**REPUBLIC OF KENYA**

**COUNTY GOVERNMENT OF MOMBASA**

****

**REQUEST FOR PROPOSAL (RFP)**

**FOR**

**APPOINTMENT OF AN**

**INDEPENDENT TECHNICAL EXPERT FOR THE URBAN RENEWAL AND REDEVELOPMENT OF OLD HOUSING ESTATES**

**WITHIN**

**MOMBASA COUNTY**

**UNDER**

**JOINT VENTURE PARTNERSHIP.**

**AUGUST 2018**

**CONTENTS**

[DISCLAIMER 4](#_Toc523308557)

[GLOSSARY 7](#_Toc523308558)

[1. INVITATION FOR PROPOSAL 10](#_Toc523308559)

[1.2 Request for Proposal 11](#_Toc523308560)

[1.3 Due diligence by Bidders 11](#_Toc523308561)

[1.4 RFP document 12](#_Toc523308562)

[1.5 Validity of the Proposal 12](#_Toc523308563)

[1.6 Brief description of the Selection Process 12](#_Toc523308564)

[1.7 Currency conversion rate and payment 13](#_Toc523308565)

[1.8 Schedule of Selection Process 13](#_Toc523308566)

[1.9 Pre‐Proposal visit to the Site and inspection of data 13](#_Toc523308567)

[1.10 Last date of receiving queries 14](#_Toc523308568)

[1.11 Communications 14](#_Toc523308569)

[2. INSTRUCTIONS TO BIDDERS 15](#_Toc523308570)

[2.1 Scope of Proposal 15](#_Toc523308571)

[2.2 Conditions of Eligibility of Bidders 20](#_Toc523308572)

[2.3 Conflict of Interest 22](#_Toc523308573)

[2.4 Number of Proposals 27](#_Toc523308574)

[2.5 Cost of Proposal 27](#_Toc523308575)

[2.6 Site Visit and Verification of Information 27](#_Toc523308576)

[2.7 Acknowledgement by Bidder 28](#_Toc523308577)

[2.8 Right to reject any or all Proposals 29](#_Toc523308578)

[B. DOCUMENTS 30](#_Toc523308579)

[2.9 Contents of the RFP 30](#_Toc523308580)

[2.10 Clarifications 32](#_Toc523308581)

[2.11. Amendment of RFP 32](#_Toc523308582)

[C. PREPARATION AND SUBMISSION OF PROPOSAL 33](#_Toc523308583)

[2.12 Language 33](#_Toc523308584)

[2.13 Format and Signing of Proposal 34](#_Toc523308585)

[2.14 Qualification 35](#_Toc523308586)

[2.15 Technical Proposal 37](#_Toc523308587)

[2.16 Financial Proposal 43](#_Toc523308588)

[2.17 Submission of Proposal 44](#_Toc523308589)

[2.18 Proposal Due Date 47](#_Toc523308590)

[2.19 Late Proposals 47](#_Toc523308591)

[2.20 Modification/ substitution/ withdrawal of Proposals 47](#_Toc523308592)

[2.21 Bid Security: 48](#_Toc523308593)

[2.22 Performance Security 49](#_Toc523308594)

[D. EVALUATION PROCESS 49](#_Toc523308595)

[2.23 Evaluation of Proposals 49](#_Toc523308596)

[2.24 Confidentiality 52](#_Toc523308597)

[2.25 Clarifications 52](#_Toc523308598)

[E. APPOINTMENT OF CONSULTANT 53](#_Toc523308599)

[2.26 Negotiations 53](#_Toc523308600)

[2.27 Substitution of Key Personnel 54](#_Toc523308601)

[2.28 Indemnity 55](#_Toc523308602)

[2.29 Award of Consultancy 55](#_Toc523308603)

[2.30 Execution of Agreement 55](#_Toc523308604)

[2.31 Commencement of assignment 56](#_Toc523308605)

[2.32 Proprietary data 56](#_Toc523308606)

[3. CRITERIA FOR EVALUATION 57](#_Toc523308607)

[3.1 Evaluation of Qualification Document 57](#_Toc523308608)

[3.2 Qualification of Bidders 57](#_Toc523308609)

[3.3 Evaluation of Technical Proposals 57](#_Toc523308610)

[3.4 Eligible Assignments 62](#_Toc523308611)

[3.5 Short‐listing of Bidders 63](#_Toc523308612)

[3.6 Evaluation of Financial Proposal 63](#_Toc523308613)

[3.7 Combined and final evaluation 64](#_Toc523308614)

[4. FRAUD AND CORRUPT PRACTICES 65](#_Toc523308615)

[5 PRE - PROPOSAL CONFERENCE 66](#_Toc523308616)

[6. MISCELLANEOUS 67](#_Toc523308617)

[SCHEDULE 1: TERMS OF REFERENCE 68](#_Toc523308618)

[SCHEDULE 2: DRAFT AGREEMENT 80](#_Toc523308619)

[SCHEDULE 3: GUIDANCE NOTE ON CONFLICT OF INTEREST 80](#_Toc523308620)

[APPENDICES 84](#_Toc523308621)

[APPENDIX I - TECHNICAL PROPOSAL 84](#_Toc523308622)

[Form 1 - Letter of Proposal 84](#_Toc523308623)

[Form 2 - Particulars of the Bidder 89](#_Toc523308624)

[Form 3 - Statement of Legal Capacity 92](#_Toc523308625)

[Form 4 - Power of Attorney 94](#_Toc523308626)

[Form 5 - Financial Capacity of the Bidder 95](#_Toc523308627)

[Form 6 - Particulars of Key Personnel 97](#_Toc523308628)

[Form 7 - Proposed Methodology and Work Plan 99](#_Toc523308629)

[Form 8 - Abstract of Eligible Assignments of the Bidder 100](#_Toc523308630)

[Form 9 - Certificate from the Statutory Auditor 101](#_Toc523308631)

[Form 10 - Eligible Assignments of Bidder 102](#_Toc523308632)

[Form 11 - Eligible Assignments of Key Personnel 103](#_Toc523308633)

[Form 12 - Curriculum Vitae (CV) of Key Personnel 104](#_Toc523308634)

[Form 13 - Proposal for Sub‐Consultant(s) 105](#_Toc523308635)

[APPENDIX II - FINANCIAL PROPOSAL 106](#_Toc523308636)

[Form 1 - Covering Letter 106](#_Toc523308637)

[Form 2 - Financial Proposal 107](#_Toc523308638)

# DISCLAIMER

The information contained in this Request for Proposal ("RFP") Document or subsequently provided to Bidders, whether verbally or in documentary or any other form by or on behalf of the County or any of its employees or advisers, is provided to Bidders on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by the County to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in the formulation of their Proposals pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the County in relation to the Consultancy. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require.

This RFP may not be appropriate for all persons, and it is not possible for the County, its employees or advisers to consider the objectives, technical expertise and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP, may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidders is on a wide range of matters, some of which depends upon interpretation of law. The information given is not an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The County accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on the law expressed herein.

The County, its employees and advisers make no representation or warranty and shall have no liability to any person including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, reliability or completeness of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way in this Selection Process.

The County also accepts no liability of any nature whether resulting from negligence or otherwise however caused arising from reliance of any Bidder upon the statements contained in this RFP.

The County may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumption contained in this RFP.

The issue of this RFP does not imply that the County is bound to select a Bidder or to appoint the Selected Bidder, as the case may be, for the Consultancy and the County reserves the right to reject all or any of the Proposals without assigning any reasons whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Proposal including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the County or any other costs incurred in connection with or relating to its Proposal. All such costs and expenses will remain with the Bidder and the County shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Proposal, regardless of the conduct or outcome of the Selection Process.

# GLOSSARY

**Agreement** As defined in Schedule ‐ 2

**Agreement Value** As defined in Clause 6.1.2 of

Schedule‐2

**Applicable Laws** As defined in Schedule‐2

**Associate** As defined in Clause 2.3.3

**Authorised Representative** As defined in Appendix 1

**County** As defined in Clause 1.1.1

**Bidder** As defined in Clause 2.1.1

**Bid Security** As defined in Clause 2.21.1

**Joint Venture Agreement** As defined in Clause 1.1.2

**Development Partner** As defined in Clause 1.1.2

**Conditions of Eligibility** As defined in Clause 2.2.1

**Conflict of Interest** As defined in Clause 2.3.1

**Consultancy** As defined in Clause 1.2

**Consultancy Team** As defined in 2.1.4

**Consultant** As defined in Clause 1.2

**CV** Curriculum Vitae

**Documents** As defined in Clause 2.12

**Effective Date** As defined in Clause 2.1 of Schedule‐2

**Eligible Assignments** As defined in Clause 3.3.4

**Expatriate Personnel** As defined in Financial Proposal

**Financial Proposal** As defined in Clause 2.16.1

**Form of Agreement** Form of Agreement as in Schedule‐2

**Key Personnel** As defined in Clause 2.1.3

**Ksh.** Kenya Shilling(s)

**Lead Member** As defined in Clause 2.1.1

**LOA** Letter of Award

**Member** As defined in Clause 2.3.3(a)

**Personnel** As defined in Clause 1.1.1(n) of Schedule‐2

**Professional Personnel** As defined in Clause 2.15.7

**Prohibited Practices** As defined in Clause 4.1

**Project** As defined in Clause 1.1.1

**Project Manager** As defined in Clause 4.6 of Schedule‐2

**Proposal** As defined in Clause 1.2

**Proposal Due Date or PDD** As defined in Clauses 1.5 and 1.8 **Qualification Document** As defined in Clause 2.14.1

**Resident Personnel** As defined in Clause 1.1.1(o) of Schedule‐2

**RFP** As defined in Disclaimer

**Selected Bidder** As defined in Clause 1.6

**Selection Process** As defined in Clause 1.6

**Services** As defined in Clause 1.1.1(q)of Schedule‐2

**Sole Firm** As defined in Clause 2.1.1

**Statement of Expenses** As defined in Note 13,Form‐2 of Appendix II

**Statutory Auditor** An Auditor appointed under Applicable Laws

**Sub‐Consultant** As defined in Clause 1.1.1(r) of Schedule‐2

**Support Personnel** As defined in Clause 2.15.7

**Team Leader** As defined in Clause 2.1.4

**Technical Proposal** As defined in Clause 2.15.1

**TOR** As defined in Clause 1.1.3

**US$** United States Dollar

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein.

# INVITATION FOR PROPOSAL

**1.** INTRODUCTION

**1.1 Background**

* + 1. The County Government of Mombasa (the “**County**”) has initiated an Urban Renewal project to develop and redevelop old housing estates within the County (the “**Project**”) through Joint Venture Partnership basis. The Project involves development and redevelopment of approximately 25,000 modern and affordable housing units and is spread across these Sites :-
1. Lot No. 1 – Khadija Estate ;
2. Lot No. 2 – Miritini Estate ;
3. Lot No. 4 – Changamwe Estate;
4. Lot No. 5 - Tudor Estate;
5. Lot No. 6 – Mzizima Estate;
6. Lot No. 7 – Buxton Estate;
7. Lot No. 8 – Likoni Estate;
8. Lot No. 9 – Nyerere Estate;
9. Lot No. 10 - Tom Mboya Estate;
10. Lot No. 11 – Kaa Chonjo Estate

1.1.2 In this regard the County has executed a Joint Venture Agreement (the “**Joint Venture Agreement**”) with Development Partners to undertake the development of the Project on each of the aforementioned Sites on Joint Venture Partnership basis.

1.1.3 An Independent Technical Expert is to be appointed as per the provisions of the Joint Venture Agreement to provide an independent oversight of the parties’ obligations under the Agreement. In pursuance of the above, the County now wishes to competitively start the process of selection of an Independent Technical Expert who shall work in accordance with the Terms of Reference specified at Schedule‐1 (the **"TOR") of the RFP document.**

## 1.2 Request for Proposal

The County invites Proposals (the **"Proposals")** for selection of an Independent Technical Expert (the **"Consultant")** who shall be responsible for monitoring and auditing the performance of both parties under the Joint Venture Agreement in conformity with the TOR in the Consultancy Agreement to be jointly signed by the County, Joint Venture partners and the Consultant (the **"Consultancy Agreement").** Both the County and representatives of the Development partners shall be responsible for the evaluation of the bids received from the consultants and in the selection of the most suitable Consultant to undertake the Project.

## 1.3 Due diligence by Bidders

Bidders are encouraged to inform themselves fully about the assignment and the local conditions before submitting the Proposal by enquiring from the County Department of Urban Renewal and Building Services about the Project by sending written queries to the County Executive Committee (CEC) member in charge of the Department. The Bidders are also encouraged to familiarize themselves with the feasibility study of the project.

## 1.4 RFP document

RFP document can be obtained free of charge between 0800 hours and 1600 hours on all working days from the County Procurement department. The RFP document can also be downloaded from the Official Website of the County Government of Mombasa <http://www.mombasa.go.ke>

## 1.5 Validity of the Proposal

The Proposal shall be valid for a period of ninety (90) days from the Proposal Due Date (the **"PDD").**

## 1.6 Brief description of the Selection Process

The County has adopted a single stage selection process (collectively the **"Selection Process")** in evaluating the Proposals comprising qualification of the bidder, technical and financial bids to be submitted in three separate sealed envelopes. In the first stage, the Bidders shall be evaluated for their compliance with the qualification requirements as specified in Clause 3.1. Based on the evaluation of qualification and a list of qualified Bidders shall be prepared as specified in Clause 3.2. Those who will have complied with the qualification criteria will proceed to the next stage of technical evaluation.

In the second stage, a technical evaluation will be carried out as specified in Clause 3.3. Based on this technical evaluation, a list of short‐listed Bidders shall be prepared as specified in Clause 3.4.

In the third stage, a financial evaluation will be carried out as specified in Clause 3.5. Proposals will finally be ranked according to their combined technical and financial scores as specified in Clause 3.6. The first ranked Bidder (the **"Selected Bidder")** shall be selected for negotiationwhile the second ranked Bidder will be kept in reserve till a contract is signed with the first ranked bidder.

## 1.7 Currency conversion rate and payment

1.7.1 For the purposes of technical and financial evaluation of Bids, the conversion rate of exchange shall be as published by Central Bank of Kenya at the time of evaluation.

1.7.2 All payments to the Consultant shall be made in KSH in accordance with the provisions of this RFP.

## 1.8 Schedule of Selection Process

The County will endeavor to adhere to the following schedule:

**Event Description Date**

1. Last date for receiving queries/clarifications by 4th 2018.

2. Proposal Due Date or PDD 11th September2018

3. Opening of Proposals On Proposal Due Date

4. Letter of Award (LOA) Within 15 days of PDD

5. Signing of Agreement Within 10 days of LOA

6. Validity of Proposals 90 days of PDD

## 1.9 Pre‐Proposal visit to the Site and inspection of data

Prospective Bidders may visit the County offices and review any information regarding the project at any time prior to PDD. For this purpose, they will provide at least two days' notice to the County officer specified below:

Chief Officer

 Department of Land, Planning and Housing,

 4th Floor, BIMA Tower (Annex),

 Meru Road

 P.O. Box 80133 - 80100

 Phone: ………………………………………..

 Email: ……………………………………

Proposals must be submitted no later than the following date and time: **11th September, 2018 at 10.00 am.**

## 1.10 Last date of receiving queries

The Bidders may address their queries to the County officer specified below on or before 4th September, 2018.

Chief Officer

 Department of Land, Planning and Housing,

 4th Floor, BIMA Tower (Annex),

 Meru Road

 P.O. Box 80133 - 80100

 Phone: ………………………………………..

 Email: ……………………………………

## 1.11 Communications

All communications including the submission of Proposal should be addressed to:

Chief Officer

 Department of Land, Planning and Housing,

 4th Floor, BIMA Tower (Annex),

 Meru Road

 P.O. Box 80133 - 80100

 Phone: ………………………………………..

 Email: ……………………………………

1.11.1 The Official Website of the County is: [http://www.Mombasa.go.ke](http://www.mombasa.go.ke)

1.11.2 All communications, including the envelopes, should contain the following information, to be marked at the top in bold letters:

**“RFP for Selection of Independent Technical Expert for the Urban Renewal and Redevelopment of Old Estates Project through joint Venture Partnership”**

# 2. INSTRUCTIONS TO BIDDERS

**A. GENERAL**

## 2.1 Scope of Proposal

Detailed description of the objectives, scope of services, Deliverables and other requirements relating to this Consultancy are specified in this RFP. In case a firm possesses the requisite experience and capabilities required for undertaking the Consultancy, it may participate in the Selection Process either individually (the **"Sole Firm"), (Bidding Entity)** or as a Consortium with a lead member of a consortium of firms (the **"Lead Member")** in response to this invitation. The term bidder (the **"Bidder")** means the Sole Firm, Bidding Entity whether a single entity (Sole proprietorship / Private limited Company or a partnership firm or the Lead Member, as the case may be. The manner in which the Proposal is required to be submitted, evaluated and accepted is explained in this RFP.

2.1.1 Bidders are advised that the selection of Consultant shall be on the basis of an evaluation by both the County and the development partners through the Selection Process specified in this RFP. Bidders shall be deemed to have understood and agreed that no explanation or justification for any aspect of the Selection Process will be given and that the County's decisions are without any right of appeal whatsoever.

2.1.2 The Bidder shall submit its Proposal in the form and manner specified in this Part‐ 2 of the RFP. The Qualification and Technical Proposal shall be submitted in the form at Appendix‐I and the Financial Proposal shall be submitted in the form at Appendix‐II. Upon selection, the Bidder shall be required to enter into an agreement with the County and the development partners in the form specified at Schedule‐2.

2.1.3  **Key Personnel**

The Consultancy Team (the “**Consultancy Team**”) shall consist of the following key Personnel (the **"Key Personnel")** who shall discharge their respective responsibilities as specified below:

|  |  |
| --- | --- |
| **Key Personal**  | **Responsibilities**  |
|  **Project Manager cum team leader (the “Team Leader”)** | He will lead, co‐ordinate and supervise the multidisciplinary team for undertaking the services as specified in the TOR. He will also review the Project development plan prepared by the Development Partner and check its adherence to the requirements of the Joint Venture Agreement. In addition he will be responsible for periodic review of the construction as per the provisions of the Joint Venture Agreement. He will be assisted by the below mentioned team members as when required. |
| **Architect**  | He will be responsible for reviewing the master plan and architectural drawings and working drawings submitted by the Development Partner and provide comments / suggestions vis‐à‐vis the technical issues and adherence to requirements of the Joint Venture Agreement and Applicable Laws. He will also assist the Team Leader in the period review of the construction as per the provisions of the Joint Venture Agreement as and when required. |
| **Quantity Surveyor**  | He will be responsible for undertaking monthly or periodic valuations for all the offsite infrastructure works and prepare interim payment valuations on the basis of which payments certificates shall be issued by the Team leader for the payment of work done by the development partner from the county mark up in the escrow account. |
| **Structural Engineer**  | He will be responsible for reviewing the design and drawings at the Project development plan stage and as built drawings submitted by the Development Partner and provide comments/suggestions vis‐à‐vis the technical issues and adherence to requirements of the Joint Venture Agreement and Applicable Laws. He will also assist the Team Leader in the period review of the construction as per the provisions of the Joint Venture Agreement as and when required. |
| **Technical Expert - STP** | He will be responsible for checking the design of the sewage treatment plant proposed by the Development Partner. He will provide comments/ suggestions vis‐à‐vis the technical issues and adherence to requirements of the Joint Venture Agreement and Applicable Laws. He will also assist the Team Leader in the period review of the construction as per the provisions of the Joint Venture Agreement as and when required. |
| **Electrical /ICT Engineer** | He will be responsible for checking the design of the all electrical and ICT works proposed by the Development Partner. He will provide comments/ suggestions vis‐à‐vis the technical issues and adherence to requirements of the Joint Venture Agreement and Applicable Laws. He will also assist the Team Leader in the period review of the construction as per the provisions of the Joint Venture Agreement as and when required. |
| **Mechanical Engineer** | He will be responsible for checking the design of the all plumbing, building drainage,mechanical ventilation and related items works proposed by the Development Partner. He will provide comments/ suggestions vis‐à‐vis the technical issues and adherence to requirements of the Joint Venture Agreement and Applicable Laws. He will also assist the Team Leader in the period review of the construction as per the provisions of the Joint Venture Agreement as and when required. |
| **Quality cum Material Expert** | He will be responsible for review of quality assurance and control procedures including the framework for carrying out tests on Project Facilities. He will provide comments/ suggestions vis‐à‐vis the technical issues and adherence to requirements of the Joint Venture Agreement and Applicable Laws. He will also assist the Team Leader in the period review of the construction as per the provisions of the Joint Venture Agreement as and when required. |
| **Environmental Expert**  | He will be responsible for review of the Project works with respect to the Applicable Laws. He shall be called upon by the Team Leader as and when required. |
| **Legal Expert** | He will be responsible for reviewing the various Project Agreements during the course of the term of the Agreement. He will also be required to provide assistance in resolution of disputes as per the provisions of the Joint Venture Agreement. |

## 2.2 Conditions of Eligibility of Bidders

2.2.1 Bidders must read carefully the minimum conditions of eligibility (the **"Conditions of Eligibility")** provided herein. Proposals of only those Bidders who satisfy the Conditions of Eligibility will be considered for evaluation.

2.2.2 To be eligible for evaluation of its Proposal, the Bidder shall fulfill the following:

A. The Bidder shall be either a Private limited company or a Limited Liability Partnership incorporated in Kenya under the Companies Act, 2015 or a company incorporated under equivalent law abroad. For a sole firm, it shall be registered in accordance to the relevant laws of Kenya or the Country (ies) of their origin. The Bidder shall be required to submit a true copy of its Incorporation Certificate or certificate of registration along with its Proposal.

B. **Technical Capacity:** The Bidder shall have, over the past 5 (five) years preceding the PDD, undertaken a minimum of 2 (two) Eligible Assignments as specified in Clause

3.3.4. The Bidder shall ensure that at least one Eligible Assignment is for a housing project of similar nature.

C. **Financial Capacity:** The Bidder shall have received a minimum income of Ksh. 75,000,000 (Seventy Five Million) per annum from professional fees during each of the 3 (three) financial years preceding the Proposal Due Date.

2.2.3 The Bidder shall enclose with its Proposal, certificate(s) from its Statutory Auditors stating its total revenues from professional fees during each of the past three financial years and the fee received in respect of each of the Eligible Assignments specified in the Proposal. In the event that the Bidder does not have a statutory auditor, it shall provide the requisite certificate(s) from the firm of Chartered Accountants that ordinarily audits the annual accounts of the Bidder.

2.2.4 The Bidder should submit a Power of Attorney as per the format at Form‐4 of Appendix‐ I.

2.2.5 Any entity which has been barred by the Central Government, any State Government, a statutory County or a public sector undertaking, as the case may be, from participating in any project, and the bar subsists as on the date of Proposal, would not be eligible to submit a Proposal either by itself or through its Associate.

2.2.6 A Bidder or its Associate should have, during the last three years, neither failed to perform on any agreement, as evidenced by imposition of a penalty by an arbitral or judicial County or a judicial pronouncement or arbitration award against the Bidder or its Associate, nor been expelled from any project or agreement nor have had any agreement terminated for breach by such Bidder or its Associate.

2.2.7 While submitting a Proposal, the Bidder should attach clearly marked and referenced continuation sheets in the event that the space provided in the specified forms in the Appendices is insufficient. Alternatively, Bidders may format the specified forms making due provision for incorporation of the requested information.

## 2.3 Conflict of Interest

2.3.1 A Bidder shall not have a conflict of interest that may affect the Selection Process or the Consultancy (the **"Conflict of Interest").** Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the County shall forfeit and appropriate the Bid Security as mutually agreed which shall be a genuine pre‐estimated compensation and damages payable to the County for, *inter alia,* the time, cost and effort of the County including consideration of such Bidder's Proposal, without prejudice to any other right or remedy that may be available to the County hereunder or otherwise.

2.3.2 The County requires that the Consultant provides professional, objective, and impartial advice and at all times hold the County's interests paramount, avoid conflicts with other assignments or its own interests, and act without any consideration for future work. The Consultant shall not accept or engage in any assignment that would be in conflict with its prior or current obligations to other clients, or that may place it in a position of not being able to carry out the assignment in the best interests of the County.

2.3.3 Some guiding principles for identifying and addressing Conflicts of Interest have been illustrated in the Guidance Note at Schedule‐3. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Selection Process, if:

**a)**the Bidder, its consortium member (the **"Member")** or Associate (or any constituent thereof) and any other Bidder, its consortium member or Associate (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of a Bidder, its Member or Associate (or any shareholder thereof having a shareholding of more than 5 per cent of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its consortium member or Associate is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof. For the purposes of this Clause 2.3.3(a), indirect shareholding held through one or more intermediate persons shall be computed as follows:

**•(aa)** where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the **"Subject Person")** shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and

**•(bb)** subject always to sub‐clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub‐clause (bb) if the shareholding of such person in the intermediary is less than 26% (twenty six per cent) of the subscribed and paid up equity shareholding of such intermediary; or

**b)** a constituent of such Bidder is also a constituent of another Bidder; or

**c)** such Bidder or its Associate receives or has received any direct or indirect subsidy or grant from any other Bidder or its Associate; or

**d)** such Bidder has the same legal representative for purposes of this Proposal as any other Bidder; or

**e)** such Bidder has a relationship with another Bidder, directly or through common third parties, that puts them in a position to have access to each other’s information about, or to influence the Proposal of either or each of the other Bidder; or

**f)** there is a conflict among this and other consulting assignments of the Bidder (including its Personnel and Sub‐consultant) and any subsidiaries or entities controlled by such Bidder or having common controlling shareholders. The duties of the Consultant will depend on the circumstances of each case. While providing consultancy services to the County for this particular assignment, the Consultant shall not take up any assignment that by its nature will result in conflict with the present assignment; or

**g)**a firm which has been engaged by the County to provide goods or works or services for a project, and its Associates, will be disqualified from providing consulting services for the same project save and except as provided in Clause 2.3.4; conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and its Members or Associates, will be disqualified from subsequently providing goods or works or services related to the same project; or

**h)** the Bidder, its Member or Associate (or any constituent thereof), and the bidder or Development Partner, if any, for the Project, its contractor(s) or sub‐contractor(s) (or any constituent thereof) have common controlling shareholding or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of a Bidder, its Member or Associate (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be,) in the bidder or Development Partner, if any, or its contractor(s) or sub‐ contractor(s) is less than 5% (five per cent) of the paid up and subscribed share capital of such Development Partner or its contractor(s) or sub‐contractor(s). For the purposes of this sub‐clause (h), indirect shareholding shall be computed in accordance with the provisions of sub‐clause (a) above.

For purposes of this RFP, Associate means, in relation to the Bidder, a person who controls, is controlled by, or is under the common control with such Bidder (the **"Associate").** As used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law or by contract.

2.3.4 A Bidder eventually appointed to provide Consultancy for this Project, and its Associates, shall be disqualified from subsequently providing goods or works or services related to the construction of the same Project and any breach of this obligation shall be construed as Conflict of Interest; provided that the restriction herein shall not apply after a period of 5 (five) years from the completion of this assignment or to consulting assignments granted by banks/lenders at any time; provided further that this restriction shall not apply to consultancy/advisory services performed for the County in continuation of this Consultancy or to any subsequent consultancy/advisory services performed for the County in accordance with the rules of the County. For the avoidance of doubt, an entity affiliated with the Consultant shall include a partner in the Consultant's firm or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Consultant, as the case may be, and any Associate thereof.

## 2.4 Number of Proposals

No Bidder or its Associate shall submit more than one Proposal for the Consultancy. A Bidder applying individually or as an Associate shall not be entitled to submit another proposal either individually or as a member of any consortium, as the case may be.

## 2.5 Cost of Proposal

The Bidders shall be responsible for all of the costs associated with the preparation of their Proposals and their participation in the Selection Process including subsequent negotiation, visits to the County, Project site etc. The County will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Selection Process.

## 2.6 Site Visit and Verification of Information

Bidders are encouraged to submit their respective Proposals after visiting the Project site and ascertaining for themselves the site conditions, traffic, location, surroundings, climate, access to the site, availability of drawings and other data with the County, Applicable Laws and regulations or any other matter considered relevant by them.

## 2.7 Acknowledgement by Bidder

2.7.1 It shall be deemed that by submitting the Proposal, the Bidder has:

a) made a complete and careful examination of the RFP;

b) received all relevant information requested from the County;

c) acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of the County or relating to any of the matters referred to in Clause 2.6 above;

d) satisfied itself about all matters, things and information, including matters referred to in Clause 2.6 herein above, necessary and required for submitting an informed Proposal and performance of all of its obligations thereunder;

e) Acknowledged that it does not have a Conflict of Interest; and

f) agreed to be bound by the undertaking provided by it under and in terms hereof.

 g) Confirmed that they have visited the projects sites.

2.7.2 The County shall not be liable for any omission, mistake or error on the part of the Bidder in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP or the Selection Process, including any error or mistake therein or in any information or data given by the County.

## 2.8 Right to reject any or all Proposals

2.8.1. Notwithstanding anything contained in this RFP, the County reserves the right to accept or reject any Proposal and to annul the Selection Process and reject all Proposals, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.

2.8.2 Without prejudice to the generality of Clause 2.8.1, the County reserves the right to reject any Proposal if:

a) at any time, a material misrepresentation is made or discovered, or

b) the Bidder does not provide, within the time specified by the County, the supplemental information sought by the County for evaluation of the Proposal.

Misrepresentation/improper response by the Bidder may lead to the disqualification of the Bidder. If the Bidder is the Lead Member of a consortium, then the entire consortium may be disqualified / rejected. If such disqualification/rejection occurs after the Proposals have been opened and the highest ranking Bidder gets disqualified/ rejected, then the County reserves the right to consider the next best Bidder, or take any other measure as may be deemed fit in the sole discretion of the County, including annulment of the Selection Process.

# B. DOCUMENTS

## 2.9 Contents of the RFP

2.9.1 This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below and will additionally include any Addendum/Amendment issued in accordance with Clause 2.11:

**Request for Proposal**

1. Introduction

 2. Instructions to Applicants

 3. Criteria for Evaluation

 4. Fraud and corrupt practices

 5. Pre‐Proposal Conference

 6. Miscellaneous

SCHEDULES

**1. Terms of Reference**

**2. Form of Agreement**

Annex‐1: Terms of Reference

Annex‐2: Deployment of Personnel

Annex‐3: Estimate of Personnel Costs

Annex‐4: Approved Sub‐Consultant(s)

Annex‐5: Cost of Services

Annex‐6: Payment Schedule

Annex‐7: Bank Guarantee for Performance Security

**3. Guidance Note on Conflict of Interest Appendices**

**Appendix‐I: Technical Proposal**

**Form 1**: Letter of Proposal

**Form 2:** Particulars of the Bidder

**Form 3:** Statement of Legal Capacity

**Form 4**: Power of Attorney

**Form 5:** Financial Capacity of Bidder

**Form 6**: Particulars of Key Personnel

**Form 7:** Proposed Methodology and Work Plan

**Form 8:** Abstract of Eligible Assignments of Bidder

**Form 9:** Abstract of Eligible Assignments of Key Personnel

**Form 10**: Eligible Assignments of Bidder

**Form 11**: Eligible Assignments of Key Personnel

**Form 12**: CV of Key Personnel

**Form 13:** Deployment of Personnel

**Form 14:** Proposal for Sub‐Consultant(s)

**Appendix‐II: Financial Proposal**

**Form 1:** Covering Letter Form 2: Financial Proposal

**Form 2:** Financial Proposal

## 2.10 Clarifications

2.10.1 Bidders requiring any clarification on the RFP may send their queries to the County in writing before the date mentioned in the Schedule of Selection Process at Clause 1.8. The envelopes shall clearly bear the following identification:

"Queries/Request for Additional Information concerning RFP for Selection of an Independent Technical Expert for the Urban Renewal and Redevelopment Project”

The County shall endeavor to respond to the queries within the period specified therein but not later than 7 (seven) days prior to the Proposal Due Date. The responses will be sent by fax or e‐mail. The County will post the reply to all such queries on the Mombasa County Official Website without identifying the source of queries.

2.10.2 The County reserves the right not to respond to any questions or provide any clarifications, in its sole discretion, and nothing in this Clause 2.10 shall be construed as obliging the County to respond to any question or to provide any clarification.

## 2.11. Amendment of RFP

2.11.1 At any time prior to the deadline for submission of Proposal, the County may, for any reason, whether at its own initiative or in response to clarifications requested by an Bidder, modify the RFP document by the issuance of Addendum/ Amendment and posting it on the Official Website.

2.11.2 All such Addendum / amendments will be notified on the Counties Official Website along with the revised RFP containing the Addendum / amendments and will be binding on all Bidders.

2.11.3 In order to afford the Bidders a reasonable time for taking an amendment into account, or for any other reason, the County may, in its sole discretion, extend the Proposal Due Date.

# C. PREPARATION AND SUBMISSION OF PROPOSAL

## 2.12 Language

The Proposal with all accompanying documents (the **"Documents")** and all communications in relation to or concerning the Selection Process shall be in English language and strictly on the forms provided in this RFP. No supporting document or printed literature shall be submitted with the Proposal unless specifically asked for and in case any of these Documents is in another language, it must be accompanied by an accurate translation of the relevant passages in English, in which case, for all purposes of interpretation of the Proposal, the translation in English shall prevail.

## 2.13 Format and Signing of Proposal

2.13.1 The Bidder shall provide all the information sought under this RFP. The County would evaluate only those Proposals that are received in the specified forms and complete in all respects.

2.13.2 The Bidder shall prepare one original set of the Proposal (together with originals/ copies of Documents required to be submitted along therewith pursuant to this RFP) and clearly marked "ORIGINAL". In addition, the Bidder shall submit 2 (two) copies of the Proposal, along with Documents, marked "COPY". In the event of any discrepancy between the original and its copies, the original shall prevail.

2.13.3 The Proposal and its copy shall be typed or written in indelible ink and signed by the authorized signatory of the Bidder who shall initial each page, in blue ink. In case of printed and published Documents, only the cover shall be initialed. All the alterations, omissions, additions, or any other amendments made to the Proposal shall be initialed by the person(s) signing the Proposal. The Proposals must be properly signed by the authorized representative (the **"Authorized Representative")** as detailed below:

a) by a duly authorized person holding the Power of Attorney, in case of a Limited Company or a corporation; or

b) by the authorized representative of the Lead Member, in case of consortium.

A copy of the Power of Attorney certified under the hands of a director of the Bidder and Commissioned/notarized by a Commissioner of oaths or a notary public respectively in the form specified in Appendix‐I (Form‐ 4) shall accompany the Proposal.

2.13.4 Bidders should note the Proposal Due Date, as specified in Clause 1.8, for submission of Proposals. Except as specifically provided in this RFP, no supplementary material will be entertained by the County, and that evaluation will be carried out only on the basis of Documents received by the closing time of Proposal Due Date as specified in Clause 2.18.1. Bidders will ordinarily not be asked to provide additional material information or documents subsequent to the date of submission, and unsolicited material if submitted will be summarily rejected. For the avoidance of doubt, the County reserves the right to seek clarifications under and in accordance with the provisions of Clause 2.24.

## 2.14 Qualification

2.14.1 Bidders shall submit their submissions in response to the Conditions of Eligibility detailed out at Clause 2.2 of this RFP document. The submissions shall be as per the formats at Appendix‐I (the “**Qualification Document**”).

2.14.2 While submitting the Qualification Proposal, the Bidder shall, in particular, ensure that:

a) The Bid Security is provided;

b) All forms relating to Qualification Document are submitted in the prescribed formats and signed by the prescribed signatories;

c) Power of Attorney, if applicable, is executed as per Applicable Laws;

d) A true copy of the Incorporation Certificate is enclosed;

e) Technical Capacity is depicted as per Form 8 and Form 10 of the Appendix‐I of the RFP document;

f) Financial Capacity is depicted as per Form 5 of the Appendix‐I of the RFP document; and

g) The Proposal is responsive in terms of Clause 2.22.3.

2.14.3 Failure to comply with the requirements spelt out in this Clause 2.14 shall make the Proposal liable to be rejected.

2.14.4 The Qualification Document shall not include any financial information relating to the Financial Proposal.

2.14.5 The County reserves the right to verify all statements, information and documents, submitted by the Bidder in response to the RFP. Any such verification or the lack of such verification by the County to undertake such verification shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the County thereunder.

2.14.6 In case it is found during the evaluation or at any time before signing of the Agreement or after its execution and during the period of subsistence thereof, that one or more of the eligibility conditions have not been met by the Bidder or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Consultant either by issue of the LOA or entering into of the Agreement, and if the Selected Bidder has already been issued the LOA or has entered into the Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the County without the County being liable in any manner whatsoever to the Bidder or Consultant, as the case may be.

2.14.7 In such an event, the County shall forfeit and appropriate the Bid Security as mutually agreed pre‐estimated compensation and damages payable to the County for, inter alia, time, cost and effort of the County, without prejudice to any other right or remedy that may be available to the County.

## 2.15 Technical Proposal

2.15.1 Bidders shall submit the technical proposal in the formats at Appendix‐I (the "**Technical Proposal**").

2.15.2 To be eligible for evaluation of its Technical Proposal, the Bidder shall fulfill the following:

A. **Availability of Key Personnel:** The Bidder shall offer and make available all Key Personnel meeting the requirements specified in sub‐clause (B) below.

B. **Conditions of Eligibility for Key Personnel:** Each of the Key Personnel must fulfill the Conditions of Eligibility specified below:

|  |  |  |  |
| --- | --- | --- | --- |
| Key Personnel  | Educational Qualification  | Length of Professional Experience | Experience on Eligible Assignments |
| Team Leader | Graduate in any construction related discipline | 15 years  | He should have led the independent Technical Expert/Construction supervision teams for two eligible consignments |
| Architect | Graduate in Architecture | 10 years | He should have worked as an Architect for two Eligible Assignments |
| Structural Engineer | Graduate in structural Engineering Graduate in Civil Engineering | 10 years | He should have worked as a lead structural engineer for two residential township projects |
| Technical Expert STP | Graduate in Utilities Expert Civil Engineering  | 7 Years | He should have worked as Utilities Expert for Two residential township projects in Kenya |
| Quality cum Material Expert | Graduate in Civil Engineering  | 7 years | He should have worked as quality cum material expert for two residential township projects |
| Environmental Expert | Master/Bachelor in Environmental science or equivalent | 7 years | He should have led the environmental impact assessment teams or worked as a sole expert for two Eligible Assignments |
| Legal Expert  | Bachelors in Law | 7 years | He should have experience in handling legal issues pertaining to housing/residential township projects  |
| Quantity Surveyor | Bachelors in Quantity Surveying or Related Discipline | 10 years  | Must have worked as a consulting quantity Surveyor on housing projects  |
| Electrical /ICT Engineer | Graduate in Electrical Engineering | 10 years  | He should have worked as a lead Electrical/ICT Engineer for two residential townshipprojects |
| Mechanical Engineer | Graduate in Mechanical Engineering | 10 years | He should have worked as a lead Mechanical Engineer for two residential townshipprojects |

2.15.3 While submitting the Technical Proposal, the Bidder shall, in particular, ensure that:

a) All forms are submitted in the prescribed formats and signed by the authorised signatories;

b) CVs of all Key Personnel have been included;

c) Key Personnel have been proposed only if they meet the Conditions of Eligibility laid down at Clause 2.15.2 of the RFP document;

d) no alternative proposal for any Key Personnel is being made and only one CV for each position has been furnished;

e) the CVs have been recently signed and dated in blue ink by the respective Personnel and countersigned by the Applicant. Photocopy or unsigned / countersigned CVs shall be rejected;

f) the CVs shall contain an undertaking from the respective Key Personnel about his/her availability for the duration specified in the RFP;

g) Professional Personnel proposed have good working knowledge of English language;

h) Key Personnel would be available for the period indicated in the TOR; and

1. No Key Personnel should have attained the age of 75 (seventy five) years at the time of submitting the proposal.
2. Attached proof of valid Professional Indemnity Insurance for at least Kes 100 million for a sole firm and Kes 300 Million for a Consortium.

2.15.4 Failure to comply with the requirements spelt out in this Clause shall make the Proposal liable to be rejected.

2.15.5 If an individual Key Personnel makes a false averment regarding his qualification, experience or other particulars, or his commitment regarding availability for the Project is not fulfilled at any stage after signing of the Agreement, he shall be liable to be debarred for any future assignment of the County for a period of 5 (five) years.

The award of this Consultancy to the Bidder may also be liable to cancellation in such an event.

2.15.6 The Technical Proposal shall not include any financial information relating to the Financial Proposal.

2.15.7 The proposed team shall be composed of experts and specialists (the **"Professional Personnel")** in their respective areas of expertise and managerial/support staff (the **"Support Personnel") such** that the Consultant should be able to complete the Consultancy within the specified time schedule. The Key Personnel specified in Clause 2.1.4 shall be included in the proposed team of Professional Personnel and must attach their relevant certificates to indicate they are registered to offer the relevant professional services in their respective disciplines in Kenya. Other Competent and experienced Professional Personnel in the relevant areas of expertise must be added as required for successful completion of this Consultancy. The CV of each such Professional Personnel, if any, should also be submitted in the format at Form‐12 of Appendix‐I.

2.15.8 A Bidder may, if it considers necessary, propose suitable Sub‐Consultants in specific areas of expertise. Credentials of such sub‐consultants should be submitted in Form‐14 of Appendix‐I. A Sub‐Consultant, however, shall not be a substitute for any Key Personnel.

2.15.9 The County reserves the right to verify all statements, information and documents, submitted by the Bidder in response to the RFP. Any such verification or the lack of such verification by the County to undertake such verification shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the County thereunder.

2.15.10 In case it is found during the evaluation or at any time before signing of the Agreement or after its execution and during the period of subsistence thereof, that one or more of the eligibility conditions have not been met by the Bidder or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Consultant either by issue of the LOA or entering into of the Agreement, and if the Selected Bidder has already been issued the LOA or has entered into the Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the County without the County being liable in any manner whatsoever to the Bidder or Consultant, as the case may be.

In such an event, the County shall forfeit and appropriate the Bid Security as mutually agreed as pre‐estimated compensation and damages payable to the County for, *inter alia,* time, cost and effort of the County, without prejudice to any other right or remedy that may be available to the County.

##

## 2.16 Financial Proposal

2.16.1 Bidders shall submit the financial proposal in the formats at Appendix‐II (the **"Financial Proposal")** clearly indicating the total cost of the Consultancy (Item F of Form‐2 of Appendix‐II) in both figures and words, in Kenya Shillings, and signed by the Bidder's Authorised Representative. In the event of any difference between figures and words, the amount indicated in words shall prevail. In the event of a difference between the arithmetic total and the total shown in the Financial Proposal, the lower of the two shall prevail.

2.16.2 While submitting the Financial Proposal, the Bidder shall ensure the following:

i. All the costs associated with the assignment shall be included in the Financial Proposal. These shall normally cover remuneration for all the Personnel (Expatriate and Resident, in the field, office etc), accommodation, air fare, equipment, printing of documents, surveys, etc. The Professional Fees Expressed as a percentage of the estimated total cost of the project in the Financial Proposal shall be without any condition attached or subject to any assumption, and shall be final and binding. In case any assumption or condition is indicated in the Financial Proposal, it shall be considered non‐responsive and liable to be rejected.

ii. The Financial Proposal shall take into account all expenses and other tax liabilities exclusive of VAT. Further, all payments shall be subject to deduction of taxes at source as per Applicable Laws.

 iii. Bidders should propose a costing model that provides best value to the Joint Ventures

## 2.17 Submission of Proposal

2.17.1 The Bidders shall submit the Proposal in hard bound form with all pages numbered serially and by giving an index of submissions. Each page of the submission shall be initialed by the Authorized Representative of the Bidder as per the terms of the RFP document. In case the Proposal is submitted on the document down loaded from Official Website, the Bidder shall be responsible for its accuracy and correctness as per the version uploaded by the County and shall ensure that there are no changes caused in the content of the downloaded document. In case of any discrepancy between the downloaded or photocopied version of the RFP document and the original RFP issued by the County, the latter shall prevail.

2.17.2 The Proposal will be sealed in an outer envelope, which will bear the address of the County, RFP Tender number, and Consultancy name as indicated at Clauses 1.11.1 and1.11.3 and the name and address of the Bidder. It shall bear on top, the following:

"Do not open, except in presence of the Authorized Person of the County Government of Mombasa"

If the envelope is not sealed and marked as instructed above, the County assumes no responsibility for the misplacement or premature opening of the contents of the Proposal submitted and consequent losses, if any, suffered by the Bidder.

2.17.3 The aforesaid outer envelope will contain three separate sealed envelopes, one clearly marked ‘**Qualification Document**’, second clearly marked **'Technical Proposal'** and the third clearly marked **'Financial Proposal'.** The envelope marked “Qualification Document” shall contain:

i. Submissions as per Clause 2.14.2; and

ii. Bid security as specified in Clause 2.21.1

The envelope marked "Technical Proposal" shall contain:

i. Proposal in the prescribed format (Form‐1 of Appendix‐I) along with Forms 2 to 15 of Appendix‐I and supporting documents.

The envelope marked "Financial Proposal" shall contain the financial proposal in the prescribed format (Forms 1 & 2 of Appendix‐II).

2.17.4 The Qualification Document, Technical Proposal and Financial Proposal shall be typed or written in indelible ink and signed by the Authorized Representative of the Bidder. All pages of the original Qualification Document, Technical Proposal and Financial Proposal must be numbered and initialed by the person or persons signing the Proposal.

2.17.5 The completed Proposal must be delivered on or before the specified time on Proposal Due Date. Proposals submitted by fax, telex, telegram or e‐mail shall deemed as non-responsive and therefore rejected.

2.17.6 The Proposal shall be made in the Forms specified in this RFP document. Any attachment to such Forms must be provided on separate sheets of paper and only information that is directly relevant should be provided. This may include photocopies of the relevant pages of printed documents. No separate documents like printed annual statements, company brochures, copy of contracts etc. will be entertained.

2.17.7 The rates quoted shall be firm throughout the period of performance of the assignment upto and including acceptance of the Final Report by the County and discharge of all obligations of the Consultant under the Agreement.

## 2.18 Proposal Due Date

2.18.1 Proposal should be submitted no later than 11Th September before 10.00 AM hours in the manner and form as detailed in this RFP document.

2.18.2 The County may, in its sole discretion, extend the Proposal Due Date by issuing an Addendum in accordance with Clause 2.11 uniformly for all Bidders.

##  2.19 Late Proposals

Proposals received by the County after the specified time on Proposal Due Date shall not be eligible for consideration and shall be summarily rejected.

## 2.20 Modification/ substitution/ withdrawal of Proposals

2.20.1 The Bidder may modify, substitute, or withdraw its Proposal after submission, provided that written notice of the modification, substitution, or withdrawal is received by the County prior to Proposal Due Date. No Proposal shall be modified, substituted, or withdrawn by the Bidder on or after the Proposal Due Date.

2.20.2 The modification, substitution, or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.17, with the envelopes being additionally marked **"MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL**", as appropriate.

2.20.3 Any alteration / modification in the Proposal or additional information or material supplied subsequent to the Proposal Due Date, unless the same has been expressly sought for by the County, shall be disregarded.

##  Bid Security:

* + 1. As part of its bid, the Bidder shall furnish to CGM a Bid Security of Kenya Shillings Three Million (Kshs. 3,000,000) in the form of an Unconditional Bank Guarantee issued by one of the nationally recognized Banks in Kenya or an Approved Financial Institution or an Approved Insurance Company approved by CGM or from an internationally recognized bank.
		2. The Bid Security shall be valid for at least One Hundred and Twenty (120) days from the date of Bid opening or from the extended date of Bid opening.
		3. Any Bid not accompanied by an acceptable Bid Security will be rejected by CGM as non-responsive.
		4. The Bid Securities of unsuccessful Bidders will be returned as promptly as possible as but not later than **twenty eight (28) days** after notification whereas the Second Ranked Bidder the Bid Security will be returned after concluding the Contract execution and after a Performance Security has been furnished by the Successful Bidder to CGM. The Bid security of the Successful Independent Technical Expert will be returned upon the Bidder executing the Contract and furnishing CGM with the required Performance Security.
		5. CGM shall reserve the right to forfeit the Bid Security under the following circumstances:
1. If the Bidder withdraws its Bid at any time during the stipulated period of Bid validity (or as may be extended).
2. If the Bidder, for the period of Bid Validity, in CGM’s opinion, commits material breach of any of the terms and / or conditions contained in the RFP Document and / or subsequent communication from CGM in this regard.
3. In the case of a Successful Independent Technical Expert , if he fails:
4. To accept the Letter of offer, or
5. To sign the Agreement, or
6. To furnish the necessary Performance Security.
	* 1. In the event that the bid is declared non-responsive, the Bid Security in such cases shall be returned to the respective Bidder within 30 days from such cessation without interest.
		2. The Bid Security of the unsuccessful Bidders will be returned after 30 days without any interest.
		3. The Bid Security of the Successful Independent Technical Expert shall be required to be maintained till the signing of the Contract.

##  Performance Security

* + 1. The Bidder to provide a Performance Security which will not exceed 10% of the bid price. The actual rate will be negotiated at the time of executing the Contract.

# D. EVALUATION PROCESS

##  Evaluation of Proposals

2.23.1 The County Government of Mombasa shall open the Proposals at 1230 hours on the Proposal Due Date, at the place specified in Clause 1.11.1 and in the presence of the Bidders who choose to attend. The envelopes marked "Qualification Document" shall be opened first. The envelopes marked “Technical Proposal” and "Financial Proposal" shall be kept sealed for opening at a later date.

2.23.2 Proposals for which a notice of withdrawal has been submitted in accordance with Clause 2.20 shall not be opened.

2.24.3 Prior to evaluation of Proposals, the County will determine whether each Proposal is responsive to the requirements of the RFP. The County may, in its sole discretion, reject any Proposal that is not responsive hereunder. A Proposal shall be considered responsive only if:

a) the Qualification Document is received in the form specified at Appendix‐I and the requirements stipulated at Clause 2.14.2;

b) it is received by the Proposal Due Date including any extension thereof pursuant to Clause 2.18;

c) it is accompanied by the Bid Security as specified in Clause 2.21.1.

d) it is signed, sealed, bound together in hard cover and marked as stipulated in Clauses 2.13 and 2.17;

e) it is accompanied by the Power of Attorney as specified in Clause 2.2.4;

f) it contains all the information (complete in all respects) as requested in the RFP;

g) it does not contain any condition or qualification; and

h) it is not non‐responsive in terms hereof.

2.23.4 The County reserves the right to reject any Proposal which is non‐responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the County in respect of such Proposals.

2.23.5 The County shall subsequently examine and evaluate Proposals in accordance with the Selection Process specified at Clause 1.6 and the criteria set out in Section 3 of this RFP.

2.23.6 After the evaluation of Qualification Document, the County shall prepare a list of pre‐ qualified Bidders in terms of Clause 3.2 for opening of their Technical Proposals. Subsequently, Technical Proposals of pre‐qualified Bidders shall be evaluated and the County shall prepare a list of short‐listed Bidders in terms of Clause 3.4. A date, time and venue will be notified to all Bidders for announcing the result of evaluation and opening of Financial Proposals. Before opening of the Financial Proposals, the list of pre‐ qualified and shortlisted Bidders along with their Technical Scores will be read out. The opening of Financial Proposals shall be done in presence of respective representatives of Bidders who choose to be present. The County will not entertain any query or clarification from Bidders who fail to qualify at any stage of the Selection Process. The financial evaluation and final ranking of the Proposals shall be carried out in terms of Clauses 3.5 and 3.6.

2.23.7 Bidders are advised that Selection will be entirely at the discretion of the County. Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Selection Process or Selection will be given.

2.23.8 Any information contained in the Proposal shall not in any way be construed as binding on the County, its agents, successors or assigns, but shall be binding against the Bidder if the Consultancy is subsequently awarded to it.

## 2.24 Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the selection of Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional adviser advising the County in relation to matters arising out of, or concerning the Selection Process. The County will treat all information, submitted as part of the Proposal, in confidence and will require all those who have access to such material to treat the same in confidence. The County may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/or the County.

## 2.25 Clarifications

2.25.1 To facilitate evaluation of Proposals, the County may, at its sole discretion, seek clarifications from any Bidder regarding its Proposal. Such clarification(s) shall be provided within the time specified by the County for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.

2.25.2 If a Bidder does not provide clarifications sought under Clause

2.25.1 above within the specified time, its Proposal shall be liable to be rejected. In case the Proposal is not rejected, the County may proceed to evaluate the Proposal by construing the particulars requiring clarification to the best of its Understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the County.

# E. APPOINTMENT OF CONSULTANT

## 2.26 Negotiations

2.26.1 The Selected Bidder may, if necessary, be invited for negotiations. The negotiations shall generally not be for reducing the price of the Proposal, but will be for re‐confirming the obligations of the Consultant under this RFP document. Issues such as deployment of Key Personnel, Understanding of the RFP, methodology and quality of the work plan shall be discussed during negotiations. A Key Personnel who did not score 70% (seventy per cent) marks as required under Clause 3.3.2 shall be replaced by the Bidder with a better candidate to the satisfaction of the County. In case the Selected Bidder fails to reconfirm its commitment, the County reserves the right to designate the next ranked Bidder as the Selected Bidder and invite it for negotiations.

2.26.2 The County will examine the CVs of all other Professional Personnel and those not found suitable shall be replaced by the Bidder to the satisfaction of the County.

2.26.3 The County will examine the credentials of all Sub‐Consultants proposed for this Consultancy and those not found suitable shall be replaced by the Bidder to the satisfaction of the County.

## 2.27 Substitution of Key Personnel

2.27.1 The County will not normally consider any request of the Selected Bidder for substitution of Key Personnel as the ranking of the Bidder is based on the evaluation of Key Personnel and any change therein may upset the ranking. Substitution will, however, be permitted if the Key Personnel is not available for reasons of any incapacity or due to health, subject to equally or better qualified and experienced Personnel being provided to the satisfaction of the County.

2.27.2 The County expects all the Key Personnel to be available during implementation of the Agreement. The County will not consider substitution of Key Personnel except for reasons of any incapacity or due to health. Such substitution shall ordinarily be limited to one Key Personnel subject to equally or better qualified and experienced Personnel being provided to the satisfaction of the County. As a condition to such substitution, a sum equal to 20% (twenty per cent) of the remuneration specified for the original Key Personnel shall be deducted from the payments due to the Consultant. In the case of a second substitution hereunder, such deduction shall be 50% (fifty per cent) of the remuneration specified for the original Key Personnel. Any further substitution may lead to disqualification of the Bidder or termination of the Agreement.

* + 1. Substitution of the Team Leader will not normally be considered and may lead to disqualification of the Bidder or termination of the Agreement if the substitution does not meet the same qualification criteria

## 2.28 Indemnity

The Consultant shall, subject to the provisions of the Agreement, indemnify the County for an amount not exceeding 3 (three) times the value of the Agreement for any direct loss or damage that is caused due to any deficiency in services.

## 2.29 Award of Consultancy

After selection, a Letter of Award (the **"LOA")** shall be issued, in duplicate, by the County to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the County may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Applicant as mutually agreed genuine pre‐estimated loss and damage suffered by the County on account of failure of the Selected Bidder to acknowledge the LOA, and the next highest ranking Bidder may be considered.

## 2.30 Execution of Agreement

After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall execute the Agreement within the period prescribed in Clause 1.8. The Selected Bidder shall not be entitled to seek any deviation in the Agreement.

## 2.31 Commencement of assignment

The Consultant shall commence the Services at the Project site within 7 (seven) days of the date of the Agreement or such other date as may be mutually agreed. If the Consultant fails to either sign the Agreement as specified in Clause 2.30 or commence the assignment as specified herein, the County may invite the second ranked Bidder for negotiations. In such an event, the Bid Security of the first ranked Bidder shall be forfeited and appropriated in accordance with the provisions of Clause 2.21.4.

## 2.32 Proprietary data

Subject to the provisions of Clause 2.24, all documents and other information provided by the County or submitted by a Bidder to the County shall remain or become the property of the County. Bidders and the Consultant, as the case may be, are to treat all information as strictly confidential. The County will not return any Proposal or any information related thereto. All information collected, analysed, processed or in whatever manner provided by the Consultant to the County in relation to the Consultancy shall be the property of the County.

# 3. CRITERIA FOR EVALUATION

## 3.1 Evaluation of Qualification Document

3.1.1 In the first stage, the Qualification Document will be evaluated on the ability of the Bidder to meet the Conditions of Eligibility as stipulated at Clause 2.2 of the RFP document.

## 3.2 Qualification of Bidders

3.2.1 The evaluation of the Qualification Document shall be undertaken as per the process detailed out at Clauses 2.2 and 2.23.3.

3.2.2 All the Proposals meeting the Conditions of Eligibility and are responsive shall be pre‐ qualified for the opening of their Technical Proposals.

## 3.3 Evaluation of Technical Proposals

3.3.1 In the second stage, the Technical Proposal will be evaluated on the basis of Bidder's experience, its Understanding of TOR, proposed methodology and Work Plan, and the experience of Key Personnel. Only those Bidders whose Technical Proposals get a score of 70 marks or more out of 100 and meeting the conditions of eligibility for the Technical Proposal as per Clause 2.15.2 shall qualify for further consideration, and shall be ranked from highest to the lowest on the basis of their technical score (ST).

3.3.2 Each Key Personnel must score a minimum of 70% marks except as provided herein. A Proposal shall be rejected if the Team Leader scores less than 70% marks or any two of the remaining Key Personnel score less than 70% marks. In case the Selected Bidder has one Key Personnel, other than the Team Leader, who scores less than 70% marks, he would have to be replaced during negotiations, with a better candidate who, in the opinion of the County, would score 70% or above.

3.3.3 The scoring criteria to be used for evaluation shall be as follows

|  |  |  |  |
| --- | --- | --- | --- |
| **Item Code** | **Parameter** | **Maximum Marks** | **Criteria** |
| 1 | Relevant Experience of the Applicant | 25 | * Score per eligible assignment: 2 marks (Maximum score :10 Marks
* Additional score in case of an international eligible assignment: 5 Marks
* Annual Average income from professional fees over three financial years preceding the Proposal Due Date the Ksh. 200 Million: 10 marks
 |
| 2 | Proposal Methodology and Work Plan | 5 | Evaluation will be based on the quality of submissions |
| 3 | Relevant Experience of the Key Personnel | 70 | 30% of the maximum marks for each Key Personnel shall be awarded for the number of Eligible Assignments the respective Key Personnel has worked on. The remaining 70% shall be awarded for the 1. The comparative size and quality of Eligible Assignments
2. Other similar work in infrastructure sectors
 |
| 3(a)  | Team Leader | 15 |  |
| 3(b) | Architect | 10 |  |
| 3 (c) | Structural Engineer | 10 |  |
| 3 (d)  | Quantity Surveyor | 5 |  |
| 3(e) | Electrical /ICT Engineer | 5 |  |
| 3(f) | Mechanical Engineer | 5 |  |
| 3 (g)  | Materials Engineer | 10 |  |
| 3(h) | Environmental Expert | 5 |  |
| 3 (i) | Legal Expert | 5 |  |
|  | **Grand Total**  | **100** |  |

While awarding marks for the number of Eligible Projects, the Bidder or Key Personnel, as the case may be, that has undertaken the highest number of Eligible Assignments shall be entitled to the maximum score for the respective category and all other competing Bidders or respective Key Personnel, as the case may be, shall be entitled to a proportionate score. No score will be awarded to a Bidder/Key Personnel for fulfilling the eligibility criteria of a minimum number of Eligible Assignments and only projects exceeding the eligibility criteria shall qualify for scoring.

For the avoidance of doubt and by way of illustration, if the minimum number of Eligible Projects for meeting the eligibility criteria is 2 (two), then an equivalent number will be ignored for each Bidder/Key Personnel and only the balance remaining will be considered for awarding scores relating to the number of Eligible Assignments on a proportionate basis. However, for assigning scores in respect of the size and quality of Eligible Assignments, all Eligible Assignments of the Bidder/Key Personnel shall be considered.

***There are 100 maximum possible points. Any features that the bidder wish to include over and above the County Government of Mombasa’s stated requirements will not receive any additional points.***

***Only those Bidders, who shall have an overall aggregate of 70% of the evaluated Technical Proposal, shall proceed to the financial proposal evaluation stage.***

***N.B. Bidders who will attain an overall Technical score of 70% and above in the Technical Evaluation shall proceed to the Financial Evaluation stage. Those who do not attain the score shall be considered non-responsive and shall not be considered for financial evaluation.***

 ***The Technical marks shall have an overall weight of 80% to be calculated as follows:***

TX = TS x 80%

Where:

TS is the Technical score obtained in Annex B; and

Tx is the weighted overall Technical Score.

## 3.4 Eligible Assignments

For the purposes of determining Conditions of Eligibility and for evaluating the Proposals under this RFP, advisory/consultancy assignments in respect of Independent Technical Expert services, for the following projects shall be deemed as eligible assignments (the **"Eligible Assignments"):**

a) Independent Technical Expert / Construction Supervision Consultancy of Housing / Infrastructure projects involving construction having an estimated capital cost (excluding land) of at least Ksh. 5 Billion in the following sectors:

• Residential Complexes

• Housing / Township

• Affordable housing projects

• Central / State Government housing complexes

• Social Infrastructure viz Hospital / School complexes or

b) Independent Technical Expert / Construction Supervision Consultancy of any other Infrastructure project involving construction having an estimated capital cost (excluding land) of at least Ksh. 5 Billion.

## 3.5 Short‐listing of Bidders

Of the Bidders ranked as aforesaid, only the top five shall be pre‐qualified and short‐ listed to proceed for financial evaluation in the third stage. However, if the number of such pre‐qualified Bidders is less than two, the County may, in its sole discretion, pre‐qualify the Bidder(s) whose technical score is less than 70 points even if such Bidder(s) do(es) not qualify in terms of Clause 3.3.2; provided that in such an event, the total number of pre‐ qualified and short‐listed Bidders shall not exceed five.

## 3.6 Evaluation of Financial Proposal

3.6.1 In the second stage, the financial evaluation will be carried out as per this Clause 3.5.

Each Financial Proposal will be assigned a financial score (FX).

3.6.2 For financial evaluation, the Percentage of cost of professional fees indicated in the Financial Proposal will be considered.

3.6.3 The County will determine whether the Financial Proposal is complete, unqualified and unconditional. The Percentage cost indicated in the Financial Proposal shall be deemed as final and reflecting the percentage cost of services to be offered. Omissions, if any, in costing any item shall not entitle the firm to be compensated and the liability to fulfill its obligations as per the TOR within the total quoted price shall be that of the Consultant. The lowest Financial Proposal will be given a financial score (FX) of 100 points. The financial scores of the proposals will be computed as follows:

|  |
| --- |
| **Table of Financial Evaluation** |
|  |  |  |  |  |  |
| **Greater Than** |  | **Less Than** |  |  | **Score**  |
|   |   |   |   |   |   |
| > | 0.25% | < | 0.75% |   | 100 |
|   |   |   |   |   |   |
| > | 0.75% | < | 1.5% |   | 70 |
|   |   |   |   |   |   |
| > | 1.5% | < | 2.0% |   | 40 |
|   |   |   |   |   |   |
| > | 2% |   |   |   | 10 |
|   |   |   |   |   |   |

***There are 100 maximum possible points. Any features that Bidders wish to include over and above NCG’s stated requirements will not receive any additional points.***

***Financial Marks shall have an overall weight of 20%.***

FX = FS x 20%

Where:

FS is the Financial score obtained; and

FX is the weighted average Financial Score

## 3.7 Combined and final evaluation

3.7.1 Proposals will finally be ranked according to their combined technical (TX) and financial (FX) scores as follows:

**TS = T X + FX**

3.7.2 The Selected Bidder shall be the first ranked Bidder (having the highest combined score).

3.7.3 The second ranked Bidder shall be kept in reserve and may be invited for negotiations in case the first ranked Bidder withdraws, or fails to comply with the requirements specified in Clauses 2.25, 2.29 and 2.30, as the case may be.

1. FRAUD AND CORRUPT PRACTICES

**4.1** The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Selection Process. Notwithstanding anything to the contrary contained in this RFP, the County shall reject a Proposal without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the "Prohibited Practices") in the Selection Process. In such an event, the County shall, without prejudice to its any other rights or remedies, forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre‐estimated compensation and damages payable to the County for, *inter alia,* time, cost and effort of the County, in regard to the RFP, including consideration and evaluation of such Bidder's Proposal.

**4.2** Without prejudice to the rights of the County under Clause 4.1 hereinabove and the rights and remedies which the County may have under the LOA or the Agreement, if any Bidder or Consultant, as the case may be, is found by the County to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Selection Process, or after the issue of the LOA or the execution of the Agreement, such Bidder or Consultant shall not be eligible to participate in any tender or RFP issued by the County during a period of 2 (two) years from the date such Bidder or Consultant, as the case may be, is found by the County to have directly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.

4.3 For the purposes of this Section, the following terms shall have the meaning hereinafter respectively assigned to them:

a) Be governed by, and construed in accordance with, the laws of Kenya and the Courts at Kenya shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Selection Process.

1. PRE - PROPOSAL CONFERENCE

 5.1 No Pre- Proposal Conference of the Bidders is envisaged. Bidders are however requested to send their queries as per the schedule at Clause 1.8.

* 1. The County shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Selection Process.
	2. County Government of Mombasa shall organize site visits upon request by the bidders. A representative of the County Government of Mombasa will be available to meet the visiting Bidders at the sites. The bidders must provide their own transport.

# **6.** **MISCELLANEOUS**

**6.1** The Selection Process shall be governed by, and construed in accordance with, the laws of Kenya and the Courts at Kenya shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Selection Process.

**6.2** The County, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:

**a)** suspend and/or cancel the Selection Process and/or amend and/or supplement the Selection Process or modify the dates or other terms and conditions relating thereto;

b) consult with any Bidder in order to receive clarification or further information;

c) retain any information and/or evidence submitted to the County by, on behalf of and/or in relation to any Bidder; and/or

d) Independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Bidder.

6.3 It shall be deemed that by submitting the Proposal, the Bidder agrees and releases the County, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.

6.4 All documents and other information supplied by the County or submitted by any Bidder shall remain or become, as the case may be, the property of the County. The County will not return any submissions made hereunder. Bidders are required to treat all such documents and information as strictly confidential.

6.5 The County reserves the right to make inquiries with any of the clients listed by the Bidders in their previous experience record.

SCHEDULE 1: TERMS OF REFERENCE

1. Scope

1.1 These Terms of Reference for the Consultant (the "TOR”) are, being specified pursuant to the executed Joint Venture Agreement (the “Agreement"), which has been entered into between the County Government of Mombasa (the “County”) and the respective Development Partner for Redevelopment of Old Estates within Mombasa County (the Project) on Joint Venture Partnership basis, and a copy of which is annexed hereto and marked as Annex‐A to form part of this TOR.

1.2 This TOR shall apply to the entire development of the project and associated infrastructure until completion and handover of the Project. Whereas the TOR details out the scope of the Consultant, it is hereby clarified that the JointVenture Agreement shall govern the scope of the Consultant. In the event of any deviation in the scope of the Consultant in the TOR and the Joint Venture Agreement, the scope of the Consultant as per the Joint Venture Agreement shall be considered**.**

2. Definitions and interpretation

2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.

2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.

2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Joint Venture Agreement shall apply, mutatis mutandis, to this TOR.

3. Role and Functions of the Consultant

3.1 The role and functions of the Consultant shall include the following:

(a) review of the Master Plan and Drawings and Documents as set forth in Paragraph 4;

(b) review, inspection and monitoring of Construction Works as set forth in Paragraph 5;

(c) conducting Tests on completion of construction and issuing Completion / Provisional Certificate as set forth in Paragraph 5;

forth in Paragraph 6;

(d) review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 7;

(f) determining, as required under the Agreement, the extra costs of any works or services

and / or their reasonableness;

(g) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;

(h) assisting the Parties in resolution of disputes as set forth in Paragraph 9; and

(i) Undertaking all other duties and functions in accordance with the Agreement.

(j) Value works in respect of the offsite infrastructure and certify the amounts of interim payment certificates to be paid to the development partner.

3.2 The Consultant shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

**4.** **Development Period**

**4.1** During the Development Period, the Consultant shall undertake a detailed review of the Master Plan and Drawings to be furnished by the Development Partner along with supporting data, including the geo‐technical and hydrological investigations; characteristics of materials from borrow areas and quarry Sites, topographical, surveys and traffic surveys. The Consultant shall complete such review and send its comments/observations to the County Government and the Development Partner within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.

4.2 The Consultant shall review any modified Master Plan and Drawings or supporting Documents sent to it by the Development Partner and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.

4.3 The Consultant shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Development Partner and furnish its comments within 15 (fifteen) days of receipt thereof.

4.4 Upon reference by the County Government, the Consultant shall review and comment on the Engineering, Procurement and Construction Contract or any other contract for construction, operation and maintenance of the Project, and furnish its comments within 7 (seven) days from receipt of such reference from the County Government.

**5.** **Construction Period**

**5**.1 In respect of the Drawings and Documents received by the Consultant for its review and comments during the Construction Period, the period of Paragraph 4 shall apply, mutatis mutandis.

5.2 The Consultant shall review the monthly progress report furnished by the Development Partner and send its comments thereon to the County Government and the Development Partner within 7 (seven) days of receipt of such report.

5.3 The Consultant shall inspect the Construction Works and the Project once every month, preferably after receipt of the monthly progress report from the Development Partner, but before the 20th (twentieth) day of each month in any case, and make out a report of such Inspection (the "Inspection Report") setting forth an overview of the status, progress, quality and safety of construction; Including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Scope of the Project and the specifications and standards. In a separate section of the Inspection Report, the Consultant shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project. The Consultant shall send a copy of its Inspection Report to the County Government and the Development Partner within 7 (seven) days of the inspection.

5.4 The Consultant may inspect the Project more than once in a month if any lapses, defects or deficiencies require such inspections.

5.5 For determining that the Construction Works conform to Specifications and Standards, the Consultant shall require the Development Partner to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Consultant in accordance with Good Industry Practice for quality assurance. The Consultant shall issue necessary directions to the Development Partner for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.

5.6 The sample size of the tests, to be specified by the Consultant under Paragraph 5.5, shall comprise 10% (ten per cent) of the quantity or number of tests prescribed for each category or type of tests in the Quality Control Manuals; provided that the Consultant may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests.

5.7 The timing of tests referred to in Paragraph 5.5 and the criteria for acceptance / rejection of their results shall be determined by the Consultant in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the test that may be carried outby the Development Partner for its own quality assurance in accordance with Good Industry Practice.

**5.8** In the event that the Development Partner carries out any remedial works for removal or rectification of any defects or deficiencies, the Consultant shall require the Development Partner to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 5 shall apply to such tests.

5.9 In the event that the Development Partner fails to achieve any of the Project Milestones. The Consultant shall undertake a review of the progress of construction and identify potential delays, if any. If the Consultant shall determine that completion of the Project is not feasible within the time specified in the Agreement, It shall require the Development Partner to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the Project Completion Date shall be achieved. Upon receipt of a report from the Development Partner, the Consultant shall review the same and send its comments to the County Government and the Development Partner forthwith.

5.10 If at any time during the Construction Period, the Consultant determines that the Development Partner has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is, being carried out in a manner that threatens the safety of the workersand the Users it shall make a recommendation to the County Government forthwith, identifyingthe whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.

5.11 In the event that the Development Partner carries out any remedial measures to secure the safety of any suspended works and Users, it may, by notice in writing, require the Consultant to inspect such works, and within 3 (three) days of receiving such notice, the Consultant shall inspect the suspended works and make a report to the County Government forthwith, recommending whether or not such suspension may be revoked by the County Government.

**5.12** If suspension of Construction Works is for reasons not attributable to the Development Partner, the Consultant shall determine the extension of dates set forth in the Project Completion Schedule, to which the Development Partner is reasonably entitled, and shall notify the County Government and the Development Partner of the same.

5.13 The Consultant shall carry out, or cause to be carried out, all the Tests specified and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 5.13 and all matters incidental thereto, the Consultant shall act under and in accordance with the provisions of Article 39A of the Joint Venture Agreement.

**6**. **Termination**

6.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Consultant shall, review in the presence of a representative of the Development Partner, inspect the Project for determining compliance by the Development Partner with the Divestment Requirements set forth in Article 47 of the Joint Venture Agreement and, if required, cause tests to be carried out at the Development Partner's cost for determining such compliance.

6.2 The Consultant shall inspect the Project once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Development Partner under Article 47 of the Joint Venture Agreement, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Consultant, it shall make a report in reasonable detail and send it forthwith to the County Government and the Development Partner.

**7.** **Determination of costs and time**

7.1 The Consultant shall determine the costs, and/or their reasonableness that are required to be determined by it under the Agreement.

**7.2** The Consultant shall determine the period, or any extension thereof that is required to be determined by it under the Agreement.

**8. Assistance in Dispute resolution**

8.1 When called upon by either Party in the event of any Dispute, the Consultant shall mediate and assist the Parties in arriving at an amicable settlement**.**

**8.2** In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Consultant shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

**9. Other duties and functions**

The Consultant shall perform all other duties and functions specified in the Agreement.

**10. Miscellaneous**

10.1 The Consultant shall notify its programme of inspection to the County Government and to the Development Partner, who may, in their discretion, depute their respective representatives to be present during the inspection

**10.2** A copy of all communications, comments, and instructions, Drawings or Documents sent by the Consultant to the Development Partner pursuant to this TOR, and a copy of all the test results with comments of the Consultant thereon shall be furnished by the Consultant to the County Government forthwith.

**10.3** The Consultant shall obtain, and the Development Partner shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Development Partner to the Consultant, whereupon the Consultant shall send one of the copies to the County Government along with its comments thereon.

10.4 The Consultant shall retain at least one copy each of all Drawings and Documents received by it, including 'as‐built' Drawings, and keep them in its safe custody.

**10.5** Upon completion of its assignment hereunder, the Consultant shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the County Government or such other person as the County Government may specify, and obtain written receipt thereof Two copies of the said document shall also be furnished in micro film form or in such other medium as may be acceptable to the County Government.

11. **Performance Clause**

a) Consultants shall be expected to fully comply with all the provisions of the “Terms of Reference , and shall be fully responsible for supervising the Designs, Construction and maintenance and operation of the facility takes place in accordance with the provisions of the Joint Venture Agreement and other schedules. Any failure of the Consultant in notifying to the County and the Development Partner on non‐compliance of the provisions of the Joint Venture Agreement and other schedules by the Development Partner, non‐adherence to the provision of ToR and non‐ adherence to the time schedule prescribed under ToR shall amount to non‐ performance.

b) The Consultant shall appoint its authorized representative, who shall issue on behalf of the Consultant, the Provisional Completion Certification and Completion Certificate along with the Team Leader and shall carry out any such task as may be decided by the County. The IE shall take prior approval of the County before issuing Provisional Completion Certification and Completion Certificate. The proposal submitted shall also include the name of the authorized representative along with the authorization letter and power of attorney.

12. **Period of Service**

The services of the Consultant would be availed for an initial period of 36 (thirty six) months. This appointment will be valid for a period of 36 (thirty six) months from the date of signing of the Agreement. The appointment period may be extended further for a period of 3 (three) years on the terms and conditions agreed by both parties.

# SCHEDULE 2: DRAFT AGREEMENT

**(Separately attached)**

# SCHEDULE 3: GUIDANCE NOTE ON CONFLICT OF INTEREST

**1.** This Note further explains and illustrates the provisions of Clause 2.3 of the RFP and shall be read together therewith in dealing with specific cases.

2. Consultants should be deemed to be in a conflict of interest situation if it can be reasonably concluded that their position in a business or their personal interest could improperly influence their judgment in the exercise of their duties. The process for selection of consultants should avoid both actual and perceived conflict of interest.

3. Conflict of interest may arise between the County and a consultant or between consultants and present or future concessionaries/ contractors. Some of the situations that would involve conflict of interest are identified below:

 a. County and consultants:

i. Potential consultant should not be privy to information from the County which is not available to others; or

ii. Potential consultant should not have defined the project when earlier working for the County; or

iii. Potential consultant should not have recently worked for the County overseeing the project.

b. Consultants and Development Partners/contractors:

i. No consultant should have an ownership interest or a continuing business interest or an on‐going relationship with a potential Development Partner/ contractor save and except relationships restricted to project‐specific and short‐term assignments; or

ii. no consultant should be involved in owning or operating entities resulting from the project; or

iii. no consultant should bid for works arising from the project.

The participation of companies that may be involved as investors or consumers and officials of the County who have current or recent connections to the companies involved, therefore, needs to be avoided.

**4.** The normal way to identify conflicts of interest is through self‐declaration by consultants. Where a conflict exists, which has not been declared, competing companies are likely to bring this to the notice of the County. All conflicts must be declared as and when the consultants become aware of them.

5. Another approach towards avoiding a conflict of interest is through the use of “Chinese walls” to avoid the flow of commercially sensitive information from one part of the consultant’s company to another. This could help overcome the problem of availability of limited numbers of experts for the project. However, in reality effective operation of “Chinese walls” may be a difficult

proposition. As a general rule, larger companies will be more capable of adopting Chinese walls approach than smaller companies. Although, “Chinese walls” have been relatively common for many years, they are an increasingly discredited means of avoiding conflicts of interest and should be considered with caution. As a rule, “Chinese walls” should be considered as unacceptable and may be accepted only in exceptional cases upon full disclosure by a consultant coupled with provision of safeguards to the satisfaction of the County.

6. Another way to avoid conflicts of interest is through the appropriate grouping of tasks. For example, conflicts may arise if consultants drawing up the terms of reference or the proposed documentation are also eligible for the consequent assignment or project.

7. Another form of conflict of interest called “scope–creep” arises when consultants advocate either an unnecessary broadening of the terms of reference or make recommendations which are not in the best interests of the County but which will generate further work for the consultants. Some forms of contractual arrangements are more likely to lead to scope‐creep. For example, lump‐sum contracts provide fewer incentives for this, while time and material contracts provide built in incentives for consultants to extend the length of their assignment.

8. Every project contains potential conflicts of interest. Consultants should not only avoid any conflict of interest, they should report any present/ potential conflict of interest to the County at the earliest. Officials of the County involved in development of a project shall be responsible for identifying and resolving any conflicts of interest. It should be ensured that safeguards are in place to preserve fair and open competition and measures should be taken to eliminate any conflict of interest arising at any stage in the process.

# APPENDICES

**APPENDIX‐I**

(See Clause 2.1.3)

### APPENDIX I - TECHNICAL PROPOSAL

### Form 1 - Letter of Proposal

(On Bidder's letter head)

(Date and Reference)

To:

Director of Supply Chain Management,

County Government of Mombasa,

P.O. Box 80133 – 80100

 Mombasa

**RE: Appointment of Independent Technical Expert for the Urban Renewal and Redevelopment of Old Estates within Mombasa County through Joint Venture Partnership.**

Dear Sir,

With reference to your RFP Document dated..................., I/we, having examined all relevant documents and understood their contents, hereby submit our Proposal for selection of an Independent Technical Expert for the Urban Renewal and Redevelopment of Old Estates within Mombasa County under Joint Venture Partnerships. The proposal is unconditional and unqualified.

1. All information provided in the Proposal and in the Appendices is true and correct and all documents accompanying such Proposal are true copies of their respective originals.
2. This statement is made for the express purpose of appointment as the Consultant for the aforesaid Project.
3. I/We shall make available to the County any additional information it may deem necessary or require for supplementing or authenticating the Proposal.
4. I/We acknowledge the right of the County to reject our proposal without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
5. I/We certify that in the last three years, we or any of our Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial County or a judicial pronouncement or arbitration award against the Bidder, nor been expelled from any project or contract by any public County nor have had any contract terminated by any public County for breach on our part.
6. I/We declare that:
	1. I/We have examined and have no reservations to the RFP Documents, including any Addendum issued by the County;
	2. I/We do not have any conflict of interest in accordance with Clause 2.3 of the RFP Document;
	3. I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the County or any other public sector enterprise or any government, Central or State; and
	4. I/We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP, no person acting for us or on our behalf will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
7. I/We understand that you may cancel the Selection Process at any time and that you are neither bound to accept any Proposal that you may receive nor to select the Consultant, without incurring any liability to the Bidders in accordance with Clause 2.8 of the RFP document.
8. I/We declare that we/any member of the consortium, are/is not a Member of a/any other Consortium applying for Selection as a Consultant.
9. I/We certify that in regard to matters other than security and integrity of the country, we or any of our Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory County which would cast a doubt on our ability to undertake the Consultancy for the Project or which relates to a grave offence that outrages the moral sense of the community.
10. I/We further certify that in regard to matters relating to security and integrity of the country, we have not been charge‐sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our Associates.
11. I/We further certify that no investigation by a regulatory County is pending either against us or against our Associates or against our CEO or any of our Directors/Managers/employees.
12. I/We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the County Government of Mombasa in connection with the selection of Consultant or in connection with the Selection Process itself in respect of the above mentioned Project.
13. The Bid Security of Kshs. 3,000,000 (Three Million) in the form of an unconditional Bank Guarantee issued by one of the nationally recognized Banks in Kenya or an Approved Financial Institution or an Approved Insurance Company approved by CGM or from an Internationally Recognized Bank .
14. I/We agree and understand that the proposal is subject to the provisions of the RFP document. In no case, shall I/we have any claim or right of whatsoever nature if the Consultancy for the Project is not awarded to me/us or our proposal is not opened or rejected.
15. I/We agree to keep this offer valid for 90 (ninety) days from the Proposal Due Date specified in the RFP.
16. A Power of Attorney in favour of the authorised signatory to sign and submit this Proposal and documents is attached herewith in Form 4.
17. In the event of my/our firm/ consortium being selected as the Consultant, I/we agree to enter into an Agreement in accordance with the form at Schedule‐2 of the RFP. We agree not to seek any changes in the aforesaid form and agree to abide by the same.
18. I/We have studied the RFP and all other documents carefully and also surveyed the Project site. We understand that except to the extent as expressly set forth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the County or in respect of any matter arising out of or concerning or relating to the Selection Process including the award of Consultancy.
19. The Financial Proposal is being submitted in a separate cover. This Qualification Document read with the Technical Proposal and the Financial Proposal shall constitute the Proposal which shall be binding on us.
20. I/We agree and undertake to abide by all the terms and conditions of the RFP Document. In witness thereof, I/we submit this Proposal under and in accordance with the terms of the RFP Document.

Yours faithfully,

(Signature, name and designation of the authorised signatory)

 (Name and seal of the Bidder / Lead Member)

### Form 2 - Particulars of the Bidder

|  |  |
| --- | --- |
| 1.1 | Title of Consultancy:**Independent Technical Expert for the Urban Renewal and Redevelopment of Old Estates Within Mombasa County through Joint Venture Partnership.** |
| 1.2 | Title of Project:**Urban Renewal and Redevelopment of Old Estates Within Mombasa County through Joint Venture Partnership**. |
| 1.3 | State whether applying as Sole Firm or Lead Member of a consortium: |
| 1.4 | State the following: Name of Company or Firm: Legal status:Country of incorporation:Registered address:Year of Incorporation: Year of commencement of business: Principal place of business: Brief description of the Company including details of its main lines of businessBidderName DesignationCompany AddressPhone NoFaxEmail Addressaddress: |
| 1.5 | If the Bidder is Lead Member of a consortium, state the following for each of the other Member Firms:1. Name of Firm:
2. Legal Status and country of incorporation
3. Registered address and principal place of business
 |
| 1.6 | For the Bidder, (in case of a consortium, for each Member), state the following information:1. In case of non-Kenyan Firm, does the Firm have business presence in Kenya?

Yes/No If so, provide the office address (es) in Kenya.1. Has the Bidder or any of the Members in case of a consortium been penalized by any organization for poor quality of work or breach of contract in the last five years?

Yes/No1. Has the Bidder/Member ever failed to complete any work awarded to it by any public County/entity in last five years?

Yes/No1. Has the Bidder or any member of the consortium been blacklisted by any Government department/Public Sector Undertaking in the last five years?

Yes/No1. Has the Bidder or any of the Members, in case of a consortium, suffered bankruptcy/insolvency in the last five years?

Yes/No**Note: If answer to any of the questions at (ii) to (v) is yes, the Bidder is not eligible for this consultancy assignment.** |
| 1.7 | Does the Bidder's company (or any member of the consortium) combine functions as a consultant or adviser along with the functions as a contractor and/or a manufacturer?Yes/No If yes, does the Bidder (and other Member of the Bidder's consortium) agree to limit the Bidder's role only to that of a consultant to the County and to disqualify themselves, their Associates/ affiliates, subsidiaries and/or parent organization subsequently from work on this Project in any other capacity?Yes/No |
| 1.8 | Does the Bidder intend to engage on short term contracts , Personnel from contractors, manufacturers or suppliers for performance of the Consulting Services?Yes/No If yes, does the Bidder agree that it will only be acceptable as Consultant, if thosecontractors, manufacturers and suppliers disqualify themselves from subsequent execution of work on this Project (including tendering relating to any goods or services for any other part of the Project) other than that of the Consultant?Yes/No If yes, have any undertakings been obtained (and annexed) from such contractors, manufacturers, etc. that they agree to disqualify themselves from subsequent execution of work on this Project and they agree to limit their role to that of consultant for the County only?  Yes/No(Signature, name and designation of the authorised signatory)For and on behalf of……………………………………. |

### Form 3 - Statement of Legal Capacity

*(To be forwarded on the letter head of the Bidder)*

Ref. Date: To,

Director of Supplies Chain Management,

County Government of Mombasa,

P.O. Box 80133 – 80100

Mombasa

 **Dear Sir,**

**RE: RFP For: Independent Technical Expert for the Urban Renewal and Redevelopment of Old Estates Within Mombasa County through Joint Venture Partnership.**

I/We hereby confirm that we, the Bidder (along with other members in case of consortium, constitution of which has been described in the Proposal), satisfy the terms and conditions laid down in the RFP document.

I/We have agreed that …………………………….. (Insert Bidder's name) will act as the Lead Member of our consortium.

I/We have agreed that ………………………………………. (Insert individual's name) will act as our Authorised Representative / will act as the Authorised Representative of the consortium on our behalf and has been duly authorized to submit our Proposal. Further, the authorised signatory is vested with requisite powers to furnish such proposal and all other documents, information or communication and authenticate the same.

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of ………………….

*1Please strike out whichever is not applicable*

### Form 4 - Power of Attorney

Know all men by these presents, we, (name of Firm and address of the registered office) do hereby constitute, nominate, appoint and authorise Mr / Ms and presently residing at …………………………………….**,** who is presently a principal with us and holding the position of ………………………………….. as our true and lawful attorney (hereinafter referred to as the "**Authorised Representative**") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Proposal for and selection as the Consultant, the Independent Technical Expert, for the Urban Renewal and Redevelopment of Old Estates Within Mombasa County through Joint Venture Partnership, including but not limited to signing and submission of all applications, proposals and other documents and writings, participating in pre‐bid and other conferences and providing information/ responses to the County, representing us in all matters before the County, signing and execution of all contracts and undertakings consequent to acceptance of our proposal and generally dealing with the County in all matters in connection with or relating to or arising out of our Proposal for the said Project and/or upon award thereof to us till the entering into of the Agreement with the County.

AND, we do hereby agree to ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Authorised Representative pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Authorised Representative in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, …………….. THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ……………….. DAY OF …………….., 2018.

For ………………………… (Signature, name, designation and address)

Witnesses:

1.

2.

Notarised Accepted

………………………

(Signature, name, designation and address of the Attorney)

*Note:*

*The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is required the same should be under common seal affixed in accordance with the required procedure.*

### Form 5 - Financial Capacity of the Bidder

*(Refer Clause 2.2.2(C))*

|  |  |  |
| --- | --- | --- |
| S. No. | Financial Year | Annual Revenue (Ksh or US$) crores) |
| 1. |  |  |
| 2. |  |  |
| 3. |  |  |
| Certificate from the Statutory AuditorThis is to certify that …………………………… (name of the Bidder) has received the payments shown above against the respective years on account of professional fees.Name of the audit firm: Seal of the audit firm Date:(Signature, name and designation of the authorised signatory) |

* In case the Bidder does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Bidder.
* **Note:** The Bidder has the option of submitting Audited Financial Statements for the last three financial years.

### Form 6 - Particulars of Key Personnel

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| S. No. | Designation of Key Personnel | Name | Educational Qualification | Length ofProfessional Experience | Present Employment | No. ofEligible Assignments |
| Name of Firm | Employed Since |
| 1.2.3.4.5.6. |  |  |  |  |  |  |  |

* Refer to Form 9 of Appendix I - Experience of Key Personnel

### Form 7 - Proposed Methodology and Work Plan

The proposed methodology and work plan shall be described as follows:

1. Understanding of TOR (not more than two pages)

The Bidder shall clearly state its understanding of the TOR and also highlight its important aspects. The Bidder may supplement various requirements of the TOR and also make precise suggestions if it considers this would bring more clarity and assist in achieving the objectives laid down in the TOR.

1. Methodology and Work Plan (not more than three pages)

The Bidder will submit its methodology for carrying out this assignment, outlining its approach toward achieving the Objectives laid down in the TOR. The Bidder will submit a brief write up on its proposed team and organisation of Personnel explaining how different areas of expertise needed for this assignment have been fully covered by its proposal. In case the Bidder is a consortium, it should specify how the expertise of each firm is proposed to be utilised for this assignment. The Bidder should specify the sequence and locations of important activities, and provide a quality assurance plan for carrying out the Consultancy Services.

**Note:** Marks will be deducted for writing lengthy and out of context responses.

### Form 8 - Abstract of Eligible Assignments of the Bidder

*(Refer Clauses 3.1 and 3.3)*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **S.****No** | **Name of Project** | **Name of Client** | **Estimated capital cost of Project (in Ksh.)** | **Payment of professional fees received by the Bidder (in Ksh.)** |
| 1 |  |  |  |  |
| 2 |  |  |  |  |
| 3 |  |  |  |  |
| 4 |  |  |  |  |

* The Bidder should provide details of only those projects that have been undertaken by it under its own name.
* The names and chronology of Eligible Projects included here should conform to the project‐ wise details submitted in Form‐10 of Appendix‐I.

###

### Form 9 - Certificate from the Statutory Auditor

This is to certify that the information contained in Column 5 above is correct as per the accounts of the Bidder and/ or the clients.

Name of the audit firm: Seal of the audit firm Date:

(Signature, name and designation of the authorised signatory)

* In case the Bidder does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Bidder.

**Note: (a)** The Bidder may attach separate sheets to provide brief particulars of other relevant experience of the Bidder.

 (**b)** The has the option of submitting letters of award , progress reports and completion certificates where applicable for the said eligible projects undertaken.

### Form 10 - Eligible Assignments of Bidder

*(Refer Clause 3.1 and 3.3)*

|  |  |
| --- | --- |
| Name of Bidder: |  |
| Name of the Project: |  |
| Other particulars |  |
| Description of services performed by the Bidder: |  |
| Name of client and Address:(Indicate whether public or private entity) |  |
| Name and telephone no. of client's representative: |  |
| Estimated capital cost of Project (in Ksh. Or US$): |  |
| Payment received by the Bidder (in Ksh. or US$): |  |
| Start date and finish date of the services (month/ year): |  |
| Brief description of the Project: |

**Notes:**

1. Use separate sheet for each Eligible Project.
2. The Bidder may attach separate sheets to provide brief particulars of other relevant experience of the Bidder.

### Form 11 - Eligible Assignments of Key Personnel

*(Refer Clause 3.1 and 3.3)*

|  |  |
| --- | --- |
| Name of Key Personnel: |  |
| Designation of Key Personnel: |  |
| Name of the Project: |  |
| Other particulars |  |
| Name of Consulting Firm where employed: |  |
| Description of services performed by the Key Personnel (including designation): |  |
| Name of client and Address: (indicate whether public or private) |  |
| Name and telephone no. of client's representative: |  |
| Estimated capital cost of the Project (in Ksh. or US$ million): |  |
| Start date and finish date of the services (month/ year): |  |
| Brief description of the Project: |
| It is certified that the aforesaid information is true and correct to the best of my knowledge and belief.(Signature and name of Key Personnel) |

**Notes:**

1. Use separate sheet for each Eligible Project.
2. The Bidder may attach separate sheets to provide brief particulars of other relevant experience of the Key Personnel.

### Form 12 - Curriculum Vitae (CV) of Key Personnel

1. Proposed Position:
2. Name of Personnel:
3. Date of Birth:
4. Nationality:
5. Educational Qualifications:
6. Employment Record:

(Starting with present position, list in reverse order every employment held.)

1. List of projects on which the Personnel has worked, Name of project and Description of responsibilities
2. Details of the current assignment and the time duration for which services are required for the current assignment.

Certification:

* 1. I am willing to work on the Project and I will be available for entire duration of the Project assignment as required.
	2. I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications and my experience.

(Signature and name of the Key Personnel)

(Signature and name of the authorised signatory of the Bidder)

**Notes:**

1. Use separate form for each Key Personnel
2. The names and chronology of assignments included here should conform to the project‐wise details submitted in Form‐8 of Appendix‐I.
3. Each page of the CV shall be signed in ink by both the Personnel concerned and by the Authorised Representative of the Bidder firm along with the seal of the firm. Photocopies will not be considered for evaluation.

### Form 13 - Proposal for Sub‐Consultant(s)

|  |  |
| --- | --- |
| 1. Details of the Firm |  |
| Firm's Name, Address and Telephone |  |
| Name and Telephone No. of the Contact Person |  |
| Fields of Expertise |  |
| No. of Years in business in the above Fields |  |
| 2. Services that are proposed to be sub contracted: |
| 3. Person who will lead the Sub‐Consultant Name:Designation:Telephone No: Email: |
| 4. Details of Firm's previous experience |
| Name of Work | Name, address and telephone no. of Client | Total Value of Services Performed | Duration of Services | Date ofCompletionof Services |
| 1.2.3. |  |  |  |  |

(Signature and name of the authorised signatory)

**Notes:**

1. The Proposal for Sub‐Consultant(s) shall be accompanied by the details specified in Forms 12 and 13 of Appendix‐I.
2. Use separate form for each Sub‐Consultant

### APPENDIX II - FINANCIAL PROPOSAL

### Form 1 - Covering Letter

(On Bidder's letter head)

(Date and Reference)

To,

Director of Supply Chain Management,

County Government of Mombasa,

P.O. Box 80133 – 80100

Mombasa

 Dear Sir,

**RE: Appointment of Independent Technical Expert for the Urban Renewal and Redevelopment of Old Estates within Mombasa County through Joint Venture Partnership.**

I/We, …………………………………….. (Bidder's name) herewith enclose the Financial Proposal for selection of my/our firm as Consultant for above.

I/We agree that this offer shall remain valid for a period of 90 (ninety) days from the Proposal Due Date or such further period as may be mutually agreed upon.

Yours faithfully,

(Signature, name and designation of the authorised signatory)

**Note:** The Financial Proposal is to be submitted strictly as per forms given in the RFP.

### Form 2 - Financial Proposal

|  |  |  |
| --- | --- | --- |
| **Item No.** | **Description** | **Percentage (%)** |
| A. | **PROFESSIONAL FEES** (Expressed as a % of the estimated total cost of the project).) |  |
|  | **Notes 1:**Professional Fees shall be all inclusive and shall include ALL the other consultants’ fees in the case of a consortium.***The Professional Fees should take into account the fees/ charges as guided by each professional body governing each profession subject to Negotiation.*** The fees are **EXCLUSIVE** of VAT |  |
| B. | **DISBURSEMENTS AND REIMBURSIBLES** (This will be covered in the contract agreement ) |  |
|  | **Notes 3:**The Financial Evaluation as outlined in Clause 3.6.3 shall be based on The Percentage Professional Fees as submitted in A above. All payments shall be made in Kenya Shillings and shall be subject to applicable Kenyan laws on Value Added Tax and Withholding Tax. |  |