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OPEN TENDER

STANDARD TENDER DOCUMENT

FRAMEWORK CONTRACT FOR SUPPLY AND DELIVERY OF WATER METERS.

TENDER NO: NZOWASCO/FRAME/ 31/2023/2024

CLOSING DATE

TUESDAY, 28TH NOVEMBER, 2023 AT 11:00 am

SECTION II - INSTRUCTIONS TO BIDDERS

2.1.0 Eligible Bidders

- 2.1.1 This Invitation for tender is open to all Bidders prequalified in the above category for the financial year 2023-2024. Successful Bidders shall complete the supply of goods by the intended completion date specified in the Schedule of Requirements Section VI.
- 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.
- 2.1.3 Bidders shall provide the qualification information statement that the Bidder (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 goods under this Invitation for Bids.
- 2.1.4 Bidders 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 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 Bidder.

2.3 Cost of Bidding

- 2.3.1 The Bidder 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 Bidding process.
- 2.3.2 Firms found capable of performing the contract satisfactorily in accordance to the set evaluation criteria shall be awarded.

2.4. The Tender Document

- 2.4.1 The document comprises the documents listed below and addenda issued in accordance with clause 2.6 of these instructions to Bidders
 - (i) Invitation to Tender
 - (ii) Instructions to Bidders
 - (iii) General Conditions of Contract
 - (iv) Special Conditions of Contract
 - (v) Schedule of requirements
 - (vi) Technical Specifications
 - (vii) Tender Form.
 - (viii) Contract Form

- (ix) Performance Security Form
 - (x) Confidential Business Questionnaire
- 2.4.2 The Bidder 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 Bid not substantially responsive to the tender documents in every respect will be at the Bidders risk and may result in the rejection of its bidder.

2.5 Clarification of Documents

- 2.5.1 A prospective Bidder requiring any clarification of the Tender Document may notify the Procuring entity in writing to 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 Bids, 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 Bidders that have received the bid document.
- 2.5.2 The procuring entity shall reply to any clarifications sought by the Bidder within 3 days of receiving the request to enable the Bidder 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 Bids, the Procuring entity, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Bidder, 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 Bidders reasonable time in which to take the amendment into account in preparing their Bids, the Procuring entity, at its discretion, may extend the deadline for the submission of Bids.

2.7 Language of Tender

- 2.7.1 The Bid prepared by the Bidder, as well as all correspondences and documents relating to the Bid exchange by the Bidder and the Procuring entity, shall be written in English language, provided that any printed literature furnished by the Bidder 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 Bid prepared by the Bidders shall comprise the following components
- (a) A Bid form completed in accordance with paragraph 2.9, 2.10 and 2.11 below
 - (b) Documentary evidence established in accordance with paragraph 2.1.2 that the Bidder is eligible to Bid and is qualified to perform the contract if its bid is accepted;
 - (c) Documentary evidence established in accordance with paragraph 2.2.1 that the goods and ancillary services to be supplied by the Bidder are eligible goods and services and conform to the Tender documents.

2.9 Bid Forms

2.9.1 The Bidder shall complete the Bid Form furnished in the Tender documents, indicating the goods to be supplied, a brief description of the goods, their country of origin and quantity.

2.10 Bidders Eligibility and Qualifications

2.10.1 Pursuant to paragraph 2.1 the Bidder shall furnish, as part of its tender, documents establishing the Bidders eligibility to Bid and its qualifications to perform the contract if its bid is accepted.

2.10.2 The documentary evidence of the Bidders eligibility to Bid shall establish to the Procuring entity's satisfaction that the Bidder, at the time of submission of its tender, is from an eligible source country as defined under paragraph 2.1

2.10.3 The documentary evidence of the Bidders qualifications to perform the contract if its Bid is accepted shall be established to the Procuring entity's satisfaction;

- (a) that, in the case of a Bidder offering to supply goods under the contract which the Bidder did not manufacture or otherwise produce, the Bidder has been duly authorized by the goods' Manufacturer or producer to supply the goods.
- (b) that the Bidder has the financial, technical, and production capability necessary to perform the contract;
- (c) that, in the case of a Bidder not doing business within Kenya, the Bidder is or will be (if awarded the contract) represented by an Agent in Kenya equipped, and able to carry out the Bidder's maintenance, repair, and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.

2.13.0 Goods Eligibility and Conformity to Tender documents

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

2.13.2 The documentary evidence of the eligibility of the goods shall consist of a statement in the Price Schedule of the country of origin of the goods and services offered which shall be confirmed by a certificate of origin issued at the time of shipment.

2.13.3 The documentary evidence of conformity of the goods to the Tender documents may be in the form of literature, drawings, and data, and shall consist of:

- (a) A detailed description of the essential technical and performance characteristic of the goods;
- (b) A list giving full particulars, including available source and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the goods for a period of two (2) years, following commencement of the use of the goods by the Procuring entity; and
- (c) A clause-by-clause commentary on the Procuring entity's Technical Specifications demonstrating substantial responsiveness of the goods and service to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.

2.13.4 For purposes of the documentary evidence to be furnished pursuant to paragraph 2.13.3(c) above, the Bidder shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by the Procurement entity in its Technical Specifications, are intended to be descriptive only and not restrictive. The Bidder

may substitute alternative standards, brand names, and/or catalogue numbers in its tender, provided that it demonstrates to the Procurement entity's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

2.15 Validity of Bids

- 2.15.1 Bid shall remain valid for 1 year or as specified in the Invitation to Bid after the date of Bid opening prescribed by the Procuring entity, pursuant to paragraph 2.18. A Bid valid for a shorter period shall be rejected by the Procuring entity as non responsive.
- 2.15.2 In exceptional circumstances, the Procuring entity may solicit the Bidder's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing.

2.16 Format and Signing of Bids

- 2.16.1 The Procuring entity shall prepare two copies of the bids, clearly marking each "ORIGINAL BID" and "COPY OF BID," as appropriate. In the event of any discrepancy between them, the original shall govern.
- 2.16.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by the Bidder or a person or persons duly authorized to bind the Bidder to the contract. The latter authorization shall be indicated by written power-of-attorney accompanying the tender. All pages of the bid, except for un amended printed literature, shall be initialed by the person or persons signing the tender.
- 2.16.3 The bid shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the Bidder, in which case such corrections shall be initialed by the person or persons signing the tender.

2.17 Sealing and Marking of Bids

- 2.17.1 The Bidder shall seal the original and each copy of the bid in separate envelopes, duly marking the envelopes as "ORIGINAL" and "COPY." The envelopes shall then be sealed in an outer envelope.
- 2.17.2 The inner and outer envelopes shall:
 - (a) Be addressed to the Procuring entity at the address given in the Invitation to Bid:
 - (b) Bear, Bid number and name in the Invitation for Bidders and the words, "DO NOT OPEN BEFORE, Tuesday 28th, November, 2023"**
- 2.17.3 The inner envelopes shall also indicate the name and address of the Bidder to enable the bid to be returned unopened in case it is declared "late".
- 2.17.4 If the outer envelope is not sealed and marked as required by paragraph 2.17.2, the Procuring entity will assume no responsibility for the tender's misplacement or premature opening.

2.18 Deadline for Submission of Bids

- 2.18.1 Bids must be received by the Procuring entity at the address specified under paragraph 2.17.2 not later than **Tuesday 28th, November, 2023**
- 2.18.2 The Procuring entity may, at its discretion, extend this deadline for the submission of bids by amending the Tender documents in accordance with paragraph 2.6, in which case all rights and obligations of the Procuring entity and candidates previously subject to the deadline will therefore be subject to the deadline as extended.

2.19 Modification and Withdrawal of Bids

- 2.19.1 The Bidder may modify or withdraw its bid after the bid's submission, provided that written notice of the modification, including substitution or withdrawal of the bids, is received by the Procuring prior to the deadline prescribed for submission of Bids.
- 2.19.2 The Bidder's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 2.17. 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 Bids.
- 2.19.3 No bid shall be modified after the deadline for submission of Bids.
- 2.19.4 No bid shall be withdrawn in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Bid Form. Withdrawal of a bid during this interval may result in the Bidder's forfeiture of its Bid security, pursuant to paragraph 2.14.7
- 2.19.5 The procuring entity may at any time terminate procurement proceedings before signing of contract and shall not be liable to any person for the termination.
- 2.19.6 The procuring entity shall give prompt notice of the termination to the Bidders and on request give its reasons for termination within 7 days to all the Bidders.

2.19 Opening of Bids

- 2.19.7 The Procuring entity will open all bids in the presence of Bidders' representatives who choose to attend, as indicated in the advert and in the location specified in the Invitation to Tender. The Bidders' representatives who are present shall sign a register evidencing their attendance.
- 2.19.8 The Bidders' names, Bid modifications or withdrawals, Bid prices, discounts and the presence or absence of requisite Bid security and such other details as the Procuring entity, at its discretion, may consider appropriate, will be announced at the opening.
- 2.19.9 The Procuring entity will prepare minutes of the bid opening.

2.19 Clarification of Bids

- 2.19.10 To assist in the examination, evaluation and comparison of bids the Procuring entity may, at its discretion, ask the Bidder for a clarification of its bid. The request for clarification and the response shall be in writing, and no change in the substance of the bid shall be sought, offered, or permitted.
- 2.19.11 Any effort by the Bidder to influence the Procuring entity in the Procuring entity's bid evaluation, bid comparison or contract award decisions may result in the rejection of the Bidders' bid.

2.20 Preliminary Examination

- 2.20.1 The Procuring entity will examine the bids 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 Bids are generally in order.
- 2.20.2 Whenever applicable, 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 Bid will be rejected, and its Bid

security 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 non-conformity or irregularity in a Bid which does not constitute a material deviation, provided such waiver does not prejudice or effect the relative ranking of any Bidder.
- 2.20.4 Prior to the detailed evaluation, pursuant to paragraph 2.23 the Procuring entity will determine the substantial responsiveness of each Bid to the Tender documents. For purposes of these paragraphs, a substantially responsive Bid 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 Bid itself without recourse to extrinsic evidence.
- 2.20.5 If a Bid is not substantially responsive, it will be rejected by the Procuring entity and may not subsequently be made responsive by the Bidder by correction of the non conformity.

2.21 Conversion to Single Currency

- 2.21.1 Where applicable other currencies are used, the procuring entity will convert these currencies to Kenya Shillings using the selling exchange rate on the date of Bid closing provided by the Central Bank of Kenya.

2.22 Evaluation and Comparison of Bids

- 2.22.1 The Procuring entity will evaluate and compare the Bids which have been determined to be substantially responsive, pursuant to paragraph 2.22
- 2.22.2 The Bid evaluation committee shall evaluate the Bid within 15days of the validity period from the date of opening the bid.
- 2.22.3 A Bidder who gives false information in the Bid 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.

2.23 Preference

- 2.23.1 Preference where allowed in the evaluation of Bids shall not exceed 30%.

2.24 Contacting the Procuring entity

- 2.24.1 Subject to paragraph 2.21 no Bidder shall contact the Procuring entity on any matter related to its tender, from the time of the Bid opening to the time the contract is awarded.
- 2.24.2 Any effort by a Bidder to influence the Procuring entity in its decisions on tender, evaluation, Bid comparison, or contract award may result in the rejection of the Bidder's bid.

2.25 Award of Contract

(a) Post-qualification

- 2.25.1 In the absence of tender, the Procuring entity will determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated responsive Bid is qualified to perform the contract satisfactorily.
- 2.25.2 The determination will take into account the Bidder financial capabilities. It will be based upon an examination of the documentary evidence of the Bidders qualifications submitted by the Bidder.

2.25.3 An affirmative determination will be a prerequisite for award of the contract to the Bidder. A negative determination will result in rejection of the Bidder's bid, in which event the Procuring entity will proceed to the next lowest evaluated Bid to make a similar determination of that Bidder's capabilities to perform satisfactorily.

(b) **Award Criteria**

2.25.4 The Procuring entity will award the contract to the successful Bidder(s) whose Bid has been determined to be substantially responsive and has been determined to be the lowest evaluated bidder, provided further that the Bidder is determined to be qualified to perform the contract satisfactorily.

(c) **Procuring entity's Right to Vary quantities**

2.25.5 The Procuring entity 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) **Procuring entity's Right to Accept or Reject Any or All Bids**

2.25.6 The Procuring entity reserves the right to accept or reject any bid, and to annul the Bidding process and reject all Bids at any time prior to contract award, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for the Procuring entity's action.

2.26 Notification of Award

2.26.1 Prior to the expiration of the period of Bid validity, the Procuring entity will notify the successful Bidder in writing that its Bid has been accepted.

2.26.2 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

2.26.3 Upon the successful Bidder's furnishing of the performance security pursuant to paragraph 2.28, the Procuring entity will promptly notify each unsuccessful Bidder and will discharge its Bid security, pursuant to paragraph 2.14

2.27 Signing of Contract

2.27.1 At the same time as the Procuring entity notifies the successful Bidder that its Bid has been accepted, the Procuring entity will send the Bidder the Contract Form provided in the Tender documents, incorporating all agreements between the parties.

2.27.2 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.

2.27.3 Within thirty (30) days of receipt of the Contract Form, the successful Bidder shall sign and date the contract and return it to the Procuring entity.

2.28 Performance Security

2.28.1 Where applicable, within Thirty (30) days of the receipt of notification of award from the Procuring entity, the successful Bidder 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.

2.28.2 Failure of the successful Bidder to comply with the requirements of paragraph 2.27 or paragraph 2.28 shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid security, in which event the Procuring entity may make the award to the next lowest evaluated Candidate or call for new Bids.

2.29 Corrupt or Fraudulent Practices

2.29.1 The Procuring entity requires that Bidders 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 Procuring entity, and includes collusive practice among Bidder (prior to or after Bid submission) designed to establish Bid prices at artificial non-competitive levels and to deprive the Procuring entity of the benefits of free and open competition;

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

2.29.3 Further a Bidder 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

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 Procuring entity and the Bidder, 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 Bidder 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 Bidder is required to supply to the Procuring entity under the Contract.
- (d) “The Procuring entity” means the organization purchasing the Goods under this Contract.
- (e) “The Bidder” 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 Procuring entity for the procurement installation and commissioning of equipment

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 Bidder

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 Bidder shall not, without the Procuring entity'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 Procuring entity in connection therewith, to any person other than a person employed by the Bidder in the performance of the Contract.

3.5.2 The Bidder shall not, without the Procuring entity'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 Procuring entity and shall be returned (all copies) to the Procuring entity on completion of the Bidder's performance under the Contract if so required by the Procuring entity.

3.6 Patent Rights

3.6.1 The Bidder shall indemnify the Procuring entity 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 Procuring entity's country

3. Performance Security

3.7.1 Within thirty (30) days of receipt of the notification of Contract award, the successful Bidder shall furnish to the Procuring entity the performance security in the amount specified in Special Conditions of Contract.

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

3.7.3 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 a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in Kenya or abroad, acceptable to the Procuring entity, in the form provided in the Tender documents.

3.7.4 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 Bidder's performance obligations under the Contract, including any warranty obligations, under the Contract

3.8 Inspection and Tests

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

3.8.2 The inspections and tests may be conducted in the premises of the Bidder or its subcontractor(s), at point of delivery, and/or at the Goods' final destination. If conducted on the premises of the Bidder 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.

3.8.3 Should any inspected or tested goods fail to conform to the Specifications, the Procuring entity may reject the equipment, and the Bidder shall either replace the rejected equipment or make alternations necessary to make specification requirements free of costs to the Procuring entity.

- 3.8.4 The Procuring entity'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 Procuring entity or its representative prior to the equipment delivery.
- 3.8.5 Nothing in paragraph 3.8 shall in any way release the Bidder from any warranty or other obligations under this Contract.
- 3.9 Packing**
- 3.9.1 The Bidder 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.
- 3.9.2 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
- 3.10 Delivery and Documents**
- 3.10.1 Delivery of the Goods shall be made by the Bidder in accordance with the terms specified by Procuring entity in its Schedule of Requirements and the Special Conditions of Contract
- 3.11 Insurance**
- 3.11.1 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.
- 3.12 Payment**
- 3.12.1 The method and conditions of payment to be made to the Bidder under this Contract shall be specified in Special Conditions of Contract
- 3.12.2 Payments shall be made promptly by the Procuring entity as specified in the contract
- 3.13 Prices**
- 3.13.1 Prices charged by the Bidder 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 Bidder in its tender.
- 3.13.2 Contract price variations shall not be allowed for contracts not exceeding one year (12 months)
- 3.13.3 Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price.
- 3.13.4 Price variation request shall be processed by the procuring entity within 30 days of receiving the request.
- 3.14. Assignment**
- 3.14.1 The Bidder shall not assign, in whole or in part, its obligations to perform under this Contract, except with the Procuring entity's prior written consent
- 3.15 Subcontracts**
- 3.15.1 The Bidder shall notify the Procuring entity in writing of all subcontracts awarded under this Contract if not already specified in the tender. Such notification, in the original Bid or later, shall not relieve the Bidder from any liability or obligation under the Contract
- 3.16 Termination for default**
- 3.16.1 The Procuring entity may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Bidder, terminate this Contract in whole or in part
- (a) if the Bidder fails to deliver any or all of the goods within the periods) specified in the Contract, or within any extension thereof granted by the Procuring entity
 - (b) if the Bidder fails to perform any other obligation(s) under the Contract

- (c) if the Bidder, in the judgment of the Procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the Contract
- 3.16.2 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, equipment similar to those undelivered, and the Bidder shall be liable to the Procuring entity for any excess costs for such similar goods.
- 3.17 Liquidated Damages**
- 3.17.1. If the Bidder fails to deliver any or all of the goods within the period(s) specified in the contract, the procuring entity shall, without prejudice to its other remedies under the contract, deduct from the contract prices liquidated damages sum equivalent to 0.5% of the delivered price of the delayed items up to a maximum deduction of 10% of the delayed goods. After this the Bidder may consider termination of the contract.
- 3.18 Resolution of Disputes**
- 3.18.1 The procuring entity and the Bidder 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
- 3.18.2 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 or international forum, and/or international arbitration.
- 3.19 Language and Law**
- 3.19.1 The language of the contract and the law governing the contract shall be English language and the Laws of Kenya respectively unless otherwise stated.
- 3.20 Force Majeure**
- 3.20.1 The Bidder shall not be liable for forfeiture of its performance security or termination for default if and to the extent that it's 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

Notes on Special Conditions of Contract

The clauses in this section are intended to assist the procuring entity in providing contract-specific information in relation to corresponding clauses in the General Conditions of Contract

The provisions of Section IV complement the General Conditions of Contract included in Section III, specifying contractual requirements linked to the special circumstances of the procuring entity and the goods being procured. In preparing Section IV, the following aspects should be taken into consideration.

- (a) Information that complement provisions of Section III must be incorporated and
 - (b) Amendments and/o supplements to provisions of Section III, as necessitated by the circumstances of the goods being procured must also be incorporated.
- 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.

SECTION V - TECHNICAL SPECIFICATIONS

5.1 General

- 5.1.1 These specifications describe the requirements for goods. Bidders are requested to submit with their offers the detailed specifications, drawings, catalogues, etc for the products they intend to supply
- 5.1.2 Bidders 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 procuring entity 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 Bidders 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 address.

SECTION VII – BID SPECIFICATION

This is the summary of the Bid requirements.

NZOWASCO.31/2023-2024 WATER METERS, METER FITTINGS AND METER SPARE PARTS						
ITEM	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL PRICE.	COUNTRY OF ORGIN
1	Plastic Meters-16bars,class c multijet volumetric					
	40mm	No.	100			
	32mm	No.	100			
	25mm	No	300			
	20mm	No.	500			
	15mm	No.	5000			
2	Metalic flanged DN 50mm (2'')	No.	200			
3	Meter Seals/bids (1kg) per pkt	kgs	100			
4	Meter Sealing guns	No	10			
5	Meter Sealing Wire	Rolls	100			

Note: Quotation should be inclusive of all TAXES.

SECTION VIII - STANDARD FORMS

Notes on the sample Forms

1. Form of TENDER - The form of Bid must be completed by the Bidder and submitted with the Tender documents. It must also be duly signed by duly authorized representatives of the Bidder.
2. Confidential Business Questionnaire Form - This form must be completed by the Bidder and submitted with the Tender documents.
3. Form - The Contract Form shall not be completed by the Bidder at the time of submitting the bid. The Contract Form shall be completed after contract award and should incorporate the accepted contract price.
4. Performance Security Form - The performance security form should not be completed by the Bidders at the time of Bid preparation. Only the successful Bidder will be required to provide performance security in the form provided herein or in another form acceptable to the procuring entity.
5. Bank Guarantee for Advance Payment Form - When Advance payment is requested for by the successful bidder and agreed by the procuring entity, this form must be completed fully and duly signed by the authorized officials of the bank.
6. 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 Bidder is an agent.
7. Criteria for evaluation

8.1 FORM OF TENDER

Date: _____

Bid No. _____

To: _____

[Name and address of procuring entity]

Gentlemen and/or Ladies:

1. Having examined the Tender documents including Addenda Nos. the receipt of which is hereby duly acknowledged, we, the

undersigned, offer to supply deliver, install and commission (..... *(Insert equipment description)* in conformity with the said Tender documents for the sum of *(total Bid 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 Bid is accepted, to deliver install and commission the equipment in accordance with the delivery schedule specified in the Schedule of Requirements.

3. If our Bids accepted, we will obtain the guarantee of a bank in a sum of 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 Bid for a period of [Number] days from the date fixed for Bid opening of the Instructions to Bidders, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

5. 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.

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

Dated this _____ day of _____ 20 _____

[Signature]

[In the capacity of]

Duly authorized to sign Bid for or on behalf of _____

8.2 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 applied to your type of business.

<p><i>Part 1 – General:</i></p> <p>Business Name</p> <p>Location of business premises.</p> <p>Plot No..... Street/Road</p>
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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

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

Part 2 (a) – Sole Proprietor

Your name in full Age

Nationality Country of origin

Citizenship details

Part 2 (b) Partnership

Given details of partners as follows:

Name	Nationality	Citizenship Details	Shares
1.
2.
3.
4.
5.
6.
7.
8.
9.
10.

Part 2 (c) – Registered Company

Private or Public

State the nominal and issued capital of company-

Nominal Kshs.

Issued Kshs.

Give details of all directors as follows

	Name	Nationality	Citizenship Details	Shares
1.
2.
3.
4.
5.
6.
7.
8.
9.
10.

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

8.3 CONTRACT FORM

THIS AGREEMENT made the _____ day of _____ 20_____ between Nzoia Water Services Company Ltd of Kenya (hereinafter called “the Procuring entity) of the one part and [Name of Bidder] of [City and country of Bidder] (Hereinafter called “the Bidder”) of the other part; WHEREAS the Procuring entity invited Bids for certain goods and has accepted a Bid by the Bidder 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 Bid Form and the Price Schedule submitted by the Bidder
 - (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 Bidder as hereinafter mentioned, the Bid hereby covenants with the Procuring entity to provide the goods 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 Bidder 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 _____ Sign _____

the _____ (For Nzoia Water Services Company Ltd)

Signed, sealed, delivered by _____ Sign _____

The _____ (for the Bidder)

In the presence of _____ Sign _____

8.4 LETTER OF NOTIFICATION OF TENDER

Nzoia Water Services Company Ltd
P.O Box 1010 – 50205,
Webuye

To: M/S _____

RE: Bid No. _____

Bid Name: _____

This is to notify that you have been pre-qualified under the above mentioned Bid.

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 7days 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.

*The procurement office,
Nzoia Water Services Company Ltd,
P.O. Box 1010 Webuye.
Tel, 0202060536,*

SIGNED FOR ACCOUNTING OFFICER

8.5 DOC. VI: TECHNICAL EVALUATION FORM

The Bidder is expected to complete part 1 of this form

Part 1. General Information

Bidder's Name

Postal Address

Tel No. Fax

E mail

Physical Address.....

Description.....

Part 2. Evaluation Criteria

Stage 1: Mandatory Requirements				
No	Requirement	Yes	No	Remarks
1	Copy of valid certificate of registration / incorporation.			
2	Copy of VAT pin.			
3	Copy of tax compliance certificate.			
4	Copy of last three (2) years audited accounts or 12 months bank statement for non limited company			
5	Dully filled form of tender			
6	Duly filled business questionnaire			
7	Bid security above 0.5% of the tendered sum price.			
8	Avail a sample per category for testing.			
➤ NB: The Bidder must qualify in all the above in order to proceed to the Evaluation Stage 2				
Stage 2: Scoring				
	Requirement	Max	Awarded	Remarks

		Points	Points	
9	➤ Business Premises	10		
	Physical location and address	5		
	Communication channel (phone, fax, email)	5		
10	➤ Type of business	12		
	Sole proprietorship	8		
	Partnership	10		
	Corporate /Ltd	12		
11	➤ Reference	15		
	Recommendations from 3 reputable firms	6		
	Copy of contracts from 3 reputable clients.	9		
12	➤ Experience (operation)	10		
	Below 8 months	2		
	8 month – 2 years	4		
	2 – 5 years	6		
	Above 5 years	10		
13	➤ Financial stability	25		
	Cash flow (bank statements)	5		
	Current ratio (current assets/current liabilities)	5		
	Credit facility period			
	30 days	5		
	60 days	8		
	90 days	12		
	Over 90 days	15		
14	➤ Value of business the firm can handle at once:	15		
	Below Kshs.2,000,000.00	4		
	Kshs.2,000,000.00 – 5,000,000.00	9		
	Ksh. 5,000,000.00 – 8,000,000.00	12		
	Above Kshs.8,000,000.00	15		
17	➤ Delivery period	13		
	Below 7days	13		
	7 – 14 days	10		
	15 – 30days	5		
	Above 30 days	3		
	Total score	100		
➤ NB: Threshold for tender shall be 70%				
➤ Qualifies for pricing;				

NOTE

- (i) The Technical Evaluation Team may visit the physical premises of the Bidder to verify information provided in the bid documents when need arises.
- (ii) The Co. deserves the right to award to the lowest evaluated three firms different quantities..

Part 3. Declaration (For the Bidder only)

(The Bidder is expected to state categorically whether he/she 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 the criteria during the entire period of the tender? (Tick appropriately below)

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

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

For Official Use Only

(Tender processing committee recommendation)

Accept the Firm

Reject the Firm

Members:

	<u>Name</u>	<u>Sign</u>	<u>Date</u>
1.	-----	-----	-----
2.	-----	-----	-----
3.	-----	-----	-----
4.	-----	-----	-----
5.	-----	-----	-----
6.	-----	-----	-----
7.	-----	-----	-----