



**TENDER NO. TCML/MGD/WS/2019/03**

**TENDER FOR THE PROPOSED  
CONSTRUCTION AND INSTALLATION OF FIRE  
TANK AND HYDRANTS**

**Volume 1**

**Bidding Procedures  
Works Requirements  
Condition of Contract & Contract Forms**

**JUNE, 2019**

CLIENT:  
TATA CHEMICALS MAGADI  
LIMITED  
P.O. BOX 1-00205  
MAGADI

THE HEAD OF PROCUREMENT  
TATA CHEMICALS MAGADI LTD.  
P.O. BOX 1-00205  
NAIROBI

  
**TATA**  
**TATA CHEMICALS MAGADI**

## INVITATION FOR BIDS



Contract Name, **CONSTRUCTION AND INSTALLATION OF FIRE TANK AND HYDRANTS**

**Contract No. TCML/MGD/WS/2019/03**

Tata Chemical Magadi, now invite sealed bids from eligible Contractors for the construction and installation of Fire tank and hydrants.

The scope of works include:

- Construction of high level 20 m<sup>3</sup> pressed steel tank, on a 10 m high steel tank.
- Laying of 100 mm diameter connection pipeline and pipe network to hydrants locations.
- Installation of hydrants

The construction period is 6 Months

A mandatory pre-bid site visit shall be held **on 21<sup>st</sup> June 2019 at Magadi Offices starting from 10 AM.**

Interested eligible bidders may obtain set of bidding document from the Tata Chemical Magadi website, or through the .link below;

**<http://www.tatachemicals.com/operations/magadi/About-us/Tender>**.

All Bids must meet the following minimum qualification:

- Successful experience as contractor in the execution of at least three projects of a nature and complexity comparable to the proposed contract within the last five years: this experience should include construction of high level tank and installation of at least 5Km of pressure pipeline.

Bid must be submitted to the address below on or before **5 pm East African Time on 28<sup>th</sup> June 2019**. At our **TATA Nairobi Collection centre**, Avon House, Enterprise Road in Nairobi Industrial Area or dropped at our tender box in Lake Magadi Main Reception Area.

The package should be clearly marked **CONSTRUCTION AND INSTALLATION OF FIRE TANK AND HYDRANT**. Contract No. **TCML/MGD/WS/2019/03**.

Electronic bids are not permitted.

Bidders must submit the Technical and the Financial proposals separately, as described below.

**A TECHNICAL PROPOSAL**

Two (2) copies in sealed envelopes clearly marked **“TECHNICAL PROPOSAL FOR TENDER NO: TCML/MGD/WS/2019/03-Tender for CONSTRUCTION AND INSTALLATION OF FIRE TANK AND HYDRANTS”** One copy marked as **“ORIGINAL”** and One other copy marked as **“COPY”**. All to be finally put in one sealed envelope. (The bidder will ensure that there is no reference at all on their financial proposal within the technical proposal envelope)

**B FINANCIAL PROPOSAL**

Two (2) copies in sealed envelopes clearly marked **“FINANCIAL PROPOSAL FOR TENDER NO: TCML/MGD/WS/2019/03-Tender for CONSTRUCTION AND INSTALLATION OF FIRE TANK AND HYDRANTS”** One copy marked as **“ORIGINAL”** and One other copy marked as **“COPY”**. All to be finally put in one sealed envelope. (The financial proposal shall include all taxes applicable)

**Head of Procurement,  
Tata Chemical Magadi Ltd,  
P.O. Box 1 - 00205,  
Magadi, Kenya.  
Telephone +254-20-6999000/290/287  
Email: [procurement-magadi@tatachemicals.com](mailto:procurement-magadi@tatachemicals.com)**

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# **PART 1 – BIDDING PROCEDURES**

# Section I. Instructions to Bidders

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## Section I. Instructions to Bidders

In submitting its bid, the Bidder accepts in full and without restriction these Instructions to Bidders and the Special and General conditions of Contract as the sole basis of this bidding procedure, whatever its own conditions of sale may be, which it hereby waives. Bidders are expected to examine carefully and comply with all instructions, forms, and Contract provisions contained in these Bidding Documents. Failure to submit a bid containing all the required information and documentation within the deadline specified will lead to the rejection of the bid. No account can be taken of any reservation in the bid regarding the Bidding Documents; any reservation will result in the immediate rejection of the bid without further evaluation.

### A. General

- 1. Scope of Bid**
  - 1.1 In connection with the Invitation for Bids indicated in the **Bid Data Sheet (BDS), Tata Chemicals Magadi Limited (herein after refer to as Employer)**, issues these Bidding Documents for the procurement of Works as specified in Section VI, Works Requirements. The name, identification, and number of lots (contracts) of the Competitive Bidding are provided in the BDS.
  - 1.2 Throughout these Bidding Documents:
    - i. the term “in writing” means communicated in written form and delivered against receipt;
    - ii. except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and
    - iii. “day” means calendar day.
- 2. Funding**
  - 2.1 All payments relevant to the Contract will be made according to what is stipulated in General Conditions of Contract, Clause 11.
- 3. Corrupt Practices**
  - 3.1 It is the Employer’s policy to require bidders/ suppliers/ contractors/ concessionaires under Employer-financed projects, programmes and studies, to observe the highest standards of ethics during the procurement and the execution of contracts under such projects, programmes and studies.
- 4. Eligible Bidders**
  - 4.1 A Bidder may be private entity, government-owned entity or any combination of such entities supported by a letter of intent to enter into an agreement or under an existing agreement in the form of a joint venture, consortium, or association (JVCA). In the case of a joint venture, consortium, or association:
    - (a) unless otherwise specified in the BDS, all partners shall be jointly and severally liable, and
    - (b) the JVCA shall nominate a Representative who shall have the authority to conduct all business for and on



behalf of any and all the partners of the JVCA during the bidding process and, in the event the JVCA is awarded the Contract, during contract execution.

- 4.2 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:
- (a) they have controlling partners in common; or
  - (b) they receive or have received any direct or indirect subsidy from any of them; or
  - (c) they have the same legal representative for purposes of this bid; or
  - (d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder, or influence the decisions of the Purchaser regarding this bidding process; or
  - (e) a Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which the party is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or
  - (f) a Bidder participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the bid;
  - (g) a Bidder was affiliated with a firm or entity that has been hired (or is proposed to be hired) by the Employer as Engineer for the contract.
- 4.3 They are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations
- 4.4 Bidders shall provide such evidence of their continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.

## **B. Contents of Bidding Document**

### **5. Sections of Bidding Document**

- 5.1 The Bidding Documents consist of Parts 1, 2, and 3, which include all the Sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITB 7.

#### **PART 1 Bidding Procedures**

- Section I. Instructions to Bidders (ITB)
- Section II. Bid Data Sheet (BDS)
- Section III. Evaluation Criteria and Qualification Criteria
- Section IV. Bidding Forms

## **PART 2 Works Requirements**

- Section V. Works Requirements

## **PART 3 Conditions of Contract and Contract Forms**

- Section VI. General Conditions (GC)
- Section VII. Particular Conditions (PC)
- Section VIII. Annex to the Particular Conditions - Contract Forms

- 5.2 The Invitation for Bids issued by the Employer is not part of the Bidding Document.
- 5.3 The Employer is not responsible for the completeness of the Bidding Documents and their addenda, if they were not obtained directly from the source stated by the Employer in the Invitation for Bids.
- 5.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Document. Failure to furnish all information or documentation required by the Bidding Documents may result in the rejection of the bid.

### **6. Clarification of Bidding Document, Site Visit, Pre-Bid Meeting**

- 6.1 A prospective Bidder requiring any clarification of the Bidding Document shall contact the Employer in writing at the Employer's address **indicated in the BDS** or raise his enquiries during the pre-bid meeting if provided for in accordance with ITB 6.4. The Employer will respond in writing to any request for clarification, provided that such request is received not later than a week/ seven (7) days prior to the deadline for submission of bids. The Employer shall forward copies of its response to all Bidders who have acquired the Bidding Document in accordance with ITB 5.3, including a description of the inquiry but without identifying its source. Should the Employer deem it necessary to amend the Bidding Document as a result of a request for clarification, it shall do so following the procedure under ITB 7 and ITB 23.2.
- 6.2 The Bidder is advised to visit and examine the Site of Works and its surroundings and obtain for itself on its own responsibility 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.
- 6.3 The Bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel,

and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.

- 6.4 The Bidder's designated representative is invited to attend a pre-bid meeting, **if provided for in the BDS**. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 6.5 Minutes of the pre-bid meeting, including the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have attended a pre-bid site visit, if so provided in accordance to ITB 6.4 or acquired the Bidding Documents in accordance with ITB 5.3, if the pre-bid site visit is not provided. Any modification to the Bidding Documents that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an Addendum pursuant to ITB 7 and not through the minutes of the pre-bid meeting.

#### 7. Amendment of Bidding Document

- 7.1 At any time prior to the deadline for submission of bids, the Employer may amend the Bidding Documents by issuing addenda.
- 7.2 Any addendum issued shall be part of the Bidding Documents and shall be communicated in writing to all who have obtained the Bidding Document from the Employer in accordance with ITB 5.3.
- 7.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB 21.2

### C. Preparation of Bids

#### 8. Cost of Bidding

- 8.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

#### 9. Language of Bid

- 9.1 The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Employer, shall be written in the **English** language.

#### 10. Documents Comprising the Bid

- 10.1 The Bid shall comprise the following:

##### A. Technical Proposal

- Statutory Documents
- written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 19.2;

- Documentary evidence in accordance with ITB 15 establishing the Bidder's qualifications to perform the contract if its Bid is accepted;
- Bid Security, in accordance with ITB 18;
- Any other document required in the BDS.

## **B. Financial Proposal**

- Letter of Bid, in accordance with ITB 11.
- Completed schedules as required, including priced Bill of Quantities, in accordance with ITB 11 and 13;
- alternative bids, if permissible, in accordance with ITB 14;

10.2 In addition to the requirements under ITB 11.1, bids submitted by a JVCA shall include a copy of the Joint Venture Agreement entered into by all partners. Alternatively, a Letter of Intent to execute a Joint Venture Agreement in the event of a successful bid shall be signed by all partners and submitted with the bid, together with a copy of the proposed agreement.

### **11. Letter of Bid, and Bills of Quantities**

11.1 The Letter of Bid and Bills of Quantities, shall be prepared using the relevant forms furnished in Section IV, Bidding Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.

### **12. Alternative Bids**

12.1 **Unless otherwise indicated in the BDS**, alternative bids shall not be considered.

12.2 When alternative times for completion are explicitly invited, a statement to that effect **will be included in the BDS**, as will the method of evaluating different times for completion.

12.3 Except as provided under ITB 12.4 below, Bidders wishing to offer technical alternatives to the requirements of the bidding document must first price the Employer's design as described in the bidding document and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology 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.

- 12.4 **When specified in the BDS**, Bidders are permitted to submit alternative technical solutions for specified parts of the Works, and such parts **will be identified in the BDS**, as will the method for their evaluating, and described in Section VI, Work's Requirements.
- 13. Bid Prices and Discounts**
- 13.1 The prices and discounts quoted by the Bidder in the Letter of Bid and in the Bill of Quantities shall conform to the requirements specified below.
- 13.2 The Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against 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 rates for other items and prices in the Bill of Quantities.
- 13.3 The price to be quoted in the Letter of Bid, in accordance with ITB 12.1, shall be the total price of the Bid, excluding any discounts offered.
- 13.4 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 and prices and the total Bid Price submitted by the Bidder.
- 14. Currencies of Bid and Payment**
- 14.1 The currency(cies) of the bid shall be, **Kenyan Shillings**
- 15. Documents Comprising the Technical Proposal**
- 15.1 The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section IV, in sufficient detail to demonstrate the adequacy of the Bidders' proposal to meet the work requirements and the completion time.
- 16. Documents Establishing the Qualifications of the Bidder**
- 16.1 To establish its qualifications to perform the Contract in accordance with Section III, Evaluation and Qualification Criteria, the Bidder shall provide the information requested in the corresponding information sheets included in Section IV, Bidding Forms.
- 17. Period of Validity of Bids**
- 17.1 Bids shall remain valid for the period **specified in the BDS** after the bid submission deadline date prescribed by the Employer. A bid valid for a shorter period shall be rejected by the Employer as non responsive.
- 17.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Employer may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a bid security is requested in accordance with ITB 18, it shall also be extended for twenty-eight (28) days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid, except as provided in ITB 17.3.

- 17.3 In the case of fixed price contracts, if the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial bid validity, the Contract price shall be adjusted by a factor specified in the request for extension. Bid evaluation shall be based on the Bid Price without taking into consideration the above correction.

## 18. Bid Security

- 18.1 **Unless otherwise specified in the BDS**, the Bidder shall furnish as part of its bid, a bid security in original form and in the amount and currency **specified in the BDS**.

- 18.2 The bid security shall be a demand guarantee at the Bidder's option, in any of the following forms:

- (a) an unconditional bank guarantee;
- (b) an irrevocable letter of credit;
- (c) a cashier's or certified check; or
- (d) another security indicated in the BDS,

from a reputable source. The bid security shall be submitted either using the Bid Security Form included in Section IV, Bidding Forms, in the case of a bank guarantee, or in another substantially similar format approved by the Employer prior to bid submission. In either case, the form must include the complete name of the Bidder. The bid security shall be valid for twenty-eight (28) days beyond the original validity period of the bid, or beyond any period of extension if requested under ITB 17.2.

- 18.3 Any bid not accompanied by an enforceable and compliant bid security, if one is required in accordance with ITB 18.1, shall be rejected by the Employer as non responsive.

- 18.4 The bid security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's furnishing of the performance security pursuant to ITB 39.

- 18.5 The bid security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required performance security.

- 18.6 The bid security may be forfeited:

- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid Form, except as provided in ITB 17.2 or
- (b) if the successful Bidder fails to:
  - (i) sign the Contract in accordance with ITB 35; or
  - (ii) furnish a performance security in accordance with ITB 36.

- 18.7 The bid security of a JVCA shall be in the name of the JVCA that submits the bid. If the JVCA has not been legally constituted at the time of bidding, the Bid Security shall be in the names of all future partners as named in the letter of intent referred to in ITB 4.1.

**19. Format and  
Signing of Bid**

- 19.1 The Bidder shall prepare one original of the documents comprising the Technical bid and Financial bid, and clearly mark them as "ORIGINAL." Alternative bids, if permitted in accordance with ITB 13, shall be clearly marked "ALTERNATIVE." In addition, the Bidder shall submit copies of the bid, in the number **specified in the BDS** and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.
- 19.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation **as specified in the BDS** and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the bid where entries or amendments have been made shall be signed or initialed by the person signing the bid.
- 19.3 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the bid.

**D. Submission and Opening of Bids**

**20. Sealing and  
Marking of Bids**

- 20.1 The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked "TECHNICAL PROPOSAL," and the original and all copies of the Financial Proposal in another sealed envelope clearly marked "FINANCIAL PROPOSAL" and warning: "DO NOT OPEN WITH THE TECHNICAL PROPOSAL". Both envelopes shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address and other information **indicated in the BDS**. The same will be done for alternative bids, if permitted in accordance with ITB 13, in separate sealed envelopes.
- 20.2 The inner and outer envelopes shall:
- (a) bear the name and address of the Bidder;
  - (b) be addressed to the Employer in accordance with ITB 21.1;
  - (c) bear the specific identification of this bidding process indicated in the BDS 1.1;
- 20.3 If all envelopes are not sealed and marked as required, the Employer will assume no responsibility for the misplacement or premature opening of the bid.

**21. Deadline for Submission of Bids**

21.1 Bids must be received by the Employer at the address and not later than the date and time **indicated in the BDS**.

21.2 The Employer may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Document in accordance with ITB 8, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

**22. Late Bids**

22.1 The Employer shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB 21. Any bid received by the Employer after the deadline for submission of bids shall be declared late, hence rejected.

**23. Withdrawal, Substitution, and Modification of Bids**

23.1 A Bidder may withdraw, substitute, or modify its bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 19.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:

(a) prepared and submitted in accordance with ITB 19 and ITB 21 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," "MODIFICATION;" and

(b) received by the Employer prior to the deadline prescribed for submission of bids, in accordance with ITB 21.

23.2 Bids requested to be withdrawn in accordance with ITB 23.1 shall be returned unopened to the Bidders.

23.3 No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Letter of Bid Form or any extension thereof.

**24. Bid Opening**

24.1 The Employer shall open the bids at his convineice without the presence of the bidders.

**E. Evaluation and Comparison of Bids****25. Confidentiality**

25.1 Information relating to the evaluation of bids and recommendation of contract award shall not be disclosed to Bidders or any other persons not officially concerned with such process until information on Contract award is communicated.

25.2 Any attempt by a Bidder to influence the Employer in the evaluation of the bids or Contract award decisions may result in the rejection of its bid.



- 25.3 Notwithstanding ITB 25.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the bidding process, it may do so in writing.
- 26. Clarification of Bids**
- 26.1 To assist in the examination, evaluation, and comparison of the bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its bid. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer's request for clarification and the response shall be in writing. No change in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids, in accordance with ITB 31.
- 26.2 If a Bidder does not provide clarifications of its bid by the date and time set by employer, its bid may be rejected.
- 27. Determination of Responsiveness**
- 27.1 The Employer's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB 11.
- 28. Correction of Arithmetical Errors**
- 28.1 Provided that the bid is substantially responsive, the Employer shall correct arithmetical errors on the following basis:
- (a) if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;
  - (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
  - (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.
- 28.2 If the Bidder that submitted the lowest evaluated bid does not accept the correction of errors, its bid shall be disqualified.
- 29. Evaluation of Bids**
- 29.1 The Employer shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.
- 29.2 To evaluate a bid, the Employer shall consider the following:

**Technical bids**

- (a) The evaluation factors indicated in Section III, Technical Evaluation and Qualification Criteria;

**Financial bids**

- (a) the bid price, excluding Provisional Sums and the provision, if any, for contingencies in the Summary Bill of Quantities, but including Daywork items, where priced competitively;
- (b) price adjustment for correction of arithmetic errors in accordance with ITB 28.1;

29.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation.

29.4 If these Bidding Documents allows Bidders to quote separate prices for different lots (contracts), and the award to a single Bidder of multiple lots (contracts), the methodology to determine the lowest evaluated price of the lot (contract) combinations, including any discounts offered in the Letter of Bid Form, is specified in Section III, Evaluation and Qualification Criteria.

**30. Comparison of Bids**

30.1 The Employer shall compare all substantially responsive bids to determine the lowest evaluated bid, in accordance with ITB 29.

**31. Qualification of the Bidder**

31.1 The Employer shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

31.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 16.1.

31.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Employer shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's qualifications to perform satisfactorily.

**32. Employer's Right to Accept Any Bid, and to Reject Any or All Bids**

32.1 The Employer reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all bids submitted and specifically, bid securities, if requested, shall be promptly returned to the Bidders.

**F. Award of Contract****33. Award Criteria**

33.1 The Employer shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated

financial bid and is substantially responsive to the technical Bids, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

**34. Notification of Award**

34.1 Prior to the expiration of the period of bid validity, the Employer shall notify the successful Bidder, in writing, that its bid has been accepted. The notification letter shall specify the sum that the Employer will pay the Contractor in consideration of the execution and completion of the Works (hereinafter and in the Conditions of Contract and Contract Forms called "the Contract Price") and the requirement for the Contractor to remedy any defects therein as prescribed by the Contract.

34.2 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.

**35. Signing of Contract**

35.1 Promptly after notification, the Employer shall send the successful Bidder the Contract Agreement.

35.2 Within seven (7) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Employer.

**36. Performance Security**

36.1 Within fourteen (14) days of the receipt of notification of award from the Employer, the successful Bidder shall furnish the performance security in accordance with the conditions of contract, using for that purpose the Performance Security Form included in Section IX, Annex to the Particular Conditions - Contract Forms, or another form acceptable to the Employer. If the performance security furnished by the successful Bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Bidder to be acceptable to the Employer.

36.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security. In that event the Employer may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily.

## Section II. Bid Data Sheet

<b>A. Introduction</b>	
<b>ITB 1.1</b>	The Employer is: <b><u>Tata Chemical Magadi Limited</u></b>
<b>ITB 1.1</b>	The name of the Project is: _____ The identification number of the Project is: _____
<b>ITB 4.1</b>	All partners shall be jointly and severally liable.
<b>B. Bidding Document</b>	
<b>ITB 6.1</b>	For <b><u>clarification purposes</u></b> only, the Employer's address is: Attention: <u>Head of Procurement,</u> <u>Tata Chemicals Magadi Limited</u> Address: <u>P.O Box 1 - 00205</u> City: <u>Magadi</u> Country: <u>Kenya</u> Telephone: <u>+245 20 6999000/290/287</u> Email: <u>procurement-magadi@tatachemicals.com</u>
<b>ITB 6.4</b>	A Mandatory Pre-Bid site visit and meeting will take place, commencing at <b>10:00 Am on 21<sup>st</sup> June 2019 at Magadi</b>
<b>C. Preparation of Bids</b>	
<b>ITB 10.1</b>	No other documents are required.
<b>ITB 12.1</b>	Alternative bids shall not be considered.
<b>ITB 12.2</b>	No alternative times for completion are invited.
<b>ITB 12.4</b>	No alternative technical solutions are invited.
<b>ITB 17.1</b>	The bid validity period shall be <u>60 days</u> .
<b>ITB 18.1</b>	A bid security <u>shall NOT be</u> required.
<b>ITB 18.2 (d)</b>	Other types of acceptable securities: <u>none</u>
<b>ITB 19.1</b>	In addition to the original of the bid, the number of copies is: <u>One</u>
<b>ITB 19.2</b>	The written confirmation of authorization to sign on behalf of the Bidder shall consist of: <b>Power of Attorney</b>
<b>D. Submission and Opening of Bids</b>	
<b>ITB 20.1</b>	For <b><u>bid submission purposes</u></b> only, the Employer's address is: Attention: <u>The head of procurement,</u> <u>Tata Chemical Magadi</u> Street Address: <u>P.O Box 1 - 00205</u> City: <u>Magadi</u> Country: <u>Kenya</u> Bids to be submitted at TATA Nairobi Collection centre, Avon House, Enterprise Road in Nairobi Industrial Area or dropped at our tender box in Lake Magadi Main Reception Area

	<p><b>The deadline for bid submission is: 28<sup>th</sup> June 2019. at 17.00 hours local time</b></p> <p>Bidders <u>do not</u> have the option of submitting their bids electronically.</p>
--	--

## **Section III. Evaluation and Qualification Criteria (*Following Prequalification*)**

This Section contains all the criteria that the Employer shall use to evaluate bids and qualify Bidders. In accordance with ITB 31, no other factors, methods or criteria shall be used. The Bidder shall provide all the information requested in the forms included in Section IV, Bidding Forms.

## 1. Asseement of essential Capability

The contractor should meet the following mandatory requirements

### 1.1 Mandatory Requirement

- 1.1.1 Firm registration certificate
- 1.1.2 . KRA Pin
- 1.1.3. Tax compliance certificate
- 1.1.4 Registration of business name
- 1.1.5 Signed Declaration/letter of attoney

Successful experience as contractor in the execution of at least three projects of a nature and complexity comparable to the proposed contract within the last five years: this experience should include construction of high level tank and installation of at least 5 Km of pressure pipeline

### 1.2 Demostration of Financial soundness

- 1.2.1 Audited financial statement for the last three years with an average annual turnover of more than 5 Million.

## 2. Detailed Assessment

### 2.1 Experience

- 2.1.1 General Construction Experience  
(Total 30 Marks, 6 Marks each)  
**At least 5 successful completed projects of KES 5 million in the last 5 years**

- 2.1.2 Specific Construction Experience  
(Total 30 Marks, 15 Marks each)  
**At least 2 successful completed project of similar scope and size**

### 2.2 Personnel

(Total 20 Marks, 5 marks for each)

The Bidder must propose qualified personnel for the key positions, which will be assigned by the Contractor to implement the works, that meet the following requirements:

Position	Experience in Years	
	Total	Similar works
Project Manager (Bsc Civil/Water Engineering, Registered with EBK)	10	7
Site Agent (Diploma in Civil/Water Engineering)	8	5

Site Surveyor	8	5
Foreman (pipe works) (Certificate in plumbing or similar)	8	5

The Bidder shall provide details of the proposed personnel and their experience records in the relevant Information Forms included in Section IV, Bidding Forms and certified copies of their certificates.

### 2.3 Equipment

*(Total 20 Marks, 4 marks for each)*

The Bidder must demonstrate that it has the key equipment listed hereafter:

Equipment type and characteristics	Minimum number required
5 ton lorry	1
Concrete Mixer, capacity 0.35 m <sup>3</sup>	1
Poker vibrator 12 to 25mm dia.	1
Pipe testing equipment	1
Jack Hammer	

The Bidder shall provide further details of proposed items of equipment using the relevant Form in Section IV, Bidding Forms and include documented evidence.



## Section IV. Bidding Forms

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## Letter of Bid

NAME OF CONTRACT: **CONSTRUCTION AND INSTALLATION FIRE TANK AND HYDRANTS**

To: **THE HEAD OF PROCUREMENT,  
TATA CHEMICALS MAGADI LTD.,  
P. O. BOX 1-00205,  
MAGADI**

1. Having examined the Terms and Conditions of Contract, the Specifications and the Bills of Quantities attached for the provision/execution of the above-named service/work, we, the undersigned, offer to enter into a contract to provide and execute fully such Services/work and remedy any defects therein in full conformity with the Conditions of Contract.
2. We undertake, if our Tender is accepted, to commence the Works within seven (7) days of receipt of the order to commence and to complete and deliver the whole of the works within **Six (6) Months (contract period)**.
3. We agree to abide by this Tender for a period of sixty (60) days from the date set for submission of the Tender and it will remain binding upon us and may be accepted at any time before the expiry of that period.
4. We acknowledge that this document is complete in every respect for the purposes of setting rates.
5. We undertake to provide within seven (7) days of the acceptance of our tender and before signing of the Contract Agreement **a third party insurance** (See Conditions of Contract Clause 14) covering all the works including the work force and to be approved by the Employer.
6. We further agree that until and unless a formal Contract Agreement is executed, this Tender, together with your Purchase Order (PO) thereof, shall constitute a binding contract between us
7. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this ..... day of .....

Signature ..... in the capacity of

.....

duly authorized to sign tenders for and on behalf of

.....

.....

(NAME OF BIDDER IN BLOCK LETTERS)

Address .....

.....

Witness .....

Signature

.....

Address .....

.....

## **Bill of Quantities**

**Contained in separate Volume 3**

## **Technical Proposal**

- **Site Organization**
- **Method Statement**
- **Mobilization Schedule**
- **Construction Schedule**
- **Equipment**
- **Personnel**
- **Others**

## **Site Organization**

## **Method Statement**

## **Mobilization Schedule**



## **Construction Schedule**

## Equipment

### Form EQU

The Bidder shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III, Evaluation and Qualification Criteria. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Bidder.

Item of equipment		
Equipment information	Name of manufacturer	Model and power rating
	Capacity	Year of manufacture
Current status	Current location	
	Details of current commitments	
Source	Indicate source of the equipment <input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Leased <input type="checkbox"/> Specially manufactured	

Omit the following information for equipment owned by the Bidder.

Owner	Name of owner	
	Address of owner	
	Telephone	Contact name and title
	Fax	Telex
Agreements	Details of rental / lease / manufacture agreements specific to the project	

# Personnel

## Form PER -1

### Proposed Personnel

Bidders should provide the names of suitably qualified personnel to meet the specified requirements stated in Section III. The data on their experience should be supplied using the Form below for each candidate.

1.	Title of position*
	Name
2.	Title of position*
	Name
3.	Title of position*
	Name
4.	Title of position*
	Name
5.	Title of position*
	Name

\*As listed in Section III.

**Form PER-2****Resume of Proposed Personnel**

<b>Name of Bidder</b>
-----------------------

<b>Position</b>		
<b>Personnel information</b>	<b>Name</b>	<b>Date of birth</b>
	<b>Professional qualifications</b>	
<b>Present employment</b>	<b>Name of employer</b>	
	<b>Address of employer</b>	
	<b>Telephone</b>	<b>Contact (manager / personnel officer)</b>
	<b>Fax</b>	<b>E-mail</b>
	<b>Job title</b>	<b>Years with present employer</b>

Summarize professional experience over the last 20 years, in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

From	To	Company / Project / Position / Relevant technical and management experience

**Form CCC****Current Contract Commitments / Works in Progress**

Bidders and each partner to a JVCA should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

Name of contract	Employer, contact address/tel/fax	Value of outstanding work (current KES equivalent)	Estimated completion date	Average monthly invoicing over last six months (KES/month)
1.				
2.				
3.				
4.				
5.				
etc.				

**Form FIN-1****Financial Resources**

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cash flow demands of the subject contract or contracts as indicated in Section III, Evaluation and Qualification Criteria

Source of financing	Amount (KES equivalent)
1.	
2.	
3.	
4.	

## Form of Bid Security

(Bank Guarantee)

\_\_\_\_\_ [Bank's Name, and Address of Issuing Branch or Office]

**Beneficiary:**            **Executive Director**  
                              **Tata Chemical Magadi**  
                              **P.O. Box 1-00205**  
                              **Nairobi, Kenya**

**Date:** \_\_\_\_\_

**BID GUARANTEE No.:** \_\_\_\_\_

We have been informed that \_\_\_\_\_ [name of the Bidder]  
(hereinafter called "the Bidder") has submitted to you its bid dated \_\_\_\_\_ (hereinafter  
called "the Bid") for the execution of \_\_\_\_\_ **Project, Contract No.**  
\_\_\_\_\_.

Furthermore, we understand that, according to your conditions, bids must be supported by a bid guarantee.

At the request of the Bidder, we \_\_\_\_\_ [name of Bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of \_\_\_\_\_ [amount in figures] (\_\_\_\_\_) [amount in words] upon receipt by us of your first demand in writing accompanied by a written statement stating that the Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder:

- (a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Form of Bid; or
- (b) having been notified of the acceptance of its Bid by the Employer during the period of bid validity, (i) fails or refuses to execute the Contract Form, if required, or (ii) fails or refuses to furnish the performance security, in accordance with the ITB.

This guarantee will expire: (a) if the Bidder is the successful Bidder, upon our receipt of copies of the contract signed by the Bidder and the performance security issued to you upon the instruction of the Bidder; and (b) if the Bidder is not the successful Bidder, upon the earlier of (i) our receipt of a copy your notification to the Bidder of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of the Bidder's bid.

Consequently, any demand for payment under this guarantee must be received by us at the office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

\_\_\_\_\_  
[signature(s)]

## **PART 2 – WORKS REQUIREMENTS**



# Section V. Works Requirements

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## Scope of Works

The works under this project include but are not limited to:

- Construction of high level 20 m<sup>3</sup> pressed steel tank, on a 10 m high steel tank.
- Laying of 100 mm diameter connection pipeline and pipe network to hydrants locations.
- Installation of hydrants

Details on scope of works and quantities are presented in the Technical Specifications, Volume 2, of this bidding document and are tabulated in the Bill of Quantities, Volume 3, whilst drawings are presented in Volume 4.

## **Specifications**

**Contained in separate Volume 2**

## **Drawings**

**Contained in separate Volume 4**

## **Supplementary Information**

**none**

# **PART 3 – CONDITIONS OF CONTRACT AND CONTRACT FORMS**

## Section VI. General Conditions (GC)

Tata Chemical Magadi  
[Name of Employer]

Project  
[Name of Contract]

The General Conditions applicable for these contract are the short form of contract (green book) prepared and copyrighted by the International Federation of Consulting Engineers (*Fédération Internationale des Ingénieurs-Conseils*, or FIDIC), FIDIC 1999-All rights reserved.

These conditions shall be read together with the “Particular Conditions” stipulated hereafter.

Conditions contained in the Particular Conditions shall be deemed to prevail in the event of any contradiction with a condition contained in the General Conditions of Contract.

## **Section VII. Particular Conditions (PC)**

The following Particular Conditions shall supplement the GC. Whenever there is a conflict, the provisions herein shall prevail over those in the GC.



## Part A - Contract Data

Conditions	Sub-Clause	Data
<b>Employer's name and address</b>	1.1.4	TATA CHEMICALS MAGADI Ltd P O Box 1, 00205 Magadi.
<b>Time for Completion/contract duration</b>	1.1.9	6 months
<b>Provisional Items</b>	1.1.20	<i>Add the following new Sub-Clause:</i> "Provisional Item" means an item of work (if any) which is specified in the Contract as a provisional item, for the execution of any part of the Works or for the supply of Plant, Materials or services under Sub-Clause 13.9 [Provisional Items].
<b>Document forming the Contract</b>	1.3	The Agreement Particular Condition General Condition The Specification The Drawing Bill of Quantities
<b>Ruling language</b>	1.4	English
<b>Language and Communications</b>	1.5	All communication shall be in writing and in English language
<b>Confidential details</b>	1.7	<i>At the end of this Sub-clause add the following paragraph:</i> The Contractor shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out obligations under it or to comply with applicable laws. The Contractor shall not publish, permit to be published, or disclose any particulars of the Works in any trade or technical paper or elsewhere without the previous agreement of the Employer.
<b>Provision of contract</b>	2.1	The contractor will take possession of the site 7

Conditions	Sub-Clause	Data
		days after contract signing
<b>Permits and Licenses</b>	2.2	<p><i>Insert at the end of Subclause 2.2:</i></p> <p>"The assistance provided by the Employer shall in no way relieve the Contractor of the responsibility for obtaining such permits, licences or approvals outlined in this Subclause 2.2"</p> <p>In addition to the above:</p> <p>i) The Contractor shall obtain all the relevant permits, licences or approvals needed by the Contractor by such date as will enable the Contractor to proceed with the Works without delay or disruption in accordance with the Programme, free from unusual or onerous conditions which shall affect the Works after the issuance of the Taking Over Certificate.</p> <p>ii) Without prejudice to the provisions of paragraph (i) above, the Contractor shall obtain all necessary permits, licences or approvals in respect of Contractor's Equipment and Workmanship, goods or materials used in or for the purposes of the construction of the Works.</p> <p>iii) The Contractor shall keep the Employer fully informed of all steps taken and to be taken in obtaining the required permits, licences or approvals and the permits and licenses referred to in paragraphs (i), (ii) above. The Contractor shall provide the Employer with copies of relevant information, all applications and approved permits and licences. Without prejudice to the obligations of the Contractor in this Clause, the Employer may notify the Contractor that the Employer does not approve of any step to be taken by the Contractor or shall, before taking the step or making the application, take due account of representations made by the Employer.</p> <p>iv) The Contractor shall not, without the Employer's approval, seek to vary or modify any of the Employer's permits, licences or approvals or any of the conditions attaching to them, or to obtain any permits, licences or approvals that are inconsistent in any respect with any of the Employer's permits, licences or approvals, or communicate with authorities in</p>

Conditions	Sub-Clause	Data
		<p>relation to the Employer's permits, licences or approvals.</p> <p>v) If it appears that any permits, licences or approvals that the Contractor is in the process of obtaining may be issued subject to conditions that will affect the ability of the Contractor to comply with any of his obligations under this Contract or on the Employer elects, to confer with the authorities regarding such possible conditions. Such action by the Employer shall not relieve the Contractor of any of his obligations under this Contract.</p> <p>vi) The Contractor must ensure that all required permits, licences or approvals that he obtains in relation to the Works and the operation of the relevant power stations are transferable to the Employer.</p> <p>vii) The Contractor shall obtain and give all permits, licences or approvals and pay all fees in connection with his obligations in this Clause.</p> <p>viii) The Contractor shall carry out the Works so as to comply with all permits, licences or approvals and not do, or permit to be done, anything that breaches or would be likely to breach the terms of any such required permits, licences or approvals. The Contractor shall indemnify, hold harmless and defend the Employer, its directors, officers, employees, agents, the Agent and the Finance Parties against all penalties and liabilities of every kind arising from any breach of the permits, licences or approvals that the Contractor has obtained or for any failure to obtain or give the permits, licences or approvals that the Contractor was to obtain.</p>
<b>Name and address of the Employers representative</b>	3.1	<p>Water and Waste water Engineer</p> <p>P.O Box 1 -- 00205</p> <p>Magadi</p>
<b>Contractors representative</b>	4.2	<p><i>After the first paragraph, add the following paragraph:</i></p> <p>"The Contractor's Representative shall be a professionally qualified Civil or Water engineer with at least 10 years' experience in Water</p>

Conditions	Sub-Clause	Data
		Supply engineering and construction, and shall have at least 5 years' experience in managing
<b>Subcontractor</b>	4.3	<p><i>Replace sub clause 4.3 with</i></p> <p>"The Contractor shall submit a copy of each Subcontract agreement with rates and prices included."</p> <p><i>At the end of this Sub-Clause, add the following</i></p> <p>paragraphs:</p> <p>a) The Contractor shall be and shall remain liable for all of the works even to the extent subcontracted under this Subclause 4.3</p> <p>b) The Contractor shall be responsible for the acts, defaults, omissions and negligence of any Subcontractor or suppliers of any tier and their respective agents, servants or workmen as fully as if such acts, defaults, omissions or negligence were the acts, defaults, omissions or negligence of the Contractor or the Contractor's agents, servants or workmen.</p> <p>c) The Contractor shall ensure that the benefit of each Subcontractor's and any manufacturer's or other's guarantee or warranty relating to the Works shall inure jointly for the benefit of the Employer and shall be freely assignable to the Employer's permitted assignees. The Contractor shall, on the expiry of the Defects Notification Period or earlier termination of the Contract, assign, or otherwise make available, to the Employer all of the Contractor's rights under all relevant subcontracts and the Subcontractor guarantees and warranties that may be still in existence at that date. The Contractor shall deliver to the Employer copies of all documents required for the enforcement of such guarantees and warranties.</p> <p>d) The Contractor must not take any action which could release, void, impair or waive any warranties or guarantees on equipment, materials or services that the Contractor procures from Subcontractors or do anything which may prejudice the Employer's rights against any Subcontractor whether</p>

Conditions	Sub-Clause	Data
		before or following assignment pursuant to paragraph d) above.
<b>Performance Security</b>	4.4	The performance security will be in the form of a demand guarantee in the amount(s) of 10% percent of the Accepted Contract Amount and in the same currency(ies) of the Accepted Contract Amount.
<b>Safety Requirements</b>	4.5	<i>Insert new subclause 4.5</i> The Contractor and his/her employees involved in this contract <b>MUST</b> be inducted on safety by the Employer before commencement of the works. <b>No Contractor must work on the Employer's site without first being inducted and wearing the correct safety equipment.</b> It is the responsibility of the Contractor to make timely arrangements for safety induction with the Employer.
<b>Requirement for contractors design</b>	5.1	<i>Addition to GC</i> The Contractor is expected to submit design for works listed as lump sum in the Bills of quantities and sub contractors works stipulated in the scope of works.
<b>Programme of works</b>	7.2	Contractor shall submit his detail programme within Seven (7) days of the date of acceptance of his contract.
<b>Delay damages for the Works</b>	7.4	The contractor to pay <u>0.1 %</u> of the Contract Price per day, upto <u>10 %</u> of the final Contract Price.
<b>Defects Notification Period</b>	9.1 & 11.5	<u>6 Months</u> , calculated from the date stated in the notice under Sub-Clause 8.2
<b>Dayworks Rates</b>	10.2	Day works rate to be provided in the bills of quantities
<b>Monthly statement</b>	11.2	<u>Not Applicable</u>
<b>Interime payment certificate</b>	11.3	<i>Addition to GC</i> The Employer's Representative may by any certificate make any correction or modification in any previous certificate which shall have been issued by him and shall have power to withhold any certificate if the works or any part thereof is not being carried out to his satisfaction.

Conditions	Sub-Clause	Data
		Payment upon each of the Employer's Representative's Certificates shall be made within Ninety (90) days after such Certificates have been signed by the Employer's Representative.
<b>Percentage of retention</b>	11.3	<u>5%</u> of the final contract price
<b>Advance payment</b>	11.3	<u>Not Applicable</u>
<b>Currency of Payment</b>	11.7	The currency of payment shall be Kenyan Shillings
<b>Default by Contractor</b>	12.1	Include the following in the first paragraph or, has become liable in accordance with SubClause 7.4 for the maximum amount of Delay Damages stated.
<b>Insurance fees for works, material and plant</b>	14.1	The sum stated in the Agreement plus <u>15%</u>
<b>Insurance for contractors Equipment</b>	14.1	Full replacement cost
<b>Third Party injury to persons and damage to property</b>	14.1	0.5 Million
<b>Insurance to workers</b>	14.1	As per Workmen Compensation Ordinance
<b>Abitration Rules</b>	15.1	UNCITRAL Arbitration Rules
<b>Appointment Authority (if not agreed) to be made by</b>	15.3	Chartered Institute of Arbitrators (Kenya Chapter)
<b>Place of Arbitration and Language</b>	15.3	Kenya, and in English language

## Section VIII. Annex to the Particular Conditions - Contract Forms

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## Notification of Award

### LETTER OF ACCEPTANCE

*[Letterhead paper of the Employer]*

*[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 Accepted Contract Amount *[amount in numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Bidders, is hereby accepted by our Agency.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose one of the Performance Security Forms included in Section IX, Annex to the Particular Conditions - Contract Forms, of the Bidding Documents

Authorized Signature: \_\_\_\_\_  
Name and Title of Signatory: \_\_\_\_\_  
Name of Agency: \_\_\_\_\_

**Attachment: Contract Agreement**



## CONTRACT AGREEMENT

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,  
between \_\_\_\_\_ of \_\_\_\_\_  
(hereinafter “the Employer”), of the one part, and \_\_\_\_\_ of \_\_\_\_\_  
(hereinafter “the Contractor”), of the other part:

WHEREAS the Employer desires that the Works known as **Construction and Installation of Fire tank and Hydrant** should be executed by the Contractor, and has accepted a Bid by the Contractor for the execution and completion of these Works and the remedying of any defects therein,

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
  - (i) the Letter of Acceptance
  - (ii) the Letter of Bid
  - (iii) the addenda Nos \_\_\_\_\_ (if any)
  - (iv) the Particular Conditions
  - (v) the General Conditions;
  - (vi) the Specification
  - (vii) the Drawings; and
  - (viii) the completed Schedules and any other documents forming part of the contract,
3. In consideration of the payments to be made by the Employer to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of \_\_\_\_\_ on the day, month and year specified above.

Signed by \_\_\_\_\_ (for the Employer)

Signed by \_\_\_\_\_ (for the Contractor)

## PERFORMANCE SECURITY

### Demand Guarantee

**Beneficiary:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**PERFORMANCE GUARANTEE No.:** \_\_\_\_\_

**Guarantor:** \_\_\_\_\_

We have been informed that \_\_\_\_\_ (hereinafter called "the Applicant") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_ (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ ( ),<sup>1</sup> such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the .... Day of ....., 2...<sup>2</sup>, and any demand for payment under it must be received by us at this office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

\_\_\_\_\_  
[signature(s)]

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

<sup>1</sup> The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency(cies) of the Contract or a freely convertible currency acceptable to the Beneficiary.

<sup>2</sup> Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."