



REPUBLIC OF KENYA

**SUPPLY AND DELIVERY OF LEAK DETECTION
EQUIPMENTS**

TENDER NO:
MWS1/ONT/005/2020-2021

TENDER ISSUE DATE:
22nd December 2020

TENDER CLOSING/OPENING DATE:
Tuesday 22th January, 2021 at 10.00 am

TENDER SUBMISSION PLACE AND ADDRESS

PRINCIPAL SECRETARY

**MINISTRY OF WATER, SANITATION AND IRRIGATION
MAJI HOUSE GROUND FLOOR NGONG ROAD
P.O BOX 49720-00100, NAIROBI
TEL: +254 02 27116103 EXT. 42288**

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SECTION I INVITATION TO TENDER

TENDER REF NO. (MWSI/ONT/005/2020-2021)
TENDER NAME (SUPPLY AND DELIVERY OF LEAK DETECTION EQUIPMENTS)

- 1.1 The (**Ministry of Water, Sanitation and Irrigation**) invites sealed tenders from eligible candidates for supply of (**Supply and Delivery of Leak Detection Equipment**).
- 1.2 A complete set of Tendering Documents in English language may download free of charge from the Ministry's Website <http://www.water.go.ke> Public Procurement Information Portal. <https://www.tender.go.ke> . may obtain printed hard copy upon payment of KES 2,000 to the Principal Secretary.
- 1.3 Prices quoted should be net inclusive of all taxes, must be in Kenya Shillings .
- 1.4 Serialization of pages by the tenderer for each tender submitted is **mandatory (section 74 1 (a) of PPADA 2015)**
- 1.5 Completed tender documents are to be enclosed in plain sealed envelopes marked as below:

TENDER NO.: MWSI/ONT/005/2020-2021
TENDER NAME: SUPPLY AND DELIVERY OF LEAK DETECTION EQUIPMENTS
- 1.6 And deposited in the tender box at Ministry of Water, Sanitation and Irrigation Ground Floor Maji House or be addressed to
Principal Secretary
Ministry of Water, Sanitation and Irrigation
P. O. Box 49720-00100
NAIROBI
so as to be received on or before **Tuesday 22th January, 2021 at 10.00 am East African Time**
- 1.7 Bulky tender documents to deposited (**Room No 322**) during normal working hours.
- 1.8 The tender is only open to those who meet the requirement for eligibility criteria and capacity to perform.
- 1.9 Tenders will be opened immediately thereafter, in the presence of tenderer's or representatives who choose to attend and sign a record of attendance.

FOR: ACCOUNTING OFFICER
MINISTRY OF WATER, SANITATION AND IRRIGATION

SECTION II ~ INSTRUCTIONS TO TENDERERS
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SECTION II – INSTRUCTIONS TO TENDERERS

2.1 Eligible Tenderers

2.1.1 This Invitation for Tenders is open to all tenderers eligible as described in the Appendix to Instructions to Tenderers. Successful tenderers shall complete the supply and deliver leak detection equipment by the intended completion date specified in the tender documents **(as provided for in the Appendix. ITT)**

Non- Eligible Tenderers

2.1.2 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender under section 55 of the PFAD Act 2015. **(as provided for in the Appendix. ITT)**

2.1.3 Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods under this Invitation for tenders.

2.1.4 Tenderers involved in corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible. **(as provided for in the Appendix. ITT)**

2.2 Eligible Equipment and Related Services

2.2.1 All equipment to be supplied and installed under the contract shall have their origin in eligible source countries.

2.2.2 For purposes of this clause, "origin" means the place where the equipment(s) are produced. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially-recognized product results that is substantially different in basic characteristics or in purpose or utility from its components

2.2.3 The origin of equipment is distinct from the nationality of the tenderer and shall be treated thus in the evaluation of the tender.

2.3 Cost of Tendering

2.3.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the procuring entity, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

2.3.2 The price to be charged for the tender document shall be KShs. 2000.00 for hard copy.

2.3.3 No price shall be charged for the tender document obtained electronically.

2.3.4 The procuring entity shall allow the tenderer to review the tender document free of charge before purchase.

2.3.5 All firms found capable of performing the contract satisfactorily in accordance with the set prequalification criteria shall be prequalified.

2.4. The Tender Document

2.4.1 The tender document comprises the documents listed below and addenda issued in accordance with clause 2.6 of these instructions to tenderers

- (i) Invitation to Tender
- (ii) Instructions to Tenderers
- (iii) General Conditions of Contract
- (iv) Special Conditions of Contract
- (v) Schedule of requirements
- (vi) Technical Specifications
- (vii) Tender Form
- (viii) Price Schedules
- (ix) Tender Security Form
- (x) Contract Form
- (xi) Performance Security Form
- (xii) Bank Guarantee for Advance Payment Form
- (xiii) Manufacturer's Authorization Form
- (xiv) Confidential Business Questionnaire Form
- (xv) Self-Declaration forms
- (xvi) Request for Review Form

2.4.2 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tender documents.

2.4.3 Failure to furnish all information required by the tender documents or to submit a tender not substantially responsive to the tender documents in every respect will be at the tenderers risk and may result in the rejection of its tender.

2.5 Clarification of Tender Documents

2.5.1 A prospective tenderer making inquiries of the tender documents may notify the Procuring entity in writing or by post at the entity's address indicated in the invitation for tenders.

2.5.2 The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of tenders, prescribed by the procuring entity.

2.5.3 Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers that have received the tender document.

2.5.4 The procuring entity shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.

2.5.6 Should the clarification result in changes to the essential elements of the tendering Documents, the Procuring entity shall amend the tendering Documents following the procedure under ITT 2.6.1

2.6 Amendment of Tender Documents

- 2.6.1 At any time prior to the deadline for submission of tender, the procuring entity, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by issuing an addendum.
- 2.6.2 All prospective tenderers that have obtained the tender documents will be notified of the amendment in writing or by post and will be binding on them.
- 2.6.3 Any addendum issued shall be part of the tender Documents and shall be communicated in writing to all who have obtained the tendering Documents from the procuring entity.
- 2.6.4 The procuring entity shall also promptly publish the addendum on the procuring entity web page.
- 2.6.5 In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, the Procuring entity, at its discretion, may extend the deadline for the submission of tenders.

2.7 Language of Tender

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

2.8 Documents Comprising the Tender

- 2.8.1 The tender prepared by the **tenderers shall comprise** the following components.
- (a) a Tender Form in accordance with paragraph 2.9
 - (b) a Price Schedule completed in accordance with paragraph 2.10 and 2.11 below
 - (c) documentary evidence established in accordance with paragraph 2.12 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
 - (d) documentary evidence established in accordance with paragraph 2.13 that the goods and ancillary services to be supplied by the tenderer are eligible goods and services and conform to the tender documents; and
 - (e) tender security furnished in accordance with paragraph 2.14
 - (f) written confirmation authorizing the signatory of the tender to commit the tenderer
 - (f) Manufacturer's Authorization Form
 - (g) Confidential Business Questionnaire Form
 - (h) Self-Declaration forms
- 2.8.2 In addition to the requirements under paragraph 2.8.1, tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members.
- 2.8.3 Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful tender shall be signed by all members and submitted with the tender, together with a copy of the proposed Agreement.

2.9 Tender Forms and Price Schedules

- 2.9.1 The tenderer shall complete the Tender Form and the appropriate Price Schedule furnished in the tender documents, indicating the goods to be supplied, a brief description of the goods, their country of origin, quantity, and prices.
- 2.9.2 The forms must be completed without any alterations to the text, and no substitutes shall be accepted.
- 2.9.3 All blank spaces shall be filled in with the information requested.

2.10 Tender Prices

- 2.10.1 The tenderer shall indicate on the appropriate Price Schedule the unit prices and total tender price of the goods it proposes to supply under the contract
- 2.10.2 Prices indicated on the Price Schedule shall include all costs including taxes, insurances and delivery to the premises of the entity.
- 2.10.3 Prices quoted by the tenderer shall be fixed during the Tender's performance of the contract and not subject to variation on any account. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.22
- 2.10.4 The validity period of the tender shall be 120 days from the date of opening of the tender.

2.11 Tender Currencies

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

2.12 Tenderers Eligibility and Qualifications

- 2.12.1 Pursuant to paragraph 2.1. the tenderers shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted as provided for in the **Appendix**.
- 2.12.2 The documentary evidence of the tenderers eligibility to tender shall establish to the Procuring entity's satisfaction that the tenderer, at the time of submission of its tender, is from an eligible source country as defined under paragraph 2.1 as provided for in the **Appendix**.
- 2.12.3 The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall establish to the Procuring entity's satisfaction;
 - (a) that, in the case of a tenderer offering to supply equipment under the contract which the tenderer did not manufacture or otherwise produce, the tenderer has been duly authorized by the equipment, Manufacturer or producer to supply the equipment **as provided for in the Appendix**.
 - (b) that the tenderer has the financial capability necessary to perform the contract **as provided for in the Appendix**;

- (c) that the tenderer has the technical capability necessary to perform the contract **as provided for in the Appendix;**
- (d) that the tenderer has the production capability necessary to perform the contract **as provided for in the Appendix;**
- (e) that, in the case of a tenderer not doing business within Kenya, the tenderer is or will be (if awarded the contract) represented by an Agent in Kenya equipped, and able to carry out the Tenderer's maintenance, repair, and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications as **provided for in the Appendix.**

2.13 Goods Eligibility and Conformity to Tender Document

2.13.1 Pursuant paragraph 2.2 of this section, the tenderer shall furnish, as part of its tender documents establishing the eligibility and conformity to the tender documents of all equipment which the tenderer proposes to supply under the contract as provided for in the **Appendix.**

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

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

- a) a detailed description of the essential technical and performance characteristic of the equipment
- b) a list giving full particulars, including available source and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the equipment for a period of two (2) years, following commencement of the use of the equipment by the Procuring entity; and
- c) a clause-by-clause commentary on the Procuring entity's Technical Specifications demonstrating substantial responsiveness of the goods and service to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.

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

2.14 Tender Security

2.14.1 The tenderer shall furnish, as part of its tender, a tender security for the amount and form specified in the Appendix to Instructions to Tenderers.

2.14.2 The tender security shall be in the amount of 2 % (two percent) of the tender price.

- 2.14.3 The tender security is required to protect the Procuring entity against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 2.14.7
- 2.14.4 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form of
- a) Cash
 - b) A bank guarantees
 - c) Such insurance guarantee approved by the Authority
 - d) Letter of credit.
- 2.14.5 Any tender not secured in accordance with paragraph 2.14.1 and 2.14.3 will be rejected by the Procuring entity as non responsive, pursuant to paragraph 2.22
- 2.14.6 Unsuccessful Tenderer's tender security will be discharged or returned as promptly as possible but not later than thirty (30) days after the expiration of the period of tender validity prescribed by the Procuring entity.
- 2.14.7 The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 2.27 and furnishing the performance security, pursuant to paragraph 2.28
- 2.14.8 The tender security may be forfeited:
- a) if a tenderer withdraws its tender during the period of tender validity specified by the procuring entity on the Tender Form; or
 - b) in the case of a successful tenderer, if the tenderer fails:
 - i) to sign the contract in accordance with paragraph 2.27
 1. or
 - ii) to furnish performance security in accordance with paragraph 2.28
 - c) If the tenderer rejects correction of an arithmetic error in the tender.

2.15 Validity of Tenders

- 2.15.1 Tenderers shall remain valid for 120 days or as specified in the tender documents after date of tender opening prescribed by the Procuring entity, pursuant to paragraph 2.20.
- 2.15.2 A tender valid for a shorter period shall be rejected by the Procuring entity as non responsive.
- 2.15.3 In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity.
- 2.15.4 The request and the responses thereto shall be made in writing.
- 2.15.5 The tender security provided under paragraph 2.14 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

2.16 Format and Signing of Tender

- 2.16.1 The tenderer shall prepare two copies of the tender, clearly marking each “ORIGINAL TENDER” and “COPY OF TENDER,” as appropriate. In the event of any discrepancy between them, the original shall govern.
- 2.16.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to sign on behalf of the tenderer.
- 2.16.3 this authorization shall consist of a written confirmation (**power of attorney**) and shall be attached to the tender.
- 2.16.4 All pages of the tender, except for unamended printed literature, shall be **initialed by the person or persons signing the tender.**
- 2.16.5 In case the tenderer is a JV, the tender shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.
- 2.16.6 The tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.
- 2.16.7 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the tender.

2.17 Sealing and Marking of Tenders

- 2.17.1 The Tenderer shall seal the original and each copy of the tender in separate envelopes, duly marking the envelopes as “ORIGINAL TENDER” and “COPY OF TENDER,”
- 2.17.2 These envelopes containing the original and the copies shall then be enclosed/ sealed in one single outer envelope.
- 2.17.3 The inner and outer envelopes shall:
- (a) bear the name and address of the tenderer;
 - (b) be addressed to the Procuring entity at the address given on the Invitation to Tender as below.

Principal Secretary
Ministry of Water, Sanitation and Irrigation
P. O. Box 49720-00100
NAIROBI
 - (c) bear the tender number and name in the Invitation to Tender
TENDER NO.: MWSI/ONT/005/2020-2021
TENDER NAME: SUPPLY AND DELIVERY OF LEAK
DETECTION EQUIPMENTS
 - (d) and the words “**DO NOT OPEN BEFORE**
(DAY: TUESDAY/DATE :22TH OF JANUARY 2021
TIME OF CLOSING; 10.00AM EAST AFRICAN TIME)

- 2.17.4 The inner envelopes shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared “late”.
- 2.17.5 The procuring entity shall not consider any tender that arrives after the deadline for submission of tenders. Any tender received by the procuring entity after the deadline for submission of tender shall be declared late, rejected, and returned unopened to the tenderer.
- 2.17.6 If the outer envelope is not sealed and marked as required by paragraph 2.17.2, the Procuring entity will assume no responsibility for the tender’s misplacement or premature opening of the tender.

2.18 Deadline for Submission of Tenders

- 2.18.1 Tenders must be received by the Procuring entity at the address specified under paragraph 2.17.2 not later than
(DAY: TUESDAY/DATE :22TH OF JANUARY 2021/TIME OF CLOSING; 10.00AM EAST AFRICAN TIME)
- 2.18.2 The Procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 2.6, in which case all rights and obligations of the Procuring entity and candidates previously subject to the deadline will therefore be subject to the deadline as extended
- 2.18.3 **BULKY TENDERS** which will not fit in the tender box shall be received by the procuring entity as provided for in the **appendix**.
- 2.18.4 **Electronic tenders** shall not be accepted

2.19 Modification and Withdrawal of Tenders

- 2.19.1 The tenderer may modify or withdraw its tender after the tender’s submission, provided that written notice of the modification, including substitution or withdrawal of the tenders, is received by the Procuring entity prior to the deadline prescribed for submission of tenders.
- 2.19.2 The Tenderer’s modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 2.17. A withdrawal notice may also be sent by cable, telex but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.
- 2.19.3 No tender may be modified after the deadline for submission of tenders.
- 2.19.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the Tenderer’s forfeiture of its tender security, pursuant to paragraph 2.14.7
- 2.19.5 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 2.19.6 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

2.20 Opening of Tenders

- 2.20.1 The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend and in the following location. Ministry of Water, Sanitation and Irrigation Offices 6TH Floor Maji House Community Area Ngong Road
- 2.20.2 The tenderers' representatives who are present shall sign a tender opening register evidencing their attendance.
- 2.20.3 The tenderers' names, tender modifications or withdrawals, tender prices, discounts and the presence or absence of requisite tender security and such other details as the Procuring entity, at its discretion, may consider appropriate, will be announced at the opening.
- 2.20.4 The Procuring entity will prepare minutes of the tender opening.

2.21 Clarification of Tenders

- 2.21.1 To assist in the examination, evaluation and comparison of tenders the Procuring entity may, at its discretion, ask the tenderer for a clarification of its tender.
- 2.21.2 The request for clarification and the response shall be in writing, and no change in the prices or substance of the tender shall be sought, offered, or permitted.
- 2.21.3 Any effort by the tenderer to influence the Procuring entity in the Procuring entity's tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderers' tender.

2.22 Preliminary Examination and Responsiveness

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

2.22.2 No correction of Arithmetical errors

The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.

(In pursuant To Section 80 Of the Public Procurement and Asset Disposal Act 2015).

- 2.22.3 The Procuring entity may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or effect the relative ranking of any tenderer.
- 2.22.4 Prior to the detailed evaluation, pursuant to paragraph 2.23 the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is

one, which conforms to all the terms and conditions of the tender documents without material deviations.

2.22.5 The Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

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

2.22.7 Evaluation shall also include **Preliminary Mandatory Evaluation** as indicated in **Appendix "III"**

2.23 Conversion to Single Currency

2.23.1 Where other currencies are used, the Procuring Entity will convert those currencies to Kenya Shillings using the selling exchange rate on the date of tender closing provided by the Central Bank of Kenya.

2.24 Evaluation and Comparison of Tenders

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

2.24.2 The Procuring entity's evaluation of a tender will exclude and not take into account

- a) in the case of equipment manufactured in Kenya or equipment of foreign origin already located in Kenya, sales and other similar taxes, which will be payable on the goods if a contract is awarded to the tenderer; and
- b) any allowance for price adjustment during the period of execution of the contract, if provided in the tender.

2.24.3 The comparison shall be of the ex-factory/ex-warehouse/off-the-shelf price of the goods offered from within Kenya, such price to include all costs, as well as duties and taxes paid or payable on components and raw material incorporated or to be incorporated in the goods.

2.24.4 The Procuring entity's evaluation of a tender will take into account, in addition to the tender price and the price of incidental services, the following factors, in the manner and to the extent indicated in paragraph 2.23.5 and in the technical specifications:

- (a) evaluation will be done in lots and **NOT** per single item
- (b) delivery schedule offered in the tender;
- (c) deviations in payment schedule from the specifications in the Special Conditions of Contract;
- (d) the cost of components, mandatory spare parts and service;
- (e) the availability in Kenya of spare parts and after-sales service for the equipment offered in the tender;

2.24.5 Pursuant to paragraph 2.24.4 the following evaluation methods will be applied

(A) *Delivery schedule*

- (i) The Procuring entity requires that the equipment under the Invitation for Tenders shall be delivered at the time specified in the Schedule of Requirements.

- (ii) Tenders offering deliveries longer than the procuring entity's required delivery time will be treated as non-responsive and rejected.

(B) Deviation in payment schedule

- (i) Tenderers shall state their tender price for the payment of schedule outlined in the special conditions of contract.
- (ii) Tenders will be evaluated on the basis of this base price.

(C) Spare parts and after sales service facilities

- (i) Tenderers must offer items with service and spare parts back-up.
- (ii) Documentary evidence and locations of such back-up must be given.
- (iii) Where a tenderer offers items without such back-up in the country, he must give a documentary evidence and assurance that he will establish adequate back-up for items supplied.

(D) Post Qualification Requirements

After determining the lowest-evaluated tender, the Procuring entity shall carry out the post qualification of the Tenderer in accordance with section 80 of the PPADA 2015, using only the requirements specified.

- (a) If tenderer is Manufacturer:

- (a) Financial Capability -The tenderer shall furnish documentary evidence that it meets the following financial requirement(s): liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet:

- (ii) Experience and Technical Capacity

The Tenderer's shall furnish documentary evidence to demonstrate that it meets the following experience requirement(s): *[list the requirement(s)]*

- (iii) Documentary Evidence

The Tenderer's shall furnish documentary evidence to demonstrate that the Goods it offers meet the following usage requirement: *[list the requirement(s)]*

- (b) If tenderer is not manufacturer:

If a tenderer is not a manufacturer, but is offering the Goods on behalf of the Manufacturer under Manufacturer's Authorization Form, the Manufacturer shall demonstrate the above qualifications (a), (ii), (iii) and the tenderer shall demonstrate that it has successfully completed at least _____ contracts of similar goods *[insert number of contracts]* in the past _____ years *[insert number of years]*

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

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

2.26 Contacting the Procuring Entity

- 2.26.1 Subject to paragraph 2.21 no tenderer shall contact the Procuring entity on any matter related to its tender, from the time of the tender opening to the time the contract is awarded.
- 2.26.2 Any effort by a tenderer to influence the Procuring entity in its decisions on tender, evaluation, tender comparison, or contract award may result in the rejection of the Tenderer's tender.

2.27 Award of Contract

(a) Post-Qualification

- 2.27.1 In the absence of pre-qualification, the Procuring entity will determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.
- 2.27.2 The determination will take into account the tenderer financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the tenderer's qualifications submitted by the tenderer, pursuant to paragraph 2.12.3 as well as such other information as the Procuring entity deems necessary and appropriate.
- 2.27.3 An affirmative determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the Tenderer's tender, in which event the Procuring entity will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

(b) Award Criteria

- 2.27.4 The Procuring entity will award the contract to the successful tenderer(s) whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.
- 2.27.5 To qualify for contract awards, the tenderer **must** have the following:
- (a) Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.
 - (b) Legal capacity to enter into a contract for procurement
 - (c) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
 - (d) Shall not be debarred from participating in public procurement.
 - (e) the person has the legal capacity to enter into a contract for procurement or asset disposal;
 - (f) the person has fulfilled tax obligations;
 - (g) the person has not been convicted of corrupt or fraudulent practices; and
 - (h) is not guilty of any serious violation of fair employment laws and practices.

(c) Procuring Entity's Right to Vary Quantities at Time of Award

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

(d) Procuring Entity's Right to Accept or Reject Any or All Tenders

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

2.27.8 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination

2.27.9 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

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

2.28 Notification of Award

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

2.28.2 The Procuring entity will simultaneously inform the other tenderers that these tenders have not been successful

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

2.29 Signing of Contract

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

2.29.2 Within fourteen (14) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Procuring entity.

2.29.3 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

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

2.30 Performance Security

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

2.30.2 Failure of the successful tenderer to comply with the requirements of paragraph 2.28 or paragraph 2.29 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Procuring entity may make the award to the next lowest evaluated Candidate or call for new tenders.

2.31 Corrupt or Fraudulent Practices

2.31.1 The procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts.

Defines for the purpose of this provision, the terms set forth below as follows:

“corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of the public official in the procurement process or in the execution, and

“fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the employer, and includes collusive practices among tenderers (prior to or after tender submission) designed to establish tender prices at artificial, non-competitive levels and to deprive the employer the benefits of free and open competition

“collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

“coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party⁵ or the property of the party to influence improperly the actions of a party;

“obstructive practice” is deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation.

2.31.2 A tenderer **shall sign a self- declaration** that he has and will not be involved in corrupt or fraudulent practices.

2.31.3 The Procuring entity will reject a proposal for award if it determines that the tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.

2.31.4 Further a tenderer who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public Procurement in Kenya.

2.32 Confidentiality

2.32.1 Information relating to the evaluation of tenders and recommendation of contract award, shall not be disclosed to Tenderer's or any other persons not officially concerned with the tendering process until information on Contract Award is communication to all tenderers.

2.32.2 Any effort by a tenderer to influence the procuring entity in the evaluation or contract award decisions may result in the rejection of its tender.

2.32.3 From the time of tender opening to the time of Contract Award, if any tenderer wishes to contact the procuring entity on any matter related to the tendering process, it should do so in writing.

2.32.4 A member of committee of the procuring entity shall **sign a confidentiality declaration form**

2.33 Conflict of Interest

2.33.1 A tender shall not have a conflict of interest.

2.33.2 Any tender found to have a conflict of interest shall be disqualified.

2.33.3 A tender may be considered to have a conflict of interest for the purpose of this tendering process, if the tenderer:

- (a) directly or indirectly controls, is controlled by or is under common control with another tenderer; or
- (b) receives or has received any direct or indirect subsidy from another tenderer; or
- (c) has the same legal representative as another tenderer; or
- (d) has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the bid of another tenderer, or influence the decisions of the procuring entity regarding this tendering process; or
- (e) participates in more than one tender in this tendering process. Participation by a tenderer in more than one tender will result in the disqualification of all tenders in which such tenderer is involved. However, this does not limit the inclusion of the same subcontractor in more than one tender; or
- (f) any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender; or

- (g) any of its affiliates has been hired (or is proposed to be hired) by the procuring entity for the Contract implementation; or
- (h) would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or
- (i) has a close business or family relationship with a professional staff of the procuring entity who; -
 - (a) are directly or indirectly involved in the preparation of the tendering documents or specifications of the contract, and/or the tender evaluation process of such contract; or
 - (ii) would be involved in the implementation or supervision of such contract

APPENDIX TO INSTRUCTIONS TO TENDERERS

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

INSTRUCTIONS TO TENDERERS REFERENCE	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
2.1.1	<i>Indicate eligible tenderers</i>
Eligibility to tender In Pursuant To 55. Of the PPADA 2015	<p>(1) A person is eligible to tender for a contract in procurement only if the person satisfies the following criteria —</p> <p>(a) the person has the legal capacity to enter into a contract for procurement or asset disposal;</p> <p>(b) the person is not insolvent, in receivership, bankrupt or in the process of being wound up;</p> <p>(c) the procuring entity is not precluded from entering into the contract with the person under section 38 of this Act;</p> <p>(d) the person and his or her sub-contractor, if any, is not debarred from participating in procurement proceedings under Part XI of this Act;</p> <p>(e) the person has fulfilled tax obligations;</p> <p>(f) the person has not been convicted of corrupt or fraudulent practices; and</p> <p>(g) is not guilty of any serious violation of fair employment laws and practices.</p>
2.1.2	<i>Indicate non-eligible tenderers</i>
2.1.2 2.1.4 Not Eligible in Pursuant To 55. (2) Of the PPADA 2015	<p>The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender under section 55 of the PPAD Act 2015.</p> <p>Tenderers involved in corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible</p> <p><i>2) A person or consortium shall be considered ineligible to tender, where in case of a corporation, private company, partnership or other body, the person or consortium, their spouse, child or sub-contractor has substantial or controlling interest and is found to be in contravention of the provisions of subsection</i></p> <p>(1) (e), the person and his or her sub-contractor, if any, is debarred from participating in procurement proceedings under Part XI of this Act;</p> <p>(f), the person has not fulfilled tax obligations;</p> <p>(g) the person has been convicted of corrupt or fraudulent practices; and</p> <p>(h) is guilty of any serious violation of fair employment laws and practices.</p>

	(a) has not completed or delayed any project by the ministry
2.2	<i>Indicate Eligible Equipment</i>
2.12.2	All equipment to be supplied and installed under the contract shall have their origin in eligible source countries. The documentary evidence of the tenderers eligibility to tender shall establish to the Procuring entity's satisfaction that the tenderer, at the time of submission of its tender, is from an eligible source country
2.8.1(c)	documentary evidence established in accordance with paragraph 2.13 that the goods and ancillary services to be supplied by the tenderer are eligible goods and services and conform to the tender documents;
2.14.1	<i>Indicate particulars of tender security</i>
2.14.2	an amount of two percent (2 %) of the tender (SECTION 61 (2) C OF PPADA 2015) KES 200,000.00
2.18.1	<i>Indicate day, date, time of closing and venue</i>
2.20.1	Day: Tuesday Date: 22 th January 2021 Time of Closing: 11.00am East African Time Place/Venue: Maji House 6 th Floor Board Room
2.29.1	<i>Indicate particulars of performance security</i>
	a successful tenderer shall submit a performance security equivalent to ten per cent (10 %) of the contract amount before signing of the contract.
1.1 The Name of The Procuring Entity And Tender	PRINCIPAL SECRETARY MINISTRY OF WATER, SANITATION AND IRRIGATION SUPPLY AND DELIVERY OF LEAK DETECTION EQUIPMENT
2.5 Clarification of Tender Document -The name(s), address (es) and telephone numbers of the Client's official(s) address are:	PRINCIPAL SECRETARY MINISTRY OF WATER, SANITATION AND IRRIGATION MAJI HOUSE, NGONG ROAD P.O. BOX 49720 – 00100 NAIROBI TEL: +254204900303 G. L 254 02 2716103 email ps@water.go.ke
In compliance to section 157 (9) of PPADA 2015 (MANDATORY)	<i>For the purpose of ensuring sustainable promotion of local industry, a 15% preference shall be given to tenderers who prove to source at least forty percent (40%) inputs are sourced from locally manufacturers.</i>
2.18.1 Deadline for submission of tenders	Day - Tuesday Date -22 th January 2021 Time- 10.00 East African Time Venue – Maji House 6 th Floor Board Room
2.18.3 Bulky tenders	Venue - 3 th Floor Room 322

2.21 Preliminary Examination and Responsiveness

NO	REQUIREMENT	R/RN
2.21. 1	<ul style="list-style-type: none"> a) whether they are complete, b) whether any computational errors have been made, c) whether required sureties have been furnished, d) whether the documents have been properly signed, and whether the tenders are generally in order e) whether the required number of copies of have been submitted (copy of tender to be replica of the original) 	

The non-responsive tenderers shall include

a) Any **ALTERNATIVES** shall be declared non-responsive

SECTION III: GENERAL CONDITIONS OF CONTRACT

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SECTION III - GENERAL CONDITIONS OF CONTRACT

3.1 Definitions and Interpretations

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

- (a) **“The Contract”** means the agreement entered into between the Procuring entity and the tenderer, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- (b) **“Contract Documents”** means the documents listed in the Contract Agreement, including any amendments thereto.
- (c) **“Day”** means calendar day.
- (d) **“Completion”** means the fulfillment of the Related Services by the Tenderer in accordance with the terms and conditions set forth in the Contract.
- (e) **“GCC”** means the General Conditions of Contract.
- (f) **“The Contract Price”** means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations
- (g) **“The Goods”** means all of the equipment, machinery, and/or other materials, which the tenderer is required to supply to the Procuring entity under the Contract.
- (h) **“The Procuring entity”** means the organization purchasing the Goods under this Contract.
- (i) **“SCC”** means the Special Conditions of Contract.
- (j) **“Subcontractor”** means any person, private or government entity, or a combination of the above, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Tenderer.
- (k) **“The Tenderer”** means the individual or firm supplying the Goods under this Contract.
- (l) **“Joint Venture, Consortium or Association,”** “means If the Tenderer’s is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Procuring entity for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Purchaser.
- (m) **Incoterms**
 - (i) Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms.
 - (ii) The terms EXW, CIP, FCA, CFR and other similar terms, when used, shall be governed by the rules prescribed in the current edition of Incoterms specified in the SCC and published by the International Chamber_of Commerce.

(N) Entire Agreement

The Contract constitutes the entire agreement between the Procuring entity and the Tenderer's and supersedes all communications, negotiations and agreements (whether written or oral) of the parties with respect thereto made prior to the date of Contract.

(O) Amendment

No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.

(P) Nonwaiver

- (i) no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
- (ii) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

(Q) Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

3.2 Application

- 3.2.1 These General Conditions shall apply in all Contracts made by the Procuring entity for the procurement installation and commissioning of equipment to the extent that they are not superceded by provisions of other part of contract.

Contract documents

- 3.2.2 Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

3.3 Country of Origin

- 3.3.1 For purposes of this clause, "**Origin**" means the place where the Goods were mined, grown or produced.
- 3.3.2 The origin of Goods and Services is distinct from the nationality of the tenderer and will be treated thus in the evaluation of the tender.

3.4 Standards and specifications

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

- (a) The Goods and Related Services supplied under this Contract shall conform to the technical specifications and standards mentioned in Schedule of Requirements and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the Goods' country of origin.
- (b) The Tenderer shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Procuring entity, by giving a notice of such disclaimer to the Procuring entity.
- (c) Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Schedule of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Procuring entity.

3.5 Use of Contract Documents and Confidential Information

- 3.5.1 The Candidate shall not, without the Procuring entity's prior written consent, disclose the Contract, or any provision therefore, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring entity in connection therewith, to any person other than a person employed by the tenderer in the performance of the Contract.
- 3.5.2 The tenderer shall not, without the Procuring entity's prior written consent, make use of any document or information enumerated in paragraph 3.5.1 above
- 3.5.3 Any document, other than the Contract itself, enumerated in paragraph 3.5.1 shall remain the property of the Procuring entity and shall be returned (all copies) to the Procuring entity on completion of the Tenderer's performance under the Contract if so, required by the Procuring entity
- 3.5.4 The Procuring entity and the tenderer shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract.
- 3.5.5 Notwithstanding the above, the Tenderer may furnish to its Subcontractor such documents, data, and other information it receives from the Procuring entity to the extent required for the Subcontractor to perform its work under the Contract, in which event the Tenderer shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Tenderer.
- 3.5.6 The Procuring entity shall not use such documents, data, and other information received from the Tenderer for any purposes unrelated to the contract.
- 3.5.7 Similarly, the Tenderer shall not use such documents, data, and other information received from the Procuring entity for any purpose other than the performance of the Contract.
- 3.5.8 The obligation of a party under GCC Sub-Clauses 3.5.4 and 3.5.6 above, however, shall not apply to information that:
 - (a) the Procuring entity or Tenderer need to share with the Bank or other institutions participating in the financing of the Contract;
 - (b) now or hereafter enters the public domain through no fault of that party;

- (c) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
- (d) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

3.5.9 The above provisions of GCC Clause 3.5 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.

3.5.10 The provisions of GCC Clause 3.5 shall survive completion or termination, for whatever reason, of the Contract.

3.6 Patent Rights, Copyright and Indemnity

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

3.6.2 The Tenderer shall, subject to the Purchaser's compliance with GCC Sub-Clause 3.6.3, indemnify and hold harmless the Procuring entity and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Procuring entity may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

- (a) the installation of the Goods by the Tenderer or the use of the Goods in the country where the Site is located; and
- (b) the sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Tenderer, pursuant to the Contract.

3.6.3 If any proceedings are brought or any claim is made against the Procuring entity arising out of the matters referred to in GCC Sub-Clause 3.6.1, the Procuring entity shall promptly give the Tenderer a notice thereof, and the Tenderer may at its own expense and in the Procuring entity name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

3.6.4 If the Tenderer fails to notify the Procuring entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Procuring entity shall be free to conduct the same on its own behalf.

3.6.4 The Procuring entity shall, at the Tenderer's request, afford all available assistance to the Tenderer in conducting such proceedings or claim, and shall be reimbursed by the Tenderer for all reasonable expenses incurred in so doing.

3.6.6 The Procuring entity shall indemnify and hold harmless the Tenderer and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs,

and expenses of any nature, including attorney's fees and expenses, which the Tenderer may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Purchaser.

3.6.7 The copyright in all drawings, documents, and other materials containing data and information furnished to the Procuring entity by the Tenderer's herein shall remain vested in the Supplier, or, if they are furnished to the Procuring entity directly or through the Tenderer's by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party

3.7 Performance Security

3.7.1 Within twenty-eight (28) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the performance security where applicable in the amount specified in Special Conditions of Contract.

3.7.2 The proceeds of the performance security shall be payable to the Procuring entity as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.

3.7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the procuring entity and shall be in the form of

- a) Cash
- b) Bank guarantee
- c) Such insurance guarantee approved by the Authority
- d) Letter of credit

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

3.8 Inspection and Tests

3.8.1 The Procuring entity or its representative shall have the right to inspect and/or to test the equipment to confirm their conformity to the Contract specifications.

3.8.2 The Procuring entity shall notify the tenderer in writing in a timely manner, of the identity of any representatives retained for these purposes.

3.8.3 The inspections and tests may be conducted in the premises of the tenderer.

3.8.4 All reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring entity.

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

3.8.6 The Procuring entity's right to inspect test and where necessary, reject the equipment after the equipment arrival and installation shall in no way be limited or waived by reason of the equipment having previously been inspected, tested and passed by the Procuring entity or its representative prior to the equipment delivery.

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

3.9 Packing and documents

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

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

3.10 Delivery and Documents

3.10.1 Delivery of the equipment, documents and installation of the same shall be made by the tenderer in accordance with the terms specified by Procuring entity in its Schedule of Requirements and the Special Conditions of Contract

3.11 Insurance

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

3.12 Payment, Taxes and Duties

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

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

3.12.3 For goods manufactured outside the Purchaser's Country, the Tenderer's shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the Purchaser's Country.

3.12.4 For goods Manufactured within the Purchaser's country, the Tenderer's shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the Purchaser.

3.12.5 If any tax exemptions, reductions, allowances or privileges may be available to the Tenderer's in the Purchaser's Country, the Procuring entity shall use its best efforts to enable the Tenderer's to benefit from any such tax savings to the maximum allowable extent.

3.13 Prices

3.13.1 Prices charged by the tenderer for equipment delivered and installation performed under the Contract shall not, with the

exception of any price adjustments authorized in Special Conditions of Contract, vary from the prices by the tenderer in its tender.

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

3.13.3 Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price.

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

3.14. Assignment

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

3.15. Subcontracts

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

3.15.2 Subcontracts shall comply with the provisions of corrupt, fraudulent practices and eligibility clauses of the tender documents.

3.16. Termination

3.16.1 Termination for Default

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

(i) if the tenderer fails to deliver any or all of the equipment within the periods) specified in the Contract, or within any extension thereof granted by the Procuring entity

(ii) if the tenderer fails to perform any other obligation(s) under the Contract

(iii) if the tenderer, in the judgment of the Procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the Contract

(b) In the event the Procuring entity terminates the Contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, equipment similar to those undelivered, and the tenderer shall be liable to the Procuring entity for any excess costs for such similar equipment. However, the Tenderer shall continue performance of the Contract to the extent not terminated.

3.16.2 Termination for Insolvency.

(a) The Procuring entity may at any time terminate the Contract by giving notice to the Tenderer if the Tenderer becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Tenderer, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Purchaser

3.16.3 Termination for Convenience.

- (a) The Purchaser, by notice sent to the Tenderer, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Tenderer under the Contract is terminated, and the date upon which such termination becomes effective.
- (b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Tenderer's receipt of notice of termination shall be accepted by the Procuring entity at the Contract terms and prices. For the remaining Goods, the Procuring entity may elect:
 - (i) to have any portion completed and delivered at the Contract terms and prices; and/or
 - (ii) to cancel the remainder and pay to the Tenderer an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Tenderer.

3.17. Liquidated Damages

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

After this the tenderer may consider termination of the contract.

3.18. Resolution and settlement of Disputes

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

3.18.2 If, after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute, either party may require that the dispute be referred for resolution to the formal mechanisms specified in the SCC.

3.19. Language and Law

3.19.1 The language of the contract shall be English language specified in the SCC.

3.19.2 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Tenderer and the Procuring entity, shall be written in the language specified in the SCC.

3.19.3 Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified, in which case, for purposes of interpretation of the Contract, this translation shall govern.

- 3.19.4 The Tenderer shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Tenderer.
- 3.19.5 The law governing the contract shall be the Laws of Kenya respectively unless otherwise specified in the SCC
- 3.19.6 Throughout the execution of the Contract, the Contractor shall comply with the import of goods and services prohibitions in the Procuring entity country.

3.20 **Warranty**

- 3.20.1 The Tenderer's warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.
- 3.20.2 the Tenderer's further warrants that the Goods shall be free from defects arising from any act or omission of the Tenderer's or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.
- 3.20.3 Unless otherwise specified in the **SCC**, the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the **SCC**, or for eighteen (18) months after the date of shipment from the port or place of loading in the country of origin, whichever period concludes earlier.
- 3.20.4 The Procuring entity shall give notice to the Tenderer's stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Procuring entity shall afford all reasonable opportunity for the Tenderer's to inspect such defects.
- 3.20.5 Upon receipt of such notice, the tenderers shall, within the period specified in the **SCC**, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.
- 3.20.6 If having been notified, the Tenderer's fails to remedy the defect within the period specified in the **SCC**, the Procuring entity may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Procuring entity may have against the Tenderer's under the Contract.

3.21. **Force Majeure**

- 3.21.1 The tenderer shall not be liable for forfeiture of its performance security, liquidated damages or termination for default if and to the extent that it's delays in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 3.21.2 For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the tenderer that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the tenderer. Such events may include, but not be limited to, acts of the Procuring entity in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

3.21.2 If a Force Majeure situation arises, the tenderer shall promptly notify the Procuring entity in writing of such condition and the cause thereof. Unless otherwise directed by the Procuring entity in writing, the tenderers shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

3.22 Notices

3.22.1 Any notice given by one party to the other pursuant to this contract shall be sent to other party by post or by fax or Email and confirmed in writing to the other party's address specified.

3.22.2 A notice shall be effective when delivered or on the notices effective date, whichever is later.

SECTION IV - SPECIAL CONDITIONS OF CONTRACT

4.1 Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, between the GCC and the SCC, the provisions of the SCC herein shall prevail over these in the GCC.

4.2 Special conditions of contract as relates to the GCC

REFERENCE OF GCC	SPECIAL CONDITIONS OF CONTRACT
3.7.1	Indicate particulars of performance security
	a successful tenderer shall submit a performance security of ten per cent (10 %) of the contract amount before signing of the contract.
3.11	Indicate terms of insurance
	The equipment must be insured
3.12.1	Indicate terms of payment
	Payment will be done upon satisfactory delivery, testing, inspection, and acceptance is done in pursuant to section 48(1-4) of the PPADA 2015
3.18.1	Indicate resolutions of disputes
	Arbitration Board of Kenya. The Arbitration Act 2012 Will Apply
	Indicate addresses of both parties
	Clients address
	PRINCIPAL SECRETARY MINISTRY OF WATER, SANITATION AND IRRIGATION P.O BOX 49720-00100 NAIROBI
	Contractors address
	Indicate addresses of both parties

SECTION V - TECHNICAL SPECIFICATIONS

5.1 PARTICULARS

The Ministry is in collaboration with Japan International Cooperation Agency (JICA) through the “Project for Strengthening Capacity in Non-Revenue Water Reduction” to improve capacity for effective management of Non-Revenue Water (NRW) in the country.

Nine (9) water service providers (WSPs) were selected for piloting under the project and JICA Expert Team continues to provide capacity support for effective NRW reduction in the pilot SPs.

Part of the Expert Team’s support involves building capacity of the WSPs on the use of technology such as the use of leak detection equipment in managing NRW.

The Ministry’s obligation under the project is to budget for acquisition of the NRW equipment, while the Expert Team uses them to train the pilot WSPs.

The Ministry has previously procured NRW equipment under Phase I and II.

This third phase will complete the set of equipment which could not be purchased under Phase I and II and will go to support three WSPs as follows:

S/No	Item description	Unit	Required Quantity	Name of WSP to be assisted
1	Pressure logger Log-Vista with pressure hose & Quick fit connector	No	1	Eldoret
2	Portable ultrasonic flow meter	No	3	1. Eldoret 2. Mavoko 3. Kilifi/Mariakani
3	Leak detector	No	2	1. Mavoko 2. Kilifi/Mariakani
4	Pipe locator	No	3	1. Eldoret 2. Mavoko 3. Kilifi/Mariakani

Name of Equipment	Specification
<p>I. Pressure Logger</p> <p>1. Sencor input op : Digital</p> <p>: Analogue</p> <p>2. Logging feature : Memory</p> <p>: Sample Rate</p> <p>: Logger ID</p> <p>: Site ID/ Clock</p> <p>: Count and event logging</p> <p>3. Comms : Serial</p> <p>4. Physical : Weight</p> <p>: Construction</p> <p>: Temp</p> <p>: Ingress protection</p> <p>: Power</p> <p>5. Accessories:</p>	<p>Uni or bi-directional pulse. Read switch contact closure type or other non-powered sensors including Kent LRP & PU10 pulse heads</p> <p>Internal pressure transducer 0-20bar/ 0-200meters head/0-300psig, accuracy +/-0.1%</p> <p>External pressure transducer or transmitter (mA) 0-20bar/0-200meters head/ 0-300psig, accuracy +/-0.1% 4-20mA external sensors</p> <p>Number of Cyclic readings (Expandable)</p> <p>1, 5, 10, 15, 30 seconds and 1, 5, 10, 30, 60 minutes</p> <p>Numeric characters</p> <p>Up to 127 alphanumeric characters/ Real time clock with date</p> <p>Count logging mode</p> <p>RS232 by infrared port to Psion Workabout RS232 by infrared port to RadLink, PDA or laptop PC</p> <p><1.0kg</p> <p>Durable powder coat painted, die cast aluminum enclosure</p> <p>-20 to +700C (Operating temperature)</p> <p>IP68 Sealed and Pressure tested</p> <p>Lithium-ion cell operational for 5 to 8 years typical. (Warranty 5 years) Data recoverable at factory with low battery condition.</p> <p>Programming Cable Specific Software Modules and applications for data</p>

II. Portable Ultrasonic Flow Meter	
1. Measurement principle	Ultrasonic transit-time difference
2. Measurement type	On line non-invasive
3. Flow velocity range	+/-0.01 25m/s
4. Resolution	0.15% of measured value, +/-0.015m/s
5. Accuracy Volume flow	+/- 1 3% of measured value depending on application +/-0.5% of measured value with process calibration
6. Flow velocity (mean)	+/-0.5% of measured value
7. Measurement rate	100 Hz (standard)
8. Pipe diameter range	(25mm) 50mm to 3000mm
9. Temperature range for sensors	-30°C to+130°C
10. Housing	Rugged integrated IP67 for both flow meter and sensors
11. Battery life	Three different operating modes to maximize battery life up to 100 with internal battery.
12. Accessories	Battery liFePo4 12.4 Ah Software for data downloaded and evaluation Magnetic mounting rail (side pictured)
III. Ground Microphone (Leak Detector)	
1. Frequency range	30 to 3000Hz
2. Temperature	Operating temperature range -15°C to +50°C
3. Battery	Battery life: Minimum 15 hours (with backlight) Battery charge: maximum 8 hours
4. Headphone	Studio quality headphone
5. Large bell microphone	High sensitivity piezo-electric sensor mounted in window proof, nitrile rubber housing. Weight<3.0kg
6. Display	Digital and 'meter' noise level Frequency analysis. TFT LCD Filter selection, Memory feature
7. accessories	Two stainless steel probe rods

IV. Pipe Locator for Metal Pipes + cable for locating Plastic Pipes	
1. Components	Receiver Signal generator Fiberglass reels to trace non metallic pipes and attach sondes Induction clamp Sondes
2. Frequencies	
: Receiver	512Hz to 200kHz
: Generator	512Hz to 200kHz
3. Operating temperature	
: Receiver	-20°C to +70°C
: Generator	-20°C to +60°C
4. IP rating	IP54
5. Power Source	
: Receiver	Alkaline battery
: Generator	Li-ion 55Wh rechargeable or 8 C cells. Output: 10W
6. Operating time	
: Receiver	Up to 20 hours
: Generator	Up to 36 hours
7. Accessories	Accessory bag

SECTION VI- SCHEDULE OF REQUIREMENTS

NO	Description	Qty	DELIVRY SCHEDULE (shipment from)	
			Weeks	Months from
1	Pressure logger log- vista with pressure hose and quick fit connector	1		
2	Portable ultrasonic flow meter	3		
3	Leak detector	2		
4	Pipe locator	3		

.....
(Title)

(Signature)

(Date)

Tenderers' Official Stamp

SECTION VII - PRICE SCHEDULE FOR GOODS

Name of tenderer: _____

Tender Number _____

Page _____ of _____

1	2	3	4	5	6	7
NO	Description	Country of origin	Quantity	Unit Price (KES)	Total Price EXW per item (cols. 4x5)	Unit price of other incidental services payable
1	Pressure logger log-vista with pressure hose and quick fit connector		1			
2	Portable ultrasonic flow meter		3			
3	Leak detector		2			
4	Pipe locator		3			
				Total Price Kshs		

Signature of tenderer _____

Note: In case of discrepancy between unit price and total, the unit price shall prevail.

SECTION VIII - STANDARD FORMS

Notes on the Standard Forms:

8.1 Form of Tender

This form must be completed by the tenderer and submitted with the tender documents. It must also be duly signed by duly authorized representative of the tenderer.

8.2 Confidential Business Questionnaire Form

This form must be completed by the tenderer and submitted with tender documents

8.3 Tender Security Form

When required by the tender document the tenderer shall provide the tender security either in the form included therein after or in another format acceptable to the procuring entity.

8.4 Contract Form

The Contract form shall not be completed by the tenderer at the time of submitting the tenderer at the time of submitting the tender. The contract form shall be completed after contract award.

8.5 Performance Security form

The performance security form should not be completed by the tenderer at the time of tender preparation. Only the successful tenderer will be required to provide performance security in the sum provided herein or in another form acceptable to the procuring entity.

8.6 Bank Guarantee for Advance Payment.

When there is an agreement to have Advance payment, this form must be duly completed.

8.7 Manufacturer's Authorization Form

When required by the tender document, this form must be completed and submitted with the tender document. This form will be completed by the manufacturer of the goods where the tender is an agent.

8.8 Tenderer's JV Members Information Form

The Tenderer shall fill in this Form in accordance with the instructions indicated below. The following table shall be filled in for the Tenderer and for each member of a Joint Venture.

8.9 Insurance

The equipment supplied under the Contract shall be fully insured

against loss or damage incidental to manufacturer or acquisition, transportation, storage, and delivery. Only the **successful tenderer** will be required to provide

8.1 FORM OF TENDER

Date _____
Tender No. _____

To: _____

[name and address of procuring entity]

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda Nos. *[insert numbers]*, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to supply deliver, install and commission (..... *(insert equipment description)* in conformity with the said tender documents for the sum of *(total tender amount in words and figures)* or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

2. We undertake, if our Tender is accepted, to deliver install and commission the equipment in accordance with the delivery schedule specified in the Schedule of Requirements.

3. If our Tender is accepted, we will obtain the guarantee of a bank in a sum of equivalent to _____ percent of the Contract Price for the due performance of the Contract, in the form prescribed by *(Procuring entity)*.

4. We agree to attenders by this Tender for a period of *[number]* days from the date fixed for tender opening of the Instructions to tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

5. This Tender, together with your written acceptance thereof and your notification of award, shall constitute a Contract, between us. Subject to signing of the Contract by the parties.

6. We understand that you are not bound to accept the lowest or any tender that you may receive.

Dated this _____ day of _____ 20 _____

[signature]

[in the capacity of]

Duly authorized to sign tender for an on behalf of _____

8.2 CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

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

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

Part 1 – General:

Business Name

Location of business premises.

Plot No..... Street/Road

Postal Address Tel No. Fax E mail

Nature of Business ,.....

Registration Certificate No.

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

Name of your bankers Branch

Part 2 (a) – Sole Proprietor

Your name in full Age

Nationality Country of origin

(iv) Citizenship details

Part 2 (b) Partnership

Given details of partners as follows:

Name	Nationality	Citizenship Details	Shares
1.
2.
3.
4.

Part 2 (c) – Registered Company

Private or Public

State the nominal and issued capital of company-

Nominal Kshs.

Issued Kshs.

Given details of all directors as follows

Name	Nationality	Citizenship Details	Shares
1.
2.
3.
4.
5.

Date Seal/Signature of Candidate

8.3 TENDER SECURITY FORM

Whereas [*name of the tenderer*]
(hereinafter called “the tenderer”) has submitted its tender dated [*date of submission of tender*] for the supply, installation and commissioning of [*name and/or description of the equipment*]
(hereinafter called “the Tender”) KNOW ALL PEOPLE by these presents that WE of having our registered office at (hereinafter called “the Bank”), are bound unto [*name of Procuring entity*] (hereinafter called “the Procuring entity”) in the sum of for which payment well and truly to be made to the said Procuring entity, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this _____ day of _____ 20 _____.

THE CONDITIONS of this obligation are: -

1. If the tenderer withdraws its Tender during the period of tender validity specified by the tenderer on the Tender Form; or
2. If the tenderer, having been notified of the acceptance of its Tender by the Procuring entity during the period of tender validity:
 - (a) fails or refuses to execute the Contract Form, 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 Procuring entity up to the above amount upon receipt of its first written demand, without the Procuring entity having to substantiate its demand, provided that in its demand the Procuring entity will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

This tender 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 above date.

[signature of the bank]
(Amend accordingly if provided by Insurance Company)

8.4 CONTRACT FORM

THIS AGREEMENT made the _____ day of _____ 20 _____ between [*name of Procurement entity*] of [*country of Procurement entity*] (hereinafter called “the Procuring entity) of the one part and [*name of tenderer*] of [*city and country of tenderer*] (hereinafter called “the tenderer”) of the other part;

WHEREAS the Procuring entity invited tenders for [certain goods] and has accepted a tender by the tenderer for the supply of those goods in the sum of [*contract price in words and figures*] (hereinafter called “the Contract Price).

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 referred to:
2. The following documents shall be deemed to form and be read and construed as part of this Agreement viz:
 - (a) the Tender Form and
 - (b) the Price Schedule submitted by the tenderer
 - (b) the Schedule of Requirements
 - (c) the Technical Specifications
 - (d) the General Conditions of Contract
 - (e) the Special Conditions of contract; and
 - (f) the Procuring entity’s Notification of Award
3. In consideration of the payments to be made by the Procuring entity to the tenderer as hereinafter mentioned, the tenderer hereby covenants with the Procuring entity to provide the goods and to remedy the defects therein in conformity in all respects with the provisions of this Contract
4. The Procuring entity hereby covenants to pay the tenderer in consideration of the provisions of the goods 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 hereto have caused this Agreement to be executed in accordance with their respective laws the day and year first above written.

Signed, sealed, delivered by _____ the _____ (for the Procuring entity)

Signed, sealed, delivered by _____ the _____ (for the tenderer in the presence of _____)

8.5 PERFORMANCE SECURITY FORM

To
[*name of Procuring entity*]

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

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

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

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

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

Signed and seal of the Guarantors

[*name of bank or financial institution*]

[*address*]

[*date*]

(Amend accordingly if provided by Insurance Company)

8.6 BANK GUARANTEE FOR ADVANCE PAYMENT

To
[*name of Procuring entity*]

[*name of tender*]

Gentlemen and/or Ladies:

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

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

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

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

Yours truly,

Signature and seal of the Guarantors

[*name of bank or financial institution*]

[*address*]

[*date*]

8.7 MANUFACTURER’S AUTHORIZATION FORM (mandatory)

To *[name of the Procuring entity]*

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

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

[signature for and on behalf of manufacturer]

Note: This letter of authority should be on the letterhead of the Manufacturer and should be signed by an authorized person.

8.8. 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

8.9 Tenderer's JV Members Information Form

[The Tenderer shall fill in this Form in accordance with the instructions indicated below. The following table shall be filled in for the Tenderer and for each member of a Joint Venture].

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

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

Page _____ of _____ pages

1. Tenderer's Name: <i>[insert Tenderers' legal name]</i>
2. Tenderer's JV Member's name: <i>[insert JV's Member legal name]</i>
3. Tenderer's JV Member's country of registration: <i>[insert JV's Member country of registration]</i>
4. Tenderer's JV Member's year of registration: <i>[insert JV's Member year of registration]</i>
5. Tenderer's JV Member's legal address in country of registration: <i>[insert JV's Member legal address in country of registration]</i>
6. Tenderer's JV Member's authorized representative information Name: <i>[insert name of JV's Member authorized representative]</i> Address: <i>[insert address of JV's Member authorized representative]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers of JV's Member authorized representative]</i> Email Address: <i>[insert email address of JV's Member authorized representative]</i>
7. Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i> <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity. <input type="checkbox"/> In case of a Government-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and absence of dependent status. 2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

SELF DECLARATION FORMS

SDF -1: LITIGATION HISTORY	67
SD -2: COMMITMENT TO CODE OF ETHICS	68
SD -3: BIO-DATA IN LINE WITH EXECUTIVE ORDER NO. 2 OF 2018	70
SD -4: NON-DEBARMENT	71
SD -5: INAPPROPRIATE INFLUENCE ON EVALUATIONS	72
SD -6: ANTI- CORRUPTION	73
SD -7: WRITTEN POWER OF ATTORNEY	74

SELF DECLARATIONS FORM -9.2: COMMITMENT TO CODE OF ETHICS

**Issued pursuant to Section 181 of the Public Procurement & Asset Disposal Act,
2015**

(to be submitted as part of payment for my dully filled, certified, signed, stamped or sealed and initialed)

I
of ID
no.(s).....
Ms.(s).....
.....
P.O. box.....code.....
(Tenderer name(s) as it appears in the certificate of registration (CR 12))

Hereby Confirm that I have read and fully understood;

1. The contents of Article 227 of the Cok, 2010, the PPADA, 2015 (the Act), its attendant PPADR 2020 (the Regulations), Executive Order No. 2 Of 2018-Procurement of Public Goods, Works and Services by Public Entities and instructions issued by the Public Procurement Regulatory Authority (PPRA).
2. That the pricing of all the items is reasonable, and deliverables will provide **value for money** in terms of cost, quality, quantity and timeliness of the delivered works, goods or services of the financial year in consideration.
3. That the supply of goods, works and services is at a price that is **fair and reasonable** and compares well with the known prices in the circumstances of the financial year in consideration.
4. That if transactions in which the standard goods, services and works are procured at **unreasonably inflated price**, I shall in addition to sanction prescribed in the PPADA 2015 (the Act), & PPADR 2020 (the regulations) pay the Ministry of Water, Sanitation and Irrigation for loss resulting from my/our actions. (REF: 54(2) & 63(1) (D) PPADA 2015)
5. That I complied with professional standards & requirements of my industry and regulated professional body of which I am member (REF: 55(C)PPADA 2015)
6. That I have not been debarred form practicing in Procurement and Asset Disposal. (REF: 41(1-5) PPADA 2015)
7. That I have complied with my tax obligation/tax compliance status as stipulated in the 55(1)(F) PPADA 2015 and The Executive Order No. 1 of 2018
8. That my current contract of
does not constitute any corrupt, coercive, obstructive, collusive or fraudulent practice or conflict of interest. (REF: 66(1) PPADA 2015)

9. That standard goods, services and works with known market prices will be procured at the prevailing market price as stipulated in the **PPRA market price** index of the financial year in consideration. (REF: 103(2)(E) PPADA 2015)
10. That I **SHALL NOT** Obstruct or hinder an officer or any other authorized person from carrying out a duty or function or exercising a power relating to procurement. (REF: 176-178 - PPADA 2015)
11. That I /we **SHALL NOT** Knowingly or in collusion with others lie to or mislead a person carrying out a duty or function or exercising a power relating to procurement.

I also certify that I am duly authorized to sign this **CODE OF ETHICS OF TENDERERS, SELF-DECLARATION & SWORN STATEMENT PLEDGE** on my own behalf and on behalf of my organization, and agree to fully comply.

Name..... Sign.....

Position.....

Office address.....

Telephone.....

E-mail.....

Name of the Firm.....
(as it appears on the certificate of registration)

(Company Seal/ Rubber Stamp where applicable)

SELF DECLARATIONS FORM -9.3: BIO-DATA IN LINE WITH EXECUTIVE ORDER NO. 2 OF 2018

PROCUREMENT OF PUBLIC GOODS, WORKS AND SERVICES BY PUBLIC ENTITIES

1	Name of Tenderer /Contractor/Tenderer	
2	Registration Details	
	Registration Number	
	Identification Number	
	Incorporation Number	
	IFMIS NUMBER	
	AGPO NUMBER (where applicable)	
3	Pin Number	
4	In Case of Company,	
	List of Directors	
	ID number	
	List of Share Holders	
	List of Beneficial Owners	
5	In Case of Sole Proprietor/Tenderer:	
	Proprietor name	
	ID number	
	Business Name	
6	In Case of Partnership,	
	Name of Partners	
	ID number of partners	
7	Business Contracts Information	
	Telephone Office	
	Telephone -Director	
	Email Address	
8	Postal Address	
9	Physical Address	
10	Tax Compliance Status	
11	Business Permit/License Number	
12	County Operation	

(Attach Filled, Signed, Certified & Stamped Copies in The Format Provided)

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

Tenderers' Official Stamp

SELF DECLARATIONS FORM -9.4: NON-DEBARMENT

**(IN COMPLIANCE WITH PART IV OF THE PPADA 2015 & PPADR 2020)
NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015.**

I,, of Post Office Box being a resident of

in the Republic of do hereby make a statement as follows: ~

1. THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Director of (insert name of the Company and postal address)

who is a tenderer in respect of Tender No.?

for
(insert tender title/description)

for

(insert name of the Procuring entity) and duly authorized and competent to make this statement.

2. THAT the aforesaid tenderers, its Directors and subcontractors have **NOT BEEN DEBARRED** from participating in procurement proceeding under Part IV of the PPAD ACT 2015 & PPAD Regulations 2020.

3. THAT what is deponed to hereinabove is true to the best of my knowledge, information and belief.

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

Tenderers' Official Stamp

SELF DECLARATIONS FORM -9.5: INAPPROPRIATE INFLUENCE ON EVALUATIONS

**PURSUANT TO SECTION 65 (1-2) OF THE PPADA 2015
I WILL NOT ENGAGE IN ANY INAPPROPRIATE INFLUENCE ON EVALUATIONS**

1. THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Director of (insert name of the Company and postal address)

who is a tenderer in respect of Tender No.?

for
(insert tender title/description)

for
(insert name of the Procuring entity) and duly authorized and competent to make this statement.

2. After the deadline for the submission of Tender No.....

(a) I shall not make any unsolicited communications to the procuring entity or any person involved in the procurement proceedings that might reasonably be construed as an attempt to influence the evaluation and comparison of tenders; and

(b) I shall not attempt, in any way, to influence that evaluation and comparison

3. If I contravene the provisions of subsection (1) I will have committed an offence and this shall lead to my tender to be disqualified.

4. THAT what is deponed to hereinabove is true to the best of my knowledge, information and belief.

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

Tenderers' Official Stamp

SELF DECLARATIONS FORM -9.6: ANTI- CORRUPTION

(In Compliance with Section 62 PPADA 2015 And 47 Of the PPADR 2020)

NOT ENGAGE IN ANY CORRUPT OR COERCIVE, OBSTRUCTIVE, COLLUSIVE OR FRAUDULENT PRACTICE OR CONFLICTS OF INTEREST.

I, of P. O. Box being a resident of in the Republic of do hereby make a statement as follows: -

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of (insert name of the Company and address) who is a tenderer in respect of

Tender/Proposal/Quotation No. dated for (insert tender title/description) for (insert name of the Procuring entity) and duly authorized and competent to make this statement.

2. THAT the aforesaid tenderers, its servants and/or agents /subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/or agents of (insert name of the Procuring entity) which is the procuring entity.

3. THAT the aforesaid tenderers, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of (name of the procuring entity)

4. THAT the aforesaid tenderers will not engage /has not engaged in any corrosive practice with other tenderer's participating in the subject tender

5. THAT what is deponed to hereinabove is true to the best of my knowledge information and belief.

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

Tenderers' Official Stamp

SELF DECLARATIONS FORM -9.7: POWER OF ATTORNEY

**FORM OF WRITTEN POWER OF ATTORNEY
(IN COMPLIANCE WITH SECTION 74(1)(D) OF PPADA 2015)**

The tenderers shall state here below the name(s) and address of his representative(s) who is/are authorized to receive/sign on his behalf correspondence in connection with the Tender.

.....
(Name of Tenderers' Representative in block letters)

.....
(Address of Tenderers' Representative)

.....
(Signature of Tenderers' Representative)

Alternate:

.....
(Name of Tenderers' Representative in block letters)

.....
(Address of Tenderers' Representative)

.....
(Signature of Tenderers' Representative)

***To Be Signed, Stamped, Filled and Sealed by All tenderers.**

*Both representative and alternate **must** attach copy of National Identification card or Passport.

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*) ofdated the...day of20.....in the matter of Tender No.....of20...

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 of20.....

SIGNED
Board Secretary

Appendix - Mandatory checklist

In Accordance with Section 155(5)(B) Of the Act,2015 Ensure That A Procuring Entity's Tender Documents Contain A **Mandatory** Requirement as Preliminary Evaluation Criteria

NO	MANDATORY REQUIREMENT	R/RN(REQUIREMENT)
MR1	Must submit a certified copy of certificate registration /incorporation in legal capacity to enter into a contract for procurement in accordance with section 55(1)(a) of the PPADA 2015;	certified valid copy of certificate registration
MR2	Must submit self-declaration forms that the tenderer/s is not debarred form participating in public procurement proceedings under Part XI of this Act in Kenya in company's letter headed in the format provided in accordance with section 55(1)(b) of the PPADA 2015 -	Properly filled, stamped and signed in the format provided
MR3	Must provide proof that the tenderer is not insolvent, in receivership, bankrupt or in the process on being wound up in accordance with section 55(1)(b) of the PPADA 2015;	Attach proof
MR4	Must submit a certified copy valid tax compliance certificate as proof that the tenderer has fulfilled tax obligations in accordance with section 55(1)(f) of the PPADA 2015;	Attach proof
MR5	Must submit self-declaration forms that the tenderer/s have not engaged in or been convicted of corrupt or fraudulent practice in public procurement in Kenya in company's letter headed in accordance with section 55(1)(g) of the PPADA 2015	Properly filled, stamped and signed in the format provided
MR6	Must proof that the tenderer is not guilty of any serious violation of fair employment laws and practices in accordance with section 55(1)(h) of the PPADA 2015;	Properly filled, stamped and signed in the format provided
MR7	Must proof that the tenderer has not proposed employing public official, civil servants and employees of public institutions and that its sub tenderers and experts have no conflict of interest in accordance with section 128(7) of the PPADA 2015;	To state explicitly
MR8	Must submit a dully filled, stamped and signed Confidential Business Questionaries	Properly filled, stamped and signed in the format provided
MR9	Must submit a dully filled, stamped and signed self-declaration forms as per 2.30.2 of the tender documents and reg 47 of the PPADR 2020	Properly filled, stamped and signed in the format provided
MR 10	Must sign the code of ethics in pursuant to section 181 of the PPADA 2015 in the format provided	Properly filled, stamped and signed in the format provided
MR11	Must submitted in the required format, spiral bind and sequential serialized in accordance with section 74(1) (a) of the PPADA 2015 and 2.16.3 of the tender document;	All Pages of Both original and copy)
MR12	Must submit power of attorney duly signed by the person lawfully authorized to do so through the power of attorney without material deviation, reservation or omission in accordance with section 74(1)(d) of the PPADA 2015;	Properly filled, stamped and signed in the format provided

	<p>At this stage the tenderers submission will either be responsive (R) or non -responsive (NR)</p> <p>The non -responsive submission will be eliminated from the entire process which are not in conformity to the requirements of section 79 of the PFAD act 2015 and 74 of PFAD Regulations 2020.</p>	
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