

REPUBLIC OF KENYA



**MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN
DEVELOPMENT AND PUBLIC WORKS.**

STATE DEPARTMENT FOR HOUSING AND URBAN DEVELOPMENT

FRAMEWORK TENDER DOCUMENT

TENDER NO: MTHUDPW/SDHUD/ADM/018/2020-2021

TENDER NAME: SUPPLY OF MINERAL WATER

PROCUREMENT METHOD: OPEN TENDER

CONTRACT TYPE: FRAMEWORK AGREEMENT

ISSUE DATE: 10th MARCH 2021

INVITATION FOR BID NOTICE

Procuring Entity: State Department for Housing and Urban Development

Framework Agreement Title: SUPPLY OF MINERAL WATER

Tender Reference No.: MTIHU DPW/SDHUD/ADMIN/18/2020-2021

1. The State Department for Housing and Urban Development (SDHUD) invites sealed bids from eligible candidates for a *Framework Tender for Supply of Mineral Water for a period of three years on as and when required basis*.
2. The Framework agreement for Supply of Mineral Water will be renewable annually based on performance.
3. The framework agreements will be given to a minimum of Seven (7) firms that will meet the requirements tabulated in this tender document.
4. The Framework Agreements will be contracted based on section 114 of the PPADA 2015 and regulations 106 of The Public Procurement and Asset Disposal Regulations, 2020.
5. Interested bidders may access the tender documents from the State Department's website www.housingandurban.go.ke or the Public Procurement Information Portal (PIIP) <https://tenders.go.ke> free of charge. No hard copies of the document shall be availed due to the current COVID-19 Pandemic.
6. Completed tender documents should be submitted accompanied by a tender security issued by a reputable Commercial Bank or an approved Insurance Company by PPRA in the amount of **KES 50,000**. The tender security shall be valid for a period of 150 days from the tender opening date. Failure to provide bid security in the right format, right source, correct value and validity period shall lead to disqualification of the bidder.
7. Prices quoted shall be inclusive of duty and other taxes and shall remain valid for 150 calendar days from the closing date of the tenders.
8. Interested eligible Bidders may obtain further information, enquiries and clarifications from the office of Supply Chain Management Services, through the email: procurement@housingandurban.go.ke
9. Completed tender documents are to be enclosed in plain sealed envelopes, marked with the tender Name and number and be deposited in the tender box provided at Ardhi House 6th floor, or be addressed to **The State Department for Housing and Urban Development P.O Box 30119-00100 Nairobi** so as to be received on or before, **24th March, 2021 at 11.00 a.m.**
10. Tenders will be opened immediately thereafter in the presence of the tenderer's representatives who choose to attend the opening at The State Department for Housing and Urban Development, Ardhi House, 6th floor Board room.

**The Head of Supply Chain Management Services
For: The Principal Secretary
State Department of Housing and Urban Development**

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PART 1 – Bidding Procedures

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Section I. Instructions to Bidders

A. General

1 Scope of Bid

- 1.1 In connection with the Invitation to Tender Notice, Framework Agreements Goods, specified **in the Bid Data Sheet (BDS)**, the Procuring Entity, as specified **in the BDS**, issues this bidding document as part of the Primary Procurement process for Goods, and may lead to Framework Agreement(s) being concluded with the successful Bidder(s). The name and identification of this RFB are specified **in the BDS**.
- 1.2 Throughout this Bidding document:
- (a) **“in writing”** means communicated in written form (e.g. by mail, e-mail, fax, including if specified **in the BDS**, distributed or received through the electronic-procurement system used by the Procuring Entity) with proof of receipt;
 - (b) if the context so requires, **“singular”** means **“plural”** and vice versa;
 - (c) **“Day”** means calendar day, unless otherwise specified as **“Business Day”**. A Business Day is any day that is an official working day of the Borrower. It excludes the Borrower’s official public holidays;
 - (d) **“Call-off Contract”** means a contract awarded, under a Framework Agreement, through a Secondary Procurement process, for the supply of Goods, and any Related Services. The parties to the contract are the Purchaser and Supplier;
 - (e) **“Closed Framework Agreement”**: A Closed Framework Agreement is where no new firm(s) may conclude Framework Agreement(s) during the Term of the Framework Agreement;
 - (f) **“Country”** means the Republic of Kenya;
 - (g) **“Delivery Period”** is the specified period from the date of formation of a Call-off contract for delivery of the Goods, as per the applicable Incoterms.
 - (h) **“Framework Agreement (FA)”** means the agreement between the Procuring Entity and Supplier (s) (the successful Bidder(s)) to establish the terms and procedures governing the award of Call-off contracts under the agreement;
 - (i) **“FA Supplier”** means a Supplier;
 - (j) **“Goods”** means all goods, materials or items that the Supplier is required to supply to a Purchaser under a Call-off Contract placed under a Framework Agreement. Details of such Goods are set out in Part 2, Supply Requirements, and

the Framework Agreement and particularly described in a Call-off Contract. Where appropriate, for the purpose of interpretation, the definition for Goods includes Related Services;

- (k) **“Lead Purchaser”** when named in the Framework Agreement, a Lead Purchaser is a party to the Framework Agreement, in its capacity as: (a) the lead entity acting on behalf of all participating Purchasers in managing and administering the Framework Agreement, and (b) as a Purchaser in its own right;
- (l) **“Multi-User Framework Agreement”** means a Framework Agreement where there is more than one Purchaser permitted to purchase through a Call-off Contract;
- (m) **“Multi-Supplier Framework Agreement”** means where more than one Bidder (Supplier) concludes a Framework Agreement for the supply of each item/Lot;
- (n) **“Primary Procurement”** means the procurement process that results in concluding a Framework Agreement(s) with a successful Bidder(s), as described in this RFB;
- (o) **“Procuring Entity”** means the entity that undertakes the Primary Procurement process and concludes the Framework Agreement(s);
- (p) **“Purchaser”**, as **specified in the BDS**, means the entity(ies) that is/are permitted to purchase Goods from a Supplier under a Call-off Contract awarded through a Framework Agreement;
- (q) **“Related Services”** if applicable, means the services incidental to the supply of the Goods, such as insurance, installation, training, initial maintenance and other such obligations of the Supplier, as specified in Framework Agreement Schedule 1: Schedule of Requirements, and specifically described in a Call-off Contract;
- (r) **“Responsible Entity”** when named in the Framework Agreement, is a party to the Framework Agreement, but only in its capacity to conclude the Framework Agreement(s) with successful Suppliers, and, as the agency responsible for managing and administering the Framework Agreement, on behalf of the Purchaser or Purchasers, once it has been concluded. A Responsible Agency is not a Purchaser under the Framework Agreement;
- (s) **“Secondary Procurement”** means the process described in the Framework Agreement and followed by a Purchaser to select a FA Supplier, and award a Call-off Contract for the supply of Goods;
- (t) **“Single-User Framework Agreement”** means a Framework Agreement where there is only one Purchaser;
- (u) **“Single-Supplier Framework Agreement”** means a Framework Agreement where only one Bidder (Supplier)

concludes a Framework Agreement for the supply of each item/Lot;

- (v) **“Supplier”** means a Bidder that has concluded a Framework Agreement through the Primary Procurement process and may be considered for the award of a Call-off Contract, to deliver the Goods, and, if applicable, Related Services, as and when required. A Supplier may also be referred to as a “FA Supplier”;
- (w) **“Term”** means the duration of a Framework Agreement starting on the Commencement Date. Where applicable, it includes any extension(s) to the initial Term, if permitted and agreed.

- 2 **Source of Funds**
 - 2.1 The State Department of Housing and Urban Development has set aside a budget and intends to apply a portion of the funds to eligible payments under Call-off Contracts to be awarded under the Framework Agreement(s) for which this Bidding document is issued.
- 3 **Fraud and Corruption**
 - 3.1 The Procuring Entity requires compliance with the provisions of the Public Procurement and Asset Disposal Act in regard to fraud and corruption.
 - 3.2 In further pursuance of this policy, Bidders shall permit and shall cause their agents (whether declared or not), subcontractors, subconsultants, service providers, suppliers, and their personnel, to permit the Procuring Entity to inspect all accounts, records and other documents relating to any, Bid submission, Primary Procurement process, Framework Agreement performance, Secondary Procurement process, and/or Call-off Contract performance (in the case of award of a Call-off Contract), and to have them audited by auditors appointed by the Government.
- 4 **Eligible Bidders**
 - 4.1 A Bidder may be a firm that is a private entity, a state-owned enterprise or institution subject to ITB 4.6, or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of any Call-off Contract(s) awarded under the Framework Agreement in accordance with the Call-off Contract conditions that apply. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the Bidding process and, in the event the JV is awarded a Call-off Contract under the Framework Agreement, during contract execution. Unless specified **in the BDS**, there is no limit on the number of members in a JV.
 - 4.2 A Bidder shall not have a conflict of interest. Any Bidder found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest for the purpose of this Bidding process, if the Bidder:

- (a) directly or indirectly controls, is controlled by or is under common control with another Bidder; or
 - (b) receives or has received any direct or indirect subsidy from another Bidder; or
 - (c) has the same legal representative as another Bidder; or
 - (d) has a relationship with another Bidder, directly or through common third parties, that puts it in a position to influence the Bid of another Bidder, or influence the decisions of the Procuring Entity regarding this Primary Procurement process; or
 - (e) or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the Goods, or Related Services, that are the subject of the Bid; or
 - (f) or any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity or Purchaser in implementing the Framework Agreement or a Call-off Contract; or
 - (g) would be providing Goods, works, or non-consulting services resulting from, or directly related to consulting services for the preparation or implementation of the project specified in the **BDS ITB 2.1** that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or
 - (h) has a close business or family relationship with a professional staff of the Procuring Entity who:
 - (i) are directly or indirectly involved in the preparation of the bidding document or specifications of the Framework Agreement or Call-off Contract, and/or the Bid evaluation process of such Framework Agreement or Call-off Contract; or
 - (ii) would be involved in the implementation or supervision of such Framework Agreement or Call-off Contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the Bidding process and execution of the Framework Agreement and/or Call-off Contract.
- 4.3 A firm that is a Bidder (either individually or as a JV member) shall not participate in more than one Bid. This includes participation as a subcontractor. Such participation shall result in the disqualification of all Bids in which the firm is involved. A firm that is not a Bidder or a JV member, may participate as a subcontractor in more than one Bid.
- 4.4 A Bidder may have the nationality of any country, subject to the restrictions pursuant to **ITB 4.8 and Bid Data Sheet**. A Bidder shall be deemed to have the nationality of a country if the Bidder is constituted, incorporated or registered in, and operates in conformity with, the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or

association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or subconsultants for any part of a Call-off Contract including Related Services.

- 4.5 A Bidder that has been sanctioned by the Government of Kenya. The list of debarred firms and individuals is available at the electronic address specified **in the BDS**.
- 4.6 Bidders that are state-owned enterprises or institutions in Kenya may be eligible to compete and conclude a Framework Agreement or be awarded a Call-off Contract(s) only if they can establish, in a manner acceptable to the Procuring Entity, that they:
- (a) are legally and financially autonomous;
 - (b) operate under commercial law; and
 - (c) are not under supervision of the Procuring Entity.
- 4.7 Eligibility of Bidders suspended, as a result of the execution of a Bid–Securing Declaration, shall be as follows:
- (a) A Bidder that is under suspension from Bidding, as the result of the operation of a Bid–Securing Declaration by the Purchaser in case of a Single-User Framework Agreement or all Purchasers in a Multi-User Framework Agreement shall not be eligible to bid to conclude a framework agreement.
 - (b) A Bidder that has concluded a framework agreement is ineligible to quote for or to be awarded a Call-off contract by a Purchaser that has suspended the bidder as the result of the operation of a Bid–Securing Declaration.
- 4.8 Firms and individuals may be ineligible if so indicated in Section V and:
- (a) as a matter of law or official regulations, Kenya prohibits commercial relations with that country, provided that the Procuring Entity is satisfied that such exclusion does not preclude effective competition for the supply of Goods or the contracting of works or services required; or
 - (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower’s country prohibits any import of Goods or contracting of works or services from that country, or any payments to any country, person, or entity in that country.
- 4.9 A Bidder shall provide such documentary evidence of eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request in the **Bid Data Sheet**.

5 Eligible Goods and Related Services

- 5.1 All the Goods and Related Services to be supplied under a Call-off Contract awarded under a Framework Agreement and financed by the Procuring Entity, may have their origin as specified in the **Bid Data Sheet**.

- 5.2 The term “origin” means the country where the Goods have been mined, grown, cultivated, produced, manufactured or processed; or, through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

B. Contents of the RFB Document

6 Sections of Bidding Document

- 6.1 The Bidding document consists of Parts 1, 2, 3, and 4, which include all sections, schedules, annexes. and should be read in conjunction with any addenda issued in accordance with **ITB 8**.

PART 1 - Bidding Procedures

Section I - Instructions to Bidders (ITB)

Section II - Bidding Data Sheet (BDS)

Section III - Evaluation and Qualification Criteria

Section IV - Bidding Forms

PART 2 - Supply Requirements

Section V - Schedule of Requirements

PART 3 - Procuring Entity Forms

PART 4 - Framework Agreement (FA)

Section A: Framework Agreement General Provisions

Section B: Framework Agreement Specific Provisions

SCHEDULE 1: Schedule of Requirements

SCHEDULE 2: Price Schedules

SCHEDULE 3: Secondary Procurement

SCHEDULE 4: Call-off Contract General Conditions of Contract

SCHEDULE 5: Secondary Procurement Forms

SCHEDULE 6: List of Purchasers (if applicable)

- 6.2 The Invitation to Tender Notice to conclude a Framework Agreement(s) for Goods”, issued by the Procuring Entity is not part of this Bidding document.
- 6.3 Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of the document, responses to requests for clarification, the Minutes of the pre-Bid meeting (if any), or addenda to the Bidding document in accordance with ITB 8. In case of any contradiction, documents obtained directly from the Procuring Entity shall prevail.
- 6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding document and to furnish with its

Bid all information or documentation as is required by the Bidding document.

- 7 Clarification of Bidding Document**
- 7.1 A Bidder requiring any clarification of the Bidding document shall contact the Procuring Entity in writing at the Procuring Entity's address specified **in the BDS**. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received prior to the deadline for submission of Bids within a period specified **in the BDS**. The Procuring Entity shall forward copies of its response to all Bidders who have acquired the Bidding document in accordance with **ITB 6.3**, including a description of the inquiry but without identifying its source. If so specified **in the BDS**, the Procuring Entity shall also promptly publish its response at the web page identified **in the BDS**. Should the clarification result in changes to the essential elements of the Bidding document, the Procuring Entity shall amend the Bidding document following the procedure under **ITB 8** and **ITB 22.2**.
- 8 Amendment of Bidding Document**
- 8.1 At any time prior to the deadline for submission of Bids, the Procuring Entity may amend the Bidding document by issuing addenda.
- 8.2 Any Addendum issued shall be part of the Bidding document and shall be communicated in writing to all who have obtained the Bidding document from the Procuring Entity in accordance with **ITB 6.3**. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's web page in accordance with **ITB 7.1**.
- 8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their Bids, the Procuring Entity may, at its discretion, extend the deadline for the submission of Bids, pursuant to **ITB 22.2**.

C. Preparation of Bids

- 9 Cost of Bidding**
- 9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, in relation to this Primary Procurement process, (and if successful any Secondary Procurement process) and the Procuring Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the Bidding process.
- 10 Language of Bid**
- 10.1 The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the Procuring Entity, shall be written in the language specified **in the BDS**. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages into the language specified **in the BDS**, in which case, for purposes of interpretation of the Bid, such translation shall govern.
- 11 Documents Comprising the Bid**
- 11.1 The Bid shall comprise the following:
- (a) Letter of Bid prepared in accordance with **ITB 12**;

- (b) Price Schedules: completed in accordance with **ITB 12** and **ITB 14**;
 - (c) Authorization: written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with **ITB 20.3**;
 - (d) Qualifications: documentary evidence in accordance with **ITB 17** establishing the Bidder’s qualifications to conclude a Framework Agreement and perform any Call-off Contract, if awarded;
 - (e) Bidder’s Eligibility: documentary evidence in accordance with **ITB 17** establishing the Bidder’s eligibility to Bid;
 - (f) Eligibility of Goods and Services: documentary evidence in accordance with **ITB 16** and **ITB 30**, establishing the eligibility of the Goods and Related Services to be supplied by the Bidder;
 - (g) Conformity: documentary evidence in accordance with **ITB 16**, that the Goods and Related Services conform to the Bidding document; and
 - (h) any other document required **in the BDS**.
- 11.2 In addition to the requirements under **ITB 11.1**, Bids submitted by a JV shall include a copy of the Joint Venture agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful Bid shall be signed by all members and submitted with the Bid, together with a copy of the proposed agreement.
- 11.3 The Bidder shall furnish in the Letter of Bid information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Bid.
- 12 Letter of Bid and Price Schedules**
- 12.1 The Letter of Bid and Price Schedules 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 except as provided under **ITB 20.3**. All blank spaces shall be filled in with the information requested.
- 13 Alternative Bids**
- 13.1 Alternative Bids shall not be permitted in this Primary Procurement process.
- 14 Bid Prices and Discounts**
- 14.1 The prices and unconditional discounts quoted by the Bidder in the Letter of Bid and in the Price Schedules shall conform to the requirements specified below.
- 14.2 Bidders shall provide their prices in the Price Schedules, as specified **in the BDS**.
- 14.3 The price to be quoted in the Letter of Bid in accordance with **ITB 12.1** shall be, as specified **in the BDS**.

- 14.4 The Bidder shall indicate the methodology for the application of any unconditional discounts in the Letter of Bid, in accordance with **ITB 12.1**.
- 14.5 For the purpose of Secondary Procurement, the price(s) offered by the Bidder shall be treated as set out in the Framework Agreement Specific Provisions.
- 14.6 The terms EXW, CIP, DDP, and other similar terms shall be governed by the rules prescribed in the current edition of Incoterms, published by the International Chamber of Commerce, as specified **in the BDS**.
- 14.7 Prices shall be quoted as specified in each Price Schedule included in Section IV, Bidding Forms. The disaggregation of price components is required solely for the purpose of facilitating the comparison of Bids by the Procuring Entity. This shall not in any way limit the Purchaser's right to award a Call-off contract on any of the terms offered. In quoting prices, the Bidder shall be free to use transportation through carriers registered in any eligible country. Similarly, the Bidder may obtain insurance services from Kenya. Prices shall be entered in the following manner:
- (i) the price of the Goods quoted **DDP (Delivery Duty Paid)**, including all customs duties and sales and other taxes already paid or payable on the components and raw material used in the manufacture or assembly of the Goods;
 - (ii) any Kenyan sales tax and other taxes which will be payable on the Goods (if a Call-off Contract is awarded to the Bidder as a FA Supplier); and
 - (iii) the price for inland transportation, insurance, and other local services required to convey the Goods to their final destination (Project Site) (if a Call-off Contract is awarded to the Bidder as a FA Supplier) specified **in the BDS**.
 - (iv) for Related Services, other than inland transportation and other services required to convey the Goods to their final destination including unloading, whenever such Related Services are specified in the Schedule of Requirements, the price of each item comprising the Related Services inclusive of any applicable taxes.

15 Currencies of Bid and Payment

- 15.1 The currency(ies) of the Bid and the currency(ies) of payments shall be the same. The Bidder shall quote in the currency of the Procuring Entity's Country the portion of the Bid price that corresponds to expenditures incurred in the currency of the Procuring Entity's Country, unless otherwise specified **in the BDS**.
- 15.2 The Bidder may express the Bid price in any currency, unless specifically provided in the **Bid Data Sheet**. If the Bidder wishes to be paid in a combination of amounts in different currencies, it may quote its price accordingly but shall use no more than three

foreign currencies in addition to the currency of the Procuring Entity's Country.

**16 Documents
Establishing the
Eligibility and
Conformity of
Goods**

- 16.1 To establish the eligibility of the Goods and Services in accordance with **ITB 5**, Bidders shall complete the country of origin declarations in the Price Schedule Forms, included in Section IV, Bidding Forms.
- 16.2 To establish the conformity of the Goods and Related Services to the Bidding document, the Bidder shall furnish as part of its Bid the documentary evidence that the Goods conform to the technical specifications and standards specified in Section VII, Schedule of Requirements.
- 16.3 The documentary evidence may be in the form of literature, drawings or data, and shall consist of a detailed item by item description of the essential technical and performance characteristics of the Goods and Related Services, demonstrating substantial responsiveness of the Goods and Related Services to the technical specification, and if applicable, a statement of deviations and exceptions to the provisions of the Section VII, Schedule of Requirements.
- 16.4 The Bidder shall also furnish a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the Goods during the period specified **in the BDS** following acceptance of the Goods by the Purchaser (if a Call-off Contract is awarded to the Bidder as a FA Supplier).

**17 Documents
Establishing the
Eligibility and
Qualifications of the
Bidder**

- 17.1 To establish Bidder's eligibility in accordance with **ITB 4**, Bidders shall complete the Letter of Bid, included in Section IV, Bidding Forms.
- 17.2 The documentary evidence of the Bidder's qualifications to conclude a Framework Agreement, and/or to perform any Call-off Contract(s) if awarded, shall establish to the Procuring Entity's satisfaction:
- (a) that, if required **in the BDS**, a Bidder that does not manufacture or produce the Goods it offers to supply shall submit the Manufacturer's Authorization using the form included in Section IV, Bidding Forms to demonstrate that it has been duly authorized by the manufacturer or producer of the Goods to supply these Goods in the Procuring Entity's Country;
 - (b) that, if required **in the BDS**, in case of a Bidder not doing business within Kenya, the Bidder is, or will be, (if awarded the call off contract) represented by an Agent in the country, equipped and able to carry out the Supplier's maintenance, repair, and spare parts stocking obligations in respect of the Goods; and

- (c) that the Bidder meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.
- 18 Period of Validity of Bids**
- 18.1 Bids shall remain valid for the Bid Validity period specified **in the BDS**. The Bid Validity period starts from the date fixed for the Bid submission deadline (as prescribed by the Procuring Entity in accordance with **ITB 22.1**). A Bid valid for a shorter period shall be rejected by the Procuring Entity as nonresponsive.
- 18.2 In exceptional circumstances, prior to the expiration of the Bid validity period, the Procuring Entity may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. A Bidder may refuse the request to extend the validity of their bids. A Bidder granting the request shall not be required or permitted to modify its Bid, except as provided in **ITB 18.3**.
- 19 No Bid Security or Bid Securing Declaration**
- 19.1 No Bid Security or Bid-Securing Declaration is required in relation to this Primary Procurement process, unless provided for in the **Bid Data Sheet**.
- 20 Format and Signing of Bid**
- 20.1 The Bidder shall prepare one original of the documents comprising the Bid as described in **ITB 11** and clearly mark it “ORIGINAL.” In addition, the Bidder shall submit a copy 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.
- 20.2 Bidders shall mark as “CONFIDENTIAL” information in their Bids which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.
- 20.3 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.
- 20.4 In case the Bidder is a JV, the Bid shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representative(s).
- 20.5 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

- 21 Sealing and Marking of Bids**
- 21.1 The Bidder shall deliver the Bid in a single, sealed envelope (one-envelope Bidding process). Within the single envelope, the Bidder shall place the following separate, sealed envelope
- (a) in an envelope marked “ORIGINAL”, all documents comprising the Bid, as described in **ITB 11**; and
 - (b) in an envelope marked “COPIES”, all required copies of the Bid; and,
- 21.2 The inner and outer envelopes, shall:
- (a) bear the name and address of the Bidder;
 - (b) be addressed to the Procuring Entity in accordance with **ITB 22.1**;
 - (c) bear the specific identification of this Bidding process indicated in **ITB 1.1**; and
 - (d) bear a warning not to open before the time and date for Bid opening.
- 21.3 If all envelopes are not sealed and marked as required, the Procuring Entity will assume no responsibility for the misplacement or premature opening of the Bid.
- 22 Deadline for Submission of Bids**
- 22.1 Bids must be received by the Procuring Entity at the address and no later than the date and time specified **in the BDS**. When so specified **in the BDS**, Bidders shall have the option of submitting their Bids electronically. Bidders submitting Bids electronically shall follow the electronic Bid submission procedures specified **in the BDS**.
- 22.2 The Procuring Entity 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 Procuring Entity and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.
- 23 Late Bids**
- 23.1 The Procuring Entity shall not consider any Bid that arrives after the deadline for submission of Bids, in accordance with **ITB 22**. Any Bid received by the Procuring Entity after the deadline for submission of Bids shall be declared late, rejected, and returned unopened to the Bidder.
- 24 Withdrawal, Substitution, and Modification of Bids**
- 24.1 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 (the power of attorney) in accordance with **ITB 20.3**, (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 20** and **ITB 21** (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly

marked “WITHDRAWAL,” “SUBSTITUTION,” or “MODIFICATION;” and

- (b) received by the Procuring Entity prior to the deadline prescribed for submission of Bids, in accordance with **ITB 22**.

24.2 Bids requested to be withdrawn in accordance with **ITB 24.1** shall be returned unopened to the Bidders.

24.3 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 or any extension thereof.

25 Bid Opening

25.1 Except as in the cases specified in **ITB 23** and **ITB 24.2**, the Procuring Entity shall, at the Bid opening, publicly open and read out all Bids received by the deadline at the date, time and place specified in the **BDS** in the presence of Bidders’ designated representatives and anyone who chooses to attend. Any specific electronic Bid opening procedures required if electronic Bidding is permitted in accordance with **ITB 22.1**, shall be as specified in the **BDS**.

25.2 First, envelopes marked “WITHDRAWAL” shall be opened and read out and the envelope with the corresponding Bid shall not be opened, but returned to the Bidder. If the withdrawal envelope does not contain a copy of the “power of attorney” confirming the signature as a person duly authorized to sign on behalf of the Bidder, the corresponding Bid will be opened. No Bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Bid opening.

25.3 Next, envelopes marked “SUBSTITUTION” shall be opened and read out and exchanged with the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. No Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Bid opening.

25.4 Next, envelopes marked “MODIFICATION” shall be opened and read out with the corresponding Bid. No Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Bid opening.

25.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the Bid Prices, including any unconditional discounts, and any other details as the Procuring Entity may consider appropriate.

25.6 Only Bids and unconditional discounts that are opened and read out at Bid opening shall be considered further in the evaluation. The Letter of Bid and the Price Schedules are to be initialed by

representatives of the Procuring Entity attending Bid opening in the manner specified **in the BDS**.

- 25.7 The Procuring Entity shall neither discuss the merits of any Bid nor reject any Bid (except for late Bids, in accordance with **ITB 23.1**).
- 25.8 The Procuring Entity shall prepare a record of the Bid opening that shall include, as a minimum;
- (a) the name of the Bidder and whether there is a withdrawal, substitution, or modification;
 - (b) the Bid Price, per lot (item) if applicable, including any unconditional discounts;
- 25.9 The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders.

E. Evaluation and Comparison of Bids

26 Confidentiality

- 26.1 Information relating to the evaluation of Bids and recommendation to conclude a Framework Agreement(s), shall not be disclosed to Bidders or any other persons not officially concerned with the Bidding process until the Notification of Intention to conclude the Framework Agreement is transmitted to all Bidders in accordance with **ITB 39.1**.
- 26.2 Any effort by a Bidder to influence the Procuring Entity in the evaluation or decision to conclude a Framework Agreement(s) may result in the rejection of its Bid.
- 26.3 Notwithstanding **ITB 26.2**, from the time of Bid opening to the time of the Framework Agreement being concluded, if any Bidder wishes to contact the Procuring Entity on any matter related to the Bidding process, it should do so in writing.

27 Clarification of Bids

- 27.1 To assist in the examination, evaluation, comparison of Bids, and qualification of Bidders, the Procuring Entity may, at its discretion, ask any Bidder for a clarification of its Bid. Any clarification submitted by a Bidder in respect to its Bid and that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, 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 Procuring Entity in the Evaluation of the Bids, in accordance with **ITB 31**.
- 27.2 If a Bidder does not provide clarifications of its Bid by the date and time set in the Procuring Entity's request for clarification, its Bid may be rejected.

- 28 Deviations, Reservations, and Omissions**
- 28.1 During the evaluation of Bids, the following definitions apply:
- (a) “Deviation” is a departure from the requirements specified in the Bidding document;
 - (b) “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding document; and
 - (c) “Omission” is the failure to submit part or all of the information or documentation required in the Bidding document.
- 29 Determination of Responsiveness**
- 29.1 The Procuring Entity’s determination of a Bid’s responsiveness is to be based on the contents of the Bid itself, as defined in **ITB 11**.
- 29.2 A substantially responsive Bid is one that meets the requirements of the Bidding document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:
- (a) if accepted, would:
 - (i) affect in any substantial way the scope, quality, or performance of the Goods and Related Services specified in the Framework Agreement; or
 - (ii) limit in any substantial way, inconsistent with the Bidding document, the Procuring Entity’s rights or the Bidder’s obligations under the Framework Agreement; or
 - (b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Bids.
- 29.3 The Procuring Entity shall examine the technical aspects of the Bid submitted in accordance with **ITB 16** and **ITB 17**, in particular, to confirm that all requirements of Section VII, Schedule of Requirements have been met without any material deviation or reservation, or omission.
- 29.4 If a Bid is not substantially responsive to the requirements of Bidding document, it shall be rejected by the Procuring Entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.
- 30 Nonconformities, Errors and Omissions**
- 30.1 Provided that a Bid is substantially responsive, the Procuring Entity may waive any nonconformities in the Bid.
- 30.2 Provided that a Bid is substantially responsive, the Procuring Entity may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the Bid related to documentation requirements. Such omission shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.
- 30.3 Provided that a Bid is substantially responsive, the Procuring Entity shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for

comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified **in the BDS**.

**31 Correction of
Arithmetical Errors**

31.1 Provided that the Bid is substantially responsive, the Procuring Entity shall correct arithmetical errors on the following basis:

- (a) if there is a discrepancy between the unit price and the line item total that is obtained by multiplying the unit price by the quantity, the unit price shall prevail and the line item total shall be corrected, unless in the opinion of the Procuring Entity there is an obvious misplacement of the decimal point in the unit price, in which case the line item total 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.

31.2 Bidders shall be requested to accept correction of arithmetical errors. Failure to accept the correction in accordance with **ITB 31.1**, shall result in the rejection of the Bid.

**32 Conversion to
Single Currency**

32.1 For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted in a single currency as specified **in the BDS**.

**33 No Margin of
Preference**

33.1 No margin of preference shall apply in the Primary Procurement process and in any Secondary Procurement processes.

34 Evaluation of Bids

34.1 The Procuring Entity shall use the criteria and methodologies listed in this ITB and Section III, Evaluation and Qualification Criteria in deciding to conclude a Framework Agreement(s). No other evaluation criteria or methodologies shall be permitted.

34.2 To evaluate a Bid, the Procuring Entity shall consider the following:

- (a) evaluation will be done for Items or Lots, as specified **in the BDS**; and the Bid Price as quoted in accordance with **ITB 14**;
- (b) price adjustment for correction of arithmetic errors in accordance with **ITB 31.1**;
- (c) price adjustment due to unconditional discounts offered in accordance with **ITB 14.4**;
- (d) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with **ITB 32**;
- (e) price adjustment due to quantifiable nonmaterial nonconformities in accordance with **ITB 30.3**; and;
- (f) the additional evaluation factors are specified in Section III, Evaluation and Qualification Criteria.

- 34.3 If applicable, the estimated effect of the price adjustment provisions in the Framework Agreement(s) (which determines the Contract Price for a Call-off Contract), applied over the Term of the Framework Agreement, shall not be taken into account in the Primary Procurement Bid evaluation.
- 34.4 The Procuring Entity's evaluation of a Bid will include and take into account:
- (a) in the case of Goods manufactured in Kenya, sales and other similar taxes, which will be payable on the Goods if a Call-off Contract is awarded to the Bidder;
 - (b) in the case of Goods manufactured outside Kenya, already imported or to be imported, customs duties and other import taxes levied on the imported Goods sales and other similar taxes, which will be payable on the Goods if the Call-off Contract is awarded to the Bidder;
- 34.5 The Procuring Entity's evaluation of a Bid may require the consideration of other factors, in addition to the Bid Price quoted in accordance with **ITB 14**. These factors may be related to the characteristics, performance, and terms and conditions of purchase of the Goods and Related Services or geographic location. The effect of the factors selected, if any, shall be expressed in monetary terms to facilitate comparison of Bids, unless otherwise specified **in the BDS** from amongst those set out in Section III, Evaluation and Qualification Criteria. The criteria and methodologies to be used shall be as specified in **ITB 34.2(f)**.
- 35 Comparison of Bids** 35.1 The Procuring Entity shall compare the evaluated costs of all substantially responsive Bids established in accordance with **ITB 34.2** to determine the ranking of Bids based on the lowest evaluated cost. The comparison shall be on the basis of DDP (Delivery Duty Paid).
- 36 Qualification of the Bidder(s)** 36.1 Before concluding a Framework Agreement(s), the Procuring Entity shall determine, to its satisfaction, whether the eligible Bidder(s) with substantially responsive Bid(s) that are able to meet the Framework Agreement criteria, meet(s) the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.
- 36.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to **ITB 17**. The determination shall not take into consideration the qualifications of other firms such as the Bidder's subsidiaries, parent entities, affiliates, subcontractors (other than specialized subcontractors if permitted in the Bidding document), or any other firm(s) different from the Bidder.
- 36.3 An affirmative determination shall be a prerequisite for the conclusion of the Framework Agreement (s) to the Bidder. A negative determination shall result in disqualification of the Bid.
- 37 Procuring Entity's Right to Accept Any** 37.1 The Procuring Entity reserves the right to accept or reject any Bid, and to annul the Bidding process and reject all Bids at any time

- Bid, and to Reject Any or All Bids** prior to the conclusion of a Framework Agreement(s), without thereby incurring any liability to Bidders. In case of annulment, all Bids submitted shall be promptly returned to the Bidders.
- 38 Appeals Period** 38.1 The Framework Agreement(s) shall not be concluded earlier than the expiry of the Appeals Period. The Standstill Period commences the day after the date the Purchaser has transmitted to each Bidder the Notification of Award Conclude a Framework Agreement.
- 39 Notification to Conclude a Framework Agreement** 39.1 The Procuring Entity shall send to each Bidder the Notification to Conclude a Framework Agreement(s) with the successful Bidder(s). The Notification(s) to Conclude shall contain, at a minimum, the following information:
- (a) the name and address of the Bidder(s) submitting the successful Bid(s);
 - (b) the price(s) of the successful Bid(s), or pricing mechanism(s);
 - (c) the names of all Bidders who submitted Bids, and their Bid prices, or pricing mechanism(s), as readout, and as evaluated.

F. Conclusion of a Framework Agreement

- 40 Framework Agreement Criteria** 40.1 This is a Closed Framework Agreement.
- 40.2 The Procuring Entity shall specify **in the BDS** and/or Section III Evaluation and Qualification Criteria, the criteria that will apply in the selection of Bidder(s), with whom a Framework Agreement(s) may be concluded.
- 41 Notification to Conclude a Framework Agreement** 41.1 Prior to the expiration of the Bid Validity Period and upon expiry of the Standstill Period, specified in **ITB 38.1** or any extension thereof, the Procuring Entity shall transmit to the successful Bidder(s) a Notification to Conclude a Framework Agreement.
- 42 No Obligation to Purchase** 42.1 The conclusion of a Framework Agreement shall not impose any obligation on the Procuring Entity and/or Purchaser(s) to purchase any Goods under the Framework Agreement.
- 43 Non-exclusivity** 43.1 This Primary Procurement process is non-exclusive, and the Procuring Entity reserves the right to procure the Goods from other suppliers who are not FA Suppliers.
- 44 Debriefing by the Procuring Entity** 44.1 On receipt of the Procuring Entity's Notification to Conclude a Framework Agreement(s), referred to in **ITB 39.1**, an unsuccessful Bidder may make a written request to the Procuring Entity for a debriefing. The Procuring Entity may provide a debriefing to all unsuccessful Bidders whose request is received within this deadline.

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| 45 Signing the Framework Agreement | 45.1 Unless an earlier deadline is stipulated in the BDS , the Bidder shall sign, date and return the Framework Agreement within twenty-eight (28) days of receipt of the same. |
| | 45.2 In case of Multi-User Framework Agreement, the Procuring Entity shall sign each Framework Agreement on behalf of all participating Purchasers. |
| 46 Publication of the Conclusion of Framework Agreement Notice | 46.1 The Conclusion of Framework Agreement Notice shall be published on the Procuring Entity’s website. |
| 47 Procurement Related Complaint or appeal | 47.1 The procedures for making a Procurement-related Complaint or appeal are as specified in the Public Procurement and Asset Disposal Act 2015 . |

G. Secondary Procurement Process for awarding a Call-off Contract

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| 48 Method and criteria for award of Call-off Contract | 48.1 The Secondary Procurement method that shall apply in selecting FA supplier and awarding a Call-off contract is specified in the Framework Agreement (Framework Agreement, Schedule 3, Secondary Procurement). To be entitled to participate in a Secondary Procurement, and awarded a Call-off Contract, FA Suppliers must continue to be qualified and eligible, and the Goods must continue to be eligible, as per the criteria stipulated in this RFB. The Purchaser may require, at the Secondary Procurement stage and award of Call-off Contract, evidence of continued qualification and eligibility. |
| 49 Adjustment to the Base Price | 49.1 The Call-off Contract Price at the Secondary Procurement stage shall not be subject to price adjustment unless specified in Framework Agreement, Section B: Framework Agreement Specific Provisions. |

Section II - Bid Data Sheet (BDS)

The following specific data for the Goods and Services to be procured shall complement, supplement, or amend the provisions in the Instructions to Bidders (ITB). Whenever there is a conflict, the provisions **in the BDS** shall prevail over those in ITB.

A: General	
ITB 1.1 and 1.2 (p)	The Procuring Entity is: <i>State Department for Housing and Urban Development</i> The reference number of the tender is: MTIHUDPW/SDHUD/ADMIN/18/2020-2021 The tender name: <i>Supply of Mineral Water</i>
ITB 1.2 (m) or (u)	Multi-Supplier Framework Agreement This Primary Procurement intends to conclude a Multi-Supplier Framework Agreement. The Procuring Entity intends to conclude a Framework Agreements with a minimum number of Seven (7) Bidders for Call-off orders.
1.2 (w)	Term of Framework Agreement The Framework Agreement shall be for a Term of 3 (three) years from the commencement date stated in the Framework Agreement and renewable annually based on performance.
ITB 4.8	Only Kenyan citizen suppliers are eligible to bid.
ITB 4.5	A list of debarred firms and individuals is available on the Public Procurement Regulatory Authority website www.ppra.go.ke
ITB 4.9	The required documentary evidence of eligibility to bid is provided in <i>Section III Evaluation and Qualification Criteria</i>
ITB 5.1	All Goods and Services to be supplied under the Framework Agreement shall have their origin in Kenya.
B: Content of Bidding Documents	
ITB 7.1	For clarification of Bid purposes only, the Procuring Entity address is: Attention: <i>Head of Supply Chain Management Services</i> Address: <i>Ardhi House</i> Floor number: 6th Floor City: Nairobi ZIP Code: 00100 Country: Kenya Telephone: +254 020 2713833 Email address: <i>procurement@housingandurban.go.ke</i> Requests for clarification should be received by the Procuring Entity no later than: Three business days before the deadline for submission of Bids. Web page: <i>www.housingandurban.go.ke</i>

C: Preparation of Bids	
ITB 10.1	The language of the Bid is <i>English</i> All correspondence shall be in <i>English</i> The language for translation of supporting documents and printed literature is <i>English</i>
ITB 11.1 (h)	The Bidder shall submit the following additional documents in its Bid: <i>All the Support Documents as required in Section III Evaluation and Qualification Criteria.</i>
ITB 14.3	The price to be quoted in the Letter of Bid shall be referenced to the Total bid price as specified in the Schedule of prices
ITB 14.5	The prices quoted by the Bidder shall not be subject to adjustment during the performance of the Contract unless as provided in the contract.
ITB 14.7 (b)(i) and (c)(v)	Named places of destination is: Nairobi Metropolitan Area
ITB 15.1	The Bidder is not required to quote in Kenya the portion of the bid price that corresponds to expenditures incurred in Kenya Shillings . The currency of the bid shall be: Kenya Shillings
ITB 17.2 (a)	Manufacturer’s authorization is not required. <i>(for Supplier/bidders who are not manufacturers/Processors to provide a Manufacturer Authorization)</i>
ITB 17.2 (b)	After sales service is not required.
ITB 18.1	The Bid validity period shall be 150 days .
ITB 19.1	A Bid Security shall be required of amount of KES 50,000 issued by a reputable bank or approved Insurance company and valid for 180 days from the date of submission. A Bid-Securing Declaration shall not be required and any Bidder submitting such shall be disqualified.
ITB 20.1	In addition to the original of the Bid, the number of copies to be delivered to the Procuring Entity is 1 (one) copy .
ITB 20.3	The written confirmation of authorization to sign on behalf of the Bidder shall consist of Power of Attorney .
D: Submission and Opening of Bids	
ITB 22.1	For Bid submission purpose only, the Procuring Entity address is: Attention: <i>Head of Supply Chain Management Services</i> Address: <i>Ardhi House</i> Floor number: 6th Floor City: Nairobi ZIP Code: 00100

	<p>Country: Kenya</p> <p>The deadline for Bid submission is:</p> <p>Date: 24 March 2021</p> <p>Time: 11:00AM</p> <p>Bidders shall not have the option of submitting their bids electronically.</p>
ITB 25.1	<p>The Bid opening shall take place at:</p> <p>Street Address: Ardhi House, 6th Floor</p> <p>Floor/ Room number: 6th Floor Conference Room</p> <p>City: Nairobi</p> <p>Country: Kenya</p> <p>Date: 24 March 2021</p> <p>Time: 11:00AM</p>
E: Evaluation and Comparison of Bids	
ITB 30.3	<p>The adjustment shall be based on the Kenya National Bureau of Statistics (KNBS), average price of the item as quoted by other substantially responsive bids and as provided in the regulations.</p>
ITB 32.1	<p>The currency that shall be used for bid evaluation and comparison purposes to convert, at the selling exchange rate, all bid prices expressed in various currencies into a single currency is Kenya Shillings.</p> <p>The source of exchange rate shall be Central Bank of Kenya</p> <p>The date for the exchange rate shall be date of bid opening.</p>
ITB 40.2	<p>The criteria that will apply in the selection of Bidder(s) with whom a Framework Agreement(s) may be concluded is provided in <i>Section III Evaluation and Qualification Criteria</i>.</p>
F: Concluding a Framework Agreement	

Section III - Evaluation and Qualification Criteria

This Section contains the criteria that the Procuring Entity shall use to conclude a Framework Agreement(s). The criteria and methodology described is to evaluate Bids and qualify Bidders. No other factors, methods or criteria shall be used other than specified in this bidding document for the Primary Procurement process.

(A) Mandatory Eligibility Criteria

To proof eligibility, the Bidder shall provide the documentary evidence as specified in *Section IV Bidding Forms and Support Documents*.

At the preliminary examination bids, the Bidder shall be required to meet the following eligibility criteria without material deviations, reservations or omissions, otherwise the bid shall be assessed as non-responsive to the requirements of the tender documents and not considered for further evaluation.

No.	Mandatory Eligibility Criteria	Required Documentary Evidence
1	The Bidder shall submit a complete bid using only the forms in Section IV Bidding Forms.	Section IV Bidding Forms including Support Documents
2	The Bidder shall be a recognized legal entity in Kenya	(a) Certificate of Incorporation or Registration (b) Confidential Business Questionnaire (c) Business Permit or Trade License
3	The Bidder shall have legal capacity to enter into a contract if awarded.	Signed Power of Attorney authorizing the signing of the bid on behalf of Bidder.
4	The Bidder has satisfied the professional requirements.	(a) Provide Manufacturer Authorization for the product being supplied (<i>for Supplier/bidders who are not manufacturers/Processors</i>) (b) Provide a Copy of KEBS approved License for the product
5	The Bidder has fulfilled its tax obligations.	Valid Tax Compliance Certificate from the Kenya Revenue Authority
6	The Bidder guarantees that it shall not withdraw its bid, refuse to sign the framework agreement if awarded, or fail to furnish any required performance security, if required.	(a) Bid valid for the period specified in Bid Data Sheet as evidenced in the Letter of Bid. (b) Bid Security in the amount, form and valid as specified in the Bid Data Sheet
7	The Bidder meets the eligibility requirements in accordance to ITB 4; including the requirements for conflict of interest, solvency, corrupt and fraudulent practices, exclusion from entering into contract, debarment, or violation of employment practices.	(a) Letter of Bid (b) Section IV Bidding Forms (c) Support Documents
8	Only the Kenyan Citizen Contractors are eligible to bid for this contract; to establish Bidder's eligibility in accordance with ITB 4 , Bidders shall complete the Letter of Bid, included in Section IV, Bidding Forms.	(a) Letter of Bid (b) CR 12 dated within the last six months

(B) Technical Evaluation Criteria

NO.	PARAMETERS	WEIGHTING SCORE	MAXIMUM SCORE
1.	To be in existence for the last 5 years	3 mark per year	15
2.	Provide a list of 5 clients and references to which the company has done similar business	5 clients with recommendation letters from the clients –4 marks each.	20
3.	Please indicate minimum time required to deliver Water after notice.	Two hours and below –10 marks • Three hours – 8 marks • Four Hours – 5 marks • Five Hours and above – 2 Marks	10
4.	Provide Certified bank statements for the last six months		15
5.	Provide reference letter from the bank		10
6.	Financial Strength Provide audited accounts for the last three years(2019 ,2018 & 2017)	Three years audited accounts – 15 marks Two years audited accounts – 10 marks One year audited accounts – 5 marks	15
7.	Propose the means of delivery for Milk (Van, Motor bike etc)		10
8.	Physical Facilities • Provide details of physical address and contacts – attach evidence	Details of physical address and contacts with copy of title or lease documents with latest utility bill – 5 marks	5
	TOTAL		100

Only bidders who score 70% and above will be subjected to financial evaluation.

(C) Financial Evaluation Criteria

- 1) Only bids that pass the technical evaluation criteria shall be subjected to the financial evaluation;
- 2) The financial evaluation of bids shall be carried out in accordance to the provisions of the bidding documents, in particular ITB 30 to 35;
- 3) All Bidders shall be ranked based on the *evaluated price* , with the first ranked being the lowest evaluated price, the second ranked being the second lowest evaluated price, and so on.

- 4) The top seven ranked bidders shall be selected for inclusion in the Framework Agreement for use in Call-offs procurement procedure as provided in Section 114 of the Public Procurement and Asset Disposal Act 2015.

Section IV - Bid Forms**LETTER OF BID**

Framework Agreement Goods

Instructions to bidders: delete this box once you have completed the document

The Bidder must prepare this Letter of Bid on its own stationery with its letterhead clearly showing the Bidder's complete name and business address.

Date of this Bid submission: *[insert date (as day, month and year) of Bid submission]*

Tender Reference No.: *[insert identification]*

Tender Description.: *[insert description of the tender]*

To: *[insert complete name of Procuring Entity]*

- (a) **No reservations:** We have examined and have no reservations to the bidding document, including addenda issued in accordance with Instructions to Bidders (**ITB 8**);
- (b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with **ITB 4**;
- (c) **Eligible Goods and Related Services:** If we conclude a Framework Agreement, the Goods and Related Services that we may supply under a Call-off Contract awarded under the Framework Agreement, shall be sourced from Kenya in accordance with **ITB 5**. The Goods and Related Services shall be sourced from *[Bidder to insert the location where the goods will be sourced from]*
- (d) **Bid Securing Declaration:** We have neither been suspended nor declared ineligible by the Purchaser(s) or the Government of Kenya based on execution of a Bid-Securing Declaration in accordance with **ITB 4.7**
- (e) **Conformity:** We offer to supply, in conformity with the bidding document and in accordance with Section VII- Schedule of Requirements, the following Goods: *[insert a brief description of the Goods and Related Services]*;
- (f) **Bid Price:** The unit prices of our Bid including any discounts offered are as per the Price Schedules;
- (g) **Bid Validity Period:** Our Bid shall be valid for the period specified in **BDS 18.1** (as amended, if applicable) from the date fixed for the Bid submission deadline specified in **BDS 22.1** (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (h) **Performance Security:** If our Bid is accepted and we conclude a Framework Agreement, we understand that we may be required, as a condition of a subsequent Call-off Contract, to obtain a performance security;
- (i) **One Bid per Bidder:** We are not submitting any other Bid(s) as an individual Bidder, and we are not participating in any other Bid(s) as a Joint Venture member, or as a subcontractor, and meet the requirements of **ITB 4.3**;

- (j) **Suspension and Debarment:** We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the Public Procurement Regulatory Authority. Further, we are not ineligible under the Kenyan laws or official regulations or pursuant to a decision of the United Nations Security Council;
- (k) **State-owned enterprise or institution:** *[Bidder to select the appropriate option and delete the other] [We are not a state-owned enterprise or institution] / [We are a state-owned enterprise or institution but meet the requirements of ITB 4.6];*
- (l) **Not Bound to Purchase:** We understand that there is no obligation on the Procuring Entity/Purchaser(s) to purchase any Goods, and/or Related Services from any FA Supplier during the Term of the Framework Agreement.
- (m) **No expectation of Call-off Contract:** We confirm that no undertaking or any form of statement, promise, representation or obligation has been made by the Procuring Entity/Purchaser in respect of the total quantities or value of the Goods that may be ordered by it, or any participating Purchaser(s), in accordance with this Framework Agreement. We acknowledge and agree that we have not submitted this Bid on the basis of any such undertaking, statement, promise or representation. If we conclude a Framework Agreement, we have no legitimate expectation of being awarded a Call-off Contract under the Framework Agreement.
- (n) **Not Bound to Accept:** In relation to this Primary Procurement, we understand that you are not bound to accept any Bid that you may receive.
- (o) **Fraud and Corruption:** We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption.

Name of the Bidder: *[insert complete name of the Bidder]*

Name of the person duly authorized to sign the Bid on behalf of the Bidder: *[insert complete name of person duly authorized to sign the Bid]*

Title of the person signing the Bid: *[insert complete title of the person signing the Bid]*

Signature of the person named above: *[insert signature of person whose name and capacity are shown above]*

Date signed *[insert date of signing]* **day of** *[insert month]*, *[insert year]*

PRICE SCHEDULE FORMS

*The Bidder shall fill in these Price Schedule Forms in accordance with the instructions indicated. The list of line items in Column 1 of the **Price Schedules** coincide with the List of Goods and Related Services specified by the Procuring Entity in the Schedule of Requirements. The Bidder shall insert the values in Columns 5 and 6.*

Price Schedule: Goods

Date:				
Tender No.:				
Tender Description:				
1	2	3	4	5
Line Item No.	Description of Goods	*QTY	Delivery Period	Unit Price Inclusive VAT
1.	Supply of Mineral Water 20L	100		
2.	Supply of Mineral Water 500ml	500		
Name of Bidder: <i>[insert complete name of Bidder]</i>				
Signature of Bidder: <i>[signature of person signing the Bid]</i>				
Date: <i>[insert date]</i>				

*The quantity is for indicative purposes only. Quantity will be on as and when required basis.

CONFIDENTIAL BUSINESS QUESTIONNAIRE

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.

Part 1 General		
Business Name		
Location of Business Premises		
Plot No.		
Street/Road		
Postal Address		
Telephone Number		
Fax		
Email		
Nature of Business		
Registration Certificate No.		
Maximum value of business which you can handle at any one time		
Name of Your Bankers		
Branch		
Part 2 (a) Sole Proprietor		
Your Name in Full		
Age		
Nationality		
Country of Origin		
Citizen Details		
Part 2(b) Partnerships		
Give Details of Partners as Follows		
Name	Nationality	Citizenship
1		
2		

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.

3		
Part 2(c) Registered Company		
Private or Public		
State the nominal and issued capital of the company		
Nominal		Kshs
Issued		Kshs
Give Details of Directors as follows		
Name	Nationality	Citizenship Details
1		
2		
3		
Date		Signature of Tenderer:
If a citizen, indicate under "Citizenship Details" whether by Birth, Naturalization or Registration		

MANUFACTURER’S AUTHORIZATION

*[The Bidder shall require the Manufacturer to fill in this Form in accordance with the instructions indicated. This letter of authorization should be on the letterhead of the Manufacturer and should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer. The Bidder shall include it in its Bid, if so indicated in the **BDS**.]*

Date: *[insert date (as day, month and year) of Bid submission]*

Tender No.: *[insert number of tender process]*

To: *[insert complete name of Procuring Entity]*

WHEREAS

We *[insert complete name of Manufacturer]*, who are official manufacturers of *[insert type of Goods manufactured]*, having factories at *[insert full address of Manufacturer’s factories]*, do hereby authorize *[insert complete name of Bidder]* to submit a Bid the purpose of which is to provide the following Goods, manufactured by us *[insert name and or brief description of the Goods]*, and to subsequently sign a Framework Agreement permitting them to enter into Call-off Contracts for the supply of the Goods.

We hereby extend our full guarantee and warranty in accordance with Clause 28 of the Call-off Contract General Conditions of Contract (GCC) (as set out in the Framework Agreement, Schedule 4), with respect to the Goods offered by the above firm.

Signed: *[insert signature(s) of authorized representative(s) of the Manufacturer]*

Name: *[insert complete name(s) of authorized representative(s) of the Manufacturer]*

Title: *[insert title]*

Dated on _____ day of _____, _____ *[insert date of signing]*

FORM OF TENDER SECURITY

WHEREAS (hereinafter called “the Tenderer”) has submitted his tender dated for the provision of
..... (name of Contract)

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 KES..... 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 of20.....

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]

Support Documents

SECTION VII - SCHEDULE OF REQUIREMENTS
Estimated Schedule of Requirements- Supply of Goods

PART 3 – Procuring Entity Forms

Procuring Entity Forms

Notification to Conclude a Framework Agreement

[Use letterhead paper of the Procuring Entity]

[Date]

To: *[name and address of successful Bidder]*

Notification to Conclude a Framework Agreement
Framework Agreement No. *[insert FA reference number]*

This is to notify you that your Bid dated *[insert date]* to conclude a Framework Agreement in relation to the supply of *[insert short title for Goods]* is hereby accepted by our procuring entity.

Please sign, date and return the Framework Agreement within *[insert the applicable period for signing of the FA in accordance of the ITB]* days of receipt of the same.

Authorized Signature: _____

Name: _____

Title/position: _____

Name of Agency: _____

Telephone: _____

Email: _____

Attachment: Framework Agreement

PART 4 – Framework Agreement

Framework Agreement

[This form is to be completed by the Procuring Entity in accordance with the instructions provided in italicized text. The italicized text should be deleted from the final document.]

This Framework Agreement [*insert reference number of the Framework Agreement*] is made for the supply of [*insert brief description of Goods and services*]

on the [*insert: number*] day of [*insert: month*], [*insert: year*]

between

the Purchaser [*insert complete name of the State Department of Housing and Urban Development, the Purchaser, and*

the Supplier [*insert name of the Supplier*], a corporation incorporated under the laws of [*insert country of Supplier*] and having its principal place of business at [*insert Supplier's address*] (Supplier).

This Framework Agreement is subject to the provisions described in the Sections and Schedules listed below, and any amendments.

This Framework Agreement concludes a standing offer by the Supplier to supply the specified Goods to the Purchaser(s) during the Term of the Framework Agreement, as and when the Purchaser(s) wishes to purchase them, through a Call-off Contract.

The following documents shall be deemed to form and be read and construed as part of this Framework Agreement and, where indicated, to any Call-off Contract awarded under this Framework Agreement.

Section A: Framework Agreement General Provisions

Section B: Framework Agreement Specific Provisions

Schedule 1: Schedule of Requirements

Schedule 2: Price Schedules

Schedule 3: Secondary Procurement

Schedule 4: Call-off Contract: General Conditions of Contract (GCC)

Schedule 5: Forms for Call-off Contract

Schedule 6: List of participating Purchasers [*use for Multi-User FAs, otherwise delete*]

IN WITNESS whereof, the Parties to this Framework Agreement have caused this Framework Agreement to be executed in accordance with the laws of [*insert the name of the Framework Agreement governing law country*] on the day, month and year indicated above.

For and on behalf of the Purchaser:

Signed: [*insert signature*]

Full name: [*name of person signing*]

Procuring Entity: [*insert the name of entity*]

In the capacity of: [*insert title or other appropriate designation*]

In the presence of [*insert identification of official witness*]

For and on behalf of the Supplier:

Signed: [*insert signature of authorized representative(s) of the Supplier*]

Full name: *[name of person signing]*

In the capacity of: *[insert title or other appropriate designation]*

In the presence of *[insert identification official of witness]*

Section A: Framework Agreement General Provisions (FAGP)**Table of Provisions**

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Section A
Framework Agreement General Provisions (FAGP)

1 Definitions

- 1.1 The following words and expressions shall have the meanings hereby assigned to them
- (a) **“Base Price”** is the Framework Agreement (FA) unit price prior to any price adjustment in accordance with **FA Specific Provision FAGP 8.1**.
 - (b) **“Business Day”** is any day that is an official working day of the Purchaser. It excludes the Purchaser’s official public holidays.
 - (c) **“Call-off Contract”** is a contract awarded under a Framework Agreement, through a Secondary Procurement process, for the supply of Goods, and any Related Services.
 - (d) **“Closed Framework Agreement”** is where no new firm(s) may conclude Framework Agreement(s) during the Term of the Framework Agreement.
 - (e) **“Commencement Date”** is the date this Framework Agreement is signed by both parties, being the commencement of the Term.
 - (f) **“Contract Price”** is the price payable to the Supplier as specified in the Call-off Contract, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
 - (g) **“Day”** means calendar day.
 - (h) **“Goods”** means all goods, materials, items, commodities, raw material, machinery, equipment, and/or other materials, as specified in the **FA Specific Provisions**, that the Supplier is required to supply to the Purchaser under a Call-off Contract. Where appropriate, for the purpose of interpretation, the definition for Goods includes Related Services.
 - (i) **“In Writing”** means communicated or recorded in written form. It includes, for example: mail, e-mail, fax or communication through an electronic procurement system (provided that the electronic system is accessible, secure, ensures integrity and confidentiality, and has sufficient audit trail features).
 - (j) **“Incoterms”** means the international commercial terms for goods published by the International Chamber of Commerce (ICC).
 - (k) **“Lead Purchaser”**, when named in the Framework Agreement, means a party to the Framework Agreement, as a Purchaser in its own right under the framework agreement and as the agency responsible for the management and administration of the Framework Agreement for use by the other participating Purchasers as specified in the **FA Specific Provisions**. All communications, including notices, in relation to the Framework Agreement, are to be addressed to the Lead Purchaser. All

communications, including notices, in relation to a Call-off Contract, are to be addressed to the Purchaser named in the Call-off Contract.

- (l) **“Multi-User Framework Agreement”** means a Framework Agreement where there is more than one Purchaser permitted to purchase through a Call-off Contract, as specified in the **FA Specific Provisions**;
- (m) **“Purchaser”** is the Borrower’s agency(ies) that is/are permitted to purchase Goods from a Supplier under a Call-off Contract awarded through a Framework Agreement. Where appropriate, for the purpose of interpretation of the Framework Agreement, the term Purchaser includes Lead Purchaser, or Responsible Agency.
- (n) **“Purchaser’s Country”** is the country specified in the **FA Specific Provisions**.
- (o) **“Related Services”** means the services incidental to the supply of the Goods, such as insurance, installation, training, initial maintenance and other such obligations of the Supplier, excluding inland transportation and other services required in the Purchaser’s Country to convey the Goods to their final destination.
- (p) **“Responsible Entity”**, when named in the Framework Agreement, is a party to the Framework Agreement, but only in its capacity as the entity responsible for managing and administering the Framework Agreement for use by the participating Purchasers. All communications, including notices, in relation to the Framework Agreement, are to be addressed to the Responsible Agency.
- (q) **“Secondary Procurement”** is the method used to select a Supplier and award a Call-off Contract under this Framework Agreement.
- (r) **“Single-User Framework Agreement”** means a Framework Agreement where there is only one Purchaser, as specified in the **FA Specific Provisions**.
- (s) **“Supplier”** means the person, private or government entity, or a combination of the above, who has concluded a Framework Agreement to supply to a Purchaser, from time to time, and as and when required, the Goods, and, if applicable, Related Services, under a Call-off Contract.
- (t) **“Term”** mean the duration of this Framework Agreement as described in the **FA Specific Provisions** starting on the Commencement Date. Where applicable, it includes any extension(s) to the initial Term, if permitted in the **FA Specific Provisions**.

2 Framework Agreement Documents

- 2.1 This Framework Agreement (FA) shall be read as a whole. Where a document is incorporated by reference into this Framework Agreement, it shall be deemed to form, and be read and construed, as part of this Framework Agreement.

- 2.2 This Framework Agreement comprises the documents specified in the **FA Specific Provisions**.
- 3 Supplier's obligations**
- 3.1 The Supplier shall offer to supply (standing offer) to the Purchaser, the Goods, including any Related Services if applicable, described in the Framework Agreement Schedule 1: Schedule of Requirements, for the Term of this Framework Agreement, in accordance with the terms and conditions stipulated in this Framework Agreement.
- 3.2 During the Term of the Framework Agreement, the Supplier shall continue to be eligible and qualified, and the Goods shall continue to be eligible, as per the qualification and eligibility criteria stipulated in the Primary Procurement process and the provisions of sub-paragraphs 3a. to 3c. below. The Supplier shall notify the Purchaser immediately, in writing, if it ceases to be qualified and/or ceases to be eligible, or the Goods cease to be eligible.
- 3.3 The Supplier undertakes to supply the Goods under a Call-off Contract. The Goods supplied shall be:
- (a) of the quality, type and as otherwise specified in the Framework Agreement, Schedule 1: Schedule of Requirements,
 - (b) at the Contract Price specified in the Call-off Contract, and
 - (c) in such quantities, at such times and to such locations as specified in the Call-off Contract.
- 3.4 If specified in the **FA Specific Provisions**, at any point during Term of the Framework Agreement should technological advances be introduced by the Supplier for the Goods originally offered by the Supplier in its bid and still to be delivered, the Supplier shall offer to the Purchaser(s) of the Call-off Contracts the latest versions of the available Goods having equal or better performance or functionality at no additional cost to the Purchaser (s).
- 3.5 The Supplier agrees that the Call-off Contract General Conditions of Contract set out in the Framework Agreement, Schedule 4, and Call-off Contract Special Conditions of Contract set out in a Call-off Contract, shall apply to the supply of Goods.
- 4 Continued Qualification and Eligibility**
- 4.1 The Supplier, shall continue to have the nationality of an eligible country as specified in the **FA Specific Provisions**. A Supplier or subcontractor, shall be deemed to have the nationality of a country if the Bidder is constituted, incorporated or registered in, and operates in conformity with, the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be.
- 4.2 All Goods and Related Services to be supplied under a Call-off Contract shall continue to have their origin in eligible Countries as specified in the **FA Specific Provisions**. For the purpose of this provision, origin means the country where the Goods have been grown, mined, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results

that differs substantially in its basic characteristics from its components. ineligible Countries, if any, are listed in the **FA Specific Provisions**.

- 4.3 To continue to be eligible the Supplier shall not have been sanctioned by the Government of Kenya.
- 4.4 The Purchaser may require, during the Term of the Framework Agreement, evidence of the Supplier's continued qualification and eligibility, and the Goods continued eligibility. Failure to provide such evidence, as requested, may result in the Supplier being disqualified from participating in a Secondary Procurement process, and/or being awarded a Call-off Contract, and/or the termination of the Framework Agreement.
- 5 Term**
- 5.1 This Framework Agreement shall commence on the Commencement Date and, unless terminated earlier in accordance with the provisions of this Framework Agreement, or the general law, shall continue until the end of the Term specified in the **FA Specific Provisions**.
- 5.2 Where permitted in the **FA Specific Provisions**, the Term may be extended, at the Purchaser's sole discretion, and where there has been satisfactory performance by the Supplier. To extend the Term, the Purchaser shall give the Supplier no less than three (3) months' notice, In Writing, prior to the date on which the Framework Agreement would otherwise have expired. The total Term of the Framework Agreement shall be no longer than a total of five (5) years.
- 6 Representative**
- 6.1 The representatives for each party, who shall be the primary point of contact for the other party in relation to matters arising from this Framework Agreement, are specified in the **FA Specific Provisions**. Should the representative be replaced, the party replacing the representative shall promptly inform the other party In Writing of the name and contact details of the new representative. Any representative appointed shall be authorized to make decisions on the day to day operation of the Framework Agreement.
- 7 Role of Lead Purchaser or Responsible Agency**
- 7.1 Where there is a Lead Purchaser or Responsible Agency that is a party to the Framework Agreement, their role is to manage and administer the Framework Agreement(s) for use by the participating Purchaser(s). All communications, including notices, in relation to the Framework Agreement are to be made to the Lead Purchaser or Responsible Agency. The Lead Purchaser or Responsible Agency is responsible for all matters pertaining to the Framework Agreement including, for example, amendments, suspension and termination of the Framework Agreement. For matters relating to individual Call-off Contracts, all communications, including notices, must be made to the Purchaser named in the Call-off Contract.
- 7.2 Where no Lead Purchaser or Responsible Agency has been appointed, the named Purchaser is responsible for managing and administering the Framework Agreement and the provisions in **FAGP 6.1** above, in relation to communications and notices etc., apply to the Purchaser.
- 8 Contract Price**
- 8.1 The Contract Price for each Call-off Contract, shall be determined as specified in the **FA Specific Provisions**.

- 9 Performance Security** 9.1 The Purchaser may require a Performance Security from the Supplier in relation to the performance of a specific Call-off Contract. In this event, the Supplier shall comply with the relevant provisions relating to Performance Security contained in the Call-off Contract Special Conditions of Contract.
- 10 Language** 10.1 This Framework Agreement, and any Call-off Contract, as well as all correspondence and documents relating to this Framework Agreement, and any Call-off Contract, exchanged by the Purchaser and Supplier, shall be written in the language specified in the **FA Specific Provisions**. Supporting documents and printed literature that are part of this Framework Agreement, and any Call-off Contract, may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified, in which case, for purposes of this Framework Agreement, and any Call-off Contract, this translation shall govern.
- 10.2 The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation.
- 11 Notices** 11.1 Any notice given by one party to the other pursuant to this Framework Agreement shall be In Writing to the address specified in the **FA Specific Provisions**. A notice shall be effective when delivered, or on the notice's effective date, whichever is later.
- 12 Fraud and Corruption** 12.1 The Contract is subject to all fraud, corruption and anticorruption laws and regulations applicable in Kenya.
- 12.2 The Purchaser requires the Supplier to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the Primary or Secondary Procurement process or execution of a Call-off Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.
- 13 Records, inspections and audit** 13.1 The Supplier shall keep, and shall make all reasonable efforts to cause its subcontractor(s), if any, to keep, accurate and systematic accounts and records in respect of this Framework Agreement, the Goods, and any Call-off Contract, in such form and details as will clearly identify relevant time changes and costs.
- 14 Confidential Information** 14.1 The Purchaser and the Supplier shall keep confidential and shall not, without the consent In Writing from the other, divulge to any third party any documents, data, or other information furnished directly or indirectly by either party in connection with the Framework Agreement.
- 14.2 The obligation of a party under **FAGP 14. 1.** above, shall not apply to information that:
- (a) the Purchaser or Supplier need to share with enforcement authorities or other institution(s) participating in the financing of a Call-off Contract
 - (b) now, or in future, enters the public domain through no fault of that party

- (c) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party
- (d) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
- 15 Governing Law** 15.1 This Framework Agreement, and any Call-off Contract, shall be governed by, and interpreted in accordance with, the laws of Kenya, unless otherwise specified in the **FA Specific Provisions**, or the Special Conditions of Contract as set out in any Call-off Contract.
- 16 Change to the Framework Agreement** 16.1 Any change to this Framework Agreement, including an extension of the Term, must be In Writing and signed by both Parties. A change can be made at any time after this Framework Agreement has been signed by both Parties, and before it expires.
- 17 Termination of the Framework Agreement** 17.1 The Purchaser, without prejudice to any other remedy for breach of the Framework Agreement, may terminate this Framework Agreement immediately, by notice In Writing to the Supplier, if:
- (a) in the judgement of the Purchaser, the Supplier has engaged in Fraud and Corruption, or
- (b) during the Term of the Framework Agreement, the Supplier ceases to be qualified or eligible as per **FAGP 4**. or
- (c) the Supplier purports to assign, or otherwise transfer or dispose of this Framework Agreement, in whole, or in part, without the prior written consent of the Purchaser, or
- (d) the Supplier becomes bankrupt or otherwise insolvent.
- (e) the Supplier declines to deliver.
- 17.2 The Purchaser may terminate this Framework Agreement, in whole or in part, by notice In Writing sent to the Supplier, at any time, for its convenience. The notice of termination shall specify that the termination is for the Purchaser's convenience, the extent to which the performance of the supplier under the Framework Agreement is terminated, and the date upon which such termination becomes effective.
- 18 Consequence of expiry or termination** 18.1 Upon expiry, or earlier termination of this Framework Agreement, all Call-off Contracts entered into under this Framework Agreement shall continue in full force and effect unless otherwise terminated under the Call-off Contract General or Specific Conditions of Contract. However, no further Call off Contracts shall be awarded once the Framework Agreement is terminated.
- 19 Dispute resolution in relation to this Framework Agreement** 19.1 In the case of a dispute arising out of, or in connection with this Framework Agreement, the Parties shall, in good faith, make every reasonable effort to communicate and cooperate with each other with a view to amicably resolving the dispute.
- 19.2 Where parties have exhausted the process described in **FAGP 19.1**, the parties may, by mutual agreement, nominate and refer the dispute to an adjudicator/mediator to assist in the resolution of the dispute. Parties will

meet their own costs associated with such a referral, and split the costs of the adjudicator/mediator. In appointing the adjudicator/mediator parties should agree whether or not the adjudicator's/mediator's decision is to be final and binding.

20 Dispute resolution in relation to Call-off Contracts

- 20.1 The Purchaser and the Supplier for a Call-off Contract shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.
- 20.2 If, after twenty-eight (28) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Purchaser or the Supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this provision shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under the Contract. Arbitration proceedings shall be conducted in accordance with the rules of procedure specified in the **FA Specific Provisions**.
- 20.3 Notwithstanding any reference to arbitration herein,
- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
 - (b) the Purchaser shall pay the Supplier any monies due the Supplier.

Section B: Framework Agreement Specific Provisions

The following Framework Agreement Specific Provisions (FASP) shall supplement and/or amend the Framework Agreement General Provisions (FAGP). Whenever there is a conflict between the FAGP and FASP, the provisions of the FASP shall prevail.

Framework Agreement General Provision	Description
FAGP 1.1 (i) Goods	This Framework Agreement relates to the purchase and supply, under a separate Call-off Contract, of [<i>insert short title that describes the type of Goods, and any Related Services</i>]. The Goods, and Related Services, are more fully described in Schedule 1: Schedule of Requirements including, where applicable: list of Goods, list of Related Services, Technical Specifications, Drawings and Inspections and Tests.
FAGP 1.1 (l), (m) & (s) Single/Multi-User	This is a Single-User Framework Agreement.
FAGP 1.1 (o) Purchaser' Country	The Purchaser's Country is: <i>Kenya</i>
FAGP 2.2 Framework Agreement Documents	This Framework Agreement comprises the following documents.: <ul style="list-style-type: none"> a. Framework Agreement, including all Sections and Schedules, b. Notice of Conclusion of a Framework Agreement, and c. Letter of Bid (from Primary Procurement process) d. Letter of acceptance
FAGP 3.4 Supplier's Obligations	<i>Not Applicable</i>
FAGP 4. Eligibility	At the present time, firms, goods and services from the following countries are excluded from this Framework Agreement as being ineligible: <i>The FA is applicable only to Kenyan citizen contractors and suppliers.</i>
FAGP 5.1 Term	The Term of this Framework Agreement is 3 (three) years from the Commencement Date.
FAGP 5.2 Term extension(s)	There are no permitted extensions to the Term.
FAGP 6.1 Representatives	<p><u>Purchaser's Representatives</u></p> <p>The name and contact details of the Purchaser's Representative under this Framework Agreement, and the address for notices in relation to this Framework Agreement, are:</p> <p style="padding-left: 40px;">Name:</p> <p style="padding-left: 40px;">Title/position:</p>

	<p>Address:</p> <p>Phone:</p> <p>Mobile:</p> <p>E-mail:</p>
FAGP 6.1 Representatives	<p><u>Supplier's Representatives</u></p> <p>The name and contact details of the Supplier's Representative, for the purposes of this Framework Agreement, and the address for notices in relation to this Framework Agreement are:</p> <p>Name:</p> <p>Title/position:</p> <p>Address:</p> <p>Phone:</p> <p>Mobile:</p> <p>E-mail:</p>
FAGP 8.1 Contract Price	The Contract Price that will apply to the purchase of Goods under a Call-off Contract shall be: the Base Price stipulated in the Framework Agreement, Schedule 2.
FAGP 8.1 Contract Price	Adjustments to the Base Price shall not be permitted over the Contract period.
FAGP 3.1 & 8.1 Contract Price	if after the date of 28 days prior to date of Bid submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the place of the Purchaser's Country where the Project Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Period and/or the Base Price, then such Delivery Period and/or Base Price shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Framework Agreement. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with FAGP 8.1 .
FAGP 10.1 Language	The language of this Framework Agreement, and any Call-off Contract is <i>English</i>
FAGP 20.2 Dispute Resolution in relation to Call- off Contract.	<p>The rules of procedure for arbitration proceedings shall be as follows:</p> <p>In the case of a dispute between the Purchaser and a Supplier who is a national of the Purchaser's Country, the dispute shall be referred to adjudication or arbitration in accordance with the laws of Kenya.</p> <p>The place of arbitration will be <i>Nairobi, Kenya</i></p>

SCHEDULE 1: Schedule of Requirements

[insert the description of the Goods, requirements and technical specifications e.g.:]

Contents

- 1. List of Goods and Services and Delivery Period

SCHEDULE 2: Price Schedules

[insert the price/pricing methodology and price schedules as appropriate e.g.:]

SCHEDULE 3: Secondary Procurement

This Section contains the methods and the criteria that the Procuring Entity shall use to conduct a Secondary Procurement process to select a Supplier and award a Call-off Contract under this Framework Agreement. No other factors, methods or criteria shall be used other than specified in this RFB document for the Secondary Procurement process.

1. Secondary Procurement method(s)

The Secondary Procurement method(s) that apply to the selection of a Supplier for the award of a Call-off Contract under this Framework Agreement .

The Purchaser will select an eligible Supplier holding a Framework Agreement, to deliver the Goods, based on which Supplier is best able to deliver the Goods, and any Related Services, based on the location where the Goods are to be supplied.

The Purchaser will issue a Call-off Contract using the prices/pricing mechanism set out in the Framework Agreement, Schedule 2 or as adjusted by the agreed price adjustment formula, if applicable and any changes in any Laws and Regulations in accordance with FAGP 8.1.

The Purchaser will request the Supplier and include in the Call-off Contract Price the prices for any additional inland transportation and other related services, not included in the Base Price, in the Purchaser's Country to convey the Goods to their final destination.

1. Formation of Call-off contract

The Purchaser shall confirm that the selected Supplier continues to be qualified and eligible in accordance with Framework Agreement prior to the formation of the Call-off Contract. The Call-off Contract is formed when one of the following conditions are met depending on the method of selection used for the Secondary procurement.

- 2.1 The Call-off contract is formed when the Purchaser transmits, to the successful Supplier, a Call-off Contract for signature and return, and the Call-off Contract is signed by both the Purchaser and the Supplier. The date that the Call-off Contract is formed, is the date that the last signature is executed, or the date agreed by the parties.

2. Communicating the award of Call-off Contract

The Purchaser shall, at the same time as awarding the contract, communicate the award of the Call-off Contract in the case of: to all FA Suppliers for the items included in the Call-off Contract.

The communication must be by the quickest means possible, e.g. by email, and include, as a minimum, the following information:

- a. the name and address of the successful Supplier
 - b. the quantity/volume of Goods being procured
 - c. the contract price
 - d. a statement of the reason(s) the recipient Supplier was unsuccessful.]
- .

SCHEDULE 5: Secondary Procurement Forms

Secondary Procurement Forms

Sample Letter of Award of Call-off Contract

[modify as appropriate]

[use letterhead paper of the Purchaser]

[date]

To: *[name and address of the Supplier]*

Subject: **Notification of Award of Call-off Contract No.**

In reference to the Framework Agreement *[insert reference number and date]*

*[For mini-competition, add the following: “and your Quotation *[insert reference number and date]* has been accepted.”]*

please find inclosed herewith the Call-off Contract. You are requested to sign the Call-off contract within *[insert no of days]*.

*[Insert the following if Performance Security is required: “You are also requested to furnish a Performance Security within *[insert no of days]* in accordance with the Conditions of Call-off Contract, using for that purpose one of the Performance Security Forms included in the Framework Agreement Secondary Procurement Forms. “]*

Authorized Signature: _____
Name and Title of Signatory: _____
Name of Agency: _____

Attachment: Call-off Contract

Call-off Contract for the supply of Goods

Framework Agreement (FA):	<i>[insert short title of FA]</i>
FA Date:	<i>[insert FA date]</i>
FA reference number:	<i>[insert FA reference number]</i>
Goods:	<i>[short title for type of Goods]</i>

Purchaser:		Supplier:		
<i>[name of Purchaser]</i> <i>[address]</i>		<i>[name of Supplier]</i> <i>[address]</i>		
GOODS (GCC 1.1 i)				
Code	Product name	Quantity	Unit price	Total
<i>[insert code]</i>	<i>[description of Goods]</i>	<i>[number]</i>	<i>[price]</i>	<i>[amount]</i>
Special instructions/comments:		Total		
Required Delivery period as per INCOTERMS [See Delivery Periods in the FA]		<i>[insert period]</i> as per applicable INCOTERMS		

Contract Documents (GCC 2)
1) 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. <ul style="list-style-type: none"> (a) Letter of Award of Call-off Contract (b) Addenda No. ____ (if any) (c) Framework Agreement, (d) Section A- Framework Agreement General Provisions, (e) Section B- Framework Agreement Specific Provisions

- (f) Schedule 1: Schedule of Requirements *[insert relevant items from schedule 1 as applicable to the Call-off contract such as technical specifications, any drawings, and inspection and tests]*
- (g) Schedule 4: Call-off Contract General Conditions of Contract
- (h) *[List any other document]*

- 2) In consideration of the payments to be made by the Purchaser to the Supplier as specified in this Call-off Contract, the Supplier hereby covenants with the Purchaser to provide the Goods and Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
- 3) The Purchaser hereby covenants to pay the Supplier in consideration of the provision of the Goods and Services 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.

For and on behalf of the Purchaser

Signed: *[insert signature]*
 in the capacity of *[insert title or other appropriate designation]*
 In the presence of *[insert identification of official witness]*
 Date: _____

For and on behalf of the Supplier

Signed: *[insert signature of authorized representative(s) of the Supplier]*
 in the capacity of *[insert title or other appropriate designation]*
 in the presence of *[insert identification of official witness]*
 Date: _____

Attachment

1. Special Conditions of Call-off Contract
2. Supplier's Quotation (if applicable)
3. *[Any other documents]*