



KITUI WATER AND SANITATION COMPANY LIMITED

P.O. BOX 341 – 90200

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KITUI

NATIONAL OPEN TENDER

**TENDER NAME: SUPPLY AND DELIVERY OF COLD WATER
METERS AND ACCESSORIES**

Tender NO. KITWASCO/WSTF/LIQD/004/2020 – 2021

CLOSING DATE: FRIDAY 14TH MAY, 2021 AT 11.00 AM.

EMPLOYER:
MANAGING DIRECTOR,
KITUI WATER AND SANITATION CO. LIMITED,
P.O BOX 341 – 90200,
KITUI.

FUNDING:
THE CHIEF EXECUTIVE OFFICER,
WATER SECTOR TRUST FUND,
PO Box 49699 - 00100,
NAIROBI.

MAY/JUNE, 2021

TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
SECTION I: INVITATION TO TENDER.....	4
SECTION II: INSTRUCTIONS TO TENDERERS	6
2.1 Eligible Tenderers	6
2.2 Eligible Goods.....	6
2.3 Cost of Tendering.....	6
2.4. The Tender Document.....	6
2.5 Clarification of Documents.....	7
2.6 Amendment of Documents.....	7
2.7 Language of Tender	8
2.8 Documents Comprising of Tender	8
2.9 Tender Forms.....	8
2.10 Tender Prices.....	8
2.11 Tender Currencies	9
2.12 Tenderers Eligibility and Qualifications	9
2.13 Goods Eligibility and Conformity to Tender Documents	9
2.14 Format and Signing of Tender	9
2.15 Sealing and Marking of Tenders	10
2.16 Deadline for Submission of Tenders	10
2.17 Modification and Withdrawal of Tenders	10
2.18 Opening of Tenders.....	11
2.19 Clarification of Tenders.....	11
2.20 Preliminary Examination.....	11
2.21 Evaluation and Comparison of Tenders.....	12
2.22 Contacting the Kitui Water & Sanitation Co. Ltd	16
2.23 Award of Contract	17
2.24 Notification of Award.....	17
2.25 Signing of Contract.....	18
2.26 Corrupt or Fraudulent Practices	18
2.27 Appendix to Instructions to Tenderers.....	19
SECTION III: GENERAL CONDITIONS OF CONTRACT	
3.1 Definitions.....	20
3.2 Application.....	20

3.3 Country of Origin	20
3.4 Standards	20
3.5 Use of Contract Document and information	20
3.6 Patent Rights	21
3.7 Inspection and Tests	21
3.8 Packing	21
3.9 Delivery and Documents	22
3.10 Insurance	22
3.11 Payment	22
3.12 Prices.....	22
3.13 Assignment.....	22
3.14 Subcontracts	22
3.15 Termination for default	23
3.16 Liquidated Damages	23
3.17 Resolution of Disputes	23
3.18 Language and Law.....	23
3.19 Force Majeure	24
SECTION IV: SPECIAL CONDITIONS OF THE CONTRACT	25
SECTION V: TECHNICAL SPECIFICATION	26
5.1 General	26
SECTION VI: PRICE SCHEDULE FOR GOODS	27
SECTION VII: STANDARD FORMS	28
7.1 Form of Tender	29
7.2 Confidential Business Questionnaires Form	30
7.3 Tender questionnaire Form.....	32
7.4 Tender Security Form	33
7.5 Manufacturer's Authorization Form	34
7.6 Contract Form	35
7.5 Letter of Notification of the Award.....	36
7.6 Form RB.....	37

SECTION I: INVITATION TO TENDER



KITUI WATER AND SANITATION COMPANY LIMITED
P.O. Box 341 – 90200 KITUI
Tel: 0701 545 554. Email: Kitwasco@gmail.com
Website: www.kitwasco.co.ke



NATIONAL OPEN TENDER NOTICE ADVERTISEMENT

Kitui Water and Sanitation Company Limited has received funds from Water Sector Trust fund under the Conditional Liquidity Support Grant and intends to use part of the funds to undertake the following project. The Company hereby invites bids from eligible firms to undertake the following:

NO.	TENDER REF NO.	TENDER NAME	ELIGIBILITY	TENDER SECURITY
1	KITWASCO/WSTF/LIQD/004/2020-2021	TENDER FOR THE SUPPLY AND DELIVERY OF COLD WATER METERS AND ACCESSORIES	OPEN	90,000.00

1. The **KITUI WATER AND SANITATION Co Ltd** Invites sealed tenders for the **Supply and Delivery of Cold Water Meters and Accessories**.
2. Interested eligible candidates may obtain further information and inspect tender documents (*and additional copies*) at (**Kitui Water and Sanitation Company Ltd, P.O. Box 341 – 90200 Kitui, Manyenyoni off Mbusyani Road Near Kenya Water Institute – KEWI Kitui Campus**) Monday to Friday starting 9.00 am to 4.00 pm.
3. A complete set of tender documents are to be downloaded from the government tenders portal at www.tenders.go.ke and also through the Company Website **free of charge** at www.kitwasco.co.ke.
4. Applicants, who download the tender document from the website provided above, shall email to us their company name, email and contact details which shall be used in case of need for addendum.
5. Prices quoted shall be inclusive of all taxes, must be in Kenya shillings and shall remain valid for 120 days from the closing date of tender.
6. Completed tender documents are to be enclosed in plain sealed envelopes clearly marked with the Tender name and reference number and deposited in the Tender Box placed at the Main Administration Block at **Kitui Water and Sanitation Company Ltd, Manyenyoni, off Mbusyani Road, Kitui Town and addressed to;**
The Managing Director
Kitui Water and Sanitation Company Ltd
P.O BOX 341-90200,
KITUI
Tel; 0701 545 554/ Email; kitwasco@gmail.com
So as to be received on or not later than *Friday 14th May, 2021 at 11.00 am.*

NB: Late tenders shall not be accepted and are to be returned unopened.

7. After the deadline for the closing of tenders, thereafter tenders shall be opened immediately at the KITWASCO Manyenyoni Offices, in the presence of the candidates or their representatives who choose to attend at: **Kitui Water and Sanitation Company Ltd, Manyenyoni, off Mbusyani Road, Kitui Town.**

By: Managing Director

TENDER NO.: KITWASCO/WSTF/LIQD/004/2020-2021

TENDER NAME: Supply & Delivery of Cold Water Meters and Accessories

The *Kitui Water & Sanitation Co. Ltd* invites sealed bids from eligible candidates for the supply and delivery of Water meters and Accessories. Interested eligible candidates may obtain further information from and inspect the tender documents at *Kitui Water and Sanitation Company* Headquarters located in Manyenyoni off Kitui School – Majengo Road – Kitui Town during normal working hours.

1.2 A complete set of tender documents may be obtained by interested candidates free of charge upon downloading from the Company Website; www.kitwasco.co.ke

Tenders may also be downloaded free of charge from the government tenders portal at; www.tender.go.ke.

1.3 Completed tender documents are to be enclosed in plain sealed envelopes, clearly marked with tender reference number and be deposited in the Tender Box at our *Kitui Main Office* and addressed to; *Managing Director, Kitui Water & Sanitation Co. Ltd P.O. Box 341 – 90200 Kitui*, so as to be received on or before **11.00 am , Friday 14th May 2021.**

1.4 Tenders will be opened immediately thereafter in the presence of the Candidates or their representatives who choose to attend on **Friday 14th May 2021 at 11.00 am** in the *Company Offices, Kitui Water and Sanitation Company* Offices located in Manyenyoni off Kitui School – Majengo Road – Kitui Town.

SECTION II: INSTRUCTIONS TO TENDERERS

2.1 Eligible Tenderers

- 2.1.1 This Invitation for Tenders is open to all tenderers eligible as described in the Invitation to Tender. Successful tenderers shall complete the supply of goods by the intended completion date specified in the Schedule of Requirements Section VI.
- 2.1.2 The Kitui Water & Sanitation Co. Ltd.'s employees, committee members, Board members and their relative (spouse and children) are not eligible to participate in the tender.
- 2.1.3 Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices.

2.2 Eligible Goods

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

2.3 Cost of Tendering

- 2.3.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the Kitui Water & Sanitation Co. Ltd, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

2.4. The Tender Document

- 2.4.1 The tender document comprises the documents listed below and addenda issued in accordance with clause 2.6 of these Instructions to Tenderers
- i. Invitation to Tender
 - ii. Instructions to tenderers
 - iii. General Conditions of Contract
 - iv. Special Conditions of Contract
 - v. Schedule of requirements
 - vi. Technical Specifications
 - vii. Tender Form and Price Schedules
 - viii. Tender Security Form
 - ix. Contract Form
 - x. Performance Security Form
 - xi. Bank Guarantee for Advance Payment Form

- xii. Manufacturer's Authorization Form
- xiii. Confidential Business Questionnaire

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

2.5 Clarification of Documents

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

2.5.2 The Kitui Water & Sanitation Co. Ltd shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.

2.6 Amendment of Documents

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

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

2.6.3 In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, the Kitui Water & Sanitation Co. Ltd, at its discretion, may extend the deadline for the submission of tenders.

2.7 Language of Tender

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

2.8 Documents Comprising of Tender

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

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

2.9 Tender Forms

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

2.10 Tender Prices

2.10.1 The tenderer shall indicate on the appropriate Price Schedule the unit prices and total tender price of the goods it proposes to supply under the contract

2.10.2 Prices indicated on the Price Schedule shall include all costs including taxes, insurances and delivery to the premises of the entity.

2.10.3 Prices quoted by the tenderer shall be fixed during the Tender's performance of the contract and not subject to variation on any account. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.22

2.10.4 Tender Validity

The tender shall remain valid and open for acceptance for a period of sixty (120) days from the specified date of tender opening or from the extended date of tender opening (in accordance with clause 7.4 here above) whichever is the later.

2.10.5 Tender Security

The tenderer shall furnish as part of his tender, a Tender Security amounting to Kshs **90,000.00**. The tender security shall be in the form of unconditional bank guarantee from a local bank. The tender security shall not exceed 2 percent of the tender price.

The Tender Security shall be valid at least thirty (30) days beyond the tender validity period.

Any tender not accompanied by an acceptable Tender Surety will be rejected by the Employer as non - responsive.

2.10.6 The Tender Surety may be forfeited:

- a) If a tenderer withdraws his tender during the period of tender validity: or
- b) In the case of a successful tenderer, if he fails, within the specified time limit
 - i. To sign the Agreement, or
 - ii. To furnish the necessary Performance Security
- c) If a tenderer does not accept the correction of his tender price.

2.11 Tender Currencies

2.11.1 Prices shall be quoted in Kenya Shillings.

2.12 Tenderers Eligibility and Qualifications

2.12.1 Pursuant to paragraph 2.1 the tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.

2.12.2 The documentary evidence of the tenderers eligibility to tender shall establish to the Kitui Water & Sanitation Co. Ltd.'s satisfaction that the tenderer, at the time of submission of its tender, is from an eligible source country as defined under paragraph 2.1

2.12.3 The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall be established to the Kitui Water & Sanitation Co. Ltd.'s satisfaction;

- (a) that, in the case of a tenderer offering to supply goods under the contract which the tenderer did not manufacture or otherwise produce, the tenderer has been duly authorized by the goods' Manufacturer or producer to supply the goods.
- (b) that the tenderer has the financial, technical, and production capability necessary to perform the contract;
- (c) that, in the case of a tenderer not doing business within Kenya, the tenderer is or will be (if awarded the contract) represented by an Agent in Kenya equipped, and able to carry out the

Tenderer's maintenance, repair, and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.

2.13 Goods Eligibility and Conformity to Tender Documents

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

2.14 Format and Signing of Tender

2.14.1 The tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. The latter authorization shall be indicated by written power-of-attorney accompanying the tender. All

pages of the tender, except for unamended printed literature, shall be initialed by the person or persons signing the tender.

2.14.2 The tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

2.15 Sealing and Marking of Tenders

2.15.1 The Tenderer shall seal the filled tender in a sealed envelope bearing tender number and name in the Invitation for Tenders and the words, **“DO NOT OPEN BEFORE, *FRIDAY 14TH MAY 2021 AT 11.00 AM.*”**

2.15.2 If the outer envelope is not sealed and marked as required by paragraph 2.15.1, the Kitui Water & Sanitation Co. Ltd will assume no responsibility for the tender’s misplacement or premature opening.

2.16 Deadline for Submission of Tenders

2.16.1 Tenders must be received by the Kitui Water & Sanitation Co. Ltd at the address specified under paragraph 2.17.2 no later than **11.00 AM, *FRIDAY 14TH MAY 2021.***

2.16.2 The Kitui Water & Sanitation Co. Ltd may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 2.6, in which case all rights and obligations of the Kitui Water & Sanitation Co. Ltd and candidates previously subject to the deadline will therefore be subject to the deadline as extended.

2.17 Modification and Withdrawal of Tenders

2.17.1 The tenderer may modify or withdraw its tender after the tender’s submission, provided that written notice of the modification, including substitution or withdrawal of the tenders, is received by the Kitui Water & Sanitation Co. Ltd prior to the deadline prescribed for submission of tenders.

2.17.2 The Tenderer’s modification or withdrawal notice shall be prepared, sealed, marked, and dispatched. A withdrawal notice may also be sent by cable, telex but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.

2.17.3 No tender may be modified after the deadline for submission of tenders.

2.17.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the tenderer on the Tender Form. 2.17.5 The Kitui Water & Sanitation Co. Ltd may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

2.17.6 The Kitui Water & Sanitation Co. Ltd shall give prompt notice of the termination to the

tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

2.18 Opening of Tenders

2.18.1 The Kitui Water & Sanitation Co. Ltd will open all tenders in the presence of tenderers' representatives who choose to attend, at *11.00 am, Friday 14th May 2021* and in the location specified in the Invitation to Tender. The tenderers' representatives who are present shall sign a register evidencing their attendance.

2.18.2 The tenderers' names, tender modifications or withdrawals, tender prices, discounts and the presence or absence of requisite tender security and such other details as the Kitui Water & Sanitation Co. Ltd, at its discretion, may consider appropriate, will be announced at the opening.

2.18.3 The Kitui Water & Sanitation Co. Ltd will prepare minutes of the tender opening.

2.19 Clarification of Tenders

2.19.1 To assist in the examination, evaluation and comparison of tenders the Kitui Water & Sanitation Co. Ltd may, at its discretion, ask the tenderer for a clarification of its tender. The request for clarification and the response shall be in writing, and no change in the prices or substance of the tender shall be sought, offered, or permitted.

2.19.2 Any effort by the tenderer to influence the Kitui Water & Sanitation Co. Ltd in the Kitui Water & Sanitation Co. Ltd's tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderers' tender.

2.20 Preliminary Examination

2.20.1 The Kitui Water & Sanitation Co. Ltd will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order.

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

2.20.3 The Kitui Water & Sanitation Co. Ltd may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any tenderer.

2.20.4 Prior to the detailed evaluation, pursuant to paragraph 2.22 the Kitui Water & Sanitation Co.

Ltd will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one, which conforms to all the terms and conditions of the tender documents without material deviations. The Kitui Water & Sanitation Co. Ltd.'s determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

2.20.5 If a tender is not substantially responsive, it will be rejected by the Kitui Water & Sanitation Co. Ltd and may not subsequently be made responsive by the tenderer by correction of the non-conformity.

2.21 Evaluation and Comparison of Tenders

EVALUATION CRITERIA

KITWASCO will examine the tenders to determine completeness, general orderliness and sufficiency in responsiveness.

The method of evaluation will be Merit Point System.

The criteria of evaluation and the points to be awarded on each criterion will be as follows:

EVALUATION CRITERIA

PRELIMINARY/TECHNICAL/FINANCIAL EVALUATION

The tenders submitted by tenderers shall be evaluated in the following three (3) stages:

Stage 1: Preliminary Bid Responsiveness Assessment

This will involve assessing whether bidders have complied with submission requirements and have also attached certified copies of mandatory eligibility and statutory documents. Evaluation at this stage will be conducted on **Yes/No**, and bidders are expected to show evidence of ALL required items so as to proceed to the next stage of evaluation.

Stage 1: Preliminary Bid Responsiveness Assessment (Mandatory Requirements)	Yes/No
<p>Submission Requirements:</p> <ul style="list-style-type: none"> a) Form of tender completed, signed and stamped by the authorized person b) Completed, signed and stamped confidential business questionnaire form c) Serialization of the tender document <p>Eligibility and Statutory Documents: (ATTACH COPY FOR EACH AS REQUIRED)</p> <ul style="list-style-type: none"> d) Bidder to provide self-declaration that the person/tenderer is not debarred in the matter of the Public Procurement and Asset Disposal Act 2015 (As per section 62 of the Act) e) Bidder to provide self-declaration that the person/tenderer will not engage in any corrupt or fraudulent practice f) A valid tender security in the form of unconditional bank guarantee from a reputable Tenderer local bank at amounting to Kshs 90,000.00. g) Audited Financial Accounts for the last two years: (2018 - 2019/ 2019-2020) h) Valid Copy of Certificate of Incorporation/Registration i) Valid Copy of Current Tax Compliance certificate j) Valid Copy of Pin Certificate k) Valid and current Business Permit copy l) Disclosure of business ownership (Directors/ Partners /Sole Proprietor). Attach a valid copy of CR12 Form/Partnership agreement/I.D COPIES for sole proprietorship m) General information - Telephone Number/Email/Website/Postal Address/Contact person or company profile 	

Stage 2: Technical Evaluation Stage

Tenders will be evaluated to ensure that they are substantially responsive to the technical specifications and contract conditions stated in the Tender Document. The determination of a tender's technical responsiveness will be based on the contents of the tender itself, subject to any clarifications received in the preliminary examination of Tenders. Items of this evaluation will be scored.

NO.	Particulars/Items	Points
1	Water Meter Sample: a) Submit water meter sample intended for supply under the contract	20 Points
2	Experience: Relevant experience for supply of 1,000 meters or relevant items equivalent and above the tendered amount - (each 10 Points) (Attach Proof: copies of L.P.O.s, Contracts)	30 Points
3	Three supply projects of equal or higher value in the last two years. OR - 15 pts Any three (3No) projects of value between 50 % and 100% of value. OR - 9 pts Any three projects less than 50% value of the tendered works. - 6 pts No submission of project record - 0 pts	15 Points
4	Attach relevant literature/brochures with specifications on meters intended for supply under contract including any certificate of standardization from relevant government authorities.	15 Points
	TOTAL POINTS	80

Stage 3: Financial Evaluation Stage

Tenders that are determined to be substantially responsive to the requirements of the Tender Document shall be subjected to financial evaluation to determine the evaluated price for each Tender. The evaluated price for each Tender is determined by:

	Particulars	Points
1.	Evidence of adequate working capital for this contract. This shall be assessed based on; a) The profits shown in the audited accounts. Bidders must present financial account clearly showing the average financial position of the business (10 points for profits and 0 point for losses) b) Volume of Supply recently and successfully delivered by the firms (10 points)	20 points
	Total	20 points

A threshold of 70% for the combined scores for both Technical and Financial will be applied and bidders who score above the same will be considered for award in relation to the prices offered. Bidders who shall score below 70% will be discontinued from further evaluation. The lowest evaluated bidder offering the lowest price will be awarded the contract.

ALL BIDDERS MUST MEET MANDATORY REQUIREMENTS PROCEED TO THE NEXT STAGE.

THE PASS MARK SHALL BE 70%

(The Technical Evaluation Team will verify the information submitted by applicants and may visit the physical premises of the applicants. This will form part of the evaluation process). Technical specification

Declaration (For the Tenderer only)

(The tenderer is expected to state categorically whether he/she will/will not accept to be evaluated on the above criteria)

Q. Will you accept your bid to be evaluated based on the above criteria and abide by them during the entire period of the tender? *(Tick appropriately below)*

No.

Yes

Official Stamp.....Sign.....

Award of contracts

KITWASCO will award the contract to the lowest bidder whose bid will have been determined to be the lowest evaluated bid.

Rejection of all Suppliers

The employer reserves the right to cancel the tendering process before award of the contract at the time of bidding, KITWASCO shall reserve the right to accept or reject any bid and to cancel the bidding process and reject all bids, prior to the award of the contract.

2.21.1 The Kitui Water & Sanitation Co. Ltd will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.20

2.21.2 The tender evaluation committee shall evaluate the tender within 30 days from the date of opening the tender

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

2.22 Contacting the Kitui Water & Sanitation Co. Ltd

2.22.1 Subject to paragraph 2.21 no tenderer shall contact the Kitui Water & Sanitation Co. Ltd on any matter related to its tender, from the time of the tender opening to the time the contract is awarded.

2.22.2 Any effort by a tenderer to influence the Kitui Water & Sanitation Co. Ltd in its decisions on tender, evaluation, tender comparison, or contract award may result in the rejection of the Tenderer's tender.

2.23 Award of Contract

(a) Post - qualification

2.23.1 Kitui Water & Sanitation Co. Ltd will determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.

2.23.2 The determination will take into account the tenderer financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer as well as such other information as the Kitui Water & Sanitation Co. Ltd deems necessary and appropriate.

2.23.3 An affirmative determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the Tenderer's tender, in which event the Kitui Water & Sanitation Co. Ltd will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

(b) Award Criteria

2.23.4 The Kitui Water & Sanitation Co. Ltd will award the contract to the successful tenderer(s) whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

(c) Kitui Water & Sanitation Co. ltd.'s Right to Vary quantities

2.23.5 The Kitui Water & Sanitation Co. Ltd reserves the right at the time of contract award to increase or decrease the quantity of goods originally specified in the Schedule of requirements without any change in unit price or other terms and conditions

(d) Kitui Water & Sanitation Co. ltd.'s Right to Accept or Reject Any or All Tenders

2.23.6 The Kitui Water & Sanitation Co. Ltd reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the Kitui Water & Sanitation Co. ltd.'s action

2.24 Notification of Award

2.24.1 After evaluation, the Procuring Entity will notify the successful tenderer in writing

that its tender has been accepted.

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

2.25 Signing of Contract

2.25.1 At the same time as the Kitui Water & Sanitation Co. Ltd notifies the successful tenderer that its tender has been accepted, the Kitui Water & Sanitation Co. Ltd will send the tenderer the Contract Form provided in the tender documents, incorporating all agreements between the parties.

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

2.25.3 Within thirty (30) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Kitui Water & Sanitation Co. Ltd.

2.26 Corrupt or Fraudulent Practices

2.26.1 The Kitui Water & Sanitation Co. Ltd requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts when used in the present regulations, the following terms are defined as follows;

- (i) “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and
- (ii) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Kitui Water & Sanitation Co. Ltd, and includes collusive practice among tenderer (prior to or after tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive the Kitui Water & Sanitation Co. Ltd of the benefits of free and open competition;

2.26.2 The Kitui Water & Sanitation Co. Ltd will reject a proposal for award if it determines that the tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.

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

2.27 Appendix to Instructions to Tenderers

The following information for procurement of goods shall complement or amend the provisions of the Instructions to Tenderers. Wherever there is a conflict between the provisions of the Instructions to Tenderers and the provisions of the Appendix, the provisions of the Appendix herein shall prevail over those of the Instructions to Tenderers.

INSTRUCTIONS TO TENDERERS	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERERS
2.11.1	Kenya Shillings
2.12.3	<ul style="list-style-type: none"> ▪ Copy of Pin Certificate ▪ Certificate of registration/incorporation ▪ Current valid tax compliance certificate ▪ Current local authority single business permit ▪ Financial capability-audited accounts for the last one year ▪ Fully filled tender form ▪ Fully filled confidential business questionnaire ▪ Particular experience record ▪ Proof of similar supply to reputable institution (copy of (L.P.O)/contract ▪ Tender security Kshs 90,000
2.16.1	11.00 am, Friday 14 th May, 2021
2.18.1	11.00 am, Friday 14 th May, 2021
2.20.2	The Unit Price and Amount in Words shall Prevail
2.25.2 & 3	30 days

SECTION III: GENERAL CONDITIONS OF CONTRACT

3.1 Definitions

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

- (a) “The Contract” means the agreement entered into between the Kitui Water & Sanitation Co. Ltd and the tenderer, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- (b) “The Contract Price” means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations
- (c) “The Goods” means all of the equipment, machinery, and/or other materials, which the tenderer is required to supply to the Kitui Water & Sanitation Co. Ltd under the Contract.
- (d) “The Procurement Entity” means the organization purchasing the Goods under this Contract.
- (e) “The Tenderer’ means the individual or firm supplying the Goods under this contract.

3.2 Application

3.2.1 These General Conditions shall apply in all Contracts made by the Kitui Water & Sanitation Co. Ltd for the procurement of goods.

3.3 Country of Origin

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

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

3.4 Standards

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

3.5 Use of Contract Documents and Information

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

3.5.2 The tenderer shall not, without the Kitui Water & Sanitation Co. Ltd.'s prior written consent, make use of any document or information enumerated in paragraph 3.5.1 above

3.5.3 Any document, other than the Contract itself, enumerated in paragraph 3.5.1 shall remain the property of the Kitui Water & Sanitation Co. Ltd and shall be returned (all copies) to the Kitui Water & Sanitation Co. Ltd on completion of the Tenderer's performance under the Contract if so required by the Kitui Water & Sanitation Co. Ltd

3.6 Patent Rights

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

3.7 Inspection and Tests

3.7.1 The Kitui Water & Sanitation Co. Ltd or its representative shall have the right to inspect and/or to test the goods to confirm their conformity to the Contract specifications. The Kitui Water & Sanitation Co. Ltd shall notify the tenderer in writing in a timely manner, of the identity of any representatives retained for these purposes.

3.7.2 The inspections and tests may be conducted in the premises of the tenderer or its subcontractor(s), at point of delivery, and/or at the Goods' final destination. If conducted on the premises of the tenderer or its Subcontractor (s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Kitui Water & Sanitation Co. Ltd.

3.7.3 Should any inspected or tested goods fail to conform to the Specifications, the Kitui Water & Sanitation Co. Ltd may reject the equipment, and the tenderer shall either replace the rejected equipment or make alterations necessary to make specification requirements free of costs to the Kitui Water & Sanitation Co. Ltd.

3.7.4 The Kitui Water & Sanitation Co. Ltd.'s right to inspect, test and where necessary, reject the goods after the Goods' arrival shall in no way be limited or waived by reason of the equipment having previously been inspected, tested and passed by the Kitui Water & Sanitation Co. Ltd or its representative prior to the equipment delivery.

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

3.8 Packing

3.8.1 The tenderer shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the

Contract.

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

3.9 Delivery and Documents

3.9.1 Delivery of the Goods shall be made by the tenderer in accordance with the terms specified by Kitui Water & Sanitation Co. Ltd in its Schedule of Requirements and the Special Conditions of Contract

3.10 Insurance

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

3.11 Payment

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

3.11.2 Payments shall be made promptly by the Kitui Water & Sanitation Co. Ltd as specified in the contract

3.12 Prices

3.12.1 Prices charged by the tenderer for goods delivered and services performed under the Contract shall not, with the exception of any price adjustments authorized in Special Conditions of Contract, vary from the prices by the tenderer in its tender.

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

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

3.12.4 Price variation request shall be processed by the Kitui Water & Sanitation Co. Ltd within 30 days of receiving the request.

3.13 Assignment

3.13.1 The tenderer shall not assign, in whole or in part, its obligations to perform under this Contract, except with the Kitui Water & Sanitation Co. Ltd's prior written consent

3.14 Subcontracts

3.14.1 The tenderer shall notify the Kitui Water & Sanitation Co. Ltd in writing of all subcontracts awarded under this Contract if not already specified in the tender. Such notification, in the original tender or later, shall not relieve the tenderer from any

liability or obligation under the Contract

3.15 Termination for default

3.15.1 The Kitui Water & Sanitation Co. Ltd may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the tenderer, terminate this Contract in whole or in part

- (a) if the tenderer fails to deliver any or all of the goods within the period(s) specified in the Contract, or within any extension thereof granted by the Kitui Water & Sanitation Co. Ltd
- (b) if the tenderer fails to perform any other obligation(s) under the Contract
- (c) if the tenderer, in the judgment of the Kitui Water & Sanitation Co. Ltd has engaged in corrupt or fraudulent practices in competing for or in executing the Contract

3.15.2 In the event the Kitui Water & Sanitation Co. Ltd terminates the Contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, goods similar to those undelivered, and the tenderer shall be liable to the Kitui Water & Sanitation Co. Ltd for any excess costs for such similar goods.

3.16 Liquidated Damages

3.16.1 If the tenderer fails to deliver any or all of the goods within the period(s) specified in the contract, the Kitui Water & Sanitation Co. Ltd shall, without prejudice to its other remedies under the contract, deduct from the contract prices liquidated damages sum equivalent to 5% of the delivered price of the delayed items up to a maximum deduction of 10% of the delayed goods. After this the tenderer may consider termination of the contract.

3.17 Resolution of Disputes

3.17.1 The Kitui Water & Sanitation Co. Ltd and the tenderer shall make every effort to resolve amicably by direct informal negotiation and disagreement or dispute arising between them under or in connection with the contract

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

3.18 Language and Law

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

3.19 Force Majeure

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

SECTION IV: SPECIAL CONDITIONS OF CONTRACT

4.1. Special Conditions of Contract shall supplement the General Conditions of Contract.

Whenever there is a conflict, between the GCC and the SCC, the provisions of the SCC herein shall prevail over these in the GCC.

4.2. Special conditions of contract as relates to the GCC

REFERENCE OF GCC	SPECIAL CONDITIONS OF CONTRACT
3.9.1	<i>Signed delivery note, signed copy of LPO</i>
3.10.1	<i>Tenderer bears responsibility</i>
3.11.1	<i>One month after delivery (30 days)</i>
3.16.1	<i>5%</i>
3.17.2	<i>National forum and/or arbitration</i>

SECTION V: TECHNICAL SPECIFICATIONS

5.1 General

- 5.1.1 These specifications describe the requirements for goods. Tenderers are requested to submit with their offers the detailed specifications, drawings, catalogues, etc for the products they intend to supply
- 5.1.2 Tenderers must indicate on the specifications sheets whether the equipment offered comply with each specified requirement.
- 5.1.3 All the dimensions and capacities of the equipment to be supplied shall not be less than those required in these specifications. Deviations from the basic requirements, if any shall be explained in detail in writing with the offer, with supporting data such as calculation sheets, etc. The Kitui Water & Sanitation Co. Ltd reserves the right to reject the products, if such deviations shall be found critical to the use and operation of the products.
- 5.1.4 The tenderers are requested to present information along with their offers as follows:
- (i) Shortest possible delivery period of each product
 - (ii) Information on proper representative and/or workshop for back-up service/repair and maintenance including their names and addresses.

SECTION VI: PRICE SCHEDULE FOR SUPPLY AND DELIVERY OF COLD WATER METERS AND ACCESSORIES

Name of tenderer _____ Tender Number.....

NO.	ITEM DESCRIPTION	SIZE	MORE DETAILS	QTY	RATE (KSHS)	TOTAL (KSHS)
1	WATER METER - CO-POLIMER, COMPLETE WITH FITTINGS, BODY SCREW TYPE, R 160, EMR ENABLED WITH THERMO ENGRAVING OR EQUIVALENT THE ABBREVIATION OF- KITWASCO - SHALL BE ENGRAVED ON THE METER TO REDUCE CHANCES OF THEFT	½	CLASS C, R 160	1,000		
2	GATE VALVE - PEGLER OR EQUIVALENT	½		1,000		
3	ELBOW JOINT - G.I, 90 DEGREES	½	CLASS B	4,000		
	TOTAL (KSHS)					

Signature of tenderer _____

Stamp

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

SECTION VII: STANDARD FORMS

Notes on the Sample Forms

1) Form of Invitation for Tenders

2) Form of Tender:

The form of tender must be completed by the tenderer and submitted with the tender documents. It MUST also be duly signed by authorized representatives of the tenderer

3) Letter of Acceptance

4) Form of Contract

The Contract Form SHALL NOT be completed by the tenderer at the time of submitting the tender. The Contract Form shall be completed after contract award and should incorporate the accepted contract price.

5) Form of Tender Security

6) Tender Questionnaire

7) Confidential Business Questionnaire:

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

8) Form of Written Power of Attorney

9) Declaration Form

10) Request for Review

11) Manufacturers Authorization Form

When required by the tender documents this form MUST BE completed and submitted with the tender documents. This form will be completed by the manufacturer of the goods where the tenderer is an agent.

7.1 FORM OF TENDER

Date _____
Tender No. _____

To: _____

Gentlemen and/or Ladies:

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

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

3. We agree to abide by this Tender for a period of ...90... [*ninety*] days from the
date fixed for tender opening of the Instructions to tenderers, and it shall remain binding upon
us and may be accepted at any time before the expiration of that period.

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

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

Dated this _____ day of _____ 20 _____

[signature]

[in the capacity of]

Duly authorized to sign tender for an on behalf of _____

7.2 CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

You are requested to give the particulars indicated in Part 1 and either Part 2(a), 2(b) or 2 (c) whichever 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.

.....

Plot No..... Street/Road

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

..... Fax E mail Nature of Business

.....

Registration Certificate No.

.....

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

.....

Name of your bankers Branch

.....

Part 2 (a) – Sole Proprietor

Your name in full Age NationalityCountry of origin

Citizenship details

Given details of partners as Part 2 (b) Partnership follows:

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

Part 2 (c) – Registered Company

Private or Public

.....

State the nominal and issued capital of company-

Nominal Kshs.

Issued Kshs.

Given details of all directors as follows

Name	Nationality	Citizenship Details	Shares
------	-------------	---------------------	--------

1.....

.....

2.....

.....

3.....

4.....

5.....

Date Signature of Candidate

• If a Kenya Citizen, indicate under “Citizenship Details” whether by Birth, Naturalization or registration.

7.3 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 address 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)

7.4 FORM OF TENDER SECURITY

WHEREAS(hereinafter called “the Tenderer”) has submitted his tender dated for the construction of (name of Contract)

KNOW ALL PEOPLE by these presents that WE having our registered office at(hereinafter called “the Bank”), are bound unto(hereinafter called “the Employer”) in the sum of Kshs..... for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors and assigns by these presents sealed with the Common Seal of the said Bank this Day of20.....

THE CONDITIONS of this obligation are:

- 1. If after tender opening the tenderer withdraws his tender during the period of tender validity specified in the instructions to tenderers
Or
- 2. If the tenderer, having been notified of the acceptance of his tender by the Employer during the period of tender validity:
 - (a) fails or refuses to execute the form of Agreement in accordance with the Instructions to Tenderers, if required; or
 - (b) fails or refuses to furnish the Performance Security, in accordance with the Instructions to Tenderers;
 - (c) Rejects a correction or an arithmetic error in the tender.

We undertake to pay to the Employer up to the above amount upon receipt of his first written demand, without the Employer having to substantiate his demand, provided that in his demand the Employer will note that the amount claimed by him is due to him, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

This guarantee will remain in force up to and including thirty (30) days after the period of tender validity, and any demand in respect thereof should reach the Bank not later than the said date.

[date]	[signature of the Bank]
[witness]	[seal]

(Amend accordingly if provided by the Insurance Company)

7.5 CONTRACT FORM

THIS AGREEMENT made the _____ day of _____ 20____ between
..... [name of Procurement entity] of [country of Procurement entity]

(hereinafter called “the Kitui Water & Sanitation Co. Ltd) of the one part and

..... [name of tenderer] of [city and country of tenderer]

(hereinafter called “the tenderer”) of the other part;

WHEREAS the Kitui Water & Sanitation Co. Ltd invited tenders for certain goods and has accepted a tender by the tenderer for the supply of those goods in the sum of

..... [contract price in words and figures] (hereinafter called “the Contract Price).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to:
2. The following documents shall be deemed to form and be read and construed as part of this Agreement viz:
 - (a) the Tender Form and the Price Schedule submitted by the tenderer
 - (b) the General Conditions of Contract
 - (c) the Special Conditions of contract; and
 - (d) the Kitui Water & Sanitation Co. Ltd’s Notification of Award
3. In consideration of the payments to be made by the Kitui Water & Sanitation Co. Ltd to the tenderer as hereinafter mentioned, the tender hereby covenants with the Kitui Water & Sanitation Co. Ltd to provide the goods and to remedy defects therein in conformity in all respects with the provisions of the Contract
4. The Kitui Water & Sanitation Co. Ltd hereby covenants to pay the tenderer in consideration of the provisions of the goods and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with their respective laws the day and year first above written.

Signed, sealed, delivered by _____ the _____ (for the Kitui Water & Sanitation Co. Ltd)

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

1. _____

2. _____

7.6 MANUFACTURER'S AUTHORIZATION FORM

To [name of the Procuring Entity]

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

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

[signature for and on behalf of manufacturer]

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

7.7 LETTER OF NOTIFICATION OF AWARD

Address of Procuring Entity

To: _____

RE: Tender No. _____

Tender Name _____

This is to notify that the contract 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 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

7.8 FORM RB 1

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO.....OF.....20.....

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (*Procuring Entity*)

Request for review of the decision of the..... (*Name of the Procuring Entity*) of
.....dated the...day of20.....in the matter of Tender No.....of
.....20...

REQUEST FOR REVIEW

I/We.....,the above named Applicant(s), of
address: Physical
address.....Fax No.....Tel. No.....Email, hereby request the Public
Procurement Administrative Review Board to review the whole/part of the above mentioned decision
on the following grounds , namely:-

1.

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

1.

2. etc

SIGNED(Applicant)

Dated on.....day of/...20...

FOR OFFICIAL USE ONLY

Lodged with the Secretary Public Procurement Administrative Review Board on day of
.....20.....

SIGNED

Board secretary