

REPUBLIC OF KENYA



COUNTY GOVERNMENT OF KISUMU

TENDER DOCUMENT

FOR

**PROPOSED EXCAVATION AND AUXILIARY WORKS
CONSTRUCTION TO COMPLETION OF HOLO ORUCHO
WATER PAN IN NYANDO SUB COUNTY**

CONTRACT NO: CGK/DAILF/KCSAP/NDS/2018-2019/001

Employer:

Chief Officer, DAIL&F
County Government of Kisumu
P.O. Box 1700 - 40100
Kisumu

Prepared by:

Dep't of Agric, Irrigation, Livestock & Fisheries
County Government of Kisumu
P.O. Box 1700-40100
Kisumu

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INTRODUCTION

- 1.1 The following guidelines should be observed when using the document: -
 - (a) Specific details should be furnished in the tender notice and in the special conditions of contract (where applicable). The tender document issued to tenderers should not have blank spaces or options.
 - (b) The instructions to tenderers and the General Conditions of Contract should remain unchanged. Any necessary amendments to these parts should be made through Appendix to instructions to tenderers and special conditions of contract respectively.
- 1.2
 - (a) Information contained in the invitation to tender shall conform to the data and information in the tender documents to enable prospective tenderers to decide whether or not to participate in the tender and shall indicate any important tender requirements
 - I. The invitation to tender shall be as an advertisement in accordance with the regulations or a letter of invitation addressed to tenderers who have been prequalified following a request for prequalification.
- 1.3 The cover of the tender document should be modified to include: -
 - II. Tender number.
 - III. Tender name.
 - IV. Name of procuring entity.

SECTION I

INVITATION FOR TENDERS

Tender reference No. (CONTRACT NO: CGK/DAILF/KCSAP/NDS/2018-2019/001

Tender Name: Proposed Excavation and Auxiliary Works Construction to Completion of Holo Orucho Water Pan in Nyando Sub County

- 1.1 The County Government of Kisumu here and in the subsequent sections referred to as the procuring entity in partnership with Kenya Climate Smart Agriculture project funded by the world Bank now invites sealed Tenders from eligible candidates for the construction of **proposed Water Pan complete with its auxiliary structures at Holo Orucho**
- 1.2 Interested eligible candidates may obtain further information and inspect Tender Documents and the Design Drawings at County Government of Kisumu Headquarters at the Procurement Office during normal working hours. They may also download the same from the county web-portal www.kisumu.go.ke free of charge.
- 1.3 Prices quoted should be net inclusive of all taxes, must be in Kenya shillings and shall remain valid for 90 days from the closing date of tender.
- 1.4 **Completed Tender Documents are to be enclosed in plain sealed envelopes marked with Tender name and reference number and deposited in the Tender Box located at the Main Reception, County Government Headquarters, Prosperity House – 2nd Floor, or to be addressed to The Chief Officer, Department of Agriculture, Irrigation, Livestock and Fisheries, Kisumu, P.O. Box 1700-40100 Kisumu so as to be received on or before 4th October 2019, at 2.00 pm.**
- 1.5 **Tenders will be opened immediately thereafter in the presence of the candidates or their representatives who choose to attend** at Agriculture Boardroom, 11th Floor Wing C Prosperity Building.
- 1.6 **Interested bidders should enclose Tender Security worth 2% of their bid sum. The Tender security should be valid for 120 days from the deadline of submission of the tender.**
- 1.7 **Request for clarifications may be send to (email) and shall be dealt with in accordance with section 2.3 of Instructions to Tenderers.**

COUNTY SECRETARY

SECTION II

INSTRUCTIONS TO TENDERERS

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INSTRUCTIONS TO TENDERERS

1. General; Eligibility/Qualifications/Joint venture/Cost of tendering

- 1.1 The Employer as defined in the Appendix to Conditions of Contract invites tenders for Works Contract as described in the tender documents. The successful tenderer will be expected to complete the Works by the Intended Completion Date specified in the tender documents.
- 1.2 All tenderers shall provide the Qualification Information, a statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or has not been associated in the past, directly or indirectly, with the Consultant or any other entity that has prepared the design, specifications, and other documents for the project or being proposed as Project Manager for the Contract. A firm that has been engaged by the Employer to provide consulting services for the preparation or supervision of the Works, and any of its affiliates, shall not be eligible to tender.
- 1.3 All tenderers shall provide in the Form of Tender and Qualification Information, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.
- 1.4 In the event that pre-qualification of potential tenderers has been undertaken, only tenders from pre-qualified tenderers will be considered for award of Contract. These qualified tenderers should submit with their tenders any information updating their original pre-qualification applications or, alternatively, confirm in their tenders that the originally submitted pre-qualification information remains essentially correct as of the date of tender submission.
- 1.5 Where no pre-qualification of potential tenderers has been done, all tenderers shall include the following information and documents with their tenders, unless otherwise stated:
 - (a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the tender to commit the tenderer:
 - (b) total monetary value of construction work performed for each of the last five years:
 - (c) experience in works of a similar nature and size for each of the last five years, and details of work under way or contractually committed; and names and addresses of clients who may be contacted for further information on these contracts;
 - (d) major items of construction equipment proposed to carry out the Contract and an undertaking that they will be available for the Contract.

- (e) Qualifications and experience of key site management and technical personnel proposed for the Contract and an undertaking that they shall be available for the Contract.
- (f) reports on the financial standing of the tenderer, such as profit and loss statements and auditor's reports for the past five years;
- (g) evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);
- (h) authority to seek references from the tenderer's bankers;
- (i) information regarding any litigation, current or during the last five years, in which the tenderer is involved, the parties concerned and disputed amount; and
- (j) Proposals for subcontracting components of the Works amounting to more than 10 percent of the Contract Price.

1.6 Tenders submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated:

- (a) the tender shall include all the information listed in clause 1.5 above for each joint venture partner;
- (b) the tender shall be signed so as to be legally binding on all partners;
- (c) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
- (d) one of the partners will be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of all partners of the joint venture; and
- (e) The execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

1.7 To qualify for award of the Contract, tenderers shall meet the following minimum qualifying criteria;

- (a) annual volume of construction work of at least 2.5 times the estimated annual cash flow for the Contract;

- (b) experience as main contractor in the construction of at least five years
 - (c) two works of a nature and complexity equivalent to the Works over the last 10 years (to comply with this requirement, works cited should be at least 70 percent complete);
 - (d) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed as required for the Works;
 - (e) a Contract manager with at least five years' experience in works of an equivalent nature and volume, including no less than three years as Manager; and
 - (f) Liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than 4 months of the estimated payment flow under this Contract.
- 1.8 The figures for each of the partners of a joint venture shall be added together to determine the tenderer's compliance with the minimum qualifying criteria of clause 1.7 (a) and (e); however, for a joint venture to qualify, each of its partners must meet at least 25 percent of minimum criteria 1.7 (a), (b) and (e) for an individual tenderer, and the partner in charge at least 40 percent of those minimum criteria. Failure to comply with this requirement will result in rejection of the joint venture's tender. Subcontractors' experience and resources will not be taken into account in determining the tenderer's compliance with the qualifying criteria, unless otherwise stated.
- 1.9 Each tenderer shall submit only one tender, either individually or as a partner in a joint venture. A tenderer who submits or participates in more than one tender (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the proposals with the tenderer's participation to be disqualified.
- 1.10 The tenderer shall bear all costs associated with the preparation and submission of his tender, and the Employer will in no case be responsible or liable for those costs.
- 1.11 The tenderer, at the tenderer's own responsibility and risk, is encouraged to visit and examine the Site of the Works and its surroundings, and obtain all information that may be necessary for preparing the tender and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the tenderer's own expense.
- 1.12 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.

- 1.13 The procuring entity shall allow the tenderer to review the tender document free of charge.

2. Tender Documents

- 2.1 The complete set of tender documents comprises the documents listed below and any addenda issued in accordance with Clause 2.4.
- (a) These Instructions to Tenderers
 - (b) Form of Tender and Qualification Information
 - (c) Conditions of Contract
 - (d) Appendix to Conditions of Contract
 - (e) Specifications
 - (f) Drawings
 - (g) Bills of Quantities
 - (h) Forms of Securities
- 2.2 The tenderer shall examine all Instructions, Forms to be filled and Specifications in the tender documents. Failure to furnish all information required by the tender documents, or submission of a tender not substantially responsive to the tendering documents in every respect will be at the tenderer's risk and may result in rejection of his tender.
- 2.3 A prospective tenderer making an inquiry relating to the tender documents may notify the Employer in writing or by cable, telex or facsimile at the address indicated in the letter of invitation to tender. The Employer will only respond to requests for clarification received earlier than seven days prior to the deadline for submission of tenders. Copies of the Employer's response will be forwarded to all persons issued with tendering documents, including a description of the inquiry, but without identifying its source.
- 2.4 Before the deadline for submission of tenders, the Employer may modify the tendering documents by issuing addenda. Any addendum thus issued shall be part of the tendering documents and shall be communicated in writing or by cable, telex or facsimile to all tenderers. Prospective tenderers shall acknowledge receipt of each addendum in writing to the Employer.
- 2.5 To give prospective tenderers reasonable time in which to take an addendum into account in preparing their tenders, the Employer shall extend, as necessary, the deadline for submission of tenders, in accordance with Clause 4.2 here below.

3. Preparation of Tenders

- 3.1 All documents relating to the tender and any correspondence shall be in English language.
- 3.2 The tender submitted by the tenderer shall comprise the following:

- (a) These Instructions to Tenderers, Form of Tender, Conditions of Contract, Appendix to Conditions of Contract and Specifications;
 - (b) Tender Security;
 - (c) Priced Bill of Quantities;
 - (d) Qualification Information Form and Documents;
 - (e) Alternative offers where invited; and
 - (f) Any other materials required to be completed and submitted by the tenderers.
- 3.3 The tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items for which no rate or price is entered by the tenderer will not be paid for when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities. All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause relevant to the Contract, as of 30 days prior to the deadline for submission of tenders, shall be included in the tender price submitted by the tenderer.
- 3.4 The rates and prices quoted by the tenderer shall only be subject to adjustment during the performance of the Contract if provided for in the Appendix to Conditions of Contract and provisions made in the Conditions of Contract.
- 3.5 The unit rates and prices shall be in Kenya Shillings.
- 3.6 Tenders shall remain valid for a period of ninety (90) days from the date of submission. However, in exceptional circumstances, the Employer may request that the tenderers extend the period of validity for a specified additional period. The request and the tenderers' responses shall be made in writing. A tenderer may refuse the request without forfeiting the Tender Security. A tenderer agreeing to the request will not be required or permitted to otherwise modify the tender, but will be required to extend the validity of Tender Security for the period of the extension, and in compliance with Clause 3.7 - 3.11 in all respects.
- 3.7 The tenderer shall furnish, as part of the tender, a Tender Security in the amount and form specified in the appendix to invitation to tenderers. This shall be in the amount not exceeding 2.5 percent of the tender price
- 3.8 The format of the Tender Security should be in accordance with the form of Tender Security included in Section G - Standard forms or any other form acceptable to the Employer. Tender Security shall be valid for 30 days beyond the validity of the tender.

- 3.9 Any tender not accompanied by an acceptable Tender Security shall be rejected. The Tender Security of a joint venture must define as “Tenderer” all joint venture partners and list them in the following manner: a joint venture consisting of”.....”,.....”,and “.....”.
- 3.10 The Tender Securities of unsuccessful tenderers will be returned within 28 days of the end of the tender validity period specified in Clause 3.6.
- 3.11 The Tender Security of the successful tenderer will be discharged when the tenderer has signed the Contract Agreement and furnished the required Performance Security.
- 3.12 The Tender Security may be forfeited
- (a) if the tenderer withdraws the tender after tender opening during the period of tender validity;
 - (b) if the tenderer does not accept the correction of the tender price, pursuant to Clause 5.7;
 - (c) in the case of a successful tenderer, if the tenderer fails within the specified time limit to
 - (i) sign the Agreement, or
 - (ii) Furnish the required Performance Security.
- 3.13 Tenderers shall submit offers that comply with the requirements of the tendering documents, including the basic technical design as indicated in the Drawings and Specifications. Alternatives will not be considered, unless specifically allowed in the invitation to tender. If so allowed, tenderers wishing to offer technical alternatives to the requirements of the tendering documents must also submit a tender that complies with the requirements of the tendering documents, including the basic technical design as indicated in the Drawings and Specifications. In addition to submitting the basic tender, the tenderer shall provide all information necessary for a complete evaluation of the alternative, including design calculations, technical specifications, breakdown of prices, proposed construction methods and other relevant details. Only the technical alternatives, if any, of
The lowest evaluated tender conforming to the basic technical requirements shall be considered.

- 3.14 The tenderer shall prepare one original of the documents comprising the tender documents as described in Clause 3.2 of these Instructions to Tenderers, bound with the volume containing the Form of Tender, and clearly marked “ORIGINAL”. In addition, the tenderer shall submit copies of the tender, in the number specified in the invitation to tender, and clearly marked as “COPIES”. In the event of discrepancy between them, the original shall prevail.
- 3.15 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the tenderer, pursuant to Clause 1.5 (a) or 1.6 (b), as the case may be. All pages of the tender where alterations or additions have been made shall be initialed by the person or persons signing the tender.
- 3.16 Clarification of tenders shall be requested by the tenderer to be received by the procuring entity not later than 7 days prior to the deadline for submission of tenders.
- 3.17 The procuring entity shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.
- 3.18 The tender security shall be in the amount of 2% (per cent) of the tender price.

4. Submission of Tenders

- 4.1 The tenderer shall seal the original and all copies of the tender in two inner envelopes and one outer envelope, duly marking the inner envelopes as “ORIGINAL” and “COPIES” as appropriate. The inner and outer envelopes shall:
- (a) be addressed to the Employer at the address provided in the invitation to tender;
 - (b) bear the name and identification number of the Contract as defined in the invitation to tender; and
 - (c) Provide a warning not to open before the specified time and date for tender opening.
- 4.2 Tenders shall be delivered to the Employer at the address specified above not later than the time and date specified in the invitation to tender. However, the Employer may extend the deadline for submission of tenders by issuing an amendment in accordance with Sub-Clause 2.5 in which case all rights and obligations of the Employer and the tenderers previously subject to the original deadline will then be subject to the new deadline.
- 4.3 Any tender received after the deadline prescribed in clause 4.2 will be returned to the tenderer un-opened.

- 4.4 Tenderers may modify or withdraw their tenders by giving notice in writing before the deadline prescribed in clause 4.2. Each tenderer's modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with clause 3.13 and 4.1, with the outer and inner envelopes additionally marked "**MODIFICATION**" and "**WITHDRAWAL**", as appropriate. No tender may be modified after the deadline for submission of tenders.
- 4.5 Withdrawal of a tender between the deadline for submission of tender and the expiration of the period of tender validity specified in the invitation to tender or as extended pursuant to Clause 3.6 may result in the forfeiture of the Tender Security pursuant to Clause 3.11.
- 4.6 Tenderers may only offer discounts to, or otherwise modify the prices of their tenders by submitting tender modifications in accordance with Clause 4.4 or be included in the original tender submission.

5. Tender Opening and Evaluation

- 5.1 The tenders will be opened by the Employer, including modifications made pursuant to Clause 4.4, in the presence of the tenderers' representatives who choose to attend at the time and in the place specified in the invitation to tender. Envelopes marked "**WITHDRAWAL**" shall be opened and read out first. Tenderers' and Employer's representatives who are present during the opening shall sign a register evidencing their attendance.
- 5.2 The tenderers' names, the tender prices, the total amount of each tender and of any alternative tender (if alternatives have been requested or permitted), any discounts, tender modifications and withdrawals, the presence or absence of Tender Security, and such other details as may be considered appropriate, will be announced by the Employer at the opening. Minutes of the tender opening, including the information disclosed to those present will be prepared by the Employer.
- 5.3 Information relating to the examination, clarification, evaluation, and comparison of tenders and recommendations for the award of Contract shall not be disclosed to tenderers or any other persons not officially concerned with such process until the award to the successful tenderer has been announced. Any effort by a tenderer to influence the Employer's officials, processing of tenders or award decisions may result in the rejection of his tender.
- 5.4 To assist in the examination, evaluation, and comparison of tenders, the Employer at his discretion, may ask any tenderer for clarification of the tender, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by cable, telex or facsimile but no change in the price or substance of the tender shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered in the evaluation of the tenders in accordance with Clause 5.7.
- 5.5 Prior to the detailed evaluation of tenders, the Employer will determine whether each tender
- (a) meets the eligibility criteria defined
 - (b) has been properly signed;
 - (c) is accompanied by the required securities; and
 - (d) is substantially responsive to the requirements of the tendering documents. A substantially responsive tender is one which conforms to all the terms, conditions and specifications of the tendering documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the works; (b) which limits in any substantial way, inconsistent with the tendering documents, the Employer's rights or the tenderer's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other tenderers presenting substantially responsive tenders.
- 5.6 If a tender is not substantially responsive, it will be rejected, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.
- 5.7 Tenders determined to be substantially responsive will be checked for any arithmetic errors. Errors will be corrected as follows:
- (a) where there is a discrepancy between the amount in figures and the amount in words, the amount in words will prevail; and

- (b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will prevail, unless in the opinion of the Employer, there is an obvious typographical error, in which case the adjustment will be made to the entry containing that error.
 - (c) In the event of a discrepancy between the tender amount as stated in the Form of Tender and the corrected tender figure in the main summary of the Bill of Quantities, the amount as stated in the Form of Tender shall prevail.
 - (d) The Error Correction Factor shall be computed by expressing the difference between the tender amount and the corrected tender sum as a percentage of the corrected Builder's Work (i.e. Corrected tender sum less P.C. and Provisional Sums)
 - (e) The Error Correction Factor shall be applied to all Builder's Work (as a rebate or addition as the case may be) for the purposes of valuations for Interim Certificates and valuation of variations.
 - (f) the amount stated in the tender will be adjusted in accordance with the above procedure for the correction of errors and, with
Concurrence of the tenderer shall be considered as binding upon the tenderer. If the tenderer does not accept the corrected amount, the tender may be rejected and the Tender Security may be forfeited in accordance with clause 3.11.
- 5.8 The Employer will evaluate and compare only the tenders determined to be substantially responsive in accordance with Clause 5.5.
- 5.9 In evaluating the tenders, the Employer will determine for each tender the evaluated tender price by adjusting the tender price as follows:
- (a) making any correction for errors pursuant to clause 5.7;
 - (b) Excluding provisional sums and the provision, if any, for contingencies in the Bill of Quantities, but including Day works where priced competitively.
 - (c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with clause 3.12; and
 - (d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with clause 4.6

- 5.10 The Employer reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors which are in excess of the requirements of the tender documents or otherwise result in unsolicited benefits for the Employer will not be taken into account in tender evaluation.
- 5.11 The tenderer shall not influence the Employer on any matter relating to his tender from the time of the tender opening to the time the Contract is awarded. Any effort by the Tenderer to influence the Employer or his employees in his decision on tender evaluation, tender comparison or Contract award may result in the rejection of the tender.
- 5.12 Firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias provided that they do not sub-contract work valued at more than 50% of the Contract Price excluding Provisional Sums to a Non-indigenous sub-contractor.

6. Award of Contract

- 6.1 Subject to Clause 6.2, the award of the Contract will be made to the tenderer whose tender has been determined to be substantially responsive to the tendering documents and who has offered the lowest evaluated tender price, provided that such tenderer has been determined to be (a) eligible in accordance with the provision of Clauses 1.2, and (b) qualified in accordance with the provisions of clause 1.7 and 1.8.
- 6.2 Notwithstanding clause 6.1 above, the Employer reserves the right to accept or reject any tender, and to cancel the tendering process and reject all tenders, at any time prior to the award of Contract, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the action.
- 6.3 The tenderer whose tender has been accepted will be notified of the award prior to expiration of the tender validity period in writing or by cable, telex or facsimile. This notification (hereinafter and in all Contract documents called the "Letter of Acceptance") will state the sum (hereinafter and in all Contract documents called the "Contract Price") that the Employer will pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract. At the same time the other tenderers shall be informed that their tenders have not been successful.

The contract shall be formed on the parties signing the contract.

- 6.4 The Agreement will incorporate all agreements between the Employer and the successful tenderer. Within 14 days of receipt the successful tenderer will sign the Agreement and return it to the Employer.

- 6.5 Within 21 days after receipt of the Letter of Acceptance, the successful tenderer shall deliver to the Employer a Performance Security in the amount stipulated in the Appendix to Conditions of Contract and in the form stipulated in the Tender documents. The Performance Security shall be in the amount and specified form
- 6.6 Failure of the successful tenderer to comply with the requirements of clause 6.5 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Tender Security.
- 6.7 Upon the furnishing by the successful tenderer of the Performance Security, the Employer will promptly notify the other tenderers that their tenders have been unsuccessful.
- 6.8 Preference where allowed in the evaluation of tenders shall not be allowed for contracts not exceeding one year (12 months)
- 6.9 The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.
- 6.10 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.
- 6.11 Contract price variations shall not be allowed for contracts not exceeding one year (12 months)
- 6.12 Where contract price variation is allowed, the valuation shall not exceed 15% of the original contract price.
- 6.13 Price variation request shall be processed by the procuring entity within 30 days of receiving the request.
- 6.14 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 6.15 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.
- 6.16 A tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

7. Corrupt and Fraudulent practices

- 7.1 The procuring entity requires that tenderers observe the highest standards of ethics during procurement process and execution of contracts. A tenderer shall sign a declaration that he has not and will not be involved in corrupt and fraudulent practices.



COUNTY GOVERNMENT OF KISUMU

Date

TENDER NO. CGK/DAILF/KCSAP/NDS/2018-2019/001

CONTRACTOR'S NAME AND ADDRESS

.....

.....

Dear Sir,

RE: REQUEST FOR FULL CONTRACT TENDER FOR CONSTRUCTION OF WATER PAN COMPLETE WITH AUXILIARY STRUCTURES AT HOLO ORUCHO.

You are invited to submit your tender for full contract for the above construction.

This tender should be submitted in a plain wax sealed envelope marked Tender No. stated above.

The tender should be addressed to reach **THE CHIEF OFFICER, AGRICULTURE, IRRIGATION, LIVESTOCK AND FISHERIES. KISUMU COUNTY, P.O. BOX 1700-40100, KISUMU** during normal working hours and not later than 4th October, 2019

THIS IS NOT AN OFFER; Read the conditions, Form of tender, Appendix to form of Tender, particulars of Tender, technical qualifications, Bill of Quantities and instruction herein before tendering.

**CHIEF OFFICER,
DEPARTMENT OF AGRICULTURE, IRRIGATION, LIVESTOCK AND FISHERIES
P.O. BOX 1700-40100
KISUMU**

SECTION 1

CONSTRUCTION OF WATER PAN COMPLETE WITH AUXILIARY STRUCTURES AT HOLO ORUCHO

CONDITIONS AND INSTRUCTIONS TO TENDERERS

1. Description of Works

The works will involve the excavation and laying of earth water pan, embankment compaction and vegetative protection, fencing off the facility, Reservoir tanks mounted on concrete platforms, and construction of auxiliary structures.

2. Location of works

The project area is situated in Holo Orucho near Katolo Market, about 32 km from Kisumu City on Kisumu-Sondu road and branching at Katito market center east towards.

3. Scope of works

The main contractual works comprise of **excavation and laying of earth water pan, embankment compaction and vegetative protection, fencing off the facility, Reservoir tanks mounted on concrete platforms, and construction of auxiliary structures and supply of solar Irrigation pump** as directed by the engineer as per bills of quantities and technical specifications.

4. Project Duration

The Project duration is expected to be implemented for 3 months

CONDITIONS OF CONTRACT

1. Definitions

In this Contract, except where context otherwise requires, the following terms shall be interpreted as indicated;

“Bill of Quantities” means the priced and completed Bill of Quantities forming part of the tender.

“Compensation Events” are those defined in Clause 24 hereunder.

“The Completion Date” means the date of completion of the Works as certified by the Project Manager, in accordance with Clause 31.

“The Contract” means the agreement entered into between the Employer and the Contractor as recorded in the Agreement Form and signed by the parties including all attachments and appendices thereto and all documents incorporated by reference therein to execute, complete, and maintain the Works,

“The Contractor” refers to the person or corporate body whose tender to carry out the Works has been accepted by the Employer.

“The Contractor’s Tender” is the completed tendering document submitted by the Contractor to the Employer.

“The Contract Price” is the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.

“Days” are calendar days; **“Months”** are calendar months.

“A Defect” is any part of the Works not completed in accordance with the Contract.

“The Defects Liability Certificate” is the certificate issued by Project Manager upon correction of defects by the Contractor.

“The Defects Liability Period” is the period named in the Contract Data and calculated from the Completion Date.

“Drawings” include calculations and other information provided or approved by the Project Manager for the execution of the Contract.

“Day works” are Work inputs subject to payment on a time basis for labour and the associated materials and plant.

“Employer”, or the **“Procuring entity”** as defined in the Public Procurement Regulations (i.e. Central or Local Government administration, Universities, Public Institutions and Corporations, etc) is the party who employs the Contractor to carry out the Works.

“Equipment” is the Contractor’s machinery and vehicles brought temporarily to the Site for the execution of the Works.

“The Intended Completion Date” is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.

“Materials” are all supplies, including consumables, used by the Contractor for incorporation in the Works.

“Plant” is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.

“Project Manager” is the person named in the Appendix to Conditions of Contract (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract and shall be an “Architect” or a “Quantity Surveyor” registered under the Architects and Quantity Surveyors Act Cap 525 or an “Engineer” registered under Engineers Registration Act Cap 530.

“Site” is the area defined as such in the Appendix to Condition of Contract.

“Site Investigation Reports” are those reports that may be included in the tendering documents which are factual and interpretative about the surface and subsurface conditions at the Site.

“Specifications” means the Specifications of the Works included in the Contract and any modification or addition made or approved by the Project Manager.

“Start Date” is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with the Site possession date(s).

“A Subcontractor” is a person or corporate body who has a Contract with the Contractor to carry out a part of the Work in the Contract, which includes Work on the Site.

“Temporary works” are works designed, constructed, installed, and removed by the Contractor which are needed for construction or installation of the Works.

“A Variation” is an instruction given by the Project Manager which varies the Works.

“The Works” are what the Contract requires the Contractor to construct, install, and turnover to the Employer, as defined in the Appendix to Conditions of Contract.

2. Interpretation

2.1 In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning in English Language unless specifically defined. The Project Manager will provide instructions clarifying queries about these Conditions of Contract.

2.2 If sectional completion is specified in the Appendix to Conditions of Contract, reference in the Conditions of Contract to the Works, the Completion Date and the Intended Completion Date apply to any section of the Works (other than references to the Intended Completion Date for the whole of the Works).

2.3 The following documents shall constitute the Contract documents and shall be interpreted in the following order of priority;

- (1) Agreement,
- (2) Letter of Acceptance,
- (3) Contractor's Tender,
- (4) Appendix to Conditions of Contract,
- (5) Conditions of Contract,
- (6) Specifications,
- (7) Drawings,
- (8) Bill of Quantities,
- (9) Any other documents listed in the Appendix to Conditions of Contract as forming part of the Contract.

Immediately after the execution of the Contract, the Project Manager shall furnish both the Employer and the Contractor with two copies each of all the Contract documents. Further, as and when necessary the Project Manager shall furnish the Contractor [always with a copy to the Employer] with three [3] copies of such further drawings or details or descriptive schedules as are reasonably necessary either to explain or amplify the Contract drawings or to enable the Contractor to carry out and complete the Works in accordance with these Conditions.

3.Language and Law

3.1 Language of the Contract and the law governing the Contract shall be English language and the Laws of Kenya respectively unless otherwise stated.

4 Project Manager's Decisions

4.1 Except where otherwise specifically stated, the Project Manager will decide contractual matters between the Employer and the Contractor in the role representing the Employer.

5 Delegation

- 5.1 The Project Manager may delegate any of his duties and responsibilities to others after notifying the Contractor.

6 Communications

- 6.1 Communication between parties shall be effective only when in writing. A notice shall be effective only when it is delivered.

7 Subcontracting

- 7.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations.

8 Other Contractors

- 8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities etc. as listed in the Appendix to Conditions of Contract and also with the Employer, as per the directions of the Project Manager. The Contractor shall also provide facilities and services for them. The Employer may modify the said List of Other Contractors etc., and shall notify the Contractor of any such modification.

9 Personnel

- 9.1 The Contractor shall employ the key personnel named in the Qualification Information, to carry out the functions stated in the said Information or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Qualification Information. If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the Work in the Contract.

10 Works

- 10.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings. The Works may commence on the Start Date and shall be carried out in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.

11 Safety and Temporary Works

- 11.1 The Contractor shall be responsible for the design of temporary works. However, before erecting the same, he shall submit his designs including specifications and drawings to the Project Manager and to any other relevant third parties for their approval. No erection of temporary works shall be done until such approvals are obtained.

- 11.2 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary works and all drawings prepared by the Contractor for the execution of the temporary or permanent Works, shall be subject to prior approval by the Project Manager before they can be used.
- 11.3 The Contractor shall be responsible for the safety of all activities on the Site.

12. Discoveries

- 12.1 Anything of historical or other interest or of significant value unexpectedly discovered on Site shall be the property of the Employer. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.

13. Work Program

- 13.1 Within the time stated in the Appendix to Conditions of Contract, the Contractor shall submit to the Project Manager for approval a program showing the general methods, arrangements, order, and timing for all the activities in the Works. An update of the program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining Work, including any changes to the sequence of the activities.

The Contractor shall submit to the Project Manager for approval an updated program at intervals no longer than the period stated in the Appendix to Conditions of Contract. If the Contractor does not submit an updated program within this period, the Project Manager

may withhold the amount stated in the said Appendix from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue program has been submitted. The Project Manager's approval of the program shall not alter the Contractor's obligations. The Contractor may revise the program and submit it to the Project Manager again at any time. A revised program shall show the effect of Variations and Compensation Events.

14. Possession of Site

- 14.1 The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the Appendix to Conditions of Contract, the Employer will be deemed to have delayed the start of the relevant activities, and this will be a Compensation Event.

15. Access to Site

- 15.1 The Contractor shall allow the Project Manager and any other person authorized by the Project Manager, access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

16. Instructions

- 16.1 The Contractor shall carry out all instructions of the Project Manager which are in accordance with the Contract.

17. Extension or Acceleration of Completion Date

- 17.1 The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a variation is issued which makes it impossible for completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining Work, which would cause the Contractor to incur additional cost. The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager in writing for a decision upon the effect of a Compensation Event or variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay caused by such failure shall not be considered in assessing the new (extended) Completion Date.
- 17.2 No bonus for early completion of the Works shall be paid to the Contractor by the Employer.

18. Management Meetings

- 18.1 A Contract management meeting shall be held monthly and attended by the Project Manager and the Contractor. Its business shall be to review the plans for the remaining Work and to deal with matters raised in accordance with the early warning procedure. The Project Manager shall record the minutes of management meetings and provide copies of the same to those attending the meeting and the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

19. Early Warning

- 19.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the Work, increase the Contract Price or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.
- 19.2 The Contractor shall cooperate with the Project Manager in making and considering proposals on how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the Work and in carrying out any resulting instructions of the Project Manager.

20. Defects

- 20.1 The Project Manager shall inspect the Contractor's work and notify the Contractor of any defects that are found. Such inspection shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a defect and to uncover and test any Work that the Project Manager considers may have a defect. Should the defect be found, the cost of uncovering and making good shall be borne by the Contractor, However, if there is no defect found, the cost of uncovering and making good shall be treated as a variation and added to the Contract Price.
- 20.2 The Project Manager shall give notice to the Contractor of any defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the Appendix to Conditions of Contract. The Defects Liability Period shall be extended for as long as defects remain to be corrected.
- 20.3 Every time notice of a defect is given; the Contractor shall correct the notified defect within the length of time specified by the Project Manager's notice. If the Contractor has not corrected a defect within the time specified in the Project Manager's notice, the Project Manager will assess the cost of having the defect corrected by other parties and such cost shall be treated as a variation and be deducted from the Contract Price.

21. Bills of Quantities

- 21.1 The Bills of Quantities shall contain items for the construction, installation, testing and commissioning of the Work to be done by the Contractor. The Contractor will be paid for the quantity of the Work done at the rate in the Bills of Quantities for each item.
- 21.2 If the final quantity of the Work done differs from the quantity in the Bills of Quantities for the particular item by more than 25 percent and provided the change exceeds 1 percent of the Initial Contract price, the Project Manager shall adjust the rate to allow for the change.
- 21.3 If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bills of Quantities.

22. Variations

- 22.1 All variations shall be included in updated programs produced by the Contractor.
- 22.2 The Contractor shall provide the Project Manager with a quotation for carrying out the variations when requested to do so. The Project Manager shall assess the quotation, which

shall be given within seven days of the request or within any longer period as may be stated by the Project Manager and before the Variation is ordered.

- 22.3 If the work in the variation corresponds with an item description in the Bills of Quantities and if in the opinion of the Project Manager, the quantity of work is not above the limit stated in Clause 21.2 or the timing of its execution does not cause the cost per unit of quantity to change, the rate in the Bills of Quantities shall be used to calculate the value of the variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the variation does not correspond with items in the Bills of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of Work.
- 22.4 If the Contractor's quotation is unreasonable, the Project Manager may order the variation and make a change to the Contract price, which shall be based on the Project Manager's own forecast of the effects of the variation on the Contractor's costs.
- 22.5 If the Project Manager decides that the urgency of varying the Work would prevent a quotation being given and considered without delaying the Work, no quotation shall be given and the variation shall be treated as a Compensation Event.
- 22.6 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
- 22.7 When the Program is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast.

23. Payment Certificates, Currency of Payments and Advance Payments

- 23.1 The value of Work executed shall comprise the value of the quantities of the items in the Bills of Quantities completed; materials delivered on Site, variations and compensation events. Such materials shall become the property of the Employer once the Employer has paid the Contractor for their value. Thereafter, they shall not be removed from Site without the Project Manager's instructions except for use upon the Works.
- 23.2 Payments shall be adjusted for deductions for retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 30 days of the date of issue of each certificate. If the Employer makes a late payment, the Contractor shall be paid simple interest on the late payment in the next payment. Interest shall be calculated on the basis of number of days delayed at a rate three percentage points above the Central Bank of Kenya's average rate for base lending prevailing as of the first day the payment becomes overdue.

- 23.3 If an amount certified is increased in a later certificate or as a result of an award by an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
- 23.4 Items of the Works for which no rate or price has been entered in will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.
- 23.5 The Contract Price shall be stated in Kenya Shillings. All payments to the Contractor shall be made in Kenya Shillings and foreign currency in the proportion indicated in the tender, or agreed prior to the execution of the Contract Agreement and indicated therein. The rate of exchange for the calculation of the amount of foreign currency payment shall be the rate of exchange indicated in the Appendix to Conditions of Contract. If the Contractor indicated foreign currencies for payment other than the currencies of the countries of origin of related goods and services the Employer reserves the right to pay the equivalent at the time of payment in the currencies of the countries of such goods and services. The Employer and the Project Manager shall be notified promptly by the Contractor of any changes in the expected foreign currency requirements of the Contractor during the execution of the Works as indicated in the Schedule of Foreign Currency Requirements and the foreign and local currency portions of the balance of the Contract Price shall then be amended by agreement between Employer and the Contractor in order to reflect appropriately such changes.
- 23.7 In the event that an advance payment is granted, the following shall apply: -
- On signature of the Contract, the Contractor shall at his request, and without furnishing proof of expenditure, be entitled to an advance of 10% (ten percent) of the original amount of the Contract. The advance shall not be subject to retention money.
 - No advance payment may be made before the Contractor has submitted proof of the establishment of deposit or a directly liable guarantee satisfactory to the Employer in the amount of the advance payment. The guarantee shall be in the same currency as the advance.
 - Reimbursement of the lump sum advance shall be made by deductions from the Interim payments and where applicable from the balance owing to the Contractor. Reimbursement shall begin when the amount of the sums due under the Contract reaches 20% of the original amount of the Contract. It shall have been completed by the time 80% of this amount is reached.

The amount to be repaid by way of successive deductions shall be calculated by means of the formula:

$$R = \frac{A(x^1 - x^{11})}{80 - 20}$$

80 – 20

Where:

R	=	the amount to be reimbursed
A	=	the amount of the advance which has been granted
X ¹	=	the amount of proposed cumulative payments as a percentage of the original amount of the Contract. This figure will exceed 20% but not exceed 80%.
X ¹¹	=	the amount of the previous cumulative payments as a percentage of the original amount of the Contract. This figure will be below 80% but not less than 20%.

- d) with each reimbursement the counterpart of the directly liable guarantee may be reduced accordingly.

24. Compensation Events

24.1 The following issues shall constitute Compensation Events:

- (a) The Employer does not give access to a part of the Site by the Site Possession Date stated in the Appendix to Conditions of Contract.
- (b) The Employer modifies the List of Other Contractors, etc., in a way that affects the Work of the Contractor under the Contract.
- (c) The Project Manager orders a delay or does not issue drawings, specifications or instructions required for execution of the Works on time.
- (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon the Work, which is then found to have no defects.
- (e) The Project Manager unreasonably does not approve a subcontract to be let.
- (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to tenderers (including the Site investigation reports), from information available publicly and from a visual inspection of the Site.
- (g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer or additional work required for safety or other reasons.
- (h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- (i) The effects on the Contractor of any of the Employer's risks.
- (j) The Project Manager unreasonably delays issuing a Certificate of Completion.

- (k) Other compensation events described in the Contract or determined by the Project Manager shall apply.
- 24.2 If a compensation event would cause additional cost or would prevent the Work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.
- 24.3 As soon as information demonstrating the effect of each compensation event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager will assume that the Contractor will react competently and promptly to the event.
- 24.4 The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor not having given early warning or not having co-operated with the Project Manager.
- 24.5 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the Appendix to Conditions of Contract.
- 24.6 The Contractor shall give written notice to the Project Manager of his intention to make a claim within thirty days after the event giving rise to the claim has first arisen. The claim shall be submitted within thirty days thereafter.
Provided always that should the event giving rise to the claim of continuing effect, the Contractor shall submit an interim claim within the said thirty days and a final claim within thirty days of the end of the event giving rise to the claim.

25. Price Adjustment

- 25.1 The Project Manager shall adjust the Contract Price if taxes, duties and other levies are changed between the date 30 days before the submission of tenders for the Contract and the date of Completion. The adjustment shall be the change in the amount of tax payable by the Contractor.
- 25.2 The Contract Price shall be deemed to be based on exchange rates current at the date of tender submission in calculating the cost to the Contractor of materials to be specifically imported (by express provisions in the Contract Bills of Quantities or Specifications) for permanent incorporation in the Works. Unless otherwise stated in the Contract, if at any time during the period of the Contract exchange rates shall be varied and this shall affect the cost to the

Contractor of such materials, then the Project Manager shall assess the net difference in the cost of such materials. Any amount from time to time so assessed shall be added to or deducted from the Contract Price, as the case may be.

25.3 Unless otherwise stated in the Contract, the Contract Price shall be deemed to have been calculated in the manner set out below and in sub-clauses 25.4 and 25.5 and shall be subject to adjustment in the events specified thereunder;

- (i) The prices contained in the Contract Bills of Quantities shall be deemed to be based upon the rates of wages and other Emoluments and expenses as determined by the Joint Building Council of Kenya (J.B.C.) and set out in the schedule of basic rates issued 30 days before the date for submission of tenders. A copy of the schedule used by the Contractor in his pricing shall be attached in the Appendix to Conditions of Contract.
- (ii) Upon J.B.C. determining that any of the said rates of wages or other emoluments and expenses are increased or decreased, then the Contract Price shall be increased or decreased by the amount assessed by the Project Manager based upon the difference, expressed as a percentage, between the rate set out in the schedule of basic rates issued 30 days before the date for submission of tenders and the rate published by the J.B.C. and applied to the quantum of labour incorporated within the amount of Work remaining to be executed at the date of publication of such increase or decrease.
- (iii) No adjustment shall be made in respect of changes in the rates of wages and other emoluments and expenses which occur after the date of Completion except during such other period as may be granted as an extension of time under clause 17.0 of these Conditions.

25.4 The prices contained in the Contract Bills of Quantities shall be deemed to be based upon the basic prices of materials to be permanently incorporated in the Works as determined by the J.B.C. and set out in the schedule of basic rates issued 30 days before the date for submission of tenders. A copy of the schedule used by the Contractor in his pricing shall be attached in the Appendix to Conditions of Contract.

25.5 Upon the J.B.C. determining that any of the said basic prices are increased or decreased then the Contract Price shall be increased or decreased by the amount to be assessed by the Project Manager based upon the difference between the price set out in the schedule of basic rates issued 30 days before the date for submission of tenders and the rate published by the J.B.C. and applied to the quantum of the relevant materials which have not been taken into account in arriving at the amount of any interim certificate under clause 23 of these Conditions issued before the date of publication of such increase or decrease.

- 25.6 No adjustment shall be made in respect of changes in basic prices of materials which occur after the date for Completion except during such other period as may be granted as an extension of time under clause 17.0 of these Conditions.
- 25.7 The provisions of sub-clause 25.1 to 25.2 herein shall not apply in respect of any materials included in the schedule of basic rates.

26. Retention

- 26.1 The Employer shall retain from each payment due to the Contractor the proportion stated in the Appendix to Conditions of Contract until Completion of the whole of the Works. On Completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and the remaining half when the Defects Liability Period has passed and the Project Manager has certified that all defects notified to the Contractor before the end of this period have been corrected.

27. Liquidated Damages

- 27.1 The Contractor shall pay liquidated damages to the Employer at the rate stated in the Appendix to Conditions of Contract for each day that the actual Completion Date is later than the Intended Completion Date. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not alter the Contractor's liabilities.
- 27.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rate specified in Clause 23.30

28. Securities

- 28.1 The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount and form and by a reputable bank acceptable to the Employer, and denominated in Kenya Shillings. The Performance Security shall be valid until a date 30 days beyond the date of issue of the Certificate of Completion.

29. Day works

- 29.1 If applicable, the Day works rates in the Contractor's tender shall be used for small additional amounts of Work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.

- 29.2 All work to be paid for as Day works shall be recorded by the Contractor on Forms approved by the Project Manager. Each Completed form shall be verified and signed by the Project Manager within two days of the Work being done.
- 29.3 The Contractor shall be paid for Day works subject to obtaining signed Day works forms.

30. Liability and Insurance

- 30.1 From the Start Date until the Defects Correction Certificate has been issued, the following are the Employer's risks:
- (a) The risk of personal injury, death or loss of or damage to property (excluding the Works, Plant, Materials and Equipment), which are due to;
 - (i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works, or
 - (ii) negligence, breach of statutory duty or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.
 - (b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in Employer's design, or due to war or radioactive contamination directly affecting the place where the Works are being executed.
- 30.2 From the Completion Date until the Defects Correction Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is the Employer's risk except loss or damage due to;
- (a) a defect which existed on or before the Completion Date.
 - (b) an event occurring before the Completion Date, which was not itself the Employer's risk
 - (c) the activities of the Contractor on the Site after the Completion Date.
- 30.3 From the Start Date until the Defects Correction Certificate has been issued, the risks of personal injury, death and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer's risk are Contractor's risks.

The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts stated in the Appendix to Conditions of Contract for the following events;

- (a) loss of or damage to the Works, Plant, and Materials;
- (b) loss of or damage to Equipment;
- (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract, and
- (d) Personal injury or death.

30.4 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation required to rectify the loss or damage incurred.

30.5 If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance which the Contractor should have provided and recover the premiums from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.

30.6 Alterations to the terms of insurance shall not be made without the approval of the Project Manager. Both parties shall comply with any conditions of insurance policies.

31. Completion and taking over

31.1 Upon deciding that the Works are complete, the Contractor shall issue a written request to the Project Manager to issue a Certificate of Completion of the Works. The Employer shall take over the Site and the Works within seven [7] days of the Project Manager are issuing a Certificate of Completion.

32. Final Account

32.1 The Contractor shall issue the Project Manager with a detailed account of the total amount that the Contractor considers payable to him by the Employer under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 30 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 30 days a schedule that states the scope of the corrections or additions that are necessary. If the final account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a Payment Certificate. The Employer shall pay the Contractor the amount due in the Final Certificate within 60 days.

33. Termination

- 33.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract. These fundamental breaches of Contract shall include, but shall not be limited to, the following;
- (a) the Contractor stops work for 30 days when no stoppage of work is shown on the current program and the stoppage has not been authorized by the Project Manager;
 - (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 30 days;
 - (c) the Contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
 - (d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 30 days (for Interim Certificate) or 60 days (for Final Certificate) of issue.
 - (e) the Project Manager gives notice that failure to correct a particular defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
 - (f) The Contractor does not maintain a security, which is required.
- 33.2 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under Clause 33.1 above, the Project Manager shall decide whether the breach is fundamental or not.
- 33.3 Notwithstanding the above, the Employer may terminate the Contract for convenience.
- 33.4 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible. The Project Manager shall immediately thereafter arrange for a meeting for the purpose of taking record of the Works executed and materials, goods, equipment and temporary buildings on Site.

34. Payment Upon Termination

- 34.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the Work done and materials ordered and delivered to Site up to the date of the issue of the certificate. Additional liquidated damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable by the Contractor.

- 34.2 If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the Work done, materials ordered, the reasonable cost of removal of equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works.
- 34.3 The Employer may employ and pay other persons to carry out and complete the Works and to rectify any defects and may enter upon the Works and use all materials on the Site, plant, equipment and temporary works.
- 34.4 The Contractor shall, during the execution or after the completion of the Works under this clause remove from the Site as and when required, within such reasonable time as the Project Manager may in writing specify, any temporary buildings, plant, machinery, appliances, goods or materials belonging to or hired by him, and in default the Employer may (without being responsible for any loss or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor. Until after completion of the Works under this clause the Employer shall not be bound by any other provision of this Contract to make any payment to the Contractor, but upon such completion as aforesaid and the verification within a reasonable time of the accounts therefore the Project Manager shall certify the amount of expenses properly incurred by the Employer and, if such amount added to the money paid to the Contractor before such determination exceeds the total amount which would have been payable on due completion in accordance with this Contract the difference shall be a debt payable to the Employer by the Contractor; and if the said amount added to the said money be less than the said total amount, the difference shall be a debt payable by the Employer to the Contractor.

35. Release from Performance

- 35.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop Work as quickly as possible after receiving this certificate and shall be paid for all Work carried out before receiving it.

36. Corrupt gifts and payments of commission

The Contractor shall not;

- (a) Offer or give or agree to give to any person in the service of the Employer any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other Contract for the Employer or for showing or forbearing to show favor or disfavor to any person in relation to this or any other contract for the Employer.
- (b) Enter into this or any other contract with the Employer in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Employer. Any breach of this Condition by the Contractor or by anyone employed by him or acting on his

behalf (whether with or without the knowledge of the Contractor) shall be an offence under the provisions of the Public Procurement Regulations issued under The Exchequer and Audit Act Cap 412 of the Laws of Kenya.

37. Settlement of Disputes

37.1 In case any dispute or difference shall arise between the Employer or the Project Manager on his behalf and the Contractor, either during the progress or after the completion or termination of the Works, such dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the Chairman or Vice Chairman of any of the following professional institutions;

- (i) Architectural Association of Kenya
- (ii) Institute of Quantity Surveyors of Kenya
- (iii) Association of Consulting Engineers of Kenya
- (iv) Chartered Institute of Arbitrators (Kenya Branch)
- (v) Institution of Engineers of Kenya

On the request of the applying party. The institution written to first by the aggrieved party shall take precedence over all other institutions.

37.2 The arbitration may be on the construction of this Contract or on any matter or thing of whatsoever nature arising thereunder or in connection therewith, including any matter or thing left by this Contract to the discretion of the Project Manager, or the withholding by the Project Manager of any certificate to which the Contractor may claim to be entitled to or the measurement and valuation referred to in clause 23.0 of these conditions, or the rights and liabilities of the parties subsequent to the termination of Contract.

37.3 Provided that no arbitration proceedings shall be commenced on any dispute or difference where notice of a dispute or difference has not been given by the applying party within ninety days of the occurrence or discovery of the matter or issue giving rise to the dispute.

37.4 Notwithstanding the issue of a notice as stated above, the arbitration of such a dispute or difference shall not commence unless an attempt has in the first instance been made by the parties to settle such dispute or difference amicably with or without the assistance of third parties. Proof of such attempt shall be required.

37.5 Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Works or abandonment of the Works or termination of the Contract by either party:

- 37.5.1 The appointment of a replacement Project Manager upon the said person ceasing to act.
- 37.5.2 Whether or not the issue of an instruction by the Project Manager is empowered by these Conditions.
- 37.5.3 Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.
- 37.5.4 Any dispute or difference arising in respect of war risks or war damage.
- 37.6 All other matters shall only be referred to arbitration after the completion or alleged completion of the Works or termination or alleged termination of the Contract, unless the Employer and the Contractor agree otherwise in writing.
- 37.7 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.
- 37.8 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision requirement or notice had been given.
- 37.9 The award of such Arbitrator shall be final and binding upon the parties.

5. Submission of Tender

The completed tender documents shall be returned in plain sealed envelope marked tender for construction of Water Pan Structures at Holo-Orucho community to:

**THE CHIEF OFFICER,
AGRICULTURE, IRRIGATION, LIVESTOCK AND FISHERIES,
KISUMU COUNTY,
P.O. BOX 1700 - 40100,
KISUMU**

The particular instruction will be superseded by instruction in the letter of invitation to tender, if instructions contained therein are contrary to above. The last date and time of submission of this tender will be as specified in the Letter of Invitation.

6. Expense of tendering

No expenses incurred in preparation of this tender (catered for)

7. Other information to Accompany Tender

The tenderer shall submit with his/her tender relevant information on omitted items his/her, which he/she considers not included in the tender documents. The tenderer shall, in preparation of his/her tender program, have regarding the timing and order of carrying out the works.

8. Price Variation

The tenderer's attention is drawn to the fact that this is a fixed prices contract and therefore Variation of Price (VOP) will **NOT** be allowed therefore, clause 70.1 in the FIDIC conditions of Contract is void.

9. Qualification of bidder

All bidders shall include the following information and documents with their bids, unless otherwise stated in the bidding data.

1. Copies of original documents defining the construction or legal status and principal place of business
2. Total monetary value of construction work performed for each of the last three years
3. Experience in work of a similar nature and size for each of the last five years, and details of work underway or contractually committed; and clients who may be contacted for further information on those contracts.
4. Evidence of adequacy of working capital for this contract.
5. Must demonstrate past experience of working under strong water velocity.

10. The Contractor

The contractor shall be responsible for hiring and managing skilled and unskilled manpower labour to ensure completion of the project to the required standard as per description in the contract document.

The contractor shall co-ordinate all his/her employees' administration and management issues. All issues of accommodation travel to and from project area, insurance, and medical shall be the responsibility of the contractor.

11. Records

The contractor shall keep accurate and systematic records of any relevant information in respect of the works in such form and detail as is customary in the profession and shall permit the project supervisor to inspect the same and shall provide copies thereof if requested.

12. Cooperation with the public services

The employer or his representative shall inform the (local) respective Kenyan authorities prior to the commencement of the works to be fulfilled under this agreement. The contractor is to cooperate whenever necessary with the same Kenyan authorities during progress of the services. The contractor shall keep the employer informed about this cooperation and may call on his participation if this is considered necessary

13. Behavior

During the term of this C/Agreement, the contractor and his staff shall not interfere in affairs of a political or religious nature within working area.

TENDER EVALUATION CRITERIA

After tender opening, the tenders will be evaluated in 3 Stages, namely:

1. Preliminary Evaluation & Determination of Responsiveness

2. Technical Evaluation
3. Financial Evaluation.
4. Determination of the Most Responsive Bidder.
5. Recommendation

1. PRELIMINARY EVALUATION & DETERMINATION OF RESPONSIVENESS

This stage of evaluation shall involve examination of the pre-qualification conditions as set out in the Tender Advertisement Notice or Letter of Invitation to Tender and any other conditions stated in the bid document.

These conditions may include the following:

- a) Certified copy of Certificate of Incorporation,
- b) Certified copy of VALID Registration Certificate with the National Construction Authority in the classes specified in the tender notice.
- c) VAT and PIN registration,
- d) A copy of VALID Tax Compliance Certificate from Kenya Revenue Authority (KRA),
- e) Bid bond – 2% of the tender sum for general tenders,
- f) Certified copy of RECENT CR12 FORM from registrar of companies.
- g) Certified copy of Single Business Permit preferably from Kisumu County.
- h) Bidders shall SEQUENTIALLY SERIALIZE ALL PAGES for each tender document submitted failure to which the bidder shall be disqualified.
- i) Certified copy of relevant (Small works & Engineering) Certificate of registration for access to government procurement opportunities (AGPO) from the ministry of National Treasury for tenders in the special categories.
- j) Bid declaration for special category duly signed and stamped

Any other conditions included in the advertisement notice/Invitation letter.

Certification must be by a commissioner for oaths.

Note:

The bid security shall be in accordance with clauses 16.1 and 16.2 of Instruction to Tenderers which states as follows:

Clause 16.1 The bidder shall furnish, as part of his bid, a bid security in the amount shown in the Appendix to instruction to tenderers. The bid security must be in form of a certified cheque, bank draft, an irrevocable letter of credit or a guarantee from a reputable Bank/ Insurance approved by PPOA located in the Republic of Kenya

Clause 16.2 of Instruction to Tenderers, “the unconditional Tender surety shall be in Kenya shillings and be in form of a certified cheque, bank draft, an irrevocable letter of credit or a guarantee from a reputable Bank/ Insurance approved by PPOA located in the Republic of Kenya. The format of the surety shall be in

accordance with the sample form included in the tender documents and the tender surety shall be valid for 150 days from the date of tender opening”.

Clause 26.2 of Instruction to Tenderers: “For the purposes of this clause, a substantially responsive tender is one which conforms to all terms and condition and specifications of the tender document without material deviation or reservation and has a valid Bank/Insurance guarantee”.

The employer may seek further clarification/confirmation if necessary, to confirm authenticity/compliance of any condition of the tender.

The tenderers who do not satisfy any of the above requirements shall be considered Non-Responsive and their tenders will not be evaluated further

2. TECHNICAL EVALUATION

The tender document shall be examined based on clause 4 of the Instruction to Tenderers which states as follows:

In accordance with Instruction to Tenderers, ‘the tenderers shall provide such evidence of their continued eligibility satisfactory to the Employer as the Employer shall reasonably request’. The tenderers shall be required to fill the Standards Forms provided for the purposes of providing the required information. The tenderers may also attach the required information if they so desire.

The award of points for the STANDARD FORMS considered in this section shall be as shown below:

Mandatory Requirements

Certified copy of Business registration/Certificate of incorporation

Valid tax/PIN certificate and Valid Tax Compliance certificate

Certified copy of Single Business Permit

Certified copy of Relevant NCA category 8

Bid bond from recognized firm

Company profile

Duly filled confidential business questionnaire

Dully filled tender questionnaire

Company CR12

PRELIMINARY EVALUATION

Sub-Factor	Requirement	Bidder				Documentation Required	Provide d (Y/N)/ or N/A
		Single Entity	Joint Venture				
			All partners combined	Each partner	At least 1 partner		
Statutory and General Requirements							
No of documents	Bidder must submit number of documents as per this instruction	Must meet requirement	Must meet requirement	N/A	N / A	Number of documents, TWO in number, one (1) original, one (1) copy under ONE ENVELOPE	
Registration as a Company	Bidder Must be a legally constituted firm according to the laws of Kenya	Must meet requirement	N / A	Must meet requirement	N / A	• Certified Certificate of Incorporation; • Fully completed confidential Business Questionnaire • CR12	
Tax Compliance	Bidder MUST be Tax Registered and be Tax Compliant	Must meet requirement	N / A	Must meet requirement	N / A	Current and valid Tax Compliance Certificate – valid as of submission deadline.	
Physical address	Must have a physical office and works yard	Must meet requirement	N / A	Must meet requirement	N / A	Current and valid Single Business Permit as of the submission deadline.	
National Construction Authority	At least category NCA8 (Relevant Works)	Must meet requirement	N / A	N/A	Must meet requirement	• Current and valid NCA 8 • Current and valid annual practicing certificate for the above - valid as of deadline of submission;	
Site Visit	Bidder or representative shall attend Site visit scheduled as per Tender Advert	Must meet requirement	N / A	Must meet requirement	N / A	Tenderers to attend site visit as per advertisement – Invitation to Tender; • Bidder to sign site visit attendance register;	

						• Bidders to attach site visit form endorsed by County Project Manager and should be dully completed by the bidder.	
Tender Sum and Tender Validity Period	Bidder shall quote the Tender Sum and Validity period	Must meet requirement	Must meet requirement	N / A	N / A	• Completed Form of Tender • Completed appendix to form of tender	
Security	The Bidder shall furnish as part of its bid, a bid security in form as specified under Invitation to Tenders.	Must meet requirement	Must meet requirement	N / A	N / A	In original, unconditional tender guarantee and as specified under Invitation to Tenders	
Sanctity of the bid document	Bid document prepared as per required	Must meet requirement	Must meet requirement	N / A	N / A	Properly prepared Bid which should: - • Be sequentially serialized from front page to last page including all attachments; • Stamping, signing, and dating where required within the document including the standard forms; • Well bound and not loose.	
Bidding Forms and Other Requirements							
Declaration on code of Ethics	The declaration of code of Ethics to be properly completed.	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Completed Code of Ethics Form (Commissioned by a Commissioner of Oaths)	
Bidder Information	The bidder is required to provide all details in the format as specified as per standard forms	Must meet requirement	N / A	Must meet requirement	N / A	Fully completed Standard Forms; • Form of Tender; • Qualification information form; • Tender Questionnaire;	

						• Confidential Business Questionnaire; • Details of Sub-Contractors • Schedule of Plant and Equipment; • Schedule of Particulars	
Joint Venture Documents	Bids submitted by a JV shall include a Joint Venture Agreement entered into by all partners.	N / A	Must meet requirement	N/A	N / A	• Joint Venture Agreement properly executed by a commissioner of oaths; • Completed Qualification Information Form	
Schedule of Unit Rates	The Schedules - the Bill of Quantities, shall be prepared.	Must meet requirement	Must meet requirement	N / A	N / A	• Completed schedule of unit rates (The Bills of Quantities), with rates consistently applied for similar items within the Bills of Quantities. • No frontloading from 1 above.	
Eligibility							
Bidder debarment/Bidder ineligibility	Tenderer must not have been debarred by PPRA as per PPDA 2015	Must meet requirement	Must meet requirement	Must meet requirement	N / A	• Completed Form of Tender • Completed Commitment to Code of Ethics Form	
Historical Contract Non-Performance							
Pending Litigation/Litigation History	The bidder to declare pending litigation and the values of the cases citing whether this litigation could adversely affect going concern of the bidder or smooth delivery/completion	Must meet requirement	N / A	Must meet requirement	N / A	• Completed Qualification Information Form • Attach sworn affidavit	

	of the project in question.						
Financial Situation							
Historical Financial performance	Submission of audited reports for the last two financial years 2017/2018	Must meet requirement	Must meet requirement	N/A	N / A	Audited financial reports for the last two years (2017 &) 2018 certified by a CPA(K) auditor and consistent with Qualification Information Form	
Average Annual Turnover	Minimum average annual turnover of Kenya Shillings at least 45Million as demonstrated by the audited financial statements	Must meet requirement	Must meet requirement	N/A	Must meet requirement	Audited financial reports for the last two years 2017 and 2018 certified by a CPA(K)auditor and consistent with Qualification Information Form	
Experience							
General Experience (Years of Experience)	The company must have been in operation for at least 2 years.	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Certificate of incorporation	
Specific Experience	Participation as contractor, management contractor, or subcontractor, in at least two (2) contracts each with a value of at least Kenya Shillings 3 million within the last ten (10) years (2009 to 2018), or	Must meet requirement	Must meet requirement	N / A	N/A	List of projects – Name, Contracting Authority, project/contract budget, when completed, and contract amounts in monetary terms. This information should be summarized under Section VIII Standard Forms - Qualification Information Form and at the same time attaching project award letters, project completion certificates, contracts etc. Mere	

	combined related works (civil works contracts) of KES 2 M over the same period. The works should have been successfully & fully completed and that are of the same nature to the proposed Works and should be supported by work completion & site handover					listing without proofs – award/contract letters, completion and handover certificates will not be considered.	
Key Personnel							
Project Manager	At least a diploma in Agriculture or Civil Engineering, 3 years specific works experience at projects of similar nature and scope	Must meet requirement	Must meet requirement	N / A	Must meet requirement	• Qualification Information Form properly completed; • CV describing the person, education background, years of experience, key experience as per the requirements column; • Certified Copies of Education/Qualification Certificates.	
Site Agent	At least a diploma in Agricultural, Water or Civil Engineering, 3 years specific works experience and held the position of Site Agent in at least three projects of	Must meet requirement	Must meet requirement	N / A	Must meet requirement	• Qualification Information Form properly completed; • CV describing the person, education background, years of experience, key experience as per the requirements column;	

	similar nature and scope					• Certified Copies of Education/Qualification Certificates.	
Water Engineer	At least (1) Diploma in Water Engineering; 3 years specific works experience as an electrical engineer in at least three projects of similar nature and scope	Must meet requirement	Must meet requirement	N / A	Must meet requirement	• Qualification Information Form properly completed; • CV describing the person, education background, years of experience, key experience as per the requirements column; • Certified Copies of Education/Qualification Certificates.	
Key Equipment							
Excavator/Earth moving equipment	At least 1 No.	Must meet requirement	Must meet requirement	N / A	Must meet requirement	• Qualification Information Form/Schedule of Plant and Equipment properly completed; • Proof of equipment ownership - Logbooks/lease agreements in the name of the bidder (not mere MoUs)/or any other verifiable proofs including purchase receipts for im/mobile equipment without logbooks/registration documents.	
Motor vehicle	Minimum required number is 1.	Must meet requirements	Must meet requirement	N / A	Must meet requirement	• Qualification Information Form/Schedule of Plant and Equipment properly completed; • Proof of equipment ownership - Logbooks/lease agreements in the	

Technical Evaluation Criteria

Evaluation criteria shall comprise two stages (1) Technical Evaluation and (2) Financial Evaluation

Technical Evaluation Criteria

Technical Evaluation shall comprise scoring of bidders under various attributes in the table below – Table of Scoring Matrix. To earn maximum scores, a bidder must (1) provide supporting documents as per criteria (2) provide very precise/specific and relevant information as per criteria (3) provide as many/much information as possible to earn more points. A bidder must score a minimum of 40 points to be considered for Financial Evaluation

Table of Scoring Matrix

Technical Evaluation Criteria Sub-Factor	Requirement	Maximum score	Awarded score
Financial Situation			
Current Ratio defined as how many times current assets cover current liabilities (Current Assets Divided (/) by Current Liabilities)	Audited financial report for the last Two (2 number) years 2017, 2018 - (choose either of the qualification below):		
	Average Current Ratio of Two (2Number) and above	7	
	Average Current Ratio of One (1) and below Two (2Number)	5	
Annual Turnover defined as Gross Sales/Gross revenue that does not include sale of Capital Assets	Audited financial report for the last Two (2 number) years 2017 & 2018(choose either of the qualification below):		
	Average Annual Turnover above 4 Million/Year	8	
	Average Annual Turnover of up to 3 Million/Year	5	
	Average Annual Turnover of up to 2Million/Year	3	
Financial Capacity		15	
EXPERIENCE			
implemented & completed in the past ten (10number) years related to building works and project in question (2009 to 2018)	Information on past completed works of similar nature, complexity and magnitude. Bidders to provide a) Contract agreements/LPOs, completion & handover certificate & completed Standard Form (choose either of the qualification below):		
	Contracts value above KES 10M	20	
	Contracts value up to KES 8M	12	
	Contracts value up to KES 4M	5	
Past & Specific Experience		20	
Key Personnel	Schedule of Bidder's proposed personnel and their experience. Attach CV describing the person, education background, years of experience, key experience as per the requirements column & evidence of qualification (certificates, recommendations, service completion certificates etc.). To earn maximum points, tenderers must make sure education qualification, experience in similar works and position are well described and backed with evidences.		

Project Manager	i. A diploma and above in Civil Engineering, Agriculture Engineering = 1 point	1	
	ii. Similar Works Experience Similar Works Experience (Over 3 years = 2 points, 1-2 years = 1 point.)	2	
	iii. Experience in position of team leader/project manager in similar projects Similar Works Experience (Over 3 years = 2 points, 1-2 years = 1 point.)	2	
Site Agent	i. A diploma and above in Agriculture Engineering, Water Engineering, Civil Engineering or Projects Management = 1 point,	1	
	ii. Similar Works Experience (Similar Works Experience (Over 3 years = 2 points, 1-2 years = 1 point.)	2	
	iii. Experience in position of Site Agent in similar projects Similar Works Experience (Over 3 years = 2 points, 1-2 years = 1 point.)	2	
Site Surveyor	i. A diploma and above in Engineering Survey/Quantity Survey = 1 point.	1	
	ii. Similar Works Experience (Over 3 years = 2 points, 1-2 years = 1 point.)	2	
	iii. Experience in position of surveyor in similar projects (Over 5 years = 2 points, 4-5years = 1 point.)	2	
Water Engineer	i. More than a diploma in water engineering = 1 point.	1	
	ii. Similar Works Experience (Over 3 years = 2 points, 1-2 years = 1 point.)	2	
	iii. Experience in position of water engineer in similar projects (Similar Works Experience (Over 3 years = 2 points, 1-2 years = 1 point.)	2	
KEY PERSONNEL		20	
Key Equipment			
Proof of equipment ownership -Logbooks/lease agreements in the name of the bidder/or any other verifiable proofs including purchase receipts for im/mobile equipment without logbooks/registration documents. To earn maximum points, tenderers must make sure that extra equipment/machinery is well supported with ownership/lease agreement documents. Mere MoUs will earn no points.			
Excavator or earth moving equipment	Schedule of contractor's Excavators (Attach proof or evidence of ownership/lease		
	At least one (1) quantity	9	
Dump Truck	Schedule of contractor's Dump Trucks (Attach proof or evidence of ownership/lease		
	At least one (1) quantity	3	

Means of transport preferably Pick Up	Schedule of contractor's means of transport (Attach proof or evidence of ownership/lease		
	More than one No.	3	
Key Equipment		15	
Technical Evaluation Criteria Sub-Factor	Requirement	Maximum score	Awarded score
Financial Situation			
Current Ratio defined as how many times current assets cover current liabilities (Current Assets Divided (/) by Current Liabilities	Audited financial report for the last Two (2 number) years 2017, 2018 - (choose either of the qualification below):		
	Average Current Ratio of Two (2Number) and above	7	
	Average Current Ratio of One (1) and below Two (2Number)	5	
Annual Turnover defined as Gross Sales/Gross revenue that does not include sale of Capital Assets	Audited financial report for the last Two (2 number) years 2017 & 2018(choose either of the qualification below):		
	Average Annual Turnover above 4 Million/Year	8	
	Average Annual Turnover of up to 3 Million/Year	5	
	Average Annual Turnover of up to 2Million/Year	3	
Financial Capacity		15	
EXPERIENCE			
implemented & completed in the past ten (10number) years related to building works and project in question (2009 to 2018)	Information on past completed works of similar nature, complexity and magnitude. Bidders to provide a) Contract agreements/LPOs, completion & handover certificate & completed Standard Form (choose either of the qualification below):		
	Contracts of total value above KES 8M	20	
	Contracts of total value up to KES 6 M	12	
	Contracts of total value up to KES 4M	5	
Past & Specific Experience		20	
Key Personnel			
Schedule of Bidder's proposed personnel and their experience. Attach CV describing the person, education background, years of experience, key experience as per the requirements column & evidence of qualification (certificates, recommendations, service completion certificates etc.). To earn maximum points, tenderers must make sure education qualification, experience in similar works and position are well described and backed with evidences.			
Project Manager	i. More than a diploma in Water engineering Civil Engineering, Agricultural Engineering field = 1 point	1	
	ii. Similar Works Experience (Over 5 years = 2 points, 4-5years = 1 point.)	2	

	iii. Experience in position of team leader/project manager in similar projects (More than 5 projects = 2 points, 4-5 projects = 1 point,)	2	
Site Agent	i. More than a diploma in Agricultural Engineering, Civil Engineering or Projects Management = 1 point,	1	
	ii. Similar Works Experience (Over 5 years = 2 points, 4-5years = 1 point.	2	
	iii. Experience in position of Site Agent in similar projects (More than 5 projects = 2 points, 4-5 projects = 1 points)	2	
Site Surveyor	i. More than a diploma in Engineering Survey/Quantity Survey = 1 point.	1	
	ii. Similar Works Experience (Over 5 years = 2 points, 4-5years = 1 point.)	2	
	iii. Experience in position of surveyor in similar projects (Over 5 years = 2 points, 4-5years = 1 point.)	2	
Water Engineer	i. More than a diploma in water engineering = 1 point.	1	
	ii. Similar Works Experience (Over 5 years = 2 points, 4-5years = 1 point.)	2	
	iii. Experience in position of water engineer in similar projects (Over 5 years = 2 points, 4-5years = 1 point.)	2	
KEY PERSONNEL		20	
Key Equipment			
Proof of equipment ownership -Logbooks/lease agreements in the name of the bidder/or any other verifiable proofs including purchase receipts for im/mobile equipment without logbooks/registration documents. To earn maximum points, tenderers must make sure that extra equipment/machinery is well supported with ownership/lease agreement documents. Mere MoUs will earn no points.			
Excavator/Earth moving equipment	Schedule of contractor's Excavators (Attach proof or evidence of ownership/lease		
	At least one (1) quantity	9	
Dump Truck	Schedule of contractor's Dump Trucks (Attach proof or evidence of ownership/lease		
	At least one (1) quantity	3	
Pick-Up Truck	Schedule of contractor's Pick Ups (Attach proof or evidence of ownership/lease		
	More than one No.	3	
Key Equipment		15	

Financial Evaluation

All tenders that shall qualify from technical evaluation shall be considered for financial evaluation. Financial evaluation shall involve;

- Evaluation of completeness of the tender sum. The Form of Tender of Tender must be properly completed, amounts in words and figures and signed and stamped where appropriate;

Bid sum comparisons.

All bids shall be compared and ranked according to their bid sums from the lowest bid sum to the highest.

Form of Tender

Notes: The appendix forms part of the tender (Tenderers are required to fill up all blank spaces in this tender form and appendix)

To
**CHIEF OFFICER,
AGRICULTURE, IRRIGATION, LIVESTOCK AND FISHERIES,
KISUMU COUNTY,
P.O BOX 1700 - 40100,
KISUMU**

Dear, Sir

RE: TENDER FOR CONSTRUCTION OF WATER PAN AT HOLO-ORUCHO

1. Having examined the tender documents, appendix to form of tender, specifications, bills of quantities for the works described in these documents, we the undersigned, offer to construct, complete and maintain the whole works of the said works in conformity with the said tender documents of the sum of:
.....
..... (Amount in words)
Kshs (Amount in figures)
2. We undertake, if our tender is accepted, to commence the works within 14 days of receipt of the engineer's order to commence and complete and deliver the whole of the works comprised in the contract within Weeks calculated from the commencement date.
3. If our tender is accepted, we shall within fourteen (14) days of acceptance of our tender, execute the formal contract agreement
4. Unless and until a formal agreement is prepared and executed, this tender together with your letter of award and my letter of acceptance shall constitute a binding contract between us
5. We acknowledge receipt of the following addenda to the contract document (if none were received, write the word "none")

Addendum

.....
.....

Date of Addendum

6. We understand that you are not bound to accept the lowest or any tender you may receive
- Signature Date
- Name
- Address (Tenderer)
- Signature Date
- Name
- Address (Witness) -----

APPENDIX TO FORM OF TENDER

Description Clause No	Conditions of contract	
Date of commencement within	Days of Engineers order to commence work	41
Time of completion	 Weeks	43
Liquidated damages 47(1)	0.25% of the tender / contract sum per day delayed	
Period of maintenance	2 months	49
Percentage of retention	10% of tender / contract sum	60(4)
Time within which 60(6)	Payment of each engineer's certificate shall be made by the	
Payment is made	Employer to the contractor within 30 days after approval by The employer, subject to formalization of the contract agreement	

Signature: Date

Name: In the capacity of

.....

Duly authorized to sign for tenders for and on behalf of

.....

(IN BLOCK CAPITALS)

Address

Signature Date
(WITNESS)

Name

Occupation

To be filled by the tenderer

SCHEDULE 1 - CONFIDENTIAL BUSINESS QUESTIONNAIRE

You are requested to give the particulars indicated in part I and part 2 (a), or 2 (b) or 2(c) which ever applies to your types of business. (**Attach copy of current trade license**)

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

Part 1: General

Business name.....

Location of business premises.....Plot No.....street/road.....

Postal address.....

Telephone No.....

E-mail address.....

Nature of business.....

Current trade license No.....Expiring date.....

Maximum value of business which you can handle at any time (Kshs):.....

Name of your bankers..... branch.....

Part 2(a): Sole Proprietor

Your full name age.....

Nationality.....country of original.....

*Citizenship details.....

Part 2 (b) Partnership

Name	Nationality	Citizenship details	shares
------	-------------	---------------------	--------

1.....			
--------	--	--	--

2.....			
--------	--	--	--

3.....			
--------	--	--	--

Part 2 (c) Registered Company

Private or Public

.....

State the nominal and issued capital of the company

Nominal Kshs.

Issued Kshs.

Give details of all Directors: -

	Name	Nationality	Citizenship details	shares
1				
2				
3				
4				
5				

.....

(Date)

.....

(Signature of Tenderers)

* If Kenyan citizen, indicate under “citizenship details” whether by birth, naturalization or registration.

SCHEDULE II- SCHEDULE OF SIMILAR WORKS

Tenderers must insert in the space below and submit with the Tender the following schedule listing works of similar nature (Irrigation/water supply) they have successfully carried out within the last three (3) years. The

contractor should attach herein, the completion certificate from the client for these works.

Name of Employer & Address	Name and Location of project	Type of Project	Name of Supervisor y consultant (Engineer)	Total Value for which Contractor was responsible (Kshs).	Year commenced	Year completed	Was contract completed on time	Were there any penalties imposed? If yes give amount & explain why

.....
(Signature of Contractor)

.....
(Date)

SCHEDULE III - ONGOING CONTRACTS

Give full information about all your on-going contracts, whether prime or sub-contracts, whether in progress or awarded but yet to commence, or if you have tendered and contract has not been awarded

Name and location of project	Type of works	Date of award	Date of commencement	Client	Name of Supervisory consultant (Engineer)	Contract price/value Kshs.	Value of completed certified works (%completed)	Scheduled date of completion
Total Value								

.....
(Signature of Contractor)

.....
(Date)

SCHEDULE IV - STAFF PROPOSED FOR EXECUTION OF WORKS

Sector	Name and Nationality	Age (Years)	Years of Experience	Education	Proposed Designation	Relevant Experience
General Management*						
Administration*						
Technical Management*						
Site Supervision*						
Site Engineer*						
Site Agent*						
Ass. Site Agent*						
Site Foreman*						
Others						

*** Attach CVs and academic certificates**

Signature of contractor

Date.

SCHEDULE V - SCHEDULE OF THE MAJOR PLANTS AND EQUIPMENT TO BE USED ON THE PROPOSED CONTRACT.

On the basis of the information provided in the prequalification, please indicate the main plant and equipment considered by the company to be necessary for undertaking the project and whether this plant is already in the company's ownership or will be purchased or hired. Copies of log books to be attached

Item Description	No. of Items	Make	Model	Year of manufacture	Ownership (owned/hired)	Present location and date available for the works

We hereby certify that notwithstanding the list of plant detailed above, we will provide sufficient, suitable and adequate plant in good working order for the successful completion of works

.....
(Signature of Contractor)

.....
(Date)

DECLARATION

We underscore the importance of a free, fair and competitive procurement process that precludes fraudulent use. In this respect we have neither offered nor granted, directly or indirectly, any inadmissible advantages to

any public servants or other persons in connection with our bid, nor will we offer or are awarded the contract, in the subsequent execution of the contract.

We also underscore the importance of adhering to minimum social standards ("Core Labour Standards") in the implementation of the project. We undertake to comply with the Core Labour Standards ratified by the Country of Kenya.

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

.....

Signature of Contractor

.....

Date

Section 2

TECHNICAL SPECIFICATIONS

1.0 General Specifications

1.1 Introduction

These specifications cover the construction of the works as shown on the drawings and listed in the Bills of Quantities and shall be read in conjunction with the contract documents as listed in section 1. Instruction to Tenderers

1.2 Location of the Project

The location of the project is as described in section 1

1.3 Precedence of Contract Documents

Should the provision of any clauses be mutually at variance or exclusive, then the following precedence will apply to establish which clause should apply

- ❖ Provision of the standard or special specifications shall take precedence over those of the General Conditions of Contract
- ❖ Details shown in the contract drawings will take precedence over any other specifications
- ❖ Units shown in the Bill of Quantities will take precedence over any other units

In case of further variances, the Engineer can arbitrate. The contractor will be at liberty to claim for any extra over work.

1.4 Standards

In the specifications, Bills of Quantities and Drawings, reference has been made to the relevant British standards. The ISO system will be used for linear, area and volumetric measurements. The Engineer will give an approval in case there is some variance. The ruling of the engineer will give an approval in case there is some variance. The ruling of the engineer will be final

1.5 Quality of Materials and Workmanship

The materials and workmanship shall be of the best of their respective kinds and shall be the approval of the Engineer.

No materials will be used in the project without the approval of the engineer

1.6 Dimensions

Dimensions indicated in the drawing will be adhered to

Section 3

BILL OF QUANTITIES

PREAMBLE TO THE BILL OF QUANTITIES

1. This Bill of Quantities forms part of the Contract Documents and is to be read in conjunction with the Conditions of Contract, and the specifications. Detailed accounts of work and materials are not necessarily included in the item descriptions, and reference must be made to the specifications for this information
2. Items description for the works generally identifies the component of the works, and not the tasks to be carried out by the Contractor. The rate entered shall include for all activities required to achieve the identified component.
3. Each and every item in the Bill of Quantities should be priced. The cost of any item left un- priced shall be deemed recovered by the rates of prices included for other items.
4. Unit rates or prices shall be stated in figures. In cases of discrepancy between the amount derived from the multiplication of the unit rate and the quantity for any item, the unit rate stated shall be binding. Apparent errors in the total, extended amount or addition shall be amended accordingly
5. The quantities entered in this Bill of Quantity are provisional quantities, provide to enable the Employer to compare tenders on an equal basis, and are not to be considered as final quantities. During the execution of the Works, some quantities may vary from the initially estimated quantities. Rates quoted are assumed to include any variations in quantities.
6. Should the contractor have any doubt about the precise meaning of any item, works or figure, he is to inform the Engineer and obtain the correct meaning before the date of tender.

NYANDO, EAST KANO WAWIDHI WARD

HOLO ORUCHO WATER PAN STRUCTURES: BILLS OF QUANTITIES

ITEM	DESCRIPTION	Unit	Qty	Rate (Kshs.)	Amount (Kshs.)
1.0	BILL NO 1: PRELIMINARIES & GENERALS				
1.1	Hired Survey works to determine levels during construction, & Supervision works for the Resident Engineer	Lump Sum	1	350,000.00	350,000.00

1.2	Erect a standard bill board and maintain it throughout the construction period and beyond	Lump Sum	2	50,000.00	100,000.00
1:3	Allow for provisional sum for material testing for concrete strength at public works yard at critical stages of civil works.	No.	6	25,000.00	150,000.00
1.4	Allow for Site office construction using Timber and Galvanized iron sheets and any other locally available material	No.	1	250,000.00	250,000.00
	Total preliminaries				850,000.00
2.0	EARTH WORKS				
2.1.	Excavate and remove all tree stumps within the Main Pan area.	No.	50		
2.2	Excavate and remove all vegetative & silt load within the Water Pan and dispose off the excavated material safely as directed by the resident engineer.	M ³	350		
2.3	Excavate, Refill, and Compact to 90% MDD in layers of 150mm thick using light wetting and rolling of heavy dozer to achieve the maximum dry density fill material. The embankment should achieve an average height of 7.0 to a crest of 5.0m and approximately 520m spillway as directed by the engineer. Team the downfall to the required upstream and downstream slope grades as indicated in the drawing plant indigenous grass at the embankment.	M ³	800		
2.4	Apply and broadcast building lime in every layer of 300mm buildup to stabilize the embankment wall and compact accordingly	No.	300		
2.5	Apply top soil on the external surface of the embankment and plant approved grass and maintain it until it establishes once the level is achieved satisfactorily.	M ²	190		

2.6	Apply 2:1 clay (black cotton soil) at the base floor of the water pan to receive and hold pan waters to lock up underground seepage.	M2	30		
	Total Earth works				
3.0	PAN CONCRETE WORKS				
	<i>Curst all concrete works using 42.5 mps. cement and cure appropriately to include formworks as directed by the resident engineer.</i>				
3.1	Internal retention wall				
3.1.1	Curst reinforced concrete footing line of 300x300mm deep & raise it 200mm above the ground at the foot of the internal embankment slope to receive and hold in position rough stones embedded within the internal embankment surface	M ³	7		
3.1.2	Apply Geotextile filter cloth sheet and spread it at the internal embankment side slope that retains pan water up to the spillway level except the floor base where 2:1 clay (black cotton soil) is used – see 2.6 above	M ²	50		
3.1.3	Arrange rough stones vertically all-round the internal surface where the filter cloth is laid to the level of a spillway and render the blinding end with mass concrete except the floor base where 2:1 clay (black cotton soil) is used.	M ²	50		
3.2	Cofferdam				
3.2.1	Level, shape, stabilize and compact the cofferdam area with approved murrum before graded riprap is applied.	Sm	24		
3.2.2	Apply approved graded riprap material within the cofferdam area and blind the finished edges using mass concrete.	Sm	30		
3.2.3	Cast reinforced concrete at the retention wall and connect it with the spillway discharge wall as directed by the R.E.	M ³	10		

3.3	<i>Spillway</i>				
	<i>Consider spillway site on safe discharge towards the natural storm waterway below the pan site at 3% slope.</i>				
3.3.1	Excavate graded earth canal at 3% slope towards the natural waterway just below the pan site	M ²	12		
3.3.2	Construct lined spillway with approved riprap and render the surfaces with grouted mass concrete for safe discharge.	Sm	45		
3.4	<i>Gabion works</i>				
3.4.1	Construct one line of gabion boxes all-round the external embankment footing & fill it up with rough stones as directed by the R.E.	Lm	60		
	<i>Total cost of pan concrete works carried to summary</i>				

4.0	FENCING WORKS				
4.1	Supply and fix pre-casted Reinforced Concrete square fencing columns size 150x150x3000mm at a spacing of 2m apart.	No	155		
4.2	Supply and fix high tensile plain wire rolls and fix Ø 6mm of nine strands and fastened using stainless binding wires	Lm	440		
4.3	Supply and fix triple twisted hexagonal shaped galvanized chain link gauge 26 of six meters high, embedded into mass concrete at the base and fasten using stainless binding wire.	Lm	440		
4.4	Fabricate and fix in place metallic double flapped gate overall size three meters wide with appropriate anchor blocks at the center complete with a pad lock.	Lump Sum	1		
	<i>Total cost of Fencing Carried to Summary</i>				

5.0	CONCRETE TOWER PLATFORM				
	<i>Curst the following concrete using 42.5mps (high strength) cement & mixed with water proof additives for stability and including all formwork</i>				
5.1	Concrete grade 15/20 for blinding and reinforced foundation footing and base grade 20/20 to receive concrete columns.	M ³	8		
5.2	Reinforced concrete 20/20 in Y16 vertical bars for concrete columns 5m high to receive concrete platform in 42.5 mps cement concentration	M ³	8		
5.4	Reinforced concrete 20/20 in Y12 for all ground and suspended beams to receive concrete platform.	M ³	8		
5.5	Reinforced concrete 20/20 in Y12 for Suspended slab that holds PVC tanks and allow 50mm diameter holes to receive guardrails.	Lm	10		
5.6.	Install 50mm round galvanized water pipes as guardrails spaced 200mm apart within the holes provided for in the suspended slab.	Lump Sum	1		
5.7	Supply and install Two No. PVC tanks 10,000 lts. each and connect the two using 75mm Ø long nipple with approved back nut complete with rubber washers.	No.	2		
5.8	Allow for 3% of total concrete works for Contingencies and weather unpredictability	Lump sum	1		
	Total cost of tower taken to summary				
6.0	AUXILIARY STRUCTURES				
6.1	<i>Construct Cattle watering concrete basin to serve separately the Cattle and the sheep and goat using masonry works and steel trowel finish.</i>				
6.1.1	Construct Cattle watering reinforced concrete basin size 1.0x10.0x0.8m high to serve cattle and large stocks separately complete with murram compacted around the watering point	No.	1		

6.1.2	Construct Cattle watering concrete basin size 1x10x0.4 to serve separately the sheep, goats and small stocks.	No.	1		
6.2	<i>Wash rooms</i>				
	Construct a VIP toilet attached to a bathroom together in one block	No.	1		
	<i>Total cost of auxiliary structures carried to summary</i>				
7.0	WATER LIFTING MECHANISM				
7.1	Supply and install SF2 solar irrigation pump (120W PV panel, suction lift of 7m and total lift of 15m/50ft) complete with 8 meters 1¼" suction pipe and 30 meters 1¼" deliver pipe.	No.	2		
7.2	Supply and install delivery rubber hosepipe size 1" (100m long per pumping set)	No.	2		
	<i>Total cost of pumping taken to summary</i>				
	Allow a provisional sum for IWUA officials' excursion with similar performing areas within the project areas to induct them and strengthen leadership.	Lump Sum	2		
	Summary of induction				

GRAND SUMMARY

Bill No.	ITEM DESCRIPTION	Amount
1	BILL NO 1: PRELIMINARIES & GENERAL	850,000.00
2	BILL NO 2: EARTH WORKS	
3	BILL No. 3 PAN CONCRETE WORKS	
4	BILL No. 4 FENCING WORKS	
5	BILL No. 5 CONCRETE TOWER PLATFORM	
6	BILL No. 6 AUXILIARY STRUCTURES	
7	BILL No. 7 SOLAR PUMPING SYSTEM	
4	BILL No.8 OTHERS	
	TOTAL	

FORM OF TENDER

TO: _____ [Name of Employer) _____ [Date]
_____ [Name of Contract]

Dear Sir,

1. In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Quantities for the execution of the above named Works, we, the undersigned offer to construct, install and complete such Works and remedy any defects therein for the sum of
Kshs. _____ [Amount in figures] Kenya
Shillings _____
_____ [Amount in words]
2. We undertake, if our tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Project Manager's notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Appendix to Conditions of Contract.
3. We agree to abide by this tender until _____ [Insert date], and it shall remain binding upon us and may be accepted at any time before that date.
4. Unless and until a formal Agreement is prepared and executed this tender together with your written acceptance thereof, shall constitute a binding Contract between us.
5. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this _____ day of _____ 2019

Signature _____ in the capacity of _____

duly authorized to sign tenders for and on behalf of

_____ [Name of Tenderer]

of _____ [Address of Tenderer]

Witness; Name _____

Address _____

Signature _____

Date _____

2.4 SITE VISIT CERTIFICATE

CERTIFICATE OF AREA INSPECTION

1. This is to certify that I ,..... (name of Tenderer or his representative)
of the firm of.....
(Name of firm tendering)
in the company of.....
(Name of client representative)
visited the site in connection with the tender No.....
2. Having previously studied the contract document, I carefully examined the site.
3. I have made myself familiar with the local conditions and access roads likely to influence the works and the cost thereof.
4. I further certify that I am satisfied with the description of the work and explanations given by the said representative and that I understand perfectly the work to be done as specified and implied in the execution of the contract.

Signed..... Date.....

Name.....
(Tenderer or his representative)

Signed..... Date.....

Name.....
(Client representative)

QUALIFICATION INFORMATION

(To complete parts 1 and 2 where/as appropriate)

1. Individual Tenderers or Individual Members of Joint Ventures

1.1 Constitution or legal status of tenderer (attach copy or Incorporation Certificate);

Place of registration: _____

Principal place of business _____

Power of attorney of signatory of tender _____

1.2 Total annual volume of construction work performed in the last ten years

YEAR	CURRENCY	Value

1.3 Work performed as Main Contractor on works of a similar nature and volume over the last ten years. Also list details of work under way or committed, including expected completion date – attach contracts, letters of completion & handover certificates.

Project Name	Name of client and contact person	Type of work performed and year of completion/Expected year of completion	Value of contract	Level of Completion (%)	Expected cash outlay to complete the remaining part

Major items of Contractor's Equipment proposed for carrying out the Works. List all information requested below.

Item of Equipment	Description, Make and age (years)	Condition (new, good, poor) and number available	Owned, leased (from whom?), or to be purchased (from whom?)

Qualifications and experience of key personnel proposed for administration and execution of the Contract in line with Section III (A) – Appendix to Instructions to Tenderers – Requirements. Also attach biographical data.

Position	Name	Years of experience (general)	Years of experience in proposed position
Project Manager			

Financial reports for the last five years: balance sheets, profit and loss statements, auditor's reports, etc. List below and attach copies.

1.7 Evidence of access to financial resources to meet the qualification requirements: cash in hand, lines of credit, etc. List below and attach copies of supportive documents.

1.8 Proposed Credit Period (In calendar days). This shall form part of the conditions of the contract.

1.9 Name, address and telephone, telex and facsimile numbers of banks that may provide reference if contacted by the Employer.

Proposed program (work method and schedule) for the whole of the Works in line with Section III (A) – Appendix to Instructions to Tenderers – Requirements.

1.6 Litigation History

Name of Firm or Partner of a joint venture

Firms, including each of the partners of a joint venture, should provide information on any history of litigation or arbitration resulting from contracts executed in the last five years or currently under execution. A separate sheet should be used for each partner of a joint venture

Year	Award FOR or AGAINST Firm	Name of client, cause of litigation and matter in dispute	Disputed amount (current value, Kshs.

2.12 Joint Ventures

2.1 The information listed in 1.1 –1.10 above shall be provided for each partner of the joint venture.

2.2 The information required in 1.11 above shall be provided for the joint venture.

2.3 Attach the power of attorney of the signatory(ies) of the tender authorizing signature of the tender on behalf of the joint venture

2.4 Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners), which shows that:

- a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
- b) one of the partners will be nominated as being in charge, authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture; and
- c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

2.5 SITE VISIT CERTIFICATE CERTIFICATE OF AREA INSPECTION

5. This is to certify that I (name of Tenderer or his representative)
of the firm of.....
(Name of firm tendering)
in the company of.....
(Name of client representative)
visited the site in connection with the tender No.....
6. Having previously studied the contract document, I carefully examined the site.
7. I have made myself familiar with the local conditions and access roads likely to influence the works and the cost thereof.
8. I further certify that I am satisfied with the description of the work and explanations given by the said representative and that I understand perfectly the work to be done as specified and implied in the execution of the contract.

Signed..... Date.....

Name.....
(Tenderer or his representative)

Signed..... Date.....

Name.....

(Client representative)

TENDER QUESTIONNAIRE

Please fill in block letters.

1. Full names of tenderer;

.....

2. Full address of tenderer to which tender correspondence is to be sent (unless an agent has been appointed below);

.....

3. Telephone number (s) of tenderer;

.....

4. Telex of tenderer;

.....

5. Name of tenderer's representative to be contacted on matters of the tender during the tender period;

.....

6. Details of tenderer's nominated agent (if any) to receive tender notices. This is essential if the tenderer does not have his registered address in Kenya (name, address, telephone, telex);

.....

.....

Signature of Tenderer

Make copy and deliver to: _____ (Name of Employer)

CONFIDENTIAL BUSINESS QUESTIONNAIRE

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

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

Part 1 – General

Business Name

Location of business premises; Country/Town.....

Plot No..... Street/Road

Postal Address..... Tel No.....

Nature of Business.....

Current Trade Licence No..... Expiring date.....

Maximum value of business which you can handle at any time: Ksh.

Name of your bankers.....

Branch.....

Part 2 (a) – Sole Proprietor

Your name in full..... Age.....

Nationality..... Country of Origin.....

Citizenship details

Part 2 (b) – Partnership

Give details of partners as follows:

	<i>Name in full</i>	<i>Nationality</i>	<i>Citizenship Details</i>	<i>Shares</i>
1				
2				
3				

DECLARATION

We underscore the importance of a free, fair and competitive procurement process that precludes fraudulent use. In this respect we have neither offered nor granted, directly or indirectly, any inadmissible advantages to any public servants or other persons in connection with our bid, nor will we offer or are awarded the contract, in the subsequent execution of the contract.

We also underscore the importance of adhering to minimum social standards ("Core Labour Standards") in the implementation of the project. We undertake to comply with the Core Labour Standards ratified by the Country of Kenya.

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

.....
Signature of Contractor

.....
Date

COMMITMENT TO THE CODE OF ETHICS

PART I - Title - DECLARATION FOR CODE OF ETHICS

This code may be cited as the Code of Ethics for Suppliers in Public Procurement & Disposal

1. Interpretation

In this code, unless the context otherwise requires-

“The Act” MEANS the Public Procurement and Disposal Act, 2005 or any amendment or modification thereof

“Candidate” means a person who has obtained the tender documents from a public entity pursuant to an invitation notice by a procuring entity

“Code of Ethics” means a statement encompassing the set of rules based on values and the standards of conduct to which suppliers are expected to conform

“Consultant” is a person who provides services of predominantly intellectual, technical or advisory nature

“Contractor” means a person who enters into a procurement contract with a procuring entity to supply goods, works or services, and includes the main contractor

“Ethics” means values, customs, rules or principles, which govern right conduct

“Gift” has meaning assigned to it in the Leadership and Integrity Regulations, 2015

“Integrity” means the quality of being honest and having strong moral and ethical principles

“Persons” has meaning assigned to it in Article 260 of the Constitution and includes sole proprietorship

“Procuring Entity” means a public entity making a procurement to which the Public Procurement and Disposal Act, 2005 or any amendment or modification thereof applies

“Public Officer” has the meaning assigned to it in Article 260 of the Constitution

“Regulations” means regulations made under the Public Procurement and Disposal Act, 2005 or any amendment or modification thereof

“State Officer” has the meaning assigned to it in Article 260 of the Constitution.

“Supplier” means a candidate, bidder, and tenderer, Contractor, service provider or a consultant.

“Tenderer” means a person who submitted a tender pursuant to an invitation by a public entity

For purposes of this Code, all terms used, unless expressly defined herein, have the meaning assigned to them in the Act.

2. Application of the Code

(i) This Code of Ethics is applicable to suppliers participating in public procurement or disposal of public assets.

(ii) The objective of the Code is to set minimum standards of ethical behavior for Suppliers to ensure compliance with the Act and the Regulations and the adoption of good business practices.

PART II – REQUIREMENTS/OBLIGATIONS OF THE SUPPLIERS

3. Laws and Regulations

(i) All public procurement & disposal shall be undertaken in accordance with the values and principles of the Constitution of Kenya, 2010 (Article 10)

(ii) All Suppliers shall comply with the rule of Law.

(iii) Suppliers shall observe other laws, regulations, rules and practices relating to taxation, labour, health and safety standards as well as environmental protection.

4. Professionalism

(i) Suppliers are required to comply with professional standards of their industry or of any professional body of which they are members. Where a supplier is a member of a professional body, the Supplier shall uphold the code of ethics of the respective profession and be of good standing.

(ii) Suppliers shall maintain the highest standards of integrity and professionalism in their operations.

(iii) Suppliers in public procurement shall accord mutual respect and courtesy to the public officer(s) and other suppliers without compromising their independent and distinct roles.

(iv) Public procurement & disposal activities shall be undertaken with the objective of meeting the closest public scrutiny.

5. Impartiality

A supplier shall not engage in acts aimed at encouraging patronage, tribalism, cronyism and nepotism.

6. Gifts, Favors and Corrupt practices

(i) A supplier shall not offer or give gifts of any kind to public entities and/or the employees.

(ii) No supplier shall contact, unduly influence or exert pressure on any member of a committee or any other employee of a procuring entity to take a particular action which favours or tends to favour them.

(iii) A supplier shall not engage in fraudulent, collusive, or corrupt practices, or inappropriate influences.

(iv) A supplier shall not act inappropriately by attempting to interfere with the procurement process

7. Conflict of Interest

(i) A supplier shall not accept contracts which would constitute a conflict of interest with any prior or current contract. Suppliers shall disclose to all concerned parties those conflicts of interest that cannot be reasonably avoided.

(ii) A supplier shall not enter into a contract with a procuring entity if the supplier is:

- An employee of the procuring entity or a member of a board or committee of the procuring entity;
- A State Officer, public Officer or a member of a board or committee of the Government or any department of the Government or a person appointed to any position by the President or a Cabinet Secretary;

- A person, including a corporation, who is related to a person described in paragraph (i) or (ii). A relative has meaning assigned to it in section 33(2) of the Public Procurement and Asset Disposal Act, 2015 or any amendment or modification thereof applies;
- Debarred from participating in procurement proceedings.

8. Performance of Duties

8.1. A supplier shall:

- (i) Duly sign this code of ethics and include it in a tender, proposal or quotation submitted.
- (ii) Obtain and submit bid documents in the manner prescribed in the tender notice and tender documents
- (iii) Supply the right quantity and quality of the contracted item and deliver at the stipulated time(s) and shall not abandon the work that they have been contracted to do.
- (iv) Perform the obligations of the contracts efficiently and effectively

8.2. Suppliers shall not participate in procurement proceedings without invitation to tender and understanding the instructions to tenderers.

8.3. While responding to tenders, quotations or request for proposals, bidders should not include unfair, discriminatory or unreasonable conditions in their bids.

8.4. Suppliers should

- (i) Ensure that their deliverables provide value for money in terms of cost, quality, quantity and timeliness of the delivered works, goods or services.
- (ii) Ensure that competent persons carry out the contractual obligations of the supplier.
- (iii) Accept full responsibility for all works, services or supplies provided

8.5. A supplier shall not

- (i) Obstruct or hinder an officer of the Authority or any other authorized person from carrying out a duty or function or exercising a power relating to procurement and disposal.
- (ii) Knowingly or in collusion with others lie to or mislead a person carrying out a duty or function or exercising a power relating to procurement and disposal.

9. Communication and Accuracy of Information

A supplier shall:

- (i) Observe strict communication limitations during the bidding process and as provided for in the Act
- (ii) Respond promptly and courteously to all proper requests for information, clarifications, complaints or enquiries from procuring entities, the Authority or any law enforcement agency.
- (iii) Ensure that all information provided to procuring entities is given in writing by Authorized Officers.
- (iv) Ensure that certified copies of all mandatory certificates are availed
- (v) Ensure that information given while participating in public procurement or disposal is true, accurate and fair, and not designed to mislead.

10. Confidentiality

Information obtained in the course of performance of a procurement contract in shall not be disclosed to unauthorized persons and shall not be used for the Supplier's advantage or material gain or for furtherance of private interest. The obligation to preserve the confidential information continues even after the business/contractual relationship with the Procuring Entity ends.

11. Duty to report impropriety/corruption

A supplier shall reject and report to the PPOA and/or the relevant agency any procurement practice which might be deemed improper.

PART III - OVERSIGHT BY THE PPOA

12. PPOA shall assist in undertaking continuous training of the suppliers to eliminate malpractices which might arise due to ignorance of the public procurement system.

13. PPOA will exercise oversight in the enforcement of this Code of Ethics, including taking remedial measures where the Code of Ethics is breached

14. PPOA shall revise the code of ethics as appropriate in consultation with the relevant stakeholders

PART IV - COMPLIANCE & MONITORING

15. A Procuring Entity may conduct due diligence, on-site evaluations and inspections of suppliers' facilities and/or project site, including those of their subcontractors and Joint Venture partners to review their compliance to this Code during execution of the Contract.

16. PPOA shall, on its own motion or upon receipt of a complaint, inquire into the allegation of the violation of the Code of Ethics and institute debarment proceedings in line with Regulation 90 of the Public Procurement And Disposal Regulations, 2006

17. PPOA shall establish a complaints management system for reporting and receipt of complaints on alleged violations of the Code of Ethics

18. PPOA may collaborate and partner with other agencies, organizations and professional bodies in enforcement of this Code of Ethics.

19. All Procuring Entities shall submit a report to PPOA, annually or upon request, of any breaches by suppliers, and any action taken against the breach, in such format as is provided by PPOA.

PART V - ENFORCEMENT OF THE CODE

20. Any person may lodge a complaint alleging a breach of this code by a supplier to the Authority or a Procuring entity.

21. Upon receipt of the complaint, the Authority or the Procuring entity shall register and carry out investigations into the complaint, and may take action against the supplier in accordance with the Act and any Regulations

22. A breach of this Code shall be subject to a debarment process as stipulated in the Act which may attract a debarment for a period not less than five years. The breach may further be subjected to a Court process that may lead to the imposition of other penalties as stipulated in the Act and other Laws.

23. A Procuring Entity may disqualify a supplier from further participation in a procurement or disposal proceeding or terminate a contract if it establishes a breach of this Code

24. A breach of this Code shall lead to termination of registration of a supplier

25. A supplier who violate the law or engage in unethical business dealings may be subject to disciplinary proceedings.

26. Declaration and Signature

26.1. I (Supplier) Confirm
that I have read and fully understood the contents of the Public Procurement & Asset Disposal Act 2015 and
the Code of Ethics for Suppliers and my responsibilities under the Code.

26.2. I also certify that I am duly authorized to sign this Code on my own behalf and on behalf of my
organization, and agree to comply with the Code of Ethics.

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

Position.....

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

E-mail.....

Name of the Firm.....

(Company Seal/ Rubber Stamp where applicable)

Sworn at.....

By the said

Deponent

This.....day of.....20.....

Before Me.....

Commissioner for Oaths/Magistrate}

CONTRACT AGREEMENT
FORM OF AGREEMENT

MEMORANDUM OF AGREEMENT

CONTRACT NO: CGK/DAILF/KCSAP/NDS/2018-2019/001 .

This AGREEMENT made on the.....day of the month
of.....of the year two thousand and.....between the County Government of
Kisumu, represented herein by the Department of Agriculture, Irrigation, Livestock and Fisheries (hereinafter
called “**the employer**”) of the one part and

.....
(**Name of contractor and ID/No.**)

.....
(**Business address**)

(Hereinafter called the “**contractor**”) of the other part.

WHEREAS the employer is desirous that the works specified in section 1 of the special conditions of contract shall be executed as a whole, and has accepted a tender by the contractor for the execution, completion and maintenance of such works.

NOW THIS AGREEMENT WITNESSETH as follows:

1. In this agreement, words and expressions shall have the same meaning as are respectively assigned to them in the condition of contract hereinafter referred to.
2. the following documents shall be deemed to form and be read and construed as part of this agreement viz: -
 - a) The letter of acceptance
 - b) Tax compliant Certificate (October 2019).
 - c) Must have site visit certificate
 - e) Audited financial statement certificate.
 - f) Must comply with the NCA Certificate in this case category eight and above
 - g) Must have done at least one project with the department of Water & Irrigation
 - h) Bid bond.
3. In consideration of the payment to be made by the employer to the contractor as hereinafter mentioned the contractor HEREBY COVENANTS with the employer to execute, complete and maintain the works in conformity in all respects with the provisions of the contract.

The employer HEREBY COVENANTS to pay the contractor in consideration of the execution, completion and maintenance of the works the contract price of Kenya
shillings.....

(Kshs.....) or such other sum as may become payable under provisions of the contract at the times and in the manner prescribed by the contract.

IN WITNESS WHEREOF the parties have hereunto set their hands and affixed their seals (if any) the day and year above written.

Signed for and on behalf of the said employer.....

In the presence of:

Name:
(Signature)

Address:

Occupation:

Signed for and on behalf of the said contractor.....

(i) In the presence of:

Name:
(Signature)

Address:

Occupation:

TENDER SURETY

KNOW ALL MEN by these present that we..... (Name of surety)

.....(Address)

hereinafter called “the bank”, incorporated/registered under companies’ act and having our registered office at.....are bound unto the government of

Kenya in the sum of

Ksh.....(figures).....

..... (words) for which payment
will and truly to be made to the said government, the bank binds itself, its successors and assigns by these
presents sealed with the common seal of the said bank subscribed for it and on its behalf
by.....

CONDITIONS of this obligation are such that if.....
does not withdraw his tender dated.....of.2018
within sixty (60) days from the official tender opening date and, if called upon to do so.

1. Executes the formal contract Agreement in accordance with conditions of the said tender and instructions for Tendering.
2. Complies with a written notice by the employer, under paragraph 1.6.2 of the instructions for Tendering.
3. Produces a performance Bond satisfactorily in all respects to the employer then this obligation is to be void and of no effect otherwise to remain in full force and virtue.

This surety may be considered invalid 70 days after the official Tender opening date unless the employer requests that it be extended to allow sufficient time for the successful tenderer to execute the formal contract agreement and/or produce the required performance Bond.

Dated the.....day of.....20.....

.....
(Signature of surety)

.....
(Signature of witness)

.....
(Name of witness)

.....
(Address of witness)

LETTER OF NOTIFICATION OF AWARD

Department of Agriculture, Irrigation, Livestock & Fisheries

P.O. Box 1700-40100

KISUMU.

Date.....

To:

RE: Tender No._____

Tender Name_____

This is to notify that the contract/s stated below under the above-mentioned tender have been awarded to you.

1. Please acknowledge receipt of this letter of notification signifying your acceptance.
2. The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.
3. You may contact the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.

*(FULL PARTICULARS)*_____

SIGNED FOR ACCOUNTING OFFICER