



REPUBLIC
OF
KENYA



Poverty Reduction Through Sustainable NRM



Investing in rural people

**MINISTRY OF WATER AND IRRIGATION
STATE DEPARTMENT OF WATER
UPPER TANA NATURAL RESOURCES MANAGEMENT PROJECT**

Financed by;

Government of Kenya;

**International Fund for Agricultural Development Loan No I-867-KE and
Spanish Trust Fund Loan No I-E-8-KE and Beneficiaries**

**Project Lead Agency;
Ministry of Water and Irrigation**

TENDER NO. EBU/CC/44/2016-2017

**TENDER DOCUMENT FOR SUPPLY AND DELIVERY OF PIPES AND
FITTINGS FOR KIARUTARA WATER PROJECT IN MURANGA COUNTY**

Compiled by;

Project Coordination Team

P.O. Box 996-60100 EMBU

Tel 068 22 31376/31357

Email: info@utanrmp.or.ke

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SECTION I INVITATION TO TENDER



REPUBLIC
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Poverty Reduction Through Sustainable NRM



Investing in rural people

**MINISTRY OF WATER AND IRRIGATION SERVICES
UPPER TANA NATURAL RESOURCES MANAGEMENT PROJECT
(UTaNRMP)**

P.O. Box 996-60100 Embu Tel 068 22 31376 Email: info@utanrmp.or.ke

NATIONAL COMPETITIVE BIDDING

TENDER NAME	SUPPLY AND DELIVERY OF PIPES AND FITTINGS FOR KJARUTARA WATER PROJECT IN MURANGA COUNTY
TENDER NO	EBU/CC/44/2016-2017
PROJECT NAME	UPPER TANA NATURAL RESOURCES MANAGEMENT PROJECT (UTaNRMP)
LOAN/CREDIT NO.	IFAD LOAN 1-867-KE and SPANISH TRUST LOAN E-8-KE

The Government of Kenya has received financial assistance from the International Fund for Agricultural Development (IFAD) and the Spanish Trust Fund towards financing an eight year (2012-2020) Upper Tana Natural Resources Management Project. The goal of the project is to contribute to rural poverty reduction in the Upper Tana River Catchment through increased sustainable food production and incomes and sustainable management of natural resources for provision of environmental services. The Project Lead Agency is the Ministry of Water and Irrigation. The project area covers six counties namely: Muranga, Meru, TharakaNithi, Nyeri, Kirinyaga and Muranga. The area includes Mount Kenya and Aberdare National Parks.

The project intends to use part of the funds to procure pipes and fittings for implementation of **Kiarutara Water Project in MURANGA COUNTY**. Towards accomplishing its objectives the Upper Tana Natural Resources Management Project (UTaNRMP) now invites sealed tenders from prequalified tenderers for **SUPPLY AND**

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DELIVERY OF PIPES AND FITINGS FOR Kiarutara Water Project in MURANGA COUNTY as per specifications in the tender document.

Qualification requirements include: valid tax compliance; documentary evidence of having executed **at least three contracts of similar natures and magnitude** for each lot within the period of **last three years, audited accounts for the last two years, single business permit, filled and signed form of tender, signed Anti-corruption pledge, serialization of all pages of the tender document, certificate of incorporation/registration, Bid security, manufacturer authorization and confidential business questionnaire among others as required in the tender document.**

Prices quoted should be inclusive of all taxes and delivery and must be in Kenya Shillings and shall remain valid for (90) days from the closing date of the tender.

Completed tender documents in a plain sealed envelope and clearly marked ‘Tender No: EBU/CC/44/2016-2017 for SUPPLY AND DELIVERY OF PIPES AND FITINGS FOR KIARUTARAWATER PROJECT MURANGA COUNTY should be addressed and sent to:

The Project Coordinator,
Upper Tana Natural Resources Management Project,
P.O BOX 996-60100
Tel: 254-68-22 31376/31517
EMBU

or dropped in the Tender Box situated at the **main entrance to the EMBU West Water offices** located on Embu-Meru Road after KALRO so as to reach the above address on or before **11.00 am on 24th March 2017**. Electronic tenders will not be accepted. Opening of the tenders will take place immediately thereafter in the project Documentation Centre in the presence of tenderers or their representatives who wish to attend. Late tenders will not be accepted regardless of the circumstances.

**PROJECT COORDINATOR
UPPER TANA NATURAL RESOURCES MANAGEMENT PROJECT
FOR: PRINCIPAL SECRETARY, MINISTRY OF WATER AND IRRIGATION
(STATE DEPARTMENT OF WATER)**

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SECTION II - INSTRUCTIONS TO TENDERERS

2.1 Eligible Tenderers

- 2.1.1 This Invitation for Tenders is open to all tenderers prequalified as described in the Appendix to Instructions to tenderers. Successful tenderers shall complete the supply of goods by the intended completion date specified in the Schedule of Requirements Section VI.
- 2.1.2 The 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 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 goods under this Invitation for tenders.
- 2.1.4 Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices.

2.2 Eligible Goods

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

2.3 Cost of Tendering

- 2.3.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the procuring entity, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 2.3.2 The tender document shall not be changed

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2.4. Contents of the Tender Document

2.4.1 The tender document comprises the documents listed below and addenda issued in accordance with clause 2.6 of these instructions to Tenderers

- (i) Invitation to Tender
- (ii) Instructions to tenderers
- (iii) General Conditions of Contract
- (iv) Special Conditions of Contract
- (v) Schedule of requirements
- (vi) Technical Specifications
- (vii) Tender Form and Price Schedules
- (viii) Tender Security Form
- (ix) Contract Form
- (x) Performance Security Form
- (xi) Bank Guarantee for Advance Payment Form
- (xii) Manufacturer's Authorization Form
- (xiii) Confidential Business Questionnaire

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

2.5 Clarification of Documents

2.5.1 A prospective tenderer requiring any clarification of the tender document may notify The Procuring Entity in writing or by post at the entity's address indicated in the Invitation to Tender. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of tenders, prescribed by the 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 that have received the tender document.

2.5.2 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.

2.6 Amendment of Documents

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- 2.6.1 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 amendment.
- 2.6.2 All prospective candidates that have received the tender documents will be notified of the amendment in writing or by post and will be binding on them.
- 2.6.3 In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, the Procuring entity, at its discretion, may extend the deadline for the submission of tenders.

2.7 **Language of Tender**

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

2.8 **Documents Comprising the Tender**

- 2.8.1 The tender prepared by the tenderers shall comprise the following documents
- (a) a Tender Form and a Price Schedule completed in accordance with paragraph 2.9, 2.10 and 2.11 below
 - (b) documentary evidence established in accordance with paragraph 2.1 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
 - (c) documentary evidence established in accordance with paragraph 2.2 that the goods and ancillary services to be supplied by the tenderer are eligible goods and services and conform to the tender documents; and
 - (d) tender security furnished in accordance with paragraph 2.14

2.9 **Tender Forms**

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

2.10 **Tender Prices**

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

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

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

2.10.4 The validity period of the tender shall be 90 days from the date of opening of the tender.

2.11 Tender Currencies

2.11.1 Prices shall be quoted in Kenya Shillings unless otherwise specified in the Appendix to Instructions to Tenderers.

2.12 Tenderers Eligibility and Qualifications

2.12.1 Pursuant to paragraph 2.1. the tenderer shall furnish, as part of its tender, documents

establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.

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

2.12.3 The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall be established to the Procuring entity's satisfaction;

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

2.13 Goods Eligibility and Conformity to Tender Documents

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

2.14 Tender Security

- 2.14.1 The tenderer shall furnish, as part of its tender, a tender security for the amount specified in the Appendix to Invitation to Tenderers.
- 2.14.2 The tender security shall be in the amount of 2 per cent of the tender price.
- 2.14.3 The tender security is required to protect The Procuring Entity against the risk of Tenderer's conduct which would warrant the security's forfeiture.
- 2.14.4 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form of a bank guarantee or a bank draft issued by a reputable bank located in Kenya or abroad, or a guarantee issued by a
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reputable insurance company in the form provided in the tender documents or another form acceptable to The Procuring Entity and valid for thirty (30) days beyond the validity of the tender.

2.14.5 Any tender not secured in accordance with paragraph 2.14.1 and 2.14.3 will be rejected by The Procuring Entity as non-responsive, pursuant to paragraph 2.22

2.14.6 Unsuccessful Tenderer's tender 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.

2.14.7 The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 2.27 and furnishing the performance security, pursuant to paragraph 2.28

2.14.8 The tender security may be forfeited:

- (a) if a tenderer withdraws its tender during the period of tender validity specified by The Procuring Entity on the Tender Form; or
- (b) in the case of a successful tenderer, if the tenderer fails:
 - (i) to sign the contract in accordance with paragraph 2.27
 - or
 - (ii) to furnish performance security in accordance with paragraph 2.28

2.15 **Validity of Tenders**

2.15.1 Tenders shall remain valid for 90 days or as specified in the Invitation to Tender after the 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.

2.15.2 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 2.14 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.

2.16 **Format and Signing of Tender**

2.16.1 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.

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2.16.2 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. The latter authorization shall be indicated by written power-of-attorney accompanying the tender. All pages of the tender, except for amended printed literature, shall be initialed by the person or persons signing the tender.

2.16.3 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.

2.17 Sealing and Marking of Tenders

2.17.1 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.

2.17.2 The inner and outer envelopes shall:

(a) be addressed to The Procuring Entity at the address given in the Invitation to Tender:

(b) bear, tender number and name in the Invitation for Tenders and the words, “DO NOT OPEN BEFORE,” 11.00 am on 24th March 2017

2.17.3 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”.

2.17.4 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 Tenders

2.18.1 Tenders must be received by The Procuring Entity at the address specified under paragraph 2.17.2 no later than 11.00 am on 24th March 2017

2.18.2 The Procuring Entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 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 Tenders

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- 2.19.1 The tenderer may modify or withdraw its tender after the tender's submission, provided that written notice of the modification, including substitution or withdrawal of the tenders, is received by The Procuring Entity prior to the deadline prescribed for submission of tenders.
- 2.19.2 The Tenderer'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 tenders.
- 2.19.3 No tender may be modified after the deadline for submission of tenders.
- 2.19.4 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 2.14.7
- 2.19.5 The Procuring Entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 2.19.6 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.

2.20 Opening of Tenders

- 2.20.1 The Procuring Entity will open all tenders in the presence of tenderers' representatives who choose to attend, at 11.00 am on 24th March 2017 and in the location specified in the Invitation to Tender.

The tenderers' representatives who are present shall sign a register evidencing their attendance.

- 2.20.2 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.
- 2.20.3 The Procuring Entity will prepare minutes of the tender opening.

2.21 Clarification of Tenders

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- 2.21.1 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 of the tender shall be sought, offered, or permitted.
- 2.21.2 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 tenderers' tender.

2.22 Preliminary Examination

- 2.22.1 The Procuring Entity will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order.
- 2.22.2 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 forfeited. If there is a discrepancy between words and figures the amount in words will prevail
- 2.22.3 The Procuring Entity may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or effect the relative ranking of any tenderer.
- 2.22.4 Prior to the detailed evaluation, pursuant to paragraph 2.23 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.
- 2.22.5 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 the non-conformity.

2.23 Conversion to Single Currency

- 2.23.1 Where other currencies are used, The Procuring Entity will convert these currencies to Kenya Shillings using the selling exchange rate on the Date of tender closing provided by the Central Bank of Kenya.

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2.24 Evaluation and Comparison of Tenders

2.24.1 The Procuring Entity will evaluate and compare the tenders per lot which have been determined to be substantially responsive, pursuant to paragraph 2.22

2.24.2 The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.

2.24.3 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.

2.25 Preference

2.25.1 Preference where allowed in the evaluation of tenders shall not exceed 15%

2.26 Contacting the Procuring entity

2.26.1 Subject to paragraph 2.21 no tenderer shall contact The Procuring Entity on any matter related to its tender, from the time of the tender opening to the time the contract is awarded.

2.26.2 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.

2.27 Award of Contract

(a) Post-qualification

2.27.1 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.

2.27.2 The determination will take into account the tenderer financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 2.12.3 as well as such other information as The Procuring Entity deems necessary and appropriate.

2.27.3 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

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evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

(b) **Award Criteria**

2.27.4 The Procuring Entity will award the contract to the successful tenderer(s) whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

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

2.27.5 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 Tenders**

2.27.6 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

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

2.28.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 2.28, The Procuring Entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.14

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 send the tenderer the Contract Form provided in the tender documents, incorporating all agreements between the parties.

2.29.2 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.

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

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 requirements of paragraph 2.27 or paragraph 2.28 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 Candidate 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 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 tenderer (prior to or after tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive The Procuring Entity of the benefits of free and open competition;

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.

2.4 Appendix to Instructions to Tenderers

The following information regarding the particulars of the tender shall complement supplement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provision of the instructions to tenderers and the provisions of the *UTaNRMP is a corruption free project and no one is required to provide any inducement to participate in any of its implementation processes.*

appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers

INSTRUCTIONS TO TENDERERS REFERENCE	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
2.1.1	Tenderers registered and doing business within Kenya as evidenced by qualification information of audited accounts for two years, valid tax compliance, at least three contracts of similar nature and magnitude.
2.1.2	Qualification requirements include copies of valid tax compliance; documentary evidence of having executed at least three contracts of similar natures and magnitude for each lot within the period of last three years, audited accounts for the last two years single business permit, filled and signed form of tender, signed Anti-corruption pledge, serialization of all pages of the tender document, certificate of incorporation/registration, Bid security, manufacturer authorization and confidential business questionnaire among others as required in the tender document.
2.14.1	Tender security will be at 2% of the total price and in form of a Bank Guarantee or reputable insurance Company.
2.18.1	11.00 am on 24 th March 2017
2.27.4	This tender contains three lots of items to be quoted for. It is important to note that the tenderer is supposed to tender as per lot. Each item in each lot must be tendered for otherwise the tenderer will be termed as non-responsive. Award of tender will be on a lot per lot basis and tenderers may choose which lot(s) to tender for.
2.29.1	As in 2.18.1 above
2.30.1	Performance security will be 10% of contract amount

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SECTION III: GENERAL CONDITIONS OF CONTRACT

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

3.2 Application

3.2.1 These General Conditions shall apply in all Contracts made by The 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 tenderer.

3.4 Standards

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

3.5 Use of Contract Documents and Information

3.5.1 The tenderer shall not, without the 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

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Procuring Entity in connection therewith, to any person other than a person employed by the tenderer in the performance of the Contract.

3.5.2 The tenderer shall not, without the 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 Tenderer's performance under the Contract if so required by the Procuring entity

3.6 **Patent Rights**

3.6.1 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 Goods or any part thereof in the Procuring entity's country

3.7 **Performance Security**

3.7.1 Within ten (10) days of receipt of the notification of Contract award, the successful tenderer 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 Tenderer'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 Tenderer'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 tenderer in writing in a timely manner, of the identity of any representatives retained for these purposes.

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- 3.8.2 The inspections and tests may be conducted in the premises of the tenderer or its subcontractor(s), at point of delivery, and/or at the Goods' final destination. If conducted on the premises of the tenderer or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring entity.
- 3.8.3 Should any inspected or tested goods fail to conform to the Specifications, The Procuring Entity may reject the item/s, and the tenderer shall either replace the rejected item or make alterations 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 item/s having previously been inspected, tested and passed by The Procuring Entity or its representative prior to the item/s delivery.
- 3.8.5 Nothing in paragraph 3.8 shall in any way release the tenderer from any warranty or other obligations under this Contract.

3.9 **Packing**

- 3.9.1 The tenderer shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract.
- 3.9.2 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 tenderer 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 tenderer under this Contract shall be specified in Special Conditions of Contract

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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 tenderer for goods delivered and services performed under the Contract shall not, with the exception of any price adjustments authorized in Special Conditions of Contract, vary from the prices by the tenderer in this 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 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

3.15 Subcontracts

3.15.1 The tenderer 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 tender or later, shall not relieve the tenderer 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 tenderer, terminate this Contract in whole or in part

(a) if the tenderer fails to deliver any or all of the goods within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring entity

(b) if the tenderer fails to perform any other obligation(s) under the Contract

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- (c) 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

3.16.2 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 tenderer shall be liable to The Procuring Entity for any excess costs for such similar goods.

3.17 Liquidated Damages

3.17.1. If the tenderer 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 tenderer may consider termination of the contract.

3.18 Resolution of Disputes

3.18.1 The Procuring Entity and the tenderer shall make every effort to resolve amicably by direct informal negotiation and disagreement or dispute arising between them under or in connection with the contract

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

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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.

42. Special conditions of contract as relates to the GCC

REFERENCE OF GCC	SPECIAL CONDITIONS OF CONTRACT
3.3.1	Tenderers must specify country of origin and they must also submit certificate/letter from the official local distributor of the brand name product authorizing the Tenderer to supply the product locally (in Kenya).
3.7.1	Performance security shall be 10% of contract price
3.10.1	There shall be ONE (1) delivery point which is: KIARUTARA Offices which are near GATURA MARKET in KANDARA sub – COUNTY in MURANGA County
3.12.1	If required by the supplier, there will an advance payment of up to a maximum of 10% of the contract price upon submission of a bank guarantee for advance payment from a reputable bank. The balance of the contract price of the materials and goods delivered shall be paid upon the delivery, inspection, testing and acceptance of the same by the Procuring Entity. Otherwise, one Hundred percent (100%) of the contract price of the materials and goods delivered shall be paid upon the delivery, inspection, testing and acceptance of the same by the Procuring Entity.
3.13.2	No price adjustments are allowed for this contract.
3.18.1	Any dispute or difference arising out of this Contract which cannot be settled amicably shall be referred to the arbitration of a person/institution to be agreed upon between the Supplying firm and the client.

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SECTION V - TECHNICAL SPECIFICATIONS

5.1 General

- 5.1.1 These specifications describe the requirements for goods. Tenderers are requested to submit with their offers the detailed specifications, drawings, catalogues, etc for the products they intend to supply. Each item will be evaluated independently and the tenderers can choose which items to tender for.
- 5.1.2 Tenderers must indicate on the specifications sheets whether the equipment offered comply with each specified requirement.
- 5.1.3 All the dimensions and capacities of the equipment to be supplied shall not be less than those required in these specifications. Deviations from the basic requirements, if any shall be explained in detail in writing with the offer, with supporting data such as calculation sheets, etc. The 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 tenderers are requested to present information along with their offers as follows:
- (i) Shortest possible delivery period of each product
 - (ii) Information on proper representative and/or workshop for back-up service/repair and maintenance including their names and addresses.

5.2 price Schedule of Goods

Tenderers should enclose details of all goods offered including manufacturer's literature, standards, performance data/curves, drawings etc. to enable evaluation of the compliance of the goods offered to the specifications.

KIARUTARA RAIGA WATER PROJECT

ITEM No	DESCRIPTION	UNIT	QUANTITY
1.0	Supply and delivery of 200mm Galvanized iron pipe flanged as off-take pipe each 6m long cllts, nuts, washers and rubberass B, one pipe to be perforated in 50m holes at 100mm c/cb	No	2

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1.2	Supply and delivery of 200mm sluice valve, flanged c/w bolts, nuts washers and rubbers gaskets	No	1
1.3	Supply and delivery of 80mm Galvanizes iron pipe flanged 3 m long class B	No	1
1.4	Supply and delivery of 80 mm sluice valve, flanged c/w bolts, nuts, washers and rubber gaskets	No	1
MAIN PIPELINE FOR KIARUTARA-RAGIA WATER PROJECT			
BILL No. 3			
Pipelines' Rehabilitations			
Item	Description	Unit	Quantity
1	Allow sum for supply of materials and laying of distribution pipelines of assorted diameter as follows:		
2	8" diaUPVc PN6	M	4050
3	8" G.I pipes class B	M	276
4	2 dia Air valves	No	6
5	6 dia sluice valve complete with bolts and nuts	No	4
6	8" dia sluice valves complete with bolts and nuts	No	5
7	8" flanges complete with bolts and nuts	No	15
	6" dia nipples	No	6
	2" flanges complete with bolts and nuts	No	12
	8"x6" saddle clamp GI	No	6
	8"x8"x2" tees PVC	No	6
	8"x8"x4" tees PVC	No	5
	Gate valves 4"	No	5
	6" flanges complete with bolts and nuts	No	12
	4" flanges complete with bolts and nuts	No	5
	8" G.I bend 130o	No	8
	8" G.I bend 90o	No	2
	Gasket	M	10
	VJ coupling (mechanical) 200mm	No	46
	200mm/225V.J Step down	No	8
	8" PVC bend 45o	No	6
	8" PVC bend 90o	No	5
	8" PVC bend 221/2o	No	3
2	Construction Materials for anchors		
	Y12 Reinforcement bars	No	24
	R8 Reinforcement bars	No	24

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	Binding wire	Roll	1
	Ballast	Ton	7
	Clean River Sand	Ton	7
	Ordinary Portland Cement (50kg bag)	Bags	30

a) Equipments

Country of Origin :
 Material Grade :
 Coating :
 Lining :
 Manufacturer :
 Place of Manufacture :
 Standard of Manufacture :
 Inspection and Testing :

a) Equipment's fittings and attachments

Country of Origin :
 Material :
 Manufacturer :
 Place of Manufacture :
 Standard of Manufacture :
 Inspection and Testing

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LOT 1. – uPVC PIPES AND FITTINGS

ITEM	DESCRIPTION	UNIT	QTY	RATE Ksh.	AMOUNT Ksh.
1.0	<p>uPVC Pipe work</p> <p>Provide and supply to site and test the following flex spigot and socket pipes and fittings with rubber ring joints. Pipe dimensions / working pressures shall conform to KS-06-149 Part 2: 2000.</p> <p>Class Working pressure (m)</p> <p>B (PN 6) 60 C (PN 10) 90 D (PN 12.5) 120 E (PN 16) 150</p> <p>UPVC Straight pipes.</p>				
1.01	8" diaUPVc PN6	M	3,000		
1.02	8"x8"x2" tees PVC	No.	6		
1.03	8"x8"x4" tees PVC	No.	5		
1.04	8" PVC bend 45°	No.	6		
1.05	8" PVC bend 90°	No.	5		
1.06	8" PVC bend 22 1/2°	No.	3		
	Total carried to summary				

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LOT 2: G.I PIPES AND FITTING

ITEM	DESCRIPTION	UNIT	QTY	RATE Ksh.	AMOUNT Ksh.
2.0	Supply and delivery of 200mm Galvanized iron pipe flanged as off-take pipe each 6m long cllts, nuts, washers and rubberass B, one pipe to be perforated in 50m holes at 100mm c/cb	M.	12		
2.1	Supply and delivery of 300mm Galvanizes iron pipe flanged 3 m long class B	No.	1		
2.2	8" G.I pipes class flanged	M	276		
2.3	8" flanges complete with bolts and nuts	No.	46		
2.4	6" dia nipples	No.	6		
2.5	2" flanges complete with bolts and nuts	No.	12		
2.6	8"x6" saddle clamp G.I	No.	6		
2.7	6" flanges complete with Gasket, bolts and nuts	No.	12		
2.8	4" flanges complete with Gasket, bolts and nuts	No.	10		
2.9	8" G.I bend 130 ⁰	No.	8		
2.10	8" G.I bend 90 ⁰	No.	2		
2.11	200mm/225 VJ step down	No.	8		

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	Total carried to summary				
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LOT 3: AIR VALVES AND SECTONAL VALVES

ITEM	DESCRIPTION	UNIT	QT	RATE Ksh.	AMOUNT Ksh.
3.0	AIR VALVES				
3.1	Supply and delivery of 300mm sluice valve, flanged c/w bolts, nuts washers and rubbers gasket	No.	1		
3.2	Supply and delivery of 200mm sluice valve, flanged c/w bolts, nuts washers and rubbers gaskets	No.	1		
3.3	Supply and delivery of 80 mm sluice valve, flanged c/w bolts, nuts, washers and rubber gaskets	No.	6		
3.4	4dia Air valves with all its accessories	No.	4		
3.5	6 dia sluice valve complete its accessories	No.	5		
3.6	8" dia sluice valves its accessories	No.	5		
	Total carried to summary page.				

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ITEM	DESCRIPTION	UNIT	QTY	RATE Ksh.	AMOUNT Ksh.
1.0	LOT 1. – uPVC PIPES AND FITTINGS				
2.0	LOT 2: G.I PIPES AND FITTING				
3.0	LOT 3: AIR VALVES AND SECTONAL VALVES				
	Add 16% V.A.T				

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	Total bills from summary pages.				

SECTION VI- SCHEDULE OF REQUIREMENTS

6.1 Materials Delivery Schedule

Delivery Schedule form from the Date of Commencement of contract

Item	Description	Quantity	Delivery Schedule
pipes	uPVC and GI	All	90 days
Fittings	Pipe fittings	All	90 days

Tenderers are to submit a detailed delivery programme for each item within the limits specified.

6.2 General Description of Goods

6.2.1: Introduction

This contract is for supply of pipes and fittings for The Procuring Entity. The supply contract will be for a period of 90 days. Under this contract, pipes and fittings will be required for will be procured and delivered to the place specified in the tender document.

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6.2.2: Location and Climatic Conditions

The **Giarutara Offices** are located **2km from GATURA Kirinyaga County** in KANDARA SUB- COUNTY and is linked to Nairobi- Embu highway through BLUE POST, **16km Tarmac** road to GATURA market the project offices.

The climate in the area is characterized as high/medium. Annual rainfall is about 1500mm and temperatures range **15– 27 °C**.

The Tenderer has to take into account of the climate conditions of the area in his proposal to ensure that the pipes and fittings are stored in suitable area before acceptance.

6.2.3: GENERAL

The Tenderer in his Tender shall have selected the lot(s) which he/she proposes to offer as per Specifications and as set out and described in the Schedule of Prices.

The Tenderer shall not change the goods sizes or numbers without the express permission of The Procuring Entity or his Representative. All the items in each lot should be fully filled.

6.2.4: IDENTIFICATION AND MARKING

Before delivery, all items shall be clearly marked. All crates or packages shall be marked on two sides with indelible paint with the name of the project, the Procuring Entity, and the Contract number and shall also bear marks indicating the contents.

Equipment shall be clearly marked by figures together with Project name, Contract number, item numbers or reference numbers corresponding to the appropriate items or reference numbers in the Bills of Quantities.

Bags or crates containing parts for joints and attachments shall be clearly labeled as to the contents.

6.2.5: TESTS OF MATERIALS

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Tests on goods shall be carried out at the place of manufacture and at the final point of delivery as specified hereof and these tests shall be subject to witnessing / examination by the UTaNRMP's Representative.

6.2.6: PROTECTION IN TRANSIT

The goods shall be protected in transit by wide rings of padding securely attached to them, the padding being both thick and strong enough to keep them apart when attached. .

6.2.7: HANDLING

Loading, unloading and handling shall be carried out with the least possible impact using such handling equipment so as to prevent damage to the exterior of the goods.

The Tenderer shall make arrangements to ensure that such equipment as above is used throughout transit.

It shall be the Tenderer's responsibility to ensure that line cables, chains, hooks, metal bars and the like shall not be permitted to come into contact with the goods. During loading, unloading and handling the tenderer shall also ensure that particular care be taken to avoid distortion, flattening, denting, cracking and scoring or any other damage to the chemicals and equipments.

The Tenderer shall obtain and provide to the UTaNRMP's Representative if requested to do so, the entire manufacturer's specifications relating to the proper handling, storage, laying, installation and testing of their products and shall make them or copies thereof available to the Engineer on site.

6.2.08: STOCKING AND STORAGE

Chemicals and equipments shall be stacked in accordance with the manufacturer's recommendations.

The Tenderer to submit proposals for such protection methods with the Documents for approval of the UTaNRMP's representative if required to do so. All water works equipment to be store in lockable sheds. The works for all these protective measures is deemed to be covered in the Tenderer's rates. Materials provided for use in transit protection to equipment shall be retained in position.

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6.2.09: INSPECTION

The pipes and fittings shall be subject to inspection by the Engineer or his Representative. The Tenderer shall at all reasonable times allow the Engineer or his Representative free access to the place of inspection. The tenderer shall provide all necessary facilities and test equipment which may be required for the proper testing and inspection to be carried out to the satisfaction of the Engineer or his Representative.

6.2.10: PACKING FOR TRANSPORT

All the pipes and equipment should be packed as per manufacturer's requirements and UTaNRMP's Representative's approval.

6.2.11: MANUFACTURER'S CERTIFICATE

The Tenderer shall supply to The Procuring Entity or his agent a signed certificate from the manufacturer stating that the equipment comply in all aspect with the provisions of the specification and the indicated National or International Standards.

6.2.12: ON-SITE INSPECTION

All pipes and fittings shall be inspected upon arrival at the storage areas for damage to:

- The pipes and fittings
- External coatings (if any)
- Internal linings (if any)
- Jointing surfaces (including sockets if any)
- Any other internal or external parts of the equipment

The Tenderer shall be responsible for and shall undertake any remedial work required by the Engineer or his Representative as appropriate or where deemed necessary, replace defective equipments, fittings and equipment. All expenses in connection with such remedial works or replacements shall be deemed covered by the Tenderer.

6.2.13: HANDLING AND TRANSPORT OF GOODS

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The UTaNRMP's Representative will reject any pipes and fittings which have been damaged due to handling procedures and methods of transport and shipping:

- a) In the event of any damage being caused, the Tenderer shall be liable for the cost of repairs or replacements and the costs of any delays. The UTaNRMP's Representative shall determine whether the damage shall be repaired, and if it is to be repaired the manner of such repair or whether the damaged piece shall be replaced.

6.2.14: STORAGE OF GOODS

The Tenderer shall only store pipes and fittings and other materials at places approved by the UTaNRMP's Representative, and shall provide a watchman to prevent theft or damage until he has completed the order and the order is accepted by the client. Any damage incurred due to lack of such supervision or protection will be the Tenderer's responsibility.

6.2.15: STORAGE AREA

The Bidder will provide the description/drawings of stacking arrangement of the goods in the storage area. The Tenderer will confirm that the proposed arrangement is in accordance with the Manufacturer's recommendations or will propose modifications that shall be acceptable to both the manufacturer and the UTaNRMP's Representative

The Tenderer shall be expected to assist in maintenance of the storage area in accordance with manufacturer's requirements, until such time when all the Goods have been delivered to the storage area, and accepted.

The Tenderer shall allow the removal of the Goods from the storage area only upon receipt of written instructions from the UTaNRMP's representative.

- The Tenderer shall be responsible for the preparation of the storage area and shall hand it over to The Procuring Entity upon completion. No deliveries shall be made until the storage area has been prepared and accepted by the Procuring Entity. The storage site must meet the UTaNRMP's Representative's approval.

6.2.16: ACCEPTANCE OF GOODS

Goods will only be finally accepted in the storage area when the following conditions have been observed:-

- (a) All coating and other repairs have been made good.
- (b) All fittings and boxes are laid out.

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- (c) The Engineer, or his representative, has carried out a final inspection.

6.2.17: STANDARDS

The goods shall comply in all respects with national and internationally recognized standard, codes of practice or regulations.

Standard cited in the specification may be obtained in the relevant Standard Institutions whose principal offices are as follows:-

BRITISH STANDARDS INSTITUTION

2 PARK STREET
LONDON W1A2BS
ENGLAND

AMERICAN PETROLEUM INSTITUTE

PUBLICATIONS AND DISTRIBUTION SECTION 2101 L STREET
NORTHWEST WASHINGTON D.C. 20037
U.S.A.

INTERNATIONAL STANDARDS ORGANISATION

1, RUE DE VAREMBE CASE POSTALE 56
CH 1211 GENEVA 20
SWITZERLAND

AMERICAN WATER WORKS ASSOCIATION

666 WEST QUINCY AVENUE
DENVER
COLORADO 80235
U.S.A.

KEYA BUREAU OF STANDARDS

KEBS KAPITI ROAD, OFF MOMBASA ROAD
BEHIND BELLE VUE CINEMA,
P.O.BOX 0020054974
NAIROBI- KENYA.

6.2.18: ABBREVIATIONS

a) ORGANISATIONS

ASTM	American Society for Testing and Materials
AWWA	American Water Works Association
DIN	Deutches Institute for Normung
BS	British Standard
IDA	International Development Association
IEC	International Organisation for Standardisation

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ISO	International Organization for Standardisation
API	American Petroleum Institute
IEE	Institution of Electrical Engineers

b) UNITS

°C	degrees Celsius
cc	Cubic Centimetres
cm	Centimetre
g	gramme
“	inch
‘	feet
in	square inches
kg	kilograms
kgf	kilogram force
km	kilometer
kN	kilo Newton
lb	pound (weight)
l/s	litre per second
m	metre
m ²	square metre
m ³	cubic metre
mm	millimetre
mm	square millimeter
N	newton
kW	kilowatt
mg/d	million gallons per day
mg/l	milligramme per litre
g/l	gramme per litre
lb	pound
kVA	kilo volt ampere
kA	kilo ampere
A	ampere
mA	milliampere
V	Volt

c) OTHERS

BSCP	British Standard Code of Practice
BSP	British Standard Pipe (Thread)
CP	British Standard Code of Practice
DI	Ductile Iron
DN	Normal Diameter
GMS	Galvanised Mild Steel
MDPE	medium density polyethylene

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No.	Number
NP	Nominal Pressure
OD	Outside Diameter
%	Percentage
UK	United Kingdom of Great Britain and Northern Ireland
O & M	Operating and Maintenance
SI	International System of Units
UPVC	Unplasticised Polyvinyl Chloride
GRP	Glass Fibre Reinforced Polyester
EPDM	Ethylene Propylene Rubber
RPM	Revolutions Per Minute

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SECTION VII - PRICE SCHEDULE FOR GOODS

Name of tenderer _____ Tender Number _____ Page _____ of _____

1	2	3	4	5	6	7
Item	Description	Country of origin	Quantity	Unit price	Total Price EXW per item (cols. 4x5)	Unit price of other incidental services payable

Signature of tenderer _____

Note: In case of discrepancy between unit price and total, the unit price shall prevail.***UTaNRMP is a corruption free project and no one is required to provide any inducement to participate in any of its implementation processes.***

SECTION VIII - STANDARD FORMS

Notes on the sample Forms

1. Form of Tender - The form of tender **must be** completed by the tenderer and submitted with the tender documents. It must also be duly signed by duly authorized representatives of the tenderer.
2. Confidential Business Questionnaire Form - This form **must be** completed by the tenderer and submitted with the tender documents.
3. Tender Security Form - When required by the tender documents the tender shall provide the tender security either in the form included herein or in another format acceptable to the procuring entity.
4. Contract Form - The Contract Form shall not be completed by the tenderer at the time of submitting the tender. The Contract Form shall be completed after contract award and should incorporate the accepted contract price.
5. Performance Security Form - The performance security form should not be completed by the tenderers at the time of tender preparation. Only the successful tenderer will be required to provide performance security in the form provided herein or in another form acceptable to the procuring entity.
6. Bank Guarantee for Advance Payment Form - When Advance payment is requested for by the successful tenderer and agreed by the procuring entity, this form must be completed fully and duly signed by the authorized officials of the bank.
7. Manufacturers Authorization Form - When required by the tender documents this form must be completed and submitted with the tender documents. This form will be completed by the manufacturer of the goods where the tenderer is an agent.
8. **Anti-Corruption Declaration Commitment/ Pledge** - Each Tenderer must submit a statement, as part of the Tender documents, in the format given below which must be signed personally by the Chief Executive Officer or other appropriate senior corporate officer of the Tendering company and, where relevant, of its subsidiary in the Kenya. If a Tender is submitted by a subsidiary, a statement to this effect will also be required of the parent company, signed by its Chief Executive Officer or other appropriate senior corporate officer.

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8.1 **FORM OF TENDER**

Date _____
Tender No. _____

To: _____

[name and address of procuring entity]

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda Nos. *[insert numbers]*.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 tender amount in words and figures)* or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

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

3. If our Tender is 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 a bid 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. 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 tender you may receive.

Dated this _____ day of _____ 20 _____

[signature]

[in the capacity of]

Duly authorized to sign tender for an on behalf of _____

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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

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

<i>Part 1 – General:</i>	
Business Name	
Location of business premises.	
Plot No.....	Street/Road
Postal Address	Tel No. Fax
E mail	
Nature of Business	
Registration Certificate No.	
Maximum value of business which you can handle at any one time – Kshs.	
Name of your bankers Branch	

	Part 2 (a) – Sole Proprietor																								
	Your name in full Age																								
	Nationality Country of origin																								
	<ul style="list-style-type: none"> • Citizenship details • 																								
	Part 2 (b) Partnership																								
	Given details of partners as follows:																								
	<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;"></th> <th style="width: 45%;">Name</th> <th style="width: 20%;">Nationality</th> <th style="width: 20%;">Citizenship Details</th> </tr> </thead> <tbody> <tr> <td>Shares</td> <td></td> <td></td> <td></td> </tr> <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.																						
	Part 2 (c) – Registered Company																								
	Private or Public																								

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State the nominal and issued capital of company-

Nominal Kshs.

Issued Kshs.

Given details of all directors as follows:

No	Name	Nationality	Citizen Details	Shares
1				
2				
3				

Date Signature of Candidate

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

8.3 TENDER SECURITY FORM

Whereas [name of the tenderer]
 (hereinafter called "the tenderer") has submitted its tender dated
 [date of submission of tender] for the supply, installation and commissioning of
[name and/or description of the equipment] (hereinafter called
 "the Tender") KNOW ALL PEOPLE by these
 presents that WE of having our registered
 office at (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 of _____ 20 _____.

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 amount 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 tender 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)

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8.4 CONTRACT FORM

AGREEMENT

DATED..... DAY OF2017

BETWEEN

UPPER TANA NATURAL RESOURCES MANAGEMENT PROJECT

AND

.....(tenderer)

FOR

SUPPLY AND DELIVERY OF PIPES AND FITTINGS FOR

..... (NAME OF COMMUNITY PROJECT)

Dated:

..... (tenderer)

THIS AGREEMENT is made the.....day of **2016**

BETWEEN

(1) **UPPER TANA NATURAL RESOURCES MANAGEMENT PROJECT (“UTaNRMP”)**, a Project under the Ministry of Water and Irrigation of the Government of Kenya and having its principal place of business at Post Office Box Number 996-60100, Embu (hereinafter called “the **Purchaser**”),

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AND

- (2) **M/S**(tenderer), a limited liability company incorporated under the Laws of Kenya and of (hereinafter called “the Tenderer”).

WHEREAS—

- (a) The purchaser wishes to purchase the Goods and has invited candidates to submit tenders for the supply and delivery of the Goods.
- (b) The Tenderer pursuant to the invitation to tender submitted an offer to sell the goods to the purchaser.
- (c) The purchaser has accepted the Tenderer’s bid and is willing to purchase the Goods from the Tenderer subject to and upon the terms and conditions hereinafter appearing.

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NOW THIS AGREEMENT WITNESSES as follows—

1 DEFINITIONS

In this Agreement, unless inconsistent with the context, or otherwise specified, the following words and phrases shall have the meanings set out below—

- 1.1 “**Agreement**” means this agreement as amended or modified from time to time by the mutual consent of the parties in accordance with the procedure contained in clause 17, and shall include the schedule and appendix to this agreement.
- 1.2 “**Contract Price**” means ~~Kes.....~~ the price payable by the purchaser to the Tenderer under this Agreement as consideration for the supply and delivery of the Goods and shall include the price for the Goods, and all costs for delivery, discount, duty and value added tax.
- 1.3 “**the Goods**” means supply and delivery of (ITEMS AWARDED) as per detailed tender documents, a summary of which is given in schedule 1.

2 INTERPRETATION

- 2.1 Any reference in this Agreement to a party shall mean either the Tenderer or the purchaser, and any such reference to parties shall, as the case may be, mean all or any of them.
- 2.2 Any reference in this Agreement to a business day shall mean any day from Monday to Friday both days inclusive but excluding any day that is a public holiday by virtue of the Public Holidays Act (Cap 110 of the Laws of Kenya).
- 2.3 The headings in this Agreement are inserted for ease of reference only and shall not be taken into account in the construction or interpretation of any provision to which they refer.
- 2.4 Words importing the singular number shall include the plural and *vice versa*, and words importing the masculine shall include the feminine and neuter and *vice versa*.

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- 2.5 Subject to clause 5 herein, the expressions “Tenderer” and “the Purchaser” shall include their respective successors in title and permitted assigns, and as such, this Agreement shall be binding upon and be limited to the benefit of the parties and their respective successors in title and permitted assigns.
- 2.6 The recitals in this Agreement and appearing as part of this Agreement form part of and shall be deemed to be incorporated in this Agreement.
- 2.7 References to clauses, sub-clauses, the schedule, and the appendix, are to clauses and sub-clauses of, and the schedule and appendix to, this Agreement, and the words “hereunder”, “hereof”, “hereto”, “herein”, and words of similar meaning, shall be deemed to be references to this Agreement as a whole and not to any particular clause of, or the schedule or appendix to, this Agreement.

3 AGREEMENT

- 3.1 The Tenderer agrees to sell and the purchaser agrees to purchase the pipes and fittings materials more particularly described in the tender document together with the relevant manuals on maintenance, operation, instruction and all other ancillary equipment and parts at the Contract Price and upon the terms and conditions hereinafter provided.
- 3.2 The parties agree to do all such things and to sign and execute all such documents and deeds as may reasonably be required in order to protect or enforce any of the rights transferred pursuant to this Agreement.

4 PASSING OF PROPERTY AND RISK

The property and risk in the stated pipes and fittings shall pass to the purchaser upon delivery and signing of the Supplier’s inspection certificate by the purchaser.

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5 TITLE

The Tenderer hereby covenants that the purchaser shall obtain a good title to the goods free of any claims, charges and encumbrances.

6 PAYMENT AND DELIVERY TERMS

- 6.1 Subject to the provisions of this Agreement, the Tenderer shall deliver the stated pipes and fittings for within ninety (90) days from the effective date which shall be the date of signing this agreement or date of LPO, whichever is earlier.
- 6.2 The Contract Price shall be paid within sixty (60) days of delivery pipes and fittings upon presentation of a valid invoice to the purchaser by the Tenderer.
- 6.3 At the time of delivery, the Tenderer shall simultaneously deliver to the purchaser any requisite document relating to the pipes and fittings materials, including the delivery note and original Kenya Revenue Authority Registration Receipt.
- 6.4 Upon delivery of the pipes and fittings by the Tenderer, the purchaser shall inspect the same as set out in clause 10 herein for compliance with specifications, and notwithstanding the provisions of sub-clause 6.2, no payment of the Contract Price shall be made unless the pipes and fittings comply with the specifications set out in the schedule and the manufacturer's technical specifications.
- 6.5 The contract price quoted by the Tenderer is fixed and no variation of the contract price shall be permitted under this Agreement.

7 PERFORMANCE SECURITY

- 7.1 The Tenderer shall provide to the purchaser a performance security equal to 10% of the Contract Price, and such performance security shall be issued by a commercial bank or recognized insurance company located within the Republic of Kenya in the form provided in the tender documents.

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- 7.2 If the performance security is to be issued in the form of a bond, it shall, subject to the approval and acceptance of the purchaser, be issued by a surety whom the purchaser has determined to be suitable.
- 7.3 Failure of the Tenderer to comply with the requirement of the entire of clause 7 shall be sufficient grounds for the annulment of the award and the purchaser may make the award to the next suitable bidder.

8 ASSIGNMENT AND SUB-CONTRACTING

- 8.1 Neither the rights nor the obligations of the Tenderer under this Agreement may be assigned, transferred, or otherwise disposed of, in whole or in part, without the prior written consent of the purchaser.
- 8.2 No attempted assignment by the Tenderer in contravention of sub-clause 8.1 shall relieve the Tenderer of any of its obligations hereunder.
- 8.3 The Tenderer shall notify the purchaser in writing of all sub-contracts awarded under this Agreement if not already specified in the Supplier's quotations.
- 8.4 Notwithstanding the provisions of sub-clause 8.3, the use of sub-contractors to provide any portion of the materials will not relieve the Tenderer from its obligations under this Agreement.

9 INTELLECTUAL PROPERTY RIGHTS

The Tenderer shall indemnify and keep the purchaser fully indemnified against all losses and liabilities, costs, and expenses, in respect of claims on the grounds that the pipes and fittings or any part thereof, or anything done by the Tenderer hereunder infringes the intellectual property rights of any third party PROVIDED THAT—

- 9.1 The purchaser shall allow the Tenderer, at the Tenderer's request, to conduct and settle (on such terms as the purchaser may approve, such approval not to be unreasonably withheld or delayed, and provided that any such settlement does not in any event include terms which might in any way restrict the purchaser's use of the pipes and fittings), all negotiations and litigation, all costs incurred or recovered in such negotiations and litigation being for the tenderer's account; and

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- 9.2 The purchaser shall give the Tenderer all reasonable assistance for the purpose set out in paragraph (9.1) above; and
- 9.3 The purchaser shall not incur any cost or expense for the Tenderer's account without the Tenderer's prior written consent; and
- 9.4 If at any time any allegation of infringement is made or in the tender's opinion is likely to be made, the Tenderer may at its own expense procure for the purchaser the right to continue using the infringing items on terms not restricting the purchaser's use of the same as contemplated by this Agreement or modify or replace the infringing items so that the same cease to be infringing PROVIDED THAT such modification or replacement does not detract in any way from the performance or quality of the Electric fence materials.

10 INSPECTION AND TESTS

- 10.1 The purchaser or its representative shall have the right to inspect and to test the pipes and fittings to confirm to the specifications in the tender documents.
- 10.2 The inspections and tests shall be conducted at such location as shall be appointed by the purchaser and all reasonable facilities and assistance shall be furnished to the inspectors at no charge to the Tenderer
- 10.2 Should any inspected or tested pipes and fittings fail to conform to the specifications, the purchaser may reject the pipes and fittings, and the Tenderer shall make alterations necessary to meet specification requirements free of cost to the purchaser within 14 days failure to which the contract will stand cancelled.
- 10.3 The purchaser may conduct such tests and investigations as it deems reasonably necessary to confirm that the Tenderer has remedied all the aforesaid deficiencies in 10.2 above. Such tests and investigations shall be conducted at the Tenderer's expense.

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- 10.4 Should the pipes and fittings be rejected, the tenderer must remove the rejected pipes and fittings from the premises of the purchaser within 14 days failure to which the government of Kenya will auction them without any further reference to the tenderer.
- 10.5 Nothing in this clause shall in any way release the Tenderer from any warranty or other obligation under this Agreement.

11 WARRANTY

- 11.1 The Tenderer warrants that all PIPES AND FITTINGS delivered under this Agreement will be free from defects in material and workmanship, conform to all applicable specifications and to the extent that detailed designs have not been furnished by the purchaser, will be free from design defects and suitable for the purposes intended by the purchaser. Approval by the purchaser of designs furnished by the Tenderer shall not relieve the Tenderer of its obligations under any provision of this Agreement including the warranty contained in this clause.
- 11.2 The Tenderer's warrants hereunder shall extend to any Manufacturer's defect or non-conformity arising or manifesting itself within six (6) months after installation of the pipes and fittings, as stipulated in the manufacturer's Warranty appended to this agreement.
- 11.3 The Tenderer shall, free of charge, either repair or, at its option, replace defective pipes and fittings where the defects appear at the point of delivery or within six months after installation,

PROVIDED THAT—

- 11.3.1 Notice in writing of the defects complained of shall be given to the Tenderer upon their appearance; and

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- 11.3.2 Such defects shall be found to the Tenderer's satisfaction to have arisen solely from faulty design, workmanship of materials; and
- 11.3.3 The defective pipes and fittings materials shall be returned to the Tenderer's works at the Tenderer's expense if so requested by the purchaser.
- 11.4 Any repaired or replaced pipes and fittings materials shall be re-delivered by the Tenderer free of charge to the original point of delivery subject to the provisions of this Agreement.

12 *FORCE MAJEURE*

- 12.1 Neither party shall be liable or in any way in breach of this Agreement, or termination for default, for any delay in performing or failure to perform any of its obligations under this Agreement caused by events beyond its reasonable control ("*Force Majeure Event*").
- 12.2 The party claiming the *Force Majeure* Event shall promptly notify the other party in writing of the reasons for the delay or stoppage, and the likely duration of such delay or stoppage, and shall take all reasonable steps to overcome the delay or stoppage.
- 12.3 If the party claiming the *Force Majeure* Event has complied with sub-clause 12.2, its performance under this Agreement shall be suspended for the period that the *Force Majeure* Event continues, and the party will have an extension of time for performance which is reasonable and in any event at least equal to the period of delay or stoppage PROVIDED that where any amount is due prior to the suspension of this Agreement, it shall still be due when such suspension is lifted.
- 12.4 For the purposes of this Agreement, a *Force Majeure* Event shall mean any circumstance beyond the reasonable control of the party affected thereby. Without prejudice to the generality of the foregoing, the following shall be regarded as such circumstances—

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- 12.4.1 Acts of God, explosion, lightning, flood, tempest, fire, or accident;
- 12.4.2 War, (whether war be declared or not), invasion, act of foreign enemies;
- 12.4.3 Outbreak of hostilities, riot, civil disturbance, acts of terrorism;
- 12.4.4 Acts, restrictions, regulations, by-laws, refusals to grant any licenses or permissions, prohibitions or measures of any kind on the part of any governmental authority;
- 12.4.5 Import or export regulations or embargoes;
- 12.4.6 Power failure of whatever nature, failure of telecommunications lines, failure or breakdown of machinery or vehicles;
- 12.4.7 Theft, malicious damage, strike, lock-out, or industrial action of any kind (whether involving employees of the Tenderer or a third party);
- 12.5 The Tenderer shall not be entitled to relief under this clause in any circumstances where it has caused or substantially contributed to any delay or failure in the performance of its obligations by any default on its part.

13 TERMINATION

- 13.1 The purchaser may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the Tenderer, terminate this Agreement in whole or in part—
 - 13.1.1 If the Tenderer fails to provide the pipes and fittings s within the period prescribed under this Agreement, or within any extension thereof granted by the purchaser.
 - 13.1.2 If the Tenderer fails to perform any other obligation under this Agreement.
 - 13.1.3 If the Tenderer, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing this Agreement.
 - 13.1.4 If an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the Tenderer.
 - 13.1.5 If the Tenderer makes any voluntary arrangement with its creditors or becomes subject to an administration order.
 - 13.1.6 If the Tenderer goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company or

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firm resulting there from effectively agrees to be bound by or assume the obligations imposed on that other party under this Agreement).

- 13.1.7 If the Tenderer ceases, or threatens to cease, to carry on business.
- 13.2 In the event that the purchaser terminates the Agreement in whole or in part as a consequence of breach by the Tenderer, it may procure, upon such terms and in such manner as it deems appropriate, pipes and fittings similar to the pipes and fittings that the Tenderer was meant to supply and the Tenderer shall be liable to the purchaser for any excess costs for such similar goods.
- 13.3 Any termination of this Agreement (whether under this clause 13 or otherwise) shall not relieve either party of any obligation under this Agreement which is expressed to continue after termination.

14 LIQUIDATED DAMAGES

If the Tenderer fails to provide any or all of the pipes and fittings within the period specified in the Agreement, the purchaser shall, without prejudice to its other remedies under the Agreement, deduct from the Contract Price liquidated damages of a sum equivalent to 0.5% per week of the delivered price of the delayed fence materials up to a maximum deduction of 10% of the contract price.

15 WAIVER

- 15.1 No delay, failure, or omission by either party to enforce, exercise, or pursue any of its powers, rights, claims, privileges, or remedies under this Agreement will operate as a waiver of them nor will any single or partial enforcement, exercise, or pursuit of any such powers, rights, claims, privileges, or remedies preclude any other or further enforcement, exercise, or pursuit of them.
- 15.2 Any waiver to be effective must be in writing and must be signed by a director or other duly authorised officer of the party granting the waiver.

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- 15.3 The remedies contained in this clause are without prejudice to and in addition to any warranties, indemnities, remedies, or other rights provided by law or under any other provision of this Agreement for the benefit of the purchaser.

16 SEVERABILITY

If any part of this Agreement is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful, or unenforceable, then such part will be severed from the remainder of this Agreement which will continue to be valid and enforceable to the fullest extent permitted by law.

17 DISPUTE RESOLUTION

- 17.1 The purchaser and the Tenderer shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between the parties under or in connection with this Agreement.
- 17.2 If after thirty (30) days from the commencement of such informal negotiations the parties have been unable to amicably resolve the dispute, the dispute shall be referred by either party to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an arbitrator, the arbitrator shall be appointed by the chairman of the Chartered Institute of Arbitrators, Kenya Chapter, on the request of the applying party.
- 17.2 The arbitration shall be carried out in accordance with the provisions of the Arbitration Act, 1995, or any statutory modifications or enactments in replacement thereof.

18 EXTRAORDINARY COMMERCIAL COSTS AND CORRUPT AND FRAUDULENT PRACTICES

- 18.1 The Tenderer represents that the Agreement has not, does not or shall not give rise to the collection of Extraordinary Commercial Costs.
- 18.2 For the purposes of sub-clause 18.1 “Extraordinary Commercial Costs” shall mean any commission not mentioned in the Agreement or which does not result from an independent and valid agreement referring to the Agreement, any commission which is not in consideration of an effective legitimate service, any commission to be paid in a tax haven, any

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commission paid to a beneficiary which is ambiguously identified or to a company that could be considered a sham company.

18.3 The purchaser shall assume that the Tenderer has observed the highest standard of ethics during the procurement process and execution of this Agreement. In pursuance of this policy, the purchaser—

18.3.1 Defines, for the purposes of this provision, the terms set forth below as follows—

- (a) “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 the execution of this Agreement; and
- (b) “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 purchaser, and includes collusive practice among bidders (prior or after submission of tenders) designed to establish tender prices at artificial non-competitive levels and to deprive the purchaser of the benefits of free and open competition;

18.3.2 Will reject a proposal for award if it determines that the Tenderer has engaged in corrupt or fraudulent practices in competing to provide the equipment to which this Agreement relates;

18.3.3 will declare a supplier ineligible, either indefinitely or for a stated period of time, to be awarded any contract if it at any time determines that the Tenderer has engaged in corrupt or fraudulent practices in competing for, or in executing, this Agreement.

19 GOVERNING LAW AND JURISDICTION

19.1 This Agreement shall be governed by and construed in accordance with the law of Kenya for the time being.

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19.2 The Courts of Kenya shall have exclusive jurisdiction over all matters arising out of or pursuant to this Agreement.

20 ENTIRE UNDERSTANDING

20.1 This Agreement is the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Agreement and supersedes all previous communications, representations, and other arrangements, oral or written. The parties acknowledge that no reliance is placed on any representation made but not embodied in this Agreement.

20.2 Subject to the provisions of any Act of Parliament for the time being in force, the parties may expressly agree in writing any variation in the provisions hereof, PROVIDED that unless expressly so agreed no such agreement shall constitute or be construed as a general waiver of any of the provisions hereof by any of the parties and the rights and obligations of the parties hereunder shall remain in full force and effect notwithstanding any variation agreed between the parties on any particular occasion.

20.3 Notwithstanding any provision of this Agreement, no amendment to any provision hereof shall be effective unless such amendment has first been approved by both parties.

21 NOTICES

21.1 All notices to be given under this Agreement shall be in writing and shall be sent to the address of the recipient party shown below or such other address as the recipient party may designate by notice given in accordance with clause 21.

21.2 Notices may be delivered personally, by pre-paid registered letter, facsimile transmission, or by electronic mail. Notices shall be deemed to have been received—

21.2.1 by hand delivery – at the time of delivery;

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21.2.2 by pre-paid registered letter – three (3) clear days after the date of mailing not including the date of mailing.

21.2.3 by facsimile transmission, or electronic mail – immediately on transmission provided that if the date and time of dispatch is not during normal business hours on a business day, it shall be deemed to have been received at the time of the opening of normal business hours on the next following business day.

21.3 The addresses of the parties shall be as follows—

a) **THE PURCHASER:**

Upper Tana Natural Resources Management Project
Embu-Meru Road
P. O. Box 996-60100
Telephone: +254 -068-2231376
E-mail:utanrmp@gmail.com
EMBU

b) **NAME OF TENDERER:**

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

22 MISCELLANEOUS PROVISIONS

22.1 The Tenderer shall not, without the prior written consent of the purchaser, disclose the Agreement, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the Tenderer in the performance of the Agreement.

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22.2 The Tenderer shall not, without the prior written consent of the purchaser, make use of any document or information enumerated in sub-clause 22.1 above.

22.3 The documents enumerated in sub-clause 22.1 shall remain the property of the purchaser, and all copies of such documents shall be returned to the purchaser, if so required by the purchaser, on completion of the Tenderer's performance under the Agreement.

IN WITNESS WHEREOF this agreement has been duly executed by the parties hereto, the day and year first hereinabove mentioned.

SCHEDULE ONE (1)

THE GOODS

THE GOODS SHALL REFER TO PIPES AND FITTINGS FOR: AS PER SUMMARYDETAILS WHICH ARE SET OUT BELOW—

COMMUNITY PROJECT	Tender No	LOT No	Description	Amount (Kes)
Total				

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SIGNED BY:

NAME:**DATE**

**PROJECT COORDINATOR-UTaNRMP
DULY AUTHORISED FOR AND ON BEHALF OF UTaNRMP**

IN THE PRESENCE OF:

NAME.....

DESIGNATION

STAMP

SIGNATURE

AND

NAME **DATE**.....

CHIEF EXECUTIVE OFFICER-(tenderer)

IN THE PRESENCE OF:

NAME.....

DESIGNATION

STAMP

SIGNATURE

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(Amend accordingly if provided by Insurance Company)

8.5 PERFORMANCE SECURITY FORM

To
[name of 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 of goods]* (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 figure]* 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 you 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 _____

Signed and seal of the Guarantors

[name of bank or financial institution]

[address]

[date]

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8.6 BANK GUARANTEE FOR ADVANCE PAYMENT FORM

To
[name of Procuring entity]

[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 institutions], 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 there-under 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 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]

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8.7 MANUFACTURER’S AUTHORIZATION FORM

To *[name of the Procuring entity]*

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

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

[signature for and on behalf of manufacturer]

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

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8.7 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

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8.9 FORM RB 1

**REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

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

BETWEEN

.....APPLICANT

AND

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

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

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.
- etc.

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

- 1.
- 2.
- etc

SIGNED(Applicant)

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

FOR OFFICIAL USE ONLY

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

SIGNED
Board Secretary

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8.10 ANTI-CORRUPTION DECLARATION COMMITMENT/ PLEDGE

I/We/Messrs.....

of Street, Building, P O Box.....

.....

Contact/Phone/E mail..... declare that Public Procurement is based on a free and fair competitive Tendering process which should not be open to abuse.

I/We

declare that I/We will not offer or facilitate, directly or indirectly, any inducement or reward to any public officer, their relations or business associates, in connection with

Tender/Tender No

for or in the subsequent performance of the contract if I/We am/are successful.

Authorized Signature.....

Name and Title of Signatory.....

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