

REPUBLIC OF KENYA



COUNTY GOVERNMENT OF MERU

**CONSTRUCTION OF THIMBIRI WATER
PROJECT**

TENDER NO CGM/ONT/169/2016-2017.

DATE 3RD JAN 2017

Table of Contents

Letter of Submission.....	1
SECTION I: INVITATION FOR BIDS	4
Invitation for Bids (IFB).....	5
SECTION II: INSTRUCTIONS TO BIDDERS	6
Instructions to Bidders.....	7
Table of Clauses.....	7
A. General.....	8
B. Bidding Documents	11
C. Preparation of Bids	12
D. Submission of Bids.....	16
E. Bid Opening and Evaluation	17
F. Award of Contract.....	23
G. Bidding Data	25
SECTION III. FORMS OF BID, QUALIFICATION INFORMATION	28
Letter of Acceptance, and Agreement	Error! Bookmark not defined.
Qualification Information	Error! Bookmark not defined.
Letter of Acceptance.....	34
Agreement.....	35
SECTION IV. CONDITIONS OF CONTRACT	36
Table of Clauses	37
Conditions of Contract.....	39
A. General.....	39
B. Time Control	46
C. Quality Control.....	48
D. Cost Control.....	49
E. Finishing the Contract.....	55
SECTION V. CONTRACT DATA	59
Section V: Contract Data	60
SECTION VI. SPECIFICATIONS.....	63
Section VI. Specifications.....	Error! Bookmark not defined.
1.0 General.....	Error! Bookmark not defined.
2. 0. Site Clearance.....	Error! Bookmark not defined.
3.0 Excavation.....	Error! Bookmark not defined.

4.0	Concrete	Error! Bookmark not defined.
5.	Formwork.....	Error! Bookmark not defined.
6.0	Masonry	Error! Bookmark not defined.
7.0	Materials	Error! Bookmark not defined.
8.0	Workmanship	Error! Bookmark not defined.
9.0	Testing Of Materials.....	Error! Bookmark not defined.
10.0	Drains, Sewers and Manholes.....	Error! Bookmark not defined.
11.0	Miscellaneous.....	Error! Bookmark not defined.
12:	Specification for Electrical Works	Error! Bookmark not defined.
13.0	MECHANICAL WORKS	Error! Bookmark not defined.
14.0	Treatment Works Specification.....	Error! Bookmark not defined.
15.0	Work Programme And Method Statement Of The Construction Works.....	Error! Bookmark not defined.
SECTION VII:	LIST OF DRAWINGS	64
	LIST OF DRAWINGS	Error! Bookmark not defined.
SECTION III:	BILL OF QUANTITIES.....	65
	Preamble and Notes to Bills of Quantities.....	69
	BILL OF QUANTITIES.....	74
SECTION IX.	SECURITY FORMS.....	75
	Annex A Form: Bid Security (Bank Guarantee).....	76
	Annex B Form (Alternative 1): Performance Bank Guarantee (Conditional).....	78
	Annex B Form (Alternative 2): Performance Bank Guarantee (Unconditional).....	80
	Annex B Form (Alternative 3): Performance Bond	82
	Annex C Form: Bank Guarantee for Advance Payment	84

SECTION I: INVITATION FOR BIDS

Invitation for Bids (IFB)

Date:

Contract Identification N°: CGM/ONT/169/2016-2017

1. The **county government of meru** intends to undertake **construction of thimbiri water project**
2. the county government of meru invites bidders qualified as NCA 6 and above to tender for the above works

The **county government of meru** invites sealed Tenders from eligible bidders for the construction of **water tanks** whose components in the scope of works includes supply of all materials required for and the construction and or installation of :-.

CIVIL WORKS

Construction of 2 tanks

3. Bidding documents (and additional copies) may be downloaded from the county government website www.merucounty.go.ke
4. Bids shall be valid for a period of 120 days after Bid opening and must be accompanied by Bid security of 2% of the tender sum, in an acceptable form, and shall be addressed to

**County secretary
Meru county government
p.o box 120-60200
meru**

on or before **10.00 noon 3RD JANUARY 2017**, at which time they will be publicly opened in the presence of the bidders who choose to attend.

5. Qualified domestic or regional contractors may be eligible to receive a margin of preference of 10 per cent or 7½ per cent respectively, in Bid evaluation.¹
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SECTION II: INSTRUCTIONS TO BIDDERS

Instructions to Bidders

Table of Clauses

A. General	11
1. Scope of Bid	11
2. Source of Funds	11
3. Eligible Bidders	11
4. Qualification of the Bidder.....	11
5. One Bid per Bidder	14
6. Cost of Bidding.....	14
7. Site Visit	14
B. Bidding Documents	14
8. Content of Bidding Documents	14
9. Clarification of Bidding Documents.....	15
10. Amendment of Bidding Documents	15
C. Preparation of Bids	15
11. Language of Bid.....	15
12. Documents Comprising the Bid	15
13. Bid Prices.....	16
14. Currencies of Bid and Payment	16
15. Bid Validity	17
16. Bid Security	17
17. Alternative Proposals by Bidders	18
18. Format and Signing of Bid.....	18
D. Submission of Bids	19
19. Sealing and Marking of Bids.....	19
20. Deadline for Submission of Bids.....	19
21. Late Bids.....	19
22. Modification and Withdrawal of Bids	20
E. Bid Opening and Evaluation	20
23. Bid Opening.....	20
24. Process to Be Confidential	21
25. Clarification of Bids	21
26. Examination of Bids and Determination of Responsiveness.....	21
27. Correction of Errors	22
28. Currency for Bid Evaluation	22
29. Evaluation and Comparison of Bids	22
30. Preference for Domestic or Regional Bidders.....	23
F. Award of Contract	26
31. Award Criteria	26
32. Employer's Right to Accept any Bid and to Reject any or all Bids.....	26
33. Notification of Award and Signing of Agreement	26
34. Performance Security	26
35. Advance Payment and Security	27
36. Corrupt or Fraudulent Practices.....	27
G. Bidding Data	28

A. General

1. Scope of Bid

- 1.1 The Employer as defined in the Contract Data, invites bids for the construction of Works, as described in the Contract Data. The name and identification number of the Contract is provided in the Contract Data.
- 1.2 The successful Bidder will be expected to complete the Works by the Intended Completion Date specified in the Contract Data.

2. Source of Funds

The project will be from county funds

3. Eligible Bidders

- 3.1 This Invitation for Bids is open to all bidders from eligible countries as defined in the Rules of Procurement. Any materials, equipment, and services to be used in the performance of the Contract shall have their origin in eligible source countries.
- 3.2 All bidders shall provide in Section 2, Forms of Bid and Qualification Information, a statement that the Bidder (including all members of a joint venture and subcontractors) is not associated, nor has been associated in the past, directly or indirectly, with the Consultant or any other entity that has prepared the design, specifications, and other documents for the Project or being proposed as Project Manager for the Contract. A firm that has been engaged by the Employer to provide consulting services for the preparation or supervision of the Works, and any of its affiliates, shall not be eligible to bid.
- 3.3 Government-owned enterprises may only participate if they are legally and financially autonomous, operate under commercial law, and are not a dependent agency to the Employer.

4. Qualification of the Bidder

- 4.1 All bidders shall provide in Section III, Forms of Bid and Qualification Information, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.
- 4.2 In the event that prequalification of potential bidders has been undertaken, only

bids from prequalified bidders will be considered for award of Contract. These qualified bidders should submit with their bids any information updating their original prequalification applications or, alternatively, confirm in their bids that the originally-submitted prequalification information remains essentially correct as of the date of bid submission. The update or confirmation should be provided in Section III.

4.3 If the Employer has not undertaken prequalification of potential bidders, all bidders shall include the following information and documents with their bids in Section III, unless otherwise stated in the Bidding Data:

- (a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the Bid to commit the Bidder;
- (b) total monetary value of construction work performed for each of the last five years;
- (c) experience in works of a similar nature and size for each of the last five years, and details of work under way or contractually committed; and clients who may be contacted for further information on those contracts;
- (d) major items of construction equipment proposed to carry out the Contract;
- (e) qualifications and experience of key site management and technical personnel proposed for the Contract;
- (f) reports on the financial standing of the Bidder, such as profit and loss statements and auditor's reports for the past five years;
- (g) evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);
- (h) authority to seek references from the Bidder's bankers;
- (i) information regarding any litigation, current or during the last five years, in which the Bidder is involved, the parties concerned, and disputed amount; and
- (j) proposals for subcontracting components of the Works amounting to more than 10 percent of the Contract Price.

4.4 Bids submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated in the Bidding Data:

- (a) the Bid shall include all the information listed in Sub-Clause 4.3 above for each joint venture partner;

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

4.5 To qualify for award of the Contract, bidders shall meet the following minimum qualifying criteria:

- (a) annual volume of construction work of at least the amount specified in the Bidding Data;
- (b) experience as prime contractor in the construction of at least two works of a nature and complexity equivalent to the Works over the last 10 years (to comply with this requirement, works cited should be at least 70 percent complete);
- (c) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed in the Bidding Data;
- (d) a Contract Manager with five years' experience in works of an equivalent nature and volume, including no less than three years as Manager; and
- (e) liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than the amount specified in the Bidding Data.

A consistent history of litigation or arbitration awards against the Applicant or any partner of a Joint Venture may result in disqualification.

4.6 The figures for each of the partners of a joint venture shall be added together to determine the Bidder's compliance with the minimum qualifying criteria of Sub-Clause 4.5(a) and (e); however, for a joint venture to qualify, each of its partners must meet at least 25 per cent of minimum criteria 4.5(a), (b), and (e) for an individual Bidder, and the partner in charge at least 40 percent of those minimum criteria. Failure to comply with this requirement will result in rejection of the joint venture's Bid. Subcontractors' experience and resources will not be taken into account in determining the Bidder's compliance with the qualifying criteria, unless otherwise stated in the Bidding Data.

4.7 Bidders applying for eligibility for a margin of preference in bid evaluation,

shall supply all information to satisfy the criteria for eligibility as described in Clause 30 of these Instructions to Bidders.

5. One Bid per Bidder

5.1 Each Bidder shall submit only one Bid, either individually or as a partner in a joint venture. A Bidder who submits or participates in more than one Bid (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the proposals with the Bidder's participation to be disqualified.

6. Cost of Bidding

6.1 The Bidder shall bear all costs associated with the preparation and submission of his Bid, and the Employer will in no case be responsible or liable for those costs.

7. Site Visit

7.1 The Bidder, at the Bidder's own responsibility and risk, is encouraged to visit and examine the Site of Works and its surroundings and obtain all information that may be necessary for preparing the Bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense.

B. Bidding Documents

8. Content of Bidding Documents

8.1 The set of bidding documents comprises the documents listed in the table below and addenda issued in accordance with Clause 10:

SectionII	Instructions to Bidders
III	Forms of Bid and Qualification Information
IV	Conditions of Contract
V	Contract Data
VI	Specifications
VII	Drawings
VIII	Bill of Quantities
IX	Forms of Securities

8.2 Three copies of Sections III, V, and VIII are supplied to the prospective Bidder. The number of copies to be completed and returned with the Bid is specified in the Bidding Data.

9. Clarification of Bidding Documents

- 9.1 A prospective Bidder requiring any clarification of the bidding documents may notify the Employer in writing or by cable ("cable" includes telex and facsimile) at the Employer's address indicated in the invitation to bid. The Employer will respond to any request for clarification received earlier than 28 days prior to the deadline for submission of bids. Copies of the Employer's response will be forwarded to all purchasers of the bidding documents, including a description of the inquiry, but without identifying its source.

10. Amendment of Bidding Documents

- 10.1 Before the deadline for submission of bids, the Employer may modify the bidding documents by issuing addenda.
- 10.2 Any addendum thus issued shall be part of the bidding documents and shall be communicated in writing or by cable to all purchasers of the bidding documents. Prospective bidders shall acknowledge receipt of each addendum by cable to the Employer.
- 10.3 To give prospective bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer shall extend, as necessary, the deadline for submission of bids, in accordance with Sub-Clause 20.2 below.

C. Preparation of Bids

11. Language of Bid

- 11.1 All documents relating to the Bid shall be in the language specified in the Contract Data¹. Provided that any printed literature furnished by the Bidder may be written in another language, as long as such literature is accompanied by a translation of its pertinent passages in the language specified in the Contract Data; in which case, for purposes of interpretation of the Bid, the translation shall govern.

12. Documents Comprising the Bid

- 12.1 The Bid submitted by the Bidder shall comprise the following:
- (a) The Bid (in the format indicated in Section III);
 - (b) Bid Security;
 - (c) Priced Bill of Quantities;²
 - (d) Qualification Information Form and Documents;
 - (e) Alternative offers where invited;

and any other materials required to be completed and submitted by bidders, as specified in the Bidding Data.

13. Bid Prices

- 13.1 The Contract shall be for the whole Works, as described in Sub-Clause 1.1,

based on the priced Bill of Quantities³ submitted by the Bidder.

- 13.2 The Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items for which no rate or price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities.
- 13.3 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the rates, prices, and total Bid price submitted by the Bidder.
- 13.4 The rates and prices quoted by the Bidder shall be subject to adjustment during the performance of the Contract if provided for in the Bidding and Contract Data and the provisions of Clause 47 of the Conditions of Contract. The Bidder shall submit with the Bid all the information required under the Contract Data and Clause 47 of the Conditions of Contract.

14. Currencies of Bid and Payment

- 14.1 The unit rates and prices shall be quoted by the Bidder entirely in the currency of the Employer's country as specified in the Contract Data. Foreign currency requirements shall be indicated as a percentage of the Bid price (excluding provisional sums) and shall be payable at the option of the Bidder in (a) the currency of the Bidder's home country or (b) a currency widely used in international trade, always provided that a Bidder expecting expenditures in currency(ies) other than those stated in (a) or (b) above for portions of the foreign currency requirements, and wishing to be paid accordingly, shall indicate the relevant currencies and percentages in the Bid.
- 14.2 The rates of exchange to be used by the Bidder in arriving at the local currency equivalent and the percentage(s) mentioned in para. 14.1 above shall be the selling rates for similar transactions established by the authority specified in the Bidding Data prevailing on the date 15 days prior to the latest deadline for submission of bids. These exchange rates shall apply for all payments so that no exchange risk will be borne by the Bidder. If the Bidder uses other rates of exchange, the provisions of Clause 28.1 shall apply. In any case, payments will be computed using the rates quoted in the Bid.
- 14.3 Bidders shall indicate details of their expected foreign currency requirements in the Bid.
- 14.4 Bidders may be required by the Employer to clarify their foreign currency requirements and to substantiate that the amounts included in the rates and prices and in the Contract Data are reasonable and responsive to Sub-Clause 14.1.

15. Bid Validity

- 15.1 Bids shall remain valid for the period specified in the Bidding Data.
- 15.2 In exceptional circumstances, the Employer may request that the bidders extend the period of validity for a specified additional period. The request and the bidders' responses shall be made in writing or by cable. A Bidder may refuse the request without forfeiting the Bid Security. A Bidder agreeing to the request will not be required or permitted to otherwise modify the Bid, but will be required to extend the validity of Bid Security for the period of the extension, and in compliance with Clause 16 in all respects.
- 15.3 In the case of contracts in which the Contract Price is fixed (not subject to price adjustment), if the period of bid validity is extended beyond 60 days, the amounts payable in local and foreign currency to the Bidder selected for award, shall be increased by applying to both the local and the foreign currency component of the payments, respectively, the factors specified in the bidding data or in the request for extension, for the period of delay beyond 60 days after the expiry of the initial bid validity, up to the notification of award. Bid evaluation will be based on the Bid prices without taking the above correction into consideration.

16. Bid Security

- 16.1 The Bidder shall furnish, as part of the Bid, a Bid Security in local currency or in a freely convertible currency, in the amount specified in the Bidding Data.⁴
- 16.2 The Bid Security shall, at the Bidder's option, be in the form of a certified check, bank draft, letter of credit, or a bank guarantee from a reputable bank located in the country of the Employer or in any eligible country abroad. The format of the Bid Security should be in accordance with the form of Bid Security included in Section IX or another form acceptable to the Employer. Bid Security shall be valid for 28 days beyond the validity of the Bid.
- 16.3 Any bid not accompanied by an acceptable Bid Security shall be rejected by the Employer. The Bid Security of a joint venture must define as "bidder" all joint venture partners and list them in the following manner: a joint venture consisting of " _____," " _____," and " _____".
- 16.4 The Bid Security of unsuccessful bidders will be returned within one week after concluding the contract and after a performance security has been furnished by the successful Bidder.
- 16.5 The Bid Security of the successful Bidder will be discharged when the Bidder has signed the Agreement and furnished the required Performance Security.
- 16.6 The Bid Security may be forfeited
 - (a) if the Bidder withdraws the Bid after Bid opening during the period of Bid validity;
 - (b) if the Bidder does not accept the correction of the Bid price, pursuant to

- Clause 27; or
- (c) in the case of a successful Bidder, if the Bidder fails within the specified time limit to
 - (i) sign the Agreement; or
 - (ii) furnish the required Performance Security.

17. Alternative Proposals by Bidders

- 17.1 Bidders shall submit offers that comply with the requirements of the bidding documents, including the basic technical design as indicated in the drawings and specifications. Alternatives will not be considered, unless specifically allowed in the Bidding Data. If so allowed, Sub-Clause 17.2 shall govern.
- 17.2 If so allowed in the Bidding Data, bidders wishing to offer technical alternatives to the requirements of the bidding documents must also submit a Bid that complies with the requirements of the bidding documents, including the basic technical design as indicated in the drawings and specifications. In addition to submitting the basic Bid, the Bidder shall provide all information necessary for a complete evaluation of the alternative by the Employer, including design calculations, technical specifications, breakdown of prices, proposed construction methods and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Employer.

18. Format and Signing of Bid

- 18.1 The Bidder shall prepare one original of the documents comprising the Bid as described in Clause 12 of these Instructions to Bidders, bound with the volume containing the Form of Bid, and clearly marked "ORIGINAL." In addition, the Bidder shall submit copies of the Bid, in the number specified in the Bidding Data, and clearly marked as "COPIES." In the event of discrepancy between them, the original shall prevail.
- 18.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Bidder, pursuant to Sub-Clauses 4.3(a) or 4.4(b), as the case may be. All pages of the Bid where entries or amendments have been made shall be initialed by the person or persons signing the Bid.
- 18.3 The Bid shall contain no alterations or additions, except those to comply with instructions issued by the Employer, or as necessary to correct errors made by the Bidder, in which case such corrections shall be initialed by the person or persons signing the Bid.
- 18.4 The Bidder shall furnish information as described in the Form of Bid on

commissions or gratuities, if any, paid or to be paid to agents relating to this Bid, and to contract execution if the Bidder is awarded the contract.

D. Submission of Bids

19. Sealing and Marking of Bids

- 19.1 The Bidder shall seal the original and all copies of the Bid in two inner envelopes and one outer envelope, duly marking the inner envelopes as “ORIGINAL” and “COPIES”.
- 19.2 The inner and outer envelopes shall
- (a) be addressed to the Employer at the address provided in the Bidding Data;
 - (b) bear the name and identification number of the Contract as defined in the Bidding and Contract Data; and
 - (c) provide a warning not to open before the specified time and date for Bid opening as defined in the Bidding Data.
- 19.3 In addition to the identification required in Sub-Clause 19.2, the inner envelopes shall indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared late, pursuant to Clause 21.
- 19.4 If the outer envelope is not sealed and marked as above, the Employer will assume no responsibility for the misplacement or premature opening of the Bid.

20. Deadline for Sub-mission of Bids

- 20.1 Bids shall be delivered to the Employer at the address specified above no later than the time and date specified in the Bidding Data.
- 20.2 The Employer may extend the deadline for submission of bids by issuing an amendment in accordance with Clause 10, in which case all rights and obligations of the Employer and the bidders previously subject to the original deadline will then be subject to the new deadline.

21. Late Bids

- 21.1 Any Bid received by the Employer after the deadline prescribed in Clause 20 will be returned unopened to the Bidder.

22. Modification and Withdrawal of Bids

- 22.1 Bidders may modify or withdraw their bids by giving notice in writing before

the deadline prescribed in Clause 20.

- 22.2 Each Bidder's modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clauses 18 and 19, with the outer and inner envelopes additionally marked "MODIFICATION" or "WITHDRAWAL," as appropriate.
- 22.3 No Bid may be modified after the deadline for submission of Bids.
- 22.4 Withdrawal of a Bid between the deadline for submission of bids and the expiration of the period of Bid validity specified in the Bidding Data or as extended pursuant to Sub-Clause 15.2 may result in the forfeiture of the Bid Security pursuant to Clause 16.
- 22.5 Bidders may only offer discounts to, or otherwise modify the prices of their bids by submitting Bid modifications in accordance with this clause, or included in the original Bid submission.

E. Bid Opening and Evaluation

23. Bid Opening

- 23.1 The Employer will open the bids, including modifications made pursuant to Clause 22, in the presence of the bidders' representatives who choose to attend at the time and in the place specified in the Bidding Data.
- 23.2 Envelopes marked "WITHDRAWAL" shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted pursuant to Clause 22 shall not be opened.
- 23.3 The bidders' names, the Bid prices, the total amount of each Bid and of any alternative Bid (if alternatives have been requested or permitted), any discounts, Bid modifications and withdrawals, the presence or absence of Bid Security, will all be announced by the Employer at the bid opening. Further, any such other details as the Employer may consider appropriate, will also be announced.
- 23.4 Bids or modifications that are not opened and read out at bid opening shall not be considered further for evaluation, irrespective of the circumstances. In particular, any discount offered by a Bidder which is not read out at bid opening shall not be considered further.
- 23.5 The Employer will prepare minutes of the Bid opening, including the information disclosed to those present in accordance with Sub-Clause 23.3.
- 23.6 No bid will be rejected at bid opening except for late bids, which will be returned unopened to the bidder, pursuant to ITB Clause 21.

24. Process to Be Confidential

- 24.1 Information relating to the examination, clarification, evaluation, and comparison of bids and recommendations for the award of a contract shall not be disclosed to bidders or any other persons not officially concerned with such process until the award to the successful Bidder has been announced. Any effort by a Bidder to influence the Employer's processing of bids or award decisions may result in the rejection of his Bid.

25. Clarification of Bids and Contacting the Employer

- 25.1 To assist in the examination, evaluation, and comparison of bids, the Employer may, at the Employer's discretion, ask any Bidder for clarification of the Bidder's Bid, including breakdowns of unit rates.⁵ The request for clarification and the response shall be in writing or by cable, telex, or facsimile, but no change in the price or substance of the Bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids in accordance with Clause 27.
- 25.2 Subject to sub-clause 25.1 no Bidder shall contact the Employer on any matter relating to its bid from the time of the bid opening to the time the contract is awarded. If the Bidder wishes to bring additional information to the notice of the Employer, it should do so in writing.
- 25.3 Any effort by the Bidder to influence the Employer in the Employer's bid evaluation, bid comparison or contract award decisions may result in the rejection of the Bidder's bid.

26. Examination of Bids and Determination of Responsiveness

- 26.1 Prior to the detailed evaluation of bids, the Employer will determine whether each Bid (a) meets the eligibility criteria defined in Clause 3; (b) has been properly signed; (c) is accompanied by the required securities; and (d) is substantially responsive to the requirements of the bidding documents.
- 26.2 A substantially responsive Bid is one which conforms to all the terms, conditions, and specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the Works; (b) which limits in any substantial way, inconsistent with the bidding documents, the Employer's rights or the Bidder's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.

- 26.3 If a Bid is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

27. Correction of Errors

- 27.1 Bids determined to be substantially responsive will be checked by the Employer for any arithmetic errors. Errors will be corrected by the Employer as follows:⁶
- (a) where there is a discrepancy between the amounts in figures and in words, the amount in words will govern; and
 - (b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will govern, unless in the opinion of the Employer there is an obviously gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted will govern, and the unit rate will be corrected.
- 27.2 The amount stated in the Bid will be adjusted by the Employer in accordance with the above procedure for the correction of errors and, with the concurrence of the Bidder, shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount, the Bid will be rejected, and the Bid Security may be forfeited in accordance with Sub-Clause 16.6(b).

28. Currency for Bid Evaluation

- 28.1 Bids will be evaluated as quoted in the currency of the Employer's country as defined in the Contract Data in accordance with Sub-Clause 14.1, unless a Bidder has used different exchange rates than those prescribed in Sub-Clause 14.2, in which case the Bid will be first converted into the amounts payable in different currencies using the rates quoted in the Bid and then reconverted to the Employer's currency using the exchange rates prescribed in Sub-Clause 14.2.

29. Evaluation and Comparison of Bids

- 29.1 The Employer will evaluate and compare only the bids determined to be substantially responsive in accordance with Clause 26.
- 29.2 In evaluating the bids, the Employer will determine for each Bid the evaluated Bid price by adjusting the Bid price as follows:
- (a) making any correction for errors pursuant to Clause 27;
 - (b) excluding provisional sums and the provision, if any, for contingencies in the Bill of Quantities, but including Daywork, where priced competitively;
 - (c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with Clause 17;

and

- (d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with Sub-Clause 22.5.

29.3 The Employer reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors which are in excess of the requirements of the bidding documents or otherwise result in unsolicited benefits for the Employer will not be taken into account in Bid evaluation.

29.4 The estimated effect of any price adjustment conditions under Clause 47 of the Conditions of Contract, during the period of implementation of the Contract, will not be taken into account in Bid evaluation.

30. Preference for Domestic or Regional Bidders

30.1 If so indicated in the Bidding Data, domestic or regional contractors may receive a margin of preference in Bid evaluation, for which the following Option A shall apply if domestic preference is granted, and, alternatively, Option B if regional preference is granted.

Option A: Domestic Preference

30.2 Domestic contractors shall provide all evidence necessary to prove that they meet the following criteria to be eligible for a 10 per cent margin of preference in the comparison of their bids with those of contractors who do not qualify for the preference, A contractor is deemed domestic if:

- (a) its legal constitution is in accordance with the laws of Kenya where it must have its registered office and undertake the majority of its activities; and
- (b) the majority of the capital shares are held by nationals of that country, and
- (c) the majority of the members of the board of directors are nationals of that country, and
- (d) not less than 50 per cent of the key personnel are nationals of that country, and
- (e) there is no arrangement whereby any major part of the net profits or other tangible benefits of the domestic contractor will accrue or be paid to persons not nationals of that country or to firms which would not be eligible under this Sub-Clause.

30.3 Joint ventures between domestic and foreign firms may be eligible for the margin of preference provided the domestic partner or partners

- (a) individually satisfy the above criteria of eligibility for the preference;
- (b) demonstrate a beneficiary interest of no less than 50 percent in the joint venture, as demonstrated by the profit and loss sharing provisions of the joint venture agreement;
- (c) will, under the arrangements proposed, carry out at least 50 percent of the Works, measured in terms of value, which shall exclude any materials or plant which are to be directly imported by the domestic partner (s) (always provided that the domestic partner or partners are qualified to carry out that amount of work, in accordance with the criteria of Sub-Clause 4.3); and
- (d) satisfy any other criteria specified for the purpose of domestic preference eligibility, as specified in the Bidding Data.

30.4 The following procedure will be used to apply the margin of preference:

- (a) Responsive bids will be classified into the following groups:
 - (i) Group A: bids offered by domestic bidders and joint ventures meeting the respective criteria of Sub-Clauses 30.2 and 30.3 above; and
 - (ii) Group B: all other bids.
- (b) For the purpose of further evaluation and comparison of bids only, an amount equal to 10 percent of the evaluated Bid prices determined in accordance with Clause 29.2 (a), b), and (d), will be added to all bids classified in Group B.

Option B: Regional Preference

30.2 Contractors from regional Member countries that have joined the Kenya country in a regional cooperation agreement designed to foster economic integration by a customs union or free trade area (in this Clause referred to as "Regional contractors") shall provide all evidence necessary to prove that they meet the following criteria to be eligible for a 7½-percent margin of preference in the comparison of their bids with those of bidders who do not qualify for the preference. A contractor is deemed to be a Regional contractor if:

- (a) it is legally constituted in accordance with the laws of a regional Member country which is party to the established regional preferential arrangement and has a registered office in that particular country and does business mainly in the same or other countries that are parties to the said regional preferential arrangement; and

- (b) at least a majority of its capital shares is owned by nationals of countries that are parties to the said regional preferential arrangement; and
- (c) the majority of the members of the board of directors are nationals of countries that are parties to the said regional arrangement; and
- (d) not less than 50 percent of its key personnel are nationals of countries that are parties to the said regional preferential arrangement; and
- (e) there are no arrangements whereby any major part of the net profits of other tangible benefits of the Regional contractor or will accrue or be paid to persons not nationals of the countries which are parties to the said regional preferential arrangement or to firms that would not be eligible under this Sub-Clause³⁶.

30.3 Joint ventures between Regional contractors and foreign firms may be eligible for the margin of preference provided the Regional contractor or contractors

- (a) individually satisfy the above criteria of eligibility for the preference;
- (b) demonstrate a beneficiary interest of no less than 50 percent in the joint venture, as demonstrated by the profit and loss sharing provisions of the joint venture agreement;
- (c) will, under the arrangements proposed, carry out at least 50 percent of the Works, measured in terms of value, which shall exclude any materials or plant which are to be directly imported by the Regional contractor (s) are qualified to carry out that amount of works, in accordance with the criteria of Sub-Clause 4.3); and
- (d) satisfy any other criteria specified for the purpose of regional preference eligibility, as specified in the Bidding Data.

30.4 The following procedure will be used to apply the margin of preference:

- (a) Responsive bids will be classified into the following groups:
 - (i) Group A: bids offered by Regional contractors and joint ventures meeting the respective criteria of Sub-Clauses 30.2 and 30.3 above; and
 - (ii) Group B: all other bids.
- (b) For the purpose of further evaluation and comparison of bids only, an amount equal to 7½ percent of the evaluated Bid prices determined in accordance with Clause 29.2 (a), (b), and (d), will be added to all bids classified in Group B.

F. Award of Contract

31. Award Criteria

31.1 Subject to Clause 32, the Employer will award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the bidding documents and who has offered the lowest evaluated Bid price, provided that such Bidder has been determined to be (a) eligible in accordance with the provisions of Clause 3, and (b) qualified in accordance with the provisions of Clause 4.

32. Employer's Right to Accept any Bid and to Reject any or all Bids

32.1 Notwithstanding Clause 31, the Employer reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the Employer's action.

33. Notification of Award and Signing of Agreement

33.1 The Bidder whose Bid has been accepted will be notified of the award by the Employer prior to expiration of the Bid validity period by cable, telex, or facsimile confirmed by registered letter. This letter (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") will state the sum that the Employer will pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price").

33.2 The notification of award will constitute the formation of the Contract, subject to the Bidder furnishing the Performance Security in accordance with Clause 34 and signing the Agreement in accordance with Sub-Clause 33.3.

33.3 The Agreement will incorporate all agreements between the Employer and the successful Bidder. It will be signed by the Employer and sent to the successful Bidder, within 28 days following the notification of award. Within 21 days of receipt, the successful Bidder will sign the Agreement and deliver it to the Employer.

33.4 Upon the furnishing by the successful Bidder of the Performance Security, the Employer will, within one week, notify the other bidders that their bids have been unsuccessful.

34. Performance Security

34.1 Within 21 days after receipt of the Letter of Acceptance, the successful Bidder

shall deliver to the Employer a Performance Security in the amount and in the form (Bank Guarantee

- 34.2 If the Performance Security is provided by the successful Bidder in the form of a Bank Guarantee, it shall be issued either (a) at the Bidder's option, by a bank located in the country of the Employer or a foreign bank through a correspondent bank located in the country of the Employer, or (b) with the agreement of the Employer directly by a foreign bank acceptable to the Employer.
- 34.3 If the Performance Security is to be provided by the successful Bidder in the form of a Bond, it shall be issued by a surety which the Bidder has determined to be acceptable to the Employer.
- 34.4 Failure of the successful Bidder to comply with the requirements of Sub-Clause 34.1 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Bid Security

35. Advance Payment and Security

- 35.1 The Employer will provide an Advance Payment on the Contract Price as stipulated in the Conditions of Contract, subject to a maximum amount⁷, as stated in the Bidding Data.

36. Corrupt or Fraudulent Practices

- 37.1 The Employer requires that Bidders as well as Suppliers/Contractors under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Employer:
 - (a) defines, for the purposes of this provision, the terms set forth below 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 Employer, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Employer of the benefits of free and open competition;

- (b) will reject a proposal for award if its "no objection" has been requested or issued on the basis of incomplete, inaccurate or misleading information furnished by the Employer, or if it is established, by a decision of a court of law, or following a special audit, that the contract was awarded on the basis of corrupt practices. In that event the bidder may also be sanctioned by curtailing its participation on Bank funded projects for a specified period of time determined by the Bank.

37.2 Furthermore, Bidders shall be aware of the provision stated in sub-clause 59.2 of the General Conditions of Contract;

G. Bidding Data

Instructions to Bidders Clause Reference

- (2.1) The Employer is county government of meru
- (2.1) The Project is **construction of thimbiri water project** which involves:
The construction of the following but not limited to:

CIVIL WORKS

- Construction of masonry tanks

- (4.3) The information required from bidders in Sub-Clause 4.3 is modified as follows: "none".
- (4.4) The qualification data required from bidders in Sub-Clause 4.4 are modified as follows: "none".
- (4.5) The qualification criteria in Sub-Clause 4.5 are modified as follows: none".
- (4.5a) The minimum required annual volume of construction work for the successful Bidder in any of the last five years shall be **Kshs 20,000,000.00.**
- (4.5c) The essential equipment to be made available for the Contract by the successful Bidder shall be

- **10 ton Lorries 2 No.**
- **Pneumatic Compressor**
- **Concrete Mixer 2 no.**

- **Concrete Loader trolley**
- **Steel bending and cutting equipment**
- **1No. pick-up**
- **Drainage water pump**
- **Concrete vibrator**
- **Back pour excavator**
- **10 No. Wheelbarrow**
- **100m steel tape**

- (4.5e) The minimum amount of liquid assets and/or credit facilities net of other contractual commitments of the successful Bidder shall be Kshs 20,000,000.00
- (8.2) The number of copies of the Bid to be completed and returned shall be one original and four copies.
- (18.1)
- (13.4) The Contract “is not” subject to price adjustment in accordance with Clause 47 of the Conditions of Contract.
- (14.1) The specified trading currency shall be Kenya Shillings (Kshs).
- (15.1) The period of Bid validity shall be 120 days after the deadline for Bid submission specified in the Tendering Data.
- (15.3) The adjustment of Tender price in accordance with Clause 15.3 shall be calculated on the basis of an annual increase for foreign costs of..... percent and an annual increase for local costs as per conditions of contract.
- (16.1) The amount of Tender Security shall be 2% of Tenderers Tender price in Kshs.
- (17.0) Alternative proposals to the requirements of the bidding documents “will not,” be permitted.
- (19.2) The Employer’s address for the purpose of Bid submission is :-

COUNTY GOVERNMENT OF MERU
P.O BOX 120-60200
MERU

- (20.1) The deadline for submission of bids shall be on (date) 3RD JANUARY 2017 at . 10.00 noon.

The date of the exchange rate is date 28 days before Bid opening.
The authority for establishing the rates of exchange shall be Central

Bank of Kenya.

- (30.0) Domestic contractors “may” as appropriate receive a margin of preference in Bid evaluation.
- (34.0) The Standard Form of Performance Security acceptable to the Employer shall be “Bank Guarantee from a Bank acceptable to the Employer in the format given in section VI.
- (35.0) The Advance Payment shall be limited to 30 percent (%) of the Contract Price, subject to completion of 50% of works and production of Bank Guarantee from a Bank acceptable to the Employer.
- (36.1) The Adjudicator proposed by the Employer is
Governor meru county
The hourly fee for this proposed Adjudicator shall be Kshs 5000.00.
- The biographical data of the proposed Adjudicator will be circulated during tendering period.

\

SECTION III. FORMS OF BID, QUALIFICATION INFORMATION

Tender form

Contractor's Bid

.....
[date]

To:
Director procurement
County government of meru
P.O BOX 120-60200
meru

We offer to execute the **construction of thimbiri water water project** in accordance with the Conditions of Contract accompanying this Bid for the Contract Price of [amount in numbers],
.....
[amount in words]

The Contract shall be paid in the following currencies:

Currency	Percentage payable in currency	Rate of exchange: one foreign equals [insert local]	Inputs for which foreign currency is required
(a)			
(b)			

The advance payment required is:

Amount	Currency
(a)	
(b)	

We accept the appointment of..... [name proposed in Bidding Data] as the Adjudicator.

[or]

We do not accept the appointment of as the Adjudicator, and propose instead that [name] be appointed as Adjudicator, whose daily fees and biographical data are attached.

This Bid and your written acceptance of it shall constitute a binding Contract between understand that you are not bound to accept the lowest or any Bid you receive.

Commissions or gratuities, if any, paid or to be paid by us to agents relating to this Bid, and to contract execution if we are awarded the contract, are listed below:

Amount and Currency		
Name and Purpose of address of agent		Commission <u>or gratuity</u>
_____	_____	
_____	_____	
_____	_____	
(if none, state "none").		

We hereby confirm that this Bid complies with the Bid validity and Bid Security required by the bidding documents and specified in the Bidding Data.

Authorized Signature: _____
 Name and Title of Signatory: _____
 Name of Bidder: _____
 Address: _____
 us. We

confidential business questionnaire

The information to be filled in by bidders in the following pages will be used for purposes of post-qualification or for verification of prequalification as provided for in Clause 4 of the Instructions to Bidders. This information will not be incorporated in the Contract. Attach additional pages as necessary. Pertinent sections of attached documents should be translated into English. If used for prequalification verification, the Bidder should fill in updated information only.

1. Individual Bidders or Individual Members of Joint Ventures

1.1 Constitution or legal status of Bidder: [attach copy]

Place of registration: [insert]

Principal place of business: [insert]

Power of attorney of signatory of Bid: [attach]

1.2 Total annual volume of construction work performed in five years, in the internationally traded currency specified in the Bidding Data:..... [insert]

1.3 Work performed as prime Contractor on works of a similar nature and volume over the last five years. The values should be indicated in the same currency including expected completion date.

Project name and country	Name of client and contact person	Type of work performed and year of completion	Value of contract
--------------------------	-----------------------------------	---	-------------------

(a)

(b)

1.4 Major items of Contractor's Equipment proposed for carrying out the Works. List all information requested below. Refer also to Sub-Clause 4.3(c) of the Instructions to Bidders.

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

(a)

(b)

- 1.5 Qualifications and experience of key personnel proposed for administration and execution of the Contract. Attach biographical data. Refer also to Sub-Clause 4.3(e) of the Instructions to Bidders and Sub-Clause 9.1 of the Conditions of Contract.

Position	Name	Years of experience (general)	Years of experience in proposed position
----------	------	----------------------------------	--

(a)

(b)

- 1.6 Proposed subcontracts and firms involved. Refer to Clause 7 of Conditions of Contract.

Sections of the Works	Value of subcontract	Subcontractor (name and address)	Experience in similar work
--------------------------	-------------------------	-------------------------------------	----------------------------

(a)

(b)

- 1.7 Financial reports for the last five years: balance sheets, profit and loss statements, auditors' reports, etc. List below and attach copies.
- 1.8 Evidence of access to financial resources to meet the qualification requirements: cash in hand, lines of credit, etc. List below and attach copies of support documents.
- 1.9 Name, address, and telephone, telex, and facsimile numbers of banks that may provide references if contacted by the Employer.

1.10 Information on current litigation in which the Bidder is involved.

Other party(ies)	Cause of dispute	Amount involved
(a)		
(b)		

1.11 Statement of compliance with the requirements of Sub-Clause 3.2 of the Instructions to Bidders.

1.12 Proposed Program (work method and schedule). Descriptions, drawings, and charts, as necessary, to comply with the requirements of the bidding documents.

2. Joint Ventures

2.1 The information listed in 1.1 - 1.11 above shall be provided for each partner of the joint venture.

2.2 The information in 1.12 above shall be provided for the joint venture.

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

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

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

3. Additional Requirements

3.1 Bidders should provide any additional information required in the Bidding Data or to fulfill the requirements of Sub-Clause 4.1 and Clause 30 of the Instructions to Bidders, if applicable.

Letter of Acceptance

[letterhead paper of the Employer]

Notes on Standard Form of Letter of Acceptance

The Letter of Acceptance will be the basis for formation of the Contract as described in Clauses 33 and 34 of the Instructions to Bidders. This Standard Form of Letter of Acceptance should be filled in and sent to the successful Bidder only after evaluation of bids has been completed.

.....

[date]

To: [name and address of the Contractor]

This is to notify you that your Bid dated [date] for execution of the..... [name of the Contract and identification number, as given in the Contract Data] for the Contract Price of the equivalent of[amount in numbers and words] [name of currency], as corrected and modified² in accordance with the Instructions to Bidders is hereby accepted by our Agency.

- (a) We accept that [name proposed by bidder] be appointed as the Adjudicator.³
- (b) We do not accept that[name proposed by bidder] be appointed as adjudicator, and by sending a copy of this letter of acceptance to [insert the name of the Appointing Authority], we are hereby requesting [name], the Appointing Authority, to appoint the Adjudicator in accordance with Clause 36.1 of the Instructions to Bidders.⁴

We instruct you to submit to us latest (insert date 21 days after receipt) the Performance Security stipulated in the Contract.

You are hereby instructed to proceed with the execution of the said Works in accordance with the Contract documents.

Authorized Signature:

Name and Title of Signatory: _____

Name of Agency: ____

Attachment: Agreement

Agreement

This Agreement, made the day of..... [month],[year] between **county government of meru** (hereinafter called “the Employer”) and[name and address of Contractor] (hereinafter called “the Contractor”) of the other part.

Whereas the Employer is desirous that the Contractor execute **construction of thimbiri water project** (hereinafter called “the Works”) and the Employer has accepted the Bid by the Contractor for the execution and completion of such Works and the remedying of any defects therein.

Now this Agreement witnessed as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to, and they shall be deemed to form and be read and construed as part of this Agreement.
2. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
3. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects wherein the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

In Witness whereof the parties thereto have caused this Agreement to be executed the day and year first before written.

For the Employer:

Name of Signatory

For the Contractor:

Name of Signatory

SECTION IV. CONDITIONS OF CONTRACT

Table of Clauses

A. General	44
1. Definitions	46
2. Interpretation.....	47
3. Language and Law.....	47
4. Project Manager’s Decisions	47
5. Delegation.....	47
6. Communications	47
7. Subcontracting	47
8. Other Contractors.....	47
9. Personnel	47
10. Employer’s and Contractor’s Risks	48
11. Employer’s Risks	48
12. Contractor’s Risks.....	48
13. Insurance.....	49
14. Site Investigation Reports	49
15. Queries about the Contract Data.....	49
16. Contractor to Construct the Works	50
17. The Works to Be Completed by the Intended Completion Date	50
18. Approval by the Project Manager.....	50
19. Safety.....	50
20. Discoveries	50
21. Possession of the Site.....	50
22. Access to the Site	51
23. Instructions	51
24. Disputes	51
25. Procedure for Disputes.....	51
B. Time Control	51
27. Program	51
28. Extension of the Intended Completion Date.....	52
29. Acceleration.....	52
30. Delays Ordered by the Project Manager.....	53
31. Management Meetings.....	53
32. Early Warning.....	53
C. Quality Control	53
33. Identifying Defects.....	53
34. Tests.....	53
35. Correction of Defects	54
36. Uncorrected Defects.....	54

D. Cost Control	54
37. Bill of Quantities.....	54
38. Changes in the Quantities.....	54
39. Variations.....	54
40. Payments for Variations	55
41. Cash Flow Forecasts	55
42. Payment Certificates	55
43. Payments.....	56
44. Compensation Events.....	56
45. Tax.....	58
46. Currencies.....	58
47. Price Adjustment.....	58
48. Retention.....	59
49. Liquidated Damages	59
50. Bonus.....	59
51. Advance Payment	59
52. Securities	60
53. Dayworks.....	60
54. Cost of Repairs.....	61
 E. Finishing the Contract	 61
55. Completion	61
56. Taking Over.....	61
57. Final Account.....	61
58. Operating and Maintenance Manuals	61
59. Termination	61
60. Payment upon Termination	63
61. Property	63
62. Release from Performance	63

Conditions of Contract

A. General

1. Definitions

1.1 Boldface type is used to identify defined terms.

The Adjudicator is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in Clauses 24 and 25 hereunder.

Bill of Quantities means the priced and completed Bill of Quantities forming part of the Bid.

Compensation Events are those defined in Clause 44 hereunder.

The Completion Date is the date of completion of the Works as certified by the Project Manager, in accordance with Sub-Clause 55.1.

The Contract is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in Clause 2.3 below.

The Contractor is a person or corporate body whose Bid to carry out the Works has been accepted by the Employer.

The Contractor's Bid is the completed bidding document submitted by the Contractor to the Employer.

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

Days are calendar days; months are calendar months.

Dayworks are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.

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

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

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

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

The Employer is the party who employs the Contractor to carry out the Works.

Equipment is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.

The Initial Contract Price is the Contract Price listed in the Employer's Letter of Acceptance.

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

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

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

The Project Manager is the person named in the Contract Data (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.

The Site is the area defined as such in the Contract Data.

Site Investigation Reports are those that were included in the bidding documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.

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

The Start Date is given in the Contract Data. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.

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

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

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

The Works are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as defined in the Contract Data.

2. Interpretation

- 2.1 In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager will provide instructions clarifying queries about these Conditions of Contract.
- 2.2 If sectional completion is specified in the Contract Data, references in the Conditions of Contract to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
- 2.3 The documents forming the Contract shall be interpreted in the following order of priority:
 - (1) Agreement,
 - (2) Letter of Acceptance,
 - (3) Contractor's Bid,
 - (4) Contract Data,
 - (5) Conditions of Contract,
 - (6) Specifications,
 - (7) Drawings,
 - (8) Bill of Quantities,⁸ and
 - (9) any other document listed in the Contract Data as forming part of the Contract.

3. Language and Law

- 3.1 The language of the Contract and the law governing the Contract are stated in the Contract Data.

4. Project Manager's Decisions

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

5. Delegation

- 5.1 The Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.

6. Communications

- 6.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.

7. Subcontracting

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

8. Other Contractors

- 8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as referred to in the Contract Data. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.

9. Personnel

- 9.1 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the Contract Data, to carry out the functions stated in the Schedule or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule.

- 9.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.

10. Employer's and Contractor's Risks

- 10.1 The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.

11. Employer's Risks

- 11.1 From the Start Date until the Defects Correction Certificate has been issued, the following are Employer's risks:

- (a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to
 - (i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works or
 - (ii) negligence, breach of statutory duty, or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.
- (b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in the Employer's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.

- 11.2 From the Completion Date until the Defects Correction Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Employer's risk except loss or damage due to

- (a) a Defect which existed on the Completion Date,
- (b) an event occurring before the Completion Date, which was not itself an Employer's risk, or
- (c) the activities of the Contractor on the Site after the Completion Date.

12. Contractor's Risks

- 12.1 From the Starting Date until the Defects Correction Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer's risks are Contractor's risks.

13. Insurance

13.1 The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles stated in the Contract Data for the following events which are due to the Contractor's risks:

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

13.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.

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

13.4 Alterations to the terms of an insurance shall not be made without the approval of the Project Manager.

13.5 Both parties shall comply with any conditions of the insurance policies.

14. Site Investigation Reports

14.1 The Contractor, in preparing the Bid, shall rely on any Site Investigation Reports referred to in the Contract Data, supplemented by any information available to the Bidder

15. Queries about the Contract Data

15.1 The Project Manager will clarify queries on the Contract Data.

16. Contractor to Construct the Works

16.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.

17. The Works to Be Completed by the Intended Completion Date

- 17.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.

18. Approval by the Project Manager

- 18.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, who is to approve them if they comply with the Specifications and Drawings.
- 18.2 The Contractor shall be responsible for design of Temporary Works.
- 18.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.
- 18.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.
- 18.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.

19. Safety

- 19.1 The Contractor shall be responsible for the safety of all activities on the Site.

20. Discoveries

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

21. Possession of the Site

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

22. Access to the Site

- 22.1 The Contractor shall allow the Project Manager and any person authorized by the

Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

23. Instructions

23.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.

24. Disputes

24.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager's decision.

25. Procedure for Disputes

25.1 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.

25.2 The Adjudicator shall be paid by the hour at the rate specified in the Bidding Data and Contract Data, together with reimbursable expenses of the types specified in the Contract Data, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.

25.3 The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place shown in the Contract Data.⁹

B. Time Control

27. Program

27.1 Within the time stated in the Contract Data, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works.

27.2 An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.

27.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period stated in the Contract Data. If the

Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount stated in the Contract Data from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted.

- 27.4 The Project Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events.

28. Extension of the Intended Completion Date

- 28.1 The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.
- 28.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

29. Acceleration

- 29.1 When the Employer wants the Contractor to finish before the Intended Completion Date, the Project Manager will obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date will be adjusted accordingly and confirmed by both the Employer and the Contractor.
- 29.2 If the Contractor's priced proposals for an acceleration are accepted by the Employer, they are incorporated in the Contract Price and treated as a Variation.

30. Delays Ordered by the Project Manager

- 30.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.

31. Management Meetings

- 31.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with

the early warning procedure.

- 31.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

32. Early Warning

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

C. Quality Control

33. Identifying Defects

- 33.1 The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.

34. Tests

- 34.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.

35. Correction of Defects

- 35.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period,¹⁰ which begins at Completion, and is defined in the Contract Data. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.
- 35.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.

36. Uncorrected Defects

- 36.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager will assess the cost of having the Defect corrected, and the Contractor will pay this amount.

D. Cost Control

37. Bill of Quantities¹¹

- 37.1 The Bill of Quantities shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.
- 37.2 The Bill of Quantities is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate in the Bill of Quantities for each item.

38. Changes in the Quantities¹²

- 38.1 If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change.
- 38.2 The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Employer.
- 38.3 If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.

39. Variations

- 39.1 All Variations shall be included in updated Programs¹³ produced by the Contractor.

40. Payments for Variations

- 40.1 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.
- 40.2 If the work in the Variation corresponds with an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in Sub-Clause 38.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of

quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.¹⁴

- 40.3 If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.
- 40.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.
- 40.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.

41. Cash Flow Forecasts

- 41.1 When the Program¹⁵ is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.

42. Payment Certificates

- 42.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
- 42.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.
- 42.3 The value of work executed shall be determined by the Project Manager.
- 42.4 The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed.¹⁶
- 42.5 The value of work executed shall include the valuation of Variations and Compensation Events.
- 42.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

43. Payments⁵

- 43.1 Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 28 days of the date of each certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made.
- 43.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
- 43.3 Unless otherwise stated, all payments and deductions will be paid or charged in the proportions of currencies comprising the Contract Price.
- 43.4 Items of the Works for which no rate or price has been entered in will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

44. Compensation Events

- 44.1 The following shall be Compensation Events:
- (a) The Employer does not give access to a part of the Site by the Site Possession Date stated in the Contract Data.
 - (b) The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.
 - (c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
 - (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
 - (e) The Project Manager unreasonably does not approve a subcontract to be let.
 - (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.
 - (g) The Project Manager gives an instruction for dealing with an unforeseen

condition, caused by the Employer, or additional work required for safety or other reasons.

- (h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- (i) The advance payment is delayed.
- (j) The effects on the Contractor of any of the Employer's Risks.
- (k) The Project Manager unreasonably delays issuing a Certificate of Completion.
- (l) Other Compensation Events described in the Contract or determined by the Project Manager shall apply.

44.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.

44.3 As soon as information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager will assume that the Contractor will react competently and promptly to the event.

44.4 The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor's not having given early warning or not having cooperated with the Project Manager.

45. Tax

45.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of Clause 47.

46. Currencies

46.1 Where payments are made in currencies other than the currency of the Employer's country, the exchange rates used for calculating the amounts to be

paid shall be the exchange rates stated in the Contractor's Bid.

47. Price Adjustment

- 47.1 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the Contract Data. If so provided, the amounts certified in each payment certificate, after deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

$$P_c = A_c + B_c \text{ Imc/Ioc}$$

where:

P_c is the adjustment factor for the portion of the Contract Price payable in a specific currency "c".

A_c and B_c are coefficients¹⁷ specified in the Contract Data, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that specific currency "c"; and

Imc is the index prevailing at the end of the month being invoiced and Ioc is the index prevailing 28 days before Bid opening for inputs payable; both in the specific currency "c".

- 47.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

48. Retention

- 48.1 The Employer shall retain¹⁸ from each payment due to the Contractor the proportion stated in the Contract Data until Completion of the whole of the Works.
- 48.2 On completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected.
- 48.3 On completion of the whole Works, the Contractor may substitute retention money with an "on demand" Bank guarantee.

49. Liquidated Damages

- 49.1 The Contractor shall pay liquidated damages¹⁹ to the Employer at the rate per day stated in the Contract Data for each day that the Completion Date is later

than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the Contract Data. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

- 49.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 43.1.

50. Bonus

- 50.1 The Contractor shall be paid a Bonus²⁰ calculated at the rate per calendar day stated in the Contract Data for each day (less any days for which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Project Manager shall certify that the Works are complete, although they may not be due to be complete.

51. Advance Payment

- 51.1 The Employer shall make advance payment to the Contractor of the amounts stated in the Contract Data by the date stated in the Contract Data, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest will not be charged on the advance payment.
- 51.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.
- 51.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

52. Securities

- 52.1 The Performance Security shall be provided to the Employer no later than 21 days after receipt of the Letter of Acceptance and shall be issued in an amount and form and by a bank or surety acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is

payable. The Performance Security shall be valid until a date 28 days from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one year from the date of issue of the Completion Certificate in the case of a Performance Bond.

53. Dayworks

- 53.1 If applicable, the Dayworks rates in the Contractor's Bid shall be used for small additional amounts of work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.
- 53.2 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.
- 53.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

54. Cost of Repairs

- 54.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

E. Finishing the Contract

55. Completion

- 55.1 The Contractor shall request the Project Manager to issue a certificate of Completion of the Works, and the Project Manager will do so upon deciding that the work is completed.

56. Taking Over

- 56.1 The Employer shall take over the Site and the Works within seven days of the Project Manager's issuing a certificate of Completion.

57. Final Account

- 57.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects

Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

58. Operating and Maintenance Manuals

- 58.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the Contract Data.
- 58.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the Contract Data, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount stated in the Contract Data from payments due to the Contractor.

59. Termination

- 59.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.
- 59.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:
 - (a) the Contractor stops work for 28 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;
 - (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days;
 - (c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
 - (d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 84 days of the date of the Project Manager's certificate;
 - (e) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
 - (f) the Contractor does not maintain a Security, which is required;
 - (g) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the Contract Data; and

- (h) if the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this paragraph:

"corrupt practice" means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.

"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 Employer, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Employer of the benefits of free and open competition.

- 59.3 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under Sub-Clause 59.2 above, the Project Manager shall decide whether the breach is fundamental or not.
- 59.4 Notwithstanding the above, the Employer may terminate the Contract for convenience.
- 59.5 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

60. Payment upon Termination

- 60.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the Contract Data. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.
- 60.2 If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.

61. Property

- 61.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Employer if the Contract is terminated

because of the Contractor's default.

62. Release from Performance

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

SECTION V. CONTRACT DATA

Section V: Contract Data

The following documents are also part of the Contract:

- 58.0 Schedule of Operating and Maintenance Manuals
- 8.0 Schedule of Other Contractors
- 9.0 The Schedule of Key Personnel
- 14.0 Site Investigation Reports
- 1.1 The Funds for this Contract have been made available by county government

The Employer is county government of meru represented by

The Project Manager is the director water technical services

The name and identification number of the Contract

Construction of thimbiri water project

Contract No.

The Works consist of.

CIVIL WORKS

- Construction of masonry

A. PRELIMINARY AND GENERAL ITEMS

- Services to the Engineer during Construction Supervision

The Start Date shall be after one week from date of signing the contract.

The Intended Completion Date for the whole of the Works shall be 18 months after commencement of the works.

The following documents also form part of the Contract:

- (1) Agreement,
- (2) Letter of Acceptance,
- (3) Contractor's Bid,
- (4) Contract Data,
- (5) Conditions of Contract,
- (6) Specifications,
- (7) Drawings,

- (8) Bill of Quantities, and
 - (9) any other document listed in the Contract Data as forming part of the Contract.

- 27.0** The Contractor shall submit a revised Program for the Works within 28 days of delivery of the Letter of Acceptance.

- 21.0** The Site Possession Date shall be immediately after signing contract.

- 1.0** The Site is located igembe south in Meru County and is defined in drawings listed in list of drawings

- 35.0** The Defects Liability Period is 12 Months

- 44.0** The following events shall also be Compensation Events: **None**

- 27.0** The period between Program updates is **28 days**.

The amount to be withheld for late submission of an updated Program is **Ksh 150,000.00**.

- 3.0** The language of the Contract documents is **English**

The law that applies to the Contract is the Law of the Republic of Kenya.

- 25.0** Institution whose arbitration procedures shall be used: **UNICITRAL United Nations**.

Fees and types of reimbursable expenses to be paid to the Adjudicator: Fees **Ksh 5,000.00** per hour plus approved Expenditures.

- 26.0** Appointing Authority for the Adjudicator: Institution of Engineers of Kenya

- 25.0** Arbitration will take place in accordance with **UNICITRAL** rules and regulations.

- 46.0** The currency of the Employer's country is the **Kenya shillings**

- 47.0** The Contract "is" subject to price adjustment in accordance with Clause 70 of the Conditions of Contract, and the following information regarding coefficients "does" apply.

The coefficients for adjustment of prices are applicable

- 48.0** The Index I for local currency will be [enter index]. **Not applicable**.

The Index I for the specified international currency will be [enter

index]. **Not applicable.**

The Index I for currencies other than the local currency and the specified international currency will be [enter index]. **Not applicable**

The proportion of payments retained shall be 10% percent.

49.0 The liquidated damages for the whole of the Works is KShs. 100,000 per day.

The maximum amount of liquidated damages for the whole of the Works is 10% percent of the final Contract Price.

50.0 The Bonus for the whole of the Works is **0%** per day. The maximum amount of Bonus for the whole of the Works is 0 % percent of the final Contract Price. **Not applicable.**

51.0 The Advance Payment will be **30%** and will be paid to the Contractor upon completion of 50% of works and after the contractor supplies an advance payment bond from a reputable bank.

The Performance Security shall be for the following minimum amounts equivalent as a percentage of the Contract Price:

(a) Bank Guarantee 10% of contract sum

The standard form(s) of Performance Security acceptable to the Employer shall be “an Unconditional Bank Guarantee,” as preferred by the Employer of the type presented in Section IX of the Bidding Documents.

58.0 The date by which operating and maintenance manuals are required is **one month** after issuance of completion certificate.

The date by which “as built” drawings are required is **one month** after issuance of completion certificate.

The amount to be withheld for failing to produce “as built” drawings and/or operating and maintenance manuals by the date required is Kshs 1,000,000.00

60.0 The percentage to apply to the value of the work not completed, representing the Employer’s additional cost for completing the Works, is 30%

SECTION VI. SPECIFICATIONS

SECTION VII: LIST OF DRAWINGS

SECTION III: BILL OF QUANTITIES

BILL 3 CONSTRUCTION OF 225 CUBIC METRE WATER TANK					
	1: 225M3 STORAGE TANK				
1.1	DESCRIPTION	UNIT	QTY.	RATE	AMOUNT
1.1.1	THE FOLLOWING WORKS IN GROUND MASONRY 225M3 STORAGE TANK INCLUDING SUPPLY OF ALL MATERIALS AND NECESSARY WORKS FOR PLACING, ERECTING, COMPLETION, TESTING AND COMMISSIONING. ALL WORKS PROVISIONAL AND SUBJECT TO RE-MEASUREMENTS				
1.2	Site Clearance				
1.2.1	Clear site of all bushes and shrubs and remove debris from site directed by the Engineer	m2	110		
1.3	Excavation and Earthworks				
1.3.1	Excavate pits for water tank not exceeding 1.5m deep store onsite and backfill with selected material and spread surplus onsite; including all necessary works for side protection and for keeping site free from water, mud and fallen material.	m3	110		
1.3.2	E.O Decomposed rock/ compacted murrum as defined in the specifications.	m3	5		
1.3.3	Extra over for excavations in rock as described and defined in the specifications	m3	10		
1.4	Hardcore Filling				
1.4.1	Lay and compact 200mm thick hand-packed hardcore laid in layers not exceeding 150mm thick	m2	90		
1.5	Mass Concrete Grade 15/20 in:-				
1.5.1	50mm thick blinding to receive base slab and treat surface with 'GLADIATOR' or other equal approved anti-termite treatment.	m3	5		
1.6	Description	Unit	Qty.		
	Vibrated Reinforced Concrete 25/20 as described in:-				
1.6.1	200mm thick floor slab	m3	18		
1.6.2	200mm thick suspended roof slab	m3	18		

CONSTRUCTION OF THIMBIRI WATER PROJECT

1.6.3	Allow for finishing in cement plaster (1:3) on roof slab laid in 2.5% fall	m2	90		
1.6.4	450mm x 200mm beams	m3	2		
1.6.5	diameter 300-mm columns	m3	1		
1.7	Erect and strike sawn Formwork to:-				
1.7.1	Edges of 200mm thick floor slab.	m	35		
1.7.2	Soffit of suspended slab	m2	90		
1.7.3	Edges of suspended roof slab 200mm thick.	m	35		
1.7.4	450 x 200mm beams	m2	22		
1.7.5	300-mm diameter column	m2	2		
1.7.6	Allow for forming 600x600mm opening for access manhole in 200mm thick slab	No.	1		
	Description	Unit	Qty.		
1.8	Steel Reinforcement				
	Supply and fix reinforcement including bending hooks binding wire, cutting, spacers and supporting all in position as described				
	High tensile square twisted bars to B.S.4449				
1.8.1	16mm diameter	Kg	300		
1.8.2	12mm diameter	Kg	1100		
1.8.3	8mm diameter	Kg	200		
1.9	Natural Stone Walling jointed and pointed in Cement Sand Mortar (1:3) Reinforced every Course to engineer's details.				
1.9.1	225mm thick	m2	90		
1.9.2	300mm thick	m2	30		
1.10.0	Plaster				
1.10.1	25mm Thick cement and sand (1:2) plaster to internal wall surface with water proof cement at a ratio 1kg to 50kg cement.	m2	120		
1.10.2	20mm thick cement/ sand 1:3 plastering to external surface of walls.	m2	150		

CONSTRUCTION OF THIMBIRI WATER PROJECT

1.11	Screed				
1.11.1	40mm thick cement and sand (1:3) screed to floor, smooth render laid to falls and brushed with water proof treatment as vandex, master seal, hyseal, or any other equally approved to manufacturers specification.	m2	90		
1.D	Ladder				
1.D.1	2000mm long x 800mm wide mild steel ladder stringers 2.0m x50mm x 10mm flat bar, rings 800 x 200mm x 20mm round bar at 300mm centres externally anchored to wall lugs: one coat red oxide primer: three coats gloss oil finish: all to Engineers' detail.	No	1		
	Description	Unit	Qty.		
1.D.2	2000 long X 800mm width G.I ladder internally anchored to wall lugs: one coat red oxide primer: three coats gloss oil finish: all to Engineers' detail.	No.	1		
1.13	Manhole covers				
1.13.1	Supply and fix steel prefabricated lockable cover 600×600mm complete with frames, steel gauge 16 and as directed by the Engineer.	No.	1		
1.14	Vents				
1.14.1	100-mm vent pipes and fittings to Engineers details	No.	2		
1.15	Sundries				
	Supply and fix galvanized mild steel pipes to BS 1387 Class B with flanged and drilled joints c/w bolts and nuts to BS 143 and 1256 of approved manufactured with galvanized to BS 729.				
1.15.1	150mm diameter tubing	m	6		
1.15.2	150mm diameter tubing in overflow pipe complete with wire gauze	No.	1		
1.15.3	100mm dia scour pipe 4.5m long	No.	1		
	Extra over tubing for the following :-				
1.15.4	150mm diameter bend or elbow	No.	2		
1.15.5	150mm diameter bend or elbow	No.	1		
1.15.6	150mm diameter ball Valve	No.	1		

CONSTRUCTION OF THIMBIRI WATER PROJECT

1.15.7	200X 150mm diameter flanged bell mouth	No.	1		
1.15.8	150mm diameter Cast iron drilled flanged sluice valve complete with Bolts, nuts and gasket	No.	2		
1.15.9	Standard valve chamber	No.	2		
1.16	Testing and Sterilization				
1.16.1	Allow for water tightness test as specified and directed	Item	1		
1.16.	Allow for sterilization of the tank as directed	Item	1		
1.17	provide for supervision	lumpsum			150,000.00
	TOTAL FOR 1 NO. WATER TANK -225M3				
	TOTAL FOR 2 TANKS				

Preamble and Notes to Bills of Quantities

1. These Bills of Quantities form part of the Contract Documents and are to be read in conjunction with Conditions of Contract, Standard and Special Specifications and Drawings.
2. The quantities set forth in the Bills of Quantities represent the character of the work to be carried out. There is no guarantee to the Contractor that he will be required to carry out the quantities of work indicated under any one particular item or group of items in the Bills of Quantities, though on the Contract as the whole quantities are intended to represent the overall value of the work to be carried out.
3. The prices and rates inserted in the Bills of Quantities will be used for valuing the work executed and the Engineer will measure the whole of the works executed in accordance with the Contract.
4. The prices and rates inserted in the Bills of Quantities are to be the full inclusive costs of the works described under the items, complete in place and in accordance with specifications and Drawings including costs and expenses which may be required in and for the construction of the works described, together with any temporary works and installations which may be necessary and all general risks, liabilities and obligations set forth or implied in the Documents on which the Contract is based.
5. The brief description of the items given in the Bills of Quantities are purely for the purpose of the identification and in no way modify or supersede the detailed descriptions given in the Conditions of Contract, Specifications or Drawings. When pricing items, reference is to be made to the Conditions of Contract, Standard Specifications, Drawings and Special Specification for the full directions and description of work and materials.
6. A price or rate is to be inserted, in ink, against each item in the Bills of Quantities whether quantities are stated or not, and if the Tenderer includes the cost of a particular item elsewhere in his rates or prices, he shall insert the work teNir against both the rate and extension of that particular item. Should the Tenderer omit to price an item, then it will be assumed that he has included the cost of item elsewhere in his rates or prices.
7. No alteration shall be made to the Bills of Quantities and no extra item shall be inserted. The Tenderer shall satisfy himself that the Contract Sum arrived at by pricing the quantities am items given in sufficient compensation for constructing and maintaining the whole of the works in accordance with the Contract Documents.
8. For the purpose of payment by Interim Certificate of "Lump Sum" items the Engineer may assess the portion of the work completed of the "Lump Sum" item and allow for payment the portion of the "Lump Sum" he deems fair and reasonable. The total of all portions allowed shall not exceed the "Lump Sum". All interim payment shall be subject to the retention stipulated in the Contract Documents.

9. During construction the unit rate established for an item in one Bills of Quantities may be used as a basis for establishing a unit rate for similar work in another Bill of Quantities, which contains no unit rate for the said item. No additional cost will be considered for such an eventuality
10. The Contractor will be provided by the Employer with all that land occupied by the Permanent Works including the specified working width of pipe laying. The costs of compensation and entry upon land will be paid from the Provisional Sums. All other costs for access to works to be paid by the Contractor.
11. It shall be the responsibility of the Contractor to arrange for the removal of or alteration to existing services where necessitated by the Works. Costs incurred will be paid by the Contractor.
12. Quantities for site clearance, Stripping and spreading shall be based on the horizontal projection of the area cleared or stripped.
13. Disposal of excavated material shall be deemed to be disposed off the site unless otherwise stated in item descriptions.
14. Generally, the excavation items are based on volumes for structures and on linear measurements. The work may be covered by one or more items. The rates shall include as appropriate for:-
 - a) Breaking through surfaces, handling different classes of material separately, excavation beyond the net plans area of the foundations for working space and for battering or timbering etc.
 - b) Timbering,
 - c) Disposal of surplus spoil
 - d) Back filling as specified
 - e) Trimming of exposed excavated surfaces

Measurement of volume of excavation for structures shall be calculated from the plan dimensions of the structure without allowance for working space.

Items are included for "Extra for Rock" on a volume basis. The rates shall include for breaking out and any other additional costs and the items shall apply to work encountered within measured excavation. Different classification may be billed separately. Rock shall be measured as a volume calculated from the thickness encountered within the plan area of a mass excavation, within the plan dimensions of a structure, or within the nominal width of a trench. The decision of the Engineer on the classification of rock encountered shall be final and binding.

Timbering left in excavations shall only be measured for payment where it is specified or ordered by the Engineer.

15. When the site of any particular item of the Works has been sufficiently cleared of trees, undergrowth etc. and before any excavation or filling has been carried out, the Contractor shall carry out a survey under the supervision of the Engineer's

Representative to take, record and agree upon an adequate number of original ground levels. The data so obtained shall be used as a basis for the computation of excavation and filling.

16. The volume of fill will be measured net to the finished levels as shown on the drawings or amended by the Engineer.
17. All reinforcement will be paid for on the basis of its computed weight except for fabric reinforcement which will be paid on the basis of the net area placed. The unit rates inserted in the Bill of Quantities shall include for all necessary cutting, bending and fixing, all additional bars which may be required as spacer supports, and lacing and also for all soft iron tying wires, fixing clips of approved pattern and manufacture and chairs. The cost of all temporary works etc. shall be included in the rates for the reinforcing steel
18. The rates for concrete shall include for making and testing preliminary test cubes, for making works test cubes and forwarding them to the Testing Engineer, forming the concrete to the slopes and falls shown on the Drawings and any additional concrete used in excess of the net requirements. The rates shall also include for forming construction joints, for protection, for the rubbing down of exposed surfaces of concrete after removal of formwork and for floating or brushing of other exposed surfaces where this is required.
19. The rates for precast concrete paving shall include for all cutting, bedding jointing and laying to falls.
20. The rates for precast concrete edging and kerbs shall include for formwork, concrete bed and backing, all cutting, bedding, jointing, hunching and laying to falls.
21. The rates for formwork shall include for fillets and chamfers up to 50mm wide on the splay, coating to prevent adherence of concrete and the provision of temporary openings to facilitate inspection and cleaning. Rates shall also be inclusive of all necessary box outs and cut outs for holes up to 1 square meter.

The rates for forming rebates in concrete walls etc. shall include for forming pockets for the fish tail fixing cleats where required.

Deductions from formwork quantities will be made for openings more than 1 square meter in area.

22. Formwork for upper surfaces inclined at 30 degrees or less to the horizontal is not measured and the cost of any such formwork used will be deemed to be included in the relevant concrete item rate.
23. Wrought formwork where specified will be measure to 150mm below final ground levels.
24. Items required for Structural Joints and Construction Joints shown on drawings shall be paid for as per the rates in the Bills of Quantities; the rate for providing and fix form work not shown in drawings shall be deemed to be included in the unit rates for concrete works.

25. All rates and sums in the Bills of Quantities shall be in Kenya Shillings and Cents.
26. The Tenderer is reminded that all quantities have been measured in Metric Units.
27. Explanation of abbreviations used in the Bills of Quantities is as follows:
- L.S -Lump Sum
 - P.S. - Provisional SumY
 - P.C - Prime Cost
 - E.O. - Extra Over
 - Avg. - AVERAGE
 - Max. - Maximum
 - Min. - Minimum
 - N. e - Not Exceeding
 - nr. - Number
 - mm - Millimeter
 - m - Linear Meter
 - m² - Square Meter
 - m³ - Cubic Meter
 - Ha. - Hectare
 - DRG. - Design Drawing
 - kg- - Kilogramme
 - Dia - Diameter
 - C.I. - Cast Iron
 - uPVC - Unplasticised Polyvinyl
 - Hr. -Hour
 - AB - Ablution Block
28. The rates for metalwork shall include for bolts, nuts, washers and ringbolts, fixing as specified or in accordance with the manufacturer's instructions and rectifying as specified any parts of the painted, coated or galvanized surface that may be damaged either before or after erection.
29. The rates for fixing penstocks and flap valves etc. shall include for bedding and grouting, testing for water tightness, greasing oil working parts and leaving in good working order; where the item includes supply, the rates shall also include for supplying drawings for approval before manufacture is commenced.

Prime Cost Item

30. Attendance on nominated Sub-Contractor shall include for all or any of the following as appropriate- labour, materials and plant required for taking delivery, carting, storing, hoisting and builder's work entailed in fixing, erecting installing as specified or in accordance with the manufacturer's instructions and all overheads and profits.

32. When, in the opinion of the Engineer, it is reasonable to expect the Contractor to price the attendance item it will be so included in the Bills of Quantities. In all other cases it will form the subject of a Provisional Sum to be expended on a Day works basis.
33. Profit shall include for establishment charges, profit and any other costs not included in the attendance item.
35. Definitions of Terms Used in Bill of Quantities
- a) "Provide" - shall mean all costs to cover purchase of materials in good conditions, services for transaction with the supplier, supervision transport to site of works all charges for rental, consumption's overheads and profits throughout the Contract. It shall also include for all maintenance, insurance and handling and storage whenever applicable.
 - b) "Excavate for" - shall mean handling of any material from its incumbent position intended for specified work shown in the drawings or directed by the Engineer and backfilling and compacting part of material after laying of pipes, and cart away remaining to tips to be provided by the Contract. The cost of this work shall include all survey, supervision, labour, and tools machinery, protection of work, pumping, insurance and overheads and profits.
 - c) "Laying" - shall cover all work necessary for placing an object or material to true line and level specified in a drawing or as directed by the Engineer.
 - d) "Jointing" - shall mean process of fixing specified material, pipes, fittings and specials together using appropriate tools, materials labour and machinery. It should cover all work necessary to provide matching of opposite parts in size, shape and position indicated and clamps seating and holders to hold firmly.
 - e) "Testing" - shall mean provision of all materials apparatus, labour machinery, charges for the media or chemical to be used and their transport, repair or objects to be tested if required, re-testing, excavation of any part for visual inspection, erection of any type at all until the object has been certified as having passed the required test satisfactorily.
 - f) "Install" - shall include for all work requirements stipulated for "laying and joining"
36. Provisional sums have been included in the BOQ for cost of obtaining intake works permit from WRMA, organisations as per regulations currently in force

BILL OF QUANTITIES

SECTION IX. SECURITY FORMS

Notes on Forms of Securities

Samples of acceptable forms of Bid, Performance, and Advance Payment Securities are annexed.⁶ Bidders should not complete the Performance and Advance Payment Security forms at this time. Only the successful Bidder will be required to provide Performance and Advance Payment Securities in accordance with one of the forms or in a similar form acceptable to the Employer.

Annex A Form: Bid Security (Bank Guarantee)

Whereas, [name of Bidder] (hereinafter called “the Bidder”) has submitted his Bid dated[date] for the construction of **construction of thimbiri water project** (hereinafter called “the Bid”).

Know all people by these presents that We [name of Bank] of..... [name of country] having our registered office at..... [address] (hereinafter called “the Bank”) are bound unto name of Employer] (hereinafter called “the Employer”) in the sum of [amount]⁷ for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors, and assigns by these presents.

Sealed with the Common Seal of the said Bank this..... [day] day of [month],[year].

The conditions of this obligation are:

- (1) If, after Bid opening, the Bidder withdraws his Bid during the period of Bid validity specified in the Form of Bid; or
- (2) If the Bidder having been notified of the acceptance of his Bid by the Employer during the period of Bid validity:
 - (a) fails or refuses to execute the Form of Agreement in accordance with the Instructions to Bidders, if required; or
 - (b) fails or refuses to furnish the Performance Security, in accordance with the Instruction to Bidders; or
 - (c) does not accept the correction of the Bid Price pursuant to Clause 27,

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

This Guarantee will remain in force up to and including the date [number] days⁸ after the deadline for submission of bids as such deadline is stated in the Instructions to Bidders or as it may be extended by the Employer, notice of which extension(s) to the Bank is hereby waived. Any demand in respect of this Guarantee should reach the Bank not later than the above date.

Date _____ Signature of the Bank _____

Witness _____ Seal _____

[signature, name, and address]

Annex B Form (Alternative 1): Performance Bank Guarantee (Conditional)

This form of Performance Guarantee is conditional⁹ in that the required conditions of default are not met until an agreement has been reached on the amount of damages payable, or until an award has been made under the applicable settlement of disputes procedures.

This Agreement is made on the..... [day] day of..... [month],..... [year] between..... [name of Bank] of[address of Bank] (hereinafter called “the Guarantor”) of the one part and **county government of meru** (hereinafter called “the Employer”) of the other part.

Whereas

- (1) This Agreement is supplemental to a contract (hereinafter called the Contract) made between [name of Contractor] of[address of Contractor] (hereinafter called the Contractor) of the one part and the Employer of the other part whereby the Contractor agreed and undertook to execute the Works of **construction of thimbiri water project** for the sum of being the Contract Price; and
- (2) The Guarantor has agreed to guarantee the due performance of the Contract in the manner hereinafter appearing.

Now therefore the Guarantor hereby agrees with the Employer that upon receipt of

- (1) a written notice to the Guarantor from the Contractor, or
- (2) a written notice to the Guarantor from the Adjudicator, or
- (3) a binding arbitration or Court award confirming that the amount of the Guarantee is payable to the Employer,

the Guarantor will indemnify and pay the Employer the sum of[amount of Guarantee][amount in words],¹⁰ such sum being payable in the types and proportions of currencies in which the Contract Price is payable, provided that the Employer or his authorized representative has notified the Guarantor to that effect and has made a claim against the Guarantor not later than the date of issue of the Defects Liability Certificate.

The Guarantor shall not be discharged or released from his Guarantee by an arrangement between the Contractor and the Employer, with or without the consent of the Guarantor, or by any alteration in the obligations undertaken by the Contractor, or by any forbearance on the part of the Contractor, whether as to the payment, time, performance or otherwise, and any notice to the Guarantor of any such arrangement, alteration, or forbearance is hereby expressly waived.

Given under our hand on the date first mentioned above.

Signed by _____
for and on behalf of the Guarantor in the presence of _____

Signed by _____
for and on behalf of the Employer in the presence of _____

Annex B Form (Alternative 2): Performance Bank Guarantee (Unconditional)

The Unconditional (or “On-Demand”) Bank Guarantee has the merit of simplicity and of being universally known and accepted by commercial banks.

To:
The county secretary
County government of meru
P.O BOX 120-60200
Meru

Whereas[name and address of Contractor] (hereinafter called “the Contractor”) has undertaken, in pursuance of Contract No.[number] dated[date] to execute **construction of thimbiri water project** (hereinafter called “the Contract”);

And whereas it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a recognized bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

And whereas we have agreed to give the Contractor such a Bank Guarantee;

Now therefore we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of[amount of Guarantee] [amount in words],¹¹ such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of..... [amount of Guarantee]¹² as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Contractor before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed thereunder or of any of the Contract documents which may be made between you and the Contractor 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 be valid until a date 28 days from the date of issue of the Certificate of Completion.

Signature and seal of the Guarantor _____

Name of Bank _____

Address

Date

Annex B Form (Alternative 3): Performance Bond

This form of Bond corresponds to the U.S. practice, and should not be interpreted in the context of a “Bond” as known in other countries. As with the Conditional Bank Guarantee, the wording of some bonds may be such that an award under legal proceedings is needed to trigger action by the Surety.

By this Bond,[name and address of Contractor] as Principal (hereinafter called “the Contractor”) and[name, legal title, and address of surety, bonding company, or insurance company] as Surety (hereinafter called “the Surety”), are held and firmly bound unto **county government of meru**, [name and address of Employer] as Obligee (hereinafter called “the Employer”) in the amount of [amount of Bond] [amount of Bond in words],¹³ for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas the Contractor has entered into a Contract with the Employer dated¹⁴ the..... day of[month],[year] execute **construction of thimbiri water project** in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

Now, therefore, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Employer to be, in default under the Contract, the Employer having performed the Employer’s obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- (1) complete the Contract in accordance with its terms and conditions; or
 - (2) obtain a Bid or bids from qualified bidders for submission to the Employer for completing the Contract in accordance with its terms and conditions, and upon determination by the Employer and the Surety of the lowest responsive Bidder, arrange for a Contract between such Bidder and Employer and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term “Balance of the Contract Price,” as used in this paragraph, shall mean the total amount payable by the Employer to the Contractor under the Contract, less the amount properly paid by the Employer to the Contractor; or
 - (3) pay the Employer the amount required by the Employer to complete the Contract
-

in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

Any suit under this Bond must be instituted before the expiration of one year from the date of issuance of the Certificate of Completion.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Employer named herein or the heirs, executors, administrators, successors, and assigns of the Employer.

In testimony whereof, the Contractor has hereunto set its hand and affixed its seal, and the Surety has caused these presents to be sealed with its corporate seal duly attested by the signature of its legal representative, this..... day of..... [month],..... [year].

Signed by _____
on behalf of..... [name of Contractor]
in the capacity of _____
In the presence of _____
Date _____

Signed by _____
on behalf of..... [name of Contractor] in the capacity of _____
In the presence of _____
Date _____

Annex C Form: Bank Guarantee for Advance Payment

To:
The county secretary
County government of meru
P.O BOX 120-60200
Meru

execute **construction of thimbiri water project** Gentlemen:

In accordance with the provisions of the Conditions of Contract, Clause 51 (“Advance Payment”) of the above-mentioned Contract,..... [name and address of Contractor] (hereinafter called “the Contractor”) shall deposit with **county government of meru** a Bank Guarantee to guarantee his proper and faithful performance under the said Clause of the Contract in an amount of..... [amount of Guarantee in words].¹⁵

We, the has instructed by the Contractor, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to **county government of meru** on his first demand without whatsoever right of objection on our part and without his first claim to the Contractor, in the amount not exceeding[amount of Guarantee] [amount in words].¹⁶

We further agree that no change or addition to or other modification of the terms of the Contract or of Works to be performed thereunder or of any of the Contract documents which may be made between **county government of meru** the Contractor, shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition, or modification.

This Guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until **county government of meru** receives full repayment of the same amount from the Contractor.

Yours truly,

Signature and seal: ____

Name of Bank/Financial Institution: _

Address: _____

Date: _____
