



WATER SECTOR TRUST FUND

TENDER NO: WSTF/OT/EXTERNAL AUDIT/04/2023-2024

**EXTERNAL AUDIT-STATUTORY AUDIT AND SUBGRANTEE PROJECTS AUDITS
FOR FINANCIAL YEARS 2023/2024, 2024/2025 AND 2025/2026**

**WATER SECTOR TRUST FUND
CIC PLAZA, 1ST Floor, MARA RD, UPPER HILL
P.O. BOX 49699– 00100 GPO
NAIROBI**

JUNE 2024

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INVITATION TO TENDER

PROCURING ENTITY: WATER SECTOR TRUST FUND
CIC PLAZA, 1ST Floor, MARA RD, UPPER HILL
P.O. BOX 49699– 00100 GPO
NAIROBI
info@waterfund.go.ke

TENDER NO: WSTF/OT/EXTERNAL AUDIT/04/2023-2024

TENDER NAME : EXTERNAL AUDIT -STATUTORY AUDIT AND SUBGRANTEE
PROJECTS AUDITS FOR FINANCIAL YEARS 2023/2024, 2024/2025 AND
2025/2026.

1. The Water Sector Trust Fund invites sealed tenders for the provision of services for **STATUTORY AUDIT AND SUBGRANTEE PROJECTS AUDITS FOR FINANCIAL YEARS 2023/2024, 2024/2025 AND 2025/2026.**
2. Tendering will be conducted under open competitive method using a standardized tender document. Tendering is open to all qualified and interested Tenderers.
3. Qualified and interested tenderers may obtain further information and inspect the Tender Documents during office hours 0900-1500 hours at the address given below. More details on the Services are provided in **PART 2 - Services' Requirements**, Section V - Description of Services of the Tender Document.
4. A complete set of tender documents may be purchased or obtained by interested tenders upon payment of a non-refundable fees of Ksh.1000 in cash or Banker's Cheque and payable to the address given below or tender documents may be obtained electronically from Water Sector Trust Fund website <https://waterfund.go.ke/downloads/tenders> Tender documents obtained electronically will be free of charge.
5. Tender documents may be viewed and downloaded for free from the website <https://waterfund.go.ke/downloads/tenders>. Tenderers who download the tender document must forward their particulars immediately to procurement@waterfund.go.ke or supplychain@waterfund.go.ke to facilitate any further clarification or addendum.
6. All Tenders must be accompanied by a tender Security **Ksh. 750,000.00** as indicated in the TDS
7. The Tenderer shall chronologically serialize all pages of the tender documents submitted.
8. Completed tenders must be delivered to the address below on or before **Tuesday 9th July,2024**. Electronic Tenders **will not** be permitted.
9. Tenders will be opened immediately after the deadline date and time specified above or any deadline date and time specified later. Tenders will be publicly opened in the presence of the Tenderers' designated representatives who choose to attend at the address below.
9. Late tenders will be rejected.
10. The address referred to above is:

The Chief Executive Officer,
1st Floor, CIC Plaza 1,
Upper Hill, Mara Road,
PO Box 49699-00100, Nairobi

Yours sincerely,

Willis Ombai

Willis Ombai
Chief Executive Officer

PART 1 - TENDERING PROCEDURES

SECTION I -INSTRUCTIONS TO TENDERERS

A. General

1. Scope of Tender

- 1.1 This tendering document is for the delivery of Non-Consulting Services, as specified in Section V, Procuring Entity's Requirements. The name, identification and number of this tender are specified in the **TDS**.

2. Throughout this tendering document:

2.1 The terms:

- a) The term “in writing” means communicated in written form (e.g., by mail, e-mail, fax, including if specified **in the TDS**, distributed or received through the electronic- procurement system used by the Procuring Entity) with proof of receipt;
- b) if the contexts or esquires, “singular” means “plural” and vice versa; and
- c) “Day” means calendar day, unless otherwise specified as “Business Day”. A Business Day is any day that is an official working day of the Procuring Entity. It excludes the Procuring Entity's official public holidays.

- 2.2 The successful Tenderer will be expected to complete the performance of the Services by the Intended Completion Date provided **in the TDS**.

3. Fraud and Corruption

- 3.1 The Procuring Entity requires compliance with the provisions of the Public Procurement and Asset Disposal Act, 2015 (the Act), Section 62 “Declaration not to engage in corruption”. The tender submitted by a person shall include a declaration that the person shall not engage in any corrupt or fraudulent practice and a declaration that the person or his or her sub-contractors are not debarred from participating in public procurement proceedings.

- 3.2 The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Tenders shall be required to complete and sign the “Certificate of Independent Tender Determination” annexed to the Form of Tender.

- 3.3 **Unfair Competitive Advantage** - Fairness and transparency in the tender process require that the firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. To that end, the Procuring Entity shall indicate in the **TDS** and make available to all the firms together with this tender document all Information that would in that respect gives such firm any unfair competitive advantage over

competing firms.

- 3.4 Unfair Competitive Advantage-Fairness and transparency in the tender process require that the Firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. The Procuring Entity shall indicate in the **TDS** firms (if any) that provided consulting services for the contract being tendered for. The Procuring Entity shall check whether the owners or controllers of the Tenderer are same as those that provided consulting services. The Procuring Entity shall, upon request, make available to any tenderer information that would give such firm unfair competitive advantage over competing firms.

4 Eligible Tenderers

- 4.1 A Tenderer may be a firm that is a private entity, a state-owned entity or institution subject to ITT 4.6, or any combination of such entities in the form of a Joint Venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a Form of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the Tendering process and, in the event the JV is awarded the Contract, during contract execution. Members of a joint venture may not also make an individual tender, be a sub contract or in a separate tender or be part of another joint venture for the purposes of the same Tender. The maximum number of JV members shall be specified in the **TDS**.
- 4.2 Public Officers, of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse in which they have a substantial or controlling interest shall not be eligible to tender or be awarded contract. Public Officers are also not allowed to participate in any procurement proceedings.
- 4.3 A Tenderer shall not have a conflict of interest. Any Tenderer found to have a conflict of interest shall be disqualified. A Tenderer 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 Tender of another Tenderer, or influence the decisions of the Procuring Entity regarding this Tendering process; or
 - e or any of its affiliates participated as a consultant in the preparation of the Procuring Entity's Requirements (including Activities Schedules, Performance Specifications and Drawings) for the Non-Consulting Services that are the subject of the Tender; or
 - f or any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity or Procuring Entity for the Contract implementation; or
 - g 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 specified in the TDS ITT 2. 1 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
 - h has a close business or family relationship with a professional staff of the Procuring Entity or of the project implementing agency, who:
 - i. are directly or in directly involved in the preparation of the tendering document 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 unless the conflicts teeming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the procurement process and execution of the Contract.
- 4.4 A firm that is a Tenderer (either individually or as a JV member) shall not participate in more than one tender, except for permitted alternative Tenders. This includes participation as a subcontractor. Such participation shall result in the disqualification of all Tenders in which the firm is involved. A firm that is not a Tenderer or a JV member may participate as a sub-contractor in more than one Tender.
- 4.5 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT 4 .9.

- 4.6 A Tenderer that has been sanctioned by PPRA or are under a temporary suspension or a debarment imposed by any other entity of the Government of Kenya shall be ineligible to be pre-qualified for, initially selected for, tender for, propose for, or be awarded a contract during such period of sanctioning. The list of debarred firms and individuals is available at the PPRA Website www.ppra.go.ke
- 4.7 Tenderers that are state-owned enterprises or institutions in Kenya may be eligible to compete and be awarded a Contract(s) only if they can establish that they: (i) are legally and financially autonomous; (ii) operate under Commercial law; and (iii) are not under supervision of the Procuring Entity.
- 4.8 Firms and individuals may be ineligible if (a) as a matter of law or official regulations, Kenya prohibits commercial relations with that country, or (b) by an act of compliance with a decision of the United Nations Security Council take under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person or entity in that country.
- 4.9 A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or sub consultants for any part of the Contract including related Services.
- 4.10 Foreign tenderers are required to source at least forty (40%) percent of their contract inputs (in supplies, subcontracts and labor) from national suppliers and contractors. To this end, a foreign tenderer shall provide in its tender documentary evidence that this requirement is met. Foreign tenderers not meeting this criterion will be automatically disqualified. Information required to enable the Procuring Entity determine if this condition is met shall be provided in for this purpose is be provided in “*SECTION III-EVALUATION AND QUALIFICATION CRITERIA, Item 9*”.
- 4.11 Pursuant to the eligibility requirements of ITT 4.10, a tender is considered a foreign tenderer, if the tenderer is not registered in Kenya or if the tenderer is registered in Kenya and has less than 51 percent ownership by Kenyan citizens. JVs are considered as foreign tenderers if the individual member firms are not registered in Kenya or if are registered in Kenya and have less than 51 percent ownership by Kenyan citizens. The JV shall not sub contract to foreign firms more than 10 percent of the contract price, excluding provisional sums.
- 4.12 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for tender, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website www.cak.go.ke
- 4.13 A Tenderer may be considered ineligible if he/she offers goods, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement.
- 4.14 A Kenyan tenderer shall be eligible to tender if it provides evidence of having fulfilled his/her tax obligations by producing a valid tax compliance certificate or tax exemption certificate is sued by the Kenya Revenue Authority.

5 Qualification of the Tenderer

- 5.1 All Tenderers shall provide in Section IV, Tendering Forms, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.
- 5.2 In the event that pre-qualification of Tenderers has been undertaken as stated in ITT 18.3, the provisions on qualifications of the Section III, Evaluation and Qualification Criteria shall not apply.

B. Contents of Tendering Document

6 Sections of Tendering Document

- 6.1 The tendering document consists of Parts 1, 2, and 3, which include all the sections indicated below and should be read in conjunction with any Addenda issued in accordance with ITT 10.

PART 1: Tendering Procedures

- i) Section I - Instructions to Tenderers (ITT)
- ii) Section II - Tender Data Sheet (TDS)
- iii) Section III - Evaluation and Qualification Criteria
- iv) Section IV - Tendering Forms

PART 2: Procuring Entity's Requirements

- v) Section V-Procuring Entity's Requirements

PART 3: Contract

- vi) Section VI - General Conditions of Contract (GCC)
- vii) Section VII - Special Conditions of Contract (SCC)
- viii) Section VIII - Contract Forms

6.2 The Invitation to Tender (ITT) notice or the notice to pre-qualify Tenderers, as the case may be, issued by the Procuring Entity is not part of this tendering document.

6.3 Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of the document, responses to requests for clarification, the Minutes of the pre-Tender meeting (if any), or Addenda to the tendering document in accordance with ITT 10. In case of any contradiction, documents obtained directly from the Procuring Entity shall prevail.

6.4 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tendering document and to furnish with its Tender all information or documentation as is required by the tendering document.

7. Site Visit

7.1 The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine and inspect the Site of the Required Services and its surroundings and obtain all information that may be necessary for preparing the Tender and entering in to a contract for the Services. The costs of visiting the Site shall be the Tenderer's own expense.

8 Pre-Tender Meeting

8.1 The Procuring Entity shall specify in the **TDS** if a pre-tender conference will be held, when and where. The Procuring Entity shall also specify in the **TDS** if a pre-arranged pretender site visit will be held and when. The Tenderer's designated representative is invited to attend a pre-arranged pretender visit of the site of the works. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

8.2 The Tenderer is requested to submit any questions in writing, to reach the Procuring Entity not later than the period specified in the **TDS** before the meeting.

8.3 Minutes of the pre-Tender meeting and the pre-arranged pre-tender visit of the site of the service, if applicable, including the text of the questions asked by Tenderers and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents in accordance with ITT6.3. Minutes shall not identify the source of the questions asked.

8.4 The Procuring Entity shall also promptly publish anonymized (*no names*) Minutes of the pre-Tender meeting and the pre-arranged pretender visit of the site of the service at the web page identified **in the TDS**. Any modification to the Tender Documents that may become necessary as a result of the pre-Tender meeting shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT10 and not through the minutes of the pre-Tender meeting. Nonattendance at the pre-Tender meeting will not be a cause for disqualification of a Tenderer.

9 Clarification of Tender Documents

9.1 A Tenderer requiring any clarification of the Tender Document shall contact the Procuring Entity in writing at the Procuring Entity's address specified in the TDS or raise its enquiries during the pre-Tender meeting and the pre-arranged pretender visit of the site of the Service if provided for in accordance with ITT 8.4. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the **TDS** prior to the deadline for submission of tenders. The Procuring

Entity shall forward copies of its response to all tenderers who have acquired the Tender Documents in accordance with ITT 6.3, including a description of the inquiry but without identifying its source. If so specified in the **TDS**, the Procuring Entity shall also promptly publish its response at the webpage identified in the **TDS**. Should the clarification result in changes to the essential elements of the Tender Documents, the Procuring Entity shall amend the Tender Documents appropriately following the procedure under ITT 8.4.

10 Amendment of Tender Documents

- 10.1 At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the Tendering document by issuing addenda.
- 10.2 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tendering document from the Procuring Entity in accordance with ITT 6.3. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's web page in accordance with ITT 8.4.
- 10.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity shall extend, as necessary, the deadline for submission of Tenders, in accordance with ITT 24.2 below.

C. Preparation of Tenders

11 Cost of Tendering

- 11.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Procuring Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.

12 Language of Tender

- 12.1 The Tender as well as all correspondence and documents relating to the Tender exchanged by the Tenderer and the Procuring Entity shall be written in the English language. Supporting documents and printed literature that are part of the Tender may be in another language provided they are accompanied by an accurate translation of the relevant passages into the English language, in which case, for purposes of interpretation of the Tender, such translation shall govern.

13 Documents Comprising the Tender

- 13.1 The Tender shall comprise the following:
 - a **Form of Tender** prepared in accordance with ITT 14;
 - b **Schedules:** priced Activity Schedule completed in accordance with ITT 14 and ITT 16;
 - c **Tender Security or Tender-Securing Declaration** in accordance with ITT 21.1;
 - d **Alternative Tender:** if permissible in accordance with ITT 15;
 - e **Authorization:** written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 22.3;
 - f **Qualifications:** documentary evidence in accordance with ITT 19 establishing the Tenderer's qualifications to perform the Contract if its Tender is accepted;
 - g **Tenderer's Eligibility:** documentary evidence in accordance with ITT 19 establishing the Tenderer's eligibility to Tender;
 - h **Conformity:** documentary evidence in accordance with ITT 18, that the Services conform to the tendering document; and
 - i Any other document required in the **TDS**.

The Tenderer shall chronologically serialize pages of all tender documents submitted.

- 13.2 In addition to the requirements under ITT 13.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a Form 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.

13.3 The Tenderer shall furnish in the Form of Tender information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Tender.

14 Form of Tender and Activity Schedule

14.1 The Form of Tender and priced Activity Schedule shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITT 22.3. All blank spaces shall be filled in with the information requested.

14.2 The Tenderer shall furnish in the Form of Tender information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Tender.

15 Alternative Tenders

15.1 Unless otherwise indicated **in the TDS**, alternative Tenders shall not be considered. If alternatives are permitted, only the technical alternatives, if any, of the Best Evaluated Tender shall be considered by the Procuring Entity.

15.2 When alternative times for completion are explicitly invited, a statement to that effect will be included **in the TDS** and the method of evaluating different time schedules will be described in Section III, Evaluation and Qualification Criteria.

15.3 When specified **in the TDS**, Tenderers are reemitted to submit alternative technical solutions for specified parts of the Services, and such parts will be identified **in the TDS**, as will the method for their evaluating, and described in Section VII, Procuring Entity's Requirements.

16. Tender Prices and Discounts

16.1 The prices and discounts (including any price reduction) quoted by the Tenderer in the Form of Tender and in the Activity Schedule (s) shall conform to the requirements specified below.

16.2 All lots (contracts) and items must be listed and priced separately in the Activity Schedule(s).

16.3 The Contract shall be for the Services, as described in Appendix A to the Contract and in the Specifications (or Terms of Reference), based on the priced Activity Schedule, submitted by the Tenderer.

16.4 The Tenderer shall quote any discounts and indicate the methodology for their application in the Form of Tender in accordance with ITT 16.1

16.5 The Tenderer shall fill in rates and prices for all items of the Services described in the Specifications (or Terms of Reference), and listed in the Activity Schedule in Section VII, Procuring Entity's Requirements. Items for which no rate or price is entered by the Tenderer will not be paid for by the Procuring Entity when executed and shall be deemed covered by the other rates and prices in the Activity Schedule.

16.6 All duties, taxes, and other levies payable by the Service Provider under the Contract, or for any other cause, as of the date 30 days prior to the deadline for submission of Tenders, shall be included in the total Tender price submitted by the Tenderer.

16.7 If provided for **in the TDS**, the rates and prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract in accordance with and the provisions of Clause 6.6 of the General Conditions of Contract and / or Special Conditions of Contract. The Tenderer shall submit with the Tender all the information required under the Special Conditions of Contract and of the General Conditions of Contract.

16.8 For the purpose of determining the remuneration due for additional Services, a breakdown of the lump-sum price shall be provided by the Tenderer in the form of Appendices D and E to the Contract.

17 Currencies of Tender and Payment

17.1 The currency of the Tender and the currency of payments shall be Kenya Shillings.

18 Documents Establishing Conformity of Services

- 18.1 To establish the conformity of the Non-Consulting Services to the tendering document, the Tenderer shall furnish as part of its Tender the documentary evidence that Services provided conform to the technical specifications and standards specified in Section VII, Procuring Entity's Requirements.
- 18.2 Standards for provision of the Non-Consulting Services are intended to be descriptive only and not restrictive. The Tenderer may offer other standards of quality provided that it demonstrates, to the Procuring Entity's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Section VII, Procuring Entity's Requirements.
- 18.3 Tender to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a Service provider or group of service providers, qualifies for a margin of preference. Further the information will enable the Procuring Entity identify any actual or potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between tenderers, and thereby help to prevent any corrupt influence in relation to the procurement processor contract management.
- 18.4 The purpose of the information described in ITT 18.3 above, overrides any claims to confidentiality which a tenderer may have. There can be no circumstances in which it would be justified for a tenderer to keep information relating to its ownership and control confidential where it is tendering to undertake public sector work and receive public sector funds. Thus, confidentiality will not be accepted by the Procuring Entity as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership and control.
- 18.4 The Tenderer shall provide further documentary proof, information or authorizations that the Procuring Entity may request in relation to ownership and control which information on any changes to the information which was provided by the tenderer under ITT18.3. The obligations to require this information shall continue for the duration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.
- 18.6 All information provided by the tenderer pursuant to these requirements must be complete, current and accurate as at the date of provision to the Procuring Entity. In submitting the information required pursuant to these requirements, the Tenderer shall warrant that the information submitted is complete, current and accurate as at the date of submission to the Procuring Entity.
- 18.7 If a tenderer fails to submit the information required by these requirements, its tenderer will be rejected. Similarly, if the Procuring Entity is unable, after taking reasonable steps, to verify to a reasonable degree the information submitted by a tenderer pursuant to these requirements, then the tender will be rejected.
- 18.8 If information submitted by a tenderer pursuant to these requirements, or obtained by the Procuring Entity (whether through its own enquiries, through notification by the public or otherwise), shows any conflict of interest which could materially and improperly benefit the tenderer in relation to the procurement or contract management process, then:
- i) If the procurement process is still on going, the tenderer will be disqualified from the procurement process,
 - ii) if the contract has been awarded to that tenderer, the contract award will be set aside, pending the outcome of (iii),
 - iii) The tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other persons have committed any criminal offence.
- 18.9 If a tenderer submits information pursuant to these requirements that is in complete, inaccurate or out-of-date, or attempts to obstruct the verification process, then the consequences ITT 18.9 will ensue unless the tenderer can show to the reasonable satisfaction of the Procuring Entity that any such act was not material, or was due to genuine err or which was not attributable to the intentional act, negligence or recklessness of the tenderer.

19 Documents Establishing the Eligibility and Qualifications of the Tenderer

- 19.1 To establish Tenderer's their eligibility in accordance with ITT4, Tenderers shall complete the Form of Tender, included in Section IV, Tendering Forms.
- 19.2 The documentary evidence of the Tenderer's qualification stopper form the Contract if its Tender is accepted shall establish to the Procuring Entity's satisfaction that the Tenderer meets each of the qualification criterion

specified in Section III, Evaluation and Qualification Criteria.

- 19.3 All Tenderers shall provide in Section IV, Tendering Forms, a preliminary description of the proposed methodology, work plan and schedule.
- 19.4 In the event that pre-qualification of Tenderers has been undertaken, only Tenders from prequalified Tenderers shall be considered for award of Contract. These qualified Tenderers should submit with their Tenders any information updating their original pre-qualification applications or, alternatively, confirm in their Tenders that the originally submitted pre-qualification information remains essentially correct as of the date of Tender submission.
- 19.5 If pre-qualification has not taken place before Tendering, the qualification criteria for the Tenderers are specified- in Section III, Evaluation and Qualification Criteria.

20 Period of Validity of Tenders

- 20.1 Tenders shall remain valid for the Tender Validity period specified in the TDS. The Tender Validity period starts from the date fixed for the Tender submission deadline date (as prescribed by the Procuring Entity in accordance with ITT 24.1). A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.
- 20.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT20, it shall also be extended for a corresponding period. A Tenderer may refuse the request without forfeiting its Tender Security. A Tenderer granting the request shall not be required or permitted to modify its Tender.

21 Tender Security

- 21.1 The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender security, as specified **in the TDS**, in original form and, in the case of a Tender Security, in the amount and currency specified **in the TDS**.
- 21.2 A Tender Securing Declaration shall use the form included in Section IV, Tendering Forms.
- 21.3 If a Tender Security is specified pursuant to ITT 21.1, from a reputable source, and an eligible country and shall be in any of the following forms at the Tenderer's option:
- i) cash;
 - ii) a bank guarantee;
 - iii) a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Authority; or
 - iv) a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya,
- 21.4 If a Tender Security is specified pursuant to ITT 20.1, any Tender not accompanied by a substantially responsive Tender Security shall be rejected by the Procuring Entity as non-responsive.
- 21.5 If a Tender Security is specified pursuant to ITT 21.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's signing the contract and furnishing the Performance Security pursuant to ITT 46. The Procuring Entity shall also promptly return the tender security to the tenderers where the procurement proceedings are terminated, all tenders were determined non-responsive or a bidder declines to extend tender validity period.
- 21.6 The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required Performance Security.
- 21.7 The Tender Security may be forfeited or the Tender-Securing Declaration executed:
- a. If a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer in the Form of Tender, or any extension there to provide by the Tenderer; or
 - b. if the successful Tenderer fails to:
 - c. sign the Contract in accordance with ITT 46; or
 - d. Furnish a performance security in accordance with ITT 47.

- 21.8 Where tender securing declaration is executed, the Procuring Entity shall recommend to the PPRA that PPRA debar the Tenderer from participating in public procurement as provided in the law.
- 21.9 The Tender Security or Tender-Securing Declaration of a JV must be in the name of the JV that submits the Tender. If the JV has not been legally constituted into a legally enforceable JV at the time of Tendering, the Tender security or Tender-Securing Declaration shall be in the names of all future members as named in the Form of intent referred to in ITT 4.1 and ITT 13.2.
- 21.10A tenderer shall not issue a tender security to guarantee itself.

22 Format and Signing of Tender

- 22.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 13, bound with the volume containing the Form of Tender, and clearly marked “Original. “In addition, the Tenderer shall submit copies of the Tender, in the number specified **in the TDS**, and clearly marked as “Copies. “In the event of discrepancy between them, the original shall prevail.
- 22.2 Tenderers shall mark as “CONFIDENTIAL “information in their Tenders which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.
- 22.3 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified **in the TDS** and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person signing the Tender.
- 22.4 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.
- 22.5 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

D. Submission and Opening of Tenders

23 Sealing and Marking of Tenders

- 23.1 Depending on the sizes or quantities or weight of the tender documents, a tenderer may use an envelope, package or container. The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to the Procuring Entity and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, the Tenderer shall place the following separate, sealed envelopes:
- a. in an envelope or package or container marked “ORIGINAL”, all documents comprising the Tender, as described in ITT13; and
 - b. in an envelope or package or container marked “COPIES”, all required copies of the Tender; and
 - c. if alternative Tenders are permitted in accordance with ITT15, and if relevant:
 - i. in an envelope or package or container marked “ORIGINAL–ALTERNATIVE TENDER”, the alternative Tender; and
 - ii. in the envelope or package or container marked “COPIES- ALTERNATIVE TENDER”, all required copies of the alternative Tender.

The inner envelopes or packages or containers shall:

- a) Bear the name and address of the Procuring Entity.
 - b) Bear the name and address of the Tenderer; and
 - c) Bear the name and Reference number of the Tender.
- 23.2 If an envelope or package or container is not sealed and marked as required, the *Procuring Entity* will assume no responsibility for the misplacement or premature opening of the Tender. Tenders misplaced or opened prematurely will not be accepted.

24 Deadline for Submission of Tenders

- 24.1** Tenders must be received by the Procuring Entity at the address and no later than the date and time specified **in the TDS**. When so specified **in the TDS**, Tenderers shall have the option of submitting their Tenders electronically. Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedures specified **in the TDS**.
- 24.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the tendering document in accordance with ITT9, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

25 Late Tenders

- 25.1 The Procuring Entity shall not consider any Tender that arrives after the dead line for submission of Tenders, in accordance with ITT 24. Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected, and returned un opened to the Tenderer.

26 Withdrawal, Substitution and Modification of Tenders

- 26.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by a n authorized representative, and shall include a copy of the authorization (the power of attorney) in accordance with ITT 21.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:
- Prepared and submitted in accordance with ITT 21 and ITT 22 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL,” “SUBSTITUTION,” or “MODIFICATION;” and
 - Received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT 23.
- 26.2 Tenders requested to be withdrawn in accordance with ITT 25.1 shall be returned unopened to the Tenderers.
- 26.3 No Tender may be withdrawn, substituted, or modified 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 Form of Tender or any extension thereof.

27 Tender Opening

- 27.1** Except as in the cases specified in ITT 23 and ITT 25.2, the Procuring Entity shall, at the Tender opening, publicly open and read out all Tenders received by the deadline at the date, time and place specified **in the TDS** in the presence of Tenderers' designated representatives and anyone who choose to attend. Any specific electronic Tender opening procedures required if electronic tendering is permitted in accordance with ITT 23.1 shall be as specified **in the TDS**.
- 27.2 First, envelopes marked “WITHDRAWAL” shall be opened and read out and the envelope with the corresponding Tender shall not be opened, but returned to the Tenderer. If the withdrawal envelope does not contain a copy of the “power of attorney” confirming the signature as a person duly authorized to sign on behalf of the Tenderer, the corresponding Tender will be opened. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Tender opening.
- 27.3 Next, envelopes marked “SUBSTITUTION” shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening.
- 27.4 Next, envelopes marked “MODIFICATION” shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening.
- 27.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the total Tender Prices, per lot (contract) if applicable, including any discounts and alternative Tenders; the presence or absence of a Tender Security or Tender-Securing Declaration, if required; and any other details as the Procuring Entity may consider appropriate.

- 27.6 Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further. The Form of Tender and the priced Activity Schedule are to be initialed by representatives of the Procuring Entity attending Tender opening in the manner specified **in the TDS**.
- 27.7 The Procuring Entity shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT25.1).
- 27.8 The Procuring Entity shall prepare are cord of the Tender opening that shall include, as a minimum:
- a) The name of the Tenderer and whether there is a withdrawal, substitution, or modification;
 - b) The Tender Price, per lot (contract) if applicable, including any discounts; and
 - c) any alternative Tenders;
 - d) The presence or absence of a Tender Security or Tender-Securing Declaration, if one was required.
 - e) Number of pages of each tender document submitted
- 27.9 The Tenderers' representatives who a rep resent shall be requested to sign the record. The omission of a Tenderer's signature on the record shall not invalidate the contents and effect of the record. A copy of the tender opening register shall be distributed to Tenderer upon request.

E. Evaluation and Comparison of Tenders

28 Confidentiality

- 28.1 Information relating to the evaluation of Tenders and recommendation of contract award, shall not be disclosed to Tenderers or any other persons not officially concerned with the Tendering process until information on the Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 42.
- 28.2 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.
- 28.3 Notwithstanding ITT 28.2, 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.

29 Clarification of Tenders

- 29.1 To assist in the examination, evaluation, and comparison of Tenders, and qualification of the Tenderers, the Procuring Entity may, at the Procuring Entity's discretion, ask any tenderer for clarification of its Tender including break downs of the prices in the Activity Schedule, and other information that the Procuring Entity may require. Any clarification submitted by a Tenderer in respect to its Tender and that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the Tenders, in accordance with ITT32.
- 29.2 If a Tenderer does not provide clarifications of its Tender by the date and time set in the Procuring Entity's request for clarification, its Tender may be rejected.

30 Deviations, Reservations, and Omissions

- 30.1 During the evaluation of Tenders, the following definitions apply:
- a) "Deviation" is a departure from the requirements specified in the tendering document;
 - b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the tendering document; and
 - c) "Omission" is the failure to submit part or all of the information or documentation required in the tendering document.

31 Determination of Responsiveness

- 31.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT 12.

- 31.2 A substantially responsive Tender is one that meets the requirements of the tendering document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:
- a) If accepted, would:
 - i. affect in any substantial way the scope, quality, or performance of the Non-Consulting Services specified in the Contract; or
 - ii. limit in any substantial way, inconsistent with the tendering document, the Procuring Entity's rights or the Tenderer's obligations under the Contract; or
 - b) if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.
- 31.3 The Procuring Entity shall examine the technical aspects of the Tender submitted in accordance with ITT 18 and ITT 19, in particular, to confirm that all requirements of Section VII, Procuring Entity's Requirements have been met without any material deviation or reservation, or omission.
- 31.4 If a Tender is not substantially responsive to the requirements of tendering document, it shall be rejected by the Procuring Entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.
- 31.5 Provided that a Tender is substantially responsive, the Procuring Entity may waive any non-conformity in the Tender.
- 31.6 Provided that a Tender is substantially responsive, the Procuring Entity may request that the Tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify non-material non-conformities or omissions in the Tender related to documentation requirements. Requesting information or documentation on such non-conformities shall not be related to any aspect of the price of the Tender. Failure of the Tenderer to comply with the request may result in the rejection of its Tender.
- 31.7 Provided that a Tender is substantially responsive, the Procuring Entity shall rectify quantifiable non-material non-conformities related to the Tender Price. To this effect, the Tender Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified **in the TDS.**

32 Arithmetical Errors

- 32.1 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.
- 32.2 Provided that the Tender is substantially responsive, the Procuring Entity shall handle errors on the following basis:
- a) Any error detected if considered a major deviation that affects the substance of the tender, shall lead to disqualification of the tender as non-responsive.
 - b) Any errors in the submitted tender arising from a miscalculation of unit price, quantity, subtotal and total bid price shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of the tender as non-responsive .and
 - c) If there is a discrepancy between words and figures, the amount in words shall prevail
- 32.3 Tenderers shall be notified of any error detected in their bid during the notification of a ward.

33 Conversion to Single Currency

- 33.1 For evaluation and comparison purposes, the currency(ies) of the Tender shall be converted into a single currency **as specified in the TDS.**

34 Margin of Preference and Reservations

- 34.1 Margin of preference on local service providers may be allowed if it is deemed that the services require participation of foreign tenderers. If so allowed, it will be indicated in the **TDS.**

34.2 Where it is intended to reserve the contract to specific groups under Small and Medium Enterprises, or enterprise of women, youth and /or persons living with disability, who are appropriately registered as such by the authority to be specified in the **TDS**, a procuring entity shall ensure that the invitation to tender specifically indicates that only businesses/firms belonging to the specified group are eligible to tender as specified in the **TDS**. Otherwise, if not so stated, the invitation will be open to all tenderers.

35 Evaluation of Tenders

35.1 The Procuring Entity shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies, the Procuring Entity shall determine the Best Evaluated Tender. This is the Tender of the Tenderer that meets the qualification criteria and whose Tender has been determined to be:

- a) Substantially responsive to the tendering document; and
- b) The lowest evaluated cost.

35.2 In evaluating the Tenders, the Procuring Entity will determine for each Tender the evaluated Tender cost by adjusting the Tender price as follows:

- a) Price adjustment due to discounts offered in accordance with ITT 16.4;
- b) price adjustment due to quantifiable non material non-conformities in accordance with ITT 31.3;
- c) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT 33; and
- d) any additional evaluation factors specified **in the TDS** and Section III, Evaluation and Qualification Criteria.

35.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be considered in Tender evaluation.

35.4 In the case of multiple contracts or lots, Tenderers are allowed to tender for one or more lots and the methodology to determine the lowest evaluated cost of the lot (contract) and for combinations, including any discounts offered in the Form of Tender, is specified in Section III, Evaluation and Qualification Criteria. For one or more lots (contracts). Each lot or contract will be evaluated in accordance with ITT

35.5. The methodology to determine the lowest evaluated tenderer or tenderers based one lot (contract) or based on a combination of lots (contracts), will be specified in Section III, Evaluation and Qualification Criteria. In the case of multiple lots or contracts, tenderer will be will be required to prepare the Eligibility and Qualification Criteria Form for each Lot.

36 Comparison of Tenders

36.1 The Procuring Entity shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 35.2 to determine the Tender that has the lowest evaluated cost.

37 Abnormally Low Tenders and Abnormally High

Tenders Abnormally Low Tenders

37.1 An Abnormally Low Tender is one where the Tender price, in combination with other elements of the Tender, appears so low that it raises material concerns as to the capability of the Tenderer in regards to the Tenderer's ability to perform the Contract for the offered Tender Price.

37.2 In the event of identification of a potentially Abnormally Low Tender, the Procuring Entity shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Tender document.

37.3 After evaluation of the price analyses, in the event that the Procuring Entity determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, the Procuring Entity shall reject the Tender.

Abnormally High Tenders

- 37.4 An abnormally high price is one where the tender price, in combination with other constituent elements of the Tender, appears unreasonably too high to the extent that the Procuring Entity is concerned that it (the Procuring Entity) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Tenderers is compromised.
- 37.5 In case of an abnormally high price, the Procuring Entity shall make a survey of the market prices, check if the estimated cost of the contract is correct and review the Tender Documents to check if the specifications, scope of work and conditions of contract are contributory to the abnormally high tenders. The Procuring Entity may also seek written clarification from the tenderer on the reason for the high tender price. The Procuring Entity shall proceed as follows:
- i) If the tender price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the tender depending on the Procuring Entity's budget considerations.
 - ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, the Procuring Entity shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work and conditions of contract, as the case maybe.
- 37.6 If the Procuring Entity determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (*often due to collusion, corruption or other manipulations*), the Procuring Entity shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before retendering.

38 Unbalanced and/or Front-Loaded Tenders

- 38.1 If in the Procuring Entity's opinion, the Tender that is evaluated as the lowest evaluated price is seriously unbalanced and/or front loaded, the Procuring Entity may require the Tenderer to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the tender prices with the scope of works, proposed methodology, schedule and any other requirements of the Tender document.
- 38.2 After the evaluation of the information and detailed price analyses presented by the Tenderer, the Procuring Entity may as appropriate:
- a) Accept the Tender; or
 - b) require that the total amount of the Performance Security be increased at the expense of the Tenderer to a level not exceeding 10% of the Contract Price; or
 - c) agree on a payment mode that eliminates the inherent risk of the Procuring Entity paying too much for undelivered works; or
 - d) Reject the Tender.

39 Qualification of the Tenderer

- 39.1 The Procuring Entity shall determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender is eligible and meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.
- 39.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT 18. The determination shall not take into consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates, subcontractors or any other firm(s) different from the Tenderer that submitted the Tender.
- 39.3 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event the Procuring Entity shall proceed to the Tenderer who offers a substantially responsive Tender with the next lowest evaluated cost to make a similar determination of that Tenderer's qualifications to perform satisfactorily.

40 Procuring Entity's Right to Accept Any Tender, and to Reject Any or All Tenders

- 40.1 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 there by incurring any liability to Tenderers. In case of annulment, all Tenders submitted and specifically, Tender securities, shall be promptly returned to the Tenderers.

F. Award of Contract

43 Award Criteria

43.1 The Procuring Entity shall award the Contract to the successful tenderer whose tender has been determined to be the Lowest Evaluated Tender.

42 Notice of Intention to enter in to a Contract

42.1 Upon award of the contract and Prior to the expiry of the Tender Validity Period the Procuring Entity shall issue a Notification of Intention to Enter into a Contract/Notification of a ward to all tenderers which shall contain, at a minimum, the following information:

- a) The name and address of the Tenderer submitting the successful tender;
- b) The Contract price of the successful tender;
- c) a statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was unsuccessful, unless the price information in(c) above already reveals the reason;
- d) the expiry date of the Stand still Period; and
- e) instructions on how to request a debriefing and/or submit a complaint during the stand still period;

43 Stand still Period

43.1 The Contract shall not be signed earlier than the expiry of a Standstill Period of 14 days to allow any dissatisfied tender to launch a complaint. Where only one Tender is submitted, the Standstill Period shall not apply.

43.2 Where a Standstill Period applies, it shall commence when the Procuring Entity has transmitted to each Tenderer the Notification of Intention to Enter in to a Contract with the successful Tenderer.

44 Debriefing by the Procuring Entity

44.1 On receipt of the Procuring Entity's Notification of Intention to Enter into a Contract referred to in ITT 42, an unsuccessful tenderer may make a written request to the Procuring Entity for a debriefing on specific issues or concerns regarding their tender. The Procuring Entity shall provide the debriefing with in five days of receipt of the request.

44.2 Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending such a debriefing meeting.

45 Letter of Award

Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 43.1, upon addressing a complaint that has been filed within the Standstill Period, the Procuring Entity shall transmit the Letter of Award to the successful Tenderer. The letter of award shall request the successful tenderer to furnish the Performance Security within 21 days of the date of the letter.

46 Signing of Contract

46.1 Upon the expiry of the fourteen days of the Notification of Intention to enter into contract and upon the parties meeting their respective statutory requirements, the Procuring Entity shall send the successful Tenderer the Contract Agreement.

46.2 Within fourteen (14) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to the Procuring Entity.

46.3 The written contract shall be entered into within the period specified in the notification of award and before expiry of the tender validity period

47 Performance Security

47.1 Within twenty-one (21) days of the receipt of the Form of Acceptance from the Procuring Entity, the successful Tenderer, if required, shall furnish the Performance Security in accordance with the GCC 3.9, using for that

purpose the Performance Security Form included in Section VIII, Contract Forms, or another Form acceptable to the Procuring Entity. If the Performance Security furnished by the successful Tenderer is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Tenderer to be acceptable to the Procuring Entity. A foreign institution providing a bond shall have a correspondent financial institution located in Kenya, unless the Procuring Entity has agreed in writing that a correspondent financial institution is not required.

47.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security. In that event the Procuring Entity may award the Contract to the Tenderer offering the next Best Evaluated Tender.

48 Publication of Procurement Contract

48.1 Within fourteen days after signing the contract, the Procuring Entity shall publish the awarded contract at its notice boards and websites; and on the Website of the Authority. At the minimum, the notice shall contain the following information:

- a) Name and address of the Procuring Entity;
- b) Name and reference number of the contract being awarded, a summary of its scope and the selection method used;
- c) The name of the successful Tenderer, the final total contract price, the contract duration.
- d) Dates of signature, commencement and completion of contract;
- e) Names of all Tenderers that submitted Tenders, and their Tender prices as read out at Tender opening.

49 Adjudicator

49.1 The Procuring Entity proposes the person named **in the TDS** to be appointed as adjudicator or under the Contract, at an hourly fee specified in **the TDS**, plus reimbursable expenses. If the Tenderer disagrees with this Tender, the Tenderer should so state in the Tender. If, in the Form of Acceptance, the Procuring Entity has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Special Conditions of Contract at the request of either party.

50 Procurement Related Complaints and Administrative Review

50.1 The procedures for making a Procurement-related Complaint are as specified in the **TDS**.

50.2 A request for administrative review shall be made in the form provided under contract forms.

SECTION II - TENDER DATA SHEET (TDS)

The following specific data for the Non-Consulting Services to be procured shall complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT). Whenever there is a conflict, the provisions here in shall prevail over those in ITT.

ITT Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	A. General
ITT 1.1	The reference number of the Request for Tenders (ITT) is: WSTF/OT/EXTERNAL AUDIT/04/2023-2024. The Procuring Entity is: Water Sector Trust Fund (WSTF) The name of the ITT is: EXTERNAL AUDIT- Statutory Audit and Sub-Grantee Projects Audits for Financial Years 2023/2024, 2024/2025 And 2025/2026.
ITT 2.1(a)	Electronic –Procurement System- N/A
ITT 2.2	The Intended Completion Date is - <i>June, 2026</i>
ITT 3.3	Information that any unfair competitive advantage over competing firms is as follow: None
ITT 4.1	Maximum number of members in the Joint Venture (JV) shall be: <i>None</i>
	B. Contents of Tendering Document
ITT 8.1	(a) A pre-tender conference <u>will not be held</u>
ITT 8.2	The questions in writing, to reach the Procuring Entity not later than 7 days before the submission of bids.
ITT 8.4	Minutes of the pre-Tender meeting and the pre-arranged pretender visit of the site of the works shall be published on the website – N/A
ITT 9.1	i) The Tenderer will submit any request for clarifications in writing at the Address procurement@waterfund.go.ke or supplychain@waterfund.go.ke to reach the Procuring Entity not later than 7 days before the submission of bids. ii) The Procuring Entity shall publish its response at the website https://waterfund.go.ke The Procuring Entity shall also promptly publish response at the website https://waterfund.go.ke
	C. Preparation of Tenders
ITT 13.1 (i)	The Tenderer shall submit the following additional documents in its Tender: <i>All documents as requested in the evaluation criteria and ToR</i>
ITT 15.1	Alternative Tenders <i>shall not be</i> considered.
ITT 15.2	Alternative times for completion <i>shall not be</i> permitted. If permitted, the range of acceptable completion time is: Not Applicable.
ITT 15.3	

ITT Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	Alternative technical solutions shall be permitted for the following parts of the Services: <i>Not Applicable</i>
ITT 16.7	The prices quoted by the Tenderer <i>shall not</i> be subject to adjustment during the performance of the Contract.
ITT 20.1	The Tender validity period shall be 154 days from the date of tender submission.
ITT 21.1	<p>A Tender Security <i>shall be</i> required.</p> <p>If a Tender Security shall be required, the amount and currency of the Tender Security shall be Ksh.750,000.00 in form of:</p> <ul style="list-style-type: none"> • Cash • A bank guarantee • A guarantee by insurance company registered and licensed by Insurance Regulatory Authority and approved and listed by PPRA • <p>The tender security shall be valid for 154 days from the date of tender opening</p>
ITT 21.3 (a)	The Contract price shall be adjusted by- N/A
ITT 22.1	In addition to the original of the Tender, the number of copies is: Two
ITT 22.3	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of: Power of Attorney executed by a Notary Public or Advocate of High court or commissioner of Oaths.
D. Submission and Opening of Tenders	
ITT 24.1	<p>For <u>Tender submission purposes</u> only, the Procuring Entity's address is:</p> <p>Chief Executive Officer Water Sector Trust Fund CIC Plaza 1, First Floor, Mara road , UpperHill P.O BOX 49699-00100 Nairobi,</p>
ITT 24.1	<p>The deadline for Tender submission is:</p> <p>Date: Tuesday 9th July 2024.</p> <p>Time: 10.00 AM -EAT</p> <p>Tenderers <i>shall not</i> have the option of submitting their Tenders electronically.</p> <p>The electronic Tender submission procedures shall be: Not Applicable</p>
ITT 27.1	<p>The Tender opening shall take place at:</p> <p>Physical Address: Water Sector Trust Fund CIC Plaza 1, First Floor, Mara Road, Upper Hill P.O BOX 49699-00100 Nairobi,</p> <p>Date: Tuesday 9th July 2024. Time: 10.00 AM -EAT</p>
ITT 27.1	The electronic Tender opening procedures shall be: Not Applicable
ITT 27.6	The Form of Tender and priced Activity Schedule shall be initialled by three representatives of

ITT Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	the Procuring Entity conducting Tender opening.
E. Evaluation and Comparison of Tenders	
ITT 31.7	comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified as follows: The adjustment shall be based on the <i>insert</i> “average price of the item or component as quoted in other substantially responsive Tenders. If the price of the item or component cannot be derived from the price of other substantially responsive Tenders, the Procuring Entity shall use its best estimate.
ITT 33.1	The currency that shall be used for Tender evaluation and comparison purposes only to convert at the selling exchange rate all Tender prices expressed in various currencies into a single currency is: Kenya Shilling. The source of exchange rate shall be: The Central bank of Kenya (mean rate) The date for the exchange rate shall be: the deadline date for Submission of the Tenders.
ITT 34.1	Margin of preference allowed. - NO
ITT 34.2	The invitation to tender is extended to the following group that qualify for Reservations Not Applicable
ITT 35.2 (d)	Additional evaluation factors shall be: As per Preliminary and Technical evaluation criteria
ITT 35.4	Tenderers shall not be allowed to quote separate prices for different lots (contracts) and the methodology to determine the lowest tenderer is specified in Section III, Evaluation and Qualification Criteria.
F. Award of Contract	
ITT 49.1	The Adjudicator proposed by the Procuring Entity is _____. The hourly fee for this proposed Adjudicator shall be _____. The biographical data of the proposed Adjudicator is as follows: _____. Note- To be filled at contracting period.
ITT 50.1	The procedures for making a Procurement-related Complaint are available from the PPRA Website www.ppra.go.ke or email complaints@ppra.go.ke . If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to: For the attention: Mr. Willis Ombai Title/position: Chief Executive Officer Procuring Entity: Water Sector Trust Fund Email address: info@waterfund.go.ke In summary, a Procurement-related Complaint may challenge any of the following: (i) the terms of the Tender Documents; and (ii) the Procuring Entity’s decision to award the contract.

SECTION III – EVALUATION AND QUALIFICATION CRITERIA

1. General Provision

- 1.1 Wherever a Tenderer is required to state a monetary amount, Tenderers should indicate the Kenya Shilling equivalent using the rate of exchange determined as follows:
- a) For construction turnover or financial data required for each year-Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year are to be converted) was originally established.
 - b) Value of single contract-Exchange rate prevailing on the date of the contract signature.
 - c) Exchange rates shall be taken from the publicly available source identified in the ITT. Any error in determining the exchange rates in the Tender may be corrected by the Procuring Entity.
- 1.2 This section contains the criteria that the Employer shall use to evaluate tender and qualify tenderers. No other factors, methods or criteria shall be used other than specified in this tender document. The Tenderer shall provide all the information requested in the forms included in Section IV, Tendering Forms. The Procuring Entity should use **the Standard Tender Evaluation Report for Goods and Works** for evaluating Tenders.

1.3 Evaluation and contract award Criteria

The Procuring Entity shall use the criteria and methodologies listed in this Section to evaluate tenders and arrive at the Lowest Evaluated Tender. The tender that (i) meets the qualification criteria,(ii)has been determined to be substantially responsive to the Tender Documents, and(iii) is determined to have the Lowest Evaluated Tender price shall be selected for award of contract.

2 Preliminary examination for Determination of Responsiveness

The Procuring Entity will start by examining all tenders to ensure they meet in all respects the eligibility criteria and other mandatory requirements in the ITT, and that the tender is complete in all aspects in meeting the requirements provided for in the preliminary evaluation criteria outlined below. The Standard Tender Evaluation Report Document for Goods and Works for evaluating Tenders provides very clear guide on how to deal with review of these requirements. Tenders that do not pass the Preliminary Examination will be considered non- responsive and will not be considered further.

Preliminary Evaluation

No.	Completeness and Responsiveness Criteria	Requirement	Y/N
1.	Valid Tax Compliance Certificate	Copy of current certificate	
	Certificate of Incorporation	Copy of Certificate	
6.	Single Business Permit	Certified copy of current single Business Permit	
7.	CR12	Certified copy of current (Issued within the tendering period upto the day of tender submission) CR12 certificate showing all the directors	
8.	Submission of 1 original & 2 copy of tender document properly paginated and Serialized	All pages of the tender document submitted shall be properly tape bound, paginated in all printed pages, initialized and stamped including attachments.	
9.	Audited financial statements for the last three years (,2021,2022, 2023)	Signed and stamped by registered auditor in opinion page and attach the firm annual practicing license certificate and auditors practicing certificate.	

No.	Completeness and Responsiveness Criteria	Requirement	Y/N
10.	Tender security amount	<p>Tender security Ksh.750,000.00 from Bank guarantee or Insurance Company approved by PPRA (Insurance companies approved by PPRA as validated on PPRA website) in form of:</p> <ul style="list-style-type: none"> • cash, • a bank guarantee; • a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Authority; or • a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya <p>The tender security shall be valid for 154 days from the date of tender opening.</p>	
	Provide proof of Power of Attorney	Signed and stamped by Commissioner of oath or Notary Public or Advocate of the high court	
12.	Duly filled, signed and stamped tendering forms as provided for the tender documents	<ul style="list-style-type: none"> • Completed and signed confidential business questionnaire form. • Certificate of Independent tender determination SD1 & SD2 • Declaration and commitment to code of ethics, tender information form • Certificate of Independent tender determination as provided 	
13.	Form of Tender	Form of tender signed and stamped by the authorized person in the format provided in the tender document and the bidders letterhead.	

Only bidders that are responsive in all requirements of this stage are considered for technical evaluation stage.

3 Tender Evaluation (ITT 35)

S/NO.	REQUIREMENTS	POINTS
i.	Specific experience of the Consultant, as a firm, relevant to the Assignment:	10
ii.	Adequacy and quality of the proposed methodology, and work plan in responding to the Terms of Reference (TORs):	
	(a) Technical approach and methodology	20
	(b) Work plan	10
	(c) Organization and staffing	10
	Total points for criterion (ii)	40
iii.	Key Experts' qualifications and competence for the Assignment	
	(a) Position K-1: [Audit Partner, Category 1]	15
	(b) Position K-2: [Audit Manager, Category 2]	20
	(c) Position K-3: [in house experts, Category]	6
	3a Senior Auditor (3)	
	3b Assistant Auditor (3)	
	Technical audits	
	Position K-4 : Team leader	2
	Position K-5: Senior Engineer	2
	Position K-6 ; Engineer	2
	Position K- 7: Engineering Assistant	2
	Position K- 8 Procurement professional	1
	Total points for criterion (iii):	50
	The number of points to be assigned to each of the above Key Experts positions shall be determined considering the following three sub-criteria and relevant percentage weights:	
	(1) General qualifications (general education, training, and experience):	25%
	(2) Adequacy for the Assignment (relevant education, training, experience in the sector or similar assignments): [65%]	65%
	3) Relevant experience in the Kenya (working level fluency in local language(s)/knowledge of local culture or administrative system, government organization, etc.): [10 %]	10%
	Total weight:	100%
	Total points for the three criteria	100

The minimum technical score required to pass is 80%

Award Criteria.

The Procuring Entity shall use the criteria and methodologies listed in this Section to evaluate tenders and arrive at the Lowest Evaluated Tender. The tender that (i) meets the qualification criteria, (ii) has been determined to be substantially responsive to the Tender Documents, and (iii) is determined to have the Lowest Evaluated Tender price shall be selected for award of contract.

Price evaluation: in addition to the criteria listed in ITT 35.2 (a)–(d) the following criteria shall apply:

- i) **Alternative Completion Times**, if permitted under ITT 15.2, will be evaluated as follows:
.....
- ii) **Alternative Technical Solutions** for specified parts of the Works, if permitted under ITT 15.3, will be evaluated as follows:.....
- iii) **Other Criteria**; if permitted under ITT 35.2 (e):

4 Multiple Contracts

Multiple contracts will be permitted in accordance with ITT 35.4. Tenderers are evaluated on basis of Lots and the lowest evaluated tenderer identified for each Lot. The Procuring Entity will select one Option of the two Options listed below for award of Contracts.

OPTION1

- i) If a tenderer wins only one Lot, the tenderer will be awarded a contract for that Lot, provided the tenderer meets the Eligibility and Qualification Criteria for that Lot.
- ii) If a tenderer wins more than one Lot, the tender will be awarded contracts for all won Lots, provided the tenderer meets the aggregate Eligibility and Qualification Criteria for all the Lots. The tenderer will be awarded the combination of Lots for which the tenderer qualifies and the others will be considered for award to second lowest the tenderers.

OPTION 2

The Procuring Entity will consider all possible combinations of won Lots [contract(s)] and determine the combinations with the lowest evaluated price. Tenders will then be awarded to the Tenderer or Tenderers in the combinations provided the tenderer meets the aggregate Eligibility and Qualification Criteria for all the won Lots.

5 Alternative Tenders (ITT 15.1)

An alternative if permitted under ITT 13.1, will be evaluated as follows:

The Procuring Entity shall consider Tenders offered for alternatives as specified in Part 2- Procuring Entity's requirements. Only the technical alternatives, if any, of the Tenderer with the Best Evaluated Tender conforming to the basic technical requirements shall be considered by the Procuring Entity.

6 MARGIN OF PREFERENCE

Apply Margin of Preference, if so allowed to all evaluated and accepted tender as follows.

- 6.1 If the TDS so specifies, the Procuring Entity will grant a margin of preference of fifteen percent (15%) to be loaded on evaluated prices of foreign tenderers, where the percentage of shareholding of Kenyan citizens is less than fifty-one percent (51%).
- 6.2 Contractors applying for such preference shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a particular contractor or group of contractor's qualifies for a margin of preference.
- 6.3 After Tenders have been received and reviewed by the Procuring Entity, responsive Tenders shall be assessed to ascertain their percentage of shareholding of Kenyan citizens. Responsive tenders shall be classified into the following groups:
 - i) Group A: tenders offered by Kenyan Contractors and other Tenderers where Kenyan citizens hold shares of over fifty one percent (51%).
 - ii) Group B: tenders offered by foreign Contractors and other Tenderers where Kenyan citizens hold shares of less than fifty one percent (51%).

6.4 All evaluated tenders in each group shall, as a first evaluation step, be compared to determine the lowest tender, and the lowest evaluated tender in each group shall be further compared with each other. If, as a result of this comparison, a tender from Group A is the lowest, it shall be selected for the award. If a tender from Group B is the lowest, an amount equal to the percentage indicated in Item 3.1 of the respective tender price, including unconditional discounts and excluding provisional sums and the cost of day works, if any, shall be added to the evaluated price offered in each tender from Group B. All tenders shall then be compared using new prices with added prices to Group B and the lowest evaluated tender from Group A. If the tender from Group A is still the lowest tender, it shall be selected for award. If not, the lowest evaluated tender from Group B based on the first evaluation price shall be selected.

7 Post qualification and Contract award (ITT 39), more specifically,

- a) In case the tender was subject to post-qualification, the contract shall be awarded to the lowest evaluated tenderer, subject to confirmation of pre-qualification data, if so required.
- b) In case the tender was not subject to post-qualification, the tender that has been determined to be the lowest evaluated tenderer shall be considered for contract award, subject to meeting each of the following conditions.
 - i) The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet cash flow of Kenya Shillings 10Million.
 - ii) At least three contract(s) of a similar nature executed within Kenya, or the East African Community or abroad, that have been satisfactorily and substantially completed as a prime contractor, or joint venture member or sub-contractor each of minimum value Kenya shillings 10Million
 - iii) Other conditions depending on their seriousness.

a) **History of non-performing contracts:**

Tenderer and each member of JV in case the Tenderer is a JV, shall demonstrate that Non-performance of a contract did not occur because of the default of the Tenderer, or the member of a JV in the last _____ (*specify years*). The required information shall be furnished in the appropriate form.

b) **Pending Litigation**

Financial position and prospective long-term profitability of the Single Tenderer, and in the case the Tenderer is a JV, of each member of the JV, shall remain sound according to criteria established with respect to Financial Capability under Paragraph (i) above if all pending litigation will be resolved against the Tenderer. Tenderer shall provide information on pending litigations in the appropriate form.

c) **Litigation History**

There shall be no consistent history of court/arbitral award decisions against the Tenderer, in the last _____ (*Specify years*). All parties to the contract shall furnish the information in the appropriate form about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the year's specified. A consistent history of awards against the Tenderer or any member of a JV may result in rejection of the tender.

SECTION IV - TENDERING FORMS

1 FORM OF TENDER

(Amended and issued pursuant to PPRA CIRCULAR No. 02/2022)

INSTRUCTIONS TO TENDERERS

- i) *All italicized text is to help the Tenderer in preparing this form.*
- ii) *The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address. Tenderers are reminded that this is a mandatory requirement.*
- iii) *Tenderer must complete and sign CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELF DECLARATION FORMS OF THE TENDERER as listed under (s) below.*

Date of this Tender submission:.....[insert date (as day, month and year) of Tender submission] **Tender**

Name **and** **Identification:**.....[insert *identification*] **Alternative**

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

To: [Insert complete name of Procuring Entity]

- a) **No reservations:** We have examined and have no reservations to the tendering document, including Addenda issued in accordance with ITT9;
- b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with ITT4;
- c) **Tender-Securing Declaration:** We have not been suspended nor declared ineligible by the Procuring Entity based on execution of a Tender-Securing Declaration or Proposal-Securing Declaration in Kenya in accordance with ITT21;
- d) **Conformity:** We offer to provide the Non-Consulting Services inconformity with the tendering document of the following: [insert a brief description of the Non-Consulting Services];
- e) **Tender Price:** The total price of our Tender, excluding any discounts offered in item(f) below is: [Insert one of the options below as appropriate]

Option1,in case of one lot: Total price is:[insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies];

Or

Option 2, in case of multiple lots:(a) Total price of each lot[*insert the total price of each lot in words and figures, indicating the various amounts and the respective currencies*]; and (b) Total price of all lots (sum of all lots) [*insert the total price of all lots in words and figures, indicating the various amounts and the respective currencies*];

- f) **Discounts:** The discounts offered and the methodology for their application are:
- i) The discounts offered are: [Specify in detail each discount offered.]
- ii) The exact method of calculations to determine the net price after application of discounts is shown below: [Specify in detail the method that shall be used to apply the discounts];
- g) **Tender Validity Period:** Our Tender shall be valid for the period specified in TDS 19.1 (as amended if applicable) from the date fixed for the Tender submission deadline (specified in TDS 23.1(as amended if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

- h) **Performance Security:** If our Tender is accepted, we commit to obtain a Performance Security in accordance with the tendering document;
- i) **One Tender Per Tenderer:** We are not submitting any other Tender(s) as an individual Tenderer, and we are not participating in any other Tender(s) as a Joint Venture member or as a subcontractor, and meet the requirements of ITT4.3, other than alternative Tenders submitted in accordance with ITT14;
- j) **Suspension and Debarment:** We, along with any of our subcontractors, suppliers, consultants, manufacturers or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the PPRA. Further, we are not ineligible under Kenya's official regulations or pursuant to a decision of the United Nations Security Council;
- k) **State-owned enterprise or institution:** *[select the appropriate option and delete the other]* *[We are not a state-owned enterprise or institution]* / *[We are a state-owned enterprise or institution but meet the requirements of ITT 4.6];*
- l) **Commissions, gratuities and fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the Tendering process or execution of the Contract: *[insert complete name of each Recipient, its full address, r gratuity].*

Name of Recipient	Address	Reason	Amount

(If none has been paid or is to be paid, indicate “none.”)

- a) *[Delete if not appropriate, or amend to suit]* We confirm that we understand the provisions relating to Standstill Period as described in this tendering document and the Procurement Regulations.
- m) **Binding Contract:** We understand that this Tender, together with your written acceptance thereof included in your Form of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- n) **Not Bound to Accept:** We understand that you are not bound to accept the lowest evaluated cost Tender, the Best Evaluated Tender or any other Tender that you may receive; and
- o) **Fraud and Corruption:** We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption.
- p) **Collusive practices:** We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the “Certificate of Independent tender Determination” attached below.
- q) **Code of Ethical Conduct:** We undertake to adhere by the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal, copy available from _____ *(specify website)* during the procurement process and the execution of any resulting contract.
- r) We, the Tenderer, have completed fully and signed the following Forms as part of our Tender:
 - i) Tenderer's Eligibility; Confidential Business Questionnaire—to establish we are not in any conflict to interest.
 - ii) Certificate of Independent Tender Determination—to declare that we completed the tender without colluding with other tenderers.
 - iii) Self-Declaration of the Tenderer—to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.

- iv) Declaration and commitment to the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal.

Further, we confirm that we have read and understood the full content and scope of fraud and corruption as informed in “**Appendix 1- Fraud and Corruption**” attached to the Form of Tender.

Name of the Tenderer:..... **[insert complete name of person signing the Tender]*

Name of the person duly authorized to sign the Tender on behalf of the Tenderer:.....***[insert complete name of person duly authorized to sign the Tender]*

Title of the person signing the Tender:..... *[insert complete title of the person signing the Tender]*

Signature of the person named above:*[insert signature of person whose name and capacity are shown above]*

Date signed..... *[insert date of signing]* **day of***[insert month], [insert year]*

i) TENDERER'S ELIGIBILITY - CONFIDENTIAL BUSINESS QUESTIONNAIRE

Instruction to Tenderer

Tender is instructed to complete the particulars required in this Form, *one form for each entity if Tender is a JV*. Tenderer is further reminded that it is an offence to give false information on this Form.

a) Tenderer's details

	ITEM	DESCRIPTION
1	Name of the Procuring Entity	
2	Reference Number of the Tender	
3	Date and Time of Tender Opening	
4	Name of the Tenderer	
5	Full Address and Contact Details of the Tenderer.	1. Country 2. City 3. Location 4. Building 5. Floor 6. Postal Address 7. Name and email of contact person.
6	Current Trade License Registration Number and Expiring date	
7	Name, country and full address (<i>postal and physical addresses, email, and telephone number</i>) of Registering Body/Agency	
8	Description of Nature of Business	
9	Maximum value of business which the Tenderer handles.	
10	State if Tenders Company is listed in stock exchange, give name and full address (<i>postal and physical addresses, email, and telephone number</i>) of state which stock exchange	

General and Specific Details

b) **Sole Proprietor**, provide the following details.

Name in full _____ Age _____
 Nationality _____ Country of Origin _____
 Citizenship _____

c) **Partnership**, provide the following details.

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

d) **Registered Company**, provide the following details.

i) Private or public Company _____

ii) State the nominal and issued capital of the Company-

Nominal Kenya Shillings (Equivalent)

Issued Kenya Shillings (Equivalent)

iii) Give details of Directors as follows.

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

e) **DISCLOSURE OF INTEREST-Interest of the Firm in the Procuring Entity.**

i) Are there any person/persons in..... (*Name of Procuring Entity*) who has/have an interest or relationship in this firm? Yes/No.....

If yes, provide details as follows.

	Names of Person	Designation in the Procuring Entity	Interest or Relationship with Tenderer
1			
2			
3			

ii) **Conflict of interest disclosure**

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
1	Tenderer is directly or indirectly controlled by or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Tender has a relationship with another tenderer, directly or through common third parties that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process.		
5	Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender.		
6	Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract specified in this Tender Document.		
7	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract.		
8	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be		

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
	involved in the implementation or supervision of the Contract.		
9	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract?		

f) Certification

On behalf of the Tenderer, I certify that the information given above is complete, current and accurate as at the date of submission.

Full Name _____

Title or Designation _____

(Signature)

(Date)

ii) CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

I, the undersigned, in submitting the accompanying Letter of Tender to the _____
_____ [Name of Procuring Entity] for: _____
_____ [Name and number of tender] in response to the request for tenders made
by: _____ [Name of Tenderer] do hereby make the following statements that I
certify to be true and complete in every respect:

I certify, on behalf of _____ [Name of Tenderer] that:

1. I have read and I understand the contents of this Certificate;
2. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;
4. For the purposes of this Certificate and the Tender, I understand that the word “competitor” shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:
 - a) Has been requested to submit a Tender in response to this request for tenders;
 - b) could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;
5. The Tenderer discloses that [check one of the following, as applicable]:
 - a) The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
 - b) the Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements;
6. In particular, without limiting the generality of paragraphs(5)(a) or (5)(b) above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - a) prices;
 - b) methods, factors or formulas used to calculate prices;
 - c) the intention or decision to submit, or not to submit, a tender; or
 - d) the submission of a tender which does not meet the specifications of the request for Tenders; except as specifically disclosed pursuant to paragraph (5) (b) above;
7. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this request for tenders relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph (5)(b) above;
8. The terms of the Tender have not been, and will not be, knowingly disclosed by the Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official tender opening, or of the awarding of the Contract, which ever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph (5) (b) above.

Name _____

Title _____

Date _____

[Name, title and signature of authorized agent of Tenderer and Date]

iii) SELF-DECLARATION FORMS

FORM SD1

SELF DECLARATION THAT THE PERSON/TENDERER IS 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*) who is a Bidder 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 Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.
3. THAT what is deponed to herein above is true to the best of my knowledge, information and belief.

.....
(Title)

.....
(Signature)

.....
(Date)

Bidder Official Stamp

FORM SD2

SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE

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*) who is a Bidder 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 Bidder, 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 Bidder, 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 Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject tender
5. THAT what is deponed to here in above is true to the best of my knowledge information and belief.

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

Bidder's Official Stamp

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

I, (person) on behalf of (*Name of the Business/ Company/Firm*) declare that I have read and fully understood the contents of the Public Procurement & Asset Disposal Act, 2015, Regulations and the Code of Ethics for persons participating in Public Procurement and Asset Disposal and my responsibilities under the Code.

I do hereby commit to abide by the provisions of the Code of Ethics for persons participating in Public Procurement and Asset Disposal.

Name of Authorized signatory.....

Sign.....

Position.....

Office address..... Telephone.....

E-mail.....

Name of the Firm/Company.....

Date.....

(Company Seal/ Rubber Stamp where applicable)

Witness

Name.....

Sign.....

Date.....

iv) APPENDIX1-FRAUDANDCORRUPTION

(Appendix 1 shall not be modified)

1. Purpose

1.1 The Government of Kenya's Anti-Corruption and Economic Crime laws and their sanction's policies and procedures, Public Procurement and Asset Disposal Act (*no. 33 of 2015*) and its Regulation, and any other Kenya's Acts or Regulations related to Fraud and Corruption, and similar offences, shall apply with respect to Public Procurement Processes and Contracts that are governed by the laws of Kenya.

2. Requirements

2.1 The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts, and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1above.

2.2 Kenya's public procurement and asset disposal act (*no. 33 of 2015*) under Section 66 describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted be low highlight Kenya's policy of no tolerance for such practices and behavior:

- 1) A person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
- 2) A person referred to under sub section (1) who contravenes the provisions of that sub-section commits an offence;
- 3) Without limiting the generality of the subsection (1) and (2), the person shall be: -
 - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
 - b) if a contract has already been entered into with the person, the contract shall be voidable;
- 4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;

3. An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement: -

- a) Shall not take part in the procurement proceedings;
- b) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
- c) Shall not be a subcontractor for the tender to whom was awarded contract, or a member of the group of tenders to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.

4. An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;

4.1 If a person contravenes subsection (1) with respect to a conflict of interest described in subsection (5) (a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the a warding officer. etc.

In compliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:

- a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
 - i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

- ii) “fraudulent practice” is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
- iii) “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;
- iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- v) “obstructive practice” is:
 - a) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya 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; or
 - b) acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3e. below.
 - c) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:
 "fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.
 - c) Rejects a proposal for award¹ of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
 - d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or recommend to appropriate authority(ies) for sanctioning and debarment of a firm or individual, as applicable under the Act and Regulations;
 - e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect² all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and
 - f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a “Self-Declaration Form” as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

¹For the avoidance of doubt, a party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in

A consultancy, and rendering, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract.

² Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Investigating Authority or persons appointed by the Procuring Entity to address specific matters related to investigations/ audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/ audit, and making copies thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.

2. TENDERER INFORMATION FORM

[The Tenderer shall fill in this Form in accordance with the instructions indicated below. No alterations to its format shall be permitted and no substitutions shall be accepted.]

Date:.....*[insert date (as day, month and year) of Tender submission]*

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

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

1. Tenderer's Name:*[insert Tenderer's legal name]*
2. In case of JV, legal name of each member:*[insert legal name of each member in JV]*
3. Tenderer's actual or intended country of registration:*[insert actual or intended country of registration]*
4. Tenderer's year of registration:*[insert Tenderer's year of registration]*
5. Tenderer's Address in country of registration:*[insert Tenderer's legal address in country of registration]*
6. Tenderer's Authorized Representative Information
Name:*[insert Authorized Representative's name]*
Address.....*[insert Authorized Representative's Address]*
Telephone:.....*[insert Authorized Representative's telephone/fax numbers]*
Email Address:.....*[insert Authorized Representative's email address]*
7. Attached are copies of original documents of..... *[check the box(es) of the attached original documents]*
 Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 4.4.
 In case of JV, Form of intent to form JV or JV agreement, in accordance with ITT 4.1.
In case of state-owned enterprise or institution, in accordance with ITT4.6 documents establishing:
i) Legal and financial autonomy
ii) Operation under commercial law
iii) Establishing that the Tenderer is not under the supervision of the agency of the Procuring Entity
 A current tax clearance certificate or tax exemption certificate in case of Kenyan tenderers issued by the Kenya Revenue Authority in accordance with ITT 4.14.
8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

OTHER FORMS

3 TENDERER'S JV MEMBERS INFORMATION FORM

[The Tenderers 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]*

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

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

1. Tenderer's Name: <i>[insert Tenderer's 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 named above, in accordance with ITT 4.4. <input type="checkbox"/> In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not under the supervision of the Procuring Entity, in accordance with ITT 4.6.
8. Included are the organizational chart and a list of Board of Directors.

FORM OF TENDER SECURITY-[Option 1–Demand Bank Guarantee]

Beneficiary: _____

Request for Tenders No:

Date: _____

TENDER GUARANTEE No.: _____

Guarantor: _____

1. We have been informed that _____ (here inafter called "the Applicant") has submitted or will submit to the Beneficiary its Tender (here inafter called" the Tender") for the execution of _____ under Request for Tenders No. _____ ("the ITT").
2. Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.
3. At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ (_____) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:
 - (a) has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Applicant; or
 - b) having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension there to provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the Performance.
4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) thirty days after the end of the Tender Validity Period.
5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

[signature(s)]

Note: All italicized text is for use in preparing this form and shall be deleted from the final product.

FORMAT OF TENDER SECURITY [Option 2–Insurance Guarantee]

TENDER GUARANTEE No.: _____

1. Whereas [Name of the tenderer] (hereinafter called “the tenderer”) has submitted its tender dated [Date of submission of tender] for the [Name and/or description of the tender] (hereinafter called “the Tender”) for the execution of _____ under Request for Tenders No. _____ (“the ITT”).
2. KNOW ALL PEOPLE by these presents that WE of [Name of Insurance Company] having our registered office at (hereinafter called “the Guarantor”), are bound unto [Name of Procuring Entity] (hereinafter called “the Procuring Entity”) in the sum of (Currency and guarantee amount) for which payment well and truly to be made to the said Procuring Entity, the Guarantor binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with the Common Seal of the said Guarantor this ___ day of _____ 20 __.

3. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Applicant:
 - a) has withdrawn its Tender during the period of Tender validity set forth in the Principal's Letter of Tender (“the Tender Validity Period”), or any extension thereto provided by the Principal; or
 - b) having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity Period or any extension thereto provided by the Principal; (i) failed to execute the Contract agreement; or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to tenderers (“ITT”) of the Procuring Entity's Tendering document.

then the guarantee undertakes to immediately pay to the Procuring Entity up to the above amount upon receipt of the Procuring Entity's first written demand, without the Procuring Entity having to substantiate its demand, provided that in its demand the Procuring Entity shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.

4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) twenty-eight days after the end of the Tender Validity Period.
5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

[Date]

[Witness]

[Signature of the Guarantor]

[Seal]

Note: All italicized text is for use in preparing this form and shall be deleted from the final product.

TENDER-SECURING DECLARATION FORM

[The Bidder shall complete this Form in accordance with the instructions indicated]

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

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

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

Purchaser] I/We, the undersigned, declare that:

- 1. I/We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.
- 2. I/We accept that I / we will automatically be suspended from being eligible for tendering 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 tender during the period of tender validity specified by us in the Tendering 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 he Performance Security, in accordance with the instructions to tenders.
- 3. I/We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer(s), upon the earlier of:
 - a) Our receipt of a copy of your notification of the name of the successful Tenderer; or
 - b) thirty days after the expiration of our Tender.
- 4. I / We understand that if I am / we are / in a Joint Venture, the Tender 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 Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed:.....

Capacity / title (director or partner or sole proprietor, etc.)

Name:

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

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

Seal or stamp

QUALIFICATION FORMS

6 FOREIGN TENDERERS 40% RULE

Pursuant to ITT 4.10, a foreign tenderer must complete this form to demonstrate that the tender fulfils this condition.

Item	Description of Work Item	Describe location of Source	COST in K. shillings	Comments, if any
A	Local Labor			
1				
2				
3				
4				
5				
B	Sub contracts from Local sources			
1				
2				
3				
4				
5				
C	Local materials			
1				
2				
3				
4				
5				
D	Use of Local Plant and Equipment			
1				
2				
3				
4				
5				
E	Add any other items			
1				
2				
3				
4				
5				
6				
	TOTAL COST LOCAL CONTENT		XXXXX	
	PERCENTAGE OF CONTRACT PRICE			

7. FORM EQU: EQUIPMENT

The Tenderer shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III, Evaluation and Qualification Criteria. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Tenderer.

Item of equipment		
Equipment information	Name of manufacturer	Model and power rating
	Capacity	Year of manufacture
Current status	Current location	
	Details of current commitments	
Source	Indicate source of the equipment <input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Leased <input type="checkbox"/> Specially manufactured	

Omit the following information for equipment owned by the Tenderer.

Owner	Name of owner	
	Address of owner	
	Telephone	Contact name and title
	Fax	Telex
Agreements	Details of rental / lease / manufacture agreements specific to the project	

8. FORM PER - 1

Contractor's Representative and Key Personnel Schedule

Tenderers should provide the names and details of the suitably qualified Contractor's Representative and Key Personnel to perform the Contract. The data on their experience should be supplied using the Form PER-2 below for each candidate.

Contractor' Representative and Key Personnel

1.	Title of position: Contractor's Representative	
	Name of candidate:	
	Duration of appointment:	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	Time commitment for this position:	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	Expected time schedule for this position:	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
2.	Title of position: [_____]	
	Name of candidate:	
	Duration of appointment:	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	Time commitment for this position:	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	Expected time schedule for this position:	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
3.	Title of position: [_____]	
	Name of candidate:	
	Duration of appointment:	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	Time commitment for this position:	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	Expected time schedule for this position:	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
4.	Title of position: [_____]	
	Name of candidate:	
	Duration of appointment:	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	Time commitment for this position:	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	Expected time schedule for this position:	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
5.	Title of position: <i>[insert title]</i>	
	Name of candidate:	
	Duration of appointment:	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	Time commitment for this position:	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	Expected time schedule for this position:	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>

9. FORM PER-2:

Resume and Declaration - Contractor's Representative and Key Personnel.

Name of Tenderer		
Position [#I]: <i>[title of position from Form PER-1]</i>		
Personnel information	Name:	Date of birth:
	Address:	E-mail:
	Professional qualifications:	
	Academic qualifications:	
	Language proficiency: <i>[language and levels of speaking, reading and writing skills]</i>	
Details	Address of Procuring Entity:	
	Telephone:	Contact (manager / personnel officer):
	Fax:	
	Job title:	Years with present Procuring Entity:

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

Project	Role	Duration of involvement	Relevant experience
<i>[main project details]</i>	<i>[role and responsibilities on the project]</i>	<i>[time in role]</i>	<i>[describe the experience relevant to this position]</i>

DECLARATION

I, the undersigned.....[insert either “Contractor's Representative” or “Key Personnel” as applicable], certify that to the best of my knowledge and belief, the information contained in this Form PER-2 correctly describes myself, my qualifications and my experience.

I confirm that I am available as certified in the following table and throughout the expected time schedule for this position as provided in the Tender:-

Commitment	Details
Commitment to duration of contract:	<i>[insert period (start and end dates) for which this Contractor's Representative or Key Personnel is available to work on this contract]</i>
Time commitment:	<i>[insert period (start and end dates) for which this Contractor's Representative or Key Personnel is available to work on this contract]</i>

I understand that any misrepresentation or omission in this Form may:

- a) be taken into consideration during Tender evaluation;
- b) result in my disqualification from participating in the Tender;
- c) result in my dismissal from the contract.

Name of Contractor's Representative or Key Personnel: _____ [insert name]

Signature: _____

Date: (day month year): _____

Countersignature of authorized representative of the Tenderer:

Signature: _____

Date: (day month year): _____

TENDERERS QUALIFICATION WITHOUT PRE-QUALIFICATION

To establish its qualifications to perform the contract in accordance with Section III, Evaluation and Qualification Criteria the Tenderer shall provide the information requested in the corresponding Information Sheets included hereunder.

10 FORM ELI -1.1

Tenderer Information

Form

Date: _____

ITT No. and title: _____

Tenderer's name
In case of Joint Venture (JV), name of each member:
Tenderer's actual or intended country of registration: <i>[indicate country of Constitution]</i>
Tenderer's actual or intended year of incorporation:
Tenderer's legal address [in country of registration]:
Tenderer's authorized representative information Name: _____ Address: _____ Telephone/Fax numbers: _____ E-mail address: _____
1. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 4.4 <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 4.1 <input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with ITT 4.6, documents establishing: <ul style="list-style-type: none">• Legal and financial autonomy• Operation under commercial law• Establishing that the Tenderer is not under the supervision of the Procuring Entity
2. Included are the organizational chart and a list of Board of Directors.

11. FORM ELI -1.2

Tenderer's JV Information Form
(to be completed for each member of Tenderer's JV)

Date: _____

ITT No. and title: _____

Tenderer's JV name:
JV member's name:
JV member's country of registration:
JV member's year of constitution:
JV member's legal address in country of constitution:
JV member's authorized representative information Name: _____ Address: _____ Telephone/Fax numbers: _____ E-mail address: _____
1. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITT 4.4. <input type="checkbox"/> In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not under the supervision of the Procuring Entity, in accordance with ITT 4.6.
2. Included are the organizational chart and a list of Board of Directors.

12. FORM CON –2

Historical Contract Non-Performance, Pending Litigation and Litigation History

Tenderer's Name: _____

Date: _____

JV Member's Name _____

ITT No. and title: _____

Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria			
<input type="checkbox"/> Contract non-performance did not occur since 1 st January [insert year] specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.1.			
<input type="checkbox"/> Contract(s) not performed since 1 st January [insert year] specified in Section III, Evaluation and Qualification Criteria, requirement 2.1			
Year	Non- performed portion of contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and Kenya Shilling equivalent)
[insert year]	[insert amount and percentage]	Contract Identification: [indicate complete contract name/ number, and any other identification] Name of Procuring Entity: [insert full name] Address of Procuring Entity: [insert street/city/country] Reason(s) for nonperformance: [indicate main reason(s)]	[insert amount]
Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria			
<input type="checkbox"/> No pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.			
<input type="checkbox"/> Pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3 as indicated below.			

Year of dispute	Amount in dispute (currency)	Contract Identification	Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)
		Contract Identification: _____ Name of Procuring Entity: _____ Address of Procuring Entity: _____ Matter in dispute: _____ Party who initiated the dispute: _____ Status of dispute: _____	
		Contract Identification: _____ Name of Procuring Entity: _____ Address of Procuring Entity: _____ Matter in dispute: _____ Party who initiated the dispute: _____ Status of dispute: _____	
Litigation History in accordance with Section III, Evaluation and Qualification Criteria			

Year of dispute	Amount in dispute (currency)	Contract Identification	Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)
<input type="checkbox"/> No Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4. <input type="checkbox"/> Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4 as indicated below.			
Year of award	Outcome as percentage of Net Worth	Contract Identification	Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)
<i>[insert year]</i>	<i>[insert percentage]</i>	Contract Identification: [indicate complete contract name, number, and any other identification] Name of Procuring Entity: <i>[insert full name]</i> Address of Procuring Entity: <i>[insert street/city/country]</i> Matter in dispute: <i>[indicate main issues in dispute]</i> Party who initiated the dispute: <i>[indicate "Procuring Entity" or "Contractor"]</i> Reason(s) for Litigation and award decision <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>

Financial Situation and Performance

Tenderer's Name: _____

Date: _____

JV Member's Name _____

ITT No. and title:

Financial Data

Type of Financial information in _____ (currency)	Historic information for previous _____ years, _____ (amount in currency, currency, exchange rate*, USD equivalent)				
	Year 1	Year 2	Year 3	Year 4	Year 5
Statement of Financial Position (Information from Balance Sheet)					
Total Assets (TA)					
Total Liabilities (TL)					
Total Equity/Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
Working Capital (WC)					
Information from Income Statement					
Total Revenue (TR)					
Profits Before Taxes (PBT)					
Cash Flow Information					
Cash Flow from Operating Activities					

*Refer to ITT 15 for the exchange rate

Source of Finance – 3.1:

Specify sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.

No.	Source of finance	Amount (Kenya Shilling equivalent)
1		
2		
3		

Financial documents

The Tenderer and its parties shall provide copies of financial statements for _____ years pursuant Section III, Evaluation and Qualifications Criteria, Sub-factor 3.1. The financial statements shall:

- a) reflect the financial situation of the Tenderer or in case of JV member, and not an affiliated entity (such as parent company or group member).
- b) Be independently audited or certified in accordance with local legislation.
- c) Be complete, including all notes to the financial statements.
- d) Correspond to accounting periods already completed and audited.

Attached are copies of financial statements¹ for the _____ years required above ; and complying with the requirements

¹If the most recent set of financial statements is for a period earlier than 12 months from the date of Tender, the reason for this should be justified.

Average Annual Construction Turnover

Tenderer's Name: _____

Date: _____

JV Member's Name _____

ITT No. and title: _____

Annual turnover data (construction only)			
Year	Amount Currency	Exchange rate	Kenya Shilling equivalent
<i>[indicate year]</i>	<i>[insert amount and indicate currency]</i>		
Average Annual Construction Turnover *			

* See Section III, Evaluation and Qualification Criteria, Sub-Factor 3.2.

15. FORM FIN-3.3:

Financial Resources

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cash flow demands of the subject contractor contracts as specified in Section III, Evaluation and Qualification Criteria.

Financial Resources		
No.	Source of financing	Amount (Kenya Shilling equivalent)
1		
2		
3		

14. FORMFIN-3.4.2:**Current Contract Commitments / Works in Progress**

Tenderers and each member to a JV should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

No.	Name of Contract	Procuring Entity's Contact Address, Tel,	Value of Outstanding Work [Current Kenya Shilling /month Equivalent]	Estimated Completion Date	Average Monthly Invoicing Over Last Six Months [Kenya Shilling /month]
1					
2					
3					
4					
5					

17. FORM EXP-4.1

General Construction Experience

Tenderer's Name: _____

Date: _____

JV Member's Name _____

ITT No. and title: _____

_____ Page _____ of

_____ pages

Starting Year	Ending Year	Contract Identification	Role of Tenderer
		Contract name: _____ Brief Description of the Works performed by the Tenderer: _____ Amount of contract: _____ Name of Procuring Entity: _____ Address: _____	
		Contract name: _____ Brief Description of the Works performed by the Tenderer: _____ Amount of contract: _____ Name of Procuring Entity: _____ Address: _____	
		Contract name: _____ Brief Description of the Works performed by the Tenderer: _____ Amount of contract: _____ Name of Procuring Entity: _____ Address: _____	

18 FORM EXP -4.2(a)

Specific Construction and Contract Management Experience

Tenderer's Name: Date: _____ JV Member's Name _____ ITT No. and title: _____

Similar Contract No.	Information			
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management Contractor <input type="checkbox"/>	Sub-contractor <input type="checkbox"/>
Total Contract Amount	Kenya Shilling			
If member in a JV or sub-contractor, specify participation in total Contract amount				
Procuring Entity's Name:				
Address: Telephone/fax number E-mail:				
Description of the similarity in accordance with Sub-Factor 4.2(a) of Section III:				
1. Amount				
2. Physical size of required works items				
3. Complexity				
4. Methods/Technology				
5. Construction rate for key activities				
6. Other Characteristics				

19. FORMEXP-4.2(b)

Construction Experience in Key Activities

Tenderer's Name: _____

Date: _____

Tenderer's JV Member Name: _____

Sub-contractor's Name³ (as per ITT35): _____

ITT No. and title: _____

All Sub-contractors for key activities must complete the information in this form as per ITT 34 and Section III, Evaluation and Qualification Criteria, Sub-Factor 4.2.

1. Key Activity No One: _____

Information				
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management Contractor <input type="checkbox"/>	Sub-contractor <input type="checkbox"/>
Total Contract Amount		Kenya Shilling		
Quantity (Volume, number or rate of production, as applicable) performed under the contract per year or part of the year	Total quantity in the contract (i)	Percentage participation (ii)		Actual Quantity Performed (i) x (ii)
Year 1				
Year 2				
Year 3				
Year 4				
Procuring Entity's Name:				
Address:				
Telephone/fax number				
E-mail:				

³If applicable

2. Activity No. Two

	Information
Description of the key activities in accordance with Sub-Factor 4.2(b) of Section III:	
1	
2	
3	
4	
5	

3.

SCHEDULE FORMS

*[The Tenderer shall fill in these Forms in accordance with the instructions indicated. The list of line items in column 1 of the **Activity Schedules** shall coincide with the List of Non-Consulting Services specified in the Procuring Entity's Requirements.]*

WORK SCHEDULES AND SPECIFICATIONS

TERMS OF REFERENCE FOR THE STATUTORY AUDIT AND SUBGRANTEE PROJECTS AUDITS FOR FINANCIAL YEARS 2023/2024, 2024/2025 AND 2025/2026.

1.0 Background

Water Sector Trust Fund (WaterFund) is a Government entity established under the Water Act, 2016 Section 113 (1). The object of the Fund is to provide conditional and unconditional grants to counties, in addition to the Equalisation Fund and to assist in financing the development and management of Water services in marginalized areas or any area which is considered by the Board of Trustees (BOT) to be underserved.

Government of Kenya (GOK) and various Development Partners (DPs) channel financial assistance through WaterFund towards the implementation of Water, Sanitation and Water resources projects throughout the country with special emphasis on the underserved.

WaterFund, together with DPs and other stakeholders, is currently supporting Rural, Urban and Water Resources & Climate Change investment programmes of financing to the Water Sector in Country.

Rural Investments Programme is an approach developed together with various DPs and implementing partners to support the underserved rural areas in Kenya. The rural investment programme finances water supply and sanitation projects implemented by Water Services Providers (WSPs), Community-Based Organizations (CBO) and Community Forest Associations (CFAs) which are the sub-grantees. The programme is funded by the Government of Kenya, the Government of Denmark and the European Union.

Urban Investments Programme and Commercial financing is an approach developed together with various DPs and implementing partners to support improved access to water and sanitation in underserved urban areas. In the Urban Investments programme there is Urban Project Cycle (UPC), Aid on Delivery (AoD) and Up-scaling Basic Sanitation for the Urban Poor (UBSUP). The Programme is funded by Government of Kenya, Government of Germany (KfW), Bill and Melinda Gates Foundation.

Further in the Urban and County programmes, there are three programmes funded by World Bank namely; K-WASH, Conditional Liquidity Support Grant (CLSG) (1 and 2) for Water Service Providers Affected by COVID-19 Pandemic and Horn of Africa for ground water resilience programme (HoA-GWR).

Water Resources Investments Programmes is an approach developed together with various DPs, and Water Resources Authority (WRA), to support Water Resources Users Associations (WRUAs) and Community Forest Associations (CFAs) to manage their water resources within sub catchments. The programme is funded by Government of Kenya, Government of Sweden, Government of Finland, Government of Denmark, International Fund for Agricultural Development (IFAD) and European Union.

Managing WaterFund Investment programmes rests on an elaborate structure of relationships among DPs and several implementing partners. The key implementing partners are County Governments, Water Services Providers (WSPs), Water Resources Authority (WRA), Water Resource Users Associations (WRUAs), Community Based Organizations (CBOs), Kenya Forest Service (KFS), Community Forest Associations (CFAs) and Non-Governmental Organizations (NGOs).

All Investment Programmes will be audited as per the requirements of the DPs in line with the Financing Agreements with specific Terms and Conditions.

2.0 Responsibilities of External Auditor

In order to enable the Auditor General, Republic of Kenya to issue the statutory audit report/opinion on WaterFund, the auditor has a responsibility to report to the Auditor General (AG), whether, in the auditor's opinion:

- a) The financial statements prepared by the trustees give a true and fair view of the financial position of the Trust at the date of the statement of financial position and of its financial performance, cash flows and comparison of budget and actual amounts for the period then ended in accordance with International Public Sector Auditing Standards (IPSAS); and
- b) The financial statements have been prepared in compliance with the Water Act 2016 and other compliance issues required by the GOK.

In addition, the auditor shall report to the Board of Trustees of WaterFund on whether the financial statements of the programmes managed by the Fund have been prepared in all material respect, in accordance with WaterFund accounting policies and the applicable DPs Financing Agreement Terms and Conditions.

In arriving at the auditor's opinion, the auditor shall also consider the following matters and report:

- a) Whether proper books of account have been kept by the Fund
- b) Whether the Fund financial statements agree with the Fund accounting records and returns;
- c) Whether the auditor has obtained all the information and explanations that, to the best of their knowledge and belief, they consider necessary for the purposes of the audit.
- d) Review and report on the status of implementation of recommendations made in special audits conducted by other external auditors.

The auditor's professional responsibilities also include considering whether other information in documents containing audited financial statements is consistent with those financial statements.

2.1 Responsibilities of Water Sector Trust Fund Trustees

The trustees of WaterFund are responsible for the preparation of financial statements that present a true and fair view of the financial position, financial performance and cash flows of the Fund in accordance with IPSAS and the requirements of the Water Act 2016 and other GOK compliance requirement.

The auditor's report will explain that the trustees are responsible;

- a) For the preparation and the fair presentation of the financial statements in accordance with the applicable financial reporting framework and the requirements of the Water Act 2016.
- b) For such internal control as the trustees determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error;
- c) In preparing the financial statements, for assessing WaterFund's ability to continue as a going concern, disclosing, as applicable matters relating to going concern and using the going concern basis of accounting.
- d) Access to all information that the trustees are aware that is relevant to the preparation of the financial statements such as records, documentation and other matters, including minutes of all management and board meetings;
- e) Unrestricted access to persons within WaterFund from whom the auditor determines it necessary to obtain audit evidence.
- f) Ensuring WaterFund complies with relevant laws and regulations.
- g) Other additional information that the auditor may request from the trustees for the purpose of the audit;

2.2 Standards and Guidance

The Auditor will undertake this audit following this TORs and related **Annexes (I, II, III, IV, V and A and B)** and ensure they abide by the Code of Ethics for Professional Accountants and notably the principles of integrity, objectivity, and independence, professional competence, due care, confidentiality and professionalism.

3.0 Requirements for the Audit Firm and Auditor (Qualifications, experience and team composition) for the Firm and individual experts

Specific tasks for the Financial, Systems Audit and Projects audits are listed in ANNEX I, II, III and IV. The Auditor will employ adequate staff with appropriate professional qualifications and suitable experience with International Financial Reporting Standards (IFRS), IPSAS, International Standards on Auditing and with experience in auditing the accounts of entities comparable in size and complexity to the WaterFund. In addition, the audit team as a whole will have appropriate experience with audits of external aid operations financed by the specified donors. At least one senior member of the fieldwork team should have such experience;

3.1 Requirement for the firm's specific experience

Specific experience of the Consultant, as a firm, relevant to the Assignment. The firm should show evidence of auditing 5 number similar assignment and scope with international experience having audited Public institutions and experience in auditing donor funded projects including European Union (EU) World Bank, DANIDA, IFAD, KfW among others.

3.2 Team composition for Financial and Systems Audit

The team of auditors required for this engagement will be composed of a category 1 auditor who has the ultimate responsibility for the audit and an audit team which is composed of an appropriate mix of category 2 – 4 auditors.

Requirements for the Financial and Systems Auditors (Qualifications, experience and team composition)

Category 1 – Audit Partner

An audit partner must be a highly qualified expert with a Masters degree in Business Administration, Degree in Business Administration or relevant field and Qualified Certified Public Accountant (CPA) of Kenya. The Partner should have assumed senior and managerial responsibilities in public audit practice. He/she should be a member of the Institute of Certified Public Accountants of Kenya (ICPAK) or its equivalent or auditing body or institution with good standing. He/she must have at least 12 years of professional experience as a professional Auditor or accountant in public audit practice. Experience working with the external resources operations financed by the specified Development Partners will also be taken into account.

An audit partner, or another person in a position similar to that of a partner, will be responsible for the audit and its performance, and for the report that is issued by the firm. He/she has the appropriate authority from a professional, legal or regulatory body and is authorized to certify accounts by the laws of Kenya.

Category 2(a) - Audit Manager

An audit manager must be a qualified expert with degree in Business Administration or relevant field from recognized University and Qualified Certified Public Accountant (CPA) of Kenya or its equivalent. He/she should be a member of the Institute of Certified Public Accountants of Kenya (ICPAK) or its equivalent or auditing body or institution with good standing. He/she must have at least 6 years' experience as a professional auditor or accountant in public audit practice including relevant managerial experience of leading audit teams.

Category 2(b) – Senior Auditor

A senior auditor must be a qualified expert with a degree in Business Administration or relevant field from recognized University and Qualified Certified Public Accountant (CPA) of Kenya. He/she should be a member of the Institute of Certified Public Accountants of Kenya (ICPAK) or its equivalent or auditing body or institution with good standing. and at least 3 years professional experience in public audit practice.

Category 2(c) – Assistant Auditor

An assistant auditor must be a technical and administrative staff of at least 3 years working experience with the audit firm and a qualified expert with a degree in Business Administration or relevant field from recognized University and Qualified Certified Public Accountant (CPA) of Kenya or its equivalent.

3.3 Team composition for Technical Auditors

Technical input will be needed so as to provide a complete picture of the progress of the works. The primary objective and priority role of the technical part of the audit will be that only the projects with current and past questions costs regarding lack of accountability or value for money will be audited. The technical audit will provide information on the progress and quality of work done and guide the subsequent analysis of and response to the audit findings. The team of auditors required for this engagement will be composed of a category 1 auditor who is the team leader for technical audit and others in category 2 – 5.

Requirements for the technical Auditors (Qualifications, experience and team composition)

Category 1. Team Leader

- a) Must have an MSc. in Civil Engineering,
- b) Registered with EBK, member of IEK
- c) Licenced professional water engineer by water resources
- d) Must show experience in project planning, design, supervision and contract management of water and sanitation projects for over the last 20 years.
- e) 6 years experience in auditing.

Category 2. Senior Engineers

- a) Must have an MSc Civil Engineering or other equivalent.
- b) Registered with EBK, member of IEK
- c) Must show experience of project planning, design, supervision for the last 15 years.
- d) 5 years experience in auditing

Category 3. Engineers

- a) Must have a BSc Civil Engineering or other equivalent.
- b) Registered with EBK, member of IEK
- c) Must show experience of project planning, design, supervision for the last 8 years.
- d) 4 years' experience in auditing.

Category 4. Engineering Assistants / Graduates

- a) Has a BSc in Civil Engineering or other equivalent field.
- b) Registered graduate engineer with EBK
- c) Must have over 3 years' experience in planning and design of water and sanitation projects.
- d) Should be able to interpret layouts and designs of various structures in water related developments.
- e) 3 years' experience in auditing.

Category 5. Procurement professional

- a) Has a degree in procurement or other related field
- b) Registered with professional body and should provide a practicing license
- c) Must have more than 5 years professional experience and 2 years in auditing.

4.0 Audit Objectives

The external auditor will carry out the following services:

Assurance (audit) services

Statutory Audit: The audit will be conducted in accordance with the applicable International Standards on Auditing (ISAs). The financial statements comprise the statement of financial performance, statement of financial position, statement of changes in net assets, statement of cash flows, statement of comparison of budget and actual amounts and other explanatory notes. The objective of the audit is to express an opinion on whether the WSTF financial statements give a true and fair view of the financial position as at the year end, its financial performance and cash flows for the years then ended in accordance with International Public Sector Accounting Standards (IPSAS) and the requirements of the Water Act 2016 and other GOK compliance requirements.

Sub-grantee project audits for WaterFund: These project audits will be conducted in accordance with the applicable International Standards on Auditing (ISAs) and ISRS 4400. The objective of the audits is to report on whether the financial statements of each project managed by WaterFund have been prepared, in all material respects, in accordance with the Fund Accounting policies and the applicable DPs Financings Agreement Terms and Conditions.

As part of the audits, the auditor will review and report through a management letter, any findings related to the design and operating effectiveness of internal control systems (ICS) of WaterFund and the various projects which come to their attention during the course of the audit.

The detailed scope of the Systems and Financial audit is set out in **Annex I** of this **TORs**.

The detailed scope of the sub-grantee projects audits are set out under **Annex II, III (and A and B) and IV in the TORs**. Technical Audits set out in **ANNEX V**.

5.0 Timetable for the Audit

The detailed timetable for the five audits will be as follows;

	External Audit Activity	Dates/Months of Audits
1	Statutory Audit of Water Sector Trust Fund (Systems and Financial Audits) for the financial years ended <i>30 June 2024, 2025 and 2026</i> <i>(External audit undertaken on behalf of Office of the Auditor General (OAG), Republic of Kenya)</i>	Final report to be forwarded to the Office of the Auditor General (OAG) by 30th November 2024, 30th November,2025 and 30th November 2026
2	Urban Investments Projects Audits and External audit undertaken as per Development Partners requirements and report will only be financial project audit. <i>(External audit undertaken as per requirements in Financing Agreements with Development Partners)</i>	External audit reports should be released by 30th November 2024, 30th November,2025 and 30th November 2026
3	Harmonized Rural Projects Audits of the Varius Development Partners funded projects. <i>(External audit undertaken as per requirements in Financing Agreements with Development Partners)</i>	External audit reports should be released by 30th November 2024, 30th November,2025 and 30th November 2026
4	Expenditure verification Audit for the EU-CPIRA Programme <i>(External audit undertaken as per requirements in Financing Agreements with Development Partners)</i>	External audit reports should be released by 30th November 2024, 30th November,2025

5	<p>Technical Audits (<i>External audit undertaken for purpose of resolution of questioned costs</i>)</p>	<p>The auditor will provide the rates of assignment in comparable with the costs of funded project. This will be undertaken at time and date agreed.</p>
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The external auditor is expected to submit final report for Urban Investments Projects audits and Rural Harmonized Investments projects audits and statutory audits within the statutory period and timelines as per Financing Agreements with DPs.

6.0 Scope Limitations

The Auditor will notify the Board of Trustees and DPs as soon as possible of any limitations in the scope of work he may find prior to or during the audit. The Auditor will notify in particular any attempt by the WaterFund to restrict the scope of the audit, or any lack of cooperation on the part of the Fund.

7.0 Meetings with WaterFund, Development Partners and Audit & Risk Committee

In the course of audit assignments, there will be entry and exit meetings between the auditors, WaterFund management, Development Partners and Audit & Risk Committee of the Board. The Development Partners and the Audit & Risk Committee will have unrestricted access to the external auditors and the auditors will be expected to provide information requested at any time during the audit.

8.0 Review of prior years' external audit findings

The auditor will be expected to review the action taken by management with regard to the previous years' external audit report(s). In addition, the auditor will carry out assessment of status of implementation of the recommendations originating from other audits.

Particular focus on the audit findings from the Urban Investments, Rural Investments and Water Resources Investments programmes audits and provide advice, as appropriate, on how to make follow up more efficiently.

9.0 Outputs

WSTF expect as a result of this assignment, that the auditor will issue the following reports:

9.1 Audit report – An audit opinion addressed to the Auditor General on audit of WaterFund's financial statements in line with International Standard on Auditing (ISA) 700, to enable the Auditor General issue his opinion on the statutory financial statements of WSTF;

9.2 Sub-grantee project audit report – An audit opinion addressed to the Board of Trustees on the projects financial statement in line with ISA 800/805. The report should include the Fund Accountability Statement for each Development Partner and should cover the opening balance, revenues, expenditure, and closing balance; For KfW funded programmes, the auditor is expected to include Annex A and Annex B in reporting.

9.3 Expenditure verification Audit; Further the auditor will carry out Expenditure verification as per ANNEX IV in the Sub-grantee projects audits.

A report to the Board of Trustees (Management Letter) – highlighting areas identified through the statutory and the sub-grantee project audits which need improvement and recommendations thereon. The report will clearly categorise the observations as high risk, medium risk and low risk, based on the auditor's findings and assessment. WaterFund will provide management response to the management letter before the reports are finalised and shared with DPs & Auditor General.

The report shall be presented in English. It shall be presented containing both an executive summary and

detailed audit report. These reports will address; internal accounting, administrative controls, compliance with relevant laws, regulations, grant terms and conditions as well as significant matters of interest noted during the audit. Electronic and hard copies of the reports shall be submitted as will be agreed between the auditor, OAG, WaterFund and Development partners at the beginning of each audit.

10.0 Fees

Level of fees will be the amount indicated in the tender documents by the bidders. Payment will be made as follows; 20% (upon signing engagement letter) , 30% (upon submission of draft report and 50% (upon submission of final report)

11.0 Termination

Termination of the agreement should be possible from both parties, giving three months' notice.

ANNEX I - SPECIFIC TASKS FOR THE STATUTORY AUDIT (WATERFUND FINANCIAL AND SYSTEMS AUDIT)

1. Scope of Work for the Systems Audit

The external auditor will obtain sufficient understanding of the applicable DPs Financing agreements, laws and regulations which apply to WaterFund and determine the level of compliance.

A complete set of Financing Agreements will be provided to the external auditor and list shared with DPs for confirmation. The subject of the audit is to evaluate the adequacy of the Internal Control System (ICS) set up and operated by WaterFund for the purpose of managing risks to the achievement of Fund's objectives. The audit will cover the adequacy of the design and the operating effectiveness of the ICS during the year under review.

The work of the auditor should include but not be limited to an assessment of:

- a) WaterFund compliance with the Water Act 2016
- b) The Waterfund compliance with requirements for internal control as specified in Finance, Human Resources, Operation Policy manuals, Public Finance Management Act 2012 and other relevant legislations;
- c) Assessment of the adequacy of Internal Controls over funds received from DPs;
- d) Review status of implementation of the Public Service Ethics Act and other related legislations;
- e) Comment on the adequacy of the design and the operating effectiveness of the Anti-corruption system;
- f) Any other requirements of Office of the Auditor General (OAG) regarding the scope of work;
- g) Assessment of adequacy of the framework in place for risk assessment and risk management;
- h) Follow/check on funds flow from DPs to GoK and then to WaterFund. The report of funds flows should indicate the exchange rates at each stage.
- i) The systems audit will also involve examining the internal control measures in; (i) Asset management; (ii) Accounting and financial reporting; (iii) Cash and bank management; Computerized information systems (ICT); Budgetary and expenditure control including procurement process and procedures; (vi) Human resources and payroll processes;

2. Scope of Work for the Financial Audit

2.1 Express an Independent Opinion

The objective of the audit is the expression of an independent audit opinion on the financial statements. The

auditor will conduct the audit in accordance with International Standards on Auditing (ISAs). These standards require that the auditor complies with ethical requirements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free of material misstatement.

The procedures selected depend on the auditors' judgement and professional scepticism throughout the audit process, these will include the following:

- a) Identification and assessment the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for the auditor's opinion. The risk of not detecting a material misstatement resulting from fraud is higher than one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- b) Obtaining an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. However, the auditor will communicate to us in writing concerning any significant deficiencies in internal control relevant to the audit of the financial statements that the auditor has identified during the audit.
- c) Evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- d) Concluding on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Fund's ability to continue as a going concern. If the auditor concludes that a material uncertainty exists, the auditor is required to draw attention in the auditor's report to the related disclosures in the financial statements, or, if such disclosures are inadequate, to modify the opinion. The auditor's conclusions are based on the audit evidence obtained up to the date of the auditor's report. However, future events or conditions may cause the Fund to cease to continue as a going concern.
- e) Evaluating the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events.

2.2 Areas of Assessment

In order to meet the above objective, the work of the auditor should include but not limited to an assessment of:

- a) Deadlines for submission of audit reports and subsequent management response and action planning & reporting;
- b) Prompt information sharing on any instances or suspicions of fraud and corruption;
- c) Financial reporting in form and detail that permit identification of disbursements on agreed programme document, work plan including budget which enables comparison of the expenditure with actual plan and budget;
- d) Annual procurement plan (including procuring entity and methods) to the development partner for information;
- e) Finances to be used exclusively to cover expenditures per the programme document and as further detailed in the approved annual work plan and budget for the respective Government fiscal year;
- f) Government of Kenya ensures that the counterpart funds to individual programmes/ development partners are earmarked in the annual printed budget estimates; and
- g) The provisions of the funding agreement have further reflected in the agreements and contracts that WSTF signs with local partners.
- h) Deadlines for various types of reports.
- i) Whether the overall financial management conforms to the Ethics and Anti-Corruption Commission Act and guidelines issued from time to time;
- j) Compliance with Government of Kenya (GOK) circulars, the Water Act 2016 and others.
- k) Compliance with the requirements for reporting, presentation and submission of financial information;
- l) Compliance with the terms and conditions for the eligibility of expenditure and rules and criteria for interest, other revenues and use of exchange rates;
- m) Verification of funds received, and expenditure as specified hereunder but not limited to;
 - Check and or verify the vouchers and other relevant documents;

- If need be, visit outlets where commodities and or services were obtained or delivered when carrying out any activities;
 - Request analysis and or explanation on any expenditure to the satisfaction of the audit team;
 - Evaluate the evidence i.e. vouchers and receipts to determine reliability and authenticity of them;
 - Perform walk-through-tests to confirm the correctness of the descriptions and sources of the documents;
 - Assessment on the usage of the assets; and
 - Verify total value of daily subsistence allowances and other travel expenses paid from programmes to WSTF staff and staff of implementing partners
- n) Evaluate the expenditure at the WSTF, the recipient institutions and communities against the authorized work plans so as to assess their relevance, appropriateness and general enforceability;
- o) For funds transferred to implementing partners;
- The auditors will examine WaterFund’s capacity/routines to assess the capacity of subgrantees to handle grants, including financial management and internal control systems before making disbursements;
 - Evaluate the procedures for accessing resources;
 - Evaluate the follow up procedures;
 - Verify that either vouchers have been received or that audited statements are received timely;
 - Verify that the audited statements or vouchers are satisfactory;
 - Evaluate the procedures for the bookkeeping of these funds;
 - Assess the timely submission of periodic reports;
 - Confirm the proper handling of advances; and
 - Verify that the implementing partner does not receive funds from more than one development Partner for the same activities

ANNEX II - SPECIFIC TASKS RELATING TO THE SUB-GRANTEE PROJECT AUDIT OF THE RURAL INVESTMENTS AND WATER RESOURCES INVESTMENTS PROGRAMMES

SPECIFIC TASKS RELATING TO THE SUB-GRANTEE PROJECT AUDIT OF THE RURAL INVESTMENTS AND WATER RESOURCES INVESTMENT PROGRAMMES

1. External audit of the Audit of Sub-Grantee Projects (Implementing Partner, IPs)

These project audits will be conducted in accordance with the applicable International Standards on Auditing (ISAs) and ISRS 4400. The objective of the audits is to report on whether the special purpose financial statements of each project managed by WaterFund have been prepared, in all material respects, in accordance with the WSTF Accounting policies and the applicable DPs Financing Agreements Terms and Conditions.

The scope of the audit will cover sampled WaterFund-funded projects in Rural Investments and Water Resources Investments for the agreed period. The work of the auditor should include but not be limited to an assessment of:

- a) Whether WaterFund has used the DPs funds in accordance with the Financing Agreements Terms and Conditions;
- b) WaterFund compliance with the terms and conditions for the eligibility of expenditure;
- c) WaterFund compliance with the requirements for internal control in so far this is necessary or relevant for the purpose of the audit, record keeping and documentation.

3.3 Scope of work

The scope of the audit includes a financial audit in accordance with International Standard of Auditing (ISA) and these ToR as well as elements of compliance and performance audit

The auditor must plan the audit in accordance with their risk assessment. The extent and nature of planned procedures will be subject to the professional judgement of the auditor. It is the auditor’s responsibility to plan the necessary procedures to obtain sufficient and appropriate evidence to form the opinion of the audit.

However, the procedures listed below are considered to be minimum to form an opinion on the audit. As a result, the audit firm is expected to perform the listed procedures as well as plan and perform further procedures, if this is deemed necessary according to professional judgement.

The Auditor shall:

- a) Identify and assess risks of material misstatement of the financial statements, whether due to fraud or error,
- b) Plan and perform relevant audit procedures to form an opinion on whether the fund accountability statements are prepared, in all material respects, in accordance with established financial guidelines for reporting. The auditor shall therefore verify that the fund accountability statements accurately reflect, in all material respects, the operations of the WSTF in relation to the Development Partners (DPs) grants.
- c) Plan and perform procedures to evaluate whether funds disbursed have been spent in compliance with all applicable laws, the WaterFund rules and procedures and the agreements entered into between DPs and WaterFund for each of the grants being audited.
- d) Review and evaluate the WaterFund office's accounting policies and administrative controls and report any significant weakness together with recommendations for improvement.
- e) Determine whether the management and financial system, including internal control, within the office are adequate for efficient and prudent use of funds.
- f) Plan and perform procedures to evaluate whether funds disbursed have been spent in an economic way.
- g) Plan and perform procedures to evaluate whether WaterFund have established internal control without any material internal control weaknesses.
- h) Incorporate a management letter in the prepared audit reports with clear recommendations for areas of improvements within the management of the DPs grants at WaterFund or its sub-partners and a follow up on previous audit findings and report on observations and findings in regard to economy, internal controls and compliance with applicable laws and the agreement entered into between DPs and WaterFund.

Specifically, the Auditor shall;

The procedures of the Consultant in regard to the **financial audit** shall include, but not necessarily be limited to, the following.

- a) Submit detailed audit information requirements one month ahead of the audits to ensure that WaterFund is prepared for the audit,
- b) Based on the knowledge obtained in the planning phase, determine a materiality level in accordance with ISA 320,
- c) Request Bank confirmation letter mailed directly from the bank to the Auditor for the WaterFund and any other relevant bank accounts related to the DPs grants,
- d) Confirm and reconcile amounts received from DPs to WaterFund to implementing agents and final recipients,
- e) Perform test of expenditure to verify proper allocation to the appropriate budget lines against the approved budget,
- f) Test, on a sample basis, the existence of valid third-party supporting documents relating to reported expenditure. The sample size shall be based on the auditor's risk analysis, which should be stated in the audit summary memorandum and any instances of missing supporting documents should be reported including the amount in question,
- g) Ensure that the financial fund accountability statements contain an asset list in accordance with established financial guidelines for reporting and perform tests to verify the existence and valuation of assets acquired by WaterFund during the programme/audit period,
- h) Ensure that funds received, funds disbursed from DPs, interest and exchange gains/losses are disclosed on separate budget lines in the financial fund accountability statements and perform procedures to verify the occurrence of transactions related to,
 - i. Any interest earned during the financial year
 - ii. Any exchange gains/losses recorded in the WaterFund relating to the DPs grants

- i) Perform audit procedures to test the completeness of the fund accountability statements. The procedures shall specifically address the risk that balance sheet accounts are overstated by transactions related to exchange gains/losses, interests and other expenditures,
- j) Evaluate and obtain sufficient understanding of internal controls, assess control risk and identify reportable conditions, including material internal control weaknesses,

The procedures of the Auditor in regard to the **compliance audit** shall include, but not necessarily be limited to, the following:

- a) Scrutinize, assess and report on compliance with the terms and conditions of the signed agreements between DPs, WaterFund and Implementing Partners; ,
- b) Gain an understanding of the legislative and regulative environment in which the entity exist.
- c) The auditor will assess compliance with applicable laws and regulation with special attention to legislation regarding accounting and taxes
- d) Gain an understanding of the processes established to ensure compliance with applicable laws and regulations regarding employment of staff. This includes relevant labour legislation as well as regulation regarding social fees, pension, holiday, sick leave, and maternity leave.
- e) Reconcile involved budget amounts in the fund accountability statements against the approved budget,
- f) Review and comment on compliance to the requirement to keep third party supporting documentation as well as other relevant accounting documents available in a manner that facilitate:
 - i. Easy access for relevant staff, management and auditors,
 - ii. Easy reference on the vouchers to the accounts classification including which grant the voucher relate to and which output based budget line the vouchers should be book on.
 - iii. The accounting documentation should be kept and filed in such a way that it is like that it will be kept safe for at least five years after the end of the implementation period.

The procedures of the Auditor in regard to the **performance audit** with special consideration to economy, shall include, but not necessarily be limited to, the following:

- a) Examine the procurement of goods and services undertaken by WSTF under DPS Programme and perform tests to establish if proper procedures are in place and followed in practice,
- b) Test, on a sample basis, the WSTF accounts manual for compliance, specifically regarding allowances, advances, staff recruitment/salary scales and other accounting routines.

Test of controls related to performance audit;

- a) Perform interviews and walk-throughs to gain an understanding of the institutional processes.
- b) Identify key controls related to performance. These controls may include:
 - i. Authorization in connection with the procurement of goods and services.
 - ii. Budget reviews and follow up on costs
 - iii. Managements review of procurement processes
 - iv. Monitoring reviews including evaluation of progress compared to activity description
 - v. Managements review of benchmarks for completion or equivalent
- c) Perform test of design and implementation of identified key controls
- d) Depending on audit strategy, perform test of the operational effectiveness of controls.

For **Substantive testing** on a sample basis, the auditor shall;

- a) Determine relevant audit criteria for the audit in relation to economy, effectiveness or efficiency. The audit criteria can be qualitative or quantitative, focusing on what is expected or best practice. These may include:
 - i. The quality in which the activity is delivered or completed compared to the description of the activity,
 - ii. The quantity of items completed or delivered compared to the description of the activity,
 - iii. Cost of procured goods or services compared to expected prices,
 - iv. Compliance with established procedures for procurement of goods and services, for instance the number of quotations received,

- v. The level of entertainment costs and travel costs compared to expected levels,
- vi. Proper handling of assets in accordance with the accounts manual,
- b) Perform tests on selected audit criteria and evaluate on findings and conclusion.
- c) To ensure economy in salary levels, perform test on a sample basis of established policies and procedures for compliance, specifically regarding allowances, advances, staff recruitment/salary scales, and other accounting routines.

Analytical procedures the auditor shall;

- a) Identify relevant ratios as indicators for economy, effectiveness or efficiency. These ratios may include:
 - i Ratios between direct costs and output
 - ii Ratios between administrative costs and output
 - iii Ratios between scarce resources and output
- b) Perform analytical reviews of the development of ratios over time.

4.0 Reporting

Expected reports from the auditor

- a) An independent auditor opinion on the financial report and applicable notes
- b) A management letter highlighting findings and recommendation.

ANNEX III- SPECIFIC TASKS RELATING TO THE SUB-GRANTEE PROJECT AUDIT OF THE URBAN INVESTEMENTS PROGRAMMES

1. Objective of the Audit

The objective of the audits is to report on whether the special purpose financial statements of each project managed by WaterFund have been prepared, in all material respects, in accordance with the Fund's Accounting policies and the applicable DPs Financing Agreement Terms and Conditions.

Further, that auditor will audit the Funds paid by the disbursement in tranches procedure and express an opinion on the financial reports i.e. status of accounts and cumulated statement as defined in the Disbursement Procedure to the Separate Agreement and statements of expenditures based on the withdrawal applications for Funds.

The expenditures to be audited been made under the financial position of KfW-loan/grant no. 2013 65 402 for financing of Water Supply and Sanitation for the Urban Poor, Phase III. And KfW-Loan Agreement dated 2nd January 2020 no. BMZ-No. 2016 65 124 Development of the Water and Sanitation Sector – Water Sector Trust Fund, Phase IV.

2. Scope of Work for the Audit

The audit will be conducted in accordance with International Standards on Auditing as published by the International Auditing and Assurance Standards Board of the International Federation of Accountants with special reference to ISA 800.

The audit will be based on a sample of projects and expenditure funded in the Urban Investment programmes funded by KfW and Bill and Melinda Gates Foundation (BMGF). The audits will be based on the Urban Investments (Urban Projects Cycle (UPC), Up-scaling Basic Sanitation for the Urban Poor (UBSUP) and Aid on Delivery (AOD)). The audits will also include World Bank funded programmes namely; CLSG 1 & 2, Horn of Africa Ground Water Project and K-Wash Project.

The work of the auditor should include but not be limited to an assessment of:

- a) Whether WaterFund has used the DPs funds in accordance with the DPs Financial Agreement Terms and Conditions
- b) WaterFund compliance with the terms and conditions for the eligibility of expenditure
- c) Accounting documents have been maintained in accordance with provisions of the Financing Agreements and this comprises interests earned from balances
- d) Expenditures are supported by relevant and reliable evidence
- e) The audited statements of expenditures can be relied upon to support the related withdrawal applications
- f) Goods and services financed have been procured in accordance with Financing Agreements
- g) Specific deficiencies and areas of weaknesses have identified in the internal systems and controls
- h) WaterFund compliance with the requirements for internal control insofar as this is necessary or relevant for the purpose of the financial audit, record keeping and documentation.
- i) WaterFund compliance with the financing agreements with relation to treatment of Value Added Tax (VAT) and make specific recommendations

3. Specific Tasks

The specific tasks to be performed at WaterFund head office and in sampled projects shall include the following:

- a) Review the accounting records and other necessary documents, to establish whether proper records as pertain to the funding contract have been kept, which complied with the grant requirements and other relevant accounting standards
- b) Examine the internal accounting and administrative controls and comment on adequacy and effectiveness of the control systems and suggest areas of improvement
- c) Confirm that funds disbursed and received were properly recorded at the WaterFund
- d) Confirm that the funds received by the projects were properly used for the intended purposes
- e) Ascertain compliance with the funding contract terms and conditions, as well as local laws and regulations
- f) Review direct and indirect costs incurred while identifying and quantifying any questioned costs. All costs that are not supported with adequate documentation or are not in accordance with the agreement terms will be questioned
- g) Review the procedures used to control the funds, including their channelling to the program grantees
- h) Review the bank accounts and the controls on those bank accounts. Perform positive confirmation of balances, as necessary
- i) Determine whether advances of funds were justified with documentation, including reconciliation of funds advanced, disbursed, and available
- j) Ascertain whether funding received was appropriately recorded in the recipient's accounting records
- k) Review procurement procedures by the sub-grantees to determine whether sound commercial practices including competition were used, reasonable prices were obtained, and adequate controls were in place over the qualities and quantities received
- l) Prepare a detailed comparison between funds disbursed and reconcile funds received by WSTF, then disbursed and subsequently accounted for by WSPs.
- m) Report on Government of Kenya Counterpart contribution. The audit needs to cover both Financier and GoK expenditure as the funds may be contributed but not spent on the program. The basis is the expenditure will also be reviewed and reported and semimanual reports presented for PforR programme be reviewed.
- n) Review the statement of expenditure of programme funds
- o) Review and report on the status of implementation of prior years' audit findings

4. Reports

The auditor will issue audit report covering the following aspects;

- a) The report will be issued in English
- b) Indicate the scope of work done
- c) Terms of Reference (ToRs) will form integral part of the report
- d) Provide schedules confirming criteria considered for the opinion as well as showing receipts and disbursements during the audit period as attached as Annex A and Annex B in Urban Investments Projects audit report

- e) Auditors statements to appraise and quantify the consequences of the specific deficiency
- f) Management Letter

The auditor to provide a management letter covering the following areas;

- a) Give comments and observations on the accounting records, systems and controls examined during the course of audit
- b) Identify specific deficiencies and areas of weaknesses in systems and controls and make recommendations for their improvement
- c) Report on actions taken by the management on prior year audit findings
- d) Report on other pertinent audit matters

Annex A

(to be attached to every Report)

SUMMARY

Name of Project / Programme: ...

Ref. No. ...

Subject Matter: Project Accounts as stated in Annex B

Reporting Period: ...

Within the scope of our audit engagement under the above mentioned Project / Programme, performed in accordance with International Standard on Auditing 800/805, we express our opinion on the following criteria:

Applied Criteria	(YES/NO) **	Summary of work performed
a) WSTF has used the Development Partner funds in accordance with the Development Partner Agreement Terms and Conditions.		
b) WSTF is compliant with the terms and conditions for the eligibility of expenditure.		
c) Accounting documents have been maintained in accordance with provisions of the Agreements and this comprises interests earned from balances.		
d) Expenditures are supported by relevant and reliable evidence.		
e) The audited statements of expenditures (SoE) can be relied upon to support the related withdrawal applications.		
f) Goods and services financed have been procured in accordance with Financing Agreements.		
g) No specific deficiencies and areas of weaknesses have been identified in the relevant internal systems and controls.		
h) No other important findings and observations have been disclosed during the engagement.		
i) All observations raised in former reports have been solved by now (for details please refer to page).		

** Result “NO” requires a reference to a page/section of the Report.

Annex B

(to be attached to every Report)

Project Account Summary

Name of Project: ...

KfW Ref. No. ...

Subject Matter: Project Accounts mentioned here

Reporting Period: ...

The following Project Accounts have been considered for this audit engagement:

	Currency	Account Holder	Financed by ... (KfW or other)
Special Account			
Local Account 1			
Local Account 2			
Etc.			
Other Project-related Account**			

**e.g., for tender costs, retention etc.

The cash flows on these Project Accounts are as follows:

		Special Account	Local Account 1	Local Account 2	Local Account 3	Cash Box If any
		Account Currency:	Account Currency:	Account Currency:	Account Currency:	Currency:
A) Opening Balance						
B) Inflow of KfW funds	Plus					
C) <i>If any:</i> credit interest or other project related receipts	Plus					
D) Incoming transfers - only from accounts indicated in this table	Plus					
E) Outgoing transfers – only to accounts indicated in this table	Less					
F) Total costs paid (liabilities must not be considered hereunder)	Less					
G) <i>If any:</i> New project receivables (such as advances) not cleared until the end of the reporting period	Less					

H) Closing Balance						
--------------------	--	--	--	--	--	--

- In case of further project accounts: Please add further columns.
- If there are more than 8 local accounts of Project Partners, it is possible to state a cumulated figure in one column

Supplement 1: Project receivables – if any						
		Entity (e.g., Project Executing Agency)	Project Partner ...	Project Partner ...	Project Partner ...	Project Partner ...
		Currency:	Currency:	Currency:	Currency:	Currency:
1.) Opening balance of receivables such as advances, tax claims etc. paid but not cleared by the <u>end of previous Reporting Period</u>						
2.) Project receivables paid in <u>previous Reporting Periods and cleared during current Reporting Period</u>	Less					
3.) Project receivables paid in <u>current reporting period and not cleared by the end of this Reporting Period</u> (corresponds to line G above)	Plus					
4.) Total project receivables not cleared by the <u>end of this Reporting Period</u>						
Please note: Receivables paid <u>and</u> cleared within this Reporting Period are to be considered as “actual costs paid” (line F above) and are not to be considered here.						
Supplement 2: Retention Account						
- If any - Balance Retention Account by the end of this reporting period:						

DECLARATION OF UNDERTAKING (DoU);

The successful bidder will be required to sign the following DoU,

Appendix 1 – Declaration of Undertaking

Reference name of the Application/Offer/Contract:

("Contract")¹¹

To: ("Project Executing Agency")

1. We recognise and accept that KfW only finances projects of the Project Executing Agency ("PEA")¹² subject to its own conditions which are set out in the Funding Agreement it has entered into with the PEA. As a matter of consequence, no legal relationship exists between KfW and our company, our Joint Venture or our Subcontractors under the Contract. The PEA retains exclusive responsibility for the preparation and implementation of the Tender Process and the performance of the Contract.

2. We hereby certify that neither we nor any of our board members or legal representatives nor any other member of our Joint Venture including Subcontractors under the Contract are in any of the following situations:

- 1.1) being bankrupt, wound up or ceasing our activities, having our activities administered by courts, having entered into receivership, reorganisation or being in any analogous situation;
- 1.2) having been convicted by a final judgment or a final administrative decision or a preliminary investigation/charge is pending against us for involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings, or have been subject to (financial) sanctions and/or embargo provisions by the United Nations, the European Union or the Federal Republic of Germany. This exclusion criterion is also applicable to legal persons whose shares (or the majority thereof) are owned or de facto controlled by natural or legal persons against whom such judgments, administrative decisions, (financial) sanctions and/or embargoes have been imposed and – in the case of (financial) sanctions and/or embargoes – these restrictive measures continue to apply;
- 1.3) having been convicted by a final court decision or a final administrative decision by a court, the European Union, national authorities in the Partner Country or in Germany for Sanctionable Practice in connection with a Tender Process or the performance of a Contract or for an irregularity affecting the EU's financial interests (*in the event of such a conviction, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this conviction is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction*);
- 1.4) having been subject within the past five years to a Contract termination fully settled against us for significant or persistent failure to comply with our contractual obligations during such Contract performance, unless this termination was challenged and dispute resolution is still pending or has not confirmed a full settlement against us;
- 1.5) not having fulfilled the applicable fiscal obligations with regard to the payment of taxes at the respective tax residence and in the country of origin of the PEA (*contractors based in Annex 1 countries (<https://www.consilium.europa.eu/de/policies/eu-list-ofnon-cooperative-jurisdictions/>) must submit a fully completed and legally countersigned declaration of tax conformity (Appendix 1 to the Declaration of Undertaking) in addition to the Declaration of Undertaking at the time of award of the contract/contract review. This shall become an integral part of the contract. Failure to submit may result in exclusion from the awarding*

Capitalised terms used, but not otherwise defined in this Declaration of Undertaking have the meaning given to such term in KfW's "Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services in Financial Cooperation with Partner Countries".

The PEA means the purchaser, the employer, the client, as the case may be, for the procurement of Consulting Services, Works, Plant, Goods or Non-Consulting Services. *procedure. For contractors based in countries not listed as Annex I countries, only the Declaration of Undertaking must be submitted, and not the declaration of tax conformity*);

- 2.6) being subject to an exclusion decision of the World Bank or any other multilateral development bank and being listed on the website <http://www.worldbank.org/debarr> or respectively on the relevant list of any other multilateral development bank (*in the event of such exclusion, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this exclusion is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction*); or
- 2.7) being guilty of misrepresentation in supplying the information required as a condition of participation in the Tender.

3. We hereby certify that neither we, nor any of the members of our Joint Venture or any of our Subcontractors under the Contract are in any of the following situations of conflict of interest:

- 3.1) being an affiliate controlled by the PEA or a shareholder controlling the PEA, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;
- 3.2) having a business or family relationship with a PEA's staff involved in the Tender Process or the supervision of the resulting Contract, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;
- 3.3) being controlled by or controlling another Applicant or Bidder, or being under common control with another Applicant or Bidder, or receiving from or granting subsidies directly or indirectly to another Applicant or Bidder, having the same legal representative as another Applicant or Bidder, maintaining direct or indirect contacts with another Applicant or Bidder which allows us to have or give access to information contained in the respective Applications or Offers, influencing them or influencing decisions of the PEA;
- 3.4) being engaged in a Consulting Services activity, which, by its nature, may be in conflict with the assignments that we would carry out for the PEA;
- 3.5) in the case of procurement of Works, Plant or Goods:
 - i. having prepared or having been associated with a Person who prepared specifications, drawings, calculations and other documentation to be used in the Tender Process of this Contract;
 - ii. having been recruited (or being proposed to be recruited) ourselves or any of our affiliates, to carry out works supervision or inspection for this Contract;

4. If we are a state-owned entity, and compete in a Tender Process, we certify that we have legal and financial autonomy and that we operate under commercial laws and regulations.

5. We undertake to bring to the attention of the PEA, which will inform KfW, any change in situation with regard to points 2 to 4 here above.

6. In the context of the Tender Process and performance of the corresponding Contract:

- 6.1) neither we nor any of the members of our Joint Venture nor any of our Subcontractors under the Contract have engaged or will engage in any Sanctionable Practice, or violate the Guidelines during the Tender Process and in the case of being awarded a Contract will engage in any Sanctionable Practice during the performance of the Contract;
 - 6.2) neither we nor any of the members of our Joint Venture or any of our Subcontractors under the Contract shall acquire or supply any equipment nor operate in any sectors under an embargo of the United Nations, the European Union or Germany; and
 - 6.3) we commit ourselves to complying with and ensuring that our Subcontractors and major suppliers under the Contract comply with international environmental and labour standards, consistent with laws and regulations applicable in the country of implementation of the Contract and the fundamental conventions of the International Labour Organisation¹³ (ILO) and international environmental treaties. Moreover, we shall implement environmental and social risks mitigation measures when specified in the relevant environmental and social management plans or other similar documents provided by the PEA and, in any case, implement measures to prevent sexual exploitation and abuse and gender-based violence.
7. In the case of being awarded a Contract, we, as well as all members of our Joint Venture partners and Subcontractors under the Contract will, (i) upon request, provide information relating to the Tender Process and the performance of the Contract and (ii) permit the PEA and KfW or an agent appointed by either of them, and in the case of financing by the European Union also to European institutions having competence under European Union law, to inspect the respective accounts, records and documents, to permit on-the-spot checks and to ensure access to sites and the respective project.
 8. In the case of being awarded a Contract, we, as well as all our Joint Venture partners and Subcontractors under the Contract undertake to preserve above mentioned records and documents in accordance with applicable law, but in any case, for at least six years from the date of fulfillment or termination of the Contract. Our financial transactions and financial statements shall be subject to auditing procedures in accordance with applicable law. Furthermore, we accept that our data (including personal data) generated in connection with the preparation and implementation of the Tender Process and the performance of the Contract are stored and processed according to the applicable law by the PEA and KfW.

Name: _____ In the capacity of: _____

Duly empowered to sign in the name and on behalf
of: _____

Signature:

Dated:

ANNEX IV - SPECIFIC TASKS RELATING TO THE EXPENDITURE VERIFICATION AUDIT OF EUROPEAN UNION FUNDED PROGRAMMES - TERMS OF REFERENCE FOR AN EXPENDITURE VERIFICATION OF A SERVICE CONTRACT (FEE-BASED) EXTERNAL ACTIONS OF THE EUROPEAN UNION

□ How to use this terms of reference MODEL

□ (also applies to Annex 1)

- insert** the information requested between <...>.
- choose** the optional text between [...] highlighted in grey when applicable or delete.
- delete** all yellow instructions and the present text box.

The present terms of reference apply to the verification of expenditure declared in financial reports under the following contracts:

1) Service Contract¹ number and title of the action

[2) Service Contract² number and title of the action

<Repeat contracts/reports as applicable>

Detailed information is provided at the cover page of Annex 1.

1 Introduction

The present document and the Annexes listed in Section 8 are the terms of reference ('ToR') on which the Contractor agrees to engage 'the Expenditure Verifier' to perform a verification of expenditure reported by Reporting Entities. Where in these ToR the 'Contracting Authority' is mentioned, this refers to the < European Commission or name of another contracting authority, which has signed the Service Contract with the Contractor and finances the services. The Contracting Authority is not party to this agreement. These ToR will become an integral part of the contract concluded between the Contractor and the Expenditure Verifier. They apply to expenditure verifications contracted by the Commission or by the Contractor and cover the verification of expenditure incurred under the EU financed contracts on the cover sheet.

j) Objectives and context

The Expenditure Verifier is expected:

- to carry out the agreed-upon procedures listed in Section 6, and
- to issue reports based on the template in Annex 2 which will support the Contracting Authority's conclusions on the eligibility of the reported expenditure and the related follow-up.

The expenditure verification will be performed as [<Choose either one or both> a desk review or/and fieldwork at the location indicated in Annex 1.]

The Expenditure Verifier is not expected to provide an audit opinion.

3 Standards and Ethics

The Expenditure Verifier shall undertake this engagement in accordance with:

- the International Standard on Related Services ('ISRS') 4400 Engagements to perform Agreed-upon Procedures regarding Financial Information as promulgated by the IFAC;
- the IFAC Code of Ethics for Professional Accountants, developed and issued by IFAC's International Ethics Standards Board for Accountants (IESBA), which establishes fundamental

ethical principles for Auditors with regard to integrity, objectivity, independence, professional competence and due care, confidentiality, professional behavior and technical standards.

Although ISRS 4400 provides that independence is not a requirement for agreed-upon procedures engagements, the Contracting Authority requires that the Expenditure Verifier is independent from the Reporting Entity and complies with the independence requirements of the IFAC Code of Ethics for Professional Accountants.

4 Requirements for the Expenditure Verifier

By agreeing these ToR, the Expenditure Verifier confirms meeting at least one of the following conditions:

- The Expenditure Verifier is a member of a national accounting or auditing body or institution which in turn is a member of the International Federation of Accountants (IFAC).
- The Expenditure Verifier is a member of a national accounting or auditing body or institution. Although this organization is not member of the IFAC, the Expenditure Verifier commits to undertake this expenditure verification in accordance with the IFAC standards and ethics set out in these ToR.
- The Expenditure Verifier is registered as a statutory auditor in the public register of a public oversight body in an EU member state in accordance with the principles of public oversight set out in Directive 2006/43/EC of the European Parliament and of the Council (this applies to auditors and audit firms based in an EU member state)³.
- The Expenditure Verifier is registered as a statutory auditor in the public register of a public oversight body in a third country and this register is subject to principles of public oversight as set out in the legislation of the country concerned (this applies to auditors and audit firms based in a third country).

5 Scope

5.1 Contracts and Financial Reports covered by these ToR

The Contract(s) and Financial Reports subject to this expenditure verification are indicated on the cover sheet and in Annex 1.

5.2 Conditions for Eligibility of Expenditure

As per the Article 28.3 of the General Conditions of Service contracts, the Expenditure Verifier must satisfy itself that relevant, reliable and sufficient evidence exists that:

- a) the experts employed by the contractor for the contract have been working as evidenced on the contract (as corroborated by independent, third-party evidence, where available) for the number of days claimed in the contractor's invoices and in the financial reporting spreadsheet submitted with the interim progress reports; and
- b) the amounts claimed as incidental expenditure have actually and necessarily been incurred by the contractor in accordance with the requirements of the terms of reference of the contract.

The conditions for eligibility are stipulated in the Contracts which are provided in Annex 1 (including riders). On the basis of its verification, the Expenditure Verifier submits to the contractor an expenditure verification report in accordance with the model in Annex 2.

6 Verification Process and Methodology

6.1 Preparation of the Verification

The Expenditure Verifier shall prepare the verification and agree on the timing for carrying out the

expenditure verification, notably with regard to fieldwork (if any) (see Section 6.2. for applicable maximum time lags). The Expenditure Verifier will then also confirm with the Contractor the location(s) indicated in Annex 1 and ensure that relevant supporting documents as well as key staff are available during the verification.

6.2 Preparatory Meeting, Fieldwork, Desk Review

[The Contractor foresees a preparatory meeting with the Expenditure Verifier which will be held <Choose either one or both> by conference call or at <name and address of the meeting place should be clearly stated] The field work or desk review shall commence as soon as possible and not later than <number > calendar days after the signature of the verification contract or the date of availability of the Financial Report (i.e. financial report, supporting documents and other relevant information).

6.2.1 Engagement Context, Materiality, Risk Analysis, Sampling

The Expenditure Verifier's procedures should include:

- obtaining a sufficient understanding of the engagement context including the contractual conditions, the Contractor and the applicable EC laws and regulations which are set out in Section 5 above (Scope). The Expenditure Verifier should pay specific attention to the contractual provisions relevant for the Service contract.

The understanding should be sufficient to identify and assess the risks of material errors or misstatements in the expenditure stated in the Financial Report in order to determine the size and structure of the expenditure sample to be tested, whether caused by error or fraud, and sufficient to design and perform further verification procedures.

This work involves an assessment of the inherent risks that:

- a) The Financial Report is not reliable, i.e. that it does not present, in all material aspects, the actual expenditure incurred in conformity with applicable conditions.
- b) Expenditure declared in the financial report has not, in all material aspects, been incurred in conformity with applicable contractual conditions.
- c) Fraud and irregularities have occurred which could have had an impact on expenditure reported under the contract.

The Expenditure Verifier should assess the inherent risk based, inter alia, on the number and complexity of the transactions, the complexity of the activities provided for by the Contract, the number of implementing entities involved and the environment where the Contract is implemented.

In addition, the Expenditure Verifier, based inter alia on the information provided in annex 1 to the Terms of Reference (*Engagement Context / Key Information*) will consider the control risk, i.e. whether the design of the Internal Control System sufficiently mitigates the identified inherent risks and whether it is plausible that it is operating effectively.

The outcome of the risk analysis has to be clearly described in the Verification Report (Annex 2, Section 2.1).

- a) **Determining the sample size.** For the purpose of determining what the overall material misstatement or error is, the Expenditure Verifier will apply a materiality threshold of 2% of the total amount of the gross reported expenditure with a confidence level of 95%.
- b) **Establishing the sample and selecting the individual items for testing;** The link between the risk assessment and the size and composition of the sample, as well as the sampling method (statistical/non-statistical) must be clearly described in the Verification Report (Annex 2, Section 2.2).
- c) Performing the expenditure checks relevant to the eligibility requirements applicable to the contract.

6.2.2 Fieldwork / Desk Review

The main task during the fieldwork or desk review will be to perform the substantive tests. Key information about the testing process must be provided in the Verification Report (Annex 2, Section 4).

6.2.3 Debriefing Memo and Closing Meeting

At the end of the fieldwork or desk review, the Expenditure Verifier should prepare a debriefing memo, organise a closing meeting with the Contractor in order to discuss the findings, obtain its initial comments and agree on any additional information to be provided at a later date.

6.2.4 Documentation and Verification Evidence

Evidence to be used for performing the expenditure verification tests is all financial and non-financial information which makes it possible to examine the expenditure declared in the Financial Report.

The Expenditure Verifier documents matters which are important in providing evidence to support the report of factual findings, and evidence that the work was carried out in accordance with ISRS 4400 and these ToR.

6.3 Reporting

6.3.1 Structure and Content of the Report

The use of the Expenditure Verification Report template in Annex 2 of these ToR, including the annexed tables, is compulsory.

If the verification scope covers Financial Reports related to different Contracts, a separate and specific report should be issued for each Contract. The report should provide basic information about the Contract and should describe the outcome of the risk analysis and its implications on the sampling. The report should also give an overview of the substantive testing and fully disclose the information regarding the items included in the expenditure population and in the sample. The report should finally detail the findings identified through the performance of the agreed-upon procedures.

The report should be presented in <language>. The Expenditure Verifier will submit within < number of working days to be indicated by the Contractor > working days of the conclusion of the field work a draft report to the Contractor for comments to be received within < number of working days to be indicated by the Contractor > working days. This delay expired, the Expenditure Verifier will provide the final report to the Contractor within < number of working days to be indicated by the Contractor > working days from the receipt of the comments (if any).

6.3.2 Expenditure Verification Findings and Recommendations

The factual findings shall be reported in accordance with the formats and criteria specified in the Expenditure Verification Report template (Annex 2). The description of findings will include the standard applied (e.g. art. xx of the General Conditions of the Contract), the facts and the analysis of the Expenditure Verifier. The verification report should include all financial findings made by the Expenditure Verifier, regardless of the amount involved. Changes in the financial findings occurring between the draft and final report as a result of the consultation procedure should be clearly and sequentially reported.

7.0 Other Matters

7.1 Subcontracting

The Expenditure Verifier will not subcontract without prior written authorization from the Contractor.

8.0 Annexes

Annex 1 - Engagement Context / Key Information

Annex 2 - Model for Expenditure Verification Report

Annex 1/<...⁴>: Engagement Context / Key Information

Contract⁵ and report summary
[Annex to be completed by the Contractor]

Information about the Service Contract	
Reference number and date of the Service Contract	< Contracting Authority’s reference for the Contract>
Service contract title	
Country	
Contractor	<Full name and address of the Contractor as per the Service Contract>
Start date of the contract	
End date of the contract	
Financial Report(s) subject to verification:	<DD/MM/YYYY-DD/MM/YYYY> <DD/MM/YYYY-DD/MM/YYYY> <DD/MM/YYYY-DD/MM/YYYY>
Total amount of the invoice and invoice date	<Total amount as per the Contractor’s invoice subject of this verification and the invoice date>
Total amount invoiced to the Contracting Authority to date	<Total amount invoiced by the Contractor, the number of invoices and the invoice dates and references>
Total amount received to date by the Contractor from Contracting Authority	<Total amount received as per dd.mm.yyyy>
Contracting Authority	[<Name, position/title, phone and E-mail of the contact person at the Contracting Authority>. (To be completed only if the Contracting Authority is not the Commission.)]
European Commission	<Name, position/title, phone and E-mail of the contact person in the Delegation of the European Union in the country concerned, or if applicable at Headquarters>
Auditor	< Name and address of the audit firm and names/positions of the auditors>

A Logistics		
Issue	Question	Reply
Locations	1. Where does the Contractor retain the accounting records?	
	2. Where does the Contractor retain the original supporting documents?	
	3. Where were contractual activities carried out?	
	4. Where is key project staff available to provide information and explanations?	
Languages	5. Which is the contractual language?	
	6. Which is the language of the accounting records?	
	7. Which are the languages of supporting documents?	
	8. Which languages are spoken by key project staff?	

B Contractual Conditions

Contract amount	9. What is the total amount of the contract?	
-----------------	--	--

C Financial Report (enclosed as Annex 1.1)

Financial report	10. Approximately how many expense transactions have been reported / are expected to be reported in the Financial Report?	
	11. What is the distribution of these transactions (e.g. fees, incidental expenditure, lump sums etc.), Are the transactions few/many of large/small value?	
	12. To what extent have Project transactions been carried out in cash?	[high, medium, low]
	13. In which currencies has expenditure been incurred?	
	14. What is the reporting currency?	
	15. How many other Financial Reports have already been presented by the Contractor under this contract?	

D Previous contracts verifications, audits or monitoring

Previous verifications, audits or	16. Which previous experience did the Contractor have with EC Service contracts and associated regulations?	
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monitoring	17. How many of the previously presented Financial Reports (if any) have been subject to audit/verification by external consultants contracted by the Contractor?	
	18. Have any verification, audit or monitoring exercises other than those referred to under point 17 been carried out with regard to the contract or the Contractor that are relevant for the scope of the current verification?	
	19. Have any significant findings been raised under the exercises referred to under points 17 and 18? If so, what are they?	
	20. Have any instances of fraud or irregularities been previously identified in dealings with the Contractor?	

Annex 1/<... >.1: Financial Report(s) to be verified

E Contact Details

Contractor: <full name of the entity subject to audit>

Address		Country	
Phone		Fax	
Website			

Key contact

Annex 2: Model for >Expenditure verification Report

<To be printed on AUDITOR’S letterhead>

Report for an Expenditure Verification of a Service Contract (Fee –Based)

**External Actions of the European Union
<Title of and number of the Service contract >**

How this model should be completed by the Expenditure Verifier

- insert** the information requested between <...>
- choose** the optional text between [...] highlighted in grey when applicable or delete
- delete** all yellow instructions and the present text box

1. Background information

1.1. Short description of the action subject to verification

Contract number and title:	
-----------------------------------	--

Contract type	<service contract...>
Financial Report(s) subject to verification	<DD/MM/YYYY-DD/MM/YYYY> <DD/MM/YYYY-DD/MM/YYYY> <DD/MM/YYYY-DD/MM/YYYY>
Contractor	< Identify the Contractor and provide key information about their legal form, nationality, size, main field(s) of activity and other elements deemed relevant – max 200 words>
Location(s) where the Contract is implemented	
Contract execution period	
Contract implementation status	< indicate on-going or completed >
General and specific objectives of the Contract	
Synthetic description of the activities, outputs and target group	<max 300 words>

1.2. Basic financial information on the Contract (at the time of the verification)

	Estimated number of working days in the Budget of the contract	Fee rate per working day in the Budget of the contract	Number of working days claimed	Fees claimed (amount)	Amount claimed
FEES (including overheads):					
...					
PROVISION FOR INCIDENTAL EXPENDITURE:					
...					
LUMP SUMS					
PROVISION FOR EXPENDITURE VERIFICATION					
MAXIMUM CONTRACT VALUE					

1.3. Verified Financial Reports/Invoices

See annex 2.1

2. Risk analysis

2.1. Outcome of risk analysis

Based on the risk analysis performed according to the Terms of Reference, provide succinct information about the identified risks that may affect the verified report, regarding the action, the context in which the latter is implemented, the beneficiaries and the target group.

<E.g. of risks are transactions incurred in several currencies, technical complexity, high corruption perception index, instances of political interference, predominance of cash payments, number of parties involved, partners lacking administrative capacity, known weaknesses in internal control systems, lack of involvement or cooperation of the target group, history of fraud cases. (max. 300 words)> In addition, please identify possible mitigating factors.

<E.g. previous audit or verification work, evidence of close follow up by the contracting authority, good results yielded in the past by the implementing partner, etc. (max. 150 words)>

2.2 Implications on the sampling

Explain how the identified risk factors are reflected in the structure and size of the sample.

<Based on the identified risk factors, describe how the sample was selected (e.g. statistical/judgemental sampling, stratification, etc.), what type of transactions were prioritised (e.g. amount above xx EUR, staff expenditure, incidental expenditure etc.) what is the coverage ratio in amount and number of transaction (max. 200 words)>

3. Transaction population and sample

Sampling Highlights/Overview

The sample size was determined based on a materiality threshold of 2% of the total amount of reported expenditure with a confidence level of 95% and considering the risk analysis presented above.

Report/invoice: <indicate the report/invoice number and cut-off dates>		
	Population	Audited sample
Number of transactions		
Value of transactions EUR		

[If more than one financial report/invoice is verified, repeat as applicable]

A complete list of the transactions included in the population is to be included in Annex 2.3.

4. Substantive testing

Short description of the testing process

Compliance with the Terms of Reference and with the International Standard on Related Services (ISRS) 4400. <Confirm that the relevant testing procedures were fully applied or disclose any scope limitation. Also confirm that the testing was executed in accordance with the International Standard on Related Services (ISRS) 4400, “Engagements to

Perform Agreed-upon Procedures Regarding Financial Information”.> Provide the key information about the testing process.

<E.g. describe if the verification work took place at the implementing partner's premises, whether qualified representatives of the auditee were present, if they were cooperative, if the supporting documentation was available in full, if additional documents had to be received after the field mission, whether evidence of the equipment transfer is available, if physical inspections were performed, any scope limitations, etc. (max. 300 words)>

5. Summary of findings

5.1. Summary of errors detected

<Description of the main outcomes of the transaction testing (e.g. type of errors detected, type of transactions, geographic scope, sector, involved implementing partners, etc.) (max. 200 words)>

5.2 Audit team

<List names and expert category levels for this report.>

<Name and signature of the Verifier>

<Verifier's address: office having responsibility for the audit>

[for final reports <Date of signature> the date when the **final** report is signed]

Annex 2.1: Financial reports/invoices provided by the auditee **Annex 2.2:** Procedures performed **Annex 2.3:** Table of transactions - provided as Excel file **Annex 2.4:** Table of errors - provided as Excel file

ANNEX V- TECHNICAL AUDITS OF FUNDED PROJECTS

1.0 Technical Audit

Technical input will be needed so as to provide a complete picture of the progress of the works. The primary objective and priority role of the technical part of the audit will be that only the projects with current and past questions costs regarding lack of accountability or value for money will be audited. The technical audit will provide information on the progress and quality of work done and guide the subsequent analysis of and response to the audit findings.

The technical input should provide the following:

- a) Proposal development and financing agreement
- b) Procurement of implementation contractor
- c) Implementation
- d) Defects Liability Period
- e) Project closure

ToR requirement	Areas to be verified
Proposal development and appraisal	Design proposal for funding application (Design and drawings)
	WSTF Report on Design review and Appraisal
	Investment brief
Financing agreement	Signed agreement
	Amount
	Scope of works
	Roles and responsibilities of contract parties (WSTF, WSP, County)
	Funds release/Disbursement schedule
	Conditions guiding disbursement/release of funds
	Contract Duration – implementation, DLP
Procurement of implementation contractor	Expression of Interest (EOI) for Construction
	Signed Tender opening/submission form
	Signed Tender evaluation report
	Due diligence
	Request for No objection
	WSTF response to No objection request letter
	Letter of award
	Letter of acceptance
	Contract amount
	Scope of works
	Contract duration
	Performance bonds
	Insurance
Signed implementation contract	

ToR requirement	Areas to be verified
Implementation	Review actions taken on recommendations in the investment brief.
	Appointment of external supervisors (service agents, consultants, county staff).
	Supervision budget/amount
	Payments for supervision
	Signed minutes of site handover to contractor
	Signed Bill of Quantities (BoQs)
	Program of works
	Site diaries and measurement sheets
	Minutes of inspections and instruction book
	Monthly progress reports
	Contractor certificates/invoices for payments
	Signed minutes of inspections before payment
	Actual Payments to contractor
	Withholding of - Retention money
	Substantial final completion inspection minutes
	Snag list
	Substantial final completion inspection certificate
	Release of 50% retention
	Site handover minutes and report
	Quality control and Assurance
Inspection and receiving notes – for delivered materials	
Materials test results- concrete and quality of pipes e.t	
Results for component tests –Pipeline pressure, tank fitness e.t.c	
Inspection reports (for check on quality of workmanship)	
DLP period	As-built drawing
	O & M manuals
	Training - O & M
	Training - Financial management and book keeping
	Training - Procurement
	Project management committee
	Signed minutes of committee meetings
	Training on O & M
	Schedule of inspections
	Minutes of the inspections
	Minutes of Final Inspection
	Certificate of completion – DLP certificate
Completion	Release of Final Retention
	Draft Final completion report
	WSTF – Approval of Draft
	Completion report

2.0 Other details to be verified

ToR requirement	Areas to be verified
Contract administration and Management	Performance bond renewals
	Adherence to programme of works
	Adherence to project budget

	Use of WSTF reporting and certificate templates
	Adherence to Bill of Quantities (BoQ)
	Progress reports and minutes of site meetings
	Correspondence on issues of critical nature (request and approval of extension of contract time, change of scope and sites, budgeted component funds reorganisation, Contractor request for extension e.tc)
	Contract validity (implementation contract and Financing agreement)
Quantities used in the works as per the bills of quantities	Obtain and verify quantities of materials used
	Compare quantities used with the original BoQ
	Compare rates at beginning and end of implementation
Check on Value for investment	Obtain statement on standards set for quality of materials, staff and equipment
	Verify that staffs deployed during implementation were qualified as required
	Obtain statement on legal requirements to be complied with such as WRA approvals, EIA/ESIA License and NCA registration for contractor and works
	Obtain statement on Final Accounts settled and compare with original contract sum to assess value for investment
	Check for any outstanding/omitted works, if any
Comparison of the planned/budgeted specific project components/units with achieved ones	List scope of works at commencement of execution of works
	State scope implemented at end of execution of works
	List any omitted or deleted works and value as per BoQ
	Compare value of original scope with value at end of works
	Comparison of Unit Rates of Works / Price of Items with Market Rates and thus verify value for money
Assess the quality of workmanship in the projects;	Obtain specifications for works, materials and staff set from start of execution of works
	Obtain supervisor reports on quality of execution of works
	Assess physical status of executed works for quality check
Physical check on works done	Project location/coordinates
	Obtain location details for various components e.g routes for pipeline, point coordinates for tanks and similar components.
	Obtain adequate photographs of project components
	Check for branding of individual project components and take photographs
	Check for project branding and take photograph
Sustainability	Quality of materials
	Quality of workmanship
	As-built drawing
	O & M manuals and training
	Training - Financial management and book keeping
	Training - Procurement
	Project management committee
	Signed minutes of committee meetings
	Project operation and revenue collection
	Security of project works after implementation
Project effectiveness	Obtain estimate of beneficiaries of the executed project
	Check the achievement of Project objectives
Documentation	Assess document availability and retrieval
Challenges	Notable challenges affecting timely project execution

5.0 Timetable for the Audit

The audit will be carried out in once a year together with the statutory audits.

ANNEX VI- EVALUATION CRITERIA

The Criteria, sub-criteria, and point system for the evaluation of the Technical Proposals:

Points

- (i) Specific experience of the Consultant, as a firm, relevant to the Assignment: **[10]**
- (ii) Adequacy and quality of the proposed methodology, and work plan in responding to the Terms of Reference (TORs):
 - (a) Technical approach and methodology **[20]**
 - (b) Work plan **[10]**
 - (c) Organization and staffing **[10]**

Total points for criterion (ii): [40]

[Notes to Consultant: The Procuring Entity will assess whether the proposed methodology is clear, responds to the TORs, work plan is realistic and implementable; overall team composition is balanced and has an appropriate skill mix; and the work plan has right input of Experts]

- (iii) Key Experts' qualifications and competence for the Assignment:

[Notes to Consultant: each position number corresponds to the same for the Key Experts in Form TECH-6 to be prepared by the Consultant]

- (a) **Position K-1: [Audit Partner, Category 1]** **[15]**
- (b) **Position K-2: [Audit Manager, Category 2]** **[20]**
- (c) **Position K-3: [in house experts, Category]** **[6]**
 - 3a Senior Auditor (3)
 - 3b Assistant Auditor (3)

Technical audits

- (d) Position K-4 : Team leader **[2]**
- (e) Position K-5: Senior Engineer **[2]**
- (f) Position K-6 ; Engineer ; **[2]**
- (g) Position K- 7: Engineering Assistant **[2]**
- (h) Position K- 8 Procurement professional **[1]**

Total points for criterion (iii): [50]

The number of points to be assigned to each of the above Key Experts positions shall be determined considering the following three sub-criteria and relevant percentage weights:

- (1) General qualifications (general education, training, and experience): **[25%]**
- (2) Adequacy for the Assignment (relevant education, training, experience in the sector or similar assignments): **[65%]**
- (3) Relevant experience in the Kenya (working level fluency in local language(s)/knowledge of local culture or administrative system, government organization, etc.): **[10 %]**

Total weight: 100%

Total points for the three criteria: 100

The minimum technical score (St) required to pass is: 80%

ANNEX VII – DETAILED OF COSTS TO BE SUBMITTED BY BIDDER

FIN – 2 Summary of Costs

Item	Costs
Costs of financial proposal including	
(1) Remuneration	
(2) Reimbursables	
Sub-total	
Taxes	
Total of Taxes	
Total Costs of the Financial Proposal	

1. Statutory Audit of Water Sector Trust Fund (Systems and Financial Audits) for the financial years ended *30 June 2024, 2025 and 2026*

No	Name of Staff	Position	Remuneration rate	Time input in person/month	Total

2. Urban Investments Projects Audits and External audit undertaken as per Development Partners requirements and report will only be financial project audit for the financial years ended *30 June 2024, 2025 and 2026*

No	Name of Staff	Position	Remuneration rate	Time input in person/month	Total

3. Harmonized Rural Projects Audits of the Various Development Partners funded projects audit for the financial years ended *30 June 2024, 2025 and 2026*

No	Name of Staff	Position	Remuneration rate	Time input in person/month	Total

4. Expenditure verification Audit for the EU-CPIRA Programme audit for the financial years ended *30 June 2024, 2025 and 2026*

No	Name of	Position	Remuneration	Time input in	Total

	Staff		rate	person/month	

5. Technical Audits

No	Name of Staff	Position	Remuneration rate per month	Time input in person/month	Total

FIN- Reimbursable expenses

1. Statutory Audit of Water Sector Trust Fund (Systems and Financial Audits) for the financial years ended 30 June 2024, 2025 and 2026

NO.	Type of reimbursable expenses	Unit	Quantity	Unit Cost	Total

2. Urban Investments Projects Audits and External audit undertaken as per Development Partners requirements and report will only be financial project audit for *financial years 30 June 2024, 2025 and 2026*

NO.	Type of reimbursable expenses	Unit	Quantity	Unit Cost	Total

3. Harmonized Rural Projects Audits of the Various Development Partners funded projects for *financial years ended 30 June 2024, 2025 and 2026*

NO.	Type of reimbursable expenses	Unit	Quantity	Unit Cost	Total

4. Expenditure verification Audit for the EU-CPIRA Programme financial years *ended 30 June 2024 and 30th 2025*

NO.	Type of reimbursable expenses	Unit	Quantity	Unit Cost	Total

5. Technical Audits

NO.	Type of reimbursable expenses	Unit	Quantity	Unit Cost	Total

ANNEX VIII – BUDGETS FOR PROJECTS TO BE AUDITED.

Estimated expenditures for Horn of Africa World Bank funded programme (to be audited under the Statutory Audit)

Sn	COUNTY	FY 23/24	FY 24/25	FY 25/26
1	Garissa	33,506,263.64	33,506,263.64	33,506,263.64
2	Mandera	28,859,040.00	28,859,040.00	28,859,040.00
3	Wajir	30,964,220.00	30,964,220.00	30,964,220.00
4	Marsabit	28,661,080.00	28,661,080.00	28,661,080.00
5	Turkana	30,163,700.00	30,163,700.00	30,163,700.00
	TOTAL	152,154,303.64	152,154,303.64	152,154,303.64

Estimated expenditures for DANIDA funded programme (to be audited under the Rural Harmonized projects audits)

Sn	COUNTY	FY 23/24	FY 24/25	FY 25/26
1	Garissa	19,508,187.00	109,508,187.00	
2	Isiolo	64,858,214.00	64,858,214.00	
3	Tana River	15,580,801.00	75,580,801.00	
4	Marsabit	97,545,476.00	117,545,476.00	
5	Turkana	88,799,204.00	88,799,204.00	
6	Lamu	17,204,899.00	18,204,899.00	
	TOTAL	303,496,781.00	474,496,781.00	-

Estimated expenditures for KfW Aid on Delivery (AOD) Programme (to be audited under the Urban Investments projects audits)

Sn	COUNTY	FY 23/24	FY 24/25	FY 25/26
1	Embu	-	73,000,000	73,000,000
2	Kisumu	-	33,444,439	33,444,439
3	Nyeri	-	74,921,430	74,921,430
4	Muranga	-	74,994,506	74,994,506
5	Kakamega	-	63,935,434	63,935,434
6	Meru	-	58,978,740	58,978,740
7	Nakuru	-	70,313,999	70,313,999
	TOTAL	-	449,588,547.42	449,588,547.42

Estimated expenditures for EU funded programme (to be audited under the Expenditure verification projects audits)

Sn	COUNTY	FY 23/24	FY 24/25	FY 25/26
1	Taita Taveta	37,081,571.10	17,892,101.90	
2	Baringo	41,989,654.00	19,995,566.00	
3	West pokot	37,160,082.40	20,925,749.60	
4	Kitui	21,563,260.10	10,955,682.90	
5	Kajiado	30,742,868.80	16,175,515.20	
6	Mandera	48,289,859.10	25,695,653.90	
	TOTAL	216,827,295.50	111,640,269.50	-

Estimated expenditures for CLSG II (to be audited under the Statutory Audit)

Sn	COUNTY	WSP	FY 23/24	FY 24/25	FY 25/26
1	Kirinyaga	Kirinyaga		14,524,625.00	14,524,625.00
2	Nakuru	Naivasha		46,973,755.00	46,973,755.00
3	Garissa	Garissa		13,973,325.00	13,973,325.00
4	Muranga	Kahuti		15,158,986.50	15,158,986.50
5	Machakos	Machakos		37,000,000.00	37,000,000.00
6	Nakuru	Nakuru Rural		61,114,693.00	61,114,693.00
7	Eldoret	Eldoret		189,500,000.00	189,500,000.00
8	Muranga	Muranga South		21,385,162.50	21,385,162.50
9	Nyandarua	Nyandarua		1,604,167.00	1,604,167.00
10	Mandera	Mandera		66,121,565.50	66,121,565.50
11	Nandi	Kapsabet		9,597,350.00	9,597,350.00
12	Kisumu	Kisumu		86,171,954.50	86,171,954.50
13	Kiambu	Gatundu		38,500,000.00	38,500,000.00
14	Nyandarua	Ol Kalou		5,189,780.00	5,189,780.00
15	Nyeri	Othaya		15,174,318.50	15,174,318.50
16	Isiolo	Isiolo		31,250,000.00	31,250,000.00

Sn	COUNTY	WSP	FY 23/24	FY 24/25	FY 25/26
17	Makueni	Kibwezi		10,542,275.00	10,542,275.00
18	Embu	Embu		21,500,000.00	21,500,000.00
19	Nakuru	Nakuru		158,045,067.00	158,045,067.00
20	Nyeri	Mathira		7,529,231.50	7,529,231.50
21	Muranga	Muranga		10,545,400.00	10,545,400.00
22	Tharaka Nithi	Nithi		11,750,000.00	11,750,000.00
23	Embu	Ngagaka		4,200,000.00	4,200,000.00
24	Machakos	Mavoko		10,637,562.50	10,637,562.50
25	Laikipia	Nanyuki		17,175,350.00	17,175,350.00
26	Nyeri	Tetu		8,750,000.00	8,750,000.00
27	Nairobi	Nairobi		156,300,000.00	156,300,000.00
28	Kiambu	Ruiru Juja		2,250,000.00	2,250,000.00
29	Kiambu	Thika		16,500,000.00	16,500,000.00
30	Kiambu	Kiambu		15,777,575.00	15,777,575.00
31	Embu	Ngandori		2,518,287.50	2,518,287.50
	TOTAL		-	1,107,260,431.00	1,107,260,431.00

Estimated expenditures for UBSUP Programme (to be audited under the Urban Investments projects audits)

Sn	COUNTY	FY 23/24	FY 24/25	FY 25/26
1	Kiambu	1,750,161.67	1,750,161.67	1,750,161.67
2	Meru	1,750,161.67	1,750,161.67	1,750,161.67
3	Nakuru	1,750,161.67	1,750,161.67	1,750,161.67
4	Kilifi	1,750,161.67	1,750,161.67	1,750,161.67
5	Kirinyaga	1,750,161.67	1,750,161.67	1,750,161.67
6	Baringo	6,107,895.47	6,107,895.47	6,107,895.47
7	Kirinyaga	6,159,964.88	6,159,964.88	6,159,964.88
8	Machakos	6,003,756.66	6,003,756.66	6,003,756.66
9	Meru	5,934,330.78	5,934,330.78	5,934,330.78

Sn	COUNTY	FY 23/24	FY 24/25	FY 25/26
10	Embu	5,899,617.84	5,899,617.84	5,899,617.84
11	Muranga	5,969,043.72	5,969,043.72	5,969,043.72
12	Makueni	6,107,895.47	6,107,895.47	6,107,895.47
13	Bungoma	5,969,043.72	5,969,043.72	5,969,043.72
14	Tana River	6,003,756.66	6,003,756.66	6,003,756.66
15	Homabay	5,916,974.31	5,916,974.31	5,916,974.31
16	Migori	5,899,617.84	5,899,617.84	5,899,617.84
	TOTAL	74,722,705.68	74,722,705.68	74,722,705.68

Estimated expenditures for Urban Programme (to be audited under the Urban Investments projects audits)

	COMPANY	WSTF BUD	FY 23-24	FY 24-25
1	Mombasa Water Supply & Sanitation	18,480,000	5,877,870	6,724,261
2	Kwale Water & Sewerage	18,398,000	6,208,438	5,981,124
3	Malindi Water & Sewerage	18,480,000	-	18,480,000
4	Tana Water And Sanitation	17,900,000	-	11,693,744
5	Lamu Water & Sewerage Company	5,600,000	-	5,600,000
6	Wajir Water & Sewerage company	15,850,000	5,543,746	4,762,507
7	Elwak Water & Sewerage	18,499,173	3,333,599	2,814,373
8	Mandera Water & Sewerage	18,479,576	9,107,744	3,720,981
9	Isiolo Water & Sewerage	18,497,019	-	2,811,493
10	Imetha Water & Sanitation	17,621,350	3,547,283	2,374,950
11	Nithi Water & Sanitation	18,456,000	-	12,103,371
12	Embu Water And Sanitation	18,280,000	2,783,609	4,921,137
13	Kitui Water And Sanitation	5,500,000	922,475	610,025
14	Matungulu Kangundo Water & Sewerage Co.	16,873,319	5,527,187	6,228,635
15	Machakos Water & Sewerage	18,300,060	-	18,300,060
16	Kibwezi-Makindu Water & Sanitation	18,361,210	-	7,700,758
17	Wote Water & Sewerage Co.	17,770,925	1,889,957	5,174,701

	COMPANY	WSTF BUD	FY 23-24	FY 24-25
18	Ol Kalou Water & Sanitation	18,300,000	-	18,300,000
19	Tetu Aberdare Water & Sanitation	18,400,000	2,104,385	3,570,623
20	Kirinyaga Water & Sewerage	18,376,000	-	12,180,294
21	Kirinyaga Water & Sewerage	5,500,000	-	3,516,250
22	Muranga South Water & Sanitation	16,657,673	3,612,955	1,424,746
23	Gatanga Community Water Scheme	18,301,926	3,538,172	3,372,900
24	Kikuyu Water Company	18,497,670	3,299,717	4,638,857
25	Nzoia Water And Services	14,717,870	-	7,077,438
26	Iten Tambach Water & Sewerage	17,753,346	-	17,753,346
27	Tachasis Water & Sanitation	18,485,146	-	6,105,154
28	Chemususu Water	11,500,000	-	11,500,000
29	Nyahururu Water & Sanitation	18,496,815	3,191,048	2,507,805
30	Nanyuki Water & Sewerage	5,500,000	577,221	955,279
31	Nakuru Rural Water & Sanitation Service	18,249,162	3,834,962	1,854,667
32	Nakuru Water & Sanitation	5,700,000	880,585	851,915
33	Naivasha Water & Sanitation	5,500,000	1,238,594	293,905
34	Narok Water & Sewerage Services	5,500,000	-	3,516,250
35	Olkejuado Water & Sewerage	18,290,000	12,719,529	- 755,650
36	Kericho Water & Sanitation	18,452,537	6,161,064	6,099,948
37	Kericho Water & Sanitation	5,500,000	-	3,516,250
38	Bomet Water & Sanitation	18,481,144	-	12,168,964
39	Bomet Water And Sanitation	5,500,000	-	3,516,250
40	Kakamega County Water & Sanitation	18,467,094	-	5,782,355
41	Amatsi Water & Sanitation	18,351,300	6,299,294	5,752,711
42	Nzoia Water & Services	5,500,000	-	1,532,500
43	Busia Water & Sewerage Services	18,348,413	-	12,383,455
44	Sibo Water & Sanitation	18,400,000	3,270,969	2,631,142

	COMPANY	WSTF BUD	FY 23-24	FY 24-25
45	Kisumu Water & Sanitation	18,315,787	-	2,245,895
46	Homabay County Water & Sanitation	18,408,000	-	5,718,006
47	Homa Bay County Water & Sanitation	5,500,000	-	1,532,500
48	Migori Water & Sanitation Company	18,460,679	6,349,789	5,761,101
49	Nyasare Water And Sanitation	5,500,000	1,983,750	1,532,500
50	Gusii Water & Sanitation	17,810,316	6,116,951	11,693,365
51	Gusii Water & Sanitation	5,500,000	1,983,750	3,516,250
		751,567,510	111,904,643	304,049,090

1. The Specifications and Priced Activity Schedules

Date: _____, ITT No: _____, Alternative No: _____ Page N° _____ of _____						
1	2	3	4	5	6	7
Service N°	Description of Services	Unit	Delivery Date	Quantity and physical unit	Unit price	Total Price per Service (Col. 5*6)
<i>[insert number of the Service Line]</i>	<i>[insert name of Services]</i>		<i>[insert delivery date at place of final destination per Service]</i>	<i>[insert number of units]</i>	<i>[insert unit price per unit]</i>	<i>[insert total price per unit]</i>
Service Line No 1	Clearing and forwarding services of farm equipment from Mombasa Port to Headquarters of various Counties. The assignment involves clearing the items from the port, storing and transporting them to the Counties	100 tractors, 47 Combine Harvesters and 47,000 wheelbarrows.	To reach each County by June 30, 2018.	(i) 100 tractors at least 2 to each county. (ii) 47 Combine Harvesters; ditto (iii) 47,000 wheelbarrows; 10 to each County.		
No 2						
No 3						
Service Package No 1	(a) Service Line 1					
	(b) Service Line 2					
	(c) Service Line 3					
					Total Tender Price	

Name of Tenderer *[insert complete name of Tenderer]* Signature of Tenderer *[signature of person signing the Tender]* Date *[insert date]*

Name of Tenderer*[insert complete name of Tenderer]* Signature of Tenderer *[signature of person signing the Tender]* Date *[insert date]*

2. Method Statement

[Procuring Entity shall provide main features of the expected method of carrying out the contract, including indicating the material, personnel and equipment in puts].

3. Work Plan

[Procuring Entity shall provide main features of the work plan that the Tenderer should provide in the tender for carrying out the contract, from beginning to the end].

4. Other Time Schedule

(to be used by Tenderer when alternative Time for Completion is invited in ITT14.2) NOT APPLICABLE

1 NOTIFICATION OF INTENTION TO AWARD

[This Notification of Intention to Award shall be sent to each Tenderer that submitted a Tender.] [Send this Notification to the Tenderer's Authorized Representative named in the Tenderer Information Form] For the attention of Tenderer's Authorized Representative

Name:*[insert Authorized Representative's name]*
 Address:*[insert Authorized Representative's Address]*
 Telephone numbers:*[insert Authorized Representative's telephone/fax numbers]*
 Email Address:..... *[insert Authorized Representative's email address]*

[IMPORTANT: insert the date that this Notification is transmitted to Tenderers. The Notification must be sent to all Tenderers simultaneously. This means on the same date and as close to the same time as possible.]

DATE OF TRANSMISSION:..... This Notification is sent by: *[email/fax]* on *[date]* (local time)

Procuring Entity:*[insert the name of the Procuring Entity]*

Contract title:..... *[insert the name of the contract]*

ITT No:*[insert ITT reference number from Procurement Plan]*

This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period. During the Standstill Period you may:

- a) Request a debriefing in relation to the evaluation of your Tender, and/or
- b) Submit a Procurement-related Complaint in relation to the decision to award the contract.

D). The successful Tenderer

Name:	<i>[insert name of successful Tenderer]</i>
Address:	<i>[insert address of the successful Tenderer]</i>
Contract price:	<i>[insert contract price of the successful Tender]</i>

ii). Other Tenderers *[INSTRUCTIONS: insert names of all Tenderers that submitted a Tender. If the Tender's price was evaluated include the evaluated price as well as the Tender price as read out.]*

Name of Tenderer	Tender price	Evaluated Tender price (if applicable)
<i>[insert name]</i>	<i>[insert Tender price]</i>	<i>[insert evaluated price]</i>
<i>[insert name]</i>	<i>[insert Tender price]</i>	<i>[insert evaluated price]</i>
<i>[insert name]</i>	<i>[insert Tender price]</i>	<i>[insert evaluated price]</i>
<i>[insert name]</i>	<i>[insert Tender price]</i>	<i>[insert evaluated price]</i>
<i>[insert name]</i>	<i>[insert Tender price]</i>	<i>[insert evaluated price]</i>

iii). How to request a debriefing

DEADLINE: The deadline to request a debriefing expires at midnight on [insert date] (local time).

You may request a debriefing in relation to the results of the evaluation of your Tender. If you decide to request a debriefing your written request must be made within three (3) Business Days of receipt of this Notification of Intention to Award.

Provide the contract name, reference number, name of the Tenderer, contact details; and address the request for debriefing as follows:

Attention:[insert full name of person, if applicable]

Title/position:[insert title/position]

Agency:[insert name of Procuring Entity]

Email address:..... [insert email address]

If your request for a debriefing is received within the 3 Business Days deadline, we will provide the debriefing within five (5) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (5) Business Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.

The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.

If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Business Days from the date of publication of the Contract Award Notice.

iv. How to make a complaint

Period: Procurement-related Complaint challenging the decision to award shall be submitted by [insert date and time].

Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-related Complaint as follows:

Attention:.....[insert full name of person, if applicable]

Title/position:..... [insert title/position]

Agency:[insert name of Procuring Entity]

Email address:..... [insert email address]

At this point in the procurement process, you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Stand still Period and received by us before the Stand still Period ends. In summary, there are four essential requirements:

1. You must be an 'interested party'. In this case, that means a Tenderer who submitted a Tender in this tendering process, and is the recipient of a Notification of Intention to Award.
2. The complaint can only challenge the decision to award the contract.
3. You must submit the complaint within the period stated above.
4. You must include, in your complaint, all of the information required to support the complaint.
5. The application must be accompanied by the fees set out in the Procurement Regulations, which shall not be refundable (information available from the Public Procurement Authority at info@ppra.go.ke or complaints@ppra.go.ke)

v). Standstill Period

DEADLINE: The Standstill Period is due to end at midnight on [insert date] (local time).

The Standstill Period lasts ten (10) Business Days after the date of transmission of this Notification of Intention to Award.

The Standstill Period may be extended as stated in Section 4 above.
If you have any questions regarding this Notification please do not hesitate to contact us.

On behalf of the Procuring Entity:

Signature: _____

Name: _____

Title/position: _____

Telephone: _____

Email: _____

2 REQUEST FOR REVIEW

FORM FOR REVIEW(r.203(1))

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..... for(Tender description).

REQUEST FOR REVIEW

I/We.....,the above named Applicant(s), of address: Physical address.....P. O. Box 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.

By this memorandum, the Applicant requests the Board for an order/orders that:

- 1.
- 2.

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

3. LETTER OF AWARD

[Form head paper of the Procuring Entity]

.....*[date]*

To:.....*[name and address of the Service Provider]*

This is to notify you that your Tender dated*[date]*forexecutionofthe*[nameoftheContractandidentificationnumber, as given in the Special Conditions of Contract]* for the Contract Price of the equivalent of *[amount in numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers is hereby accepted by us (Procuring Entity).

You are requested to furnish the Performance Security within 28days in accordance with the Conditions of Contract, using, for that purpose, one of the Performance Security Forms included in Section VIII, Contract Forms, of the tender document.

Please return the attached Contract dully signed

AuthorizedSignature:.....

Name and Title of Signatory:.....

Name of Agency:.....

Attachment: Contract

4 FORM OF CONTRACT *[Form*

head paper of the Procuring Entity]

LUMP SUM REMUNERATION

This CONTRACT (herein after called the “Contract”) is made the *[day]* day of the month of *[month]*, *[year]*, between, on the one hand, *[name of Procuring Entity]* (herein after called the “Procuring Entity”) and, on the other hand, *[name of Service Provider]* (hereinafter called the “Service Provider”).

[Note: In the text below text in brackets is optional; all notes should be deleted in final text. If the Service Provider consist of more than one entity, the above should be partially amended to read as follows: “... (herein after called the “Procuring Entity”) and, on the other hand, a joint venture consisting of the following entities, each of which will be jointly and severally liable to the Procuring Entity for all the Service Provider's obligations under this Contract, namely, [name of Service Provider] and [name of Service Provider] (herein after called the “Service Provider”).]

WHEREAS

- a) The Procuring Entity has requested the Service Provider to provide certain Services as defined in the General Conditions of Contract attached to this Contract (herein after called the “Services”);
- b) the Service Provider, having represented to the Procuring Entity that they have the required professional skills, and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract at a contract price of.....;

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents shall be deemed to form and be read and construed as part of this Agreement, and the priority of the documents shall be as follows:
 - a) The Form of Acceptance;
 - b) The Service Provider's Tender
 - c) The Special Conditions of Contract;
 - d) The General Conditions of Contract;
 - e) The Specifications;
 - f) The Priced Activity Schedule; and
 - g) The following Appendices: *[Note: If any of these Appendices are not used, the words “Not Used” should be inserted below next to the title of the Appendix and on the sheet attached hereto carrying the title of that Appendix.]*

- Appendix A: Description of the Services
- Appendix B: Schedule of Payments
- Appendix C: Subcontractors
- Appendix D: Breakdown of Contract Price
- Appendix E: Services and Facilities Provided by the Procuring Entity

2. The mutual rights and obligations of the Procuring Entity and the Service Provider shall be as set forth in the Contract, in particular:
 - a) The Service Provider shall carry out the Services in accordance with the provisions of the Contract; and
 - b) The Procuring Entity shall make payments to the Service Provider in accordance with the provisions of the Contract.

IN WITNESS WHERE OF, the Parties here to have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf of _____ *[name of Procuring Entity]*

_____ *[Authorized Representative]*

For and on behalf of *[name of Service Provider]*

[Note :If the Service Provider consists of more than one entity, all these entities should appear as signatories, e.g., in the following manner:]

For and on behalf of each of the Members of the Service Provider

.....*[name of member]*

.....*[Authorized Representative]*

..... *[name of member]*

.....*[Authorized Representative]*

4 FORM OF TENDER SECURITY (Bank Guarantee) *[The bank shall fill in this*

Bank Guarantee Form in accordance with the instructions indicated.] [Guarantor Form head or SWIFT identifier code]

Beneficiary:.....*[Procuring Entity to insert its name and address]*

ITT No.:.....*[Procuring Entity to insert reference number for the Request for Tenders]*

Alternative No.:*[Insert identification No if this is a Tender for an alternative]* **Date:***[Insert date of issue]*

TENDER GUARANTEE No.:.....*[Insert guarantee reference number]*

Guarantor:*[Insert name and address of place of issue, unless indicated in the Form head]*

We have been informed that _____*[insert name of the Tenderer, which in the case of a joint venture shall be the name of the joint venture (whether legally constituted or prospective) or the names of all members thereof]*(hereinafter called "the Applicant") has submitted or will submit to the Beneficiary its Tender (hereinafter called "the Tender") for the execution of ___under Request for Tenders No. _____("The ITT").

Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.

At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____(_____) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:

- (a) Has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Form of Tender ("the Tender Validity Period"), or any extension there to provide by the Applicant; or
- (b) Having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension thereto provided by the Applicant, (i) has failed to sign the contract agreement, or (ii) has failed to furnish the performance security, in accordance with the Instructions to Tenderers ("ITT") of the Beneficiary's tendering document.

This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the Contract agreementsignedbytheApplicantandtheperformancesecurityissuedtothe Beneficiary in relation to such Contract agreement; or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) twenty-eight days after the end of the Tender Validity Period.

Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758.

[Signature(s)]

Note: *All italicized text is for use in preparing this form and shall be deleted from the final product.*

5 FORM OF TENDER SECURITY (TENDER BOND) *[The Surety shall fill*

in this Tender Bond Form in accordance with the instructions indicated.] BOND NO. ____

BY THIS BOND *[name of Tenderer]* as Principal (herein after called “the Principal”), and *[name, legal title, and address of surety]*, **authorized to transact business in Kenya**, as Surety (hereinafter called “the Surety”), are held and firmly bound unto *[name of Procuring Entity]* as Obligee (hereinafter called “the Procuring Entity”) in the sum of *[amount of Bond][amount in words]*, for the payment of which sum, well and truly to be made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

WHERE AS the Principal has submitted or will submit a written Tender to the Procuring Entity dated the _____ day of _____, 20_____, for the supply of *[name of Contract]* (herein after called the “Tender”).

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal:

- c) Has withdrawn its Tender during the period of Tender validity set forth in the Principal's Form of Tender (“the Tender Validity Period”), or any extension thereto provided by the Principal; or
- d) having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity Period or any extension there to provide by the Principal; (i) failed to execute the Contract agreement; or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to Tenderers (“ITT”) of the Procuring Entity's tendering document.

then the Surety undertakes to immediately pay to the Procuring Entity up to the above amount upon receipt of the Procuring Entity's first written demand, without the Procuring Entity having to substantiate its demand, provided that in its demand the Procuring Entity shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.

The Surety hereby agrees that its obligation will remain in full force and effect up to and including the date 28 days after the date of expiration of the Tender Validity Period set forth in the Principal's Form of Tender or any extension thereto provided by the Principal.

IN TESTIMONY WHERE OF, the Principal and the Surety have caused these presents to be executed in the irrespctive names this _____ day of _____ 20_____.

Principal: _____
Corporate Seal (where appropriate)

Surety: _____

(Signature)

(Signature)

(Printed name and title)

(Printed name and title)

6 FORM OF TENDER-SECURING DECLARATION

[The Tenderer shall fill in this Form in accordance with the instructions indicated.]

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

ITT No.:*[number of Tendering process]*

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

To:..... *[complete name of Procuring Entity]* We, the undersigned, declare

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

Declaration.

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

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

We understand this Tender Securing Declaration shall expire if we are not the successful Tenderer, upon the earlier of (i) our receipt of your notification to us of the name of the successful Tenderer; or (ii) twenty-eight days after the expiration of our Tender.

Name of the Tenderer* _____

Name of the person duly authorized to sign the Tender on behalf of the Tenderer** _____

Title of the person signing the Tender _____

Signature of the person named above _____

Date signed _____ day of _____, _____

*: In the case of the Tender submitted by joint venture specify the name of the Joint Venture as Tenderer

** : Person signing the Tender shall have the power of attorney given by the Tenderer attached to the Tender

[Note: In case of a Joint Venture, the Tender-Securing Declaration must be in the name of all members to the Joint Venture that submits the Tender.

PART II – PROCURING ENTITY'S REQUIREMENTS

SECTION V - ACTIVITY SCHEDULE

Objectives

The objectives of the Activity Schedule are

- a) to provide sufficient information on the quantities of Services to be performed to enable Tenders to be prepared efficiently and accurately; and
- b) when a Contract has been entered into, to provide a priced Activity Schedule for use in the periodic valuation of Services executed.

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

Day work Schedule

A Day work Schedule should be included only if the probability of unforeseen work, outside the items included in the Activity Schedule, is high. To facilitate checking by the Procuring Entity of the realism of rates quoted by the Tenderers, the Day work Schedule should normally comprise the following:

- a) A list of the various classes of Services, labor, materials, and plant for which basic day work rates or prices are to be inserted by the Tenderer, together with a statement of the conditions under which the Service Provider will be paid for services delivered on a day work basis.
- b) Nominal quantities for each item of Day work, to be priced by each Tenderer at Day work rates as Tender. The rate to be entered by the Tenderer against each basic Day work item should include the Service Provider's profit, over heads, supervision, and other charges.

Provisional Sums

The estimated cost of specialized services to be carried out, or of special goods to be supplied, by other Service Providers should be indicated in the relevant part of the Activity Schedule as a particular provisional sum with an appropriate brief description. A separate procurement procedure is normally carried out by the Procuring Entity to select such specialized Service Providers. To provide an element of competition among the Tenderers in respect of any facilities, amenities, attendance, etc., to be provided by the successful Tenderer as prime Service Provider for the use and convenience of the specialist contractors, each related provisional sum should be followed by an item in the Activity Schedule inviting the Tenderer to quote a sum for such amenities, facilities, attendance, etc.

These Notes for Preparing an Activity Schedule are intended only as information for the Procuring Entity or the person drafting the tendering document. They should not be included in the final documents.

PERFORMANCE SPECIFICATIONS AND DRAWINGS

(Describe Outputs and Performances, rather than Inputs, wherever

possible) Notes on Specifications

A set of precise and clear specifications is a prerequisite for Tenderers to respond realistically and competitively to the requirements of the Procuring Entity without qualifying or conditioning their Tenders. In the context of international competitive Tendering, the specifications must be drafted to permit the widest possible competition and, at the same time, present a clear statement of the required standards of workmanship, materials, and performance of the goods and services to be procured. Only if this is done will the objectives of economy, efficiency, and fairness in procurement be realized, responsiveness of Tenders be ensured, and the subsequent task of Tender evaluation facilitated. The specifications should require that all goods and materials to be incorporated in the Services be new, unused, of the most recent or current models, and incorporate all recent improvements in design and materials unless provided otherwise in the Contract.

Samples of specifications from previous similar projects in the same country are useful in this respect. The use of metric units is encouraged. Most specifications are normally written specially by the Procuring Entity to suit the Contract in hand. There is no standard set of Specifications for universal application in all sectors in all countries, but there are established principles and practices, which are reflected in this document

There are considerable advantages in standardizing General Specifications for repetitive Services in recognized public sectors, such as education, health, sanitation, social and urban housing, roads, ports, railways, irrigation, and water supply, in the same country or region where similar conditions prevail. The General Specifications should cover all classes of workmanship, materials, and equipment commonly involved in the provision of Services, although not necessarily to be used in a particular Services Contract. Deletions or addenda should then adapt the General Specifications to the particular Services.

Care must be taken in drafting specifications to ensure that they are not restrictive. In the specification of standards for goods, materials, Services, and workmanship, recognized international standards should be used as much as possible. Where other particular standards are used, whether national standards of Kenya or other standards, the specifications should state that goods, materials, Services and workmanship that meet other authoritative standards, and which ensure substantially equal or higher quality than the standards mentioned, will also be acceptable.

If technical alternatives for parts of the Services are permitted in the tendering document, these parts shall be described in this Section.

These Notes for Preparing Specifications are intended only as information for the Procuring Entity or the person drafting the tendering document.

**PART III – CONDITIONS OF CONTRACT AND
CONTRACT FORMS**

SECTION VI - GENERAL CONDITIONS OF CONTRACT

A. General

Provisions Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- a) The Adjudicator is the person appointed jointly by the Procuring Entity and the Service Provider to resolve disputes in the first instance, as provided for in Sub-Clause 8.2 hereunder.
- b) "Activity Schedule" is the priced and completed list of items of Services to be performed by the Service Provider forming part of his Tender;
- c) "Completion Date" means the date of completion of the Services by the Service Provider as certified by the Procuring Entity
- d) "Contract" means the Contract signed by the Parties, to which these General Conditions of Contract (GCC) are attached, together with all the documents listed in Clause 1 of such signed Contract;
- e) "Contract Price" means the price to be paid for the performance of the Services, in accordance with Clause 6;
- f) "Day works" means varied work inputs subject to payment on a time basis for the Service Provider's employees and equipment, in addition to payments for associated materials and administration.
- g) "Procuring Entity" means the Procuring Entity or party who employs the Service Provider
- h) "Foreign Currency" means any currency other than the currency of Kenya;
- i) "GCC" means these General Conditions of Contract;
- j) "Government" means the Government of Kenya;
- k) "Local Currency" means Kenya shilling;
- l) "Member," in case the Service Provider consist of a joint venture of more than one entity, means any of these entities; "Members" means all these entities, and "Member in Charge" means the entity specified in the SC to act on their behalf in exercising all the Service Provider' rights and obligations towards the Procuring Entity under this Contract;
- m) "Party" means the Procuring Entity or the Service Provider, as the case maybe, and "Parties" means both of them;
- n) "Personnel" means persons hired by the Service Provider or by any Subcontractor as employees and assigned to the performance of the Services or any part thereof;
- o) "Service Provider" is a person or corporate body whose Tender to provide the Services has been accepted by the Procuring Entity;
- p) "Service Provider's Tender" means the completed Tendering Document submitted by the Service Provider to the Procuring Entity
- q) "SCC" means the Special Conditions of Contract by which the GCC may be amended or supplemented;
- r) "Specifications" means the specifications of the service included in the Tendering Document submitted by the Service Provider to the Procuring Entity
- s) "Services" means the work to be performed by the Service Provider pursuant to this Contract, as described in Appendix A; and in the Specifications and Schedule of Activities included in the Service Provider's Tender.
- t) "Subcontractor" means any entity to which the Service Provider subcontracts any part of the Services in accordance with the provisions of Sub-Clauses 3.5 and 4;
- u) "Public Procurement Regulatory Authority (PPRA)" shall mean the Government Agency responsible for oversight of public procurement.
- v) "Project Manager" shall the person appointed by the Procuring Entity to act as the Project Manager for the purposes of the Contract and named in the Particular Conditions of Contract, or other person appointed from time to time by the Procuring Entity and notified to the Contractor.

w) “Notice of Dissatisfaction” means the notice given by either Party to the other indicating its dissatisfaction and intention to commence arbitration.

1.2 Applicable Law

The Contract shall be interpreted in accordance with the laws of Kenya.

1.3 Language

This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

1.4 Notices

Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, hand delivery, or email to such Party at the address **specified in the SCC**.

1.5 Location

The Services shall be performed at such locations as a respecified in Appendix A, in the specifications and, where the location of a particular task is not so specified, at such locations, whether in Kenya or elsewhere, as the Procuring Entity may approve.

1.6 Authorized Representatives

Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Procuring Entity or the Service Provider may be taken or executed by the officials **specified in the SCC**.

1.7 Inspection and Audit by the PPRA

Pursuant to paragraph 2.2 e. of Attachment 1 to the General Conditions, the Service Provider shall permit and shall cause its sub contract or sand sub-consultants to permit, PPRA and/or persons appointed by PPRA to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by PPRA. The Service Provider's and its Subcontractors' and sub-consultants' attention is drawn to Sub-Clause 3.10 which provides, inter alia, that acts intended to materially impede the exercise of PPRA's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to PPRA's prevailing sanctions procedures).

1.8 Taxes and Duties

The Service Provider, Subcontractors, and their Personnel shall pay such taxes, duties, fees, and other impositions as may be levied under the Applicable Law, the amount of which is deemed to have been included in the Contract Price.

2 Commencement, Completion, Modification, and Termination of Contract

2.1 Effectiveness of Contract

This Contract shall come into effect on the date the Contract is signed by both parties or such other later date as maybe **stated in the SCC**.

2.2 Commencement of Services

2.2.1 Program

Before commencement of the Services, the Service Provider shall submit to the Procuring Entity for approval a Program showing the general methods, arrangements order and timing for all activities. The Services shall be carried out in accordance with the approved Program as updated.

2.2.2 Starting Date

The Service Provider shall start carrying out the Services thirty (30) days after the date the Contract becomes effective, or at such other date as may be **specified in the SCC**.

2.3 Intended Completion Date

Unless terminated earlier pursuant to Sub-Clause 2.6, the Service Provider shall complete the activities by the Intended Completion Date, as is **specified in the SCC**. If the Service Provider does not complete the activities by the Intended Completion Date, it shall be liable to pay liquidated damage as per Sub-Clause 3.8. In this case, the Completion Date will be the date of completion of all activities.

2.4 Modification

Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written agreement between the Parties.

2.4.1 Value Engineering

The Service Provider may prepare, at its own cost, a value engineering proposal at any time during the performance of the contract. The value engineering proposal shall, at a minimum, include the following:

- a) The proposed change(s), and a description of the difference to the existing contract requirements;
- b) A full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (including life cycle costs, if applicable) the Procuring Entity may incur in implementing the value engineering proposal; and
- c) A description of any effect(s) of the change on performance/functionality.

The Procuring Entity may accept the value engineering proposal if the proposal demonstrates benefits that:

- a) accelerates the delivery period; or
- b) reduces the Contract Price or the lifecycle costs to the Procuring Entity; or
- c) improves the quality, efficiency, safety or sustainability of the services; or
- d) yields any other benefits to the Procuring Entity, without compromising the necessary functions of the Facilities.

If the value engineering proposal is approved by the Procuring Entity and results in:

- a) a reduction of the Contract Price; the amount to be paid to the Service Provider shall be the percentage specified in the **SCC** of the reduction in the Contract Price; or
- b) an increase in the Contract Price; but results in a reduction in lifecycle costs due to any benefit described in (a) to (d) above, the amount to be paid to the Service Provider shall be the full increase in the Contract Price.

2.5 Force Majeure

2.5.1 Definition

For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

2.5.2 No Breach of Contract

The failure of a Party to fulfill any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

2.5.3 Extension of Time

Any period with in which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

2.5.4 Payments

During the period of their inability to perform the Services as a result of an event of Force Majeure, the Service Provider shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Service after the end of such period.

2.6 Termination

2.6.1 By the Procuring Entity

The Procuring Entity may terminate this Contract, by not less than thirty(30) days' written notice of termination to the Service Provider, to be given after the occurrence of any of the events specified in paragraphs(a)through (d) of this Sub-Clause 2.6.1:

- a) If the Service Provider does not remedy a failure in the performance of its obligations under the Contract, within thirty (30) days after being notified or within any further period as the Procuring Entity may have subsequently approved in writing;
- b) if the Service Provider become insolvent or bankrupt;
- c) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- d) if the Service Provider, in the judgment of the Procuring Entity has engaged in Fraud and Corruption, as defined in paragraph2.2a. of Attachment1 to the GCC, in competing for or in executing the Contract

2.6.2 By the Service Provider

The Service Provider may terminate this Contract, by not less than thirty (30) days' written notice to the Procuring Entity, such notice to be given after the occurrence of any of the events specified in paragraphs (a) and (b) of this Sub-Clause 2.6.2:

- a) If the Procuring Entity fails to pay any monies due to the Service Provider pursuant to this Contract and not subject to dispute pursuant to Clause 7 within forty-five (45) days after receiving written notice from the Service Provider that such payment is overdue; or
- b) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

2.6.3 Payment up on Termination

Upon termination of this Contract pursuant to Sub-Clauses 2.6.1 or 2.6.2, the Procuring Entity shall make the following payments to the Service Provider:

- a) remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination;
- b) except in the case of termination pursuant to paragraphs (a), (b), (d) of Sub-Clause 2.6.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel.

3 Obligations of the Service Provider

3.1 General

The Service Provider shall perform the Services in accordance with the Specifications and the Activity Schedule, and carry out its obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Service Provider shall always act, in respect

of any matter relating to this Contractor to the Services, as faithful adviser to the Procuring Entity, and shall at all times support and safeguard the Procuring Entity's legitimate interests in any dealings with Subcontractors or third parties.

3.2 Conflict of Interests

3.2.1 Service Provider Not to Benefit from Commissions and Discounts.

The remuneration of the Service Provider pursuant to Clause 6 shall constitute the Service Provider's sole remuneration in connection with this Contractor to the Services, and the Service Provider shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contractor to the Services or in the discharge of their obligations under the Contract, and the Service Provider shall use their best efforts to ensure that the Personnel, any Subcontractors, and agents of either of them similarly shall not receive any such additional remuneration.

3.2.2 Service Provider and Affiliates Not to be Otherwise Interested in Project

The Service Provider agree that, during the term of this Contract and after its termination, the Service Provider and its affiliates, as well as any Subcontractor and any of its affiliates, shall be disqualified from providing goods, works, or Services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.

3.2.3 Prohibition of Conflicting Activities

Neither the Service Provider nor its Subcontractors nor the Personnel shall engage, either directly or indirectly, in any of the following activities:

- a) During the term of this Contract, any business or professional activities in Kenya which would conflict with the activities assigned to them under this Contract;
- b) during the term of this Contract, neither the Service Provider nor their Subcontractors shall hire public employees' inactive duty or on any type of leave, to perform any activity under this Contract;
- c) After the termination of this Contract, such other activities as may be **specified in the SCC**.

3.3 Confidentiality

The Service Provider, its Subcontractors, and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the Procuring Entity's business or operations without the prior written consent of the Procuring Entity.

- 3.4 **The Service Provider** (a) shall take out and maintain, and shall cause any Subcontractors to take out and maintain, at its (or the Subcontractors', as the case may be) own cost but on terms and conditions approved by the Procuring Entity, insurance against the risks, and for the coverage, as shall be **specified in the SCC**; and (b) at the Procuring Entity's request, shall provide evidence to the Procuring Entity showing that such insurance has been taken out and maintained and that the current premiums have been paid.

3.5 Service Provider's Actions Requiring Procuring Entity's Prior Approval

The Service Provider shall obtain the Procuring Entity's prior approval in writing before taking any of the following actions:

- a) Entering into a subcontract for the performance of any part of the Services,
- b) appointing such members of the Personnel not listed by name in Appendix C ("Key Personnel and Subcontractors"),
- c) changing the Program of activities; and
- d) Any other action that may be **specified in the SCC**.

3.6 Reporting Obligations

The Service Provider shall submit to the Procuring Entity the reports and documents specified in Appendix B in the form, in the numbers, and within the periods set forth in the said Appendix.

3.7 Documents Prepared by the Service Provider to Be the Property of the Procuring Entity

All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Service Provider in accordance with Sub-Clause 3.6 shall become and remain the property of the Procuring Entity, and the Service Provider shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Procuring Entity, together with a detailed inventory thereof. The Service Provider may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be **specified in the SCC**.

3.8 Liquidated Damages

3.8.1 Payments of Liquidated Damages

The Service Provider shall pay liquidated damages to the Procuring Entity at the rate per day **stated in the SCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the SCC**. The Procuring Entity may deduct liquidated damages from payments due to the Service Provider. Payment of liquidated damages shall not affect the Service Provider's liabilities.

3.8.2 Correction for Over-payment

If the Intended Completion Date is extended after liquidated damages have been paid, the Procuring Entity shall correct any overpayment of liquidated damages by the Service Provider by adjusting the next payment certificate. The Service Provider shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 6.5.

3.8.3 Lack of performance penalty

If the Service Provider has not corrected a Defect within the time specified in the Procuring Entity's notice, a penalty for Lack of performance will be paid by the Service Provider. The amount to be paid will be calculated as a percentage of the cost of having the Defect corrected, assessed as described in Sub-Clause 7.2 and **specified in the SCC**.

3.9 Performance Security

The Service Provider shall provide the Performance Security to the Procuring Entity no later than the date specified in the Form of acceptance. The Performance Security shall be issued in an amount and form and by a bank or surety acceptable to the Procuring Entity, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The performance Security shall be valid until a date 28 day from the Completion Date of the Contract in case of a bank guarantee, and until one year from the Completion Date of the Contract in the case of a Performance Bond.

3.10 Fraud and Corruption

The Procuring Entity requires compliance with the Government's Anti-Corruption laws and its prevailing sanctions. The Procuring Entity requires the Service Provider to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the tendering process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

3.11 Sustainable Procurement

The Service Provider shall conform to the sustainable procurement contractual provisions, if and as specified in the SCC.

4 Service Provider's Personnel

4.1 Description of Personnel

The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Service Provider's Key Personnel are described in Appendix C. The Key Personnel and Subcontractors listed by title as well as by name in Appendix Care hereby approved by the Procuring Entity.

4.2 Removal and/or Replacement of Personnel

- a) Except as the Procuring Entity may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Service Provider, it becomes necessary to replace any of the Key Personnel, the Service Provider shall provide as a replacement a person of equivalent or better qualifications.
- b) If the Procuring Entity finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Service Provider shall, at the Procuring Entity's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Procuring Entity.
- c) The Service Provider shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

5 Obligations of the Procuring Entity

5.1 Assistance and Exemptions

The Procuring Entity shall use its best efforts to ensure that the Government shall provide the Service Provider such assistance and exemptions as **specified in the SCC**.

5.2 Change in the Applicable Law

If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Service Provider, then the remuneration and reimbursable expenses otherwise payable to the Service Provider under this Contract shall be increased or decreased accordingly by agreement between the Parties, and corresponding adjustments shall be made to the amounts referred to in Sub-Clauses 6.2(a) or (b), as the case may be.

5.3 Services and Facilities

The Procuring Entity shall make available to the Service Provider the Services and Facilities listed under Appendix F.

6 Payments to the Service Provider

6.1 Lump-Sum Remuneration

The Service Provider's remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all Subcontractors' costs, and all other costs incurred by the Service Provider in carrying out the Services described in Appendix A. Except as provided in Sub-Clause 5.2, the Contract Price may only be increased above the amounts stated in Sub-Clause 6.2 if the Parties have agreed to additional payments in accordance with Sub-Clauses 2.4 and 6.3.

6.2 Contract Price

- a) The price payable is **set forth in the SCC**.
- b) Price may be payable in foreign currency, if so allowed in this document.

6.3 Payment for Additional Services, and Performance Incentive Compensation

6.3.1 For the purpose of determining the remuneration due for additional Services as may be agreed under Sub-Clause 2.4, a breakdown of the lump-sum price is provided in Appendices D and E.

6.3.2 **If the SCC so specify**, the service provider shall be paid performance incentive compensation asset out in the Performance Incentive Compensation appendix.

6.3.3 Where the contract price is different from the corrected tender price, in order to ensure the contractor is not paid less or more relative to the contract price (*which would be the tender price*), payment valuation certificates and variation orders on omissions and additions valued based on rates in the schedule of rates in the Tender, will be adjusted by a plus or minus percentage. The percentage already worked out during tender evaluation is worked out as follows: $(\text{corrected tender price} - \text{tender price}) / \text{tender price} \times 100$.

6.4 Terms and Conditions of Payment

Payments will be made to the Service Provider according to the payment schedule **stated in the SCC**. **Unless otherwise stated in the SCC**, the advance payment (Advance for Mobilization, Materials and Supplies) shall be made against the provision by the Service Provider of a bank guarantee for the same amount, and shall be valid for the period **stated in the SCC**. Any other payment shall be made after the conditions **listed in the SCC** for such payment have been met, and the Service Provider have submitted an invoice to the Procuring Entity specifying the amount due.

6.5 Interest on Delayed Payments

If the Procuring Entity has delayed payments beyond thirty (30) days after the due date stated in the **SCC**, interest shall be paid to the Service Provider foreach day of delay at the rate stated in **the SCC**.

6.6 Price Adjustment

6.6.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC**. If so provided, the amounts certified in each payment certificate, after deducting for Advance Payment, shall be adjusted by applying the respective price adjustment fact or to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

$$P_c = A_c + B_c L_{mc} / L_{oc} + C_c I_{mc} / I_{oc}$$

Where:

P_c is the adjustment factor for the portion of the Contract Price payable in a specific currency “c”.

A_c , B_c and C_c are coefficients specified in the **SCC**, representing: A_c the non-adjustable portion; B_c the adjustable portion relative to labor costs and C_c the adjustable portion for other inputs, of the Contract Price payable in that specific currency “c”; and

L_{mc} is the index prevailing at the first day of the month of the corresponding invoiced ate and L_{oc} is the index prevailing 28 days before Tender opening for labor; both in the specific currency “c”.

I_{mc} is the index prevailing at the first day of the month of the corresponding invoice date and I_{oc} is the index prevailing 28 days before Tender opening for other inputs payable; both in the specific currency “c”.

If a price adjustment factor is applied to payments made in a currency other than the currency of the source of the index for a particular indexed input, a correction factor Z_o/Z_n will be applied to the respective component factor of p_n for the formula of the relevant currency. Z_o is the number of units of Kenya Shillings of the index, equivalent to one unit of the currency payment on the date of the base index, and Z_n is the corresponding number of such currency units on the date of the current index.

6.6.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account to fall changes in cost due to fluctuations in costs.

6.7 Day works

6.7.1 If applicable, the Day work rates in the Service Provider's Tender shall be used for small additional amounts of Services only when the Procuring Entity has given written instructions in advance for additional services to be paid in that way.

6.7.2 All work to be paid for as Day works shall be recorded by the Service Provider on forms approved by the Procuring Entity. Each completed form shall be verified and signed by the Procuring Entity representative as indicated in Sub-Clause 1.6 within two days of the Services being performed.

6.7.3 The Service Provider shall be paid for Day works subject to obtaining signed Day works forms as indicated in Sub-Clause 6.7.2

7 Quality Control

7.1 Identifying Defects

The principle and modalities of Inspection of the Services by the Procuring Entity shall be as **indicated in the SCC**. The Procuring Entity shall check the Service Provider's performance and notify him of any Defects that are found. Such checking shall not affect the Service Provider's responsibilities. The Procuring Entity may instruct the Service Provider to search for a Defect and to uncover and test any service that the Procuring Entity considers may have a Defect. Defect Liability Period is as **defined in the SCC**.

Correction of Defects, and Lack of Performance Penalty

- a) The Procuring Entity shall give notice to the Service Provider of any Defects before the end of the Contract. The Defects liability period shall be extended for as long as Defects remain to be corrected.
- b) Every time notice a Defect is given, the Service Provider shall correct the notified Defect within the length of time specified by the Procuring Entity's notice.
- c) If the Service Provider has not corrected a Defect within the time specified in the Procuring Entity's notice, the Procuring Entity will assess the cost of having the Defect corrected, the Service Provider will pay this amount and a Penalty for Lack of Performance calculated as described in Sub-Clause 3.8.

8 Settlement of Disputes

8.1 Contractor's Claims

8.1.1 If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

8.1.2 If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Procuring Entity shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clauses shall apply.

8.1.3 The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all relevant to such event or circumstance.

8.1.4 The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting the Procuring Entity's liability, the Project Manager may, after receiving any notice under this Sub-Clause, monitor the record-keeping and /or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.

8.1.5 Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and /or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

8.1.5.1 This fully detailed claim shall be considered as interim;

- a) The Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and /or amount claimed, and such further particulars as the Project Manager may reasonably require; and

- b) The Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Project Manager.
- 8.1.6 Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the Project Manager shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within the above defined time period.
- 8.1.7 Within the above defined period of 42 days, the Project Manager shall proceed in accordance with Sub-Clause 3.5[Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.
- 8.1.8 Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.
- 8.1.9 If the Project Manager does not respond within the time framed in this Clause, either Party may consider that the claim is rejected by the Project Manager and any of the Parties may refer to Arbitration in accordance with Sub-Clause 8.2 [Matters that may be referred to arbitration].
- 8.1.10 The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contract or fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.

8.2 Matters that may be referred to arbitration

- 8.2.1 Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Services or abandonment of the Services or termination of the Contract by either party:
 - a) The appointment of a replacement Project Manager upon the said person ceasing to act.
 - b) Whether or not the issue of an instruction by the Project Manager is empowered by these Conditions
 - c) Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.
 - e) Any dispute arising in respect of war risks or war damage.
 - f) All other matters shall only be referred to arbitration after the completion or alleged completion of the Services or termination or alleged termination of the Contract, unless the Procuring Entity and the Contractor agree otherwise in writing.

8.3 Amicable Settlement

- 8.3.1 Where a Notice of Dissatisfaction has been given, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a Notice of Dissatisfaction in accordance with Sub-Clause 8.1 above should move to commence arbitration after the fifty-sixth day from the day on which a Notice of Dissatisfaction was given, even if no attempt at an amicable settlement has been made.

8.4 Arbitration

- 8.4.1 Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 8.3 shall be finally settled by arbitration. Arbitration shall be conducted in accordance with the Arbitration Laws of Kenya.
- 8.4.2 The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Project Manager from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

- 8.4.3 Neither Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction.
- 8.4.4 Arbitration may be commenced prior to or after completion of the services. The obligations of the Parties, and the Project Manager shall not be altered by reason of any arbitration being conducted during the progress of the services.
- 8.4.5 The terms of the remuneration of each or all the members of Arbitration shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

8.5 Arbitration with proceedings

- 8.5.1 In case of any claim or dispute, such claim or dispute shall be notified in writing by either party to the other with a request to submit to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed, on the request of the applying party, by the Chairman or Vice Chairman of any of the following professional institutions;
- a) Law Society of Kenya or
 - b) Chartered Institute of Arbitrators (Kenya Branch)
- 8.5.2 The institution written to first by the aggrieved party shall take precedence over all other institutions.
- 8.5.3 The arbitration may be on the construction of this Contractor on any matter or thing of what so ever nature arising there under or in connection there with, including any matter or thing left by this Contract to the discretion of the Project Manager, or the withholding by the Project Manager of any certificate to which the Contractor may claim to be entitled to or the measurement and valuation referred to in clause 23.0 of these conditions, or the rights and liabilities of the parties subsequent to the termination of Contract.
- 8.5.4 Provided that no arbitration proceedings shall be commenced on any claim or dispute where notice of a claim or dispute has not been given by the applying party within ninety days of the occurrence or discovery of the matter or issue giving rise to the dispute.
- 8.5.5 Notwithstanding the issue of a notice as stated above, the arbitration of such a claim or dispute shall not commence unless an attempt has in the first instance been made by the parties to settle such claim or dispute amicably with or without the assistance of third parties. Proof of such attempt shall be required.
- 8.5.6 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.
- 8.5.7 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision requirement or notice had been given.
- 8.5.8 The award of such Arbitrator shall be final and binding upon the parties.

8.6 Failure to Comply with Arbitrator's Decision

- 8.6.1 In the event that a Party fails to comply with a final and binding Arbitrator's decision, then the other Party may, without prejudice to any other rights it may have, refer the matter to a competent court of law.

9.1 The Adjudicator

- 9.1.1 Should the Adjudicator resign or die, or should the Procuring Entity and the Service Provider agree that the Adjudicator is not functioning in accordance with the provisions of the Contract; a new Adjudicator will be jointly appointed by the Procuring Entity and the Service Provider. In case of disagreement between the Procuring Entity and the Service Provider, within 30 days, the Adjudicator shall be designated by the Appointing Authority **designated in the SCC** at the request of either party, within 14 days of receipt of such request.

9.2 The Adjudicator shall be paid by the hour at the rate **specified in the TDS and SCC**, together with reimbursable expenses of the type's **specified in the SCC**, and the cost shall be divided equally between the Procuring Entity and the Service Provider, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.

B. SPECIAL CONDITIONS OF CONTRACT

SECTION VII - SPECIAL CONDITIONS OF CONTRACT

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(a)	The Adjudicator is : <i>To be appointed by in line with Constitution of Kenya</i>
1.1(v)	Project Manager is General Manager, Internal Audit & Risk Assurance
1.1(d)	The contract name is Statutory Audit and Sub-Grantee Projects Audits for Financial Years 2023/2024, 2024/2025 And 2025/2026
1.1(g)	The Procuring Entity is Water Sector Trust Fund
1.1(l)	The Member in Charge is General Manager, Internal Audit & Risk Assurance
1.1(o)	The Service Provider is
1.4	<p>The addresses are:</p> <p>Chief Executive Officer Water Sector Trust Fund P.O BOX 49699-00100 Nairobi, CIC Plaza, Upper Hill</p> <p>Service Provider: To be amended during contract signing</p> <p>Attention: _____</p> <p>Email address _____</p>
1.6	<p>The Authorized Representatives are:</p> <p>For the Procuring Entity: General Manager, Internal Audit & Risk Assurance</p> <p>For the Service Provider: <u>TBD</u></p>
2.1	The date on which this Contract shall come into effect is the last date of contract signing
2.2.2	The Starting Date for the commencement of Services is 1st August 2024
2.3	The Intended Completion Date is 31st December 2026
2.4.1	If the value engineering proposal is approved by the Procuring Entity the amount to be paid to the Service Provider shall be ___% (insert appropriate percentage. The percentage is normally up to 50%) of the reduction in the Contract Price.
3.2.3	Activities prohibited after termination of this Contract are: Disclosure of confidential information relating to the assignment and others prohibited by the professional accountancy regulating body, Institute of Certified Public Accountants of Kenya (ICPAK)
3.4	<p>The risks and coverage by insurance shall be:</p> <ul style="list-style-type: none"> (i) Third Party motor vehicle <u>N/A</u> (ii) Third Party liability <u>Service provider</u> (iii) Procuring Entity's liability and workers' compensation (iv) Professional liability <u>Service provider</u> (v) Loss or damage to equipment and property <u>service provider</u>
3.5(d)	The other actions are N/A

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
3.7	Restrictions on the use of documents prepared by the Service Provider are: reports submitted for use by only Water Sector Trust Fund, Office of the Auditor General and Development Partners. _____
3.8.1	The liquidated damages rate is _____ per day The maximum amount of liquidated damages for the whole contract is _____ percent of the final Contract Price. Not Applicable
3.8.3	The percentage _____ to be used for the calculation of Lack of performance Penalty(ies) is _____.
5.1	The assistance and exemptions provided to the Service Provider are: necessary logistical arrangements to travel to the field.
6.4	Payments shall be made according to the following schedule: <ul style="list-style-type: none"> • 20% (upon signing engagement letter) • 30% (upon submission of draft report and • 50% (upon submission of final report)
6.5	Payment shall be made within 30 days of receipt of the invoice and the relevant documents specified in Sub-Clause 6.4,
6.6.1	Price adjustment is _____ in accordance with Sub-Clause 6.6. The coefficients for adjustment of prices are _Not Applicable (a) For local currency: A_L is _____ B_L is _____ C_L is _____ L_{mc} and L_{oc} are the index for Labor from _____ I_{mc} and I_{oc} are the index for _____ from _____ (b) For foreign currency A_F is _____ B_F is _____ C_F is _____ L_{mc} and L_{oc} are the index for Labor from _____ I_{mc} and I_{oc} are the index for _____ from _____
7.1	The principle and modalities of inspection of the Services by the Procuring Entity are as follows: <i>As agreed by the parties during the contract signing.</i>
9.1	The designated Appointing Authority for a new Adjudicator is as agreed by the parties during the signing of the contract
9.2	The Adjudicator is person to resolve any dispute. Who will be paid a rate agreed upon per hour of work during contracting and reimbursable expenses will be agreed upon.

C. APPENDICES

Appendix A - Description of the Services

Give detailed descriptions of the Services to be provided, dates for completion of various tasks, place of performance for different tasks, specific tasks to be approved by Procuring Entity, etc.

Appendix B - Schedule of Payments and Reporting Requirements

List all milestones for payments and list the format, frequency, and contents of reports or products to be delivered; persons to receive them; dates of submission; etc. If no reports are to be submitted, state here “Not applicable.”

Appendix C - Breakdown of Contract Price

List here the elements of cost used to arrive at the breakdown of the lump-sum price:

- 1. Rates for Equipment Usage or Rental or for Personnel (Key Personnel and other Personnel).*
- 2. Reimbursable expenditures.*

This appendix will exclusively be used for determining remuneration for additional Services.

Appendix D - Services and Facilities Provided by the Procuring Entity

D. FORMS

SECTION VIII -CONTRACT FORMS

FORM NO. 1 - PERFORMANCE SECURITY – (Unconditional Demand Bank Guarantee)

[Guarantor letterhead or SWIFT identifier code]

Beneficiary: _____ *[insert name and Address of Procuring Entity]*

Date: _____ *[Insert date of issue]*

PERFORMANCE GUARANTEE No.: _____

Guarantor:..... *[Insert name and address of place of issue, unless indicated in the letterhead]*

1. We have been informed that _____ (hereinafter called "the Applicant") has entered into Contract No. _____ dated _____ with the Beneficiary, for the execution of _____ (herein after called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.
3. At the request of the Applicant, we as Guarantor, hereby irrevocably under take to pay the Beneficiary any sum or sums not exceeding in total an amount of _____(),¹such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.
4. This guarantee shall expire, no later than the....Day of....., 2...², and any demand for payment under it must be received by us at this office indicated above on or before that date.
5. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months]* *[one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.” _____

[Name of Authorized Official, signature(s) and seals/stamps]

Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.

¹The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Beneficiary.

²Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9. The Procuring Entity should note that in the event of an extension of this date for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Procuring Entity might consider adding the following text to the form, at the end of the pen ultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months]* *[one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”

FORM No. 2 - PERFORMANCE SECURITY OPTION 2 – (Performance Bond)

[Note: Procuring Entities are advised to use Performance Security–Unconditional Demand Bank Guarantee instead of Performance Bond due to difficulties involved in calling Bond holder to action]

[Guarantor letterhead or SWIFT identifier code]

Beneficiary: *[insert name and Address of Procuring Entity]* **Date:** _____ *[Insert date of issue]*

PERFORMANCE BOND No.: _____

Guarantor: *[Insert name and address of place of issue, unless indicated in the letterhead]*

1. By this Bond _____ as Principal (hereinafter called “the Contractor”) and _____] as Surety (herein after called “the Surety”), are held and firmly bound unto _____] as Obligee (herein after called “the Procuring Entity”) in the amount of _____ for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.
2. WHEREAS the Contractor has entered into a written Agreement with the Procuring Entity dated the _____ day of _____, 20_____, for _____ in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are herein after referred to as the Contract.
3. NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Procuring Entity to be, in default under the Contract, the Procuring Entity having performed the Procuring Entity's obligations there under, the Surety may promptly remedy the default, or shall promptly:
 - 1) Complete the Contract in accordance with its terms and conditions; or
 - 2) Obtain a tender or tenders from qualified tenderers for submission to the Procuring Entity for completing the Contract in accordance with its terms and conditions, and upon determination by the Procuring Entity and the Surety of the lowest responsive Tenderers, arrange for a Contract between such Tenderer, and Procuring Entity and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable here under, the amount set forth in the first paragraph hereof. The term “Balance of the Contract Price,” as used in this paragraph, shall mean the total amount payable by Procuring Entity to Contractor under the Contract, less the amount properly paid by Procuring Entity to Contractor; or
 - 3) pay the Procuring Entity the amount required by Procuring Entity to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.
4. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.
5. Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking-Over Certificate. No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Procuring Entity named herein or the heirs, executors, administrators, successors, and assigns of the Procuring Entity.
6. In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this day _____ of _____ 20_____.

SIGNED ON _____ on behalf of
by _____ in the capacity
of In the presence of

SIGNED ON _____ on behalf of
By _____ in the capacity
of In the presence of

FORM NO. 3 - ADVANCE PAYMENT SECURITY [Demand Bank Guarantee]

[Guarantor letter head or SWIFT identifier code] [Guarantor letter head or SWIFT identifier code]

Beneficiary: _____ *[Insert name and Address of Procuring Entity]*

Date: _____ *[Insert date of issue]*

ADVANCE PAYMENT GUARANTEE No.: _____ *[Insert guarantee*

reference number] **Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

1. We have been informed that _____ (hereinafter called "the Applicant") has entered into Contract No. _____ dated _____ with the Beneficiary, for the execution of _____ (herein after called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum _____ () is to be made against an advance payment guarantee.
3. At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of ___ ()' upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:
 - a) Has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or
 - b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.
4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Applicant on its account number _____ at
5. The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the day of , 2,² whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.
6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months] [one year]*, in response to the Beneficiary' s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

.....
[Name of Authorized Official, signature(s) and seals/stamps]

Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.

¹The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Procuring Entity.

²Insert the expected expiration date of the Time for Completion. The Procuring Entity should note that in the event of an extension of the time for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Procuring Entity might consider adding the following ext. to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months] [one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

FORM NO. 4 BENEFICIAL OWNERSHIP DISCLOSURE FORM

(Amended and issued pursuant to PPRA CIRCULAR No. 02/2022)

INSTRUCTIONS TO TENDERERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE FORM

This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful tenderer pursuant to Regulation 13 (2A) and 13 (6) of the Companies (Beneficial Ownership Information) Regulations, 2020. In case of joint venture, the tenderer must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.

For the purposes of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the legal person (tenderer) or arrangements or a natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person (Tenderer) or arrangement.

Tender Reference No.: _____ [insert identification no] Name of the Tender Title/Description: _____ [insert name of the assignment] to: _____ [insert complete name of Procuring Entity]

In response to the requirement in your notification of award dated ___ [insert date of notification of award] to furnish additional information on beneficial ownership: _____ [select one option as applicable and delete the options that are not applicable]

I) We here by provide the following beneficial ownership information.

Details of beneficial ownership

	Details of all Beneficial Owners		% of shares a person holds in the company Directly or indirectly	% of voting rights a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)	Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)
1.	Full Name		Directly----- ----- % of shares	Directly.....% of voting rights	1. Having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer: Yes -----No----	1. Exercises significant influence or control over the Company body of the Company (tenderer)
	National identity card number or Passport number			Indirectly----- ----- % of shares		
	Personal Identification Number (where applicable)					

Details of all Beneficial Owners		% of shares a person holds in the company Directly or indirectly	% of voting rights a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)	Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)	
	Nationality				2. Is this right held directly or indirectly?: Direct..... Indirect.....	Yes ----No-- -- 2. Is this influence or control exercised directly or indirectly? Direct..... Indirect..... ...
	Date of birth [dd/mm/yyyy]					
	Postal address					
	Residential address					
	Telephone number					
	Email address					
	Occupation or profession					
2.	Full Name		Directly----- ----- % of shares Indirectly---- ----- % of shares	Directly.....% of voting rights Indirectly----- % of voting rights	1. Having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer: Yes ----No---- 2. Is this right held directly or indirectly?: Direct..... Indirect.....	1. Exercises significant influence or control over the Company body of the Company (tenderer) Yes ----No-- -- 2. Is this influence or control exercised directly or indirectly? Direct..... Indirect..... ...
	National identity card number or Passport number					
	Personal Identification Number (where applicable)					
	Nationality(ies)					
	Date of birth [dd/mm/yyyy]					
	Postal address					
	Residential address					
	Telephone number					
	Email address					
	Occupation or profession					
3. e.t .c						

II) Am fully aware that beneficial ownership information above shall be reported to the Public Procurement Regulatory Authority together with other details in relation to contract awards and shall be maintained in

the Government Portal, published and made publicly available pursuant to Regulation 13(5) of the Companies (Beneficial Ownership Information) Regulations, 2020.(Notwithstanding this paragraph Personally Identifiable Information in line with the Data Protection Act shall not be published or made public). *Note that Personally Identifiable Information (PII) is defined as any information that can be used to distinguish one person from another and can be used to deanonymize previously anonymous data. This information includes National identity card number or Passport number, Personal Identification Number, Date of birth, Residential address, email address and Telephone number.*

III) In determining who meets the threshold of who a beneficial owner is, the Tenderer must consider a natural person who in relation to the company:

- (a) holds at least ten percent of the issued shares in the company either directly or indirectly;
- (b) exercises at least ten percent of the voting rights in the company either directly or indirectly;
- (c) holds a right, directly or indirectly, to appoint or remove a director of the company; or
- (d) exercises significant influence or control, directly or indirectly, over the company.

IV) What is stated to herein above is true to the best of my knowledge, information and belief.

Name of the Tenderer:[insert complete name of the Tenderer]_____*

*Name of the person duly authorized to sign the Tender on behalf of the Tenderer: ** [insert complete name of person duly authorized to sign the Tender]*

Designation of the person signing the Tender: [insert complete title of the person signing the Tender]

Signature of the person named above: [insert signature of person whose name and capacity are shown above]

Date this [insert date of signing] day of..... [Insert month], [insert year]

Bidder Official Stamp