



COUNTY GOVERNMENT OF MARSABIT.

**TENDER No.
MBT/COU/WATER/90/2018-19**

**PIPING OF WATER FROM SHUR
BOREHOLE TO KOBI ADI TANK AS
PER THE BILL OF QUANTITIES.**

DECEMBER, 2018

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INTRODUCTION

The following general directions should be observed when using the document. Specific details should be finished in the invitation to tender and in the special conditions of contract. The final document to be provided to the tenderers should not have blank spaces or give options.

The instructions to tenderers and the general conditions of contract should remain unchanged. Any necessary amendments to these parts should be made through the appendix to the instructions to the tenderers or the general conditions of contract respectively.

Information contained in the invitation to tender shall conform to the data and information in the tender documents to enable potential tenderers to decide whether or not to participate in the tender and shall indicate any important tender requirements,

The invitation to tender shall be issued as an advertisement in accordance with the regulations or as a letter of invitation addressed to the tenderers who have expressed interest following an advertisement of a prequalification tender.

SECTION I – INVITATION TO TENDER

Tender No: MBT/COU/WATER/90/2018-19

**FOR PIPING OF WATER FROM SHUR BOREHOLE TO KODI ADI TANK
AS PER THE BILL OF QUANTITIES.**

1. The County Government of Marsabit invites sealed bids from eligible candidates for **Piping of water from Shur borehole to Kodi Adi tank as per the bill of quantities.**
2. Interested eligible candidates may obtain further information from and inspect the tender documents at the Procurement offices; Governor's Office Building during normal working hours.
3. A complete set of tender documents may be from the *Procurement office* located at the *Governor's Office Building; ground floor* upon payment of a non-refundable fee of Kshs.1000 only.
4. Completed tender documents should be placed into a plain sealed envelope clearly marked with the tender number and tender name and addressed to the:

**DIRECTOR SUPPLY CHAIN MANAGEMENT,
COUNTY GOVERNMENT OF MARSABIT,
P.O Box 384-60500,
MARSABIT.**

so as to be received on or before **31st December, 2018 at 10.00 am.**

5. Prices quoted should be net inclusive of all taxes and delivery must be in Kenya Shillings and shall remain valid for the entire period of the contract agreement.
6. Tenders shall be opened immediately after the closing date at the *Procurement Office; Governor's Office Building* in the presence of bidders or their representatives who choose to attend. Late bids will be returned to the bidders unopened.

**FOR CECM, FINANCE AND ECONOMIC PLANNING
MARSABIT COUNTY .**

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SECTION II INSTRUCTIONS TO TENDERERS

2.1 Eligible tenderers

2.1.1 This Invitation to tender is open to all tenderers eligible as described in the instructions to tenderers. Successful tenderers shall provide the services for the stipulated duration from the **date** of commencement (hereinafter referred to as the term) specified in the tender documents.

2.1.2 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender unless where specially allowed under section 131 of the Act.

2.1.3 Tenderers shall provide the qualification information statement that the tenderer (including all members, of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the services under this Invitation for tenders.

2.1.4 Tenderers involved in corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

2.2 Cost of tendering

2.2.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the procuring entity, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

2.2.2 The procuring entity shall allow the tenderer to review the tender document free of charge before purchase.

2.3 Contents of tender documents

2.3.1 The tender document comprises of the documents listed below and addenda issued in accordance with clause 6 of these instructions to tenders

- i. Contract Form
- ii. Instructions to tenderers
- iii. General Conditions of Contract
- iv. Special Conditions of Contract
- v. Schedule of Requirements
- vi. Form of tender
- vii. Specifications, Bills of Quantities and Price schedules
- viii. Confidential business questionnaire form
- ix. Tender security form
- x. Performance security form
- xi. Declaration form

2.3.2 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.

2.4 Clarification of Documents

2.4.1 A prospective candidate making inquiries of the tender document may notify the Procuring entity in writing or by post, fax or email at the entity's address indicated in the Invitation for tenders. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives no later than seven (7) days prior to the deadline for the submission of tenders, prescribed by the procuring entity. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers who have received the tender documents”

2.4.2 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

2.5 Amendment of documents

2.5.1 At any time prior to the deadline for submission of tenders, the Procuring entity, 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 issuing an addendum.

2.5.2 All prospective tenderers who have obtained the tender documents will be notified of the amendment by post, fax or email and such amendment will be binding on them.

2.5.3 In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, the Procuring entity, at its discretion, may extend the deadline for the submission of tenders.

2.6 Language of tender

2.6.1 The tender prepared by the tenderer, as well as all correspondence and documents relating to the tender exchanged by the tenderer and the Procuring entity, shall be written in English language. 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.

2.7 Documents Comprising the Tender

2.7.1 The tender prepared by the tenderer shall comprise the following components:

- i. A Tender Form and a Price Schedule completed in accordance with paragraph 9, 10 and 11 below.
- ii. Documentary evidence established in accordance with Clause 2.11 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
- iii. Tender security furnished is in accordance with Clause 2.12 (d) confidential business questionnaire

2.8 Form of Tender

2.8.1 The tenderers shall complete the Form of Tender and the appropriate Price Schedule furnished in the tender documents, indicating the services to be performed.

2.9 Tender Prices

2.9.1 The tenderer shall indicate on the Price schedule the unit prices where applicable and total tender prices of the services it proposes to provide under the contract.

2.9.2 Prices indicated on the Price Schedule shall be the cost of the services quoted including all customs duties and VAT and other taxes payable:

2.9.3 Prices quoted by the tenderer shall remain fixed during the term of the contract unless otherwise agreed by the parties. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.22.

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

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

2.9.6 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.

2.10 Tender Currencies

2.10.1 Prices shall be quoted in Kenya Shillings unless otherwise specified in the appendix to Instructions to Tenderers

2.11 Tenderers Eligibility and Qualifications.

2.11.1 Pursuant to Clause 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.

2.11.2 The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall establish to the Procuring entity's satisfaction that the tenderer has the financial and technical capability necessary to perform the contract.

2.12 Tender Security

2.12.1 The tenderer shall furnish, as part of its tender, a tender security for the amount and form specified in the Invitation to tender.

2.12.2 The tender security shall be in the amount not exceeding 2 per cent of the tender price.

2.12.3 The tender security is required to protect the Procuring entity against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 2.12.7

2.12.4 The tender security shall be denominated in a Kenya Shillings or in another freely convertible currency and shall be in the form of:

- i. A bank guarantee.
- ii. Cash.
- iii. Such insurance guarantee approved by the Authority.
- iv. Letter of credit

2.12.5 Any tender not secured in accordance with paragraph 2.12.1 and 2.12.3 will be rejected by the Procuring entity as non-responsive, pursuant to paragraph 2.20

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

2.12.7 The successful tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 2.29, and furnishing the performance security, pursuant to paragraph 2.30.

2.12.8 The tender security may be forfeited:

If a tenderer **withdraws** its tender **during** the period of tender validity specified by the procuring entity on the Tender Form; or In the case of a successful tenderer, *if* the tenderer fails: to sign the contract in accordance with paragraph 30 or to furnish performance security in accordance with paragraph 31 or If the tenderer rejects, correction of an error in the tender.

2.13 Validity of Tenders

2.13.1 Tenders shall remain valid for 60 days or as specified in the invitation to tender after date of tender opening prescribed by the Procuring entity, pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the Procuring entity as non-responsive.

2.13.1 In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 2.12 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

2.14 Format and Signing of Tender

2.14.1 The tenderer shall prepare two copies of the tender, clearly marking each "ORIGINAL TENDER" and "COPY OF TENDER," as appropriate. In the event of any discrepancy between them, the original shall govern.

2.14.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. All pages of the tender, except for unamended printed literature, shall be initialed by the person or persons signing the tender.

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

2.15 Sealing and Marking of Tenders

2.15.1 The tenderer shall seal the original and each copy of the tender in separate envelopes, duly marking the envelopes as “ORIGINAL” and “COPY.” The envelopes shall then be sealed in an outer envelope. The inner and outer envelopes shall be addressed to the procuring entity at the address given in the invitation to tender and shall bear tender number and name in the invitation to tender and the words: “DO NOT OPEN BEFORE (**Monday,31st December, 2018 at 10.00am**),”

2.15.2 The inner envelopes shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared “late”. —

2.15.3 If the outer envelope is not sealed and marked as required by paragraph 2.15.2, the Procuring entity 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 Procuring entity at the address specified under paragraph 1.5 not later than **Monday 31st December, 2018 at 10.00 A.M.**

2.16.2 The procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 6, in which case all rights and obligations of the procuring entity and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

2.16.3 Bulky tenders which will not fit in the tender box shall be received by the procuring entity as provided for in the appendix.

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 tender’s is received by the procuring entity prior to the deadline prescribed for the submission of tenders.

2.17.2 The Tenderer’s modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 2.15. A withdrawal notice may also be sent by cable, 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.

Withdrawal of a tender during this interval may result in the Tenderer's forfeiture of its tender security, pursuant to paragraph 2.12.7.

2.17.5 The procuring entity 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 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.

2.18 Opening of Tenders

2.18.1 The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend on **Monday, 31st December, 2018 at 10.00 A.M.** 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 Procuring Entity, at its discretion, may consider appropriate, will be announced at the opening.

2.18.3 The procuring entity will prepare minutes of the tender opening which will be submitted to the tenderers that signed the tender opening register and will have made the request.

2.19 Clarification of tenders

2.19.1 To assist in the examination, evaluation and comparison of tenders the procuring entity 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 shall be sought, offered, or permitted.

2.19.2 Any effort by the tenderer to influence the procuring entity in the procuring entity's tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderer's tender.

2.19.3 Comparison or contract award decisions may result in the rejection of the tenderers' tender.

2.20 Preliminary Examination and Responsiveness

2.20.1 The Procuring entity will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required securities 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, and its tender security may be forfeited. If there is a discrepancy between words and figures, the amount in words will prevail.

2.20.3 The Procuring entity may waive any minor informality or nonconformity 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 23, the Procuring entity 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 Procuring entity'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 Procuring entity and may not subsequently be made responsive by the tenderer by correction of then on conformity.

2.21 Conversion to a single currency

2.21.1 Where other currencies are used, the procuring entity will convert those currencies to Kenya shillings using the selling exchange rate on the date of tender closing provided by the central bank of Kenya.

2.22 Evaluation and comparison of tenders.

2.22.1 The procuring entity will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.20

2.22.2 The comparison shall be of the price including all costs as well as duties and taxes payable on all the materials to be used in the provision of the services.

2.22.3 The Procuring entity's evaluation of a tender will take into account, in addition to the tender price, the following factors, in the manner and to the extent indicated in paragraph 2.22.4 and in the technical specifications:

2.22.4 Operational plan proposed in the tender; deviations in payment schedule from that specified in the Special Conditions of Contract;

Pursuant to paragraph 22.3 the following evaluation methods will be applied:

2.23 Operational Plan.

2.23.1 The Procuring entity requires that the services under the Invitation for Tenders shall be performed at the time specified in the Schedule of Requirements. Tenders offering to perform longer than the procuring entity have required delivery time will be treated as non-responsive and rejected.

2.24 Deviation in payment schedule.

2.24.1 Tenderers shall state their tender price for the payment on a schedule outlined in the special conditions of contract. Tenders will be evaluated on the basis of this base price. Tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in tender

price they wish to offer for such alternative payment schedule. The Procuring entity may consider the alternative payment schedule offered by the selected tenderer.

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

2.24.2 To qualify for contract awards, the tenderer shall have the following:-

- i. Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.
- ii. Legal capacity to enter into a contract for procurement
- iii. Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing
- iv. Shall not be debarred from participating in public procurement.

2.25 Contacting the procuring entity

Subject to paragraph 2.19, no tenderer shall contact the procuring entity on any matter relating to its tender, from the time of the tender opening to the time the contract is awarded.

2.25.1 Any effort by a tenderer to influence the procuring entity in its decisions on tender evaluation tender comparison or contract award may result in the rejection of the tenderer's tender.

2.26 Award of Contract

2.26.1 Post qualification

2.26.1.1 In the absence of pre-qualification, the Procuring entity 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.

2.26.1.2 The determination will take into account the tenderer's financial and technical capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 2.1.2, as well as such other information as the Procuring entity deems necessary and appropriate.

2.26.1.3 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 Procuring entity will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

2.27 Award Criteria

2.27.1 Subject to paragraph 2.29 the Procuring entity will award the contract to the successful tenderer 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.

2.27.2 The procuring entity reserves the right to accept or reject any tender and to annul the tendering process and reject all tenders at any time prior to contract award, without 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 procuring entity's action. If the procuring entity determines that none of the tenderers is responsive; the procuring entity shall notify each tenderer who submitted a tender.

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

2.28 Notification of award

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

2.28.2 The notification of award will signify the formation of the Contract subject to the signing of the contract between the tenderer and the procuring entity pursuant to clause 2.29. Simultaneously the other tenderers shall be notified that their tenders have not been successful.

2.28.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 31, the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.12

2.29 Signing of Contract

2.29.1 At the same time as the Procuring entity notifies the successful tenderer that its tender has been accepted, the Procuring entity will simultaneously inform the other tenderers that their tenders have not been successful.

2.29.2 Within fourteen (14) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Procuring entity.

2.29.3 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.

2.30 Performance Security

2.30.1 Within thirty (30) days of the receipt of notification of award from the Procuring entity, the successful tenderer shall furnish the performance security in accordance with the Conditions of Contract, in the Performance Security Form provided in the tender documents, or in another form acceptable to the Procuring entity.

2.30.2 Failure of the successful tenderer to comply with the requirement of paragraph 2.29 or paragraph 2.30.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Procuring entity may make the award to the next lowest evaluated or call for new tenders.

2.31 Corrupt or Fraudulent Practices

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

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

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

SECTION III GENERAL CONDITIONS OF CONTRACT

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SECTION III GENERAL CONDITIONS OF CONTRACT

3.1 Definitions

In this contract the following terms shall be interpreted as indicated:

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

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

“The services” means services to be provided by the contractor including materials and incidentals which the tenderer is required to provide to the Procuring entity under the Contract.

“The Procuring entity” means the organization sourcing for the services under this Contract.

“The contractor means the individual or firm providing the services under this Contract.

“GCC” means general conditions of contract contained in this section

“SCC” means the special conditions of contract

“Day” means calendar day

3.2 Application

These General Conditions shall apply to the extent that they are not superseded by provisions of other part of contract.

3.3 Standards

The services provided under this Contract shall conform to the 7 standards mentioned in the Schedule of requirements

3.4 Patent Right's

The tenderer shall indemnify the Procuring entity against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the services under the contract or any part thereof.

3.5 Performance Security

3.5.1 Within twenty-eight (28) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the performance security where applicable in the amount specified in Special Conditions of Contract.

3.5.2 The proceeds of the performance security shall be payable to the Procuring entity as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.

3.5.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Procuring entity and shall be in the form of:

- i. Cash.
- ii. A bank guarantee.
- iii. Such insurance guarantee approved by the Authority.
- iv. Letter of credit.

3.5.4 The performance security will be discharged by the procuring entity and returned to the candidate not later than thirty (30) days following the date of completion of the tenderer's performance of obligations under the contract, including any warranty obligations under the contract.

3.6 Inspections and Tests

3.6.1 The Procuring entity or its representative shall have the right to inspect and/or to test the services to confirm their conformity to the Contract specifications. The Procuring entity shall notify the tenderer in writing, in a timely manner, of the identity of any representatives retained for these purposes.

3.6.2 The inspections and tests may be conducted on the premises of the tenderer or its subcontractor(s). If conducted on the premises of the tenderer or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring entity.

3.6.3 Should any inspected or tested services fail to conform to the Specifications, the Procuring entity may reject the services, and the tenderer shall either replace the rejected services or make alterations necessary to meet specification requirements free of cost to the Procuring entity.

3.6.4 Nothing in paragraph 3.7 shall in any way release the tenderer from any warranty or other obligations under this Contract.

3.7 Payment

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

3.8 Prices

Prices charged by the contractor for services performed under the Contract shall not, with the exception of any Price adjustments authorized in SCC, vary from the prices by the tenderer in its tender or in the procuring entity's request for tender validity extension as the case may be. No variation in or modification to the terms of the contract shall be made except by written amendment signed by the parties.

3.9 Assignment

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

3.10 Termination for Default

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

- if the tenderer fails to provide any or all of the services within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring entity.
- if the tenderer fails to perform any other obligation(s) under the Contract.
- if the tenderer, in the judgment of the Procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

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

3.11 Termination of insolvency

The procuring entity may at the anytime terminate the contract by giving written notice to the contractor if the contractor becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the contractor, provided that such termination will not produce or affect any right of action or remedy, which has accrued or will accrue thereafter to the procuring entity.

3.12 Termination for convenience

The procuring entity by written notice sent to the contractor may terminate the contract in whole or in part, at any time for its convenience. The notice of termination shall specify that the termination is for the procuring entity convenience, the extent to which performance of the contractor of the contract is terminated and the date on which such termination becomes effective. For the remaining part of the contract after termination the procuring entity may elect to cancel the services and pay to the contractor on agreed amount for partially completed services.

3.13 Resolution of disputes

3.13.1 The procuring entity's and the contractor shall make every effort to resolve amicably by direct informal negotiations any disagreement or dispute arising between them under or in connection with the contract.

3.13.2 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 that the dispute be referred for resolution to the formal mechanisms specified in the SCC.

3.14 Governing Language

The contract shall be written in the English language. All correspondence and other documents pertaining to the contract, which are exchanged by the parties, shall be written in the same language.

3.15 Force Majeure

The contractor 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.

3.16 Applicable Law.

The contract shall be interpreted in accordance with the laws of Kenya unless otherwise specified in the SCC

3.17 Notices

3.17.1 Any notices given by one party to the other pursuant to this contract shall be sent to the other party by post or by fax or E-mail and confirmed in writing to the other party's address specified in the SCC

3.17.2 A notice shall be effective when delivered or on the notices effective date, whichever is later.

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

SECTION VI: SPECIAL CONDITIONS OF CONTRACT

A. GENERAL	
GCC 1.1 (o)	The Employer is: The County Secretary, Marsabit County. Tel.....; Email:.....Attention: Chief Officer, Water Services Development, Marsabit County.
GCC 1.1 (r)	The Intended Completion Date for the whole of the Works shall be the day four months after the date of bid award
GCC 1.1 (u)	The Project Manager is the Director Water Services Development, Government of Marsabit County.
GCC 1.1 (w)	The Site is located in Shur; Marsabit County and shall be shown to the winning bidder by the County office together with the local community.
GCC 1.1 (z)	The Start Date shall be
GCC 1.1 (dd)	The works consists of Piping of water from Shur borehole to Kobi Adi tank.
GCC 2.3(i)	The following documents also form part of the Contract: Clause 2.7 of the instructions to tenders.
GCC 3.1	The language of the contract is English. The Law that applies to the Contract is the law of the Republic of Kenya
GCC 8.1	There is no other contractor anticipated.
GCC 9.1	Key Personnel: Contractor's site representative, Clerk of works, Surveyor, Masons and Unskilled local labour
GCC 15.1	Queries. N/A
GCC 21.1	The Site Possession Date(s) shall be:.....
GCC 25.3	Institution whose arbitration procedures shall be used: Chartered Institute of Arbitrators (Kenya Chapter) Sub-Clause 25.3 - Any dispute, controversy or claim arising out of or relating to this contract, or breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the chartered Institute of Arbitrators (Kenya Chapter) Arbitration Rules as at present in force. Place of Arbitration shall be Nairobi Kenya

B. TIME CONTROL	
GCC 27.1	The Contractor shall submit for approval a Program for the Works within 14 days from the date of the Letter of Acceptance.
GCC 27.3	The period between Program updates is 60 days. The amount to be withheld for late submission of an updated program is Ksh.....
GCC 29.1	The Defects Liability Period is: 183 days
C. QUALITY CONTROL	
GCC 33.1	<u>Variations</u> N/A
GCC 35	<u>Payment Certificates</u> The Contractor shall submit to the Employer the invoice showing the amount due to the Contractor, accompanied by necessary documents. The Project Manager, in consultation with the Employer, shall check the Contractor's invoice and certify the amount to be paid to the Contractor
GCC 36	<u>Payments</u> 36.1 The Employer shall pay the Contractor the amounts certified by the Project Manager within 28 days of the date of each certificate. At least three (3) payment certificates will be done on the following basis "Part Payment" "Final Payment" and "Repayment of Retention".
GCC 37	<u>Tax</u> The Employer shall adjust the Contract Price if taxes, duties, and other levies are changed between the date that is 28 days before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of GCC Clause 47.
D. Cost Control	
GCC 46.1	The currency of the Employer's country is: Kenya Shillings (KShs)
GCC 47.1	The Contract is not subject to price adjustment in accordance with GCC Clause 47.
GCC 48.1	The proportion of payments retained is: 10%
GCC 52.1	The Performance Security amount is 2% of the Bid Sum in form of Bank Guarantee (unconditional) or an equivalent amount in a freely convertible Currency

SECTION V: BILL OF QUANTITIES

PREAMBLE:

1. General

Attention is directed to the Form of Tender and the Appendix, the instructions to Tenderers, Conditions of Contract, the Specifications and the drawings. The Bill of Quantities is to be read in conjunction with these documents

2. Method of Measurement

The Bill of Quantities have been generally drawn up in accordance with the standard Method (1973) published by the Institution of Civil Engineers, A-7 Great George Street London, SW1 3AA, where special methods of measurements have been used. These are apparent in the Bill of Quantities under the item so affected or are referred to later in this preamble.

3. Measurements to be Net

Unless otherwise specified all measurements will be net over the finished work, and no allowance will be made for waste or working space.

4. Each item to be priced.

A price or rate is to be entered against each numbered item in the Bill of Quantities. Items against which no price or rate s entered will be considered as being covered by other rates or prices elsewhere in the Bill of Quantities and no specific payment will be made for that item

5. Rates and Prices Fully Inclusive

The rates and prices entered in the Bill of Quantities shall include for not only supplying all constituent materials but also for all other operations required to produce the finished work as shown on the drawings and described elsewhere in the Tender Documents. The Description of items shall be deemed to cover all such operations unless they are specifically stated otherwise.

6. Description of work.

Descriptions of work under items in the Bill of Quantities are only sufficient details to enable identification of the item of works so referred to. Reference is to be made to the Drawings, Conditions of Contract and Specifications for detailed information and general obligations.

7. Tolerance on Rock Excavation

Where an excavated rock surface forms the finished limits of the work, payment will be made for the volume to the finished lines shown on the drawings. The Tenderer shall include in his rates for any trimming of rock faces which may be necessary as a result of his method of working

BILL OF QUANTITY FOR PIPING WATER FROM SHUR BOREHOLE TO KOBADI TANK:

Item No	Item Description	Unit	Quantity	Rate	Total Amount
	Preliminaries				
1.0	Provide for mobilization and demobilization of Materials, personnel and all equipment to and from site for the construction and laying of the pipeline	LS			
2.0	Piping and trenching				
2.1	Allow for excavation of (0.3x0.8x8000) M trench from the borehole to Kobi-Adi tank and backfilling upon laying of pipes.	CM	2650		
2.2	Provide for purchase, supply and laying of 2 inch PPR pipes over a stretch of 8000m borehole to Kobi-Adi tank	Rolls	80		
2.3	Extra over for assorted fittings of 2 inch.	LS			
2.4	Provide for construction of two valves control chambers each measuring (1 00x80x60) cm positioned at borehole and the tank.	No.	2		
2.5	Allow for provision and fixing of fabricated lockable steel manhole cover complete with frame for both valve chambers	No.	2		
2.6	Supply and fix wash outs as directed by the Engineer	NO.	3		
2.7	Supply and fix air valves as directed	NO.	2		
2.8	Extra over for fittings	LS			
	SUB-TOTALS				
	Add 2% Supervision				
	Add VAT				
	GRAND-TOTALS				

SECTION VI: DESCRIPTION OF SERVICES

6.0 Introduction

The project is located in Shur; Marsabit County and it involves the Piping of water from Shur borehole to Kobi Adi tank.

EVALUATION CRITERIA

Technical proposals shall be subjected to the following evaluation criteria:

- i. Experience in previous and on-going works of a similar nature and size for at least three years covering from 2015 to 2018 **(30 marks)** - distributed as below.

Years of Experience

- over 3 years' experience - **15 marks**
- 2 years' Experience - **10 marks**
- 1year experience - **5 marks**

Works of similar nature

- 5 Completed similar Jobs (3 Marks each) =**15 Marks**
- (Rest of the marks given on Pro-rata basis)

Attach evidence /reference letter or LPOs

- ii. Special Group (AGPO) certificate - **10 marks**
- iii. Duly filled & Stamped form of tender - **5 marks**
- iv. Qualifications and experience; **(20 marks)**
 - a. At least two key site management CVs and copies of certificates.
 - b. Technical personnel and their CVs and copies of certificates.
- v. Certified copies of Audited Financial reports for the last three (3) years 2014, 2015 and 2016 or 2015, 2016 and 2017 where available **(15 marks)**.
 - **Liquidity ratios CA/CL ≥ 2 = 5 marks**
 - **Gearing ratios not more than 20% = 5 marks**
 - **Profitability ratios 20% and above = 5 marks**

Marks will be awarded on the ratio indicated as an average for the three years as follows:

- **Full marks for meeting requirement**
- **Zero (0) marks for not meeting requirement**

FINANCIAL EVALUATION

The bid shall be checked for arithmetic errors based on the rates and the total sums indicated in the bills of quantities.

- a) Confirmation shall be sought in writing from the tenderers whose tender sums will be determined to have a significant arithmetic error to their disadvantage, to confirm whether they stand by their tender sums.

SECTION VIII- STANDARD FORMS

Notes on standard forms

1. The tenderer shall complete and submit with its tender the form of tender and price schedules pursuant to instructions to tenderers clause 9 and in accordance with the requirements included in the special conditions of contract.
2. When requested by the appendix to the instructions to tenderers, the tenderer should provide the tender security, either in the form included herein or in another form acceptable to the procuring entity pursuant to instructions to tenderers clause 12.3
3. The contract form, the price schedules and the schedule of requirements shall be deemed to form part of the contract and should be modified accordingly at the time of contract award to incorporate corrections or modifications agreed by the tenderer and the procuring entity in accordance with the instructions to tenderers or general conditions of contract.
4. The performance security and bank guarantee for advance payment forms should not be completed by the tenderers at the time of tender preparation. Only the successful tenderer will be required to provide performance/entity and bank guarantee for advance payment forms in accordance with the forms indicated herein or in another form acceptable to the procuring entity and pursuant to the – conditions of contract.
5. The principal's or manufacturer's authorization form should be completed by the principal or the manufacturer, as appropriate in accordance with the tender documents.

STANDARD FORMS

1. Form of tender
2. Price schedules
3. Contract form
4. Confidential Questionnaire form
5. Tender security form
6. Performance security form
7. Bank guarantee for advance payment
8. Declaration form

FORM OF TENDER

Date _____

TenderNo. _____

To.....

.....

[Name and address of procuring entity]

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda Nos.. *[insert numbers]*, the of which is hereby duly acknowledged, we, the undersigned, offer to provide.
[description _____ *of* _____
*services]*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 provide the services in accordance with the services schedule specified in the Schedule of Requirements.
3. If our Tender is accepted, we will obtain the tender guarantee in a sum equivalent to percent of the Contract Price for the due performance of the Contract, in the form prescribed by (Procuring entity).
4. We agree to abide by this Tender for a period of *[number]* days from the date fixed for tender opening of the Instructions to tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
5. Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.

Dated this _____ day of _____ 20
[signature] _____ *[In the Capacity of]*
 Duly authorized to sign tender for and on behalf of _____

CONTRACT FORM

THIS AGREEMENT made the day of 20 between.....[name of procurement entity] of[country of Procurement entity](hereinafter called “the Procuring entity”) of the one part and[name of tenderer] of[city and country of tenderer](hereinafter called “the tenderer”) of the other part.

WHEREAS the procuring entity invited tenders for certain materials and spares. Viz.....[brief description of materials and spares] and has accepted a tender by the tenderer for the supply of those materials and spares in the sum of[contract price in words and figures]

NOW THIS AGREEMENT WITNESSETH ASFOLLOWS:

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

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

Signed, sealed, delivered by the (for the Procuring entity)

Signed, sealed, delivered by the _(for the tenderer)

CONFIDENTIAL BUSINESS QUESTIONNAIRE

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

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

<p>Part 1 General</p> <p>Business Name.....</p> <p>Location of Business</p> <p>Premises.....</p> <p>Plot No.,.....Street/Road.....</p> <p>Postal addressTel No.Fax Email.....</p>

	<p>Part 2 (a) – Sole Proprietor</p>																				
	<p>Your name in full.....Age.....</p> <p>Nationality.....Country of Origin.....</p> <p>Citizenship details</p> <p>.....</p>																				
	<p>Part 2 (b) –Partnership</p>																				
	<p>Given details of partners as follows</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 25%;">Name</th> <th style="width: 25%;">Nationality</th> <th style="width: 25%;">Citizenship details</th> <th style="width: 25%;">Shares</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>	Name	Nationality	Citizenship details	Shares	1.	2.	3.	4.
Name	Nationality	Citizenship details	Shares																		
1.																		
2.																		
3.																		
4.																		
	<p>Part 2 (c) – Registered Company</p>																				
	<p>Private or Public</p> <p>State the nominal and issued capital of company Nominal Kshs.</p> <p>Issued Kshs.</p> <p>Given details of all directors as follows</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 25%;">Name</th> <th style="width: 25%;">Nationality</th> <th style="width: 25%;">Citizenship details</th> <th style="width: 25%;">Shares</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>	Name	Nationality	Citizenship details	Shares	1.	2.	3.	4.
Name	Nationality	Citizenship details	Shares																		
1.																		
2.																		
3.																		
4.																		
	<p>Date.....Signature of Candidate.....</p>																				

TENDER SECURITY FORM

Whereas[Name of the tenderer]

(Hereinafter called “the tenderer”)has submitted its tender dated..... [Date of submission of tender] for the provision of.....

[Name and/or description of the services]

(Hereinafter called “the Tenderer”).....

KNOW ALL PEOPLE by these presents that WE.....

Of.....having registered office at

[Name of procuring entity](Hereinafter called “the Bank”)are bound unto.....

[Name of procuring entity](Hereinafter called “the procuring entity”) in the sum

of.....

for which payment well and truly to be made to the said Procuring entity, 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 the tenderer withdraws its Tender during the period of tender validity specified by the tenderer on the Tender Form; or
2. If the tenderer, having been notified of the acceptance of its Tender by the Procuring entity during the period of tender validity:
 - (a) fails or refuses to execute the Contract Form, if required; or
 - (b) fails or refuses to furnish the performance security, in accordance with the instructions to tenderers;

we undertake to pay to the Procuring entity up to the above amount upon receipt of its first written demand, without the Procuring entity having to substantiate its demand, provided that in its demand the Procuring entity will note that the earnout claimed by it is due to it, 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 above date.

[signature of the bank]

(Amend accordingly if provided by Insurance Company)

PERFORMANCE SECURITY FORM

To:

[name of the Procuring entity]

WHEREAS.....[name of tenderer]

(hereinafter called “the tenderer”) has undertaken, in pursuance of Contract No. _____ [reference number of the contract] dated _____ 20____ to

supply.....

[Description services](Hereinafter called “the contract”)

AND WHEREAS it has been stipulated by you in the said Contract that the tenderer shall furnish you with a bank guarantee by a reputable bank for the sum specified therein as security for compliance with the Tenderer’s performance obligations in accordance with the Contract.

AND WHEREAS we have agreed to give the tenderer a guarantee:

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the tenderer, up to a total of
[amount of the guarantee in words and figures],

and we undertake to pay you, upon your first written demand declaring the tenderer to be in default under the Contract and without cavil or argument, any sum or sums within the limits of
[amount of guarantee] as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the _____ day of 20_____

Signature and seal of the Guarantors

[name of bank or financial institution]

[address]

[date]

(Amend accordingly if provided by Insurance Company)

BANK GUARANTEE FOR ADVANCE PAYMENT

To.....

[Name

Of tender].....

Gentlemen and/or Ladies:

In accordance with the payment provision included in the special conditions of contract, which amends the general conditions of contract to provide for advance payment,

.....

[Name and address of tenderer][hereinafter called “the tenderer”] shall deposit with the Procuring entity a bank guarantee to guarantee its proper and faithful performance under the said clause of the contract in an amount

of.....

[Amount of guarantee in figures and words].

We, the

[bank or financial institution], as instructed by the tenderer, agree unconditionally and irrevocably to guarantee as primary obligator and not as surety merely, the payment to the Procuring entity on its first demand without whatsoever right of objection on our part and without its first claim to the tenderer, in the amount not exceeding[amount of guarantee in figures and words].

We further agree that no change or addition to or other modification of the terms of the Contract to be performed thereunder or of any of the Contract documents which may be made between the Procuring entity and the tenderer, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition, or modification.

This guarantee shall remain valid and in full effect from the date of the advance payment received by the tenderer under the Contract until[*date*].

Yours truly,

Signature and seal of the Guarantors

.....
[name of bank or financial institution]

.....
[address]

.....
[date]

LETTER OF NOTIFICATION OF AWARD

Address of Procuring Entity

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

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 this...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.
- 2.

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

- 1.
- 2.

SIGNED.....(Applicant)

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

FOR OFFICIAL USE ONLY

Lodged with the Secretary Public Procurement Administrative Review Board on day of20.....

SIGNED Board Secretary

CERTIFICATE OF TENDERER’S OR REPRESENTATIVE VISIT TO SITE

1. This is to certify that (Name of Tenderer or his representative) of the firm of
(Name of Firm Tendering)

In the company of
(Name of the Engineer conducting the visit)

Visited the site in connection with the Tender for

PIPING OF WATER FROM SHUR BOREHOLE TO KOBI ADI TANK

CONTRACT NO: MBT/COU/WATER/90/2018-19

Having previously studied the Contract Documents, I carefully examined the site.

- 2. I have made myself familiar with all local conditions likely to influence the works and the cost thereof
- 3. I further certify that I am satisfied with the description of the works and the explanations given by the said Engineer of the Work and that I understand perfectly the work to be done as specified and implied in the execution of the Contract

Signed
(Tenderer or his representative)

Witnessed
(Signature of the Engineer conducting the visit)

Date.....