

# THE REPUBLIC OF KENYA



## ATHI WATER WORKS DEVELOPMENT AGENCY (AWWDA)



Financial Cooperation between Kenya and  
Germany, with Support of KfW Development  
Bank



## NAIROBI SATELLITE TOWNS WATER AND SANITATION DEVELOPMENT PROGRAMME; PHASE 1

**SUPPLY AND DELIVERY OF CONSUMER WATER METERS – LOT 3**

**TENDER No. AWWDA/KfW/NST/G/03/2021**

**BMZ No. 2013 65 436**

## BIDDING DOCUMENT

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INSTRUCTIONS TO BIDDERS AND BID DATA SHEET  
EVALUATION AND QUALIFICATION CRITERIA  
BIDDING FORMS INCLUDING BILL OF QUANTITIES  
SCHEDULE OF REQUIREMENTS  
GENERAL CONDITIONS OF CONTRACT  
SPECIAL CONDITIONS OF CONTRACT  
CONTRACT FORMS

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**May 2021**

# **Bidding Document for Procurement of Goods**

## **Procurement of:**

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### **Nairobi Satellite Towns Water and Sanitation Development Programme, Phase 1**

#### **Supply and Delivery of Consumer Water Meters – Lot 3**

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**ICB No:** AWWDA/KfW/NST/G/03/2021

**Project:** NAIROBI SATELLITE TOWNS WATER AND SANITATION  
DEVELOPMENT PROGRAMME, PHASE 1 – SUPPLY AND  
DELIVERY OF CONSUMER WATER METERS –LOT 3

**Purchaser:** ATHI WATER WORKS DEVELOPMENT AGENCY

**Country:** REPUBLIC OF KENYA

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## **PART 1 - BIDDING PROCEDURES**

# Section I. Instructions to Bidders

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## Section I. Instructions to Bidders

### A. General

- 1. Scope of Bid**
  - 1.1 In connection with the Invitation for Bids, **specified in the Bid Data Sheet (BDS)**, the Purchaser, **as specified in the BDS**, issues these Bidding Documents for the supply of Goods and Related Services incidental thereto as specified in Section VII, Schedule of Requirements. The name, identification and number of lots (contracts) of this International Competitive Bidding (ICB) procurement are **specified in the BDS**.
  - 1.2 Throughout these Bidding Documents:
    - (a) the term “in writing” means communicated in written form (e.g. by mail, e-mail, fax, telex) with proof of receipt;
    - (b) if the context so requires, “singular” means “plural” and vice versa; and
    - (c) “day” means calendar day.
- 2. Source of Funds**
  - 2.1 The Borrower or Recipient (hereinafter called “Borrower”) **specified in the BDS** has received financing (hereinafter called “funds”) from KfW Development Bank (KfW) (hereinafter called “the Bank”) in an amount **specified in the BDS**, toward the project named **in the BDS**. The Borrower intends to apply a portion of the funds to eligible payments under the contract(s) for which these Bidding Documents are issued.
  - 2.2 Payment by the Bank will be made only at the request of the Borrower and upon approval by the Bank in accordance with the terms and conditions of the Loan (or other financing) Agreement. The Loan (or other financing) Agreement prohibits a withdrawal from the Loan (or other financing) account for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import, to the knowledge of the Bank, is prohibited by decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations. No party other than the Borrower shall derive any rights from the Loan (or other financing) Agreement or have any claim to the proceeds of the Loan (or other financing).
- 3. Corrupt and Fraudulent Practices**
  - 3.1 The Bank requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Section VI.
  - 3.2 In further pursuance of this policy, Bidders shall permit and shall cause its agents (where declared or not), sub-contractors, sub-consultants, service providers or suppliers and to permit the Bank to inspect all accounts, records and other documents relating to the submission of the application, bid submission (in case





prequalified), and contract performance (in the case of award), and to have them audited by auditors appointed by the Bank.

#### 4. Eligible Bidders

- 4.1 A Bidder may be a firm that is a private entity, a government-owned entity—subject to ITB 4.5—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 letter of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the 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 bidding process and, in the event the JV is awarded the Contract, during contract execution. **Unless specified in the BDS**, there is no limit on the number of members in a JV.
- 4.2 A Bidder shall not have a conflict of interest. Any Bidder found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest for the purpose of this bidding process, if the Bidder:
- (a) directly or indirectly controls, is controlled by or is under common control with another Bidder; or
  - (b) receives or has received any direct or indirect subsidy from another Bidder; or
  - (c) has the same legal representative as another Bidder; or
  - (d) has a relationship with another Bidder, directly or through common third parties, that puts it in a position to influence the bid of another Bidder, or influence the decisions of the Purchaser regarding this bidding process; or
  - (e) participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which such Bidder is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or
  - (f) any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the bid; or
  - (g) any of its affiliates has been hired (or is proposed to be hired) by the Purchaser or Borrower for the Contract implementation; or
  - (h) would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the BDS ITB 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
- (i) has a close business or family relationship with a professional staff of the Borrower (or of the project implementing agency, or of a recipient of a part of the loan) who: (i) are directly or indirectly involved in the preparation of the bidding documents or specifications of the contract, and/or the bid evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Bank throughout the procurement process and execution of the contract
- 4.3 A Bidder may have the nationality of any country, subject to the restrictions pursuant to ITB 4.7. A Bidder shall be deemed to have the nationality of a country if the Bidder 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 sub-contractors or sub-consultants for any part of the Contract including related Services.
- 4.4 A Bidder that has been sanctioned by the Bank in accordance with the above ITB 3.1, including in accordance with the Bank's Guidelines on Preventing and Combating Corruption in Projects Financed by the Bank's Credits and Grants ("Anti-Corruption Guidelines"), shall be ineligible to be prequalified for, bid for, or be awarded a Bank-financed contract or benefit from a Bank-financed contract, financially or otherwise, during such period of time as the Bank shall have determined. The list of debarred firms and individuals is available as **specified in the BDS**.
- 4.5 Bidders that are Government-owned enterprises or institutions in the Purchaser's Country may participate only if they can establish that they (i) are legally and financially autonomous (ii) operate under commercial law, and (iii) are not dependent agencies of the Purchaser. To be eligible, a government-owned enterprise or institution shall establish to the Bank's satisfaction, through all relevant documents, including its Charter and other information the Bank may request, that it: (i) is a legal entity separate from the government (ii) does not currently receive substantial subsidies or budget support; (iii) operates like any commercial enterprise, and, inter alia, is not obliged to pass on its surplus to the government, can acquire rights and liabilities, borrow funds and be liable for repayment of its debts, and can be declared bankrupt; and (iv) is not bidding for a contract to be awarded by the department or agency of the government which under their applicable laws or regulations is the reporting or supervisory authority of the

enterprise or has the ability to exercise influence or control over the enterprise or institution.

4.6 A Bidder shall not be under suspension from bidding by the Purchaser as the result of the operation of a Bid–Securing Declaration.

4.7 Firms and individuals may be ineligible if so indicated in Section V and (a) as a matter of law or official regulations, the Borrower’s country prohibits commercial relations with that country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the supply of goods or the contracting of works or services required; or (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower’s country 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.

4.8 A Bidder shall provide such evidence of eligibility satisfactory to the Purchaser, as the Purchaser shall reasonably request.

## **5. Eligible Goods and Related Services**

5.1 All the Goods and Related Services to be supplied under the Contract and financed by the Bank may have their origin in any country in accordance with Section V, Eligible Countries.

5.2 For purposes of this Clause, the term “goods” includes commodities, raw material, machinery, equipment, and industrial plants; and “related services” includes services such as insurance, installation, training, and initial maintenance.

5.3 The term “origin” means the country where the goods have been mined, grown, cultivated, produced, manufactured or processed; or, through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

## **B. Contents of Bidding Document**

## **6. Sections of Bidding Document**

6.1 The Bidding Documents consist 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 ITB 8.

### **PART 1 Bidding Procedures**

- Section I. Instructions to Bidders (ITB)
- Section II. Bidding Data Sheet (BDS)
- Section III. Evaluation and Qualification Criteria
- Section IV. Bidding Forms
- Section V. Eligibility Criteria

- Section VI. KfW Policy – Sanctionable Practice – Social and Environmental Responsibility

## **PART 2 Supply Requirements**

- Section VII. Schedule of Requirements

## **PART 3 Contract**

- Section VIII. General Conditions of Contract (GCC)
- Section IX. Special Conditions of Contract (SCC)
- Section X. Contract Forms

- 6.2 The Invitation for Bids issued by the Purchaser is not part of the Bidding Document.
- 6.3 Unless obtained directly from the Purchaser, the Purchaser is not responsible for the completeness of the document, responses to requests for clarification, the Minutes of the pre-Bid meeting (if any), or Addenda to the Bidding Document in accordance with ITB 8. In case of any contradiction, documents obtained directly from the Purchaser shall prevail.
- 6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents and to furnish with its Bid all information or documentation as is required by the Bidding Documents.

### **7. Clarification of Bidding Documents**

- 7.1 A Bidder requiring any clarification of the Bidding Document shall contact the Purchaser in writing at the Purchaser's address **specified in the BDS**. The Purchaser will respond in writing to any request for clarification, provided that such request is received prior to the deadline for submission of bids within a period **specified in the BDS**. The Purchaser shall forward copies of its response to all Bidders who have acquired the Bidding Documents in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. If so **specified in the BDS**, the Purchaser shall also promptly publish its response at the web page **identified in the BDS**. Should the clarification result in changes to the essential elements of the Bidding Documents, the Purchaser shall amend the Bidding Documents following the procedure under ITB 8 and ITB 22.2.

### **8. Amendment of Bidding Document**

- 8.1 At any time prior to the deadline for submission of bids, the Purchaser may amend the Bidding Documents by issuing addenda.
- 8.2 Any addendum issued shall be part of the Bidding Documents and shall be communicated in writing to all who have obtained the Bidding Documents from the Purchaser in accordance with ITB 6.3. The Purchaser shall also promptly publish the addendum on the Purchaser's web page in accordance with ITB 7.1.

- 8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Purchaser may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB 22.2.

### C. Preparation of Bids

- 9. Cost of Bidding** 9.1 The Bidder shall bear all costs associated with the preparation and submission of its bid, and the Purchaser shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
- 10. Language of Bid** 10.1 The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Purchaser, shall be written in the language **specified in the BDS**. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages into the language **specified in the BDS**, in which case, for purposes of interpretation of the Bid, such translation shall govern.
- 11. Documents Comprising the Bid** 11.1 The Bid shall comprise the following:
- (a) Letter of Bid in accordance with ITB 12;
  - (b) completed schedules , in accordance with ITB 12 and 14
  - (c) Bid Security or Bid-Securing Declaration, in accordance with ITB 19.1;
  - (d) alternative bids, if permissible, in accordance with ITB 13;
  - (e) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2;
  - (f) documentary evidence in accordance with ITB 17 establishing the Bidder's qualifications to perform the contract if its bid is accepted;
  - (g) documentary evidence in accordance with ITB 17 establishing the Bidder's eligibility to bid;
  - (h) documentary evidence in accordance with ITB 16, that the Goods and Related Services to be supplied by the Bidder are of eligible origin;
  - (i) documentary evidence in accordance with ITB 16 and 30, that the Goods and Related Services conform to the Bidding Documents;
  - (j) Dully filled and Stamped Declaration of Undertaking Form
  - (k) any other document **required in the BDS**.
- 11.2 In addition to the requirements under ITB 11.1, bids submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a

Joint Venture Agreement in the event of a successful bid shall be signed by all members and submitted with the bid, together with a copy of the proposed Agreement.

- 11.3 The Bidder shall furnish in the Letter of Bid information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Bid.

**12. Letter of Bid and Price Schedules**

- 12.1. The Letter of Bid and Price Schedules shall be prepared using the relevant forms furnished in Section IV, Bidding Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITB 20.2. All blank spaces shall be filled in with the information requested.

**13. Alternative Bids**

- 13.1. Unless otherwise **specified in the BDS**, alternative bids shall not be considered.

**14. Bid Prices and Discounts**

- 14.1 The prices and discounts quoted by the Bidder in the Letter of Bid and in the Price Schedules shall conform to the requirements specified below.
- 14.2 All lots (contracts) and items must be listed and priced separately in the Price Schedules.
- 14.3 The price to be quoted in the Letter of Bid in accordance with ITB 12.1 shall be the total price of the bid, excluding any discounts offered.
- 14.4 The Bidder shall quote any discounts and indicate the methodology for their application in the Letter of Bid, in accordance with ITB 12.1.
- 14.5 Prices quoted by the Bidder shall be fixed during the Bidder's performance of the Contract and not subject to variation on any account, **unless otherwise specified in the BDS**. A bid submitted with an adjustable price quotation shall be treated as nonresponsive and shall be rejected, pursuant to ITB 29. However, if in accordance with the BDS, prices quoted by the Bidder shall be subject to adjustment during the performance of the Contract, a bid submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.
- 14.6 If so specified in ITB 1.1, bids are being invited for individual lots (contracts) or for any combination of lots (packages). Unless otherwise **specified in the BDS**, prices quoted shall correspond to 100 % of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Bidders wishing to offer discounts for the award of more than one Contract shall specify in their bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITB 14.4 provided the bids for all lots (contracts) are opened at the same time.

- 14.7 The terms EXW, CIP, and other similar terms shall be governed by the rules prescribed in the current edition of Incoterms, published by The International Chamber of Commerce, **as specified in the BDS.**
- 14.8 Prices shall be quoted as specified in each Price Schedule included in Section IV, Bidding Forms. The dis-aggregation of price components is required solely for the purpose of facilitating the comparison of bids by the Purchaser. This shall not in any way limit the Purchaser's right to contract on any of the terms offered. In quoting prices, the Bidder shall be free to use transportation through carriers registered in any eligible country, in accordance with Section V, Eligible Countries. Similarly, the Bidder may obtain insurance services from any eligible country in accordance with Section V, Eligible Countries. Prices shall be entered in the following manner:
- (a) For Goods manufactured in the Purchaser's Country:
    - (i) the price of the Goods quoted EXW (ex-works, ex-factory, ex warehouse, ex showroom, or off-the-shelf, as applicable), including all customs duties and sales and other taxes already paid or payable on the components and raw material used in the manufacture or assembly of the Goods;
    - (ii) any Purchaser's Country sales tax and other taxes which will be payable on the Goods if the contract is awarded to the Bidder; and
    - (iii) the price for inland transportation, insurance, and other local services required to convey the Goods to their final destination (Project Site) **specified in the BDS.**
  - (b) For Goods manufactured outside the Purchaser's Country, to be imported:
    - (i) the price of the Goods, quoted CIP named place of destination, in the Purchaser's Country, as **specified in the BDS;**
    - (ii) the price for inland transportation, insurance, and other local services required to convey the Goods from the named place of destination to their final destination (Project Site) **specified in the BDS;**
  - (c) For Goods manufactured outside the Purchaser's Country, already imported:
    - (i) the price of the Goods, including the original import value of the Goods; plus any mark-up (or rebate); plus any other related local cost, and custom duties and other import taxes already paid or to be paid on the Goods already imported.



- (ii) the custom duties and other import taxes already paid (need to be supported with documentary evidence) or to be paid on the Goods already imported;
- (iii) the price of the Goods, obtained as the difference between (i) and (ii) above;
- (iv) any Purchaser's Country sales and other taxes which will be payable on the Goods if the contract is awarded to the Bidder; and
- (v) the price for inland transportation, insurance, and other local services required to convey the Goods from the named place of destination to their final destination (Project Site) **specified in the BDS.**
- (b) for Related Services, other than inland transportation and other services required to convey the Goods to their final destination, whenever such Related Services are specified in the Schedule of Requirements:
  - (ii) the price of each item comprising the Related Services (inclusive of any applicable taxes).

**15. Currencies of Bid and Payment**

- 15.1 The currency(ies) of the bid and the currency(ies) of payments shall be **as specified in the BDS.** The Bidder shall quote in the currency of the Purchaser's Country the portion of the bid price that corresponds to expenditures incurred in the currency of the Purchaser's country, unless otherwise **specified in the BDS.**
- 15.2 The Bidder may express the bid price in any currency. If the Bidder wishes to be paid in a combination of amounts in different currencies, it may quote its price accordingly but shall use no more than three foreign currencies in addition to the currency of the Purchaser's Country.

**16. Documents Establishing the Eligibility and Conformity of the Goods and Related Services**

- 16.1 To establish the eligibility of the Goods and Related Services in accordance with ITB 5, Bidders shall complete the country of origin declarations in the Price Schedule Forms, included in Section IV, Bidding Forms.
- 16.2 To establish the conformity of the Goods and Related Services to the Bidding Documents, the Bidder shall furnish as part of its Bid the documentary evidence that the Goods conform to the technical specifications and standards specified in Section VII, Schedule of Requirements.
- 16.3 The documentary evidence may be in the form of literature, drawings or data, and shall consist of a detailed item by item description of the essential technical and performance characteristics of the Goods and Related Services, demonstrating substantial responsiveness of the Goods and Related Services to the technical specification, and if applicable, a statement of deviations

and exceptions to the provisions of the Section VII, Schedule of Requirements.

16.4 The Bidder shall also furnish a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the Goods during the period **specified in the BDS** following commencement of the use of the goods by the Purchaser.

16.5 Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by the Purchaser in the Schedule of Requirements, are intended to be descriptive only and not restrictive. The Bidder may offer other standards of quality, brand names, and/or catalogue numbers, provided that it demonstrates, to the Purchaser's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Section VII, Schedule of Requirements.

**17. Documents  
Establishing the  
Eligibility and  
Qualifications  
of the Bidder**

17.1 To establish Bidder's their eligibility in accordance with ITB 4, Bidders shall complete the Letter of Bid, included in Section IV, Bidding Forms.

17.2 The documentary evidence of the Bidder's qualifications to perform the contract if its bid is accepted shall establish to the Purchaser's satisfaction:

- (a) that, if **required in the BDS**, a Bidder that does not manufacture or produce the Goods it offers to supply shall submit the Manufacturer's Authorization using the form included in Section IV, Bidding Forms to demonstrate that it has been duly authorized by the manufacturer or producer of the Goods to supply these Goods in the Purchaser's Country;
- (b) that, if **required in the BDS**, in case of a Bidder not doing business within the Purchaser's Country, the Bidder is or will be (if awarded the contract) represented by an Agent in the country equipped and able to carry out the Supplier's maintenance, repair and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications; and
- (c) that the Bidder meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.

**18. Period of  
Validity of Bids**

18.1. Bids shall remain valid for the period **specified in the BDS** after the bid submission deadline date prescribed by the Purchaser in accordance with ITB 22.1. A bid valid for a shorter period shall be rejected by the Purchaser as nonresponsive.

18.2. In exceptional circumstances, prior to the expiration of the bid validity period, the Purchaser may request bidders to extend the period of validity of their bids. The request and the responses shall

be made in writing. If a Bid Security is requested in accordance with ITB Clause 19, it shall also be extended for a corresponding period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its bid, except as provided in ITB 18.3.

18.3. If the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial bid validity, the Contract price shall be determined as follows:

- (a) In the case of fixed price contracts, the Contract price shall be the bid price adjusted by the factor **specified in the BDS**.
- (b) In the case of adjustable price contracts, no adjustment shall be made.
- (c) In any case, bid evaluation shall be based on the bid price without taking into consideration the applicable correction from those indicated above.

## **19. Bid Security**

19.1. The Bidder shall furnish as part of its bid, either a Bid-Securing Declaration or a bid security, as **specified in the BDS**, in original form and, in the case of a bid security. In the amount and currency **specified in the BDS**.

19.2. A Bid Securing Declaration shall use the form included in Section IV, Bidding Forms.

19.3. If a bid security is specified pursuant to ITB 19.1, the bid security shall be a demand guarantee in any of the following forms at the Bidder's option :

- (a) an unconditional guarantee issued by a bank or financial institution (such as an insurance, bonding or surety company);
- (b) an irrevocable letter of credit;
- (c) a cashier's or certified check; or
- (d) another security **specified in the BDS**,

from a reputable source from an eligible country. If the unconditional guarantee is issued by a financial institution located outside the Purchaser's Country, the issuing financial institution shall have a correspondent financial institution located in the Purchaser's Country to make it enforceable. In the case of a bank guarantee, the bid security shall be submitted either using the Bid Security Form included in Section IV, Bidding Forms, or in another substantially similar format approved by the Purchaser prior to bid submission. The bid security shall be valid for twenty-eight (28) days beyond the

original validity period of the bid, or beyond any period of extension if requested under ITB 18.2.

- 19.4. If a Bid Security is specified pursuant to ITB 19.1, any bid not accompanied by a substantially responsive Bid Security shall be rejected by the Purchaser as non-responsive.
- 19.5. If a Bid Security is specified pursuant to ITB 19.1, the Bid Security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's signing the contract and furnishing the Performance Security pursuant to ITB 42.
- 19.6. The Bid Security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the contract and furnished the required performance security.
- 19.7. The Bid Security may be forfeited or the Bid Securing Declaration executed:
- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid, or any extension thereto provided by the Bidder ; or
  - (b) if the successful Bidder fails to:
    - (i) sign the Contract in accordance with ITB41; or
    - (ii) furnish a performance security in accordance with ITB 42.
- 19.8. The bid security or Bid- Securing Declaration of a JV must be in the name of the JV that submits the bid. If the JV has not been legally constituted into a legally enforceable JV at the time of bidding, the bid security or Bid-Securing Declaration shall be in the names of all future members as named in the letter of intent referred to in ITB 4.1 and ITB 11.2.
- 19.9. If a bid security is **not required in the BDS**, pursuant to ITB 19.1, and
- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid, or
  - (b) if the successful Bidder fails to: sign the Contract in accordance with ITB 41; or furnish a performance security in accordance with ITB 42;

the Borrower may, **if provided for in the BDS**, declare the Bidder ineligible to be awarded a contract by the Purchaser for a period of time **as stated in the BDS**.

## 20. Format and Signing of Bid

- 20.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB 11 and clearly mark it "ORIGINAL." Alternative bids, if permitted in accordance with ITB 13, shall be

clearly marked “ALTERNATIVE.” In addition, the Bidder shall submit copies of the bid, in the number **specified in the BDS** and clearly mark them “COPY.” In the event of any discrepancy between the original and the copies, the original shall prevail.

- 20.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation **as specified in the BDS** and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the bid where entries or amendments have been made shall be signed or initialed by the person signing the bid.
- 20.3 In case the Bidder is a JV, the Bid 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.
- 20.4 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the bid.

## **D. Submission and Opening of Bids**

### **21. Sealing and Marking of Bids**

- 21.1. The Bidder shall enclose the original and all copies of the bid, including alternative bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as “ORIGINAL”, “ALTERNATIVE” and “COPY.” These envelopes containing the original and the copies shall then be enclosed in one single envelope.
- 21.2. The inner and outer envelopes shall:
- (a) bear the name and address of the Bidder;
  - (b) be addressed to the Purchaser in accordance with ITB 24.1;
  - (c) bear the specific identification of this bidding process indicated in ITB 1.1; and
  - (d) bear a warning not to open before the time and date for bid opening.
- 21.3. If all envelopes are not sealed and marked as required, the Purchaser will assume no responsibility for the misplacement or premature opening of the bid.

### **22. Deadline for Submission of Bids**

- 22.1. Bids must be received by the Purchaser at the address and no later than the date and time **specified in the BDS**. When so **specified in the BDS**, bidders shall have the option of submitting their bids electronically. Bidders submitting bids electronically shall follow the electronic bid submission procedures **specified in the BDS**.

- 22.2. The Purchaser may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Documents in accordance with ITB 8, in which case all rights and obligations of the Purchaser and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

### 23. Late Bids

- 23.1. The Purchaser shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB 22. Any bid received by the Purchaser after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.

### 24. Withdrawal, Substitution, and Modification of Bids

- 24.1. A Bidder may withdraw, substitute, or modify its Bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization (the power of attorney) in accordance with ITB 20.2, (except that withdrawal notices do not require copies ). The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:
- (a) prepared and submitted in accordance with ITB 20 and 21 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL,” “SUBSTITUTION,” or “MODIFICATION;” and
  - (b) received by the Purchaser prior to the deadline prescribed for submission of bids, in accordance with ITB 22.
- 24.2. Bids requested to be withdrawn in accordance with ITB 24.1 shall be returned unopened to the Bidders.
- 24.3. No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Letter of Bid or any extension thereof.

### 25. Bid Opening

- 25.1. Except as in the cases specified in ITB 23 and 24, the Purchaser shall publicly open and read out in accordance with ITB 25.3 all bids received by the deadline at the date, time and place **specified in the BDS** in the presence of Bidders’ designated representatives and anyone who choose to attend. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 22.1, shall be as **specified in the BDS**.
- 25.2. First, envelopes marked “WITHDRAWAL” shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. 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 Bidder, the corresponding bid will be opened. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked “SUBSTITUTION” shall

be opened and read out and exchanged with the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. No Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at bid opening. Envelopes marked “MODIFICATION” shall be opened and read out with the corresponding Bid. No Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Bid opening. Only bids that are opened and read out at Bid opening shall be considered further.

- 25.3. All other envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the total Bid Prices, per lot (contract) if applicable, including any discounts and alternative bids; the presence or absence of a Bid Security, if required; and any other details as the Purchaser may consider appropriate. Only discounts and alternative bids read out at Bid opening shall be considered for evaluation. The Letter of Bid and the Price Schedules are to be initialed by representatives of the Purchaser attending bid opening in the manner **specified in the BDS**. The Purchaser shall neither discuss the merits of any bid nor reject any bid (except for late bids, in accordance with ITB 25.1).
- 25.4. The Purchaser shall prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per lot (contract) if applicable, including any discounts, and alternative bids; and the presence or absence of a Bid Security, if one was required. The Bidders’ representatives who are present shall be requested to sign the record. The omission of a Bidder’s signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders.

## **E. Evaluation and Comparison of Bids**

- 26. Confidentiality**
- 26.1 Information relating to the evaluation of bids and recommendation of contract award, shall not be disclosed to bidders or any other persons not officially concerned with the bidding process until information on Contract Award is communication to all Bidders in accordance with ITB 40.
- 26.2 Any effort by a Bidder to influence the Purchaser in the evaluation or contract award decisions may result in the rejection of its Bid.
- 26.3 Notwithstanding ITB 26.2, from the time of bid opening to the time of Contract Award, if any Bidder wishes to contact the Purchaser on any matter related to the bidding process, it should do so in writing.

- 27. Clarification of Bids**
- 27.1 To assist in the examination, evaluation, comparison of the bids, and qualification of the Bidders, the Purchaser may, at its discretion, ask any Bidder for a clarification of its Bid. Any clarification submitted by a Bidder in respect to its Bid and that is not in response to a request by the Purchaser shall not be considered. The Purchaser'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 Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Purchaser in the Evaluation of the bids, in accordance with ITB 31.
- 27.2 If a Bidder does not provide clarifications of its bid by the date and time set in the Purchaser's request for clarification, its bid may be rejected.
- 28. Deviations, Reservations, and Omissions**
- 28.1 During the evaluation of bids, the following definitions apply:
- (a) "Deviation" is a departure from the requirements specified in the Bidding Documents;
  - (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Documents; and
  - (c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Documents
- 29. Determination of Responsiveness**
- 29.1 The Purchaser's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB 11.
- 29.2 A substantially responsive Bid is one that meets the requirements of the Bidding Documents 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 Goods and Related Services specified in the Contract; or
    - (ii) limit in any substantial way, inconsistent with the Bidding Documents, the Purchaser's rights or the Bidder's obligations under the Contract; or
  - (b) if rectified, would unfairly affect the competitive position of other bidders presenting substantially responsive bids.
- 29.3 The Purchaser shall examine the technical aspects of the bid submitted in accordance with ITB 16 and ITB 17, in particular, to confirm that all requirements of Section VII, Schedule of



Requirements have been met without any material deviation or reservation, or omission.

29.4 If a bid is not substantially responsive to the requirements of Bidding Documents, it shall be rejected by the Purchaser and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

**30. Nonconformities, Errors and Omissions**

30.1 Provided that a Bid is substantially responsive, the Purchaser may waive any nonconformities in the Bid.

30.2 Provided that a bid is substantially responsive, the Purchaser may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the bid related to documentation requirements. Such omission shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

30.3 Provided that a bid is substantially responsive, the Purchaser shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component.

**31. Correction of Arithmetical Errors**

31.1 Provided that the Bid is substantially responsive, the Purchaser shall correct arithmetical errors on the following basis:

(a) if there is a discrepancy between the unit price and the line item total that is obtained by multiplying the unit price by the quantity, the unit price shall prevail and the line item total shall be corrected, unless in the opinion of the Purchaser there is an obvious misplacement of the decimal point in the unit price, in which case the line item total as quoted shall govern and the unit price shall be corrected;

(b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and

(c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

31.2 Bidders shall be requested to accept correction of arithmetical errors. Failure to accept the correction in accordance with ITB 31.1, shall result in the rejection of the Bid.

**32. Conversion to Single Currency**

32.1 For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted in a single currency as **specified in the BDS**.

**33. Margin of Preference**

33.1 **Unless otherwise specified in the BDS**, a margin of preference shall not apply.

**34. Evaluation of Bids**

34.1 The Purchaser shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.

34.2 To evaluate a Bid, the Purchaser shall consider the following:

- (a) evaluation will be done for Items or Lots (contracts), as **specified in the BDS**; and the Bid Price as quoted in accordance with clause 14;
- (b) price adjustment for correction of arithmetic errors in accordance with ITB 31.1;
- (c) price adjustment due to discounts offered in accordance with ITB 14.3;
- (d) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 32;
- (e) price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 30.3;
- (f) the additional evaluation factors are specified in Section III, Evaluation and Qualification Criteria;

34.3 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 taken into account in bid evaluation.

34.4 If these Bidding Documents allows Bidders to quote separate prices for different lots (contracts), the methodology to determine the lowest evaluated price of the lot (contract) combinations, including any discounts offered in the Letter of Bid Form, is specified in Section III, Evaluation and Qualification Criteria

34.5 The Purchaser's evaluation of a bid will exclude and not take into account:

- (a) in the case of Goods manufactured in the Purchaser's Country, sales and other similar taxes, which will be payable on the goods if a contract is awarded to the Bidder;
- (b) in the case of Goods manufactured outside the Purchaser's Country, already imported or to be imported, customs duties and other import taxes levied on the imported Good, sales and other similar taxes, which will be payable on the Goods if the contract is awarded to the Bidder;
- (c) any allowance for price adjustment during the period of execution of the contract, if provided in the bid.

34.6 The Purchaser's evaluation of a bid may require the consideration of other factors, in addition to the Bid Price quoted in accordance with ITB 14. These factors may be related to the characteristics, performance, and terms and conditions of purchase of the Goods and Related Services. The effect of the factors selected, if any, shall be expressed in monetary terms to facilitate comparison of bids, unless otherwise **specified in the BDS** from amongst those set out in Section III, Evaluation and Qualification Criteria. The criteria and methodologies to be used shall be as specified in ITB 34.2 (f).

### 35. Comparison of Bids

35.1 The Purchaser shall compare the evaluated prices of all substantially responsive bids established in accordance with ITB 34.2 to determine the lowest evaluated bid. The comparison shall be on the basis of CIP (place of final destination) prices for imported goods and EXW prices, plus cost of inland transportation and insurance to place of destination, for goods manufactured within the Borrower's country, together with prices for any required installation, training, commissioning and other services. The evaluation of prices shall not take into account custom duties and other taxes levied on imported goods quoted CIP and sales and similar taxes levied in connection with the sale or delivery of goods.

### 36. Qualification of the Bidder

35.2 If the bid, which results in the lowest Evaluated Bid Price, is significantly lower than the Purchaser's estimate, the Purchaser shall require the Bidder to produce detailed price analyses for any or all items of the Price Schedules, to demonstrate the internal consistency of those prices with the supply requirements and the method and schedule proposed. If one or several inconsistencies are evidenced, or if a bidder does not provide the required detailed price analyses, the bid shall be declared non-compliant and rejected.

36.1 The Purchaser shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

36.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 17.

36.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Purchaser shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's qualifications to perform satisfactorily.

### 37. Purchaser's Right to Accept Any Bid, and to Reject Any or All Bids

37.1 The Purchaser reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all bids submitted and specifically, bid securities, shall be promptly returned to the Bidders.

## F. Award of Contract

### 38. Award Criteria

38.1 Subject to ITB 37.1, the Purchaser shall award the Contract to the Bidder whose bid has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Documents,

provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

**39. Purchaser's  
Right to Vary  
Quantities at  
Time of Award**

- 39.1 At the time the Contract is awarded, the Purchaser reserves the right to increase or decrease the quantity of Goods and Related Services originally specified in Section VII, Schedule of Requirements, provided this does not exceed the percentages **specified in the BDS**, and without any change in the unit prices or other terms and conditions of the bid and the Bidding Documents.

**40. Notification of  
Award**

- 41.1 Prior to the expiration of the period of bid validity, the Purchaser shall notify the successful Bidder, in writing, that its Bid has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the "Letter of Acceptance") shall specify the sum that the Purchaser will pay the Supplier in consideration of the supply of Goods (hereinafter and in the Conditions of Contract and Contract Forms called "the Contract Price"). At the same time, the Purchaser shall also notify all other Bidders of the results of the bidding and shall publish in *UNDB online* the results identifying the bid and lot (contract) numbers and the following information:

- (i) name of each Bidder who submitted a Bid;
- (ii) bid prices as read out at Bid Opening;
- (iii) name and evaluated prices of each Bid that was evaluated;
- (iv) name of bidders whose bids were rejected and the reasons for their rejection; and
- (v) name of the successful Bidder, and the Price it offered, as well as the duration and summary scope of the contract awarded.

- 41.2 Until a formal Contract is prepared and executed, the notification of award shall constitute a binding Contract.

- 41.3 The Purchaser shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB 40.1, requests in writing the grounds on which its bid was not selected.

**41. Signing of  
Contract**

- 41.1 Promptly after notification, the Purchaser shall send the successful Bidder the Contract Agreement.

- 41.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Purchaser.

- 41.3 Notwithstanding ITB 41.2 above, in case signing of the Contract Agreement is prevented by any export restrictions attributable to the Purchaser, to the country of the Purchaser, or to the use of the products/goods, systems or services to be supplied, where such export

restrictions arise from trade regulations from a country supplying those products/goods, systems or services, the Bidder shall not be bound by its bid, always provided however, that the Bidder can demonstrate to the satisfaction of the Purchaser and of the Bank that signing of the Contract Agreement has not been prevented by any lack of diligence on the part of the Bidder in completing any formalities, including applying for permits, authorizations and licenses necessary for the export of the products/goods, systems or services under the terms of the Contract.

**42. Performance  
Security**

- 42.1 Within twenty eight (28) days of the receipt of notification of award from the Purchaser, the successful Bidder, if required, shall furnish the Performance Security in accordance with the GCC, subject to ITB 34.5, using for that purpose the Performance Security Form included in Section X, Contract Forms, or another Form acceptable to the Purchaser. If the Performance Security furnished by the successful Bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Bidder to be acceptable to the Purchaser. A foreign institution providing a bond shall have a correspondent financial institution located in the Purchaser's Country.
- 42.2 Failure of the successful Bidder 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 Bid Security. In that event the Purchaser may award the Contract to the next lowest evaluated Bidder, whose bid is substantially responsive and is determined by the Purchaser to be qualified to perform the Contract satisfactorily.

## Section II. Bid Data Sheet (BDS)

The following specific data for the goods to be procured shall complement, supplement, or amend the provisions in the Instructions to Bidders (ITB). Whenever there is a conflict, the provisions herein shall prevail over those in ITB.

*[Instructions for completing the Bid Data Sheet are provided, as needed, in the notes in italics mentioned for the relevant ITB Clauses.]*

ITB Clause Reference	A. General
ITB 1.1	The number of the Invitation for Bids is: <b>AWWDA/KfW/NST/G/03/2021</b>
ITB 1.1	The Purchaser is: <b>Athi Water Works Development Agency</b>
ITB 1.1	The name of the ICB is: <b><i>Nairobi Satellite Towns Water and Sanitation Development Programme, Phase I: Supply and Delivery of Consumer Water Meters – Lot 3</i></b> The identification number of the ICB is: <b>AWWDA/KfW/NST/G/03/2021</b> The number and identification of lots (contracts) comprising this ICB is: <b>Supply and Delivery of Consumer Water Meters – Lot 3</b>
ITB 2.1	The Borrower is: <b><i>Government of Kenya (GOK)</i></b>
ITB 2.1	The name of the Project is: <b><i>Nairobi Satellite Towns Water and Sanitation Development Programme, Phase I: Supply and Delivery of Consumer Water</i></b>
ITB 4.1	Maximum number of members in the JV shall be: <b>2</b>
IITB 4.4	Ineligible bidders include persons or entities under financial sanctions by either Kenya, Germany, the European Union or the United Nations in accordance with the sanction lists established by these institutions regarding fight against terrorism.
	B. Contents of Bidding Documents
ITB 7.1	For <b><u>clarification purposes</u></b> only, the Purchaser's address is:  Attention: <b><i>Chief Executive Officer Athi Water Works Development Agency</i></b>  Street Address: <b><i>Athi Water Plaza, Muthaiga North Road Off Kiambu Road</i></b>  City: <b><i>Nairobi</i></b> ZIP Code: <b><i>P. O. Box 45283-00100</i></b> Country: <b><i>Kenya</i></b> Telephone: <b><i>+254-20-2727438</i></b>

	<p>Facsimile number: <b>+254-20-2724295</b></p> <p>Electronic mail address: <a href="mailto:info@awwda.go.ke">info@awwda.go.ke</a></p> <p>Requests for clarification should be received by the Employer no later than <b>14 days Prior to the Deadline for Submission of Bids</b></p>
<b>ITB 7.1</b>	Web page: <a href="http://www.awwda.go.ke">www.awwda.go.ke</a>
	<b>C. Preparation of Bids</b>
<b>ITB 10.1</b>	<p>The language of the bid is: <b>English</b></p> <p>All correspondence exchange shall be in <b>English</b> language.</p> <p>Language for translation of supporting documents and printed literature is <b>English</b>.</p>
<b>ITB 11.1 (j)</b>	<p>The Bidder shall submit the following additional documents in its bid:</p> <p>(i) Declaration of Undertaking duly signed, without alterations</p> <p>Information on the Manufacturer of the Goods to be Supplied i.e. the Consumer Water Meters. The information shall include:</p> <ul style="list-style-type: none"> <li>• Name of the Manufacturer</li> <li>• Country of origin of the Goods</li> <li>• Technical Data Sheets from the Manufacturer</li> <li>• Quality Standards to which the Goods are manufactured (e.g. ISO, EN, BS, AWWA, DIN, etc.)</li> </ul> <p>Bidder to provide the above information in the Form given in Section VII, Schedule of Requirements.</p>
<b>ITB 13.1</b>	Alternative bids <b>shall not be</b> considered.
<b>ITB 14.5</b>	The prices quoted by the Bidder <b>shall not be</b> subject to adjustment during the performance of the Contract.
<b>ITB 14.6</b>	<p>Prices quoted for each lot (contract) shall correspond at least to <b>[N/A]</b> percent of the items specified for each lot (contract).</p> <p>Prices quoted for each item of a lot shall correspond at least to <b>100%</b> percent of the quantities specified for this item of a lot.</p>
<b>ITB 14.7</b>	The Incoterms edition is <b>Eighth Edition, Incoterms 2010</b>
<b>ITB 14.8 (b) (i) and (c) (v)</b>	<p>Place of Destination:</p> <p><b>Athi Water Works Development Agency (AWWDA) Head Office in Nairobi, Kenya</b></p>

<b>ITB 14.8</b> <b>(a)</b> <b>(iii);(b)(ii)</b> <b>and (c)(v)</b>	<p>“Final destination (Project Site)”:</p> <p><b>Ruiru-Juja Water and Sewerage Company (RUJWASCO) Head Office in Ruiru, Kenya</b></p> <p><b>and</b></p> <p><b>Oloolaiser Water and Sewerage Company (OWSC) Head Office in Ongata Rongai, Kenya</b></p>
<b>ITB 15.1</b>	<p>The prices shall be quoted by the bidder in <b>Kenya Shillings</b>. However, a Bidder may request to be paid a specified percentage of the Bid Price in <b>Euro</b>. A bidder who wishes to be paid part of the Bid Price in Euro shall indicate in the Appendix to Bid – Table C, the percentage of the Bid Price to be paid in Euro.</p> <p><b>The Euro is the only Foreign Currency in which payments may be made by the Employer.</b></p>
<b>ITB 16.4</b>	<p>Period of time the Goods are expected to be functioning (for the purpose of spare parts) <b>24 Months</b>.</p>
<b>ITB 17.2(a)</b>	<p>Manufacturer’s authorization is <b>required</b>.</p>
<b>ITB 17.2(b)</b>	<p>After sales service is <b>required</b>.</p>
<b>ITB 18.1</b>	<p>The bid validity period shall be <b>120</b> days.</p>
<b>ITB 18.3(a)</b>	<p>The bid price shall be adjusted by the following factor(s): <b>Not Applicable</b></p>
<b>ITB 19.1</b>	<p>A <i>Bid Security</i> <b>shall be</b> required.</p> <p>A Bid-Securing Declaration <b>shall not be</b> required.</p> <p>The amount and currency of the bid security shall be <b>Kshs. 2,000,000/= (Kenya Shillings Two Million) or equivalent in Euro</b>.</p>
<b>ITB 19.3(d)</b>	<p>Other types of acceptable securities:</p> <p><b><i>Only an Unconditional Guarantee issued by a Reputable Bank in an Eligible Country is acceptable. Guarantees issued by Non-Bank Financial Institutions are NOT Acceptable.</i></b></p>
<b>ITB 19.9</b>	<p><b>Not Applicable</b></p>
<b>ITB 20.1</b>	<p>In addition to the original of the bid, the number of copies is: <b>Three (3)</b></p>
<b>ITB 20.2</b>	<p>The written confirmation of authorization to sign on behalf of the Bidder shall consist of:</p> <p><b>(a) The name and description of the documentation required to demonstrate the authority of the signatory to sign the Bid such as a Power of Attorney; and</b></p> <p><b>(b) In the case of Bids submitted by an existing or intended JV an undertaking signed by all parties (i) stating that all parties shall be jointly and severally liable, and (ii) nominating a Representative who shall have the authority to conduct all business for and on behalf of any and all the parties of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution.</b></p>



<b>D. Submission and Opening of Bids</b>	
<b>ITB 22.1</b>	<p>For <b><u>bid submission purposes</u></b> only, the Purchaser's address is:</p> <p>Attention: <b>Chief Executive Officer</b> <b>Athi Water Works</b> <b>Development Agency</b></p> <p>Street Address: <b>Athi Water Plaza, Muthaiga North Road</b> <b>Off Kiambu Road</b></p> <p>City: <b>Nairobi</b></p> <p>ZIP Code: <b>P. O. Box 45283-00100</b></p> <p><b>The deadline for bid submission is: Date: 22<sup>nd</sup> June,2021</b> <b>Time: 12.00 Noon East African Time</b> Bidders <b>shall not</b> have the option of submitting their bids electronically.</p>
<b>ITB 25.1</b>	<p>The bid opening shall take place at:</p> <p>Street Address: <b>Athi Water Plaza, Muthaiga North Road Off Kiambu Road</b> City: <b>Nairobi</b> Country: <b>Kenya</b></p> <p>Date: <b>22<sup>nd</sup> June,2021</b> Time: <b>1205 Hours East African Time</b></p>
<b>ITB 25.3</b>	The Letter of Bid and Priced Bill of Quantities shall be initialed by <b>Three (3)</b> representatives of the Purchaser conducting Bid opening.
<b>E. Evaluation and Comparison of Bids</b>	
<b>ITB 32.1</b>	<p>The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency is: <b>Kenya Shillings</b></p> <p>The source of exchange rate shall be: <b>Central Bank of Kenya</b>, Selling Rate. The date for the exchange rate shall be: <b>Date of Bid Opening</b></p>
<b>ITB 33.1</b>	A margin of domestic preference <b>shall not</b> apply.
<b>ITB 34.2(a)</b>	Evaluation will be done for <b>All Items</b> .
<b>ITB 34.6</b>	<b>Not Applicable</b>
<b>F. Award of Contract</b>	
<b>ITB 38</b>	A bid evaluation report on will be prepared by the Purchaser and sent to KfW with a recommendation on the award of the contract. The Purchaser will only award the contract, after the no-objection of KfW has been received in writing on this evaluation report.
<b>ITB 39.1</b>	<p>The maximum percentage by which quantities may be increased is: <b>25%</b></p> <p>The maximum percentage by which quantities may be decreased is: <b>25%</b></p>
<b>Add ITB 40.1</b>	Notwithstanding the notification by the Employer a legally binding contract can only come into force upon the written approval of the Contract Agreement by KfW-Frankfurt.

## **Section III. Evaluation and Qualification Criteria**

*This Section contains all the criteria that the Purchaser shall use to evaluate a bid and qualify the Bidders in accordance with ITB 34 and ITB 36, no other factors, methods or criteria shall be used.*

**1. Margin of Preference (ITB 33)**

No Domestic Preference shall be applied in the evaluation.

**2. Evaluation (ITB 34)**

**2.1. Evaluation Criteria (ITB 34.6)**

No Adjustments to the Bid Price shall be applied in the evaluation of bids.

**2.2. Multiple Contracts (ITB 34.4)**

Not Applicable

**2.3. Alternative Bids (ITB 13.1)**

Alternative bids shall NOT be considered.

**3. Post-qualification Requirements (ITB 36.1)**

After determining the lowest-evaluated bid in accordance with ITB 35.1, the Purchaser shall carry out the post-qualification of the Bidder in accordance with ITB 36, using the requirements specified below:

Qualification Criteria			Compliance Requirements				Documentation
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
3.1 Bid Submission Form, Declaration of Undertaking, and Eligibility							
3.1.1	Bid Submission Form	Submission, in accordance with Section III, Qualification	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Bid Submission Form
3.1.2	Declaration of Undertaking	Submission, in accordance with ITB 11	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Declaration of Undertaking
3.1.3	Power of Attorney	Submission, in accordance with ITB 20.2	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Power of Attorney (free format)
3.1.4	Joint Venture Agreement	JV Agreement or Letter of Intent, (in case of a JV), in accordance with ITB 4.1	N/A	Must meet requirement	Must meet requirement	N/A	Relevant pages of an existing JV Agreement or Letter of Intent (free format)
3.1.5	Nationality	Nationality in accordance with ITB 4.3	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Bidder Information Form and JV members Information Form (in case of JV), with attachments
3.1.6	Conflict of Interest	No conflicts of interest in accordance with ITB 4.2	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Bid Submission Form
3.1.7	KfW Eligibility	Not being ineligible for KfW financing, as described in ITB 5.1	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Bid Submission Form
3.1.8	State-owned Entity	Meets conditions of ITB 4.5	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Bidder Information Form and JV members Information Form (in case of JV), with attachments

Qualification Criteria			Compliance Requirements				Documentation
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
3.2 Historical Contract Non-Performance							
2.1	History of Non-Performing Contracts	Termination of a contract <sup>1</sup> did not occur as a result of Supplier default in the past 5 years.	Must meet requirement <sup>2</sup>	Must meet requirements	Must meet requirement <sup>2</sup>	N/A	Form CON - 2
2.2	Suspension Based on Execution of Bid Securing Declaration by the Purchaser or withdrawal of the Bid within Bid validity	Not under suspension based on execution of a Bid Securing Declaration pursuant to ITB 4.6 or withdrawal of a Bid pursuant ITB 19.9.	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Bid Submission Form
2.3	Pending Litigation	All pending litigation shall in total not represent more than one hundred percent (100%) of the Bidder’s net worth and shall be treated as resolved against the Bidder.	Must meet requirement	N/A	Must meet requirement	N/A	Form CON – 2

<sup>1</sup> Non-performance shall include all terminations of contracts where (a) non-performance was not challenged by the supplier, including through referral to the dispute resolution mechanism under the respective contract, and (b) contracts that were so challenged but fully settled against the supplier. Non-performance shall not include contracts where Purchaser's decision was overruled by the dispute resolution mechanism.

<sup>2</sup> This requirement also applies to contracts executed by the Bidder as a JV member.

Qualification Criteria			Compliance Requirements				Documentation
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
3.3 Financial Situation and Performance							
3.1	Financial Capabilities	Submission of audited balance sheets or if not required by the law of the Bidder's country, other financial statements acceptable to the Purchaser, for the last 3 years to demonstrate the current soundness of the Bidder's financial position based on the following criteria: <b>a) Liquidity ratio <math>\geq 1.1</math></b> ((Current Assets) / (Current Liabilities) $\geq 1.1$ ) <b>b) Indebtedness ratio <math>\leq 80\%</math></b> ((Total Liabilities) x 100 / (Total Assets) $\leq 80\%$ )]	Must meet requirement	N/A	Must meet requirement	N/A	Form FIN – 3.1, with attachments
3.2	Average Annual Supplier Turnover	Minimum average annual supplier turnover of Kshs.180,000,000 (Kenya Shillings One Hundred and Eighty Million), calculated as total certified payments received for contracts in progress and/or completed within the last 3 years, divided by 3 years	Must meet requirement	Must meet requirement	Must meet at least twenty-five percent (25%) of the requirement	Must meet at least forty percent (40%) of the requirement	Form FIN – 3.2
3.3	Access to Liquidity	The Bidder 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 the cash flow requirements estimated as Kshs.50,000,000/= (Kenya Shillings Fifty Million) or equivalent in a freely convertible currency for the subject contract net of the Bidders other commitments.	Must meet requirement	Must meet requirement	Must meet at least twenty-five percent (25%) of the requirement	Must meet at least forty percent (40%) of the requirement	Liquidity Letter issued by the Bidder's bankers (free format)

### 3.4 Experience and Technical Capacity

The Bidder shall furnish documentary evidence to demonstrate that it meets the following experience requirement:

Bidder must have supplied and delivered **Consumer Water Meters, quantity not less than 4,000Nr. in a single Contract within the last 3 years**. Bidder to give details of where, when and to whom or which institution the Meters were supplied.

The address of the recipient, Quantity of Meters supplied and the Contract Value to be provided with all the requisite supporting evidence.

### 3.5 Documentary Evidence

The Bidder shall furnish documentary evidence to demonstrate that the Goods it offers meet all the requirements stipulated in the Technical Specifications. As a minimum this must include:

- i. Must show Proof of Similar Assignments in nature within the last three years. (Copies of Award Letters, Orders, Contracts and Testimonials from clients)
- ii. Copy of Brochures and Literature and Drawings attached for the meters to be supplied under this contract.
- iii. Must indicate the country of Origin of goods to be supplied (NB: no country is known as LOCAL)
- iv. Must attach Manufacturers Letter of Authorization to deal with the goods to be supplied under this contract.
- v. The BRAND MUST be registered in the country of origin with clear physical address of the manufacturer.
- vi. Durability Test Certificate from the manufacturer for each sample presented
- vii. Accuracy test certificate from the manufacturer for each sample presented
- viii. Pressure test certificate from the manufacturer for each sample presented
- ix. Bidder must comply to all requirements in **Table 1** below.

TABLE 1: MANDATORY TECHNICAL EVALUATION CRITERIA

ITEM	CRITERIA (All are Mandatory)	(YES)	(NO)	Comments
1	Two samples of the water meters offered must be submitted together with the bid			
2	<b>ISO Certification</b> Manufacturer ISO 9001 certified			
3	<b>Meter Certification</b> Type approval certificate (either according to EN ISO 4064 2014, or OIML R49 2013) and MID certified.			

Supply and Delivery of Consumer Water Meters – Lot 3					Evaluation and Quantification Criteria																			
4	<b>Meter Certification</b> KEBS certificate																							
5	<b>Meter Certification</b> Certificate of Sanitary Compliance (WRAS or similar)																							
6	<b>Meter Design:</b> Volumetric type (positive displacement meter)																							
7	<b>Marks and Inscriptions:</b> In addition to ISO 4064, nominal diameter, the meter model, the temperature class and the letters “AWWDA” followed by the serial number (e.g. AWWDA 1512345619).																							
8	<b>Connectors:</b> Coupling kits with internal BSP threads																							
9	<b>Meter length:</b> <table><tr><th>Diameter</th><th>Meter Length (mm)</th><th>Max Meter Length with connectors (mm)</th></tr><tr><td>15</td><td>165</td><td>250</td></tr><tr><td>20</td><td>190</td><td>350</td></tr><tr><td>25</td><td>260</td><td>350</td></tr><tr><td>32</td><td>260</td><td>380</td></tr><tr><td>40</td><td>300</td><td>450</td></tr></table>			Diameter	Meter Length (mm)	Max Meter Length with connectors (mm)	15	165	250	20	190	350	25	260	350	32	260	380	40	300	450			
Diameter	Meter Length (mm)	Max Meter Length with connectors (mm)																						
15	165	250																						
20	190	350																						
25	260	350																						
32	260	380																						
40	300	450																						
10	<b>Meter housing/casing material</b> DN15 and DN20 must have composite housing/casing, brass will not be permitted.  For DN25 and bigger, the meters can have brass housing/casing.																							
11	<b>Meter pre-equipped for remote reading</b>																							
12	<b>Meter Installation</b> For installation in in any position, Vertical & Horizontal, (except overhead).																							
13	<b>Meter Protection</b>  <b>Strainers:</b> In-built strainer screen  <b>Reverse Flow Restrictor / Non-Return Valves:</b> In-built Non-Removable and maintenance free NRV  <b>Sealing:</b> Sealing holes 2.5 mm diameter																							
14	<b>Tightness, Pressure and Temperature Resistance</b> ≥16 Bars ≤50°C																							



15	<b>Meteorological Class and starting flow rates:</b> Class R=160 and above requirements			
16	<b>Meter test certificates for individual sample meters</b> 1. Accuracy testing 2. Pressure testing and 3. Durability			
17	<b>Warranty Period</b> Minimum 2 years			
18	<b>Spare parts/after sales service:</b> The name, address, and contact details of the local agent responsible for providing spare parts and maintenance shall be indicated.			
19	<b>Manufacturer's Letter of Authorization</b> Submitted, also with proof that manufacturer has supplied similar domestic meters internationally for at least 10 years to ISO and OIML standards			

### 3.6 Provision of samples for testing

The Bidder shall furnish 2 No. consumer meters together with the Bid for testing to demonstrate that the Goods it offers meet all the requirements stipulated in the Technical Specifications. Late delivery of the samples due to import requirements will not lead to the bids being rejected, provided the samples are delivered within 2 weeks of bid submission.

Following the determination of whether the lowest evaluated and substantially responsive Bidder meets the qualifying criteria, as per ITB 36, the sample water meters will be inspected and tested against the technical requirements and must pass these tests successful prior to Award of Contract.

## Section IV. Bidding Forms

### Table of Forms

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## Declaration of Undertaking

Reference name of the Application / Offer / Contract: Nairobi Satellite Towns Water and Sanitation Development Programme, Phase 1: Supply and Delivery of Consumer Water Meters – Lot 3

To: Athi Water Works Development Agency (AWWDA) ("**Purchaser**")

1. We recognise and accept that KfW only finances projects of the Project Executing Agency ("PEA")<sup>3</sup> 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:
  - 2.1) 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;
  - 2.2) convicted by a final judgement or a final administrative decision or subject to financial sanctions by the United Nations, the European Union or Germany for involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings; this criterion of exclusion is also applicable to legal Persons, whose majority of shares are held or factually controlled by natural or legal Persons which themselves are subject to such convictions or sanctions;
  - 2.3) 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*);
  - 2.4) 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;
  - 2.5) not having fulfilled applicable fiscal obligations regarding payments of taxes either in the country where we are constituted or the PEA's country;
  - 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/debar> 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*

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<sup>3</sup> 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.

*Contract and that adequate compliance measures have been taken in reaction); or*

- 2.7) being guilty of misrepresentation in supplying the information required as condition to participation in this Tender Procedure.
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 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 Organisation<sup>4</sup> (ILO) and international environmental treaties. Moreover, we shall

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<sup>4</sup> In case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant/Bidder/Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate

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 auditor 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<sup>5</sup>: \_\_\_\_\_

Signature:

Dated:

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measures in the spirit of the said ILO conventions with respect to a) workers grievances on working conditions and terms of employment, b) child labour, c) forced labour, d) worker's organisations and e) non-discrimination.

<sup>5</sup> In the case of a JV, insert the name of the JV. The person who will sign the application, bid or proposal on behalf of the Applicant/Bidder shall attach a power of attorney from the Applicant/Bidder.

## Letter of Bid

*The Bidder must prepare the Letter of Bid on stationery with its letterhead clearly showing the Bidder's complete name and address.*

Date: \_\_\_\_\_

ICB No.: **AWWDA/KfW/NST/G/03/2021**

Invitation for Bid No.: **AWWDA/KfW/NST/G/03/2021**

To: **The Chief Executive Officer,  
Athi Water Works Development Agency  
(AWWDA),  
P.O. Box 45283-00100,  
Nairobi.**

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB 8)\_\_\_\_\_;
- (b) We meet the eligibility requirements and have no conflict of interest in accordance with ITB 4;
- (c) We have not been suspended nor declared ineligible by the Purchaser based on execution of a Bid Securing Declaration in the Purchaser's country in accordance with ITB 4.6
- (d) We offer to supply in conformity with the Bidding Documents and in accordance with the Delivery Schedules specified in the Schedule of Requirements the following Goods: **Consumer Water Meters** as per the Specifications.
- (e) The total price of our Bid, excluding any discounts offered in item (f) below is:

Kshs.....  
.....  
.....

- (f) The discounts offered and the methodology for their application are:

- (i) The discounts offered are

\_\_\_\_\_  
\_\_\_\_\_

- (ii) The exact method of calculations to determine the net price after application of discounts is shown below

\_\_\_\_\_  
\_\_\_\_\_

- (g) Our bid shall be valid for a period of **120** days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (h) If our bid is accepted, we commit to obtain a performance security in accordance with the Bidding Documents;
- (i) We are not participating, as a Bidder or as a subcontractor, in more than one bid in this bidding process in accordance with ITB 4.2(e), other than alternative bids submitted in accordance with ITB 13;
- (j) 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 a member of the World Bank Group, KfW Development Bank (KfW), the European Union (EU) or a debarment imposed in accordance with the Agreement for Mutual Enforcement of Debarment Decisions between the World Bank, KfW Development Bank (KfW), the European Union (EU) and other development banks. Further, we are not ineligible under the Employer's country laws or official regulations or pursuant to a decision of the United Nations Security Council;
- (k) We are not a government owned entity/ We are a government owned entity but meet the requirements of ITB 4.5;<sup>1</sup>
- (l) We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract:

Name of Recipient	Address	Reason	Amount

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

- (m) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed; and
- (n) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.
- (o) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any type of fraud and corruption

Name of the Bidder\* \_\_\_\_\_

<sup>1</sup> Bidder to use as appropriate

Name of the person duly authorized to sign the Bid on behalf of the Bidder\*\*

\_\_\_\_\_

Title of the person signing the Bid: \_\_\_\_\_

Signature of the person named above: \_\_\_\_\_

Date signed \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\*: In the case of the Bid submitted by joint venture specify the name of the Joint Venture as Bidder

\*\*: Person signing the Bid shall have the power of attorney given by the Bidder to be attached with the Bid Schedules.



## Bidder Information Form

*[The Bidder 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: \_\_\_\_\_

ICB No.: **AWWDA/KfW/NST/G/03/2021**

Page \_\_\_\_\_ of \_\_\_\_\_ pages

1. Bidder's Name
2. In case of JV, legal name of each member :
3. Bidder's actual or intended country of registration:
4. Bidder's year of registration:
5. Bidder's Address in country of registration:
6. Bidder's Authorized Representative Information  Name:  Address:  Telephone/Fax numbers:  Email Address:
7. Bidder to attach copies of:  i) Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITB 4.3.  ii) In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 4.1.  iii) In case of Government-owned enterprise or institution, in accordance with ITB 4.5 documents establishing: <ul style="list-style-type: none"><li>• Legal and financial autonomy</li><li>• Operation under commercial law</li><li>• Establishing that the Bidder is not dependent agency of the Purchaser</li></ul> iv) Company Organizational Chart, a list of Board of Directors, and the Beneficial Ownership.

## Bidder's JV Members Information Form

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

Date: \_\_\_\_\_

ICB No.: **AWWDA/KfW/NST/G/03/2021**

Page \_\_\_\_\_ of \_\_\_\_\_ pages

1. Bidder's Name:
2. Bidder's JV Member's name:
3. Bidder's JV Member's country of registration:
4. Bidder's JV Member's year of registration:
5. Bidder's JV Member's legal address in country of registration:
6. Bidder's JV Member's authorized representative information Name: Address: Telephone/Fax numbers: Email Address:
7. Bidder to attach copies of: <ul style="list-style-type: none"><li>i) Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITB 4.3.</li><li>ii) In case of a Government-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and absence of dependent status, in accordance with ITB 4.5.</li><li>iii) Included are the Organizational Chart, a list of Board of Directors, and the Beneficial Ownership.</li></ul>

## Form CON - 2: Historical Contract Non-Performance, Pending Litigation and Litigation History

*[To be completed by the Bidder and by each member of the Bidder's JV]*

Bidder's Name: *[Insert]*

Date: *[Insert]*

JV Member's Name: *[Insert or state "None" if the Bidder is not a Joint Venture]*

**ICB No.: AWWDA/KfW/NST/G/03/2021**

Page *[Insert]* of *[Insert]* pages

Non-Performed Contracts in accordance with Section III, Qualification and Evaluation Criteria			
<input type="checkbox"/> Contract non-performance did not occur since 1st January <i>[insert current year number less 5]</i> specified in Section III, Qualification and Evaluation Criteria, Qualification, subclause 2.1. <b>Or</b> <i>[Tick as appropriate]</i>			
<input type="checkbox"/> Contract(s) not performed since 1st January <i>[insert current year number less 5]</i> specified in Section III, Qualification and Evaluation Criteria, Qualification, subclause 2.1 are as follows:			
Year	Non- performed Portion of Contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and €-equivalent)
<i>[Insert year]</i>	<i>[Insert amount and percentage]</i>	Contract Identification: <i>[Indicate complete contract name/ number, and any other identification]</i> Name of Purchaser: <i>[Insert full name]</i> Address of Purchaser: <i>[Insert street/city/country]</i> Reason(s) for non-performance: <i>[Indicate main reason(s)]</i>	<i>[Insert amount and values]</i>

<b>Non-Performed Contracts in accordance with Section III, Qualification and Evaluation Criteria</b>			
<b>Pending Litigation, in accordance with Section III, Qualification and Evaluation Criteria and Requirements</b>			
<input type="checkbox"/> No pending litigation in accordance with Section III, Qualification and Evaluation Criteria and Requirements, Qualification, subclause 2.3. <b>Or</b> <i>[Tick as appropriate]</i>			
<input type="checkbox"/> Pending litigation in accordance with Section III, Qualification and Evaluation Criteria, Qualification, subclause 2.3 as indicated below:			
<b>Year of dispute</b>	<b>Amount in dispute (currency)</b>	<b>Contract Identification</b>	<b>Total Contract Amount (currency), €-equivalent (exchange rate)</b>
<i>[Insert year]</i>	<i>[Insert amount]</i>	Contract Identification: Name of Purchaser: Address of Purchaser: Matter in dispute: Party who initiated the dispute: Status of dispute:	<i>[Insert amount and values]</i>

Title of the person signing the Bid *[Insert complete title of the person signing the Bid]*

Signature of the person named above *[Signature of the person named above]*

Date signed *[Insert date of signing]* day of *[Insert month]* *[Insert year]*

## Form FIN - 3.1: Financial Situation and Performance

*[To be completed by the Bidder and by each member of the Bidder's JV]*

Bidder's Name: *[Insert]*

Date: *[Insert]*

JV Member's Name: *[Insert or state "None" if the Bidder is not a Joint Venture]*

ICB No.: AWWDA/KfW/NST/G/03/2021

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### 1. Financial Data

Type of Financial Information in <i>[Insert Bidder's home currency]</i>	Historic information for last available three (3) years (amount in Bidder's home-currency, exchange rate, Kshs equivalent)		
	<i>[Insert Year 1]</i>	<i>[Insert Year 2]</i>	<i>[Insert Year 3]</i>
<b>Statement of Financial Position (Information from Balance Sheet)</b>			
Total Assets (TA)	<i>[Insert value in Bidder's home currency]</i>	<i>[Insert value in Bidder's home currency]</i>	<i>[Insert value in Bidder's home currency]</i>
	<i>[Insert exchange rate]</i>	<i>[Insert exchange rate]</i>	<i>[Insert exchange rate]</i>
	<i>[Insert Kshs equivalent]</i>	<i>[Insert Kshs equivalent]</i>	<i>[Insert Kshs equivalent]</i>
Total Liabilities (TL)			
Total Equity/Net Worth (NW)			
Current Assets (CA)			
Current Liabilities (CL)			
Working Capital (WC)			
<b>Information from Income Statement</b>			
Total Revenue (TR)			
Profits Before Taxes (PBT)			
<b>Cash Flow Information</b>			

Type of Financial Information in <i>[Insert Bidder's home currency]</i>	Historic information for last available three (3) years (amount in Bidder's home-currency, exchange rate, Kshs equivalent)		
	<i>[Insert Year 1]</i>	<i>[Insert Year 2]</i>	<i>[Insert Year 3]</i>
Cash Flow from Operating Activities			

## 2. Financial Documents

The Bidder and its parties shall provide copies of financial statements for **the last available three (3) years** pursuant Section III, Qualification and Evaluation Criteria, Qualification, Sub-factor 3.1.

The financial statements shall:

- (a) Reflect the financial situation of the Bidder 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 statements<sup>1</sup> for the **last available three (3) years** required above and complying with the requirements.

Title of the person signing the Bid *[Insert complete title of the person signing the Bid]*

Signature of the person named above *[Signature of the person named above]*

Date signed *[Insert date of signing]* day of *[Insert month]* *[Insert year]*

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

## Form FIN - 3.2: Average Annual Turnover

*[To be completed by the Bidder and by each member of the Bidder's JV]*

Bidder's Name: *[Insert]*

Date: *[Insert]*

JV Member's Name: *[Insert or state "None" if the Bidder is not a Joint Venture]*

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Annual Turnover Data			
Year	Currency & Amount	Exchange Rate	Kshs-equivalent
Average Annual Turnover <sup>7</sup>			

Title of the person signing the Bid *[Insert complete title of the person signing the Bid]*

Signature of the person named above *[Signature of the person named above]*

Date signed *[Insert date of signing]* day of *[Insert month]* *[Insert year]*

<sup>7</sup> See Section III, Qualification and Evaluation Criteria, Qualification, Sub-Factor 3.2

## Bill of Quantities

### Notes:

- 1) All Rates to be quoted in Kenya Shillings
- 2) The Rates quoted in the Bills of Quantities shall be inclusive of all applicable Government Duties and Taxes, excluding VAT.

<b>Nairobi Satellite Towns Water &amp; Sanitation Development Programme, Phase 1</b> <b>Supply and Delivery of Consumer Water Meters – Lot 3</b> <b>Tender No. AWSB/KfW/NST/G/03/2020</b> <b>BILL OF QUANTITIES</b>					
ITEM NO.	DESCRIPTION	UNIT	QTY	RATE (KShs)	AMOUNT (KShs)
<b>1</b>	<b><u>Consumer Water Meters</u></b>				
1.1	<b><u>Consumer Water Meters for RUJWASCO</u></b> Supply, Transport to site and hand over to Purchaser's Representative / RUJWASCO Store, Consumer Water Meters, conforming to the given Technical Specifications. Rates to include offloading at the place of delivery and assistance in open package inspection.				
1.1.1	DN 15	Nr	6,720		
1.1.2	DN 20	Nr	1,176		
1.1.3	DN 25	Nr	252		
1.1.4	DN 32	Nr	168		
1.1.5	DN 40	Nr	84		
1.2	<b><u>Consumer Water Meters for OWSC</u></b> Supply, Transport to site and hand over to Purchaser's Representative / OWSC Store, Consumer Water Meters, conforming to the given Technical Specifications. Rates to include offloading at the place of delivery and assistance in open package inspection.				
1.2.1	DN 15	Nr	6,640		
1.2.2	DN 20	Nr	1,162		
1.2.3	DN 25	Nr	249		
1.2.4	DN 32	Nr	166		
1.2.5	DN 40	Nr	83		
<b>2</b>	<b><u>Testing</u></b>				
2.1	<b><u>Testing on Delivery</u></b> Allow for Accuracy Testing of 5% of Meters by KEBS upon Delivery, prior to Acceptance and Taking Over by the Purchaser in accordance with the Technical Specifications, rate per meter tested.	Nr	835		
<b>Bill Total Exclusive of Value Added Tax (VAT), Carried to Letter of Bid (A)</b>					



### Summary of Payment Currencies

Name of payment currency	A Amount of currency	B Rate of exchange (local currency per unit of foreign)	C Local currency equivalent $C = A \times B$	D Percentage of Total Bid Price (TBP) $\frac{100 \times C}{TBP}$
Local currency (Kenya Shillings)		1.00		
Foreign currency (Euro)		*		
Total Bid Price ( <u>Exclusive</u> of VAT)				100.00

\* Bidder to enter Exchange Rate applicable 14 days before the date of submission of Bids.

**Note:**

1. Amounts to be indicated in the Table above are portions of the Bid Price Exclusive of Value Added Tax (VAT).
2. The project is exempt from Customs duties, VAT, IDF and RDL in respect of goods being imported or purchased locally.

## Form of Bid Security

### (Bank Guarantee)

*[The bank shall fill in this Bank Guarantee Form in accordance with the instructions indicated.]*

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** The Chief Executive Officer,  
Athi Water Works Development Agency (AWWDA),  
P.O. Box 45283-00100,  
Nairobi, Kenya.

**IFB No.:** AWWDA/KfW/NST/G/03/2021

**Date:** \_\_\_\_\_

**BID GUARANTEE No.:** \_\_\_\_\_

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

We have been informed that \_\_\_\_\_ *[insert name of the Bidder, 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 bid (hereinafter called "the Bid") for the execution of **Nairobi Satellite Towns Water and Sanitation Development Programme, Phase 1: Supply and Delivery of Consumer Water Meters – Lot 3** under Invitation for Bids No. AWWDA/KfW/NST/G/03/2021 ("the IFB").

Waiving all objections and defenses, we, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[Insert guarantee amount and currency in words and figures]* upon receipt by us of the Beneficiary's first 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 Bid during the period of bid validity set forth in the Applicant's Bid Submission Form (the Bid Validity Period"); or
- (b) Having been notified of the acceptance of its Bid by the Beneficiary during the Bid Validity Period, (i) has failed to sign the contract agreement, or (ii) has failed to furnish the performance security, in accordance with the Instructions to Bidders ("ITB") of the Beneficiary's bidding document.

This guarantee shall expire not later than *[Insert expiry date]* .

By this date we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

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

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*[Signature(s)]*

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

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## Manufacturer's Authorization

*[The Bidder shall require the Manufacturer to fill in this Form in accordance with the instructions indicated. This letter of authorization should be on the letterhead of the Manufacturer and should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer. The Bidder shall include it in its bid, if so indicated in the **BDS**, and for Items listed in the **BDS** and/or **Specifications**]*

*[Note: All italicized text is for use in preparing these forms by bidders and shall be deleted from the final document.]*

Date: *[Insert date]*

ICB No.: **AWWDA/KfW/NST/G/03/2021**

To: *[Insert complete name of Purchaser]*

### WHEREAS

We *[Insert complete name of Manufacturer]*, who are official manufacturers of *[Insert type of goods manufactured]*, having factories at *[Insert full address of Manufacturer's factories]*, do hereby authorize *[Insert complete name of Bidder]* to submit a bid the purpose of which is to provide the following Goods, manufactured by us:

*[Insert name and or brief description of the Goods]*,

and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 28 of the General Conditions of Contract, with respect to the Goods offered by the above firm.

Signed: *[Insert signature(s) of authorized representative(s) of the Manufacturer]*

Name: *[Insert complete name(s) of authorized representative(s) of the Manufacturer]*

Title: *[Insert title]*

Date signed *[Insert date of signing]* day of *[Insert month]* *[Insert year]*

## Section V. Eligibility Criteria

### Eligibility in KfW-Financed Procurement

1. To the exception of any equipment or any sector which is subject to an embargo by the United Nations, the European Union or Germany, all goods, works, plants, consulting services and non-consulting services are eligible for KfW financing regardless of the country of origin of the contractor, supplier, subcontractor, consultant or sub consultant inputs or resources used in the implementation processes. The Contracting Authority means the Purchaser, the Employer, the Client or the Project Executing Agency as the case may be, for the procurement of goods, works, plants, consulting services or non-consulting services.
2. Natural or legal persons (including board members or legal representatives, all members of a joint venture or any of their suppliers, contractors, subcontractors, consultants or sub consultants) shall not be awarded a KfW-financed contract if, on the date of submission of an application, a Bid or a proposal, or on the date of award of a contract, they:
  - 2.1 are bankrupt or being wound up or ceasing their activities, are having their activities administered by the courts, have entered into receivership, or are in any analogous situation arising from a similar procedure;
  - 2.2 have been:
    - (a) convicted, within the past five years by a court decision, which has the force of *res judicata* in the country where the contract is implemented, of fraud, corruption or of any other offense committed during a procurement process or performance of a contract, unless they provide supporting information together with their Declaration of Undertaking (Form available as Appendix to the Application, Bid or Proposal Submission Form) which shows that this conviction is not relevant in the context of this contract and that adequate compliance measures have been taken in reaction;
    - (b) subject to an administrative sanction within the past five years by the European Union or by national authorities either in the country of the Contracting Authority or of KfW, for fraud, corruption or for any other offense committed during a procurement process or performance of a contract, unless they provide supporting information together with their Declaration of Undertaking (Form available as Appendix to the Application, Bid or Proposal Submission Form) which shows that this sanction is not relevant in the context of this contract and that adequate compliance measures have been taken in reaction;
    - (c) convicted, within the past five years by a court decision, which has the force of *res judicata*, of fraud, corruption or of any other offense committed during the procurement process or performance of an KfW-financed contract;
  - 2.3 are listed for financial sanctions by the United Nations, the European Union and/or Germany for the purposes of fight-against-terrorist financing or threat to international peace and security. This criterion of exclusion is also applicable to legal persons, whose majority of shares are held or factually controlled by a listed natural or legal person;
  - 2.4 have been subject within the past five years to a contract termination fully settled against them for significant or persistent failure to comply with their contractual obligations during contract performance, unless this termination was challenged and the

- dispute resolution is still pending or has not confirmed a full settlement against them;
- 2.5 have not fulfilled their fiscal obligations regarding payments of taxes in accordance with the legal provisions of either the country where they are constituted or the Contracting Authority's country;
  - 2.6 are subject to an exclusion decision of the World Bank and are listed on the website <http://www.worldbank.org/debarr>, unless they provide supporting information together with their Declaration of Undertaking (Form available as Appendix to the Application, Bid or Proposal Submission Form) which shows that this exclusion is not relevant in the context of this contract and that adequate compliance measures have been taken in reaction;
  - 2.7 have created false documents or committed misrepresentation in documentation requested by the Contracting Authority as part of the procurement process of this Contract.

State-owned entities may compete only if they can establish that they (i) are legally and financially autonomous, and (ii) operate under commercial law. To be eligible, a state-owned entity shall establish to KfW's satisfaction, through all relevant documents, including its Charter and other information KfW may request, that it: (i) is a legal entity separate from their state, (ii) does not currently receive substantial subsidies or budget support, (iii) operates like any commercial enterprise, and, inter alia, is not obliged to pass on its surplus to their state, can acquire rights and liabilities, borrow funds and be liable for repayment of its debts, and can be declared bankrupt.

## Section VI. KfW Policy – Sanctionable Practice – Social and Environmental Responsibility

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### 1) Sanctionable Practice

The PEA and the Contractors (including all members of a Joint Venture and proposed or engaged Subcontractors) must observe the highest standard of ethics during the Tender Process and performance of the Contract.

By signing the Declaration of Undertaking the Contractors declare that (i) they did not and will not engage in any Sanctionable Practice likely to influence the Tender Process and the corresponding Award of Contract to the PEA's detriment, and that (ii) in case of being awarded a Contract they will not engage in any Sanctionable Practice.

Moreover, KfW requires to include in the Contracts a provision pursuant to which Contractors must permit KfW and in case of financing by the European Union also to European institutions having competence under European law to inspect the respective accounts, records and documents relating to the Tender Process and the performance of the Contract, and to have them audited by auditors appointed by KfW.

KfW reserves the right to take any action it deems appropriate to check that these ethics rules are observed and reserves, in particular, the rights to:

- (a) reject an Offer for Award of Contract if during the Tender Process the Bidder who is recommended for the Award of Contract has engaged in Sanctionable Practice, directly or by means of an agent in view of being awarded the Contract;
- (b) declare misprocurement and exercise its rights on the ground of the Funding Agreement with the PEA relating to suspension of disbursements, early repayment and termination if, at any time, the PEA, Contractors or their legal representatives or Subcontractors have engaged in Sanctionable Practice during the Tender Process or performance of the Contract without the PEA having taken appropriate action in due time satisfactory to KfW to remedy the situation, including by failing to inform KfW at the time they knew of such practices.

KfW defines, for the purposes of this provision, the terms set forth below as follows:

<b>Coercive Practice</b>	The impairing or harming, or threatening to impair or harm, directly or indirectly, any person or the property of the person with a view to influencing improperly the actions of a person.
<b>Collusive Practice</b>	An arrangement between two or more persons designed to achieve an improper purpose, including influencing improperly the actions of another person.
<b>Corrupt Practice</b>	The promising, offering, giving, making, insisting on, receiving, accepting or soliciting, directly or indirectly, of any illegal payment or undue advantage of any nature, to or by any person, with the

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intention of influencing the actions of any person or causing any person to refrain from any action.

**Fraudulent Practice** Any action or omission, including misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a person to obtain a financial benefit or to avoid an obligation.

**Obstructive Practice** Means (i) deliberately destroying, falsifying, altering or concealing evidence material to the investigation or the making of false statements to investigators, in order to materially impede an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice, or threatening, harassing or intimidating any Person to prevent them from disclosing their knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) any act intended to materially impede the exercise of KfW's access to contractually required information in connection with an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice.

**Sanctionable Practice** Any Coercive Practice, Collusive Practice, Corrupt Practice, Fraudulent Practice or Obstructive Practice (as such terms are defined herein) which is unlawful under the Financing Agreement.

## **2) Social and Environmental Responsibility**

Projects financed in whole or partly in the framework of Financial Cooperation have to ensure compliance with international Environmental, Social, Health and Safety (ESHS) standards (including issues of sexual exploitation and abuse and gender based violence) Contractors in KfW-financed projects shall consequently undertake in the respective Contracts to:

- (a) comply with and ensure that all their Subcontractors and major suppliers, i.e. for major supply items comply with international environmental and labour standards, consistent with applicable law and regulations in the country of implementation of the respective Contract and the fundamental conventions of the International Labour Organisation<sup>8</sup> (ILO) and international environmental treaties and;
- (b) implement any environmental and social risks mitigation measures, as identified in the environmental and social impact assessment (ESIA) and further detailed in the environmental and social management plan (ESMP) as far as these measures are relevant to the Contract and implement measures for the prevention of sexual exploitation and abuse and gender-based violence.

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<sup>8</sup> In case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant/Bidder/Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions with respect to a) workers grievances on working conditions and terms of employment, b) child labour, c) forced labour, d) worker's organisations and e) non-discrimination.



## **PART 2 - SUPPLY REQUIREMENTS**



# **Section VII. Schedule of Requirements**

## **Contents**

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## 1. List of Goods and Delivery Schedule

*[The column “Bidder’s offered Delivery date” to be filled by the Bidder]*

Line Item N°	Description of Goods	Quantity	Physical unit	Final (Project Site) Destination as specified in BDS	Delivery (as per Incoterms) Date		
					Earliest Delivery Date	Latest Delivery Date	Bidder’s offered Delivery date <i>[to be provided by the bidder]</i>
1	Consumer Water Meters for RUJWASCO and OWSC	16,700	Nr	As per Bid Data Sheet (BDS) Clause 14.8	N/A	90 Days after: (i) date of Receipt of Advance Payment by the Supplier* (ii) date of Receipt of the approved Master List for Tax Exemption by the Supplier**  Whichever is the latest.	

\* The complete and correct Advance Payment Security and Supplier’s Advance Payment Request must be submitted by the Supplier within twenty-eight (28) days of signature of the Contract Agreement. If these documents are submitted later than 28 days, then all days in excess of the 28 will be deducted from the 90 day delivery date, since the Supplier will be deemed to be delaying the payment of the Advance Payment.

\*\* After receipt of the approved Master List for Tax Exemption, the Supplier is responsible for submitting the required documents for the specific tax exemption, which must be approved before the goods can be ordered tax free. The 90 day contract delivery schedule foresees 28 days for the issuing of the specific tax exemption from the date the Supplier submits the correct documents, If the approval of the specific tax exemption takes more than 28 days then this will lead to an extension of the delivery date, unless the delay is due to the fault of the Supplier.

## 2. Technical Specifications

### **Technical Specification for Domestic Water Meters (Volumetric)**

#### **Meter Scope**

##### **Domestic water meters for service connections.**

The meters shall be high quality and robust for long term performance, high accuracy and reliability. They must be from a well-recognized manufacturer that has supplied similar domestic meters internationally for at least 10 years to ISO and OIML standards.

The meters must comply with EN ISO 4064: 2014, OIML R 49 :2013 and MID 2014/32/EU. The meters shall be the volumetric type (positive displacement meter), R=160, accuracy class 1, for installation in any position (except overhead).

Water meters to be equipped with integrated but easy exchangeable inlet strainer (mesh filter basket) and backflow preventer.

The meters must be pre-equipped for converting it into a communicating meter, ready for mobile or fixed network (radio/wired) reading.

The meter must be new and manufactured in the year of delivery. The domestic water meter shall be supplied as a complete kit with BSP threaded inlet and outlet tail coupling kits for connection to water pipes.

#### **Meter Manufacturer Certification**

The manufacturer of the meters must hold the Quality System Certificate for the standard ISO 9001.

The meters shall be either certified according to EN ISO 4064 or OIML R49. Hence, a type approval certificate has to be provided. If tested according to OIML R49, the report has to be issued by an accredited OIML Issuing Authority.

The meters shall also be MID certified, the type approval number must be provided.

The supplier should provide additionally the specific manufacturer's authorization for selling its product and the relevant certificate issued by KEBS.

#### **Meter Materials**

**General:** The materials used in the construction of the meter should be designed to withstand treated (potable) water supplied to WHO International regulations, for the climatic conditions of Nairobi City area, and to operate normally for 5 years without any need for normal maintenance or repair and without the maximum error exceeding the specified limits. The domestic water meter must be constructed throughout of materials which are resistant to internal and external corrosion and if necessary be protected by some suitable surface treatment. All materials of the water meter which are in contact with the water flowing through the water meter shall be non-toxic and non-tainting and this shall be certified by a recognized authority. Water temperature variations within the working range shall not affect the materials used in the construction of the water meter.

The meter sizes DN15 and DN20 must have composite housing/casing, brass will not be permitted.

For DN25 and bigger, the meters can have brass housing/casing.

**Serial Number:** In addition to the inscription requirement in ISO 4064, on every meter body there shall be marked the nominal diameter of the meter (e.g. DN 15 mm), the meter model, the temperature class T50, an arrow indicating the direction of flow in indelible marking cast in raised characters, in very easily visible position on the outer case of the meters, **but NOT on the lid**. The letters “AWWDA” followed by the serial number (e.g. AWWDA 1512345619) in one continuous string should be engraved on the meter body and laser marked on the upper part of the totalizer in Number and Barcode, near the index, in big letters (5mm minimum height) and not on any transparent part of the totalizer. The set of the serial numbers to be used will be issued to the winning bidder.

**External Case Bolts:** Where external case bolts, screws, cap bolts, nuts and washers form part of the meter design these shall be arranged for ease of removal after long service. They shall be of the same composition as the meter casing if appropriate or of stainless steel.

### **Type of Dial**

The meter dial must be circular, straight reading in cubic meters ( $M^3$ ), either with “Sealed Register” (sealed in a transparent capsule filled with protective propylene glycol or glycerin) or “Dry Dial”. No portion of the register shall be in contact with the measured water. (Meters with numbered drums in contact with the water being measured are not acceptable)

### **Connectors:**

Threaded meters shall be supplied complete with a set of connectors that are made of copper alloy or equivalent material resistant to corrosion, rust and damage due to shock or vibration. The connectors shall be threaded to the correct male size, comprising cap nuts, linings and fibber sealing washers. The meter linings shall have adequate provisions to safeguard against tampering.

Meter body casing nipple shall have an external straight BSP threads. Coupling nuts shall have internal BSP threads of the same nominal pitch and diameter as in each case of the meter body. They shall be of the same composition as the meter casing if appropriate or of stainless steel. The tailpiece connections shall have external BSP taper thread of the same size as the nominal diameter of the meter.

**Meter Size:** The domestic meter must correspond to OIML R-49:2013

<b>Diameter</b>	<b>Meter Length (mm)</b>	<b>Max Meter Length with connectors (mm)</b>
15	165	250
20	190	350
25	260	350
32	260	380
40	300	450

**Counter:** The meter shall have tempered glass lens of minimum 5mm thickness with flat and smooth surface, scratch resistant and that does not turn opaque.

The indicator shall provide for reliable and unambiguous direct reading of the volume of water measured in cubic meters ( $m^3$ ) and litres. The indications of volume shall be by any of the two types as follows: -

Type 1 By a row of inline consecutive digits in one or more apertures (drum counters);

or

Type 2 A combination of drum counters for whole units of cubic meters and pointers on circular scales

for fractions of cubic meters.

Drum counters shall be black for indication of a cubic meter and its multiples shall be red for indication of fractions of a cubic meter. Visible movements of the digits shall be upwards and the actual height of the digits on the drums shall not be less than 4 mm. The advance of a digital unit shall be completed while the next lower valued digit is within the last tenth of its travel. The drums showing digits of lowest value shall move continuously in Type 1, and may move continuously in Type 2. Indicators with pointers (Type 2) shall rotate in a clockwise direction. The value of each division on the scales shall be expressed in multiples or sub-multiples of ten.

Each scale shall be graduated in cubic meters or accompanied by a multiplying factor (x0.0001, x0.001, x0.01, x0.1) according to the value of the scale. The symbol ( $m^3$ ) shall appear on the dial.

**The gear unit and the counter shall be combined and completely hermetically sealed. Unsealed counters shall not be accepted.**

The numbered drums shall be contained in a transparent hermetically sealed capsule. The counter shall be placed in a window of adequate thickness in the meter body and be placed so as to allow for ease of meter reading. Counter window shall be of minimum 5mm thickness. Black numbers on white shall denote cubic meters and white numbers on red shall denote litres.

The meter shall be pre-equipped for retrofitting with new generation bi-directional pulse emitter.

The pre-equipment and the proposed communication equipment should be insensitive to magnets of up to 3850 gauss.

**Tightness, Pressure and Temperature Resistance:** The water meter shall permanently sustain (without leakage, malfunctioning or permanent deformation) a minimum working pressure of 16 bar, a test pressure of 2.5 times the working pressure and be suitable for water temperatures up to 50 degrees Celsius.

**Measuring Chamber:** The measuring chamber shall be self-contained unit, smoothly finished, firmly seated, and easily removed from the main casing and shall not be produced as part of the main casing. The chamber shall be secured in the main casing so that the accuracy of the meter will not be affected by any distortion of the main case that may occur with operating pressure less than 16 bars.

**Rotary Piston :** Piston shall be smoothly finished and equipped with thrust rollers. The piston spindles shall be fastened securely. It should have sufficient dimensional stability to retain operating clearance at working temperatures up to 50°C. A designed life expectancy in excess of 10 years is expected.

The meters shall operate at PH 6.5 – 8.5

Tenderer shall specify the optimum pH and the water quality for which the meters have been designed.

### **Meter Protection**

**Strainers:** The meter shall have an in-built strainer screen, which shall be rigid, fit snugly, be easy to remove and have an effective straining area at least double the main casing inlet.

### **Reverse Flow Restrictor / Non-return Valves:**

All meters must be fitted with an in-built non removable maintenance free non return valve that shall prevent meter reversal.

**Sealing:** Water meters shall be provided with a means of sealing so that after sealing, both before and after the water meter has been properly installed, there shall be no possibility of dismantling or altering

the water meter without visibly damaging the seal. The meters shall be sealed subsequent to manufacture and before delivery to the purchaser. The preferred method of sealing is by a corrosive resistant wire inserted through 2.5 mm diameter holes in the halves of the body, and secured by a circular sheet metal seal impressed by a device which provides a unique imprint on the seal denoting manufacturer's identity.

**Meter Characteristics & Performance:**

The meter metrological data, flow rate values and dimensions shall (as a minimum) meet the following (terms to ISO 4064):

Note that for meters DN 25 and 32 the preferred option is for meters  $Q_3 = 6.3\text{m}^3/\text{h}$ ,  $R=160$ .

Alternatively, for meters DN 25 and 32 the option  $Q_3 = 10\text{m}^3/\text{h}$ ,  $R=160$  will also be accepted. The supplier must indicate which option is offered.



**Table of Flow Meters to be supplied:**

Flow Meter Nominal Diameter (ND)	length	BSP connecters	starting flow rate (l/h)	Q1 (m <sup>3</sup> /h)	Q2 (m <sup>3</sup> /h)	Q3 (m <sup>3</sup> /h)	Q4 (m <sup>3</sup> /h)	Q3/Q1	MPE lower flow rate	MPE upper flow rate (Temp 0-30°C)	MPE upper flow rate (Temp >30°C)
DN15	165	1/2"	<2	0.01562	0.025	2.5	3.125	160	3%	1%	2%
DN 20	190	3/4"	<2	0.025	0.04	4	5	160	3%	1%	2%
DN 25 (preferred)	260	1"	<8	0.039375	0.063	6.3	7.875	160	3%	1%	2%
or DN 25	260		<8	0.0625	0.1	10	12.5	160	3%	1%	2%
DN 32 (preferred)	260	1 1/4"	<8	0.039375	0.063	6.3	7.875	160	3%	1%	2%
or DN 32	260		<8	0.0625	0.1	10	12.5	160	3%	1%	2%
DN 40	300	1 1/2"	<12	0.1	0.16	16	20	160	3%	1%	2%

**Tender Sample Meters:** The tenderer shall provide a sample of two (2) meters on the bid opening date and time and acknowledged by the supply chain manager; which will be sampled during the evaluation stage of the tender. One (1) meter shall be DN15 and one (1) meter shall be DN20. One DN15 and one DN20 sample meter shall be tested for accuracy and pressure at KEBS. The KEBS results shall be final.

**Testing on Delivery of Meters:** A systematic random sampling of five percent (5%) of the delivered meters in sequentially serialized batches of one hundred (100) meters shall be tested for accuracy at the Kenya Bureau of Standards (KEBS) laboratory. The costs to be covered by the relevant item in the BoQ.

If any of the sampled 5 meters in a batch fails, then the batch is rejected. If more than 2 batches in a single consignment are rejected then the entire consignment shall be rejected.

In case of a dispute the two parties shall agree upon an accredited laboratory by KENAS for further testing of the same meters in the presence of both parties at the bidder's cost.

The results from the later test shall be deemed to be final.

#### **Manufacturing defects**

These shall include but not limited to leakage, cracked body, faulty dials, stopped meter.

Detection of any of the above on any meter shall be considered as a manufacturing defect then: -

- I. The entire consignment shall be rejected.
2. The supplier shall be instructed to deliver another consignment within 60 days. If the delivery subsequent to the consignment found to have manufacturing defects is found to have any defective meter, contract termination shall commence immediately in accordance to clause 3.16 of GCC and concluded after finalization of testing defined in item (I) above. No further delivery shall be accepted.

**Design Workmanship and Materials:** The meters shall be guaranteed against defects in materials and workmanship for a minimum period of two (2) years from date of delivery subject to their being used only for the measurement of water that meets WHO guidelines under the normal conditions of flow, pressure and temperature recommended by the manufacturers for the size and type of meter concerned. The supplier shall provide durability test certificates for all deliveries.

Meters should be designed for easy disassembly and re-assembly without the use of special tools or equipment and should be easy to maintain and repair. Meters designed to resist vandalism / tampering will be preferred.

**Packaging:** Packing shall be made of strong carton box, and inside such carton box, each meter plus the associated fittings shall be packed in its own carton box. The meters shall further be packed in batches of 10 meters. The cartons shall be labelled with the meter model, manufacturer's logo and contacts.

#### **Maintenance manuals:**

A complete set of maintenance manuals in ENGLISH, spare parts lists, extruded drawings, wall charts required for maintaining the meters or in carrying out tests are to be provided with the tender.

#### **After sales service:**

Address of the local agents technical advisors and details of after sales-service shall be submitted

together with each tender. Information on stocks of meters and meter spares, which will be held by the local agents, is also to be stated in the tender.

Availability of spare parts has to be proven. The manufacturer should provide a complete list of available spare parts (in English), their specific costs (at the time of purchase) and delivery time. The manufacturer should guarantee the supply of spare parts for at least two years after the expiry of warranty.

#### **Meter test certificates**

During delivery each meter shall be accompanied by the following test certificates in accordance to OIML R49 2013 and ISO 4064:2014

1. Accuracy testing
2. Pressure testing and
3. Durability

**Additional information:** The tenderer is at liberty to provide additional information on the meter not catered for in this document.

#### **Summary of the technical data of the goods**

Tenderer must complete the attached Annex A, which summarizes the technical data of the goods being offered under this tender.

#### **ANNEX 'A' TO TECHNICAL SPECIFICATION**

(To be completed by all Tenderer)

A. Type/Model of meter: .....

To be completed by all Tenderers

Flow Meter Nominal Diameter (ND)	length (mm)	starting flow rate (l/h)	Q1 (m <sup>3</sup> /h)	Q2 (m <sup>3</sup> /h)	Q3 (m <sup>3</sup> /h)	Q4 (m <sup>3</sup> /h)	Q3/Q1	Pressure class (bars)	Outer casing / housing material	Inbuilt strainer and non-return valve (Y/N)	Pre-equipped for remote reading (Y/N)
DN15											
DN 20											
DN 25											
DN 32											
DN 40											

B. Copies of test certificates from manufacturer shall be attached.

C. After-sales service of the meters can be carried out by (Name of Local Agent)

.....

Located at ..... Box No. ....

Telephone .....

Contact Person .....

### ***Technical Specification***

- i. Must show Proof of Similar Assignments in nature within the last three years. (Copies of Award Letters, Orders, Contracts and Testimonials from clients)*
- ii. Copy of Brochures and Literature and Drawings attached for the meters to be supplied under this contract.*
- iii. Must indicate the country of Origin of goods to be supplied (NB: no country is known as LOCAL)*
- iv. Must attach Manufacturers Letter of Authorization to deal with the goods to be supplied under this contract.*
- v. The BRAND MUST be registered in the country of origin with clear physical address of the manufacturer.*
- vi. Durability Test Certificate from the manufacturer for each sample presented*
- vii. Accuracy test certificate from the manufacturer for each sample presented*
- viii. Pressure test certificate from the manufacturer for each sample presented*
- ix. Bidder must comply to all requirements on table 1 below*

*A bidder who fails to meet any of the above requirements shall be dropped at this stage and shall not be progressed to the Financial Evaluation stage*

**TABLE 1: MANDATORY TECHNICAL EVALUATION CRITERIA**

<b>ITEM</b>	<b>CRITERIA (All are Mandatory)</b>	<b>(YES)</b>	<b>(NO)</b>	<b>Comments</b>
1	Two samples of the water meters offered must be submitted together with the bid			

Supply and Delivery of Consumer Water Meters – Lot 3					Schedule of Requirements																			
2	<b>ISO Certification</b> Manufacturer ISO 9001 certified																							
3	<b>Meter Certification</b> Type approval certificate (either according to EN ISO 4064 2014, or OIML R49 2013) and MID certified.																							
4	<b>Meter Certification</b> KEBS certificate																							
5	<b>Meter Certification</b> Certificate of Sanitary Compliance (WRAS or similar)																							
6	<b>Meter Design:</b> Volumetric type (positive displacement meter)																							
7	<b>Marks and Inscriptions:</b> In addition to ISO 4064, nominal diameter, the meter model, the temperature class and the letters “AWWDA” followed by the serial number (e.g. AWWDA 1512345619).																							
8	<b>Connectors:</b> Coupling kits with internal BSP threads																							
9	<b>Meter length:</b> <table><tr><th>Diameter</th><th>Meter Length (mm)</th><th>Max Meter Length with connectors (mm)</th></tr><tr><td>15</td><td>165</td><td>250</td></tr><tr><td>20</td><td>190</td><td>350</td></tr><tr><td>25</td><td>260</td><td>350</td></tr><tr><td>32</td><td>260</td><td>380</td></tr><tr><td>40</td><td>300</td><td>450</td></tr></table>			Diameter	Meter Length (mm)	Max Meter Length with connectors (mm)	15	165	250	20	190	350	25	260	350	32	260	380	40	300	450			
Diameter	Meter Length (mm)	Max Meter Length with connectors (mm)																						
15	165	250																						
20	190	350																						
25	260	350																						
32	260	380																						
40	300	450																						
10	<b>Meter housing/casing material</b> DN15 and DN20 must have composite housing/casing, brass will not be permitted.  For DN25 and bigger, the meters can have brass housing/casing.																							
11	<b>Meter pre-equipped for remote reading</b>																							
12	<b>Meter Installation</b> For installation in in any position, Vertical & Horizontal, (except overhead).																							

13	<b>Meter Protection</b>  <b>Strainers:</b> In-built strainer screen  <b>Reverse Flow Restrictor / Non-Return Valves:</b> In-built Non-Removable and maintenance free NRV  <b>Sealing:</b> Sealing holes 2.5 mm diameter			
14	<b>Tightness, Pressure and Temperature Resistance</b> $\geq 16$ Bars $\leq 50^{\circ}\text{C}$			
15	<b>Meteorological Class and starting flow rates:</b> Class R=160 and above requirements			
16	<b>Meter test certificates for individual sample meters</b> 3. Accuracy testing 4. Pressure testing and 3. Durability			
17	<b>Warranty Period</b> Minimum 2 years			
18	<b>Spare parts/after sales service:</b> The name, address, and contact details of the local agent responsible for providing spare parts and maintenance shall be indicated.			
19	<b>Manufacturer's Letter of Authorization</b> Submitted, also with proof that manufacturer has supplied similar domestic meters internationally for at least 10 years to ISO and OIML standards			

### 3. Schedule of Information on Manufacturers, Quality Standards and Technical Data Sheets for Goods to be Supplied

No.	Material/Equipment	Name and Address of Manufacturer (where applicable)	Country of Origin	Name & Address of Supplier (including Country)	Make/Model (Where Applicable)	Applicable Quality Standard to which Material/Equipment Conforms and MID Type Approval Number
i)	Consumer Water Meters (DN 15mm)					
ii)	Consumer Water Meters (DN 20mm)					
iii)	Consumer Water Meters (DN 25mm)					
iv)	Consumer Water Meters (DN 32mm)					
v)	Consumer Water Meters (DN 40mm)					

**Note:** Bidder to submit Technical Data Sheets from the proposed manufacturers for each of the items above.

**If the Bidder fails to provide adequate details including Manufacturer's Technical Data Sheets as required above, the Bid may be deemed incomplete and consequently rejected.**



## 4. Drawings

These Bidding Documents includes **No** drawings.

## **5. Inspections and Tests**

The following inspections and tests shall be performed:

- (i) Inspection and Accuracy Testing of randomly selected samples of the Water Meters to be carried out at the Kenya Bureau of Standards Laboratory as per the Technical Specifications. The costs to be covered by the relevant item in the BoQ. KEBs Testing Results will be final.
- (ii) Physical Inspection of the Water Meters to be carried out at the RUJWASCO Head Office in Ruiru and the OWSC Head Office in Ongata Rongai prior to Acceptance and Taking Over of the Meters by the Purchaser.

## **PART 3 - CONDITIONS OF CONTRACT AND CONTRACT FORMS**

## Section VIII. General Conditions of Contract

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## Section VIII. General Conditions of Contract

### 1. Definitions

1.1 The following words and expressions shall have the meanings hereby assigned to them:

- (a) “Bank” means the KfW Development Bank (KfW).
- (b) “Contract” means the Contract Agreement entered into between the Purchaser and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
- (c) “Contract Documents” means the documents listed in the Contract Agreement, including any amendments thereto.
- (d) “Contract Price” means the price payable to the Supplier as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
- (e) “Day” means calendar day.
- (f) “Completion” means the fulfillment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.
- (g) “GCC” means the General Conditions of Contract.
- (h) “Goods” means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Purchaser under the Contract.
- (i) “Purchaser’s Country” is the country specified in the Special Conditions of Contract (SCC).
- (j) “Purchaser” means the entity purchasing the Goods and Related Services, as specified in the SCC.
- (k) “Related Services” means the services incidental to the supply of the goods, such as insurance, installation, training and initial maintenance and other such obligations of the Supplier under the Contract.
- (l) “SCC” means the Special Conditions of Contract.
- (m) “Subcontractor” means any person, private or government entity, or a combination of the above, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier.

(n) “Supplier” means the person, private or government entity, or a combination of the above, whose bid to perform the Contract has been accepted by the Purchaser and is named as such in the Contract Agreement.

(o) “The Project Site,” where applicable, means the place named in the **SCC**.

**2. Contract Documents**

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

**3. Corrupt and Fraudulent Practices**

3.1 The Bank requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Appendix to the GCC.

3.2 The Purchaser requires the Supplier 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 bidding 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.



#### **4. Interpretation**

4.1 If the context so requires it, singular means plural and vice versa.

#### **4.2 Incoterms**

- (a) Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms.
- (b) The terms EXW, CIP, FCA, CFR and other similar terms, when used, shall be governed by the rules prescribed in the current edition of Incoterms specified in the **SCC** and published by the International Chamber of Commerce in Paris, France.

#### **4.3 Entire Agreement**

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

#### **4.4 Amendment**

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

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#### 4.5 Nonwaiver

- (a) Subject to GCC Sub-Clause 4.5(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
- (b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

#### 4.6 Severability

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

### 5. Language

- 5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Supplier and the Purchaser, shall be written in the language specified in the **SCC**. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified, in which case, for purposes of interpretation of the Contract, this translation shall govern.
- 5.2 The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Supplier.

### 6. Joint Venture, Consortium or Association

- 6.1 If the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Purchaser.

### 7. Eligibility

- 7.1 The Supplier and its Subcontractors shall have the nationality of an eligible country. A Supplier or Subcontractor shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.
- 7.2 All Goods and Related Services to be supplied under the Contract and financed by the Bank shall have their origin in Eligible

Countries. For the purpose of this Clause, origin means the country where the goods have been grown, mined, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

## **8. Notices**

8.1 Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the **SCC**. The term “in writing” means communicated in written form with proof of receipt.

8.2 A notice shall be effective when delivered or on the notice’s effective date, whichever is later.

## **9. Governing Law**

9.1 The Contract shall be governed by and interpreted in accordance with the laws of the Purchaser’s Country, unless otherwise specified in the **SCC**.

9.2 Throughout the execution of the Contract, the Contractor shall comply with the import of goods and services prohibitions in the Purchaser’s country when

(a) as a matter of law or official regulations, the Borrower’s country prohibits commercial relations with that country; or

9.2 (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower’s Country prohibits any import of goods from that country or any payments to any country, person, or entity in that country.

## **10 Settlement of Disputes**

10.1 The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.

10.2 If, after twenty-eight (28) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Purchaser or the Supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under the Contract. Arbitration proceedings shall be conducted in accordance with the rules of procedure **specified in the SCC**.

10.3 Notwithstanding any reference to arbitration herein,

- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
- (b) the Purchaser shall pay the Supplier any monies due the Supplier.

**11. Inspections and Audit by the Bank**

11.1 The Supplier shall keep, and shall make all reasonable efforts to cause its Subcontractors to keep, accurate and systematic accounts and records in respect of the Goods in such form and details as will clearly identify relevant time changes and costs.

11.2 The Supplier shall permit, and shall cause its Subcontractors to permit, the Bank and/or persons appointed by the Bank to inspect the Supplier's offices and all accounts and records relating to the performance of the Contract and the submission of the bid, and to have such accounts and records audited by auditors appointed by the Bank if requested by the Bank. The Supplier's and its Subcontractors and consultants' attention is drawn to Clause 3 [Fraud and Corruption], which provides, inter alia, that acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under this Sub-Clause 11.1 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Bank's prevailing sanctions procedures)

**12. Scope of Supply**

12.1 The Goods and Related Services to be supplied shall be as specified in the Schedule of Requirements.

**13. Delivery and Documents**

13.1 Subject to GCC Sub-Clause 33.1, the Delivery of the Goods and Completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in the Schedule of Requirements. The details of shipping and other documents to be furnished by the Supplier are specified in the SCC.

**14. Supplier's Responsibilities**

14.1 The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GCC Clause 12, and the Delivery and Completion Schedule, as per GCC Clause 13.

**15 Contract Price**

15.1 Prices charged by the Supplier for the Goods supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its bid, with the exception of any price adjustments authorized in the SCC.

**16. Terms of Payment**

16.1 The Contract Price, including any Advance Payments, if applicable, shall be paid as specified in the SCC.

16.2 The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GCC Clause 13 and upon fulfillment of all other obligations stipulated in the Contract.

16.3 Payments shall be made promptly by the Purchaser, but in no case later than sixty (60) days after submission of an invoice or request for payment by the Supplier, and after the Purchaser has accepted it.

16.4 The currencies in which payments shall be made to the Supplier under this Contract shall be those in which the bid price is expressed.

16.5 In the event that the Purchaser fails to pay the Supplier any payment by its due date or within the period set forth in the **SCC**, the Purchaser shall pay to the Supplier interest on the amount of such delayed payment at the rate shown in the **SCC**, for the period of delay until payment has been made in full, whether before or after judgment or arbitration award.

#### **17. Taxes and Duties**

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

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

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

#### **18. Performance Security**

18.1 If required as specified in the **SCC**, the Supplier shall, within twenty-eight (28) days of the notification of contract award, provide a performance security for the performance of the Contract in the amount specified in the **SCC**.

18.2 The proceeds of the Performance Security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.

18.3 As specified in the **SCC**, the Performance Security, if required, shall be denominated in the currency(ies) of the Contract, or in a freely convertible currency acceptable to the Purchaser; and

shall be in one of the format stipulated by the Purchaser in the **SCC**, or in another format acceptable to the Purchaser.

18.4 The Performance Security shall be discharged by the Purchaser and returned to the Supplier not later than twenty-eight (28) days following the date of Completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the **SCC**.

## **19. Copyright**

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

## **20. Confidential Information**

20.1 The Purchaser and the Supplier shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Supplier may furnish to its Subcontractor such documents, data, and other information it receives from the Purchaser to the extent required for the Subcontractor to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Supplier under GCC Clause 20.

20.2 The Purchaser shall not use such documents, data, and other information received from the Supplier for any purposes unrelated to the contract. Similarly, the Supplier shall not use such documents, data, and other information received from the Purchaser for any purpose other than the performance of the Contract.

20.3 The obligation of a party under GCC Sub-Clauses 20.1 and 20.2 above, however, shall not apply to information that:

- (a) the Purchaser or Supplier need to share with the Bank or other institutions participating in the financing of the Contract;
- (b) now or hereafter enters the public domain through no fault of that party;
- (c) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or

- (d) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

20.4 The above provisions of GCC Clause 20 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.

20.5 The provisions of GCC Clause 20 shall survive completion or termination, for whatever reason, of the Contract.

## **21. Subcontracting**

21.1 The Supplier shall notify the Purchaser in writing of all subcontracts awarded under the Contract if not already specified in the bid. Such notification, in the original bid or later shall not relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.

21.2 Subcontracts shall comply with the provisions of GCC Clauses 3 and 7.

## **22. Specifications and Standards**

22.1 Technical Specifications and Drawings

- (a) The Goods and Related Services supplied under this Contract shall conform to the technical specifications and standards mentioned in Section VI, Schedule of Requirements and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the Goods' country of origin.

- (b) The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Purchaser.

- (c) Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Schedule of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Purchaser and shall be treated in accordance with GCC Clause 33.

## **23. Packing and Documents**

23.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where

appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

23.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the **SCC**, and in any other instructions ordered by the Purchaser.

#### **24. Insurance**

24.1 Unless otherwise specified in the **SCC**, the Goods supplied under the Contract shall be fully insured—in a freely convertible currency from an eligible country—against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the **SCC**.

#### **25. Transportation and Incidental Services**

25.1 Unless otherwise specified in the **SCC**, responsibility for arranging transportation of the Goods shall be in accordance with the specified Incoterms.

25.2 The Supplier may be required to provide any or all of the following services, including additional services, if any, **specified in SCC**:

- (a) performance or supervision of on-site assembly and/or start-up of the supplied Goods;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied Goods;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied Goods;
- (d) performance or supervision or maintenance and/or repair of the supplied Goods, for a period of time agreed by the parties, provided that this service shall not relieve the Supplier of any warranty obligations under this Contract; and
- (e) training of the Purchaser's personnel, at the Supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied Goods.

25.3 Prices charged by the Supplier for incidental services, if not included in the Contract Price for the Goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services

#### **26. Inspections and Tests**

26.1 The Supplier shall at its own expense and at no cost to the Purchaser carry out all such tests and/or inspections of the Goods and Related Services as are specified in the **SCC**.



- 26.2 The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the Goods' final destination, or in another place in the Purchaser's Country as specified in the **SCC**. Subject to GCC Sub-Clause 26.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.
- 26.3 The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 26.2, provided that the Purchaser bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.
- 26.4 Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Purchaser. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Purchaser or its designated representative to attend the test and/or inspection.
- 26.5 The Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.
- 26.6 The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.
- 26.7 The Purchaser may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a notice pursuant to GCC Sub-Clause 26.4.
- 26.8 The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report

pursuant to GCC Sub-Clause 26.6, shall release the Supplier from any warranties or other obligations under the Contract.

## **27. Liquidated Damages**

27.1 Except as provided under GCC Clause 32, if the Supplier fails to deliver any or all of the Goods by the Date(s) of delivery or perform the Related Services within the period specified in the Contract, the Purchaser may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the **SCC** of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those **SCC**. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to GCC Clause 35.

## **28. Warranty**

28.1 The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.

28.2 Subject to GCC Sub-Clause 22.1(b), the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.

28.3 Unless otherwise specified in the **SCC**, the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the **SCC**, or for eighteen (18) months after the date of shipment from the port or place of loading in the country of origin, whichever period concludes earlier.

28.4 The Purchaser shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Supplier to inspect such defects.

28.5 Upon receipt of such notice, the Supplier shall, within the period specified in the **SCC**, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.

28.6 If having been notified, the Supplier fails to remedy the defect within the period specified in the **SCC**, the Purchaser may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.

## **29. Patent**

### **Indemnity**

~~29.1 The Supplier shall, subject to the Purchaser's compliance with~~

GCC Sub-Clause 29.2, indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

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

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

29.2 If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in GCC Sub-Clause 29.1, the Purchaser shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

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

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

29.5 The Purchaser shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or

otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Purchaser.

**30 Limitation of Liability**

- 30.1 Except in cases of criminal negligence or willful misconduct,
- (a) the Supplier shall not be liable to the Purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser and
  - (b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the supplier to indemnify the purchaser with respect to patent infringement

**31. Change in Laws and Regulations**

- 31.1 Unless otherwise specified in the Contract, if after the date of 28 days prior to date of Bid submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the place of the Purchaser's country where the Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Clause 15.

**32. Force Majeure**

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

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

**33. Change Orders  
and Contract  
Amendments**

33.1 The Purchaser may at any time order the Supplier through notice in accordance GCC Clause 8, to make changes within the general scope of the Contract in any one or more of the following:

- (a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
- (b) the method of shipment or packing;
- (c) the place of delivery; and
- (d) the Related Services to be provided by the Supplier.

33.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier's receipt of the Purchaser's change order.

33.3 Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.

33.4 Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

**34. Extensions of  
Time**

34.1 If at any time during performance of the Contract, the Supplier or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 13, the Supplier shall promptly notify the Purchaser in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in which



case the extension shall be ratified by the parties by amendment of the Contract.

34.2 Except in case of Force Majeure, as provided under GCC Clause 32, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 26, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 34.1.

## **35. Termination**

### **35.1 Termination for Default**

- (a) The Purchaser, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate the Contract in whole or in part:
  - (i) if the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GCC Clause 34;
  - (ii) if the Supplier fails to perform any other obligation under the Contract; or
  - (iii) if the Supplier, in the judgment of the Purchaser has engaged in fraud and corruption, as defined in GCC Clause 3, in competing for or in executing the Contract.
- (b) In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC Clause 35.1(a), the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

### **35.2 Termination for Insolvency.**

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

### **35.3 Termination for Convenience.**

- (a) The Purchaser, by notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for

its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.

- (b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:
  - (i) to have any portion completed and delivered at the Contract terms and prices; and/or
  - (ii) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

**36. Assignment**

36.1 Neither the Purchaser nor the Supplier shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

**37. Export  
Restriction**

37.1 Notwithstanding any obligation under the Contract to complete all export formalities, any export restrictions attributable to the Purchaser, to the country of the Purchaser, or to the use of the products/goods, systems or services to be supplied, which arise from trade regulations from a country supplying those products/goods, systems or services, and which substantially impede the Supplier from meeting its obligations under the Contract, shall release the Supplier from the obligation to provide deliveries or services, always provided, however, that the Supplier can demonstrate to the satisfaction of the Purchaser and of the Bank that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the export of the products/goods, systems or services under the terms of the Contract. Termination of the Contract on this basis shall be for the Purchaser's convenience pursuant to Sub-Clause 35.3.



## Section IX. Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement and / or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

<b>GCC 1.1(i)</b>	The Purchaser's country is: <b>The Republic of Kenya</b>
<b>GCC 1.1(j)</b>	<p>The Purchaser is:</p> <p><b>Chief Executive Officer</b>  <b>Athi Water Works Development Agency (AWWDA)</b>  <b>P.O. Box 45283-00100</b>  <b>Nairobi, Kenya</b></p> <p>Street Address: <i>Athi Water Plaza, Muthaiga North Road Off Kiambu Road</i>  Telephone: +254-20-2727438  Facsimile number: +254-20-2724295  Electronic mail address: <a href="mailto:info@awwda.go.ke">info@awwda.go.ke</a></p>
<b>GCC 1.1 (o)</b>	The Project Site(s)/Final Destination(s) is/are: <b>Ruiru-Juja Water and Sewerage Company (RUJWASCO) Head Office in Ruiru and Ololaiser Water and Sewerage Company (OWSC) Head Office in Ongata Rongai.</b>
<b>GCC 4.2 (a)</b>	The meaning of the trade terms shall be as prescribed by Incoterms. If the meaning of any trade term and the rights and obligations of the parties thereunder shall not be as prescribed by Incoterms, they shall be as prescribed by: <b>Not Applicable</b>
<b>GCC 4.2 (b)</b>	The version edition of Incoterms shall be <b>Eighth Edition, Incoterms 2010</b>
<b>GCC 5.1</b>	The language shall be: <b>English</b>
<b>GCC 7.2</b>	"Goods and services from countries under embargo from Germany, the European Union or the United Nations are not eligible. Goods and services from countries which are legally barred in the country of the contracting agency."
<b>GCC 8.1</b>	<p>For <b>notices</b>, the Purchaser's address shall be:</p> <p><b>Chief Executive Officer</b>  <b>Athi Water Works Development Agency (AWWDA)</b>  <b>P.O. Box 45283-00100</b>  <b>Nairobi, Kenya</b></p> <p>Street Address: <i>Athi Water Plaza, Muthaiga North Road Off Kiambu Road</i>  Telephone: +254-20-2727438  Facsimile number: +254-20-2724295  Electronic mail address: <a href="mailto:info@awwda.go.ke">info@awwda.go.ke</a></p>

<b>GCC 9.1</b>	The governing law shall be the law of <b>Kenya</b> .
<b>GCC 10.2</b>	<p>The rules of procedure for arbitration proceedings pursuant to GCC Clause 10.2 shall be as follows:</p> <p><b>(a) Contract with foreign Supplier:</b></p> <p>GCC 10.2 (a)—Any dispute, controversy or claim arising out of or relating to this Contract, or breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.</p> <p><b>(b) Contracts with Supplier national of the Purchaser's country:</b></p> <p>In the case of a dispute between the Purchaser and a Supplier who is a national of the Purchaser's country, the dispute shall be referred to adjudication or arbitration in accordance with the laws of the Purchaser's country.</p>
<b>GCC 13.1</b>	<p>Details of Shipping and other Documents to be furnished by the Supplier are <b><i>a negotiable bill of lading, a non-negotiable sea way bill, an airway bill, a railway consignment note, a road consignment note, insurance certificate, Manufacturer's or Supplier's warranty certificate, inspection certificate issued by nominated inspection agency, Supplier's factory shipping details.</i></b></p> <p>The above documents shall be received by the Purchaser before arrival of the Goods and, if not received, the Supplier will be responsible for any consequent expenses.</p>
<b>GCC 15.1</b>	The prices charged for the Goods supplied and the related Services performed <b>shall not</b> be adjustable.
<b>GCC 16.1</b>	<p>Payments shall be made using the KfW's Simplified Direct Disbursement Procedure. The method and conditions of payment to be made to the Supplier under this Contract shall be as follows:</p> <p>(i) <b>Advance Payment: Twenty (20) percent</b> of the Contract Price shall be paid within Fifty-Six (56) days of submission of the Payment Application, with a Bank Guarantee for equivalent amount valid until the Goods are delivered and in the form provided in the bidding documents, or another form acceptable to the Purchaser, and the submission of an acceptable performance guarantee.</p> <p>(ii) <b>On Delivery: Eighty (80) percent</b> of the Contract Price shall be paid within 70 days of Delivery and Acceptance of the Goods.</p> <p>Payment to the Supplier of the amounts due in each currency shall be made into the following bank accounts <b>(To be filled prior to contract signature stage)</b></p>

<b>GCC 16.5</b>	<p>The payment-delay period after which the Purchaser shall pay interest to the supplier shall be <b>70 days</b>.</p> <p>1) 3% above the “Central Bank Rate” (CBR) published monthly by the Central Bank of Kenya for payments in local currency; and</p> <p>2) 2% above “3-month LIBOR Rate” for payments in foreign currency”</p>
<b>GCC 18.1</b>	<p>A Performance Security <b>shall be required</b>.</p> <p>The amount of the Performance Security shall be <b>10%</b> of the Contract Price.</p> <p>The cost of Provision of Performance Security in accordance with this Clause shall be deemed to be covered under the Supplier’s Rates.</p>
<b>GCC 18.3</b>	<p>The Performance Security shall be in the form of an <b>Unconditional Bank Guarantee</b>.</p> <p>The Performance Security shall be denominated in the currencies of payment of the Contract, in accordance with their portions of the Contract Price.</p>
<b>GCC 18.4</b>	<p>Discharge of the Performance Security shall take place: <b>12 Months after Final Delivery and Acceptance of the Goods. The Performance Security must be valid up to this time. There will be no partial discharge of the Performance Security for partial delivery of Goods.</b></p>
<b>GCC 23.2</b>	<p>The packing, marking and documentation within and outside the packages shall be: <b>Not Applicable</b></p>
<b>GCC 24.1</b>	<p>The insurance coverage shall be as specified in the Incoterms. All Goods shall be insured by the Supplier up to the time they are handed over and Accepted by the Purchaser. <b>The cost of Insurance shall be deemed to be covered under the Supplier’s Rates.</b></p>
<b>GCC 25.1</b>	<p>Responsibility for transportation of the Goods shall be as specified in the Incoterms.</p>
<b>GCC 25.2</b>	<p>Incidental services to be provided are: <b>Not Applicable</b></p>
<b>GCC 26.1</b>	<p>The inspections and tests shall be as indicated in Section VII, Schedule of Requirements, 5. Inspections and Tests</p>
<b>GCC 26.2</b>	<p>The Inspections and tests shall be conducted at the premises of the Supplier or at the premises of the Purchaser / Final Destination as shall be decided by the Purchaser.</p>
<b>GCC 27.1</b>	<p>The liquidated damage shall be <b>1.3125%</b> per week</p>
<b>GCC 27.1</b>	<p>The maximum amount of liquidated damages shall be <b>7.5%</b> of the Contract Price</p>

<b>GCC 28.3</b>	<p>The period of validity of the Warranty shall be <b>24 Months after Acceptance / Taking Over of the Goods by the Purchaser.</b></p> <p>For purposes of the Warranty, the place(s) of final destination(s) shall be : <b>Ruiru-Juja Water and Sewerage Company (RUJWASCO) Head Office in Ruiru and Ololaiser Water and Sewerage Company (OWSC) Head Office in Ongata Rongai.</b></p>
<b>GCC 28.5</b>	The period for repair or replacement shall be <b>30 days.</b>

## **Attachment 1 to Special Conditions of Contract**

# **KfW Policy – Sanctionable Practice – Social and Environmental Responsibility**

### **1) Sanctionable Practice**

The PEA and the Contractors (including all members of a Joint Venture and proposed or engaged Subcontractors) must observe the highest standard of ethics during the Tender Process and performance of the Contract.

By signing the Declaration of Undertaking the Contractors declare that (i) they did not and will not engage in any Sanctionable Practice likely to influence the Tender Process and the corresponding Award of Contract to the PEA's detriment, and that (ii) in case of being awarded a Contract they will not engage in any Sanctionable Practice.

Moreover, KfW requires to include in the Contracts a provision pursuant to which Contractors must permit KfW and in case of financing by the European Union also to European institutions having competence under European law to inspect the respective accounts, records and documents relating to the Tender Process and the performance of the Contract, and to have them audited by auditors appointed by KfW.

KfW reserves the right to take any action it deems appropriate to check that these ethics rules are observed and reserves, in particular, the rights to:

- (a) reject an Offer for Award of Contract if during the Tender Process the Bidder who is recommended for the Award of Contract has engaged in Sanctionable Practice, directly or by means of an agent in view of being awarded the Contract;
- (b) declare misprocurement and exercise its rights on the ground of the Funding Agreement with the PEA relating to suspension of disbursements, early repayment and termination if, at any time, the PEA, Contractors or their legal representatives or Subcontractors have engaged in Sanctionable Practice during the Tender Process or performance of the Contract without the PEA having taken appropriate action in due time satisfactory to KfW to remedy the situation, including by failing to inform KfW at the time they knew of such practices.

KfW defines, for the purposes of this provision, the terms set forth below as follows:

<b>Coercive Practice</b>	The impairing or harming, or threatening to impair or harm, directly or indirectly, any person or the property of the person with a view to influencing improperly the actions of a person.
<b>Collusive Practice</b>	An arrangement between two or more persons designed to achieve an improper purpose, including influencing improperly the actions of another person.
<b>Corrupt Practice</b>	The promising, offering, giving, making, insisting on, receiving, accepting or soliciting, directly or indirectly, of any illegal payment or undue advantage of any nature, to or by any person, with the intention of influencing the actions of any person or causing any person to refrain from any action.

**Fraudulent Practice** Any action or omission, including misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a person to obtain a financial benefit or to avoid an obligation.

**Obstructive Practice** Means (i) deliberately destroying, falsifying, altering or concealing evidence material to the investigation or the making of false statements to investigators, in order to materially impede an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice, or threatening, harassing or intimidating any Person to prevent them from disclosing their knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) any act intended to materially impede the exercise of KfW's access to contractually required information in connection with an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice.

**Sanctionable Practice** Any Coercive Practice, Collusive Practice, Corrupt Practice, Fraudulent Practice or Obstructive Practice (as such terms are defined herein) which is unlawful under the Financing Agreement.

## 2) **Social and Environmental Responsibility**

Projects financed in whole or partly in the framework of Financial Cooperation have to ensure compliance with international Environmental, Social, Health and Safety (ESHS) standards (including issues of sexual exploitation and abuse and gender based violence) Contractors in KfW-financed projects shall consequently undertake in the respective Contracts to:

- (a) comply with and ensure that all their Subcontractors and major suppliers, i.e. for major supply items comply with international environmental and labour standards, consistent with applicable law and regulations in the country of implementation of the respective Contract and the fundamental conventions of the International Labour Organisation<sup>9</sup> (ILO) and international environmental treaties and;
- (b) implement any environmental and social risks mitigation measures, as identified in the environmental and social impact assessment (ESIA) and further detailed in the environmental and social management plan (ESMP) as far as these measures are relevant to the Contract and implement measures for the prevention of sexual exploitation and abuse and gender-based violence..

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<sup>9</sup> In case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant/Bidder/Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions with respect to a) workers grievances on working conditions and terms of employment, b) child labour, c) forced labour, d) worker's organisations and e) non-discrimination.

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## **Section X. Contract Forms**

This Section contains forms which, once completed, will form part of the Contract. The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful Bidder after contract award.

### **Table of Forms**

<b>Letter of Acceptance .....</b>	<b>3-23</b>
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## Letter of Acceptance

*[letterhead paper of the Purchaser]*

*[date]*

To: *[name and address of the Supplier]*

Subject: **Notification of Award Contract No.** . . . . .

This is to notify you that your Bid dated . . . . *[insert date]* . . . . for execution of the . . . . .  
*[insert name of the contract and identification number, as given in the SCC]* . . . . . for  
the Accepted Contract Amount of . . . . . *[insert amount in numbers and words and name  
of currency]*, as corrected and modified in accordance with the Instructions to Bidders is hereby  
accepted by our Agency.

You are requested to furnish the Performance Security within 28 days in accordance with the  
Conditions of Contract, using for that purpose the of the Performance Security Form included in  
Section X, Contract Forms, of the Bidding Document.

Authorized			Signature: ____
Name and	Title	of	Signatory: ____
Name of Agency: _____			

**Attachment: Contract Agreement**

## Contract Agreement

*[The successful Bidder shall fill in this form in accordance with the instructions indicated]*

THIS AGREEMENT made

the [ *insert: number* ] day of [ *insert: month* ], [ *insert: year* ].

BETWEEN

- (1) [ *insert complete name of Purchaser* ], a [ *insert description of type of legal entity, for example, an agency of the Ministry of .... of the Government of { insert name of Country of Purchaser } , or corporation incorporated under the laws of { insert name of Country of Purchaser } ]* and having its principal place of business at [ *insert address of Purchaser* ] (hereinafter called “the Purchaser”), of the one part, and
- (2) [ *insert name of Supplier* ], a corporation incorporated under the laws of [ *insert: country of Supplier* ] and having its principal place of business at [ *insert: address of Supplier* ] (hereinafter called “the Supplier”), of the other part :

WHEREAS the Purchaser invited bids for certain Goods and ancillary services, viz., [ *insert brief description of Goods and Services* ] and has accepted a Bid by the Supplier for the supply of those Goods and Services.

The Purchaser and the Supplier agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other contract documents.
  - (a) the Letter of Acceptance
  - (b) the Letter of Bid (including the signed Declaration of Undertaking)
  - (c) the Addenda Nos. \_\_\_\_\_ (if any)
  - (d) Special Conditions of Contract
  - (e) General Conditions of Contract
  - (f) the Specification (including Schedule of Requirements and Technical Specifications)
  - (g) the completed Schedules (including Price Schedules)
  - (h) any other document listed in GCC as forming part of the Contract
3. In the event of any discrepancy or inconsistency within the Contract documents, then the documents shall prevail in the order listed above.
4. In consideration of the payments to be made by the Purchaser to the Supplier as specified in this Agreement, the Supplier hereby covenants with the Purchaser to provide the Goods and

Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.

5. The Purchaser hereby covenants to pay the Supplier in consideration of the provision of the Goods and Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of *[insert the name of the Contract governing law country]* on the day, month and year indicated above.

For and on behalf of the Purchaser

Signed: *[insert signature]*

in the capacity of *[ insert title or other appropriate designation ]*

in the presence of *[insert identification of official witness]*

For and on behalf of the Supplier

Signed: *[insert signature of authorized representative(s) of the Supplier]*

in the capacity of *[ insert title or other appropriate designation ]*

in the presence of *[ insert identification of official witness]*

## Performance Security

Address of guarantor bank:

.....  
.....  
.....

Address of beneficiary (contracting agency):

**The Chief Executive Officer,  
Athi Water Works Development Agency (AWWDA),  
P.O. Box 45283-00100,  
Nairobi, Kenya.**

On ..... you concluded with ..... ("Contractor") a contract for **Nairobi Satellite Towns Water and Sanitation Development Programme, Phase I: Supply and Delivery of Consumer Water Meters – Lot 3, Contract No. AWWDA/KfW/NST/G/03/2021** at a price of .....

In accordance with the provisions of the contract the Contractor is obligated to provide a performance bond for ... % of the contract price.

We, the undersigned ..... (Guarantor), waiving all objections and defences under the aforementioned contract, hereby irrevocably and independently guarantee to pay on your first written demand an amount up to a total of .....(in Words:.....)

against your written declaration that the Contractor has failed to duly perform the aforementioned contract.

In the event of any claim under this guarantee, payment shall be effected to *[Insert the account on which payments are to be made]*, for the account of **Athi Water Works Development Agency**.

This guarantee shall expire no later than .....

By this date we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

This guarantee is governed by the laws of **Kenya**.

.....

Place, date

.....

Guarantor

## Advance Payment Security

Address of guarantor bank:

.....  
.....  
.....

Address of beneficiary (contracting agency):

**The Chief Executive Officer,  
Athi Water Works Development Agency (AWWDA),  
P.O. Box 45283-00100,  
Nairobi, Kenya.**

On ..... you concluded with ..... ("Contractor")  
a contract for **Nairobi Satellite Towns Water and Sanitation Development Programme,  
Phase I: Supply and Delivery of Consumer Water Meters – Lot 3, Contract No.  
AWWDA/KfW/NST/G/03/2021** at a price of .....

In accordance with the provisions of the contract the Contractor receives an advance pay- ment  
in the amount of ....., which represents ..... % of the order value.

We, the undersigned ..... (Guarantor), waiving all objections and defences  
under the aforementioned contract, hereby irrevocably and independently guarantee to pay on  
your first written demand any amount advanced to the Contractor up to a total of  
..... in ..... words:  
.....) against your written declaration that the  
Contractor has failed to duly perform the aforementioned contract.

This guarantee shall come into force and effect as soon as the advance payment has been credited  
to the account of the Contractor. Minor deductions of the above mentioned amount notably due to  
bank fees shall have no effect on the entry into force

In the event of any claim under this guarantee, payment shall be effected to *[Insert the account on  
which payments are to be made]*, for the account of **Athi Water Works Development Agency**.

This guarantee shall expire no later than .....

By this date we must have received any claims for payment by letter or encoded  
telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total  
amount to be claimed hereunder.

This guarantee is governed by the laws of **Kenya**.

.....  
Place, date

.....  
Guarantor