



**KIMAWASCO**  
**KILIFI MARIKANI WATER AND**  
**SEWERAGE COMPANY LIMITED**

**Call:** 0727-110 711 / 0737-442 525

**Email:** info@kilifiwater.co.ke

**Website:** www.kilifiwater.co.ke

---

**TENDER REF.NO: KIMAWASCO/FC/016/2024-26**

**TENDER NAME: TENDER FOR SUPPLY OF FUEL AND LUBRICANTS  
THROUGH FRAMEWORK CONTRACT FOR A PERIOD OF TWO (YEARS)**

**OPEN FOR ALL ELIGIBLE BIDDERS**

**CLOSING DATE AND TIME 15<sup>TH</sup> AUGUST 2024 AT 1100 HRS**

**TABLE OF CONTENTS**

SECTION I: INVITATION TO TENDER .....2

SECTION II- INSTRUCTIONS TO TENDERERS .....3

APPENDIX TO INSTRUCTIONS TO TENDERERS ..... 14

SECTION III - GENERAL CONDITIONS OF CONTRACT..... 19

SECTION IV - SPECIAL CONDITIONS OF CONTRACT .....22

SECTION V - TECHNICAL SPECIFICATIONS .....25

SECTION VI: SCHEDULE OF REQUIREMENTS AND PRICING.....26

SECTION VII - STANDARD FORMS .....32

## **SECTION I: INVITATION TO TENDER**

**TENDER REF NO: KIMAWASCO/T/016/2024-26**

**TENDER NAME: TENDER FOR SUPPLY OF FUEL AND LUBRICANTS.**

- 1.1 The Kilifi Mariakani Water and Sewerage Co. Ltd invites sealed bids from eligible suppliers for the supply of fuel and lubricants through **Framework** Contract for the period of two (2) years.
- 1.2 Interested eligible candidates may obtain further information from and inspect the tender documents from the procurement office, located at Kilifi town at former K.D.D.P Offices, Off Mombasa-Malindi Road, during normal working hours.
- 1.3 A hard copy of the tender document may be obtained by interested firms upon payment of a non-refundable fee of **Kshs. 1000** payable to our revenue office in cash or banker's cheque payable to Kilifi Mariakani Water and Sewerage Co. Ltd. The document can also be viewed and downloaded from the company website [www.kilifiwater.co.ke](http://www.kilifiwater.co.ke) . Bidders who download the tender document from the website **MUST** forward their particulars immediately for records and any further tender clarifications and addenda to address provided at appendix to instruction to tenderers.
- 1.4 Completed tender documents are to be enclosed in plain sealed envelopes marked with tender name and tender reference number and be deposited in the Tender Box situated outside revenue office at headquarters offices in Kilifi town, former K.d.d.p Offices Off Mombasa-Malindi road or be addressed to;

**THE MANAGING DIRECTOR,  
KILIFI MARIAKANI WATER AND SEWERAGE CO.LTD,  
P.O. BOX 275-80108  
KILIFI.**

So as to be received on or before **15<sup>th</sup> August, 2024, at 1100hrs**

- 1.5 Prices quoted shall be as per the prevailing pump prices as determined by the regulator (Energy regulatory commission) and in accordance with the Kenyan Government laws controlling the supply of fuel and lubricants for the two (2) year period.
- 1.6 Tenders will be opened immediately thereafter in the presence of the Candidates or their representatives who choose to attend at Kilifi Mariakani Water and Sewerage Boardroom.

**Managing Director**

## **SECTION II- INSTRUCTIONS TO TENDERERS**

### **2.1 Eligible Tenderers**

- 2.1.1 This Invitation for Tender is open for all bidders eligible as described in the Invitation to Tender. Successful tenderers shall complete the supply of goods by the intended completion period specified in the Schedule of Requirements Section VI.
- 2.1.2 Kilifi Mariakani Water and Sewerage employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.
- 2.1.3 Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Kilifi Mariakani Water and Sewerage Co. Ltd 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 shall not be under a declaration of ineligibility for corrupt and fraudulent practices.

### **2.2 Eligible Goods**

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

### **2.3 Cost of Tendering**

- 2.3.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and KIMAWASCO 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 not exceed Kshs.1, 000 or free of charge for bidders that download the tender document from Company website.
- 2.3.3 All firms found capable of performing the contract satisfactorily in accordance with the set criteria shall be awarded the tender.

## **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.

- Invitation to Tender
- Instructions to tenderers
- General Conditions of Contract
- Special Conditions of Contract
- Schedule of requirements
- Technical Specifications
- Tender Form and Price Schedules
- Tender Securing Declaration Form
- Contract Form
- Performance Security Form
- Confidential Business Questionnaire
- Declaration of undertaking not to engage in corrupt fraudulent practices

2.4.2 The Tenderer is expected to examine all instructions, forms, terms and specifications in the tender documents. Failure to furnish all information required by the tender documents or to submit a tender not substantially responsive to the tender documents in every respect will be at the tenderers risk and may result in the rejection of its tender.

## **2.5 Clarification of Documents**

2.5.1 A prospective tenderer requiring any clarification of the tender document may notify KIMAWASCO in writing or by post at the entity's address indicated in the Invitation to Tender. KIMAWASCO will respond in writing to any request for clarification of the tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of tenders, prescribed by the procuring entity. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers that have received the tender document.

2.5.2 KIMAWASCO shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.

## **2.6 Amendment of Documents**

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

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

2.6.3 In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, KIMAWASCO, 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 KIMAWASCO, shall be written in English language, provided that any printed literature furnished by the tenderer may be written in another language provided they are accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the tender, the English translation shall govern.

## 2.8 **Documents Comprising of Tender**

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

- (a) Tender Form and a Price Schedule completed in accordance with paragraph 2.9, 2.10 and 2.11 below
- (b) Documentary evidence established in accordance with paragraph 2.1 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
- (c) documentary evidence established in accordance with paragraph 2.2 that the goods and ancillary services to be supplied by the tenderer are eligible goods and services and conform to the tender documents; and
- (d) tender security furnished in accordance with paragraph 2.14

## 2.9 **Tender Forms**

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

## 2.10 **Tender Prices**

2.10.1 The tenderer shall indicate on the appropriate Price Schedule the unit prices 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 tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.

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

2.12.3 The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall be established to the KIMAWASCO satisfaction;

(a) that, in the case of a tenderer offering to supply goods under the contract which the tenderer did not manufacture or otherwise produce, the tenderer has been duly authorized by the goods' Manufacturer or producer to supply the goods.

(b) that the tenderer has the financial, technical, and production capability necessary to perform the contract;

(c) that, in the case of a tenderer not doing business within Kenya, the tenderer is or will be (if awarded the contract) represented by an Agent in Kenya equipped, and able to carry out the Tenderer's maintenance, repair, and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.

## **2.13 Goods Eligibility and Conformity to Tender Documents**

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

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

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

(a) detailed description of the essential technical and performance characteristic of the goods;

(b) clause-by-clause commentary on the KIMAWASCO Technical Specifications demonstrating substantial responsiveness of the goods and service to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.

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

## **2.14 Tender Security**

**2.14.1** The tenderer shall furnish, as part of its tender, **a tender securing declaration form specified in the Appendix to Invitation to Tenderers.**

2.14.2 The Tender securing declaration form shall be duly signed and stamped.

2.14.3 The tender securing form is required to protect KIMAWASCO against the risk of Tenderer's conduct.

2.14.4 Any tender not secured in accordance with paragraph 2.14.1 and 2.14.3 will be rejected by KIMAWASCO as non-responsive, pursuant to paragraph 2.22

2.14.5 Unsuccessful Tenderer's tender security will be discharged or returned as promptly as possible as but not later than thirty (30) days after the expiration of the period of tender validity prescribed by KIMAWASCO.

2.14.6 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

2.14.7 The tender security may be forfeited:

(a) if a tenderer withdraws its tender during the period of tender validity specified by KIMAWASCO 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

or

(ii) to furnish performance security in accordance with paragraph 2.28



## 2.15 **Validity of Tenders**

- 2.15.1 Tenders shall remain valid for **120** days or as specified in the Invitation to tender after the date of tender opening prescribed by KIMAWASCO, pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by KIMAWASCO as non-responsive.
- 2.15.2 In exceptional circumstances, KIM AWASCO may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 2.14 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

## 2.16 **Format and Signing of Tender**

- 2.16.1 Bidders shall prepare **Two copies (2)** of the tender, clearly marking one "ORIGINAL TENDER" and one "COPY OF TENDER," as appropriate. In the event of any discrepancy between them, the original shall govern.
- 2.16.2 The original and the copy of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. The latter authorization shall be indicated by written power-of-attorney accompanying the tender. All pages of the tender, except for unamended printed literature, shall be initialled by the person or persons signing the tender.
- 2.16.3 The tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialled by the person or persons signing the tender.

## 2.17 **Sealing and Marking of Tenders**

- 2.17.1 The Tenderer shall seal the original and a copy of the tender in separate envelopes, duly marking the envelopes as "ORIGINAL" and "COPY." The envelopes shall then be sealed in an outer envelope.
- 2.17.2 The inner and outer envelopes shall:
- (a) be addressed to Kilifi Mariakani Water & Sewerage Co. Ltd at the address given in the Invitation to Tender;
  - (b) bear, tender number and name in the Invitation for Tenders and the words, "DO NOT OPEN BEFORE," **15<sup>th</sup> August, 2024 at 1100 hrs.**
- 2.17.3 The inner envelopes shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared "late".

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

## **2.18 Deadline for Submission of Tenders**

2.18.1 Tenders must be received by the Procuring entity at the address specified under paragraph 2.17.2 no later than **15<sup>th</sup> AUGUST, 2024 at 1100 hrs**

2.18.2 KIMAWASCO 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.

## **2.19 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 KIMAWASCO may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

2.19.6 KIMAWASCO 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 KIMAWASCO will open all tenders in the presence of tenderers' representatives who choose to attend on Monday 24<sup>th</sup> August, 2020 at 1115hrs and in the location specified in the Invitation to Tender. The tenderers' representatives who are present shall sign a register evidencing their attendance.

2.20.2 The tenderers' names, tender modifications or withdrawals, tender prices, discounts and the presence or absence of requisite tender security and such other details as KIMAWASCO, at its discretion, may consider appropriate, will be announced at the opening.

2.20.3 KIMAWASCO 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 KIMAWASCO may, at its discretion, ask the tenderer for a clarification of its tender. The request for clarification and the response shall be in writing, and no change in the prices or substance of the tender shall be sought, offered, or permitted.

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

## **2.22 Preliminary Examination**

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

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

2.22.3 KIMAWASCO 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 affect the relative ranking of any tenderer.

2.22.4 Prior to the detailed evaluation, pursuant to paragraph 2.23 KIMAWASCO 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. KIMAWASCO determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

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

## **2.23 Conversion to Single Currency**

2.23.1 Where other currencies are used, KIMAWASCO will convert these 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 KIMAWASCO will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.22

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

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

## **2.25 Preference**

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

## **2.26 Contacting the Procuring entity**

2.26.1 Subject to paragraph 2.21 no tenderer shall contact KIMAWASCO 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 KIMAWASCO 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, KIMAWASCO will determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.

2.27.2 The determination will take into account the **tenderer financial, technical, and production capabilities**. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 2.12.3 as well as such other information as KIMAWASCO 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 KIMAWASCO 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 KIMAWASCO will award the contract to the successful tenderer(s) whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

**(c) Procuring entity's Right to Vary quantities**

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

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

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

**2.28 Notification of Award**

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

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

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

**2.29 Signing of Contract**

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

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

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

### **2.30 Performance Security**

2.30.1 Within Thirty (30) days of the receipt of notification of award from KIMAWASCO, 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 KIMAWASCO.

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

### **2.31 Corrupt or Fraudulent Practices**

2.31.1 KIMAWASCO requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts when used in the present regulations; the following terms are defined as follows;

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

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

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

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

## APPENDIX TO INSTRUCTIONS TO TENDERERS

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	The tender is open to all eligible suppliers.
2.3.2	A complete set of the tender document may be obtained by interested firms upon payment of a non-refundable fee of <b>Kshs.1000</b> each payable to our accounts office in cash or by banker's cheque. The document can also be viewed and downloaded from the website <a href="http://www.kilifiwater.co.ke">www.kilifiwater.co.ke</a> at free <b>of charge</b> . Bidders who download the tender document from the website <b>MUST</b> forward their particulars immediately for records and any further tender clarifications and addenda.
2.5.1	<p>A prospective tenderer requiring any clarification of the tender document may notify KIMAWASCO in writing at the following address:</p> <p>Managing Director            Kilifi Mariakani Water and Sewerage Co. Ltd,            Former Kddp offices, Off Mombasa-Malindi road at Kilifi town            P.O. Box 275-80108,            Kilifi            E-mail: <a href="mailto:info@kilifiwater.co.ke">info@kilifiwater.co.ke</a></p> <p>NB: Any request for clarification must be in the firm's letter head, signed and must be in reference to the specific parts of the tender document properly numbered specific parts of the tender document properly numbered.</p>
2.5.1	KIMAWASCO will respond in writing email to any request for clarification received at least seven (7) days prior to the deadline for the submission of tenders.
2.10.2	The prices should include all taxes and delivery to KIMAWASCO offices.
2.11.1	Prices quoted shall be in Kenya Shillings or an easily convertible foreign currency and shall remain fixed during contract period from date of contract signing.
2.14.1	The tenderer shall furnish, as part of its tender, a tender securing bid declaration form dully signed, filled and stamped.
2.16	Tenderers must submit one (1) original and one (1) copy of the

	tender
2.18.1	The tender Closing date is on; Monday 24 <sup>th</sup> August,2020 at 1115hrs
2.22.1	At the preliminary evaluation stage, the following mandatory requirements that determines a bidder's responsiveness will be assessed:- As provided below (A): Tender Evaluation Criteria Mandatory requirement <b>NB:</b> Bidders who will not meet the below requirements will be declared non-responsive and their bids will not be evaluated further.
2.22.2	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.
2.24.1	In the technical evaluation stage, only bidders who have been found responsive at the preliminary stage will be evaluated on the following below parameters: As provided below (B): Tender Evaluation Criteria in the tender document. Bids responsive at the technical evaluation stage will be evaluated at the financial stage. In the financial evaluation stage, The bids will be checked for costing of all items and payment terms.
2.27.4	Award Criteria: The lowest evaluated bidder will be recommended for award and signing of contract.
2.28.1	The unsuccessful tenderers will be notified on the outcome of the tender at the same time the successful tenderer is notified.
2.30.1	No performance security is required for this tender.



## TENDER EVALUATION CRITERIA

### STAGE A: PRELIMINARY REQUIREMENTS (MANDATORY)

No.	Documents to be submitted	Yes/No
1.	A dully filled, signed and stamped tender securing declaration form	
2.	Duly filled, Signed & Stamped Price Schedules.	
3.	Duly filled, Signed & Stamped Tender Form ( summation of schedule)	
4.	Attach a copy of Certificate of Incorporation/Registration in Kenya	
5.	Submit Tax Compliance Certificate valid at the time of opening. This will be verified through the TCC checker.	
6.	Duly filled, signed and stamped Confidential Business Questionnaire	
7.	Duly filled, signed and stamped declaration of undertaking not to engage in corrupt fraudulent practice	
8.	A valid licence/certificate from regulator(Energy regulatory commission) authorization to supply fuel and lubricants	
9.	Submit a valid business permit	
10.	Provide business location / office location, office address, telephone numbers & email address and contact person.	
11.	Provide certified audited accounts for the last 2yrs/6 months Bank Statements	

NB: Bids that do not meet the above requirements will be declared non-responsive and will not be evaluated further.

## STAGE B: TECHNICAL EVALAUTION CRITERIA

*Bidders that score 70% and above under Technical evaluation will be subjected to Financial Evaluation.*

No	Evaluation Attribute	Weighting score	Max score %
1.	Experience in supply of goods/products of similar nature. Attach a detailed list of corporate clients with copies of LPOs/contracts done where you have been supplying fuel and lubricants.	<ul style="list-style-type: none"> <li>• 5 and above clients: 35marks</li> <li>• Others prorated at: <u>Number of clients' x 35</u> 5</li> </ul>	35
2.	Number of years in business relevant to the tender applied for.	<ul style="list-style-type: none"> <li>• 5 years and above: 15 marks</li> <li>• Others prorated at: <u>Number of years x15</u> 5</li> </ul>	15
3.	List of personnel in employment proposed to be dedicated for the required supply: <ul style="list-style-type: none"> <li>• Management personnel- - provide a signed CV for person dedicated for the delivery.</li> </ul>	<ul style="list-style-type: none"> <li>• One (1) CV and above: -10 marks</li> <li>None; -0 marks</li> </ul>	10
	<ul style="list-style-type: none"> <li>• Other supportive staff;</li> </ul> <p>Provide CVs for personnel proposed for the execution of the contract.</p> <p>The category should be supported by a list of employees indicating their employment status i.e. permanent or others).</p>	<ul style="list-style-type: none"> <li>• 4 employees and above scores <b>20 marks.</b></li> <li>• Others prorated at: <u>Number of years' x 20</u> 4</li> </ul>	20
4.	List of equipment owned that will be used by the applicant relevant to the tender applied for. Attach ownership documents or leased documents	5marks	5
5.	Provide a letter of commitment duly signed & stamped confirming alternative source of obtaining fuel and lubricants in case you run out of the products at the pump station.	10marks	10
6.	Document conformity/neatness and well arranged	5marks	5
	Total		100

## **STAGE C: FINANCIAL EVALUATION CRITERIA**

Only bidders with scores 70% and above at technical evaluation stage their bids will be subjected to financial evaluation to assess their financial capabilities.

## **SECTION III - GENERAL CONDITIONS OF CONTRACT**

### **3.1 Definitions**

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

(a) “The Contract” means the agreement entered into between the Procuring entity and the tenderer, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

(b) “The Contract Price” means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations

(c) “The Goods” means all of the equipment, machinery, and/or other materials, which the tenderer is required to supply to the Procuring entity under the Contract.

(d) “The Procuring entity” means the organization purchasing the Goods under this Contract.

(e) “The Tenderer” means the individual or firm supplying the Goods under this Contract.

### **3.2 Application**

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

### **3.3 Country of Origin**

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

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

### **3.4 Standards**

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

### **3.5 Use of Contract Documents and Information**

3.5.1 The tenderer shall not, without the Procuring entity’s prior written consent, disclose the Contract, or any provision therefore, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring entity in connection therewith, to any person other than a person employed by the tenderer in the performance of the Contract.

- 3.5.2 The tenderer shall not, without the Procuring entity's prior written consent, make use of any document or information enumerated in paragraph 3.5.1 above
- 3.5.3 Any document, other than the Contract itself, enumerated in paragraph 3.5.1 shall remain the property of the Procuring entity and shall be returned (all copies) to the Procuring entity on completion of the Tenderer's performance under the Contract if so required by the Procuring entity

### **3.6 Patent Rights**

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

### **3.7 Performance Security**

- 3.7.1 Within thirty (30) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the performance security in the amount and manner specified in Special Conditions of Contract.
- 3.7.2 The proceeds of the performance security shall be payable to the Procuring entity as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.
- 3.7.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Procuring entity and shall be in the form of a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in Kenya or abroad, acceptable to the Procuring entity, in the form provided in the tender documents.
- 3.7.4 The performance security will be discharged by the Procuring entity and returned to the Candidate not later than thirty (30) days following the date of completion of the Tenderer's performance obligations as specified in the Special Conditions of Contract, including any warranty obligations, under the Contract.

### **3.8 Inspection and Tests**

- 3.8.1 The Procuring entity or its representative shall have the right to inspect and/or to test the goods to confirm their conformity to the Contract specifications. The Procuring entity shall notify the tenderer in writing in a timely manner, of the identity of any representatives retained for these purposes.
- 3.8.2 The inspections and tests may be conducted in the premises of the tenderer or its subcontractor(s), at point of delivery, and/or at the Goods' final destination. If conducted on the premises of the tenderer or its subcontractor(s), all reasonable facilities and

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

- 3.8.3 Should any inspected or tested goods fail to conform to the Specifications, the Procuring entity may reject the equipment, and the tenderer shall either replace the rejected equipment or make alterations necessary to make specification requirements free of costs to the Procuring entity.
- 3.8.4 The Procuring entity's right to inspect, test and where necessary, reject the goods after the Goods' arrival shall in no way be limited or 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.
- 3.8.5 Where the Procuring Entity rejects any component of the Goods delivered, it shall provide a timeline in writing within which the Tenderer shall collect and replace the rejected Goods.
- 3.8.6 Should the Tenderer fail to collect the Goods within the prescribed timelines or any extension thereof granted, the Procuring Entity shall be entitled to charge a storage fee at the prevailing commercial bank rates until all the rejected Goods are collected by the Tenderer.
- 3.8.7 Where the Tenderer despite the extension granted in clause 3.8.5 above fails to collect the rejected Goods, the Procuring Entity shall be entitled to proceed and dispose the rejected Goods in accordance with the procedures outlined in the Public Procurement and Asset Disposal Act, 2015.
- 3.8.8 Nothing in paragraph 3.8 shall in any way release the tenderer from any warranty or other obligations under this Contract.

### 3.9 **Packing**

- 3.9.1 The tenderer shall provide such packing of the Goods as is required to prevent damage or deterioration during transit to their final destination, as indicated in the Contract.
- 3.9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract

### 3.10 **Delivery and Documents**

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

### **3.11 Insurance**

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

### **3.12 Payment**

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

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

### **3.13 Prices**

3.13.1 Prices charged by the tenderer for goods delivered 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 25%, of the original contract price.

3.13.4 Where the variation in contract price results to an increment by more than 25%, such variation shall be tendered for separately.

3.13.5 Where quantity variation of Goods is allowed, the variation shall not exceed 15% of the original contract quantity.

3.13.6 Price variation request shall be responded to by the procuring entity within 30 days of receiving the request.

### **3.14. Assignment**

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

### **3.15 Subcontracts**

3.15.1 The tenderer shall not sub contract in whole or in part, any of its obligations under this Contract, except with the written consent of the procuring entity with the exception of subcontracts awarded already specified in the tender. Such notification, in the original tender or later, shall not relieve the tenderer from any liability or obligation under the Contract.

### **3.16 Termination for default**

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

### **3.16 Termination for default**

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

(a) If the Goods delivered by the Tenderer do not conform to the Standards specified in the Contract.

(b) if the tenderer fails to deliver any or all of the goods within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring entity.

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

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

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

### **3.18 Termination for Convenience**

The Procuring Entity by written 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 the termination is for the Procuring Entity's convenience, the extent to which performance of the contract is terminated and the date on which such termination becomes effective.

For the remaining part of the contract after termination the Procuring Entity's may elect to cancel the supply and pay to the Tenderer the amount for partially delivered Goods.

### **3.14 Termination by Mutual Consent**

By mutual written agreement, the Procuring Entity and the Tenderer may agree to terminate the contract. The agreement shall provide that the termination is by mutual agreement, the extent to which the contract is terminated and the effects of such termination on each party's obligations.



### **3.15 Termination by Insolvency**

If the Tenderer becomes insolvent or bankrupt; the Procuring Entity may at any time terminate this Agreement by giving written notice to the Tenderer becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the Tenderer, provided that such termination will not produce or affect any right of action or remedy which has accrued or will accrue thereafter to the Procuring Entity.

### **3.16 Liquidated Damages**

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

### **3.17 Interest on Delayed Payments**

The Procuring Entity shall not in any instance whatsoever, incur any interest or additional costs from overdue amounts, if any, owed to the Tenderer regarding this procurement.

### **3.18 Resolution of Disputes**

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

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

### **3.19 Language and Law**

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

### **3.20 Force Majeure**

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

**Effect of Force Majeure:**

If a Party is prevented from or delayed in performing an obligation hereunder by reason of Force Majeure the affected Party shall:

- (a) be relieved from the consequences of its failure to perform that obligation on a day-to-day basis;
- (b) promptly notify the other parties of the occurrence as soon as reasonably possible by email, telex or cable of the nature of the Force Majeure and the extent to which the Force Majeure suspends the affected party's obligations under this Agreement; and
- (c) use all reasonable endeavours to overcome the consequences of the event and resume performance of its obligations as soon as possible after the Force Majeure condition no longer exists.

**Force Majeure Termination:**

If an event of Force Majeure continues beyond a period of thirty (30) days, the Parties shall meet in good faith to consult, if no such solution is found, either Party shall be entitled to terminate the obligations of the Parties under the Contract which are affected by such Force Majeure by giving written notice of not less than seven (7) days to the other Party.

**Limitation of Liability**

To the fullest extent permitted by law, the Procuring Entity, its officers, directors, employees, agents, and subcontractors, shall not be liable for any claims, losses, costs, or damages of whatsoever nature and howsoever arising to the Tenderer, and anyone claiming by, through, or under the Tenderer, resulting from or in any way related to this Contract from any cause or causes, including but not limited to any direct, indirect, general, special, punitive, incidental or consequential damages, loss of income or profit, loss of or damage to property, claims of third parties or other losses of any kind or character.

**3.21 Amendments**

Any amendment of any term of the Contract entered into by the parties shall only be made by a written agreement between the parties, and such agreement shall be deemed to form an integral part of such Contract.

## 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.
42. Special conditions of contract as relates to the GCC

REFERENCE OF GCC	SPECIAL CONDITION OF CONTRACT
3.1 Definitions	The Purchaser is Kilifi Mariakani Water and Sewerage Co. Ltd C P. O Box 275-80108 Kilifi. It includes the Purchaser's legal representative's successors or assigns
3.4	<p>1. Prices charged by the tenderer for the delivered goods performed under the Contract shall be that of pump price prevailing and controlled by the fuel &amp; lubricants regulator (Energy commission) under the laws of Kenya for the two (2) years.</p> <p>2. The fuel and lubricants to be supplied <b>shall be clean and free from any defects/impurities.</b></p>
3.7.1 performance Security	<b>No performance security is required for this tender</b>
3.10.1	<p>The delivery period for items shall be immediately upon issuance of fuel detail orders. It is KIMAWASCO's desire to have the items delivered within the shortest time possible. Partial delivery shall not be accepted.</p> <p><b>Note</b></p> <p>i) Delivery of fuel &amp; lubricants shall be done to KIMAWASCO'S motor vehicles, motor cycles or in bulky for use in water pumping stations for a period of two (2) years.</p> <p>ii) Orders will be placed with the supplier by way of an official Local Purchase Order (LPO) /detail fuel orders.</p> <p>iii) Orders shall be executed by the supplier as specified on the LPO and more particularly the provisions of the contract entered into between the parties.</p> <p>iv) It is the Parties intention and Agreement</p>

	that there will be no obligation for the procuring entity to award any Orders to the awarded tenderer during the term of the Contract entered into for the Goods procured under this tender.
3.12.1 payment terms & conditions	<p>1. Payment shall be made thirty (30) days after receipt of certified undisputed invoice(s) and delivery notes at KIMAWASCO offices</p> <p>2.No interest on delayed payments</p> <p>3.No advance payment</p>
3.13 Prices	Prices charged shall be pump prices and shall not be the subject of correction, adjustment or amendment in any way by any person unless the fuelling price regulator allows it.
3.18.1 Resolution of Disputes	<p>If any dispute or difference of any kind arises between the Parties in connection with this Agreement or the breach, termination or validity hereof (a “Dispute”) it shall be referred to arbitration under the Arbitration Act, 1995. The arbitration shall be by one arbitrator mutually chosen by both parties and his decision shall be final and binding on the parties.</p> <p>(a) The seat of the arbitration shall be Nairobi, Kenya;</p> <p>(b) There shall be one (1) arbitrator who shall be jointly appointed by the parties, failure of which the arbitrator shall be appointed in accordance with the Nairobi Centre for International Arbitration Rules, provided that any person who has existing or prior relationship with either Party shall not be eligible for appointment as an arbitrator except with the consent of both Parties.</p> <p>(c) The language of the arbitration shall be English;</p> <p>(d) The award rendered shall apportion the costs of the arbitration;</p> <p>(e) A party aggrieved by the decision of the arbitrator reserves the right of appeal in a Court of Competent Jurisdiction.</p>

	<p>(f) The award shall be in writing and shall set forth in reasonable detail the facts of the Dispute and the reasons for the tribunal's decision.</p> <p>(g) The provisions of this Clause shall continue to be binding on the Parties notwithstanding any termination or cancellation of this Contract.</p>
<p>Notices:</p>	<p>Each party's address for the service of notice shall be the below mentioned address or such other address as it specifies by notice to the other;</p> <p>For the Procuring Entity:  The Managing Director  Kilifi Mariakani Water &amp; Sewerage Co. Ltd  P.O. Box 275-80108,  Kilifi</p> <p>Any notice given under the Agreement shall be in writing and may be served:</p> <ul style="list-style-type: none"> <li>i. personally;</li> <li>ii. by registered or recorded delivery mail;</li> <li>iii. by e-mail, telex or facsimile transmission (the latter confirmed by telex or post); or</li> <li>iv. by any other means which any party specifies by notice to the others.</li> </ul> <p>Notice shall be deemed to have been served:</p> <ul style="list-style-type: none"> <li>i. if it was served in person, at the time of service;</li> <li>ii. if it was served by post, 72 hours after it was posted; and</li> <li>iii. If it was served by e-mail, telex or facsimile transmission, at the time of transmission.</li> </ul>

## **SECTION V - TECHNICAL SPECIFICATIONS**

### **5.1 General**

- 5.1.1 Tenderers must indicate on the specifications sheets whether the equipment offered comply with each specified requirement.
- 5.1.2 All the dimensions and capacities of the equipment to be supplied shall not be less than those required in these specifications. Deviations from the basic requirements, if any shall be explained in detail in writing with the offer, with supporting data such as calculation sheets, etc. The procuring entity reserves the right to reject the products, if such deviations shall be found critical to the use and operation of the products.
- 5.1.3 The tenderers are requested to present information along with their offers as follows:
  - (i) Shortest possible delivery period of each product.

**SECTION VI: SCHEDULE OF REQUIREMENTS AND PRICING.**

NB: Tenderers must quote the full schedules with completeness in order to qualify as responsive. Incomplete schedule shall not be considered and shall be declared non -responsive.

1. Prices charged by the tenderer for the delivered goods performed under the Contract shall be that of pump price and not vary from the prices allowed by the fuel regulator at the time of delivery of goods. For the purposes of evaluation and making recommendations for award, tenderers shall put indicative prices on the column of prices given in the schedule of requirements.
2. The goods to be supplied **shall be clean and free from any defects.**
3. The price of fuel shall be at pump price and regularly advised by the Regulator.

**SCHEDULE OF REQUIREMENTS AND PRICING**

S/NO	ITEM DESCRIPTION	UNIT OF ISSUE	ESTIMATED QTY FOR 2YRS	UNIT PRICE 16% VAT Kshs.	TOTAL AMOUNT Kshs.
1.0	Unleaded petrol	LTRS	1,000,000.00		
2.0	Unleaded Diesel	LTRS	1,000,000.00		
3.0	2T Oil	LTRS	1000.00		
4.0	Oil	LTRS	1000.00		
5.0	Break oil	LTRS	5.00		
6.0	Coolant	LTRS	10.00		
7.0	Battery water	LTRS	10.00		
8.0	ATF(power steering fluid)	LTRS	10.00		
9.0	CC-140/90(manual transmission)	LTRS	5.00		
	TOTAL				

Tenderer's name (Company).....

Signature & Rubber-Stamp .....Date.....

## SECTION VII - STANDARD FORMS

### Notes on the sample Forms

1. **Form of Tender** - The form of tender must be completed by the tenderer and submitted with the tender documents. It must also be duly signed by duly authorized representatives of the tenderer.
2. **Confidential Business Questionnaire Form** - This form must be completed by the tenderer and submitted with the tender documents.
3. **Tender Securing Bid Declaration Form** - When required by the tender documents the tender shall provide the tender securing in the form included herein.
4. **Contract Form** - The Contract Form shall not be completed by the tenderer at the time of submitting the tender. The Contract Form shall be completed after contract award and should incorporate the accepted contract price.
5. **Performance Security Form** - The performance security form should not be completed by the tenderers at the time of tender preparation. Only the successful tenderer will be required to provide performance security in the form provided herein or in another form acceptable to the procuring entity.
6. **Declaration of Undertaking** - The declaration of undertaking must filled, signed and stamped



**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 unit summation]* .the receipt of which is hereby duly acknowledged, we, the undersigned, offer to supply and deliver ( ..... *(insert tender 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 abide 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 you may receive.

Dated this day .....of 20 .....

signature.....& stamped [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.

<p>Part1-General:</p> <p>Business Name.....</p> <p>Location of business.....</p> <p>Plot No.....Street/Road.....</p> <p>Postal Address.....Tel. No.....Fax.....Email.....</p> <p>Nature of Business.....</p> <p>Registration Certificate No.....</p> <p>Maximum value of business which you can handle at any one time Kshs.....</p> <p>Name of your bankers.....Branch.....</p>
--

<p>Part 2(a)-Sole Proprietor</p> <p>Your name in full.....Age.....</p> <p>Nationality.....Country of origin.....</p> <p>Citizenship details.....</p> <p>Shares.....</p>
---

<p>Part 2(b) –Partnership</p> <p>Give details of partners as follows;</p> <table> <thead> <tr> <th>Name</th> <th>Shares</th> <th>Nationality</th> <th>Citizenship</th> </tr> </thead> <tbody> <tr> <td>1.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>	Name	Shares	Nationality	Citizenship	1.....	.....	.....	.....	2.....	.....	.....	.....	3.....	.....	.....	.....	4.....	.....	.....	.....
Name	Shares	Nationality	Citizenship																	
1.....	.....	.....	.....																	
2.....	.....	.....	.....																	
3.....	.....	.....	.....																	
4.....	.....	.....	.....																	

<p>Part 2(c)-Registered Company</p>
-------------------------------------

	Private or Public.....			
	State the nominal and issued capital of company			
	Nominal Ksh.....			
	Issued.....Ksh.....			
	Given details of all directors as follows			
	Name	Shares	Nationality	Citizenship details
	1.....	.....	.....	.....
	2.....	.....	.....	.....
	3.....	.....	.....	.....
	4.....	.....	.....	.....

If a Kenya Citizen, indicate under “Citizenship details” whether by birth, naturalization or registration.

### 8.3 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 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 tender hereby covenants with the Procuring entity to provide the goods and to remedy defects therein in conformity in all respects with the provisions of the 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 .....

**8.4 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*.....*Dated*.....

**8.5 TENDER SECURING BID DECLARATION FORM**

[The Bidder shall complete in this Form in accordance with the instructions indicated]  
Date: ..... of Bid Submission] Tender No. .... of bidding process]

To: ..... [insert complete name of Purchaser]

We, the undersigned, declare that:

- 1. We understand that, according to your conditions, bids must be supported by a Bid Securing Declaration.
- 2. We accept that we will automatically be suspended from being eligible for bidding in

Any contract with the Purchaser for the period of time of ..... (insert number of months or years) starting on ..... (insert date), if we are in breach of our obligation(s) under the bid conditions, because we –

- a) Have withdrawn our Bid during the period of bid validity specified by us in the Bidding Data Sheet; or
- b) Having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity,
  - (i) Fail or refuse to execute the Contract, if required, or
  - (ii) Fail or refuse to furnish the Performance Security, in accordance with the ITT.

- 3. We understand that this Bid Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of

- (i) Our receipt of a copy of your notification of the name of the successful Bidder;
- Or
- ii) Twenty-eight days after the expiration of our Tender

- 4. We understand that if we are a Joint Venture, the Bid Securing Declaration must be in the name of the **Joint Venture** that submits the bid, and the Joint Venture has not been legally constituted at the time of bidding, the Bid Securing Declaration shall be in the names of all future partners as named in the letter of intent .

Signed..... [insert signature of person whose name and capacity are shown] in the Capacity of..... [insert legal capacity of person signing the Bid Securing Declaration]

Name:..... [insert complete name of person

signing the Bid Securing Declaration]

Duly authorized to sign the bid for and on behalf of: ..... [insert complete name of Bidder]

Dated on ..... day of ..... [Insert date of signing]

**8.6 DECLARATION OF UNDERTAKING**

We underscore the importance of a free, fair and competitive procurement process that precludes abusive practices. In this respect we have neither offered nor granted directly or indirectly any inadmissible advantages to any public servant or other person nor accepted such advantages in connection with our bid, nor will we offer or grant or accept any such incentives or conditions in the present procurement process or, in the event that we are awarded the contract, in the subsequent execution of the contract. We also declare that no conflict of interest exists in the meaning of the kind described in the Public Procurement & Disposal Act 2015

We also underscore the importance of adhering to the law in the implementation of the project.

We will inform our staff about their respective obligations and about their obligation to fulfil this declaration of undertaking and to obey the laws of the country.

We also declare that our company/sub-contractors/ all members of the consortium has/have not been debarred to engage in procurement/ included in the list of sanctions. We acknowledge that, the client is entitled to terminate the contract immediately if the statements made in the Declaration of Undertaking were objectively false or the reason for exclusion occurs after the Declaration of Undertaking has been issued.

Dated this day..... of .....20.....

(Name of company)

(Signature(s))



