



NATIONAL AIDS CONTROL COUNCIL

TENDER NO. NACC/T/001/ 2020-2021

SUPPLY OF DRINKING WATER TO THE NATIONAL AIDS CONTROL  
COUNCIL

**CLOSING DATE: January 15, 2021 at 12:00PM**

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SECTION I: INVITATION TO TENDER

January 7, 2021

TENDER NO. TENDER NO. NACC/T/001/ 2020-2021

TENDER NAME: SUPPLY OF DRINKING WATER TO THE NATIONAL AIDS CONTROL COUNCIL

The National AIDS Control Council (NACC) invites sealed tenders from eligible candidates for Supply of drinking water for NACC. The contract will be for a period of two years subject annual Satisfactory Performance review in the first year.

The tender document may be viewed and downloaded from the NACC's website [www.nacc.or.ke](http://www.nacc.or.ke) or in Public Procurement Information Portal in [www.tenders.go.ke](http://www.tenders.go.ke) for free or at Kshs 1,000 for printed copy payable through a bankers cheque addressed to Chief Executive Officer, National AIDS Control Council.

Prices quoted should be net inclusive of all taxes, must be in Kenya Shillings and should remain valid for 120 days.

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 the NACC Offices, 9<sup>th</sup> Floor, Landmark Plaza, Argwings Kodhek Road, Nairobi addressed to:

**The Chief Executive Officer,  
National AIDS Control Council,  
P. O. Box 61307 - 00200  
NAIROBI**

To be received on or before **January 15, 2021 at 12:00 PM.**

Tenders will be opened immediately thereafter in the presence of the tenderers representatives who choose to attend the opening at the 6<sup>th</sup> floor Board Room, Landmark Plaza, Argwings Kodhek Road.

**CHIEF EXECUTIVE OFFICER  
NATIONAL AIDS CONTROL COUNCIL**

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## SECTION II - INSTRUCTIONS TO TENDERERS

### 2.1 Eligible Tenderers

2.1.1 This Invitation for Tenders is open to all tenderers eligible as described in the Invitation to Tender. Successful tenderers shall undertake to **supply drinking water** as specified in the Schedule of Requirements Section VI.

2.1.2 The National AIDS Control Council employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.

2.1.3 Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by The National AIDS Control Council to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods under this Invitation for tenders.

2.1.4 Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices.

### 2.2 Eligible Goods

2.2.1 All goods to be supplied under the contract shall have their origin in eligible source countries.

2.2.2 For purposes of this clause, "origin" means the place where the goods are mined, grown, or produced. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially-recognized product results that is substantially different in basic characteristics or in purpose or utility from its components

2.2.3 The origin of goods is distinct from the nationality of the tenderer.

### 2.3 Cost of Tendering

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

2.3.2 The price is to be changed for the tender document as specified in the appendix to Instructions to tenderers.

2.3.3 All firms found capable of performing the contract satisfactorily in accordance to the set qualification criteria shall be considered.

### 2.4 The Tender Document

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

- i. Invitation to Tender
- ii. Instructions to tenderers
- iii. General Conditions of Contract
- iv. Special Conditions of Contract

- v. Schedule of requirements
- vi. Technical Specifications
- vii. Tender Form and Price Schedules
- viii. Tender Security Form
- ix. Contract Form
- x. Performance Security Form
- xi. Manufacturer's Authorization Form
- xii. Confidential Business Questionnaire

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

## 2.5 Clarification of Documents

2.5.1 A prospective tenderer requiring any clarification of the tender document may notify The National AIDS Control Council in writing or by post at The National AIDS Control Council address indicated in the Invitation to Tender. The Council will respond in writing to any request for clarification of the tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of tenders, prescribed by The National AIDS Control Council. Written copies of The National AIDS Control Council response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers that have received the tender document.

2.5.2 The National AIDS Control Council shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.

## 2.6 Amendment of Documents

2.6.1 At any time prior to the deadline for submission of tenders, The National AIDS Control Council, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by amendment.

2.6.2 All prospective candidates that have received the tender documents will be notified of the amendment in writing or by post and will be binding on them.

2.6.3 In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, The National AIDS Control Council, at its discretion, may extend the deadline for the submission of tenders

## 2.7 Language of Tender

2.7.1 The tender prepared by the tenderer, as well as all correspondence and documents relating to the tender exchange by the tenderer and The National AIDS Control Council, shall be written in English language, provided that any printed literature furnished by the tenderer may be written in another language provided they are accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the tender, the English translation shall govern.



## 2.8 Documents Comprising of Tender

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

- a) Tender Form and a Price Schedule completed in accordance with the Tender documents
- b) Documentary evidence that establishes that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
- c) Documentary evidence that establishes that the goods and ancillary services to be supplied by the tenderer are eligible goods and services and conform to the tender documents; and
- d) Tender security furnished as prescribed in the Appendix.

## 2.9 Tender Forms

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

## 2.10 Tender Prices

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

2.10.2 Prices indicated on the Price Schedule shall include all costs including taxes, insurances and delivery to the premises of The National AIDS Control Council.

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

2.10.4 The validity period of the tender shall be 90 days from the date of opening of the tender.

## 2.11 Tender Currencies

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

## 2.12 Tenderers Eligibility and Qualifications

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

2.12.2 The documentary evidence of the tenderers eligibility to tender shall establish to The National AIDS Control Council satisfaction that the tenderer, at the time of submission of its tender, is from an eligible source country as defined by the Manufacturer.

2.12.3 The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall be established to The National AIDS Control Council satisfaction;

- a) that, in the case of a tenderer offering to supply goods under the contract which the tenderer did not manufacture or otherwise produce, the tenderer has been duly authorized by the goods' Manufacturer or producer to supply the goods.

b) that the tenderer has the financial, technical, and production capability necessary to perform the contract;

c) that, in the case of a tenderer not doing business within Kenya, the tenderer is or will be (if awarded the contract) represented by an Agent in Kenya equipped, and able to carry out the Tenderer's maintenance, repair, and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.

### 2.13 Goods Eligibility and Conformity to Tender Documents

2.13.1 The tenderer shall furnish as part of its tender documents establishing the eligibility and conformity to the tender documents of all goods which the tenderer proposes to supply under the contract.

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

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

i) A detailed description of the essential technical and performance characteristic of the goods;

ii) A list giving full particulars, including available source and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the goods for a period of two (2) years, following commencement of the use of the goods by The National AIDS Control Council; and

iii) A clause-by-clause commentary on The National AIDS Control Council Technical Specifications demonstrating substantial responsiveness of the goods and service to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.

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

### 2.14 Tender Security

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

2.14.2 The tender security shall be as specified in the Appendix.

2.14.3 The tender security is required to protect The National AIDS Control Council against the risk of Tenderer's conduct which would warrant the security's forfeiture.

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

2.14.5 Any tender not secured accordingly and shall be rejected by The National AIDS Control Council as non-responsive.

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

2.14.7 The successful Tenderer's tender security will be discharged upon the tenderer signing the contract and furnishing the performance security.

2.14.8 The tender security may be forfeited: -

- i. if a tenderer withdraws its tender during the period of tender validity specified by The National AIDS Control Council on the Tender Form; or
- ii. in the case of a successful tenderer, if the tenderer fails:
- iii. to sign the contract in accordingly or
- iv. to furnish performance security as required.

## 2.15 Validity of Tenders

2.15.1 Tenders shall remain valid for 120 days or as specified in the Invitation to Tender after the date of tender opening prescribed by The National AIDS Control Council. A tender valid for a shorter period shall be rejected by The National AIDS Control Council as non-responsive.

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

## 2.16 Format and Signing of Tender

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

2.16.2 For each bid, the tenderer shall prepare the original and copy of the document as specified. Each bid shall be marked "ORIGINAL BID or COPY BID" and bear the Tender Number and description as appropriate.

2.16.3 Both Bids shall be enclosed in an outer sealed envelope marked "SUPPLY OF DRINKING WATER."

This outer envelope shall bear the submission address and other information indicated in the Appendix “A” and be clearly marked, “DO NOT OPEN EXCEPT IN PRESENCE OF THE OPENING COMMITTEE.”

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

2.16.5 The tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

### 2.17 Sealing and Marking of Tenders

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

2.17.2 The inner and outer envelopes shall:

(a) be addressed to The National AIDS Control Council at the address given in the Invitation to Tender:

(b) bear, tender number and name in the Invitation for Tenders and the words, “DO NOT OPEN BEFORE,” **January 15, 2021 at 1200PM.**

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

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

### 2.18 Deadline for Submission of Tenders

2.18.1 Tenders must be received by The National AIDS Control Council at the address specified no later than **January 15, 2021 at 1200PM.**

2.18. The National AIDS Control Council may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents, in which case all rights and obligations of The National AIDS Control Council and candidates previously subject to the deadline will therefore be subject to the deadline as extended

### 2.19 Modification and Withdrawal of Tenders

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

2.19.2 The Tenderer’s modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 2.17. A withdrawal notice may

also be sent by cable, telex but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.

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

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

2.19.5 The National AIDS Control Council may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

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

## 2.20 Opening of Tenders

2.20.1 The National AIDS Control Council will open all tenders in the presence of tenderers' representatives who choose to attend, at **January 15, 2021 at 12:00pm.** and in the location specified in the Invitation to Tender.

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

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

2.20.4 The National AIDS Control Council will prepare minutes of the tender opening.

## 2.21 Clarification of Tenders

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

2.21.2 Any effort by the tenderer to influence The National AIDS Control Council in The National AIDS Control Council tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderers' tender.

## 2.22 Preliminary Examination

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

2.22.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and

quantify, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security forfeited. If there is a discrepancy between words and figures the amount in words will prevail.

2.22.3 The National AIDS Control Council may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or effect the relative ranking of any tenderer.

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

2.22.5 If a tender is not substantially responsive, it will be rejected by The National AIDS Control Council and may not subsequently be made responsive by the tenderer by correction of the non-conformity.

### 2.23 Conversion to Single Currency

2.23.1 Where other currencies are used, The National AIDS Control Council will convert these currencies to Kenya Shillings using the selling exchange rate on the date of tender closing provided by the Central Bank of Kenya.

### 2.24 Evaluation and Comparison of Tenders

2.24.1 The National AIDS Control Council will evaluate and compare the tenders which have been determined to be substantially responsive.

2.24.2 The Tender Evaluation Committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender as per the qualification requirements set out in technical specifications.

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

### 2.25 Preference

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

### 2.26 Contacting The National AIDS Control Council

2.26.1 No tenderer shall contact The National AIDS Control Council on any matter related to its tender, from the time of the tender opening to the time the contract is awarded.

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

## 2.27 Award of Contract

### a) Post-qualification

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

2.27.2 The determination will take into account the tenderer financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer as well as such other information as The National AIDS Control Council deems necessary and appropriate.

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

### (b) Award Criteria

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

### (c) Right to Vary quantities

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

### (d) Right to Accept or Reject Any or All Tenders

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

## 2.28 Notification of Award

2.28.1 Prior to the expiration of the period of tender validity, The National AIDS Control Council will notify the successful tenderer in writing that its tender has been accepted.

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

2.28.3 Upon the successful Tenderer's furnishing of the performance security, The National AIDS Control Council will promptly notify each unsuccessful Tenderer and will discharge its tender security.



### 2.29 Signing of Contract

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

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

2.29.3 Within thirty (30) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to The National AIDS Control Council.

### 2.30 Performance Security

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

2.30.2 Failure of the successful tenderer to comply with the requirements

of paragraph 2.27 or paragraph 2.28 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event The National AIDS Control Council may make the award to the next lowest evaluated Candidate or call for new tenders.

### 2.30 Corrupt or Fraudulent Practices

2.30.1 The National AIDS Control Council requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts when used in the present regulations, the following terms are defined as follows;

“corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of The National AIDS Control Council, and includes collusive practice among tenderer (prior to or after tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive The National AIDS Control Council of the benefits of free and open competition;

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

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



## APPENDIX TO INSTRUCTIONS TO TENDERERS

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

INSTRUCTIONS TOTENDERERS REFERENCE	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
2.1.1	<i>Open to all eligible bidders</i>
2.5.1	<i>Any clarification with regard to this tender should be addressed to:</i> The CEO National AIDS Control Council P. O. Box 61307 – 00200 NAIROBI (KENYA)
2.14.1	<i>No Bid Security required</i>
2.17.2	Tenders must be addressed and delivered to: The CEO National AIDS Control Council P. O. Box 61307 – 00200 NAIROBI (KENYA)
2.18.1	<i>The tender submission deadline is on <b>January 15, 2021 at 1200PM.</b></i>
2.22.4	EVALUATION CRITERIA (please refer to the technical specifications and qualification requirements under Section V of this Tender document)

SECTION III: GENERAL CONDITIONS OF CONTRACT

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## SECTION III - GENERAL CONDITIONS OF CONTRACT 3.1

### Definitions

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

“The Contract” means the agreement entered into between The National AIDS Control Council and the tenderer, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

“The Contract Price” means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations

“The Goods” means all of the equipment, machinery, and/or other materials, which the tenderer is required to supply to The National AIDS Control Council under the Contract.

“The Procuring Entity” means the organization purchasing the Goods under this Contract and in this case it is the Parliamentary Service Commission.

“The Tenderer” means the individual or firm supplying the Goods under this Contract.

### 3.2 Application

3.2.1 These General Conditions shall apply in all Contracts made by The National AIDS Control Council for the procurement installation and commissioning of equipment.

### 3.3 Country of Origin

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

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

### 3.4 Standards

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

### 3.5 Use of Contract Documents and Information

3.5.1 The tenderer shall not, without The National AIDS Control Council prior written consent, disclose the Contract, or any provision therefore, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of The National AIDS Control Council in connection therewith, to any person other than a person employed by the tenderer in the performance of the Contract.

3.5.2 The tenderer shall not, without The National AIDS Control Council prior written consent, make use of any document or information enumerated in paragraph 3.5.1 above.

3.5.3 Any document, other than the Contract itself, enumerated in paragraph 3.5.1 shall remain the property of The National AIDS Control Council and shall be returned (all copies) to The National AIDS Control Council on completion of the Tenderer's

performance under the Contract if so required by The National AIDS Control Council.

### 3.6 Patent Rights

- 3.6.1 The tenderer shall indemnify The National AIDS Control Council against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof in The National AIDS Control Council country.

### 3.7 Performance Security

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

### 3.8 Inspection and Tests

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

the equipment having previously been inspected, tested and passed by The National AIDS Control Council or its representative prior to the equipment delivery.

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

### 3.9 Packing

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

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

### 3.10 Delivery and Documents

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

### 3.11 Insurance

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

### 3.12 Payment

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

- 3.12.2 Payments shall be made promptly by The National AIDS Control Council as specified in the contract.

### 3.13 Prices

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

- 3.13.2 Contract price variations shall not be allowed for contracts not exceeding one year (12 months).

- 3.13.3 Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price.

- 3.13.4 Price variation request shall be processed by The National AIDS Control Council within 30 days of receiving the request.

### 3.14 Assignment

- 3.14.1 The tenderer shall not assign, in whole or in part, its obligations to perform under this Contract, except with The National AIDS Control Council prior written consent

### 3.15 Subcontracts

3.15.1 The tenderer shall notify The National AIDS Control Council in writing of all Subcontracts awarded under this Contract if not already specified in the tender. Such notification, in the original tender or later, shall not relieve the tenderer from any liability or obligation under the Contract.

### 3.16 Termination for default

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

- i. if the tenderer fails to deliver any or all of the goods within the period(s) specified in the Contract, or within any extension thereof granted by The National AIDS Control Council
- ii. if the tenderer fails to perform any other obligation(s) under the Contract
- iii. if the tenderer, in the judgment of The National AIDS Control Council has engaged in corrupt or fraudulent practices in competing for or in executing the Contract

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

### 3.17 Liquidated Damages

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

### 3.18 Resolution of Disputes

3.18.1 The National AIDS Control Council and the tenderer shall make every effort to resolve amicably by direct informal negotiation and disagreement or dispute arising between them under or in connection with the contract.

3.18.2 If, after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute, either party may require adjudication in an agreed national or international forum, and/or international arbitration.

### 3.9 Language and Law

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

3.20 Force Majeure

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

**SECTION IV - SPECIAL CONDITIONS OF CONTRACT**

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

REFERENCE OF GCC	SPECIAL CONDITIONS OF CONTRACT
3.12.1	<i>Payment terms will be as per the contract to be signed by both parties.</i>
3.18.1	<i>Dispute will be settled as per the laws of Kenya</i>



## SECTION V: TECHNICAL SPECIFICATIONS AND QUALIFICATION REQUIREMENTS

The following are the minimum qualification requirements and technical specifications:

- QUALIFICATION REQUIREMENTS TO SUPPORT THE FIRM'S BID The tenderers must submit the following: -

### PRELIMINARY/MANDATORY QUALIFICATION REQUIREMENTS

- i) Attach Certificate of Incorporation/Registration, VAT and PIN Certificate.
- ii) Attach a valid Tax Compliance Certificate.
- iii) Fully fill the attached mandatory Confidential Business Questionnaire.
- iv) Self-Declaration Forms (R 62): Self-Declaration
- v) Form SD1: Self-Declaration That the Person/Tenderer Is Not Debarred (R 62
- vi) Bank Details

### EVALUATION CRITERIA AND AWARD

The evaluation will be on the preliminary/ mandatory qualification requirements to be evaluated on 'Yes or No' Basis.

The bidder is required to fulfill all the preliminary requirements.

The final contract amount shall be as agreed by both parties in writing.

SECTION VI - SCHEDULE OF REQUIREMENTS

The National AIDS Control Council will require water as follows;

Item no	Description	QTY	Unit Price	Total Price
1	Water Dispenser (Refundable Deposit)	8		
2	Empty bottle refundable deposit	25		
3	Weekly supply of 18 bottles of water @ 18.9litre	18		
4	Servicing and Maintenance of dispensers			
5	Disposable cups	2000 pcs		
6	VAT and tax compliance certificate	Mandatory		
7	Certificate of incorporation and pin certificate	Mandatory		
8	Provide a list of 5 current clients (reputable Organization) with recommendation letters issued within 6 months	Mandatory		
9	Provide physical address of premises	Mandatory		
10	Recent test reports issued by KEBS	Mandatory		

## SECTION VIII: STANDARD FORMS

### Notes on the sample Forms

- a) Form of Tender: The form of tender must be completed by the tenderer and submitted with the tender documents. It must also be duly signed by duly authorized representatives of the tenderer. Must be submitted together with the Price Schedule.
- b) Price Schedule: The form of tender must be completed by the tenderer and submitted with the tender documents. It must also be duly signed by duly authorized representatives of the tenderer. Must be submitted together with the Price Schedule.
- c) Confidential Business Questionnaire Form: This form must be completed by the tenderer and submitted with the tender documents. To be provided in the technical bid.
- d) Tender Security Form: The tenderer is not required to fill and sign this form.
- e) Performance Security Form: The performance security form should not be completed by the tenderers at the time of tender preparation.
- f) Contract Form: The Contract Form shall not be completed by the tenderer at the time of submitting the tender. The Contract Form shall be completed after contract award and should incorporate the accepted contract price.

8.1 FORM OF TENDER

Date \_\_\_\_\_

Tender No. \_\_\_\_\_

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

\_\_\_\_\_  
[name and address of Commission]

Gentlemen and/or Ladies:

Having examined the tender documents including Addenda

Nos. .... [insert numbers].the receipt of which is hereby duly acknowledged, we, the undersigned, offer to maintain photocopying machines in conformity with the said tender documents for the sum of Kenya shillings

.....

(Total tender amount in words and figures)

or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

We undertake, if our Tender is accepted, to deliver the vehicles in accordance with the delivery schedule specified in the Schedule of Requirements.

If our Tender is accepted, we will obtain the guarantee of a bank in a sum of equivalent to \_\_\_\_\_NA percent of the Contract Price for the due performance of the Contract , in the form prescribed by Commission.

We agree to abide by this Tender for a period of ..... [number] days from the date fixed for tender opening of the Instructions to tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

This Tender, together with your written acceptance thereof and your notification of award, shall constitute a Contract, between us subject to signing of the Contract by the parties.

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 tender for an on behalf of \_\_\_\_\_

8.2 - PRICE SCHEDULE FOR GOODS

Name of tenderer \_\_\_\_\_ Tender Number \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_

Item no	Description	QTY	Unit Price	Total Price
1	Water Dispenser (Refundable Deposit)	8		
2	Empty bottle refundable deposit	25		
3	Weekly supply of 18 bottles of water @ 18.9litre	18		
4	Servicing and Maintenance of dispensers			
5	Disposable cups	2000 pcs		
6	VAT and tax compliance certificate	Mandatory		
7	Certificate of incorporation and pin certificate	Mandatory		
8	Provide a list of 5 current clients (reputable Organization) with recommendation letters issued within 6 months	Mandatory		
9	Provide physical address of premises	Mandatory		
10	Test reports issued by KEBS	Mandatory		

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

Note:

In case of discrepancy between unit price and total, the unit price shall prevail.

The total cost should be inclusive of all applicable taxes and duties.

Should attach a price catalogue for the commonly used parts and consumables.

### 8.3 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 Email

Nature of Business

Registration Certificate No.

Maximum value of business which you can handle at any one time – Kshs.

Name of your bankers

Branch

#### Part 2 (a) – Sole Proprietor

Your name in full.....Age.....

Nationality.....Country of Origin.....

Citizenship details

.....

#### Part 2 (b) – Partnership

Given details of partners as follows

Name	Nationality	Citizenship details	Shares
------	-------------	---------------------	--------

.....

.....

.....

.....

#### 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

Name	Nationality	Citizenship details	Shares
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

Date.....Signature of Candidate.....

*Part 2 (d) – Conflict of Interest*

I/We, the undersigned state that I / We have no conflict of interest in relation to this assignment: -

.....

.....

.....

.....

For and on behalf of M/s .....

In the capacity of .....

Dated this .....day of .....2019

Suppliers' / Company's Official Rubber Stamp.....

*Part 2 (e) – Interest in the Firm:*

Is there any person/persons in the NACC or any other public institution who has interest in the Firm? Yes/No ..... (Delete as necessary) Institution .....

.....  
(Title) (Signature) (Date)

Part 2(f) - Experience

Please list here below similar projects accomplished or companies / clients you have provided with similar services in the last two (2) years.

<u>Company Name</u>	<u>Country</u>	<u>Contract/ Order No.</u>	<u>Value</u>
---------------------	----------------	----------------------------	--------------

1.....

2.....

3.....

Contact person (Full Names) .....

E-mail address.....

Cell phone no .....



8.4 TENDER SECURITY FORM

Whereas ..... [name of the tenderer]

(hereinafter called “the tenderer”) has submitted its tender dated ..... [date of submission of tender] for the supply, installation and commissioning of .....[name and/or description of the equipment]

(hereinafter called “the Tender”) ..... KNOW ALL PEOPLE by these presents that WE .....

... of ..... having our registered office at ..... (hereinafter called “the Bank”), are bound unto ..... [name of Commission} (hereinafter called “The National AIDS Control Council ”) in the sum of ..... for which payment well and truly to be made to the said Commission, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

THE CONDITIONS of this obligation are:

- 1. If the tenderer withdraws its Tender during the period of tender validity specified by the tenderer on the Tender Form; or
2. If the tenderer, having been notified of the acceptance of its Tender by The National AIDS Control Council during the period of tender validity: fails or refuses to execute the Contract Form, if required; or fails or refuses to furnish the performance security in accordance with the Instructions to tenderers;

We undertake to pay to The National AIDS Control Council up to the above amount upon receipt of its first written demand, without The National AIDS Control Council having to substantiate its demand, provided that in its demand The National AIDS Control Council will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

This tender 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 above date.

\_\_\_\_\_  
[Signature of the bank]

(Amend accordingly if provided by Insurance Company)

8.5 CONTRACT FORM

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_ between ..... [name of Procurement entity] of ..... [country of Procurement entity] (hereinafter called “The National AIDS Control Council ) of the one part and ..... [name of tenderer] of ..... [city and country of tenderer] (hereinafter called “the tenderer”) of the other part;

WHEREAS The National AIDS Control Council invited tenders for certain goods ] and has accepted a tender by the tenderer for the supply of those goods in the sum of ..... [contract price in words and figures] (hereinafter called “the Contract Price).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to:
2. The following documents shall be deemed to form and be read and construed as part of this Agreement viz:
  - i) The bid document by the successful tenderer
  - ii) The Tender Form and the Price Schedule submitted by the tenderer
  - iii) The Schedule of Requirements
  - iv) The Technical Specifications
  - v) The General Conditions of Contract
  - vi) The Special Conditions of contract; and
  - vii) The National AIDS Control Council Notification of Award
  - viii) The Bidder’s letter of acceptance
  - ix) Acceptable Performance Security
3. In consideration of the payments to be made by The National AIDS Control Council to the tenderer as hereinafter mentioned, the tender hereby covenants with The National AIDS Control Council to provide the goods and to remedy defects therein in conformity in all respects with the provisions of the Contract
4. The National AIDS Control Council hereby covenants to pay the tenderer in consideration of the provisions of the goods and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with their respective laws the day and year first above written.

Signed, sealed, delivered by \_\_\_\_\_ the \_\_\_\_\_ (for The National AIDS Control Council

Signed, sealed, delivered by \_\_\_\_\_ the \_\_\_\_\_ (for the tenderer in the presence of

\_\_\_\_\_

8.6 PERFORMANCE SECURITY FORM

To .....

[name of Council]

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

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

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

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

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

Signed and seal of the Guarantors

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

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

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

8.7 FORM SD1: SELF-DECLARATION THAT THE PERSON/TENDERER IS NOT DEBARRED (r 62)

REPUBLIC OF KENYA

PUBLIC PROCUREMENT REGULATORY AUTHORITY (PPRA)

FORM SD1: SELF-DECLARATION THAT THE PERSON/TENDERER IS NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015.

I, .....of P. O. Box ..... being a resident of

..... in the Republic of ----- do hereby make a statement as

follows:

1. THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Director of .....

..... (insert name of the Company) who is a Bidder in respect of Tender No. .... for .....(insert tender title/description) for .....(insert name of the Procuring entity) and duly authorized and competent to make this statement.

2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.

3. THAT what is deponed to hereinabove is true to the best of my knowledge, information and belief.

.....  
(Title) (Signature) (Date)

Bidder Official Stamp

8.8 SELF DECLARATION FORMS (r 62): SELF-DECLARATION  
REPUBLIC OF KENYA

PUBLIC PROCUREMENT REGULATORY AUTHORITY (PPRA)

FORM SD<sub>2</sub>: SELF DECLARATION FORMS (r 62): SELF-DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE.

I, .....of P. O. Box ..... being a resident of  
..... in the Republic of ----- do hereby make a statement as follows:-

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of  
.....

..... (insert name of the Company) who is a Bidder in respect of Tender  
No. .... for .....(insert tender title/description) for .....(insert name of the Procuring entity) and duly authorized and competent to make this statement.

2. THAT the aforesaid Bidder, its servants and/or agents /subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/or agents of  
.....( insert name of the Procuring entity) which is the procuring entity

3. THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of .....(name of the procuring entity)

4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject tender

5. THAT what is deponed to hereinabove is true to the best of my knowledge information and belief.

.....  
(Title) (Signature) (Date)

Bidder's Official Stamp

## 8.9 BANK DETAILS FORM- MANDATORY

Provide the following bank details for electronic transfer purposes

Name of the Bidder:.....

Bank Name :.....

Bank branch name ;.....

Bank code :.....

Bank account :.....

PIN Number :.....

VAT Number :.....

Bank signatory(s) :.....

.....

Signed/ date.....