



ENGINEERS WITHOUT BORDERS KENYA

TENDER NO: RC/EWB/30/12/2019-2020

TENDER DESCRIPTION: DRILLING AND EQUIPPING OF
RUMBIYE COMMUNITY BOREHOLE
WATER PROJECT IN AGENG'A NANGUBA
WARD.

ISSUED DATE: 4th FEBUARY 2020.

CLOSING DATE: 18th FEBUARY 2020 AT 12.00PM.

ENGINEERS WITHOUT BORDERS KENYA

P.O. BOX 3271 -00200

NAIROBI

FOR THIS TENDER:

THE EMPLOYER'S TECHNICAL REPRESENTATIVE IS: -

CHIEF EXECUTIVE OFFICER

ENGINEERS WITHOUT BORDERS KENYA

P.O. BOX 3271 - 00200

NAIROBI

SECTION A:

INVITATION TO BIDDERS.....	4
INSTRUCTIONS TO TENDERERS	2
1. GENERAL	5
2. TENDER DOCUMENTS	6
3. PREPARATION OF TENDERS	7
4. SUBMISSION OF TENDERS	7
5. TENDER OPENING.....	8
6. TENDER EVALUATION	8
7. AWARD OF CONTRACT	10

SECTION B:

CONDITIONS OF CONTRACT.....	10
1. DEFINITIONS	10
2. CONTRACT DOCUMENTS	12
3. EMPLOYER'S REPRESENTATIVE'S DECISIONS.....	12
4. WORKS, LANGUAGE AND LAW OF CONTRACT.....	12
5. SAFETY, TEMPORARY WORKS AND DISCOVERIES	12
6. WORK PROGRAMME AND SUB-CONTRACTING	13
7. THE SITE	13
8. INSTRUCTIONS	13
9. EXTENSION OF COMPLETION DATE.....	13
10. MANAGEMENT MEETINGS	14
11. DEFECTS	14
12. BILLS OF QUANTITIES/SCHEDULE OF RATES	15
13. VARIATIONS	15
14. INSURANCE	15
15. LIQUIDATED DAMAGES.....	15
16. COMPLETION AND TAKING OVER.....	16
17. TERMINATION	16
18. PAYMENT UPON TERMINATION.....	16
19. CORRUPT GIFTS AND PAYMENTS OF COMMISSION	17
20. SETTLEMENT OF DISPUTES	17
22. SITE PRE-VISIT.....	17

APPENDIX TO CONDITIONS OF CONTRACT	18
SECTION C:	
SPECIFICATION/BILLS OF QUANTITIES / SCHEDULE OF RATES.....	20
PREAMBLE TO BILLS OF QUANTITIES -.....	20
SCOPE OF WORKS.....	20
SECTION D:.....	21
STANDARD FORMS	24
1. FORM OF TENDER	ERROR! BOOKMARK NOT DEFINED.
2. FORM OF AGREEMENT	32
3. FORM OF TENDER SECURITY.....	34
4. PERFORMANCE BOND.....	36
5. BANK GUARANTEE FOR ADVANCE PAYMENT	38
7. QUALIFICATION INFORMATION	39
8. TENDER QUESTIONNAIRE	43
9. CONFIDENTIAL BUSINESS QUESTIONNAIRE	44
10. DETAILS OF SUB-CONTRACTORS.....	45

**TENDER FOR DRILLING AND EQUIPPING OF RUMBIYE COMMUNITY
BOREHOLE WATER PROJECT IN AGENG'A NAGUBA WARD, FUNYULA SUB-
COUNTY, BUSIA COUNTY.**

The Rotary Club of Sunset, California has allocated funds for the infrastructure development for the Rumbiye Community. The Engineers Without Borders Kenya will be the implementing agency.

1. The Sector activities are implemented through the following thematic areas:
 - i. Mobilisation and demobilisation of drilling unit/units to the various sites
 - ii. Drilling, development and casing of borehole to the recommended depth or as per the advice of the Employer or his representative
 - iii. Test pumping
 - iv. Water quality analysis
 - v. Installation of well head caps
 - vi. Pump installation
 - vii. Fence and other sanitary works and
 - viii. Preparation and submission of all reports related to this contract
2. The project now invites tenders from eligible and interested candidates for the Drilling and Equipping of Rumbiye community borehole water project in Ageng'a Nanguba ward - Funyula Sub County.
3. Interested bidders may obtain detailed tender documents **FREE OF CHARGE** by downloading from the organisation website www.ewb-kenya.org
4. Prices quoted should be net inclusive of all taxes and delivery costs, must be expressed in Kenya shillings and shall remain valid for a period of **120 days** from the closing date of the tender.
5. There will be no mandatory site visit. Bidders are advised to visit the site at their own expense to familiarize themselves with the site conditions. **No requests for variations based on unanticipated site conditions will be considered.**
6. Clarifications on the tender document.

Clarifications on the tender document may be submitted by email, to info@ewb-kenya.org and cc to ewbs.ke@gmail.com , until February 11th 2020.

EWB Kenya will respond to all questions up to February 15th 2020.

7. Proposal Submission.

Completed tender documents in one running pdf must be submitted until 12.00 hours, February 18th, 2020 to info@ewb-kenya.org and cc to ewbs.ke@gmail.com. Late bids will not be accepted.

Completed tender documents are accepted in English.

SECTION A

INSTRUCTIONS TO TENDERERS

1. General

- 1.1 The Employer as defined in the Appendix to Conditions of Contract invites tenders for Works Contract as described in the tender documents. The successful Tenderer will be expected to complete the works by the Intended Completion Date specified in the Contract
- 1.2 Tenderers shall include the following information and documents with their tenders, unless otherwise stated:
 - (a) Copies of certificates of registration under Companies Act, PIN, VAT and Tax Compliance stating principal place of business;
 - (b) Copies of certificate of registration as a Contractor by National Construction Authority (NCA) Category 4 and above (**Water works**)
 - (c) Major items of construction equipment's owned
 - (d) Experience in works of similar nature and size for each of the last **three years** and clients who may be contacted for further information on these contracts
 - (e) Authority to seek references from the Tenderer's bankers.
 - (f) Qualification and experience of key site management and technical staff proposed for the contract
 - (g) Bid bond from reputable banking institution or insurance firm – 2% of the contract sum and valid for 120 days.
 - (h) Reports on the financial standing of the tenderer, such as profit and loss statements and auditors' reports for the last three years shall be an added advantage.
- 1.3 The Tenderer shall bear all costs associated with the preparation and submission of his tender.
- 1.4 The Tenderer, at the Tenderer's own expense and risk, **MUST** visit and examine the Site of the Works and its surroundings, and obtain all information that may be necessary for preparing the tender and entering into a contract for the proposed works as defined in the specifications.

1.5 Eligible Tenderers

- a) The invitation to Tender is open to all firms as defined in the Public Procurement and Disposal of Assets Act 2015 and the Public Procurement and Disposal Regulations of 2006.
- b) A firm debarred from participating in Public Procurement by the Public Procurement Directorate shall not be eligible to bid during the period of time determined.

2. Tender Documents

- 2.1 The complete set of Tender documents comprises the documents listed here below and any addenda issued in accordance with clause 2.4 here below: -
 - (i) Instructions to Tenderers
 - (ii) Form of Tender
 - (iii) Conditions of Contract and Appendix to Conditions of Contract
 - (iv) Specifications/Bills of Quantities/Schedule of Rates (whichever is applicable)
 - (v) Other document/materials required by the project to be filled and submitted in accordance with these Instructions and Conditions
- 2.2 The Tenderer shall examine all instructions, forms and specifications in the tender documents. Failure to furnish all information required by the tender documents may result in rejection of the Tender.
- 2.3 A prospective Tenderer requiring any clarification of the tender documents may notify the Employer in writing or by cable, telex or facsimile at the address indicated in the letter of invitation to tender. They will respond to any request for clarification received earlier than seven [7] days prior to the deadline for submission of tenders. Copies of the Employer's response will be forwarded to all persons issued with tendering documents, including a description of the inquiry, but without identifying its source.
- 2.4 Before the deadline for submission of Tenders, the project may modify the tender documents by issuing addenda. Any addenda thus issued shall be part of the tender documents and shall be communicated in writing or by cable, telex or facsimile, or by email to all Tenderers. Prospective Tenderers shall acknowledge receipt of each addendum in writing to the project.
- 2.5 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their tenders, the project shall extend, as necessary, the deadline for submission of Tenders in accordance with clause 4.5 here below.

3. Preparation of Tenders

- 3.1 All documents relating to the tender and any correspondence shall be in the English Language.
- 3.2 The Tender submitted by the Tenderer shall comprise the following: -
 - (a) The Tender;
 - (b) Tender Security;
 - (c) Priced Bill of Quantities/initialled on every page or Schedule of Rates for lump-sum Contracts
 - (d) Any other documents/materials required by the project to be completed and submitted by Tenderers.
- 3.3 The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities/Schedule of Rates. Items for which no rate or price is entered by the Tenderer shall be deemed covered by the other rates and prices in the Bill of Quantities/Schedule of Rates.
- 3.4 The unit rates and prices shall be in Kenya Shillings.
- 3.5 Tenders shall remain valid for a period of **120 days** from the date of submission. However, the project may request that the Tenderers extend the period of validity for a specified additional period. The request and the Tenderers' responses shall be made in writing.
- 3.6 The Tenderer shall prepare one original of the documents comprising the tender documents as described in these Instructions to Tenderers.
- 3.7 The original shall be typed or written in indelible ink and shall be signed by a person or persons duly authorised to sign on behalf of the Tenderer. The person or persons signing the tender shall initial all pages of the Tender where alterations or additions have been made.

4. Submission of Tenders

- 4.1 The Tender duly filled and sealed in an envelope shall; -
 - (a) be addressed to the **Employer** at the address provided in the invitation to Tender;
 - (b) bear the name and identification number of the Contract as defined in the invitation to Tender; and
 - (c) Provide a warning not to open before the specified time and date for Tender opening.
- 4.2 Tenders shall be delivered to the Employer at the address specified above not later than the time and date specified in the invitation to tender.

- 4.3 The Tenderer shall not submit any alternative offers unless they are specifically required in the Tender documents. Each Tenderer shall submit only one tender.
- Any Tenderer who fails to comply with this requirement will be disqualified.
- 4.4 Any tender received after the deadline for opening tenders will be returned to the Tenderer un-opened.
- 4.5 The project may extend the deadline for submission of tenders by issuing an amendment in accordance with sub-clause 2.5 in which case all rights and obligations of the project and the Tenderers previously subject to the original deadline will then be subject to the new deadline.

5. Tender Opening

- 5.2 The Tenders will be opened in the presence of the Tenderers and/or their representatives who choose to attend at the time and in the place specified in the invitation to tender.
- The name of the Tenderer, the total amount of each tender and such other details as may be considered appropriate, shall be read out aloud and recorded in a tender opening register, and a copy of the record may on request be made available to a tenderer.
- Minutes of the tender opening, including the information disclosed to those present will also be prepared by the Employer.

6. Tender Evaluation

- 6.1 Information relating to the examination, clarification, evaluation and comparison of tenders and recommendations for the award of the Contract shall not be disclosed to Tenderers or any other persons not officially concerned with such process until the award to the successful Tenderer has been announced.
- Any effort by a Tenderer to influence the processing of tenders or award decisions may result in the rejection of his tender.
- 6.2 Prior to the detailed evaluation of tenders, the project will determine if each tender: -
- a) Meets the eligibility criteria defined in Clause 1.5.
 - b) Has been properly signed;
 - c) Is accompanied by the required securities;
 - d) Is substantially responsive to the requirements of the bidding documents.
- 6.3 A substantially responsive Tender is one which conforms to all the terms, Conditions and Specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation is the one: -
- a) Which affects in any substantial way the scope, quality or performance of the works;

- b) Which limits in a substantial way, or is inconsistent with the tender documents, the project's rights or the Tenderer's obligation under the Contract;
 - c) Whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive tenders.
- 6.4 Tenders determined to be substantially responsive will be checked for any arithmetic errors. Errors will be corrected as follows:
- (a) Where there is a discrepancy between the amount in figures and the amount in words, the amount in words will prevail; and
 - (b) Where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the line item total will govern and the unit rate will be adjusted accordingly in such a way that the Tender sum remains unaltered.
 - (c) For lump sum items, only the total amount will be considered disregarding any amount filled in as unit rate.
 - (d) In the event of a discrepancy between the tender amount as stated in the Form of Tender and the corrected tender figure in the main summary of the Bill of Quantities/Quotation, the amount as stated in the Form of Tender shall prevail.
 - (e) The Error Correction Factor shall be computed by expressing the difference between the tender amount and the corrected tender sum as a percentage of the Corrected Builder's Work
 - (f) The Error Correction Factor shall be applied to all Builders' Work for the purposes of valuations for Interim Certificates.
 - (g) The amount stated in the tender will be adjusted in accordance with the above procedure for correction of errors and with the concurrence of the Tenderer, shall be considered as binding upon the Tenderer.
- If the Tenderer does not accept the corrected amount, the tender may be rejected and the Tender Security forfeited.
- 6.5 To assist in the examination, evaluation, and comparison of tenders, the Employer at his discretion may request any tenderer for clarification of the Tender, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by email, cable, telex or facsimile.

7. Award of Contract

- 7.1 The award of the Contract will be made to the Tenderer who has offered the **lowest evaluated tender price**.
- 7.2 Notwithstanding the provisions of clause 7.1 above, the Employer reserves the right to accept or reject any tender and to cancel the tendering process and reject all tenders at any time prior to the award of Contract without thereby incurring any liability to the affected Tenderer or Tenderers or any obligation to inform the affected Tenderer or Tenderers of the grounds for the action.
- 7.3 The Tenderer whose tender has been accepted will be notified of the award prior to expiration of the tender validity period in writing or by cable, telex, email or facsimile. This notification (hereinafter and in all Contract documents called the "Letter of Acceptance") will state the sum [hereinafter and in all Contract documents called the "Contract Price"] which the project will pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract.
- The notification of award will constitute the formation of the Contract, subject to the Tenderer signing the Contract Agreement.
- 7.4 The Contract Agreement will incorporate all agreements between the project and the successful Tenderer. It will be signed by the successful Tenderer, not earlier than 14 days following the notification of award.
- The contract shall be signed in the premises of the client or such place as shall be mutually decided on by the signing parties.
- 7.5 Within 14 days after the receipt of the letter of Acceptance, the successful Tenderer shall, if called upon, deliver to the Employer a Performance Security amount stipulated in the Appendix to Conditions of Contract and work programme based on the bill of quantities/schedule of works.
- 7.6 The resulting contract from this tender **SHALL NOT BE TRANSFERRED** to another party without consent of the employer and any attempt by the successful bidder to do so may lead to automatic termination without prejudice.

SECTION B:

CONDITIONS OF CONTRACT

1. Definitions

- 1.1 In this Contract, except where context otherwise requires, the following terms shall be interpreted as indicated:

"Bills of Quantities" means the priced and completed Bill of Quantities forming part of the tender [where applicable]

“Schedule of Rates” means the priced Schedule of Rates forming part of the tender [where applicable].

“The Completion Date” means the date of completion of the Works as certified by the Employer’s Representative.

“The Contract” means the agreement entered into by the Employer and the Contractor as recorded in the Agreement Form and signed by the parties.

“The Contractor” refers to the person or corporate body whose tender to carry out the Works has been accepted by the Employer.

“The Contractor’s Tender” is the completed tendering document submitted by the Contractor to the Employer.

“The Contract Price” is the price stated in the Letter of Acceptance.

“Days” are calendar days;

“Months” are calendar months

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

“The Defects Liability Certificate” is the certificate issued by Employer’s Representative upon correction of defects by the Contractor.

The Defects Liability Period” is the period named in the Appendix to Conditions of Contract and calculated from the Completion Date.

“Drawings” include calculations and other information provided or approved by the Employer’s Representative for the execution of the Contract.

“Employer” refers to the party who employs the Contractor to carry out the Works.

“Equipment” is the Contractor’s machinery and vehicles brought temporarily to the Site for the Execution of the Works.

“Site” means the place or places where the permanent Works are to be carried out including workshops where the same is being prepared.

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

“Employer’s Representative” is the person appointed by the Employer and notified to the Contractor for the purpose of supervision of the Works.

“Specification” means the Specification of the Works included in the Contract.

“Start Date” is the date when the Contractor shall commence execution of the Works

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

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

“A Variation” is an instruction given by the project/Employer’s Representative which varies the Works.

“The Works” are what the Contract requires the Contractor to construct, install and turn over to the Employer.

2. Contract Documents

2.1 The following documents shall constitute the Contract documents and shall be interpreted in the following order of priority:

- (1) Contract Agreement,
- (2) Letter of Acceptance,
- (3) Contractor’s Tender,
- (4) Conditions of Contract,
- (5) Specifications,
- (6) Bills of Quantities or Schedule of Rates [whichever is applicable]

3. Employer’s Representative’s Decisions

3.1 Except where otherwise specifically stated, the Employer’s Representative will decide contractual matters between the Employer and the Contractor in the role representing the Employer.

4. Works, Language and Law of Contract

4.1 The Contractor shall construct and install the Works in accordance with the Contract documents. The Works may commence on the Start Date and shall be carried out in accordance with the Programme submitted by the Contractor, as updated with the approval of the Employer’s Representative, and complete them by the Intend Completion Date.

4.2 The ruling language of the Contract shall be English language and the law governing the Contract shall be the law of the Republic of Kenya.

5. Safety, Temporary works and Discoveries

5.1 The Contractor shall be responsible for design of temporary works and shall obtain approval of third parties to the design of the temporary works where required.

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

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

6. Work Programme and Sub-contracting

- 6.1 Within seven days after Site possession date, the Contractor shall submit to the Employer's Representative for approval a programme showing the general methods, arrangements, order and timing for all the activities in the Works.
- 6.2 The Contractor may sub-contract the Works (but only to a maximum of 25 percent of the Contract Price) with the approval of the Employer's Representative. However, he shall not assign the Contract without the approval of the Employer in writing. Sub-contracting shall not alter the Contractor's obligations.

7.0 The Site

- 7.1 The Employer shall give possession of all parts of the Site to the Contractor.
- 7.2 The Contractor shall allow the Employer's Representative and any other person authorized by the Employer's Representative access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

8.0 Instructions

- 8.1 The Contractor shall carry out all instructions of the Employer's Representative which are in accordance with the Contract.

9.0 Extension of Completion Date

- 9.1 The Employer's Representative shall extend the Completion Date if an occurrence arises which makes it impossible for completion to be achieved by the Intended Completion Date. The Employer's Representative shall decide whether and by how much to extend the Completion Date.
- 9.2 For the purposes of this clause, the following occurrences shall be valid for consideration:

Delay by: -

- (a) force majeure, or
- (b) reason of any exceptionally adverse weather conditions, or
- (c) reason of civil commotion, strike or lockout affecting any of the trades employed upon the Works or any of the trades engaged in the preparation, manufacture or transportation of any of the goods or materials required for the Works, or
- (d) reason of the Employer's Representative's instructions issued under these Conditions, or
- (e) reason of the contractor not having received in due time necessary instructions, drawings, details or levels from the Employer's Representative for which he specifically applied in writing on a date which having regard

to the date for Completion stated in the appendix to these Conditions or to any extension of time then fixed under this clause was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same, or

- (f) delay on the part of artists, tradesmen or others engaged by the Employer in executing work not forming part of this Contract or;
- (g) reason of delay by statutory or other service providers or similar bodies engaged directly by the Employer, or
- (h) reason of opening up for inspection of any work covered up or of the testing or any of the Work, materials or goods in accordance with these conditions unless the inspection or test showed that the Work, materials or goods were not in accordance with the Contract, or;
- (i) reason of delay caused by appointing of a replacement of Employer's Representative, or;
- (j) reason of delay caused by the late supply of goods or materials or in executing Work for which the Employer or his agents are contractually obliged to supply or to execute as the case may be, or;
- (k) Delay in receiving possession of or access to the Site.

10. Management Meetings

10.1 Contract management meeting shall be held regularly and attended by the Employer's Representative and the Contractor.

Its business shall be to review the plans for the remaining Work. The Employer's Representative shall record the business of management meetings and provide copies of the record to those attending the meeting and the Employer.

The responsibility of the parties for actions to be taken shall be decided by the Employer's Representative either at the management meeting or after the management meeting and stated in writing to all who attend the meeting.

10.2 Communication between parties shall be effective only when in writing.

11. Defects

11.1 The Employer's Representative shall inspect the Contractor's work and notify the Contractor of any defects found. Such inspection shall not affect the Contractor's responsibilities. The Employer's Representative may instruct the Contractor to search for a defect and to uncover and test any Work that the Employer's Representative considers may have a defect. Should the defect be found, the cost of uncovering and making good shall be borne by the Contractor.

11.2 The Employer's Representative shall give notice to the Contractor of any defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the Appendix to Conditions of Contract.

11.3 Every time notice of a defect is given; the Contractor shall correct the notified defect within the length of time specified by the Employer's Representative's notice. If the Contractor has not corrected a defect within the time specified in the Employer's Representative's notice, the

Employer's Representative will assess the cost of having the defect corrected by other parties and such cost shall be treated as a variation and be deducted from the Contract Price.

12. Bills of Quantities/Schedule of Rates

12.1 The Bills of Quantities/Schedule of Rates shall contain items for the construction, Installation, testing and commissioning of the Work to be done by the Contractor. The Contractor will be paid for the quantity of the Work done at the rates in the Bills of Quantities/Schedule of Rates for each item. Items against which no rate is entered by the Tenderer will not be paid for when executed and shall be deemed covered by the rates for other items in the Bills of Quantities/Schedule of Rates.

12.2 Where Bills of Quantities do not form part of the Contract, the Contract Price shall be a lump sum (which shall be deemed to have been based on the rates in the Schedule of Rates forming part of the tender) and shall be subject to re-measurement after each stage.

13. Variations

13.1 The Contractor shall provide the Employer's Representative with a quotation for carrying out the variations when requested to do so. The Employer's Representative shall assess the quotation and shall obtain the necessary authority from the Employer before the variation is ordered.

13.2 If the Work in the variation corresponds with an item description in the Bill of Quantities/Schedule of Rates, the rate in the Bills of Quantities/Schedule of Rates shall be used to calculate the value of the variation.
If the nature of the Work in the variation does not correspond with items in the Bill of Quantities/Schedule of Rates, the quotation by the Contractor shall be in the form of new rates for the relevant items of Work.

13.3 If the Contractor's quotation is unreasonable, the Employer's Representative may order the variation and make a change to the Contract Price, which shall be based on the Employer's Representative's own forecast of the effects of the variation on the Contractor's costs.

13.4 Where contract price variation is allowed, the variation shall not exceed 25% of the original contract price.

14. Insurance

14.1 The Contractor shall be responsible for and shall take out appropriate cover against, among other risks, personal injury; loss of or damage of the Works, materials and plant; and loss of or damage of property.

15. Liquidated Damages

15.1 The Contractor shall pay liquidated damages to the Employer at the rate of **0.01 per cent** of the contract price per day for each day that the actual completion Date is later than the Intended Completion Date except in the case of any of the occurrences listed under clause 9.2.

The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

16. Completion and Taking Over

16.1 Upon deciding that the Work is complete the Contractor shall request the Employer's Representative to issue a Certificate of Completion of the Works.

The Employer shall take over the Site and the Works within seven days of the Employer's Representative issuing a Certificate of Completion.

17. Termination

The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

These fundamental breaches of Contract shall include, but shall not be limited to, the following;

- a) The Contractor stops Work for 30 days continuously without reasonable cause or authority from the Employer's Representative;
- b) The Contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- c) The Employer's Representative gives notice that failure to correct a particular defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time.

If the Contract is terminated, the Contractor shall stop Work immediately, and leave the Site as soon as reasonably possible.

The Employer's Representative shall immediately thereafter arrange for a meeting for the purpose of taking record of the Works executed and materials, goods, equipment and temporary buildings on Site.

18. Payment upon termination

The Employer may employ and pay other persons to carry out and complete the Works and to rectify any defects and may enter upon the Works and use all materials on Site, Plant, Equipment and temporary works.

The Contractor shall, during the execution or after the completion of the Works under this clause, remove from the Site as and when required within such reasonable time as the Employer's Representative may in writing specify, any temporary buildings, plant, machinery, appliances, goods or materials belonging to him, and in default thereof, the Employer may (without being responsible for any loss or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor.

Until after completion of the Works under this clause, the Employer shall not be bound by any other provision of this Contract to make any payment to the Contractor, but upon such completion as aforesaid and the verification within a reasonable time of the accounts therefore the Employer's Representative shall certify the amount of expenses properly incurred by the

Employer and, if such amount added to the money paid to the Contractor before such determination exceeds the total amount which would have been payable on due completion in accordance with this Contract, the difference shall be a debt payable to the Employer by the Contractor; and if the said amount added to the said money be less than the said total amount, the difference shall be a debt payable by the Employer to the Contractor.

19. Corrupt Gifts and Payments of Commission

The Contractor shall not;

- (a) Offer or give or agree to give to any person in the service of the Employer any gifts or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other contract with the Employer or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract with the Employer.
- (b) Any breach of this Condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) shall be an offence under the Laws of Kenya.

20. Settlement of Disputes

Any dispute arising out of the Contract which cannot be amicably settled between the parties shall be referred by either party to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the chairman of the Chartered Institute of Arbitrators, Kenya branch, on the request of the applying party.

21. Pre-Tender visit

All the bidders can visit the site to acquaint themselves with all the site conditions before bidding.

The employer's representative will be available to accompany them to site on request by the bidder.

No requests for variations based on unanticipated site conditions will be considered.

APPENDIX TO CONDITIONS OF CONTRACT

Notes on the Appendix to the Instruction to Tenderers

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

Appendix to Instructions to Tenderers

- i) The following instructions shall supplement, complement or amend the provisions of the instructions to candidates.
- ii) Where there is a conflict between the provisions of the instructions to candidates and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to the candidates.
- iii) The employer is
The Rotary Club of Davis, Sunset
California
- iv) Name of Employer's Representative:
The Executive Chief Officer
Engineers Without Borders Kenya
P. O. Box 3271 – 00200
Nairobi
- v) Engineers Without Borders Kenya in consultation with the employer will select candidates among those that submit documents, in accordance with the method of selection detailed under this section.
- vi) Candidates will be asked required to quote prices in accordance with the schedule of prices provided in this tender document.
- vii) Prices quoted should be net inclusive of all taxes and delivery costs, must be expressed in Kenya shillings and shall remain valid for a period of **120 days** from the closing date of the tender.
- viii) Clarifications on the tender document.
Clarifications on the tender document may be submitted by email, to **info@ewb-kenya.org** and cc to **ewbs.ke@gmail.com**, until February 11th 2020.
EWB Kenya will respond to all questions up to February 15th 2020.
- ix) Tender documents shall be submitted in the following English language.
- x) Proposal Submission.
Completed tender documents in one running pdf must be submitted until 12.00 hours, February 18th, 2020 to **info@ewb-kenya.org** and cc to **ewbs.ke@gmail.com**.
- xi) Expiry of this contract shall be dependent on the price validity period or as shall be validated otherwise.
- xii) The resulting contract from this tender SHALL NOT BE TRANSFERRED to another party without consent of the employer and any attempt by the successful bidder to do so may lead to automatic termination without prejudice.

SECTION C:

SPECIFICATION/BILLS OF QUANTITIES / SCHEDULE OF RATES

PREAMBLE TO BILLS OF QUANTITIES -

1. The Bills of Quantities form part of the Contract Documents and are to be read in conjunction with the instructions to Tenderers and these documents.
2. The prices and rates to be inserted in the Bill of Quantities are to be the full, inclusive value of the work described under the several items including all costs and expenses which may be required in and for the execution of the work described and for the Contractor's overheads, profits and all taxes that may be due to the Government under this contract.
3. Each item in the B/Q contains only a brief description of the proposed work. Full details and directions of the work to be done, the materials to be used, the standards of workmanship, methods of measurement and payment are to be found in the various sections of the Specifications.
4. The Quantities set forth in the Bill of Quantities are estimated and substantially represent the work to be carried out.

There is no guarantee to the Contractor that he will be required to carry out all the quantities of work indicated under any one particular item or group of items in the Bills of Quantities.

The basis of payment shall be the Contractor's rates and the quantities of work actually done in fulfilment of his obligation under the Contract.

**RUMBIYE COMMUNITY BOREHOLE
BILL OF QUANTITIES FOR DRILLING AND CONSTRUCTION OF RUMBIYE
COMMUNITY BOREHOLE WATER PROJECT**

The site is located at Kalungu village in Ageng'a Nanguba ward – Funyula Sub County.

PRELIMINARY (PROVISIONAL SUM)

ITEM	DESCRIPTION	UNIT	QUANTITY	RATE (KSH)	TOTAL AMOUNT (KSHS)
1.	Geo survey, report analysis and production of report	Item	Ls	0.00	0.00
2.	Drilling permit from WARMA	ITEM	Ls	0.00	0.00
3.	Environmental impact assessment from NEMA	Item	Ls	0.00	0.00
4.	Allow the provisional sum of 65,000 to cover supervision costs of engineer assigned on the project	Item	Ls		
	SUB TOTAL				

2. BOREHOLE DRILLING, CONSTRUCTION AND DEVELOPMENT

ITEM	DESCRIPTION	UNIT	QUANTITY	RATE (KSH)	TOTAL AMOUNT (KSHS)
1.	Mobilization/set-up/camp/water supply/restitution/demobilization				
1.1	Mobilize/demobilize drilling plant/camp and set up at rig site	LS	1.0		
1.2	Providing water for drilling and camp	LS	1.0		
2	Drilling				
2.1	Drilling 305 mm diameter hole to accommodate surface casing	M	6.0		
2.2	Drilling at 203 mm diameter from base of surface casing to 100m	M	94.0		
2.3	Drilling at 203 mm diameter from 100m to 200m	M	70.0		
3.0	Sample collection, storage and record keeping				
9	Formation samples collected at 2m intervals, record keeping complete and borehole down lithological logging	No.	85.0		

**DRILLING AND EQUIPPING OF RUMBIYE COMMUNITY BOREHOLE WATER PROJECT
IN AGENG'A NANGUBA WARD-FUNYULA SUB COUNTY**

ITEM	DESCRIPTION	UNIT	QUANTITY	RATE (KSH)	TOTAL AMOUNT (KSHS)
4.	Logging				
4.1	Geologist logging including rock description in terms of colour, texture, shape, roundness, porosity, weathering etc, after every 2 meters	No.	85.0		
5.0	Supply and install casing and screen, casing with bottom cap				
5.1	Supply/install/remove temporary/surface casing	M	6.0		
5.2	Supply/install 152 mm (6") ID mild steel plain casing	M	54.0		
5.3	Supply/install 152 MM (6") ID mild steel plasma-slotted screen	M	117.0		
6.0	Gravel pack				
6.1	Supply/install gravel pack to specification	M ³	1.7		
7.0	Wellhead				
7.1	Construct well head with cement grout 1mx1mx1m	LS	1.0		
7.2	Supply and install well cap	LS	1.0		
7.3	Actual development	HR	3.0		
8.0	Test Pumping and Recovery Measurements				
8.1	Mobilization of test pumping equipment, installation and removal	LS	1.0		
8.2	Constant discharge test	HR	24.0		
8.3	Constant test recovery measurements	HR	12.0		
	SUB TOTAL				

3: WATER ANALYSIS

ITEM	DESCRIPTION	UNIT	QUANTITY	RATE (KSH)	TOTAL AMOUNT (KSHS)
1.	Collection of water samples of 1litre from boreholes for full physical, chemical and bacteriological analysis after test pumping, including transporting to laboratory	Item	Ls		
2.	Complete WRMA 009A and borehole completion report	Item	Ls		
3.	Borehole permit and BH number	Item	Ls		
	SUB TOTAL				

4: PUMP INSTALLATION

ITEM	DESCRIPTION	UNIT	QUANTITY	RATE (KSH)	TOTAL AMOUNT (KSHS)
1.	Purchase and installation of Indian Mark II hand pump	Item	Ls		
2.	Construction of super structure complete with open drill as shall be advised by the water engineer on site	Item	Ls		
	SUB TOTAL				

5: FENCE AND OTHER SANITARY WORKS

ITEM	DESCRIPTION	UNIT	QUANTITY	RATE (KSH)	TOTAL AMOUNT (KSHS)
1.	Chain link	PCS	2.0		
2.	Fence posts	PCS	15.0		
3.	Nails and other items	LS	1.0		
4.	Metal gate (Mesh and metal)	LS	1.0		
5.	Labour	LS	1.0		
	SUB TOTAL				

Summary

1. Preliminary (provisional sum)	-
2. Drilling, construction and development	-
3. Water quality analysis	-
4. Pump Installation	-
5. Fence and other Sanitary Works	-
Total	-

SECTION D:
STANDARD FORMS

- (i) Form of Tender
- (ii) Form of Agreement
- (iii) Form of Tender Security
- (iv) Performance Bond
- (v) Qualification Information
- (vi) Tender Questionnaire
- (vii) Confidential Business Questionnaire
- (viii) Details of Sub-Contractors

1. FORM OF TENDER

TO: _____ [Name of Employer] _____ [Date]

_____ [Name of Contract]

Dear Sir,

In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Quantities/Schedule of Rates for the execution of the above named Works, we, the undersigned offer to construct, install and complete such Works and remedy any defects therein for the sum of Kshs. _____ [Amount in figures] Kenya

Shillings _____ [Amount in words]

We undertake, if our tender is accepted, to commence the Works on the commencement date and to complete the whole of the Works comprised in the Contract within the time stated in the Appendix.

We agree to abide by this tender until _____ [Insert date], and it shall remain binding upon us and may be accepted at any time before that date.

Unless and until a formal Agreement is prepared and executed this tender together with your written acceptance thereof, shall constitute a binding Contract between us.

We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this _____ day of _____ 20_____

Signature _____ in the capacity of _____

duly authorized to sign tenders for and on behalf of
_____ [Name of Tenderer] of
_____ [Address of Tenderer]

Witness: Name _____

Address _____

Signature _____

Date _____

2. FORM OF AGREEMENT

THIS AGREEMENT, made the _____ day of _____ 20 _____
between _____ of [or whose registered
office is situated at] _____
(hereinafter called “the Employer”) on the one part AND
_____ of [or whose registered
office is situated at] _____
(Hereinafter called “the Contractor”) on the other part.

WHEREAS THE Employer is desirous that the Contractor executes

(*Name and identification number of **Contractor***) (Hereinafter called “the **Works**”) located
at _____ [*Place/location of the Works*] and the Employer has
accepted the tender submitted by the Contractor for the execution and completion of such
Works and the remedying of any defects therein for the Contract Price of
Kshs _____ [*Amount* in _____ *figures*], Kenya
Shillings _____ [*Amount in words*].

NOW THIS AGREEMENT WITNESSETH as follows:

In this Agreement, words and expressions shall have the same meanings as are respectively
assigned to them in the Conditions of Contract hereinafter referred to.

The following documents shall be deemed to form and shall be read and construed as part of
this Agreement i.e.

- (i) Letter of Acceptance
- (ii) Form of Tender
- (iii) Conditions of Contract Part I
- (iv) Conditions of Contract Part II and Appendix to Conditions of Contract
- (v) Specifications
- (vi) Priced Bills of Quantities/Priced Schedule of Rates [whichever is applicable]

In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby Covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.

The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

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

The common Seal of _____

Was hereunto affixed in the presence of _____

Signed Sealed, and Delivered by the said _____

Binding Signature of Employer _____

Binding Signature of Contractor _____

In the presence of (i) Name _____

Address _____

Signature _____

(ii)

Name _____

Address _____

Signature _____

3. FORM OF TENDER SECURITY

WHEREAS (herein after called “the Tenderer”) has submitted his tender dated for Construction ofproject..... (*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 Kshs..... for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors and assigns by these presents sealed with the Common Seal of the said Bank this Day 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;

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 ninety (90) 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]

4. PERFORMANCE BOND

By this Bond, We _____ of (or whose registered office is situated at) _____
as Principal (hereinafter called "the Contractor") and _____
_____ of [or whose registered office is situated at
] _____
as Surety (hereinafter called "the Surety"), are held and firmly bound unto _____ of [or
whose registered office is situated
at] _____
as Oblige (hereinafter called "the Employer") in the amount of
Kshs. _____ [amount of Bond in figures] Kenya Shillings

[amount of Bond in words], for the payment of which sum well and truly, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Contractor has entered into a Contract with the Employer dated the _____ day of _____ 20 _____ for the execution of _____

[name of Contract] in accordance with the Contract documents, Specifications and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

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

- (1) complete the Contract in accordance with its terms and conditions; or
- (2) obtain a tender or tenders from qualified tenderers for submission to the Employer for completing the Contract in accordance with its terms and conditions, and upon determination by the Employer and the Surety of the lowest responsive tenderer, arrange for a Contract between such tenderer and Employer and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof.

The term "Balance of the Contract Price", as used in this paragraph, shall mean the total amount payable by the Employer to the Contractor under the Contract, less the amount properly paid by the Employer to the Contractor; or

- (3) Pay the Employer the amount required by the Employer to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

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

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

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

In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this _____ day of _____ 20_____

SIGNED ON _____ SIGNED ON _____

On behalf of _____ On behalf of _____
[Name of Contractor] [Name of Surety]

By _____ By _____

In the capacity of _____ In the capacity of _____

In the presence of; Name _____ In the presence of; Name _____

Address _____ Address _____

Signature _____ Signature _____

Date _____ Date _____

5. QUALIFICATION INFORMATION

1. Individual Tenderers or Individual Members of Joint Ventures

1.1 Constitution or legal status of tenderer (attach copy or Incorporation Certificate);

Place of registration: _____

Principal place of business _____

Power of attorney of signatory of tender _____

1.2 Total annual volume of construction work performed in the last three years

Year	Value

1.3 Work performed as Main Contractor on works of a similar nature and volume over the last five years. Also list details of work under way or committed, including expected completion date.

Project name	Name of client and contact person	Type of work performed and year of completion	Value of Contract

- 1.4 Major items of Contractor's Equipment proposed for carrying out the Works.
List all information requested below.

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

- 1.5 Qualifications and experience of key personnel proposed for administration and execution of the Contract. Attach biographical data.

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

- 1.6 Financial reports for the last five years: balance sheets, profit and loss statements, auditor's reports, etc. List below and attach copies.
- 1.7 Evidence of access to financial resources to meet the qualification requirements: cash in hand, lines of credit, etc. List below and attach copies of supportive documents.
-
- 1.8 Name, address and telephone, telex and facsimile numbers of banks that may provide reference if contacted by the Employer.
- 1.9 Statement of compliance with the requirements of Clause 1.2 of the Instructions to Tenderers.
-

1.6 Proposed program (work method and schedule) for the whole of the Works.

Descriptions, drawings and charts as necessary to comply with the requirements of the tendering documents

6. TENDER QUESTIONNAIRE

Please fill in block letters.

1. Full names of tenderer;

.....

2. Full address of tenderer to which tender correspondence is to be sent (unless an agent has been appointed below);

.....

3. Telephone number (s) of tenderer;

.....

4. Telex of tenderer;

.....

5. Name of tenderer's representative to be contacted on matters of the tender during the tender period;

.....

6. Details of tenderer's nominated agent (if any) to receive tender notices. This is essential if the tenderer does not have his registered address in Kenya (name, address, telephone, telex);

.....

.....

Signature of Tenderer

Make copy and deliver to: _____ (*Name of Employer*)

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

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

	Part 2 (a) – Sole Proprietor																				
	Your name in fullAge																				
	Nationality Country of origin																				
	5.5.2 Citizenship details																				
	Part 2 (b) Partnership																				
	Given details of partners as follows:																				
	<table> <tr> <th>Name</th> <th>Nationality</th> <th>Citizenship Details</th> <th>Shares</th> </tr> <tr> <td>1.....</td> <td></td> <td></td> <td></td> </tr> <tr> <td>2.....</td> <td></td> <td></td> <td></td> </tr> <tr> <td>3.....</td> <td></td> <td></td> <td></td> </tr> <tr> <td>4.....</td> <td></td> <td></td> <td></td> </tr> </table>	Name	Nationality	Citizenship Details	Shares	1.....				2.....				3.....				4.....			
Name	Nationality	Citizenship Details	Shares																		
1.....																					
2.....																					
3.....																					
4.....																					
	Part 2 (c) – Registered Company																				
	Private or Public																				
	State the nominal and issued capital of company-																				
	Nominal Kshs. Issued Kshs.																				
	Given details of all directors as follows																				
	<table> <tr> <th>Name</th> <th>Nationality</th> <th>Citizenship Details</th> <th>Shares</th> </tr> <tr> <td>1.....</td> <td></td> <td></td> <td></td> </tr> <tr> <td>2.....</td> <td></td> <td></td> <td></td> </tr> <tr> <td>3.....</td> <td></td> <td></td> <td></td> </tr> <tr> <td>4.....</td> <td></td> <td></td> <td></td> </tr> </table>	Name	Nationality	Citizenship Details	Shares	1.....				2.....				3.....				4.....			
Name	Nationality	Citizenship Details	Shares																		
1.....																					
2.....																					
3.....																					
4.....																					
Date	Signature of Candidate																				

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

8. DETAILS OF SUB-CONTRACTORS

If the Tenderer wishes to sublet any portions of the Works under any heading, he must give below details of the sub-contractors he intends to employ for each portion.

Failure to comply with this requirement may invalidate the tender.

(1) Portion of Works to be sublet:

(i) Full name of Sub-contractor
and address of head office:

.....

(ii) Sub-contractor's experience
of similar works carried out
in the last 3 years with
Contract value:

.....

.....

(2) Portion of Works to sublet (not more 25% of contract value)

.....

(i) Full name of sub-contractor
and address of head office:

.....

.....

(ii) Sub-contractor's experience
of similar works carried out
in the last 3 years with
Contract value:.....

.....

(Signature of Tenderer)

Date