



## **TANA WATER WORKS DEVELOPMENT AGENCY**

### **PROVISION OF COURIER SERVICES TENDER NO. TWWDA/T/007/2021-2023:**

**CHIEF EXECUTIVE OFFICER  
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**CLOSING DATE: 19th May, 2021 AT 10.00 AM**



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## Introduction

- 1.1 This document has been prepared for framework agreement. **The winning bidder/s will be awarded the provision of the named services for FY 2021 – 2023 unless the procurement entity decides otherwise.**
- 1.2 The document includes a form for invitation for tender, instructions to candidates and a letter of application with attached forms for candidates to complete.

***NB: The criteria in SECTION V must be met before a bidder qualifies for the financial evaluation.***



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**SECTION I - INVITATION FOR TENDERS**

**TENDER REF: TWWDA/T/ 007/2021-23**

**TENDER NAME: PROVISION OF COURIER SERVICES**

**Tana Water Works Development Agency** invites sealed tenders from eligible candidates for Provision of **COURIER SERVICES**

- 1.1 Eligible candidates may obtain hard copies of tender documents from TWWDA'S Procurement Office during normal working hours upon payment of non-refundable fee of KES 1,000 cash or Bankers Cheque or download for free from the website [www.tanawwda.go.ke](http://www.tanawwda.go.ke) or IFMIS tender portal <http://supplies.treasury.go.ke>
- 1.2 Prices quoted should be net inclusive of all taxes, and delivery costs, must be in Kenya Shillings and shall remain valid for at least 12 months following the date of signing of frame work contract with the winning bidder.
- 1.3 Completed tender documents are to be enclosed in plain sealed envelopes, marked with the tender number and name and be deposited in the **Tender Box** at **Tana Water Works Development Agency, P. O. Box 1292-10100 Nyeri, Maji House, Baden Powell Road**, or to be addressed to the **Chief Executive Officer Tana Water Works Development Agency** so as to be received on or before **WEDNESDAY 19TH MAY, 2021** at **10. 00 a.m.**
- 1.4 Tenders will be opened on **THURSDAY 27<sup>TH</sup> MAY, 2021** after Seven days of quarantine at the **TWWDA Resource Centre**, in the presence of the candidates or their representatives who choose to attend but **SHOULD NOT EXCEED 15 PERSONS**.

**THE CHIEF EXECUTIVE OFFICER  
TANA WATER WORKS DEVELOPMENT AGENCY  
MAJI HOUSE, BADEN POWELL ROAD  
P.O. BOX 1292- 10100  
NYERI  
TEL. NO: 061-2032282**



## ***SECTION II - INSTRUCTIONS TO TENDERERS***

### **2.1 Eligible Tenderers**

- 2.1.1 This Invitation for Tenders is open to all tenderers eligible as described in the Invitation to Tender. Successful tenderers shall provide the named service/s by the intended completion date specified in the Schedule of Requirements Section VI.
- 2.1.2 The procuring entity's employees, committee members, Council members and their relative (spouse and children) are not eligible to participate in the tender.
- 2.1.3 Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the services under this Invitation for tenders.
- 2.1.4 Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices.

### **2.2 Eligible Goods**

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



## **2.3 Cost of Tendering**

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

2.3.2 The price to be charged for a hard copy of the tender document shall not exceed KES1000/=

2.3.3 All firms found capable of performing the contract satisfactorily in accordance with the set prequalification criteria shall be prequalified.

## **2.4. The Tender Document**

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

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

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

## **2.5 Clarification of Documents**



- 2.5.1 A prospective tenderer requiring any clarification of the tender document may notify the Procuring entity in writing or by post at the entity's address indicated in the Invitation to Tender. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of tenders, prescribed by the procuring entity. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers that have received the tender document.
- 2.5.2 The procuring entity shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.

## **2.6 Amendment of Documents**

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

## **2.7 Language of Tender**

- 2.7.1 The tender prepared by the tenderer, as well as all correspondence and documents relating to the tender exchange by the tenderer and the Procuring entity, shall be written in English language, provided that any printed literature furnished by the tenderer may be written in another language provided they are accompanied by an accurate



English translation of the relevant passages in which case, for purposes of interpretation of the tender, the English translation shall govern.

## **2.8 Documents Comprising of Tender**

2.8.1 The tender prepared by the tenderers shall comprise the following components

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

## **2.9 Tender Forms**

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

## **2.10 Tender Prices**

2.10.1 The tenderer shall indicate on the appropriate Price Schedule the unit prices and total tender price of the goods/Services it proposes to supply/provide under the contract

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

2.10.3 Prices quoted by the tenderer shall be fixed during the Tender's performance of the contract and not subject to variation on any account. A tender submitted with an adjustable price quotation will





be treated as non-responsive and will be rejected, pursuant to paragraph 2.22

2.10.4 The validity period of the tender shall be **150 days** from the date of submission of the tender.

## 2.11 **Tender Currencies**

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

## 2.12 **Tenderers Eligibility and Qualifications**

2.12.1 Pursuant to paragraph 2.1. the tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.

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

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

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



## **2.13 Goods Eligibility and Conformity to Tender Documents**

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

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

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

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

2.13.4 For purposes of the documentary evidence to be furnished pursuant to paragraph 2.13.3(c) above, the tenderer shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by the Procurement entity in its Technical Specifications, are intended to be descriptive only and not restrictive. The tenderer may substitute alternative standards, brand names, and/or catalogue numbers in its tender, provided that it demonstrates to the Procurement entity's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.



## 2.14 Tender Security

2.14.1 The tenderer shall furnish, as part of its tender, a tender security for the amount specified in the Appendix to Invitation to Tenderers.

2.14.2 The tender security shall be in the amount of 2 per cent of the tender price.

2.14.3 The tender security is required to protect the Procuring entity against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 2.14.7

2.14.4 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form of a bank guarantee or a bank draft issued by a reputable bank located in Kenya or abroad, or a guarantee issued by a reputable insurance company in the form provided in the tender documents or another form acceptable to the Procuring entity and valid for thirty **(30) days beyond** the validity of the tender.

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

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

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

2.14.8 The tender security may be forfeited:

- (a) if a tenderer withdraws its tender during the period of tender validity specified by the procuring entity on the Tender Form;  
or
- (b) in the case of a successful tenderer, if the tenderer fails:



- (i) to sign the contract in accordance with paragraph 2.27  
or
- (ii) to furnish performance security in accordance with paragraph 2.28

## **2.15 Validity of Tenders**

2.15.1 Tenders shall remain valid for 150 days or as specified in the Invitation to tender after the date of tender submission prescribed by the Procuring entity, pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the Procuring entity as non-responsive.

2.15.2 In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 2.14 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

## **2.16 Format and Signing of Tender**

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

2.16.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. The latter authorization shall be indicated by written power-of-attorney accompanying the tender. All pages of the tender, except for un-amended printed literature, shall be initialed by the person or persons signing the tender.

2.16.3 The tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the tenderer, in which



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case such corrections shall be initialed by the person or persons signing the tender.

## **2.17 Sealing and Marking of Tenders**

2.17.1 The Tenderer shall seal the original and each copy of the tender in separate envelopes, duly marking the envelopes as “ORIGINAL” and “COPY.” The envelopes shall then be sealed in an outer envelope.

2.17.2 The inner and outer envelopes shall:

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

(b) bear, tender number and name in the Invitation for Tenders and the words, “DO NOT OPEN BEFORE,” **THURSDAY, 27TH MAY 2021.**

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

2.17.4 If the outer envelope is not sealed and marked as required by paragraph 2.17.2, the Procuring entity will assume no responsibility for the tender’s misplacement or premature opening.

## **2.18 Deadline for Submission of Tenders**

2.18.1 Tenders must be received by the Procuring entity at the address specified under paragraph 2.17.2 no later than **WEDNESDAY, 19TH MAY 2021 AT 10:00AM.**

2.18.2 The Procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 2.6, in which case all rights and obligations of the Procuring entity and candidates previously subject to the deadline will therefore be subject to the deadline as extended

## **2.19 Modification and Withdrawal of Tenders**



2.19.1 The tenderer may modify or withdraw its tender after the tender's submission, provided that written notice of the modification, including substitution or withdrawal of the tenders, is received by the Procuring Entity prior to the deadline prescribed for submission of tenders.

2.19.2 The Tenderer's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 2.17. A withdrawal notice may also be sent by cable, telex but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.

2.19.3 No tender may be modified after the deadline for submission of tenders.

2.19.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the Tenderer's forfeiture of its tender security, pursuant to paragraph 2.14.7

2.19.5 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

2.19.6 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

## **2.20 Opening of Tenders**

2.20.1 The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, at 10.00 am on **THURSDAY, 27TH MAY 2021** and in the location specified in the Invitation to Tender.

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



2.20.2 The tenderers' names, tender modifications or withdrawals, tender prices, discounts and the presence or absence of requisite tender security and such other details as the Procuring entity, at its discretion, may consider appropriate, will be announced at the opening.

2.20.3 The Procuring entity will prepare minutes of the tender opening.

## **2.21 Clarification of Tenders**

2.21.1 To assist in the examination, evaluation and comparison of tenders the Procuring entity may, at its discretion, ask the tenderer for a clarification of its tender. The request for clarification and the response shall be in writing, and no change in the prices or substance of the tender shall be sought, offered, or permitted.

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

## **2.22 Preliminary Examination**

2.22.1 The Procuring entity will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order.

2.22.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantify, the unit price shall prevail. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security forfeited. If there is a discrepancy between words and figures the amount in words will prevail

2.22.3 The Procuring entity may waive any minor error/s in a tender which does/do not constitute a material deviation, provided such waiver does not prejudice or effect the relative ranking of any tenderer.



2.22.4 Prior to the detailed evaluation, pursuant to paragraph 2.23 the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one, which conforms to all the terms and conditions of the tender documents without material deviations. The Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

2.22.5 If a tender is not substantially responsive, it will be rejected by the Procuring entity and may not subsequently be made responsive by the tenderer by correction of the non-conformity.

## **2.23 Conversion to Single Currency**

2.23.1 Where other currencies are used, the procuring entity will convert these currencies to Kenya Shillings using the selling exchange rate on the rate of tender closing provided by the Central Bank of Kenya.

## **2.24 Evaluation and Comparison of Tenders**

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

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

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

## **2.25 Preference**

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





## **2.26 Contacting the Procuring entity**

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

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

## **2.27 Award of Contract**

### **(a) Post-qualification**

2.27.1 In the absence of pre-qualification, the Procuring entity will determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.

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

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

### **(b) Award Criteria**

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



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

2.27.5 The Procuring entity reserves the right at the time of contract award to increase or decrease the quantity of goods originally specified in the Schedule of requirements without any change in unit price or other terms and conditions

**(d) Procuring entity's Right to accept or Reject any or All Tenders**

2.27.6 The Procuring entity reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the Procuring entity's action

**2.28 Notification of Award**

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

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

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

**2.29 Signing of Contract**

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



2.29.2 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

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

## **2.30 Performance Security**

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

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

## **2.31 Corrupt or Fraudulent Practices**

2.31.1 The Procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts when used in the present regulations, the following terms are defined as follows;

- (i) “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and
- (ii) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring entity, and includes collusive practice among tenderer (prior to or after tender submission) designed to establish tender prices at artificial non-



competitive levels and to deprive the Procuring entity of the benefits of free and open competition;

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

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



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## **Appendix to Instructions to Tenderers**

### **Notes on the Appendix to the Instruction to Tenderers**

1. The Appendix to instructions to tenderers is intended to assist the procuring entity in providing specific information in relation to the corresponding clause in the instructions to Tenderers included in Section II and has to be prepared for each specific procurement.
2. The procuring entity should specify in the appendix information and requirements specific to the circumstances of the procuring entity, the goods to be procured and the tender evaluation criteria that will apply to the tenders.
3. In preparing the Appendix the following aspects should be taken into consideration;
  - (a) The information that specifies and complements provisions of Section II to be incorporated
  - (b) Amendments and/or supplements if any, to provisions of Section II as necessitated by the circumstances of the goods to be procured to be also incorporated
4. Section II should remain unchanged and can only be amended through the Appendix.
5. Clauses to be included in this part must be consistent with the public procurement law and the regulations.



## Appendix to Instructions to Tenderers

The following information regarding the particulars of the tender shall complement supplement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provision of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers

INSTRUCTIONS TO TENDERERS REFERENCE	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
2.1.1	<b>Provision of Courier Services (TWWDA/T/007/2021-2023)</b>
2.14.1	<i>Not applicable.</i>
2.17.1	<i>Bidder to submit both the ORIGINAL and a SIMILAR COPY of a completed bid to the Procuring entity with all the attachments as required.</i>
2.18.1	<i>Closing date will be <b>Wednesday 19<sup>th</sup> May 2021.</b></i>
2.29.1	<i>As in 2.18.1 above</i>
2.29.1	<i>N/A</i>

*(Complete as necessary)*



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## **SECTION III - GENERAL CONDITIONS OF CONTRACT**

### **3.1 Definitions**

3.1.1 In this Contract, the following terms shall be interpreted as indicated:-

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

### **3.2 Application**

3.2.1 These General Conditions shall apply in all Contracts made by the Procuring entity for the procurement, installation and commissioning of equipment

### **3.3 Country of Origin**

3.3.1 For purposes of this clause, “Origin” means the place where the Goods were mined, grown or produced.

3.3.2 The origin of Goods and Services is distinct from the nationality of the tenderer.



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### **3.4 Standards**

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

### **3.5 Use of Contract Documents and Information**

- 3.5.1 The tenderer shall not, without the Procuring entity's prior written consent, disclose the Contract, or any provision therefore, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring entity in connection therewith, to any person other than a person employed by the tenderer in the performance of the Contract.
- 3.5.2 The tenderer shall not, without the Procuring entity's prior written consent, make use of any document or information enumerated in paragraph 3.5.1 above
- 3.5.3 Any document, other than the Contract itself, enumerated in paragraph 3.5.1 shall remain the property of the Procuring entity and shall be returned (all copies) to the Procuring entity on completion of the Tenderer's performance under the Contract if so required by the Procuring entity

### **3.6 Patent Rights**

- 3.6.1 The tenderer shall indemnify the Procuring entity against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof in the Procuring entity's country

### **3.7 Performance Security**

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





- 3.7.2 The proceeds of the performance security shall be payable to the Procuring entity as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.
- 3.7.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Procuring entity and shall be in the form of a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in Kenya or abroad, acceptable to the Procuring entity, in the form provided in the tender documents.
- 3.7.4 The performance security will be discharged by the Procuring entity and returned to the Candidate not later than thirty (30) days following the date of completion of the Tenderer's performance obligations under the Contract, including any warranty obligations, under the Contract

### **3.8 Inspection and Tests**

- 3.8.1 The Procuring entity or its representative shall have the right to inspect and/or to test the goods to confirm their conformity to the Contract specifications. The Procuring entity shall notify the tenderer in writing in a timely manner, of the identity of any representatives retained for these purposes.
- 3.8.2 The inspections and tests may be conducted in the premises of the tenderer or its subcontractor(s), at point of delivery, and/or at the Goods' final destination. If conducted on the premises of the tenderer or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring entity.
- 3.8.3 Should any inspected or tested goods fail to conform to the Specifications, the Procuring entity may reject the equipment, and the tenderer shall either replace the rejected equipment or make alterations necessary to make specification requirements free of costs to the Procuring entity.



3.8.4 The Procuring entity's right to inspect, test and where necessary, reject the goods/services after the Goods' arrival shall in no way be limited or

3.8.5 waived by reason of the equipment having previously been inspected, tested and passed by the Procuring entity or its representative prior to the equipment delivery.

3.8.6 Nothing in paragraph 3.8 shall in any way release the tenderer from any warranty or other obligations under this Contract.

### **3.9 Packing**

3.9.1 The tenderer shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract.

3.9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract

### **3.10 Delivery and Documents**

3.10.1 Delivery of the Goods shall be made by the tenderer in accordance with the terms specified by Procuring entity in its Schedule of Requirements and the Special Conditions of Contract

### **3.11 Insurance**

3.11.1 The Goods supplied under the Contract shall be fully insured against loss or damage incidental to manufacturer or acquisition, transportation, storage, and delivery in the manner specified in the Special conditions of contract.

### **3.12 Payment**

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



3.12.2 Payments shall be made promptly by the Procuring entity as specified in the contract

### **3.13 Prices**

3.13.1 Prices charged by the tenderer for goods delivered and services performed under the Contract shall not, with the exception of any price adjustments authorized in Special Conditions of Contract, vary from the prices by the tenderer in its tender.

3.13.2 Contract price variations shall only be allowed for contracts that have exceeded one year (12 months)

3.13.3 Where contract price variation is allowed, the variation shall not exceed 15% of the original contract price.

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

### **3.14. Assignment**

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

### **3.15 Subcontracts**

3.15.1 The tenderer shall notify the Procuring entity in writing of all subcontracts awarded under this Contract if not already specified in the tender. Such notification, in the original tender or later, shall not relieve the tenderer from any liability or obligation under the Contract

### **3.16 Termination for default**



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

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

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

### **3.17 Liquidated Damages**

3.17.1. If the tenderer fails to deliver any or all of the goods within the period(s) specified in the contract, the procuring entity shall, without prejudice to its other remedies under the contract, deduct from the contract prices liquidated damages sum equivalent to 0.5% of the delivered price of the delayed items up to a maximum deduction of 10% of the delayed goods. After this the tenderer may consider termination of the contract.

### **3.18 Resolution of Disputes**

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

3.18.2 If, after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a



contract dispute, either party may require adjudication in an agreed national or international forum, and/or international arbitration.

### **3.19 Language and Law**

3.19.1 The language of the contract and the law governing the contract shall be English language and the Laws of Kenya respectively unless otherwise stated.

### **3.20 Force Majeure**

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



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## **SECTION IV - SPECIAL CONDITIONS OF CONTRACT**

### **Notes on Special Conditions of Contract**

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

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

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



## **SPECIAL CONDITIONS OF CONTRACT**

- 4.1. Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, between the GCC and the SCC, the provisions of the SCC herein shall prevail over these in the GCC.
42. Special conditions of contract as relates to the GCC

<b>REFERENCE GCC</b>	<b>OF SPECIAL CONDITIONS OF CONTRACT</b>
3.7.1	NA
3.12.1	Payment process begins after delivery/Distribution of mails/Parcels, confirmation of the same and submission of accurate invoice/s
3.18.1	As per provisions of 3.18



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## SECTION V - QUALIFICATION CRITERIA

### I. BID EVALUATION CRITERIA FOR PROVISION OF COURIER SERVICES.

BIDDER NO. .... BIDDER NAME .....

The Applicant **MUST** meet the following criteria

1.	MANDATORY REQUIREMENTS	Yes	No	Remarks
	Submission of valid documents under listed:-			
	i) Copy of a valid incorporation/ registration certificate			
	ii) Copy of the latest CR12 (for the incorporated companies)			
	iii) Valid Tax Compliance Certificate			
	iv) Copy of valid business Permit			
	v) Must clearly indicate the physical location, mobile number/s and landline/s where applicable.			
	vi) The bid document/s to be systematically paginated			
	vii) Submit a duly “filled up” tender declaration form in the format provided in this tender document, addressed to Tana Water Works Development Agency. The terms under the tender security declaration shall be valid for an additional Thirty (30) calendar days after the expiry of the tender validity period.			
	viii) Submit two copies of the tender/Bid document marked (Original & Copy). The Copies must be signed and stamped.			
2	<b>TECHNICAL AND OTHER REQUIREMENTS</b>			
		<b>Require d Marks</b>	<b>Awarded Marks</b>	<b>Remarks</b>
	i) Volume of business the firm can handle per month (at least KES 300,000)	9		
	ii) Similar jobs carried out in the past (attach proof in the form of transaction documents)	9		
	iii) Business Experience/Number of years in business.	9		
	iv) Previous dealings with TWWDA - will address issues such as:- <ul style="list-style-type: none"> <li>Late delivery(Less 3)</li> <li>Partial delivery (Less 3)</li> <li>Poor quality services(Less 3)</li> </ul> NB: those who haven't been engaged by TWWDA in the past will be exempted/score all	9		
	v) Provide information on: Tel- landlines/mobiles, E-mail address and contact person(s)	5		
	Vi) Provide certified bank statements for the last one year	6		
	vii) Attached latest audited Accounts for limited companies and financial statements for non-limited business entities	10		



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	viii) Three recommendation letters from reputable firms with which the candidate has had business in the past	9		
	<b>ix) Company profile / business profile</b>	10		
	x) Complete Confidential Business Questionnaire attached	12		
	xi) Litigation history: Indicate if there are any pending court cases on public procurement matters (evidenced by a written stamped affidavit by commissioner of Oath	12		
	<b>Total Marks</b>	<b>100</b>		

*NB:*

- *Special groups who apply for prequalification of items in this category will be exempted 2(i), (ii) & (iii) in which case the candidates will score all allocated marks. Attach copy of **AGPO certificate**,*
- **A bidding Firm shall be considered to have passed technical evaluation if it attained 75% marks and above to proceed to Financial Evaluation. Those who score below this mark will be eliminated at this stage and will not be considered further.**



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## SECTION VI - SCHEDULE OF REQUIREMENTS

### **NB:**

- **The Bidding firm to attach a price schedule of courier services offered plus a template of its `contract of courier services`, indicating all terms of service;**
- **The Courier Company that serves the largest scope of the `named areas here below including any additional areas at the most competitive rates (see the Contract form under Section VII-7.6) shall have an added advantage at the Financial evaluation stage.**

### **NB:**

Prices should include all **the taxes and delivery** to and Distribution from Tana Water Works Development Agency (See the form of Agreement below for guidance).

Signature of tenderer \_\_\_\_\_

Stamp\_\_\_\_\_



## **SECTION VII - STANDARD FORMS**

### **Notes on the sample Forms**

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



tender documents. This form will be completed by the manufacturer of the goods where the tenderer is an agent.

7.1 **FORM OF TENDER**

Date \_\_\_\_\_

Tender No. TWWDA/T/007/2021-23

To: **The Chief Executive Officer  
Tana Water Works Development Agency  
P.O Box 1292-10100  
Nyeri.**

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda No. (Insert numbers if any).....the receipt of which is hereby duly acknowledged, we, the undersigned, offer to provide required services/works/goods under this tender in conformity with the said tender documents for the sum of ..... (*total tender amount in words and figures*) or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.
2. We undertake, if our Tender is accepted, to provide the required services in accordance with the conditions of the tender.
3. We agree to abide by this Tender for a period of 120 days [*number of days*] from the date fixed for tender opening of the Instructions to tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
4. This Tender, together with your written acceptance thereof and your notification of award, shall constitute a Contract, between us. Subject to signing of the Contract by the parties.
5. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2021

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[in the capacity of]

Duly authorized to sign tender for an on behalf of \_\_\_\_\_

Company's Stamp/Seal



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## 7.2 CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

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

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

### *Part 1 – General:*

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

	<p align="center"><b>Part 2 (a) – Sole Proprietor</b></p> <p>Your name in full ..... Age .....</p> <p>Nationality ..... Country of origin .....</p> <ul style="list-style-type: none"> <li>• Citizenship details .....</li> </ul>																								
	<p align="center"><b>Part 2 (b) Partnership</b></p> <p>Given details of partners as follows:</p> <table border="1"> <thead> <tr> <th>Name</th> <th>Nationality</th> <th>Citizenship Details</th> <th>Shares</th> </tr> </thead> <tbody> <tr> <td>1. ....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2. ....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3. ....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4. ....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>	Name	Nationality	Citizenship Details	Shares	1. ....	.....	.....	.....	2. ....	.....	.....	.....	3. ....	.....	.....	.....	4. ....	.....	.....	.....				
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1. ....	.....	.....	.....																						
2. ....	.....	.....	.....																						
3. ....	.....	.....	.....																						
4. ....	.....	.....	.....																						
	<p align="center"><b>Part 2 (c) – Registered Company</b></p> <p>Private or Public .....</p> <p>State the nominal and issued capital of company-</p> <p>Nominal Kshs. ....</p> <p>Issued Kshs. ....</p> <p>Given details of all directors as follows</p> <table border="1"> <thead> <tr> <th>Name</th> <th>Nationality</th> <th>Citizenship Details</th> <th>Shares</th> </tr> </thead> <tbody> <tr> <td>1.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>5.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>	Name	Nationality	Citizenship Details	Shares	1.....	.....	.....	.....	2.....	.....	.....	.....	3.....	.....	.....	.....	4.....	.....	.....	.....	5.....	.....	.....	.....
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1.....	.....	.....	.....																						
2.....	.....	.....	.....																						
3.....	.....	.....	.....																						
4.....	.....	.....	.....																						
5.....	.....	.....	.....																						
	<p>Date ..... Signature of Candidate .....</p>																								

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



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### 7.3 LIST OF CLIENTS

Indicate the details of companies in the private /public sector where you have undertaken/are undertaking services of similar nature where the contract sum is at least KES 30,000/- per month.

NO.	Contact Information	Details
1.	Name of company	
	Name of the contact person	
	Designation	
	Telephone Number	
	e-mail address	
	Contract amount (kshs. per month)	
2.	Name of company	
	Name of the contact person	
	Designation	
	Telephone Number	
	e-mail address	
	Contract amount (kshs. per month)	
3.	Name of company	
	Name of the contact person	
	Designation	
	Telephone Number	
	e-mail address	
	Contract amount (kshs. per month)	

**ENSURE THAT YOU HAVE PROVIDED REFERENCED LETTERS FOR ALL THE ABOVE LISTED ORGANIZATIONS**



## 7.4 DECLARATION NOT TO BE INVOLVED IN CORRUPT OR FRAUDULENT PRACTICES

TO: The Chief Executive Officer

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

Tana Water Works Development Agency

P.O. Box 1292-10100, NYERI

Ladies and/or Gentlemen,

Being duly authorized to represent and act on behalf of \_\_\_\_\_ (name of firm) (herein after referred to as 'the Applicant') and having reviewed and fully understood all of the tender information provided, the undersigned hereby admit that \_\_\_\_\_ (name of the firm) has **Never Been Involved in any Corrupt or Fraudulent Practices** and further commit **Not to be Involved in any Corrupt or Fraudulent Practices and that We Shall Observe the Highest Standard of Ethics during the Procurement Process and Execution of Contracts.**

We further agree (by signing this declaration hereunder) that failure to comply with the above may lead to:

- i. Rejection of our proposal;
- ii. Having our firm's details submitted to the Public Procurement Regulatory Authority (PPRA) for the purpose of debarring our firm from participating in public procurement in Kenya

Signed:	Signed:	Signed:
Name:	Name:	Name:
Designation:	Designation:	Designation:



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## 7.5 TENDER SECURITY DECLARATION FORM

WHEREAS .....(hereinafter called “the Tenderer”) has  
submitted his Tender dated ..... for  
**Provision of Courier Services, Tender No. TWWDA/T/007/2021-2023.**

KNOW ALL PEOPLE by these presents that WE ..... having our  
registered Office at .....(hereinafter called “the Bank”), are bound  
unto.....(hereinafter called “the Employer”) in the sum of  
Kshs..... 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 of.....20.....

THE CONDITIONS of this obligation are:

1. If after Tender opening the Tenderer withdraws his Tender during the period of  
Tender Validity specified in the instructions to Tenderers  
  
Or
2. If the Tenderer, having been notified of the acceptance of his Tender by the  
Employer during the period of Tender Validity:
  - a) fails or refuses to execute the form of Agreement in accordance with the  
Instructions to Tenderers, if required; or
  - b) fails or refuses to furnish the Performance Security, in accordance with the  
Instructions to Tenderers;
  - c) Rejects a correction or an arithmetic error in the Tender.

We undertake to pay to the Employer up to the above amount upon receipt of his first  
written demand, without the Employer 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 both of the two conditions, specifying the occurred condition or  
conditions.

This guarantee will remain in force up to and including thirty (30) days after the period of  
Tender Validity, and any demand in respect thereof should reach the Bank not later than the  
said date.

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(signature of the Bank)

\_\_\_\_\_  
(witness)

\_\_\_\_\_  
(seal)



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## 7.6 CONTRACT FORM

This Agreement is made on \_\_\_\_\_(Day/Month/Year) between Tana Water Works Development Agency (TWWDA), Maji House, Baden Powell Road, P.O. Box 1292 – 10100, NYERI (hereinafter called “the Employer”) of the one part AND MS \_\_\_\_\_ of P.O. BOX \_\_\_\_\_, \_\_\_\_\_) (hereinafter called “the Company”/or “Courier Company”) of the other part covers the **provision of courier Services (Tender No.TWWDA/T/---/20---20--)**.

### (1.0) PAYMENT

- a. Whereas the said Company has agreed and accepted to provide courier services (which includes among others any additional or incidental services thereto that may be requested by the customer from time to time at the described fee including VAT as per the list of the specified areas (listed in clause 2.0) payable within thirty days upon the date of receipt of an Invoice from the Company and the approval and certification of the rendered services by the employer. Any variation/s of the charges levied by the Company shall strictly be in compliant with the provisions under the Public Procurement and Assets Disposal Act 2015, section 139 and the regulations related thereto. Any other cases of emergencies that may affect provision of the services described herein shall be a subject of deliberation and where no agreement has been reached within three (3) months after the commencement of such deliberations, this may be a basis for determining this Agreement;
- b. No variation, extension, omission or cancellation of the express terms of these conditions, special provisions or schedule of this contract shall be binding upon the parties unless and until it is confirmed in writing under the hand of the respective Directors/Heads (or officially authorized representatives in writing) of the parties hereto, and for the avoidance of doubt, it is declared that no person, other than the said persons have any authority to negotiate or enter into any commitment on behalf of either party, the effect of which would, or might involve the parties in any legal liability whatsoever.
- c. During any day on which the fulfillment of this contract would require the company to perform the services prescribed on a Public Holiday, the company shall be entitled to make a reasonable extra charge commensurate with the additional cost incurred by the company in performing such services;
- d. The Company shall be entitled to charge interest at the rate of 10% per annum on the amount of any charges specified herein if payment is not made within the stated duration;
- e. In the event the employer terminates this contract without fully paying all monies invoiced in accordance with the provisions under this contract, the company shall be entitled to register the employer and the debt with the credit reference agencies;
- f. The employer shall be obliged to reimburse the company all costs, charges and fees that shall have been incurred in executing legal recovery procedures for unpaid debts owed by the employer;
- g. It is unequivocally agreed between the parties that the company shall not be liable to pay the amounts stated under liability or any other amount at any time when any whole or part of the charges (together with the interest thereon) is due from the client to the company;



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- h. Without prejudice to all or any rights which the company may have at common law, the company has a general and particular lien over the consignments for all claims and money owing by the employer to the company under this contract and in any other way whatsoever, and until the service charges (together with interest thereon) have been received by the company, during the currency of the said lien, the company is entitled to be paid reasonable storage charges at market rate;

(2.0) Now therefore it is mutually agreed by and between the parties hereto as follows.

- a) Tana Water Works Development Agency (TWWDA) desires to have its mails and parcels specified herein after distributed to and delivered from various destinations as listed in (clause 3.0).
- b) The courier Company is willing and able to undertake comprehensive courier services, and other services specified thereto, in clause (3.0) under the terms and condition of this contract.

Therefore in consideration of mutual premises, representation, conversant and other good and valuable consideration, the receipt and adequateness of which is hereby acknowledged by the parties to the following terms and conditions and to be bound thereby.

### (3.0) SCOPE

The comprehensive courier services will cover the following Supplies and Materials as per the scope set out below and any others' that could be consented to during the initial Agreement.

#### Scope of work

- a. The courier Service shall cover the specified areas here below.
- b. The Courier Company shall provide the necessary tools, equipment, logistics and any other necessities for the performance of duties and obligations of the courier services in the listed destinations and the surrounding major Centers.

#### LIST OF DESTINATIONS (Put a Tick on all towns/areas your firm serves and/or add the other areas served)

No.	Location	No.	Location	No.	Location	No.	Location	No.	Location
1.	Ahero	31	Kangundo	61	Maragua	91	Nkubu	121	
2.	Athi River	32	Kapenguria	62	Mariakani	92	Nyahururu	122	
3.	Awendo	33	Kapsabet	63	Maseno	93	Nyamira	123	
4.	Bomet	34	Karatina	64	Masii	94	Nyeri		
5.	Bondo	35	Kendubay	65	Matuu	95	Olkalau		
6.	Bungoma	36	Kericho	66	Maua	96	Oloitoktok		
7.	Burnt forest	37	Keroka	67	Mbale	97	Ongata Rongai		
8.	Busia	38	Kerugoya	68	Mbita	98	Othaya		
9.	Chogoria	39	Kiambu	69	Meru	99	Oyugis		
10.	Chuka	40	Kibwezi	70	Migori	100	Ruaka		
11.	Diani	41	Kiganjo	71	Moi's Bridge	101	Ruiru		
12.	Eldama Ravine	42	Kijabe	72	Molo	102	Runyenjes		
13.	Eldoret	43	Kikuyu	73	Mombasa	103	Sabasaba		
14.	Emali	44	Kilifi	74	Mtito	104	Sagana		



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					Andei				
15	Embu	45	Kisii	75	Muhoroni	105	Siaya		
16	Garissa	46	Kisumu	76	Mumias	106	Sotik		
17	Gatundu	47	Kitale	77	Murang`a	107	Sultan Hamud		
18	Gilgil	48	Kitengela	78	Murarandia	108	Tala		
19	Githunguri	49	Kitui	79	Mwatate	109	Thika		
20	Homabay	50	Kutus	80	Mwea	110	Timau		
21	Igoji	51	Limuru	81	Mwingi	111	Turbo		
22	Isebania	52	Litein	82	Nairobi	112	Ugunja		
23	Isiolo	53	Luanda	83	Naivasha	113	Voi		
24	Juja	54	Machakos	84	Nakuru	114	Watamu		
25	Kabarnet	55	Makindu	85	Nandi Hills	115	Webuye		
26	Kagio	56	Makueni	86	Nanyuki	116	Wote		
27	Kajiado	57	Makutano	87	Naro Moru	117	Wundanyi		
28	Kakamega	58	Makuyu	88	Narok	118	Engineer		
29	Kangari	59	Malaba	89	Ngong`	119			
30	Kangema	60	Malindi	90	Njoro	120			

In addition the Bidder provides the following costs and conditions that will apply when billing /invoicing for services rendered;

- i. The charge will be Ksh\_\_\_\_\_/= per parcel for the first 5kilos within the above indicated network towns(Bidder to attach its actual network-areas of service);
- ii. Excess weight above 5kgs is charged at KES \_\_\_\_\_ per Kg.
- iii. The company shall invoice the client a minimum amount of KES\_\_\_\_\_/= per month
- iv. Delivery shall be the above mentioned towns and within a radius of 5kms of the towns
- v. Delivery to any other destinations out if the quoted ones shall be on adhoc rates
- vi. The above rates are VAT Exclusive
- vii. The above rates do not include services rendered on Public Holidays and Sundays;
- viii. Customers are advised that all items that are over the standard liabilities of \_\_\_\_\_  
(**Bidder`s name**) must be insured.

#### (4.0) DURATION AND TERMINATION OF THE CONTRACT

- i. This Agreement shall commence on \_\_\_\_\_ (**Day/Date/Month**) and expire on \_\_\_\_\_ (**Day/Date/Month**), subject to provision of satisfactory services by the Company; although extendable in line with the conditions under this contract. This contract shall remain in force from the date of commencement until the earliest date of termination by either party giving to the other at least a one (1) month`s advance notice in writing to that effect expiring on the last day of any succeeding calendar month thereafter;
- ii. This contract may be determined by either party forthwith if the other party commits any breach of its obligation herein and such breach shall continue for seven (7) calendar days or if either party (being an individual) commits an act of bankruptcy or (being a Corporation) shall go into liquidation other than for the purpose of



reconstruction or amalgamation, or shall suffer the appointment of a Receiver of any of his/its property or income or make any deed or arrangement with or composition for the benefit of any of his/its creditors.

**(5.0) LIABILITY OF THE COMPANY**

- i. That the Courier Company will, in providing the services stated herein, and in acting for the purpose of this contract, be responsible for the selection and employment of the employees put on and/or in charge of such services. Subject to **5.0 (iv) below**, the courier company shall be responsible to the client and shall indemnify the client against all losses of or damage to a consignment up to the amount specified in clause (4) which may occur during any period of the company's responsibility and which was caused solely by negligence on the part of the company's employees, servants or agents whilst acting in the course of their employment;
- ii. That the courier Company shall not, except where the company is **expressly in writing**, requested and required by the Employer to **take custody of and use any keys issued by the client**, be responsible for any loss or damage to keys or any loss or damage resulting from the loss or use or damage to keys or any loss or damage related thereto;
- iii. **NOTIFICATION OF CLAIMS:** Any liability on the part of the courier company shall arise if the Employer shall have given written notice to the courier company of any relevant loss or damage within fourteen (14) days immediately following either the discovery thereof or the end of the period of the courier company's responsibility in which the loss/damage is said to have occurred (whichever shall be the earlier); but in any event, such liability will not arise if such written notice is not given by the client to the courier company within twenty-one (21) days of the date upon which the consignment was collected or received by the company;
- iv. **EXTENT OF LIABILITY:**
  - a. If pursuant to the provisions set out herein and subject to the following sub-clauses set out hereunder, any liability on the part of the courier company shall arise (whether under the express or implied terms of this contract, or at common law, or in any other way) to the client for any loss or damage of whatever nature directly arising out of, or connected with the provision of, or purported provision of, or failure in provision of the service covered by this contract, such liability shall be limited to the payment by the courier company by way of damages of a sum which shall not in any circumstances exceed a total of Kenya shillings ten thousand (ksh10,000/=) in respect of any loss that may occur during any one period of the company's responsibility. The client shall indemnify and keep indemnified the courier company against any claims, demands or legal action arising from any third party where the loss that has occurred is as a result of an act of commission or omission on the part of the client with regard to the delivery or receipt of the consignment/s-in-transit;
  - b. The courier company shall not be liable for any loss, damage or injury or any indirect loss arising from the performance of or failure by the company to perform a duty extraneous to this contract which the courier company or its employees or other



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personnel may at the express wish of the client have undertaken to perform, unless the courier company has agreed in writing to carry out such extraneous duty and the written agreement is signed by a Director of the courier company and the client;

- c. That the courier company shall be under no liability whatever in respect of any loss, damage or injury or consequential or indirect loss arising from or in consequence of the excepted risks or to which any of the excepted risks shall have directly contributed to or caused any loss, damage, injury or consequential or indirect loss ;
- d. That if the courier company shall be prevented from , or delayed in starting , or carrying out, or implementing any of the services described in the schedule by reason of any of the said excepted risks, or by reason of strikes, lock-outs, labor disputes, weather conditions, traffic congestion, mechanical breakdown, obstruction of any public or private road or highway, or any cause whatever beyond the courier company`s control, the client shall have no claim whatever, provided that in the case of a mechanical breakdown of one of the courier company`s vehicles, the courier company shall use its best endeavors to provide a replacement vehicle with the minimum practicable delay;
- e. That under no circumstance/s shall the courier company be liable for any late or mis-delivery caused or contributed by any deficient or ambiguous labeling of the consignment;
- f. That the liability of the courier company in respect of any loss or damage suffered by the client/employer shall in no case exceed the monetary and other limits referred to in **(5.0) iv(a)** hereof. Moreover, if the company shall carry out or shall have contracted to carry out, more than one service for the client on any one day, whether under the terms of this contract or in conjunction with one or more separate contract (whether in a form similar to this contract or not), the total liability of the courier company in respect of all loss and damage suffered by the client during that day shall not exceed the sum of Kenya Shillings thirty thousand (Ksh30,000/=);

**(6.0) TERMS DEFINING AND LIMITING LIABILITY:**

- a. The potential losses that might be caused, or alleged to be caused, by the failure of the courier company or its servants or agents to perform any acts or services, or to take any particular precaution or care (whether as a result of a breach of contract or negligence, or any other wrongful act or omission), or to avoid doing any act, are so great in proportion to the sums which can reasonably be charged hereunder by the courier company that the courier company and its servants/or agents cannot and will not assume any liability in respect of any losses or damage howsoever caused outside, or beyond the provisions of this contract except where the company is dilatory in the processing of any claim lawfully and justifiably made by the employer, in which case the company will be liable to the Employer for such expense or cost incurred by the employer in pursuing or enforcing any claim;
- b. The Company shall in no case be liable for any consequential loss.



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(7.0) **INDEMNITY:** The client/employer shall for all purposes be deemed to be, and be treated as the sole beneficial owner of all property and valuables, the protection of which is the subject of this contract. Accordingly, if any other person shall in respect of such property or valuables, make any claim upon the company or its servants or agents outside or beyond the ability of the company to the client under the terms hereof in respect of such property or valuables, then the employer shall indemnify the company and its servants or agents in respect of such claims and all costs thereof, provided nevertheless that if any servant or agent of the company shall have been guilty of any dishonest or criminal act (relevant to the loss or damage) such servant or agent shall not be, as between himself and the client/employer, entitled to the benefit of this indemnity. It is hereby agreed between the client/employer and the Courier Company, its servants and agents, both for itself and for its servants and agents for their benefit, that the servants and agents of the courier company shall be entitled to the protection of all the terms hereof, shall bear no liability beyond or in addition to that of the courier company itself, provided always that if any servant or agent shall not be, as between himself and the client, entitled to the protection of any of the terms hereof. This will be the total liability of the courier company and its servants and agents whether jointly or severally and shall in no case exceed the provided limits.

(8.0) **OFFER OF EMPLOYMENT:** The employer/client undertakes that it will not, during the period of subsistence of this contract, or within one (1) year after the termination thereof either:

- i. Knowingly offer employment in any capacity to any person who shall have been an officer or servant of the courier company during the subsistence of this contract whether or not s/he has provided services to the employer/client hereunder or;
- ii. Knowingly employ any firm or company promoted, managed or controlled by such person or any business owned or managed by such persons which offers a similar service to that provided by the courier company.

(9.0) **JURISDICTION:** This contract shall be governed by the laws of Kenya.

(10.0) The conditions and all provisions under this Agreement shall supersede the provisions of any previous contract, warranty or representation made or given relating to the same service as described herein.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf of **TANA WATER WORKS DEVELOPMENT AGENCY**

Name: \_\_\_\_\_

Designation: **CHIEF EXECUTIVE OFFICER-TWWDA**

Signature: \_\_\_\_\_



Date: \_\_\_\_\_(Day/Month/Year)

In the presence of:

Witness: Name: \_\_\_\_\_

Address: **1292-10100, NYERI**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_(Day/Month/

.....  
For and on behalf of the Courier Company: **MS**\_\_\_\_\_

Full name of the

Authorized representative: \_\_\_\_\_

Designation: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_(Date, Month/Year)

In the presence of:

Witness: Name: \_\_\_\_\_

Address: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_(Date, Month/Year)



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## 7.7 PERFORMANCE SECURITY FORM

To .....  
[*name of Procuring entity*]

WHEREAS ..... [*name of tenderer*]  
(hereinafter called “the tenderer”) has undertaken , in pursuance of Contract  
No. \_\_\_\_\_ [*reference number of the contract*] dated \_\_\_\_\_  
20 \_\_\_\_\_ to supply .....  
[*description of goods*] (hereinafter called “the Contract”).

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

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

THEREFORE WE hereby affirm that we are Guarantors and responsible to  
you, on behalf of the tenderer, up to a total of .....  
[*amount of the guarantee in words and figure*] and we undertake to pay you,  
upon your first written demand declaring the tenderer to be in default under  
the Contract and without cavil or argument, any sum or sums within the  
limits of ..... [*amount of guarantee*] as aforesaid, without  
you needing to prove or to show grounds or reasons for your demand or the  
sum specified therein.

This guarantee is valid until the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Signed and seal of the Guarantors

\_\_\_\_\_  
[*name of bank or financial institution*]

\_\_\_\_\_  
[*address*]

\_\_\_\_\_  
[*date*]



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## 7.8 BANK GUARANTEE FOR ADVANCE PAYMENT FORM

To .....  
[name of Procuring entity]

[name of tender] .....

Gentlemen and/or Ladies:

In accordance with the payment provision included in the Special Conditions of Contract, which amends the General Conditions of Contract to provide for advance payment, ..... [name and address of tenderer] (hereinafter called “the tenderer”) shall deposit with the Procuring entity a bank guarantee to guarantee its proper and faithful performance under the said Clause of the Contract in an amount of ..... [amount of guarantee in figures and words].

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

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

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

Yours truly,

Signature and seal of the Guarantors

\_\_\_\_\_  
[name of bank or financial institution]

\_\_\_\_\_  
[address]

\_\_\_\_\_  
[date]



## 7.9 MANUFACTURER’S AUTHORIZATION FORM

To [name of the Procuring entity] .....

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

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

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[Signature for and on behalf of manufacturer]

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



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## 7.10 LETTER OF NOTIFICATION OF AWARD

Address of Procuring Entity

\_\_\_\_\_  
\_\_\_\_\_

To: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RE: Tender No. \_\_\_\_\_

Tender Name \_\_\_\_\_

This is to notify that the contract/s stated below under the above mentioned tender have been awarded to you.

\_\_\_\_\_  
\_\_\_\_\_

1. Please acknowledge receipt of this letter of notification signifying your acceptance.
2. The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.
3. You may contact the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.

(FULL PARTICULARS) \_\_\_\_\_  
\_\_\_\_\_

SIGNED FOR ACCOUNTING OFFICER



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## 7. 11 FORM RB 1

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

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

BETWEEN

.....APPLICANT

AND

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

Request for review of the decision of the..... (*Name of the Procuring Entity*) of  
.....dated the...day of .....20.....in the matter of Tender No.....of  
.....20...

### REQUEST FOR REVIEW

I/We.....,the above named Applicant(s), of address: Physical  
address.....Fax No.....Tel. No.....Email ....., hereby request the Public  
Procurement Administrative Review Board to review the whole/part of the above mentioned  
decision on the following grounds , namely:-

- 1.
- 2.
- etc.

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

- 1.
- 2.
- etc

SIGNED .....(Applicant)

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

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### FOR OFFICIAL USE ONLY

Lodged with the Secretary Public Procurement Administrative Review Board on ..... day of  
.....20.....

SIGNED  
D.G.



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