

Kizingo Estate



COUNTY GOVERNMENT OF MOMBASA

TENDER NO. CGM/PRO/T/006/2021-2022

REQUEST FOR PROPOSAL FOR URBAN RENEWAL AND REDEVELOPMENT OF OLD ESTATES WITHIN MOMBASA COUNTY THROUGH JOINT VENTURE PARTNERSHIP; LOT NO. 12- KIZINGO ESTATE

TENDER DOCUMENT

THE COUNTY SECRETARY AND HEAD OF PUBLIC

SERVICE COUNTY GOVERNMENT OF MOMBASA

P.O. BOX 390440 - 80100

MOMBASA.

Email: countysecretary@mombasa.

go.ke

FEBRUARY 2022

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SECTION 1 –REQUEST FOR PROPOSAL (RFP)

Date: 3rd February 2022

Reference No.: TENDER NO. CGM/PRO/T/006/2021-2022

Name of Assignment: REQUEST FOR PROPOSAL FOR URBAN RENEWAL AND REDEVELOPMENT OF OLD ESTATES WITHIN MOMBASA COUNTY THROUGH JOINT VENTURE PARTNERSHIP-LOT NO. 12- KIZINGO ESTATE

1. The County Government of Mombasa now invites sealed tenders from eligible bidders for a **REQUEST FOR PROPOSAL FOR URBAN RENEWAL AND REDEVELOPMENT OF OLD ESTATES WITHIN MOMBASA COUNTY THROUGH JOINT VENTURE PARTNERSHIP-LOT NO. 12- KIZINGO ESTATE**
2. Tendering will be conducted through the National Competitive (NCB) Bidding procedures specified in the Public Procurement and Asset Disposal Act, 2015 and is open to all Tenderers as defined in the Act.
3. A complete set of bidding documents can be downloaded from the county website **www.mombasa.go.ke** at no fee
4. Tender security shall be **shall not be applicable**.
5. Bidders are advised to regularly visit the County Government of Mombasa website to obtain any additional information/addendum on the tender. **All addenda/additional information on the tender shall be posted on the website as they become available.**
6. Completed Tender Documents in plain, sealed envelopes bearing ONLY the Tender Number and its description, and without bearing any name or mark, whatsoever to indicate the identity of the sender must be deposited at the **Tender Box located at the County Assembly Hall ground floor next to the main office, Treasury Square, Mombasa to reach him not later than 17th February 2022**
7. Bulky tenders shall be submitted at the office of **Director of Procurement & Supplies located on the 2nd floor of County Assembly Building BEFORE 17th February 2022 EAST AFRICAN TIME, ON 1200HRS on 17th February 2022** to be addressed as shown below.

TENDER NO.: CGM/PRO/T/006/ 2021-2022

TENDER NAME: REQUEST FOR PROPOSAL FOR URBAN RENEWAL AND REDEVELOPMENT OF OLD ESTATES WITHIN MOMBASA

**COUNTY THROUGH JOINT VENTURE PARTNERSHIP-LOT NO.
12- KIZINGO ESTATE**

8. “DO NOT OPEN BEFORE 1200 HOURS ON 17th February 2022”

Addressed to:

**THE COUNTY SECRETARY,
COUNTY GOVERNMENT OF MOMBASA,
P.O BOX 390440 – 80100,
MOMBASA.**

9. Tenders shall be publicly opened immediately thereafter in the presence of bidders/representatives who choose to attend the opening process at 1200 Hrs. in the Finance Boardroom, County Assembly Hall 2nd Floor or where directed by the County Secretary.
10. Prices quoted should be inclusive of all taxes and delivery and must be in Kenya Shillings shall remain valid for 120 days from the closing date of the tender.
11. Canvassing or lobbying for the tender shall lead to automatic disqualification.

AG. DIRECTOR SUPPLY CHAIN MANAGEMENT.

FOR: COUNTY SECRETARY.

COUNTY GOVERNMENT OF MOMBASA.

SECTION 2. INSTRUCTIONS TO BIDDERS AND DATA SHEET

Section 2(a). Instructions to Bidders (ITC)

A. DISCLAIMER

The County Government of Mombasa (CGM) has taken adequate care in the preparation of this Request for Proposal (RFP). Nevertheless, the Bidder should satisfy itself that the RFP is complete in all respects.

Neither CGM, nor its employees, consultants, advisors accept any liability or responsibility for the accuracy or completeness of, nor make any representation or warranty – express or implied, with respect to the information contained in the RFP, or on which the RFP is based, or any other information or representations supplied or made in connection with the Selection Process.

Neither CGM, nor its employees, consultants or advisors will have any liability to any Bidder or any other person under any law, statute, rules or regulations or otherwise for any loss, expense or damage which may arise from or be incurred or suffered in connection with any information contained in this RFP, the award of the Project, the information and any other information supplied by or on behalf of CGM or their employees, any consultants or otherwise arising in any way from the selection process for the Project.

The RFP does not address concerns relating to diverse investment objectives, financial situation and particular needs of each party. The RFP is not intended to provide the basis for any investment decision and each prospective Bidder must make its / their own independent assessment in respect of various aspects of the feasibilities of the Project. No person has been authorized by CGM to give any information or to make any representation not contained in the RFP document

CGM or its authorized officers / representatives / advisors reserve the right, without prior notice, to change the procedure for the selection of the Successful Bidder or terminate discussions and the delivery of information at any time before the signing of any agreement for the Project, without assigning reasons thereof.

CGM reserves the right to reject any or all of the Bids submitted in response to the RFP at any stage without assigning any reasons whatsoever.

CGM reserves the right to change any or all of the provisions of the RFP. Such changes will be intimated to all the Bidders.

CGM reserves the right to change, modify, add to or alter the selection process including adding other parameters to the evaluation criteria. Any change in the selection process shall be communicated to all Bidders.

B. GENERAL PROVISIONS

1. Meanings/Definitions

The following terms used in these Bid Documents shall have the meaning given to them unless otherwise defined herein below:

Bank guarantee; shall mean a guarantee from a reputable bank duly licensed by the Central Bank of Kenya to carry out banking business in Kenya.

Bid; shall mean the proposal containing the ‘Mandatory Requirements’, ‘Technical Proposal’ and ‘Financial Proposal’ as submitted by a Bidder in response to this RFP Document.

Bidder; shall mean the Bidding Entity or Bidding Consortium submitting a bid for this Project.

Bidding Entity; shall mean a single entity (Sole Proprietorship / Private Limited Company) or a partnership firm submitting a bid for the Project.

Bidding Consortium; shall mean a group of bidding entities jointly submitting a bid for the Project.

Bid Documents; shall mean this Request for Proposal (RFP) together with all its attached Annexes and Standard Forms, Architectural and Engineering drawings.

Bid Security; shall have a meaning as referred to in Section 3.12 of this RFP.

Bid Submission Deadline; shall mean the final date and time for the Bidders to submit their Bids as noted in Annex A (Appendix to Instructions to Bidders).

Bid Validity Period; shall mean the period during which Bids must remain valid as determined under Annex A (Appendix to Instructions to Bidders).

CGM; shall mean the County Government of Mombasa.

Clause; a clause of these Bid Documents.

Consortium; each entity in the Bidding Consortium shall be member referred to as a “Consortium Member”.

Contract Period; shall mean 36 months or any other period agreed between the two Parties and defined in the contract Agreement to be signed by both parties.

Contracting Authority; shall mean the County Government of Mombasa (CGM).

Development Value; shall mean the development value offered by the Bidder in the Financial Proposal which shall reflect the total sale value of all the units to be developed under the project.

Development Partner; shall mean the Successful Bidder that offers the best evaluated technical and financial bid and which shall by itself or through a Special Purpose Vehicle enter into a Joint Venture Agreement with CGM to develop the Project.

Financial Proposal; shall mean the Financial bid as submitted by the Bidder as per the format specified under Section VI in the Request for Proposal.

JBA; means the Joint Bidding Agreement outlined in Standard Form VIII to be entered into among the members forming the Bidding Consortium.

JVA; means the Joint Venture Agreement to be entered into by CGM and the Development Partner. “Joint Venture Agreement”, “Contract” and “Development Contract” are synonymous.

Lead Consortium Member (LCM); shall mean the Lead Consortium Member which shall be vested with the prime responsibility of developing the Project.

Letter of Offer (LOA); shall mean the letter issued by CGM to the Successful Bidder and shall be as per terms mentioned in Clause 3.25

Project Name; shall mean the Urban Renewal and Redevelopment of Old Estates within Mombasa County through Joint Venture Partnership. Lot No. 12 – Kizingo Estate.

Project Facilities; shall mean collectively all the facilities to be developed by the Development Partner at the Project site in accordance with provisions of the Joint Venture Agreement.

Project Site; shall mean the parcel of land at Kizingo Estate whose site Cadastral Map is as attached in Section VIII.

RFP; means this Request for Proposal Document.

Successful Bidder; shall mean the Successful Bidding Consortium or Bidding entity that attains the highest aggregated score in their technical and financial bids.

Technical Proposal; shall mean the Technical Bid as submitted by the Bidder as per the format specified under Section V in the Request for Proposal.

Transaction Advisors; means the Consulting firm appointed by CGM to offer advisory services regarding the project, prepare the bid documents and all the transaction agreements related to the project.

2. Introduction

The County Government of Mombasa (CGM) (the “Contracting Authority”) in line with its responsibility for urban

management as vested to it under the Urban Areas and Cities Act, 2011 intends to undertake an aggressive programme aimed at urban regeneration and renewal of its old estates within the County. This will ensure that the residents of Mombasa County will have access to sound and affordable modern housing with upgraded and greatly renewed support infrastructure. This being a fairly capital intensive undertaking, the County plans to implement the Project through joint venture partnerships with private investors.

The Investors will be expected to bring in the financing required to do the construction while the County Government will avail the land where the development will be undertaken. The Bidders will be expected to indicate in their bids the price they shall expect to be paid for each unit developed, upon which the County will then add a mark up to determine the sale price at which the houses will be offered to members of the Public to buy.

The designs of the estate shall be prepared by the Bidder and the Successful Bidder will be required, by way of novation, to adopt them to implement the Project. Bidders may propose design changes but subject to the Contracting Authority's approval.

The Project involves the development of a new Estate and redevelopment of 6 old Estates into modern housing estates with improved housing facilities and infrastructure to meet the rising demand for housing units in the County. These Estates are as follows and their Tenders have already been advertised:

- **Lot No. 1** - Khadija Estate;
- **Lot No. 5** – Tudor Estate;
- **Lot No. 6** – Mzizima Estate;
- **Lot No. 7** – Buxton Estate;
- **Lot No. 10** – Tom Mboya Estate;
- **Lot No. 11** – Kaa Chonjo Estate;
- **Lot No. 12** – Kizingo Estate;

The above sites currently have the following existing Housing Units:

Estate	No. of Existing Housing Units	Acreage
Khadija Estate	100	9.137
Tudor Estate	900	21
Buxton Estate	520	14
Tom Mboya Estate	32	1.5
Kaa Chonjo Estate	100	18
Mzizima Estate	113	5.787
Kizingo Estate	6	0.326

The County therefore seeks development partners from the Construction Industry, Banking Industry, Pension Funds / Schemes, Real Estate Developers and other investors to participate in this project. Private parties can participate either as single entities or as Consortiums. Each of the five (5) Sites mentioned above will constitute a distinct contract for which separate Bids should be submitted. A Bidder can bid for more than one Lot.

Annex B herein shall only be relied upon where the bidder is providing the designs for the estate.

3. PROJECT IMPLEMENTATION STRATEGY

The project will be implemented on a Joint Venture arrangement basis. The formation of the Joint Venture (JV) partnership is contemplated under Section 6 (5) as read together with Section 74 of the County Governments Act No. 17 of 2012, Laws of Kenya.

Private investors have the opportunity to enjoy relatively high returns expected from the project as the current prohibitive cost of land in Mombasa County will not hinder their participation. The relationship between the CGM and the Development Partner(s) shall be governed by a Joint Venture Agreement and Parties shall appoint an Independent Technical expert to monitor the implementation of each party's obligations under the partnership.

Project Implementation Strategy

1. The Bidders will be expected to provide their best design solutions for the site and offer competitive prices for developing the units.
2. The bidding parameters will be based on the Technical viability of the bidders proposal and the prices a bidder will quote for developing each unit constructed and the number and value of the developed units that the bidder proposes to grant to CGM out of the project.
3. The Contracting Authority will then proceed to enter into a Joint Venture Agreement with the Successful Bidder to undertake the development of the Project.
4. Existing Tenants (if any) will each be allocated a newly built housing unit and given an opportunity to pay up for it over a period of time.

4. JOINT VENTURE STRUCTURE

Both parties shall enter into a joint venture relationship governed by a Joint Venture Agreement. In this JV relationship, CGM will grant a lease of the land to the Development Partner or to a Special Purpose

Vehicle established by members of the successful Consortium for the Construction of the units.

On their part, the Development Partner shall be expected to raise and contribute the required development finances and appoint Engineering Procurement and Construction (EPC) Contractors to build the housing units together with the other required facilities.

The housing units developed shall have subleases or sectional titles that will securitize any finances from the private partner's lenders. Both the County Government and the JV partner shall engage the services of an Independent Technical Expert who shall be a firm of Construction Professionals to monitor the performance by each party of their obligations. The parties shall also agree on the appointment of a Independent Financial Expert to have an audit role over the financial dealings of the parties in the joint venture and be a custodian of security documents (if needed). Fees for the Independent Technical Expert and Independent Financial Expert shall be met equally by each Party. The Technical Expert appointed to oversee the implementation of the Project shall be designated as the "Project Manager".

The Development Partner either by itself or through a Special Purpose Vehicle comprising of the consortium members submitting the bid, will be allowed to charge the subleases in respect of the units that it is entitled to get from the development and such funds shall only be used for the purposes of developing the project and related facilities.

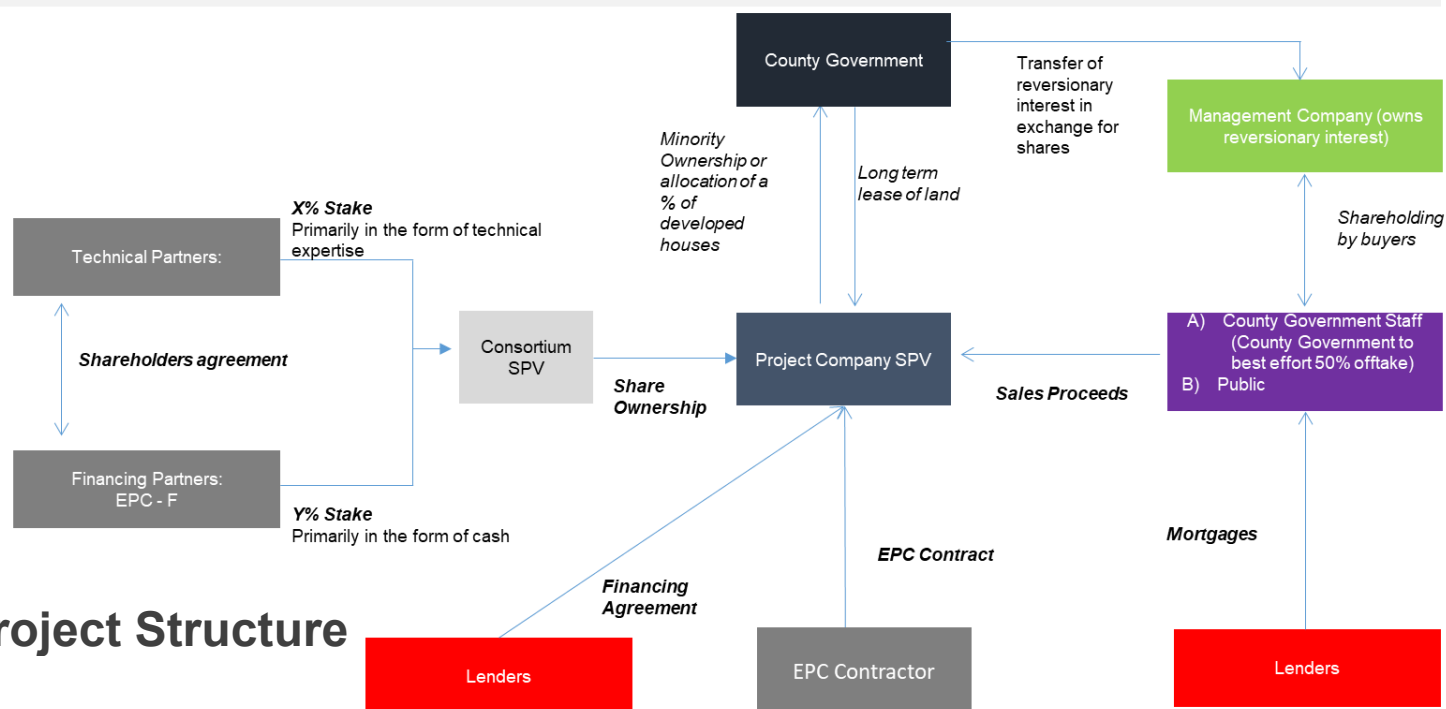
The sub-leases or sectional titles for the developed units will only be transferred to the eventual house buyers upon payment of the full purchase price of the unit.

Purchasers intending to purchase the houses through mortgages shall make their mortgage repayments into their respective mortgage companies who will then be expected to remit the full purchase price into the Developer. The Mortgage Companies offering Mortgages will be entitled to hold the sub-leases as security for tenants who purchase the houses in this manner.

The figure below shows the Joint Venture Structure.

Project Structure

Partnering with county government to offer affordable housing to staff and the public



JUNE 2019

5. EXISTING TENANTS

Kizingo Site

The site currently has a total of six (6) three – bed roomed houses. There is no sufficient undeveloped open space where the Development Partner may commence the construction works of the new housing units. There may be need to develop in phases to minimize the need to move or relocate the existing tenants all at once.

In the alternative, bidders will be required to provide in their bid price, relocation rent equivalent to the market rentals for similar units within the project site for a minimum period of 24 months which shall be paid as a lump sum to each tenant to relocate as the construction is undertaken. Those tenants who shall relocate to other houses will be given first priority to occupy the newly constructed and finished housing units. The relocation rent shall be negotiated between the County Government of Mombasa and the existing tenants, which aforesaid amount shall be based on the prevailing market rent rates on the estate being developed.

The County Government of Mombasa (CGM) shall have the cost of the housing units constructed for the existing Tenants deducted from its share of Allocated Housing Units as shall be agreed between the County and the Development Partner. These tenants will be expected to repay the County Government through an affordable scheme to be agreed between the Tenant and the County Government.

6. MANAGEMENT COMPANY

The Development Partner will be required to register the Sectional Plans under the **Sectional Properties Act No. 21 of 2020**, or as amended, with the aim of dividing the buildings into units to be owned by individual proprietors and common property to be owned by proprietors of the units as Tenants in Common and to provide for the use and management of the units and common Property and for connected Purposes.

The Development Partner will facilitate the formation of a Management Company to be incorporated under the Sectional Properties Act which shall manage the property on behalf of all the purchasers. The Management Company shall consist of all those persons who are the owners of units in the parcel the Sectional Plan relates.

7. REPRESENTATIVES OF THE PARTIES

CONTRACTING AUTHORITY'S REPRESENTATIVE (S)

The Contracting Authority / CGM shall have the right to appoint one or more representative(s) to carry out the following:

- i. Inspect the performance of the Project in all its stages for the Contract duration; and
- ii. Have authority to act on its behalf and issue binding decisions under this Contract within his / her given authority.

The CGM shall notify the Development Partner of the name(s) of CGM's Representative(s) and their delegated authorities and powers.

The identity of the person or its replacement appointed by CGM to act as CGM's Representative will be made in a separate written notification to the Development Partner Ten (10) days prior to their appointment or replacement.

DEVELOPMENT PARTNER'S REPRESENTATIVE (S)

The Development Partner shall have the right to appoint one or more representative(s) with the authority to act on its behalf and issue binding decisions under this Contract within his/her given authority. The Development Partner shall notify CGM of the name(s) of any Development Partner Representative(s) and their delegated authorities and powers. The identity of the person or its replacement appointed by Development Partner to act as Development Partner Representative shall be made in a separate written notification to CGM Ten (10) days prior to their appointment or replacement.

8. Conflict of Interest

- 3.1 The bidder is required to provide professional, objective, and impartial advice, always holding the Procuring Entity's interest's paramount, strictly avoiding conflicts with other assignments or its own corporate interests and acting without any consideration for future work.
- 3.2 The bidder has an obligation to disclose to the Procuring Entity any situation of actual or potential conflict that impacts its capacity to serve the best interest of the Procuring Entity. Failure to disclose such situations may lead to the disqualification of the bidder or the termination of its Contract.
- 3.3 Without limitation on the generality of the foregoing, and unless stated otherwise in the Data Sheet, the bidders shall not be hired under the circumstances set forth below:

i) Conflicting Activities

Conflict between consulting activities and procurement of goods, works or non-consulting services: a firm that has been engaged by the Procuring Entity to provide goods, works, or non-consulting services for a project, or any of its Affiliates, shall be disqualified from providing consulting services resulting from or directly related to those goods, works, or non-consulting services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, or any of its Affiliates, shall be disqualified from subsequently providing goods or works or non-consulting services resulting from or directly related to the consulting services for such preparation or implementation.

ii) Conflicting Assignments

Conflict among consulting assignments: A Bidder (including its Experts and Sub-Bidders) or any of its Affiliates shall not be hired for any assignment that, by its nature, may conflict with another assignment of the bidder for the same or for another Procuring Entity.

iii) Conflicting Relationships

Relationship with the Procuring Entity's staff: a Bidder (including its Experts and Sub-Bidders) that has a close business or personal relationship with senior management or professional staff of the Procuring Entity who has the ability to influence the bidding process and: (i) are directly or indirectly involved in the preparation of the Terms of Reference for the assignment, (ii) the selection process for the Contract, or (iii) the supervision of the Contract, may not be awarded a Contract, unless the conflict stemming from such relationship has been resolved in a manner that determines there is no conflict to affect this selection process.

iv) Others

Any other types of conflicting relationships as indicated in the Data Sheet.

9. Unfair Competitive Advantage

- 4.1 Fairness and transparency in the selection process require that the bidders or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the assignment in question. To that end, the Procuring Entity shall indicate in the Data Sheet and make available to all Bidders together with this RFP all information that would in that respect give such Bidder any unfair competitive advantage over competing Bidders.

10. Corrupt and Fraudulent Practices

- 5.1 CGM requires that Bidders observe the highest standards of ethics during the procurement process and execution of contract. A Bidder shall sign a declaration form that it has not and will not be involved in any corrupt and fraudulent practices. Any Bidder that shall be involved in corrupt or fraudulent practices will be disqualified from the procurement process and shall be guilty of an offence under the Public Procurement and Disposal Act Chapter 412C of the Laws of Kenya.
- 5.2 Collusive practices
- 5.2 The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding

collusive practices in contracting. Any Bidder found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Bidders shall be required to complete and sign the “Certificate of Independent Proposal Determination” annexed to the Proposal Form.

- 5.3 In further pursuance of this policy, Bidders shall permit and shall cause their agents (where declared or not), subcontractors, sub-Bidders, service providers, suppliers, and their personnel, to permit the Government and its agencies to inspect all accounts, records and other documents relating to any short-listing process, Proposal submission, and contract performance (in the case of award), and to have them audited by auditors, investigators or compliance officers.

11. Eligibility

6.1 Mandatory Requirements

Bidders are **Reminded To Take Note** that only bids meeting the following mandatory requirements will be evaluated. The following are mandatory requirements;

- i. Bid Security for the Project in accordance with Annex A (Appendix to Instructions to Bidders) and Standard Form IX.
- ii. A covering letter in accordance with Standard Form I.
- iii. The Bidders Information Sheet in Accordance with Standard Form II.
- iv. In case of a Bidding Consortium (BC), the Power of Attorney for designating the Lead Consortium Member in accordance with Standard Form V.
- v. Power of Attorney to the Bid Signatory in accordance with Standard Form VI.
- vi. The Certificate of Bidder’s visit to site in accordance with Standard Form IV.
- vii. Format of undertaking in accordance with Standard Form VII.
- viii. In case of a Bidding Consortium (BC), the Joint Bidding Agreement in accordance with Standard Form VIII.
- ix. Bidders must prove that they have undertaken at least three project(s) with a cumulative number of at least 2,000 housing units of similar nature on a JV, single Entity or any other partnership agreements.
- x. Demonstrate the ability to put together a project management team to deliver the project within a maximum period of 36 months. (Provide CV’s and Certificates, both professional and educational, of key personnel to be involved in the project and their roles).
- xi. Bidders shall demonstrate ability to raise equity for deployment of the Project to the extent of **USD 50 Million**. In case of consortium, the Bidder has to demonstrate the ability of each member’s contributions towards the above amount and demonstrate the equity available for deployment towards the project.
- xii. Demonstrate capacity and ability to raise funds for the project to the tune of **USD 100 Million** besides the minimum equity contribution stated in item (k) above.
- xiii. Demonstrate a Sound Net worth of the entity of **USD 65 Million**
- xiv. The requisite number of copies of Bid documents as stipulated in the RFP.
- xv. The Bid Documents should be submitted properly bound, filled and page numbered/serialized.

6.2 Bidding Consortium:

Bids submitted by a bidding consortium shall comply with the following requirements;

- a. A copy of the Joint Bidding Agreement entered into by the bidding consortium partners in the format outlined in Standard Form VIII shall be submitted with the bid
- b. One of the partners shall be nominated as being the Lead Consortium Member and who shall be authorized to give and receive instructions for and on behalf of any and all the partners of the joint venture, and the execution of the contract;
- c. All partners of the Bidding Consortium shall be liable jointly and severally for the execution of the contract in accordance with the contract terms.

6.3 Constituent Parts of the Mandatory Requirements

Mandatory Requirements	
Part 1	A covering letter in accordance with Standard Form I
Part 2	A Bid Security for the Project in accordance with Annex A (Appendix to Instructions to Bidders and Standard Form IX
Part 3	A Power of Attorney in accordance with Clause 3.2.1 and Standard Form VI
Part 4	The Bidder's information Sheet in accordance with standard Form II
Part 5	In case of a Bidding Consortium (BC), the Information Sheet for each BC Party in accordance with Standard Form III
Part 6	The Certificate of Bidder's visit to site in accordance with Standard Form IV
Part 7	In case of a Bidding Consortium (BC), the Power of Attorney for designating the Lead Consortium Member in accordance with Standard Form V
Part 8	An undertaking in accordance with Standard Form VII
Part 9	In case of a Bidding Consortium (BC), the Joint Bidding Agreement in accordance with Standard Form VIII.
Part 10	Bidders must prove that they have undertaken at least three project(s) with a cumulative number of at least 2,000 housing units of similar nature on a JV, single Entity or any other partnership agreements.
Part 11	Demonstrate the ability to put together a project management team to deliver the project within a maximum period of 36 months. (Provide CV's and Certificates, both professional and educational, of key personnel to be involved in the project and their roles).
Part 12	Bidders shall demonstrate ability to raise equity for deployment of the Project to the extent of USD 50 Million . In case of consortium, the Bidder has to demonstrate the ability of each member's contributions towards the above amount and demonstrate the equity available for deployment towards the project.

Part 13	Demonstrate capacity and ability to raise funds for the project to the tune of USD 100 Million besides the minimum equity contribution stated in item Part 12 above.
Part 14	Demonstrate a Sound Net worth of the entity of USD 65 Million
Part 15	The requisite number of copies stipulated in this RFP.
Part 16	The Bid Documents should be submitted properly bound, filled and page numbered/serialized.

Preparation of Proposals

12. General Considerations

- 7.1 In preparing the Proposal, the bidder is expected to examine the RFP in detail. Material deficiencies in providing the information requested in the RFP may result in rejection of the Proposal.

13. Cost of Preparation of Proposal

- 8.1 The bidder shall bear all costs associated with the preparation and submission of its Proposal, and the Procuring Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the selection process. The Procuring Entity is not bound to accept any proposal and reserves the right to annul the selection process at any time prior to Contract award, without there by incurring any liability to the bidder.

14. Language

- 9.1 The Proposal, as well as all correspondence and documents relating to the Proposal exchanged between the bidder and the Procuring Entity shall be written in the English language.

15. Documents Comprising the Proposal

- 10.1 The bid documents comprise the documents listed here below and are to be read together with any addendum issued in accordance with Clause 3.8 of these Instructions to Bidders. The bid document consists of six (6) main parts, namely:-

- a. SECTION II “INVITATION TO SUBMIT BID (S)”
- b. SECTION III “INSTRUCTIONS TO BIDDERS”
- c. SECTION IV “PROJECT OUTPUT SPECIFICATIONS”
- d. SECTION V “TECHNICAL PROPOSAL”
- e. SECTION VI “FINANCIAL PROPOSAL”
- f. SECTION VII “GENERAL OUTLINE OF THE CONDITIONS OF CONTRACT”

- 10.2 The Bidder is expected to examine carefully all instructions, conditions and forms in the bid document. Failure to comply with the requirements for bid submission will be at the Bidder’s risk. Pursuant to Clauses 3.2.1, 3.2.2 & 3.2.3 of Instructions to Bidders, bids which are not responsive to the requirements of the bid documents will be rejected.

- 10.3 All recipients of documents related to this bid for the purpose of submitting a bid (whether they submit a bid or not) shall treat the details of the documents as “Private and Confidential”.

16. Only One Proposal

- 11.1 The bidder (including the individual members of any Joint Venture) shall submit only one Proposal, either in its own name or as part of a Joint Venture in another Proposal. If a Bidder, including any Joint Venture member, submits or participates in more than one proposal, all such proposals shall be disqualified and rejected. This does not, however, preclude Sub-Bidder, or the bidder's staff from participating as Key Experts and Non-Key Experts in more than one Proposal when circumstances justify and if stated in the Data Sheet.
- 11.2 Members of a joint venture may not also make an individual Proposal, be a subcontractor in a separate proposal or be part of another joint venture for the purposes of the same Contract.
- 11.3 Should a Joint Venture subsequently win the Contract, it shall consider whether an application for exemption from the Competition Authority of Kenya is merited pursuant to Section 25 of the Competition Act 2010.

17. Proposal Validity**a. Proposal Validity Period**

- 12.1 The bid shall remain valid and open for acceptance for a period of Ninety (90) days from the date of Bid opening or from the extended date of Bid opening.

b. Extension of Validity Period

- 12.1 In exceptional circumstances prior to expiry of the original bid Validity period, CGM may request Bidders for a specified extension of the period of bid validity. The request and the responses thereto shall be made in writing or by email or facsimile. A Bidder may refuse the request without forfeiting the Bid Bond. A Bidder agreeing to the request will not be required nor permitted to modify its bid, but will be required to extend the validity of the Bid Bond correspondingly.

c. Substitution of Key Experts at Validity Extension

- 12.2 If any of the Key Experts become unavailable for the extended validity period, the bidder shall provide a written adequate justification and evidence satisfactory to the Procuring Entity together with the substitution request. In such case, a replacement Key Expert shall have equal or better qualifications and experience than those of the originally proposed Key Expert. The technical evaluations core, however, will remain to be based on the evaluation of the CV of the original Key Expert.
- 12.3 If the bidder fails to provide a substitute Key Expert with equal or better qualifications, or if the provided reasons for the replacement or justification are unacceptable to the Procuring Entity, such Proposal will be rejected.

d. Sub-Contracting

- 12.4 The bidder shall not subcontract the whole or part of the Services without reasonable justification and written approval of the Procuring Entity.

18. Clarification and Amendment of RFP

- 13.1 To assist in the examination, evaluation and comparison of bids, CGM may ask Bidders individually for clarification of their bids. The request for clarification and the response shall be in writing or by facsimile or telex, but no change in the price or substance of the bid shall be sought, offered or permitted EXCEPT as required to confirm the correction of arithmetical errors discovered by CGM during the evaluation of the bid.
- 13.2 No Bidder shall contact CGM on any matter relating to its bid from the time of the bid opening to the time the Contract is awarded. If the Bidder wishes to bring additional information to the notice of CGM, it shall do so in writing.

19. Preparation of Proposals–Specific Considerations

14.1 While preparing the Proposal, the bidder must give particular attention to the following:

- (a) If a Bidder considers that it may enhance its expertise for the assignment by associating with other Bidders in the form of a Joint Venture or as Sub-Bidders, it may do so on the condition that only one Proposal is submitted, in accordance with ITC 11. Above. A Bidder cannot associate with shortlisted Bidder(s). When associating with non-shortlisted/non-invited firms in the form of a joint venture or a sub-consultancy, the shortlisted/invited Bidder shall be a lead member. If shortlisted/invited Bidder associates with each other, any of them can be a lead member.
- (b) The Procuring Entity may indicate in the Data Sheet the estimated amount or Key Experts' time input (expressed in person-month), or the Procuring Entity's estimated total cost of the assignment, but not both. This estimate is indicative and the Proposal shall be based on the bidder's own estimates for the same. This clause shall not apply when using Fixed Budget selection method.
- (c) For assignments under the Fixed-Budget selection method, the estimated Key Experts' time input shall not be disclosed. Total available budget, with an indication whether it is inclusive or exclusive of taxes, is given in the Data Sheet, and the Financial Proposal shall not exceed this budget.
- d) Key Experts shall not appear in more than one proposal unless so allowed in the Data Sheet. Invited firms must confirm and ensure their Key experts do not appear in proposal of other invited firms, otherwise proposals with Key experts appearing in other proposals will be rejected.

20. Technical Proposal Format and Content

Constituent Parts of the Technical Bid	
Part 1	The Technical Bid submitted in accordance with Annex B (Technical Bid Requirements)

Technical Proposal Evaluation

The technical proposal shall constitute the following;

The Technical Proposal shall be evaluated and scored using a scale of 100 points allocated according to the quality, thoroughness and credibility of the Technical Proposal elements as defined in Annex B (Technical Bid Requirements). The available total points and relative weights for these elements are presented in the following table:

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 a weight of 40% in the overall aggregated score which will be calculated as below:

$$T_{\chi} = TS \times 40\%$$

Where:

TS is the Technical score obtained in Annex B; and

$T\chi$ is the weighted overall Technical Score

ANNEX B – MANDATORY AND ELIGIBILITY REQUIREMENTS

Mandatory and Eligibility Requirements Form		Yes	No
Part 1	A covering letter in accordance with Standard Form I		
Part 2	A Bid Security for the Project in accordance with Annex A (Appendix to Instructions to Bidders and Standard Form IX		
Part 3	A Power of Attorney in accordance with Clause 3.2.1 and Standard Form VI		
Part 4	The Bidder's information Sheet in accordance with standard Form II		
Part 5	In case of a Bidding Consortium (BC), the Information Sheet for each BC Party in accordance with Standard Form III		
Part 6	The Certificate of Bidder's visit to site in accordance with Standard Form IV		
Part 7	In case of a Bidding Consortium (BC), the Power of Attorney for designating the Lead Consortium Member in accordance with Standard Form V		
Part 8	An undertaking in accordance with Standard Form VII		
Part 9	In case of a Bidding Consortium (BC), the Joint Bidding Agreement in accordance with Standard Form VIII.		
Part 10	Bidders must prove that they have undertaken at least three project(s) with a cumulative number of at least 2,000 housing units on a Joint Venture, single Entity or any other partnership agreements.		
Part 11	Demonstrate the ability to put together a project management team to deliver the project within a maximum period of 36 months. (Provide CV's and Certificates, both professional and educational, of key personnel to be involved in the project and their roles).		
Part 12	Bidders shall demonstrate ability to raise equity for deployment of the Project to the extent of USD 50 Million . In case of consortium, the Bidder has to demonstrate the ability of each member's contributions towards the above amount and demonstrate the equity available for deployment towards the project.		

Part 13	Demonstrate capacity and ability to raise funds for the project to the tune of USD 100 Million besides the minimum equity contribution stated in item (k) above.		
Part 14	Demonstrate a Sound Net worth of the entity of USD 65 Million		
Part 15	The requisite number of copies stipulated in this RFP.		
Part 16	The Bid Documents should be submitted properly bound, filled and page numbered/serialised.		

ANNEX C – TECHNICAL BID REQUIREMENTS

Technical Bid Reference	Evaluation Elements	Sub-Percent (out of 100)	Notes
1.0	Architectural design concept and approach to the Site	30%	Demonstrates a coherent conceptual approach and orientation that meets the requirements of the CA. the design proposal will demonstrate the following: a) Clarity in presentation b) Design functionality c) Innovativeness d) Aesthetical values e) Site accessibility f) Environmental effectiveness g) Cost effectiveness h) “Green buildings” solutions
1.1	Design report detailing the functional content of the conceptual design	8%	Sufficient detail and adequate rationale is provided to support the proposed design in relation to: a) Net and Gross areas; b) Project planning; c) Design concepts and approach; d) Project environment; e) Functional design

1.2	Floor plans for individual housing units, commercial centre and/or any other communal facilities.	2%	Functional, accurate and complete drawings are provided and should comply with minimum area requirements specified in the Project Output Specifications.
1.3	Comprehensive Site Plan. To include Elevations and sections	4%	Accurate and complete drawings are provided and should provide reasonable building height and ceiling heights.
1.4	Exterior and interior perspectives	2%	Accurate and complete drawings that exhibit clear building volume and massing of buildings on site.
1.5	Landscape designs To include recreational green spaces	3%	Functional, accurate and complete drawings are provided.
1.6	Design for vehicular parking and drive ways and parking ratios preferably one parking space per unit	5%	Accurate and complete drawings should be provided specifying parking lot requirements and markings.

1.7	Innovative use of Key materials and schedule of finishes. Demonstrate use of maintenance free materials	5%	Detailed and accurate schedule provided.
1.8	Construction Works Program	5%	Detailed construction plans (text and drawings) is provided that includes: details of the proposed approach to commissioning; and Key phasing and decommissioning.
1.9	Construction works specifications	5%	Sufficiently detailed written description adequately addressing: a) construction method statement; b) Project management plan;

			c) impacts on existing engineering services and buildings; d) key materials and products; refurbishment within the overall construction; e) safety strategies; f) quality control; g) utilities and building services strategies
2.0	Schedule of Accommodation	5%	Bidder is to provide the detailed Schedule of Accommodation with all functional units in accordance with the requirements of the design and overall technical proposal

2.1	Proposed Structural design system	3%	Sufficiently detailed written description of the structural system to be provided. .
2.2	Electrical and electronic design system	3%	Sufficiently detailed written description provided.
2.3	Mechanical services Design system	3%	Sufficiently detailed written description provided.
2.4	Mobilization plans, construction Staff organization, and list of Project equipment	5%	Detailed mobilization plans, construction Staff organization, and list of Project equipment are provided.
2.5	Use of non-renewable resources and green technologies	2%	Accurate and complete drawings are provided.

2.6	Design Program	5%	Bidders are to provide an outline of design and construction programme for the completion of the construction works and commissioning of the Housing Units. This construction programme should detail key deliverables and a critical path graph (with use of Primavera - or equivalent - software). This timetable should demonstrate that the units required will be available and operational on the scheduled date.
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2.7	Project Management Team	5%	Bidders are to provide the Project Management Team Organization chart and CVs for the project Architectural firm, Quantity Surveying firm, Civil & Structural Engineering firm, Electrical and Mechanical Engineering firm, Construction Manager, Project Manager and Facilities Manager. Each project design team member should have a minimum experience of ten years and above in handling housing projects of similar size as the project
	Total	100%	

There are 100 maximum possible points. Any features that Bidders wish to include over and above CGM'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.

21. Financial Proposal

Financial Bid Form 1

Each Bidder shall submit a complete Financial Bid, by duly completing the forms provided in Annex C, D, E and F (Financial Bid Forms 1- 4), for the Project. The Bidders shall not amend or change the Financial Bid Forms, in any way whatsoever, other than for duly filling the required data. Any Bid which does include amendments or additions of whatsoever nature to the Financial Bid Forms shall be rejected.

The Financial Bid shall comprise the following documents:

Constituent Parts of the Financial Bid	
	The Project Financial Package in accordance with Annex C - Financial Bid Form 1.

Financial Bid	The Proposed Mortgage Facility to be offered to End Buyers in accordance with Annex D – Financial Bid Form 2.
	Marketing Plan in accordance with Annex E – Financial Bid Form 3.
	Total number of units to be allocated to CGM in accordance with Annex F – Financial Bid Form 4

The Bidder shall submit the above mentioned documents in accordance with the following conditions and instructions:

Financial Bid Form 1

In Financial Bid Form 1 (Annex C), the Bidder shall provide the number of units proposed to be developed for the Project, the Development value per unit in Kenya Shillings, and the Development value per Square Metre and the overall Total Development value.

Financial Bid Form 2

In Financial Bid Form 2 (Annex D), the Bidder shall provide the Mortgage Facility proposed to be offered to end buyers without reflecting any inflation rate adjustments.

Financial Bid Form 3

In Financial Bid Form 3 (Annex E), the Bidder shall provide the proposed Marketing Plan for the housing units.

Financial Bid Form 4

In Financial Bid Form 4 (Annex 4) the bidder shall provide the proposed total number of units to be allocated to CGM.

Memorandum of Understanding between the Bidder and the Lender(s)

Should the Bidder require financing for the Project from Lender(s), as part of the Financial Bid, the Bidder shall submit a signed MOU between the Bidder and the Lender(s) expressing the Lender's interest in financing the Project if the Bidder becomes the Successful Bidder.

Financial Bid Envelope

The Financial Bid (Forms 1, 2, 3 & 4) together with the MOU executed with the Lender(s) for financing of the Project shall be enclosed in separate envelopes with the following inscription: "Financial Bid for Project (Name and Lot No.)". All the Financial Bid envelopes for the Project shall then be enclosed in the Financial Bid Envelope in accordance with Clause 3.17 of the RFP Document.

Financial Bid Basic Conditions

- a. Any Financial Bid including any basis or conditions of the Financial Bid or any additional document of whatsoever nature other than those required under Section VI of this RFP

Document shall be rejected.

- b. Any Financial Bid including any conditions, provisions, restrictions, basis of Financial Bid calculations or assumptions of whatsoever nature presented in any form shall be rejected.
- c. Any Financial Bid including any alterations, amendments or changes in the Financial Bid Forms 1, 2 or 3 other than filling these forms as indicated, shall be rejected.
- d. In the event of any discrepancy between words and figures in the Financial Bid Forms, the amounts indicated in words shall prevail.

The Financial Bid shall be evaluated against four Financial Sections as follows:

- i. Project Financial Package as provided by the Bidders in Annex C – Financial Bid Form 1 (50 points)
- ii. Proposed End Buyer Mortgage Facility/ Tenant Purchase Scheme as provided by the Bidders in Annex D – Financial Bid Form 2 (15 points)
- iii. Proposed Marketing Plan as provided by the Bidders in Annex E – Financial Bid Form 3 (10 points)
- iv. Proposed total number of units to be allocated to the CGM (25 points)

Table 1

Financial Score Summary

Evaluation Attributes	Maximum Score	Bidder Score
Project Financial Package	50	
Proposed Mortgage Facility / Tenant Purchase Scheme	15	
Marketing Plan	10	
Total number of units to be allocated to the CGM	25	
Total Score	100	

ANNEX D- FINANCIAL BID FORM 1**(A) Number of proposed Units**

Unit Type	Number of Units Proposed
2 Bedroom	
3 Bedroom	
Total	

(B) Development value per Unit (Kshs)

Unit Type	Development value (Kshs)
2 BR	
3 BR	

(C) Development value per Square Metre and the Total development value

Development value per Square Metre	Total Development value (Kshs.)

NOTE:

Table A - Insert the number of Proposed Units to be Developed

Table B - Insert the Development value for Each Proposed Unit

Table C - Insert the Development value per Square Metre and indicate the Total Development value

ANNEX E - FINANCIAL BID FORM 2

Proposed Mortgage Facility/ Tenant Purchase Scheme

Proposed Mortgage Interest Rate/Tenant Purchase Scheme	Tenure (Years)

ANNEX F - FINANCIAL BID FORM 3

Marketing Plan including affirmative marketing and outreach to potential tenants

The Bidders shall be required to develop a marketing plan for the sale of the developed units. The Bidders shall provide information on how they intend to market the housing units to potential tenants. The Marketing Proposal shall be in the form of a written plan detailing the marketing strategies and operations of the Bidder.

ANNEX G – FINANCIAL BID FORM 4

The bidder shall be required to state the total number of units that they propose to allocate to the County Government of Mombasa. This shall cover the two bedrooms and three bedroom units.

TYPE OF UNITS TO ALLOCATED	NUMBER OF UNITS TO BE ALLOCATED
2 nd Bedroom Apartments	
3 rd Bedroom Apartments	
Total number of unit	

FINANCIAL EVALUATION CRITERIA**(A) Development value per Unit (Kshs) - 30 Points Maximum**

Unit Type	Development value (Kshs)	Total Score
2 BR	3.5 Million and Below	30
	Above 4.0 Million	20
3 BR	5 Million and Below	30
	Above 5 Million	20

(B) Development value per Square Metre and the Total development value - 15 Points Maximum

Development value per Square Metre	Total Score	Total Development value (Kshs.)
Between Kshs 50,000 - Kshs. 60,000	10	
Above Kshs. 60,000	5	

(C) Number of proposed Units - 5 points Maximum

Number of Units	Total Score
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Attained maximum optimum possible number of units with corresponding adequate parking per unit and adequate green areas	5
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d) Proposed Mortgage Facility / Tenant Purchase Scheme – 15 Points Maximum

Proposed Mortgage Interest Rate / Tenant Purchase Schemes	Tenure (Years)	Points
Interest Below 10%	20 Years and Above	15
Interest Above 10 % but Below 15%	10 - 15 Years	10
Interest Above 15%	Below 15 Years	5
Other Tenant Purchase Schemes	(Specify details)	TBD but shall not exceed 15 Points

E) Marketing Plan to sell the houses and outreach to Potential T.P buyers - 10 Points Maximum

- Failure to provide a marketing and outreach plan (0 points).
- Provided a general description of outreach to potential tenants/buyers (10 points).

F) TOTAL NUMBER OF UNITS TO BE ALLOCATED TO THE COUNTY GOVERNMENT OF MOMBASA (25 POINTS MAXIMUM)

TYPE OF UNITS TO ALLOCATED	NUMBER OF UNITS TO BE ALLOCATED	POINTS
2 nd Bedroom Apartments		10 points
3 rd Bedroom Apartments		15 points
Total number of unit		25 points

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

Financial Marks shall have an overall weight of 70%.

$$F\chi = FS \times 60\%$$

Where:

FS is the Financial score obtained in Table 1; and

F χ is the weighted average Financial Score

$$\text{Overall Aggregate Score} = T\chi + F\chi$$

The Bidder who shall have attained the highest overall aggregate score shall be the Successful Bidder.

22. Submission, Sealing, and Marking of Proposals

The Bidder shall place one (1) original plus three (3) copies of their Mandatory Requirements in a sealed envelope clearly marked “MANDATORY REQUIREMENTS”. The Bidder shall clearly mark the original document as “ORIGINAL” and the 3 copies as “COPY”.

The Bidder shall place one (1) original plus three (3) copies of their Technical Proposal in a sealed envelope clearly marked “TECHNICAL PROPOSAL”. The Bidder shall clearly mark the original document as “ORIGINAL” and the 3 copies as “COPY”.

The Bidder shall place one (1) original of its Financial Proposal in a sealed envelope clearly marked “FINANCIAL PROPOSAL”. The Bidder shall clearly mark the original document as “ORIGINAL”. No copies are allowed for the Financial Proposal.

In the event of discrepancy between the original and any copy, the original shall prevail.

23. Sealing and Marking of Proposals

18.1 The three envelopes should then be sealed in one common outer envelope marked “**BID NO: CGM/PRO/T/002/2021-2022: URBAN RENEWAL AND REDEVELOPMENT OF OLD ESTATES WITHIN MOMBASA COUNTY THROUGH JOINT VENTURE PARTNERSHIP. LOT NO. 12 - KIZINGO ESTATE**”.

18.2 The inner and outer envelopes shall be addressed to CGM at the address stated in the Appendix to Instructions to Bidders and bear the name and identification of the Contract stated in the said Appendix with a warning not to open before the date and time for opening of bids as stated in the said Appendix.

18.3 The inner envelopes shall each indicate the name and address of the Bidder to enable the bid to be returned unopened in case it is declared “late”, while the outer envelope shall bear no mark indicating the identity of the Bidder.

18.4 If the outer envelope is not sealed and marked as instructed above, CGM will assume no responsibility for the misplacement or premature opening of the bid. A bid opened prematurely for this cause will be rejected by CGM and returned to the respective Bidder.

24. Confidentiality/Canvassing

19.1 From the time the Proposals are opened to the time the Contract is awarded, the bidder should not contact the Procuring Entity on any matter related to its Technical and/or Financial Proposal. Information relating to the evaluation of Proposals and award recommendations shall not be disclosed to the bidders who submitted the Proposals or to any other party not officially concerned with the process, until the publication of the Contract award information.

19.2 Any attempt by Bidders or any one on behalf of the bidder to influence improperly the Procuring Entity in the evaluation of the Proposals or Contract award decisions may result in the rejection of its Proposal and may be subject to the application of prevailing PPRA's debarment procedures.

19.3 Notwithstanding the above provisions, from the time of the Proposals' opening to the time of Contract award publication, if a Bidder wishes to contact the Procuring Entity on any matter related to the selection process, it should do so only in writing.

25. Opening of Technical Proposals

20.1 CGM will open the outer envelope and the inner envelopes containing the “**MANDATORY REQUIREMENTS**” & “**TECHNICAL PROPOSAL**” in the presence of the Bidders' Representatives who choose to attend at the time and location indicated in the Invitation to Bid. The Bidders' representatives who are present shall sign a register evidencing their attendance.

20.2 Bids for which an acceptable notice of withdrawal has been submitted will not be opened. CGM will examine the bids to determine whether they are complete, whether the requisite Bid Securities have been furnished, whether the documents have been properly signed and whether the bids are generally in order.

20.3 At the bid opening, CGM will announce the Bidder's names, the presence of the requisite Bid Security and such other details as CGM, at its discretion, may consider appropriate. No bid shall be rejected at the bid opening except for late bids.

20.4 CGM shall prepare minutes of the bid opening including the information disclosed to those present.

20.5 Bids not opened and read out at the bid opening SHALL NOT be considered for further evaluation, irrespective of the circumstances. Any bid recited after the deadline for submission of bid shall be returned to the Bidder unopened.

26. Proposals Evaluation

21.1 Subject to provision of ITC 15.1, the valuers of the Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded and after the Procuring Entity notifies all the bidders in accordance with ITC 22.1.

21.2 The bidder is not permitted to alter or modify its Proposal in anyway after the proposal submission deadline except as permitted under ITC12.7. While evaluating the Proposals, the Evaluation Committee will conduct the evaluation solely on the basis of the submitted Technical and Financial Proposals.

27. Evaluation of Mandatory Preliminary Equipment

22.1 The Procuring Entity's evaluation committee shall evaluate the Technical Proposals that have passed the eligibility and mandatory criteria, on the basis of their responsiveness to the Terms of Reference and the RFP. The eligibility and mandatory criteria shall include the following and any other that may include in the Data sheet.

- a) Firm has submitted the required number of copies of the Technical Proposals.
- b) Firm has submitted a sealed financial proposal.
- c) The Proposal is valid for the required number of days.
- d) The Technical Proposal is signed by the person with power of attorney, without material deviation, reservation, or omission.
- e) The Technical Proposal is complete with all the forms and required documentary evidence submitted including and arranged in the following order, Company profile and organizational structure, Tax Compliance, Declaration of non-debarment, Declaration of anti-corruption involvement, Signed audited financial account documents.
- f) A valid tax compliance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 3.14.
- g) Key Experts.
- h) Key Experts do not appear in more than one proposal, if so required.
- i) A short-listed firm has not participated in more than one proposal, if so required.
- j) The bidder is not insolvent, in receivership, bankrupt or in the process of being wound up.
- k) The bidder, its sub-bidder and experts have not engaged in or been convicted of corrupt or fraudulent practices.
- l) The bidder is neither precluded from entering into a Contract nor debarred by PPRA.
- m) The firm has not proposed employing public officials, civil servants and employees of public institutions.

22.2 Each responsive Proposal will be given a technical score. A Proposal shall be rejected at this stage if it does not respond to important aspects of the RFP or if it fails to achieve the minimum technical score indicated in the Data Sheet.

28. Public Opening of Financial Proposals

23.1 Unsuccessful Proposals

After the technical evaluation is completed, the Procuring Entity shall notify those Bidders whose Proposals were considered non-responsive to the RFP and TOR or did not meet the minimum qualifying technical score, advising them the following: (i) their Proposal was not responsive to the RFP and TOR or did not meet the minimum qualifying technical score; (ii) provide information relating to the bidder's overall technical score, as well as scores obtained for each criterion and sub-criterion; (iii) their Financial Proposals will be returned unopened after completing the selection process and Contract signing; and (iv) notify them of the date, time and location of the public opening of the Financial Proposals and invite them to attend.

23.2 Financial Proposals for QBS, CQS and SSS

Following the ranking of the Technical Proposals, when the selection is based on QBS or CQS, the top-ranked Bidder is invited to negotiate the Contract. Only the Financial Proposal of the technically top-ranked Bidder is opened by the opening committee. All other Financial Proposals shall be returned unopened after the Contract negotiations are successfully concluded and the Contract is signed with the successful Bidder.

When the selection is based on the SSS method and if the invited Bidder meets the minimum technical score required passing, the financial proposal shall be opened and the bidder invited to negotiate the contract.

23.3 Financial Proposals for QCBS, FBS, LCS

Following the ranking of the Technical Proposals, and after internal approvals, the Procuring Entity shall simultaneously notify in writing those Bidders whose Proposals were considered responsive to the RFP and TOR, and that have achieved the minimum qualifying technical score, advising them the following: (i) their Proposal was responsive to the RFP and TOR and met the minimum qualifying technical score; (ii) provide information relating to the bidder's overall technical score, as well as scores obtained for each criterion and sub-criterion; (iii) their Financial Proposal will be opened at the public opening of Financial Proposals; and (iv) notify them of the date, time and location of the public opening and invite them for the opening of the Financial Proposals.

23.4 Opening of Financial Proposals

The opening date should allow the bidders sufficient time to decide for attending the opening and shall be no less than five (5) Business Days from the date of notification of the results of the technical evaluation, described in ITC 22.1 and 22.2.

29. Correction of Errors

24.1 Activities and items described in the Technical Proposal but not priced in the Financial Proposal, shall be assumed to be included in the prices of other activities or items, and no corrections are made to the Financial Proposal.

24.2 Time-Based Contracts-If a Time-Based contract form is included in the RFP, in case of discrepancy between (i) a partial amount(sub-total) and the total amount, or (ii) between the amount derived by multiplication of unit price with quantity and the total price, or (iii) between figures and words, the later will prevail. In case of discrepancy between the Technical and Financial Proposals in indicating quantities of input, the Technical Proposal prevails and the Procuring Entity's evaluation committee shall correct the quantification indicated in the Financial Proposal so as to make it consistent with that indicated in the Technical Proposal, apply the relevant unit price included in the Financial Proposal to the corrected quantity, and correct the total Proposal cost.

24.3 Lump-Sum Contracts - If a Lump-Sum contract form is included in the RFP, the bidder is deemed to have included all prices in the Financial Proposal, so neither arithmetical correction nor price adjustments shall be made. The total price, net of taxes understood as per ITC 24 below, specified in the Financial Proposal (Form FIN-1) shall be considered as the offered price.

30. Taxes

25.1 Subject to ITC 24.2, all taxes are deemed to be included in the bidder's financial proposal as separate items, and, therefore, considered in the evaluation.

25.2 All local identifiable taxes levied on the contract invoices (such as sales tax, VAT, excise tax, or any similar taxes or levies) and income and withholding tax payable to Kenya on the remuneration of non-resident Experts for the services rendered in Kenya are dealt with in accordance with the instructions in the Data Sheet.

31. Conversion to Single Currency

26.1 For the evaluation purposes, prices shall be converted to a single currency using the selling rates of exchange, source and date indicated in the Data Sheet.

32. Abnormally Low Prices

27.1 An Abnormally Low Price is one where the financial price, in combination with other constituent elements of the proposal, appears unreasonably low to the extent that the price raises material concerns with the Procuring Entity as to the capability of the Consulting firm to perform the Contract for the offered price.

27.2 In the event of identification of a potentially Abnormally Low Price by the evaluation committee, the Procuring Entity shall seek written clarification from the firm, including a detailed price analyses of its price in relation to the subject matter of the contract, scope, delivery schedule, allocation of risk and responsibilities and any other requirements of the RFP document.

27.3 After evaluation of the price analyses, if the Procuring Entity determines that the firm has failed to demonstrate its capability to perform the contract for the offered price, the Procuring Entity shall reject the firm's proposal.

33. Abnormally High Prices

28.1 An abnormally high price is one where the proposal price, in combination with other constituent elements of the proposal, appears unreasonably too high to the extent that the Procuring Entity is concerned that it (the Procuring Entity) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Bidders is compromised.

28.2 In case of an abnormally high tender price, the Procuring Entity shall make a survey of the market prices, check if the estimated cost of the contract is correct, and review the RFP to check if the specifications, TOR, scope of work and conditions of contract are contributory to the abnormally high proposals. The Procuring Entity may also seek written clarification from the bidders on the reason or the high proposal price. The Procuring Entity shall proceed as follows:

i) If the proposal price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the proposal depending on the Procuring Entity's budget considerations.

ii) If specifications, TOR, scope of work and/or conditions of contract are contributory to the abnormally high proposal prices, the Procuring Entity shall reject all proposals and may re-invite for proposals for the contract based on revised estimates, specifications, TOR, scope of work and conditions of contract.

28.3 If the Procuring Entity determines that the Proposal Price is abnormally too high because genuine competition between Bidders is compromised (often due to collusion, corruption or other manipulations), the Procuring Entity shall reject all Proposals and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before re-inviting for proposals.

34. Combined Quality and Cost Evaluation

a. Quality and Cost Based Selection (QCBS) Method

29.1 In the case of Quality and Cost Based Selection (QCBS), the total score is calculated by weighting the technical and financial scores and adding them as per the formula and instructions in the Data Sheet. The bidder that achieves the highest combined technical and financial score will be notified and invited for negotiations.

b. Fixed Budget Selection (FBS) Method

29.2 In the case of FBS, those Proposals that exceed the budget indicated in ITC 14.1.4 of the Data Sheet shall be rejected. The Procuring Entity's evaluation committee will select the bidder with the highest-ranked Technical Proposal that does not exceed the budget indicated in the RFP, notify and invite such Bidder to negotiate the Contract.

c. Least Cost Selection (LCS) Method

29.3 In the case of Least-Cost Selection (LCS), the Procuring Entity's evaluation committee will select the bidder whose Proposal is the lowest evaluated total price among those Proposals that achieve the minimum technical score required to pass, notify the bidder and invite the bidder to negotiate the Contract.

d. Combined Technical and Evaluation Report

29.4 The evaluation committee shall prepare a combined technical and financial evaluation report, with specific recommendations for award or otherwise and subject to the required approvals within the Procuring Entity prior to notifications and invitation of Bidder for negotiations.

35. Notification of Intention to enter into a Contract/Notification of Award

30.1 The Procuring Entity shall send to each Bidder (that has not already been notified that it has been unsuccessful) the Notification of Intention to Award the Contract to the successful Bidder. The **Notification of Intention to enter into a Contract / Notification of Award** shall contain, at a minimum, the following information:

- i) The name and address of the bidder with whom the Procuring Entity successfully negotiated a contract;
- ii) the contract price of the successful Proposal;
- iii) a statement of the reasons why the recipient's Proposal was unsuccessful
- iv) the expiry date of the Standstill Period, and
- v) instructions on how to request a debriefing and/or submit a complaint during the standstill period;

36. Standstill Period

31.1 The Standstill Period shall be the number of days stated in the Data Sheet. The Standstill Period commences the day after the date the Procuring Entity has transmitted to each Bidder (that has not already been notified that it has been unsuccessful) the Notification of Intention to Award the Contract. The Contract shall not be signed earlier than the expiry of the Standstill Period. This period shall be allowed for aggrieved Bidders to lodge an appeal. The procedure for appeal and the authority to determine the appeal or complaint is as indicated in the Data Sheet.

NEGOTIATIONS AND AWARD

37. Negotiations

32.1 The negotiations will be held at the date and address indicated in the Data Sheet with the bidder's representative(s) who must have written power of attorney to negotiate and sign a Contract on behalf of the bidder.

32.2 The evaluation committee shall prepare minutes of negotiations that are signed by the Accounting Officer and the bidder's authorized representative.

32.3 Availability of Key Experts

The invited Bidder shall confirm the availability of all Key Experts included in the Proposal as a pre-requisite to the negotiations, or, if applicable, a replacement in accordance with ITC 12. Failure to confirm the Key Experts' availability may result in the rejection of the bidder's Proposal and the Procuring Entity proceeding to negotiate the Contract with the next-ranked Bidder.

- 32.4 Notwithstanding the above, the substitution Key Experts at the negotiations may be considered if due solely to circumstances outside the reasonable control of and not foreseeable by the bidder, including but not limited to death or medical incapacity. In such case, the bidder shall offer a substitute Key Expert within the period of time specified in the letter of invitation to negotiate the Contract, who shall have equivalent or better qualifications and experience than the original candidate.

32.5 Technical negotiations

The technical negotiations include discussions of the Terms of Reference (TORs), the proposed methodology, the Procuring Entity's inputs, the special conditions of the Contract, and finalizing the "Description of Services" part of the Contract. These discussions shall not substantially alter the original scope of services under the TOR or the terms of the contract, lest the quality of the final product, its price, or the relevance of the initial evaluation be affected.

32.6 Financial negotiations

The financial negotiations include the clarification of the bidder's tax liability in Kenya and how it should be reflected in the Contract. All applicable taxes shall be itemized separately and included in the contract price.

- 32.7 If the selection method included cost as a factor in the evaluation (that is QCBS, FBS, LCS), the unit rates and the total price stated in the Financial Proposal for a Lump-Sum contract shall not be negotiated.
- 32.8 Where QBS or CQS methods was used for a *Lump-sum Contract* as indicated in the RFP, the unit rates negotiations shall not take place, except when the offered Key Experts and Non-Key Experts' remuneration rates are much higher than the typically charged rates by Bidders in similar contracts or the professional practice. In such case, the Procuring Entity may ask for clarifications and, if the fees are very high, ask to change the rates. The format for (i) providing information on remuneration rates in the case of QB and CQS; and (ii) clarifying remuneration rates' structure under this Clause, is provided in Appendix A to the Financial Form FIN-3: Financial Negotiations – Breakdown of Remuneration Rates. If after the clarifications, the price is still considered too high, the Procuring Entity may terminate the negotiation and invite the next ranked Bidder to open its financial proposal and negotiate the contract.
- 32.9 In the case of a *Time- Based contract*, negotiation of unit rates shall not take place, except when the offered Key Experts and Non-Key Experts' remuneration rates are much higher than the typically charged rates by Bidders in similar contracts. In such case, the Procuring Entity may ask for clarifications and, if the fees are very high, ask to change the rates. The format for (i) providing information on remuneration rates in the case of QBS and CQS; and (ii) clarifying remuneration rates' structure under this Clause, is provided in Appendix A to the Financial Form FIN-3: Financial Negotiations-Breakdown of Remuneration Rates. If after the clarifications, the price is still considered too high, the Procuring Entity may terminate the negotiation and invite the next ranked Bidder for negotiations.
- 32.10 Where SSS method was used as indicated in the RFP, both the unit rates and total price shall be negotiated. If the negotiations fail, the Procuring Entity shall terminate the bidder selection process. In that event, the Procuring Entity shall review the consultancy requirements and market conditions prior to deciding to use an appropriate selection method to again procure the consulting services.

38. Conclusion of Negotiations

- 33.1 The negotiations are concluded with a review of the finalized draft Contract, which then shall be initialed by the Accounting Officer and the bidder's authorized representative and minutes prepared to record the outcome of the negotiations.

- 33.2 If the negotiations fail, the Procuring Entity shall inform the bidder in writing of all pending issues and disagreements and provide a final opportunity to the bidder to respond. If disagreement persists, the Procuring Entity shall terminate the negotiations informing the bidder of the reasons for doing so. The Procuring Entity will invite the next-ranked Bidder to negotiate a Contract. Once the Procuring Entity commences negotiations with the next-ranked Bidder, the Procuring Entity shall not reopen the earlier negotiations.

39. Letter of Award

- 34.1 Upon expiry of the Standstill Period, specified in ITC 28.1, after satisfactorily addressing any appeal that has been filed within the Standstill Period, and upon successful negotiations, the Procuring Entity shall send a Letter of Award to the successful Bidder. The letter shall confirm the Procuring Entity's award of Contract to the successful Bidder and requesting the bidder to sign and return the draft negotiated Contract within Twenty-One (21) Days from the date of the Letter of Award.

40. Signing of Contract

- 35.1 The Contract shall be signed prior to the expiration of the Proposal Validity Period and promptly after expiry of the Standstill Period, specified in ITC 28.1 and upon satisfactorily addressing any complaint that has been filed within the Standstill Period.
- 35.2 The bidder is expected to commence the assignment on the date and at the location specified in the Data Sheet.

41. Publication of Procurement Contract

- 36.1 Within the period specified in the Data Sheet, the Procuring Entity shall publish the awarded Contract which shall contain, at a minimum, the following information: (a) name and address of the Procuring Entity; (b) name and reference number of the contract being awarded, (c) the selection method used; (d) names of the bidders that submitted proposals; (e) names of all Bidders whose Proposals were rejected or were not evaluated; (f) the name of the successful Bidder, the final total contract price, the contract duration and a summary of its scope.
- 36.2 Consider carefully the information on Bidders to be published, particularly evaluation by the Procuring Entity, to avoid disclosing information which can facilitate bid-rigging formation going forward. Suggest amendment as follows:
- 36.3 The awarded Contract shall be published on the Procuring Entity's website with free access if available and in the official procurement tender portal.

42. Procurement Related Complaint and Administrative Review

- 37.1 The procedures for making Procurement-related Complaints shall be specified in the **TDS**.
- 37.2 A request for administrative review shall be made in the form provided under contract forms.

SECTION 2 (B). DATA SHEET

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
A. General Provisions	
1(j)	Electronic procurement system shall not be used
2.1	Name of the Procuring Entity: COUNTY GOVERNMENT OF MOMBASA The bidder selection method is: QUALITY AND COST BASED METHOD
2.2	Financial Proposal to be submitted together with Technical Proposal in separate envelopes: Yes The name of the assignment is: REQUEST FOR PROPOSAL FOR URBAN RENEWAL AND REDEVELOPMENT OF OLD ESTATES WITHIN MOMBASA COUNTY THROUGH JOINT VENTURE PARTNERSHIP-LOT NO. 12- KIZINGO ESTATE
2.3	A pre-proposal conference will be held: N/A
2.4	The Procuring Entity will provide all the relevant and necessary information upon request to facilitate this exercise.
3.3 (iv)	Not Applicable
4.1	Not Applicable
6.2	Maximum number of members in the Joint Venture (JV) shall be N/A
6.6 (a)	The list of debarred firms and individuals is available at the PPRA's website www.ppra.go.ke or email complaints@ppra.go.ke
6.7	Not Applicable
B. Preparation of Proposals	
10.1	The technical (Envelope A) and financial (Envelope B) proposals: - 1. Shall have a table contents page clearly indicating Sections and Page Numbers (Mandatory). 2. Shall have pages in the whole document from the table of contents page numbered in the correct sequence (i.e 1,2,3...) including all appendices and attachments (Mandatory). 3. Shall be firmly bound and should not have any loose pages. Spiral binding and files (spring and box) are not acceptable (Mandatory). 4. Shall be submitted in one original and two copies of the original (Mandatory). 5. Shall be signed (where signatures are required) by a duly authorized representative of the firm or any other officer appointed and evidenced by a Power of Attorney (Mandatory).

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	The Proposal shall comprise of the following mandatory requirements presented in an orderly manner as follows: - 1st Inner Envelope (A) with the Technical Proposal: - i).Power of Attorney to sign the Proposal - ii).TECH-1: Technical Proposal Submission Form - iii).TECH-2: Bidder’s Organization and Experience - iv).TECH-3: Comments and Suggestions on the TORs - v).TECH-4: Description of Approach, Methodology and Work plan - vi).TECH-5: Work Schedule and Planning for Deliverables - vii).TECH-6: Team Composition, Assignment, and Key Experts’ Input - viii).TECH-7: Mandatory Documentary Evidence - ix). AND ALL THE REQUESTED MANDATORY PRELIMINARY DOCUMENTS IN ANNEX B ABOVE AND 2nd Inner Envelope (B) with the Financial Proposal: - i).FIN-1: Financial Proposal Submission Form - ii).FIN-2: Summary of Costs - iii).FIN-3: Breakdown of Remuneration - iv).FIN-4: Breakdown of Reimbursable Expenses - v).AND ALL THE REQUIRED FINANCIAL SUBMISSIONS AS REQUESTED ABOVE IN TABLE 1 (Financial Score Summary) and ANNEX C –G (FINANCIAL BID FORM)
11.1	Participation of the bidder, and Key Experts in more than one Proposal is permissible; NOT PERMITTED
12.1	Proposals must remain valid for 120 days after the proposal submission deadline.
13.1	Clarifications may be requested not later than 7 days prior to the submission deadline. The contact information for requesting clarifications is: email; countysecretary@mombasa.go.ke
14 (b) (do not use for Fixed Budget method)	N/A

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
14 (c) and 26.2 [use for Fixed Budget method]	N/
14 (d)	Key Experts shall not appear in more than one proposal
16.1(b)	
16.2	A price adjustment provision applies to remuneration rates: TO BE DISCUSSED DURING CONTRACTING
16.3	“Information on the bidder’s tax obligations in the Procuring Entity’s country can be found on the Kenya Revenue Authority website: www.kra.go.ke
16.4	The Financial Proposal shall be stated in KENYA SHILLINGS/USD The Financial Proposal should state local costs in Kenya Shillings/USD
C. Submission, Opening and Evaluation	
17.1	The bidder “shall not” have the option of submitting their Proposals electronically.
17.5	The bidder must submit: (a) Technical Proposal: one (1) original and two (2) copies of original; (b) Financial Proposal: one (1) original and two (2) copies of original.
18.5	The Proposals must be submitted no later than: Date: 17th February 2022 Time: 1200HOURS The Proposal submission details are to be deposited in a: Tender Box located at the County Assembly Hall ground floor next to the main office, Treasury Square, Mombasa to reach him not later than 1200HRS on 17th February 2022 or Addressed to: THE COUNTY SECRETARY, COUNTY GOVERNMENT OF MOMBASA, P.O BOX 390440 – 80100, MOMBASA.
20.1	An online option of the opening of the Technical Proposals is offered: No The opening shall take place at:

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	In the Finance Board Room, located on the 2nd floor of the County Assembly Hall, Treasury Square or as directed by the County Secretary. Date: 17th February 2022 Time: 12015 HOURS
20.2	In addition, the following information will be read aloud at the opening of the Technical Proposals: i).Name of the bidder ii).Number of copies submitted iii).Number of pages of bid submission
22.1	Other eligibility and mandatory criteria shall be: As per the requested documents in sec. 22.1 of SECTION 2. INSTRUCTIONS TO BIDDERS AND DATA SHEET. This forms part of preliminary evaluation process and is mandatory for proof to be provided.
22.2	The Criteria, sub-criteria, and point system for the evaluation of the Technical Proposals: SHALL BE AS INDICTAED IN ANNEX C ABOVE The minimum technical score (St) required to pass is: 80%
23.4	An online option of the opening of the Financial Proposals is offered; N/A
25.2	Not applicable
29.1 (QCBS only)	The lowest evaluated Financial Proposal (Fm) is given the maximum financial score (Sf) of 20. The formula for determining the financial scores (Sf) of all other Proposals is calculated as following: $Sf = 100 \times Fm / F$, in which “Sf” is the financial score, “Fm” is the lowest price, and “F” the price of the proposal under consideration. The weights given to the Technical (T) and Financial (P) Proposals are: T = 0.8 and P = 0.2] Proposals are ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) as following: $S = St \times T\% + Sf \times P\%$.
31	The Standstill Period (Period between notification and award of the project) shall be: 14 days. The procedures for making a procurement related complaint are detailed in the Public Procurement and Asset Disposal Act, 2015 and Regulations, 2020. If a Bidder wishes to make a procurement related complaint or appeal, the bidder shall submit its complaint to the Public Procurement Administrative Review Board within this period.
D. Negotiations and Award	
32.1	Expected date and address for contract negotiations: to be advised by the Procuring Entity if applicable

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
35.2	Expected date for the commencement of the Services: Date: to be advised by the Procuring Entity UPON CONTRACT SIGNING
36.1	The publication of the contract award information following the completion of the contract negotiations and contract signing will be done as following: The publication will be done within 14 days after the contract signing.
37.1	The procedures for making a Procurement-related Complaints are detailed in the “Regulations” available from the PPRA Website www.ppra.go.ke or email complaints@ppra.go.ke .

SECTION 3. TECHNICAL PROPOSAL – STANDARD FORMS

{Notes to Bidder shown in brackets {} throughout Section 3 provide guidance to the bidder to prepare the Technical Proposal; they should not appear on the Proposals to be submitted.}

1. FORM TECH-1: TECHNICAL PROPOSAL SUBMISSION FORM – (MANDATORY)

{Location, Date}

To: [Name and address of Procuring Entity]

Dear Sirs:

We, the undersigned, offer to provide development services for [Insert title of assignment] in accordance with your RFP dated [Insert Date] and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal and a Financial Proposal sealed in a separate envelope.

{If the bidder is a joint venture, insert the following: We are submitting our Proposal in association/as a consortium/as a joint venture with: {Insert a list with full name and the legal address of each member, and indicate the lead member}. We have attached a copy {insert: “of our letter of intent to form a joint venture” or, if a JV is already formed, “of the JV agreement”} signed by every participating member, which details the likely legal structure of and the confirmation of joint and severable liability of the members of the said joint venture.

OR

{If the bidder's Proposal includes Sub-Bidders, insert the following:} We are submitting our Proposal with the following firms as Sub-Bidders: {insert a list with full name and address of each Sub-Bidder.}

We hereby declare that:

- a) All the information and statements made in this Proposal are true and we accept that any misinterpretation or misrepresentation contained in this Proposal may lead to our disqualification by the Procuring Entity or maybe sanctioned by the PPRA.
- b) Our Proposal shall be valid and remain binding upon us for the period of time specified in the Data Sheet, Clause 12.1.
- c) We have no conflict of interest in accordance with ITC3.
- d) We meet the eligibility requirements as stated in ITC6, and we confirm our understanding of our obligation to abide by the Government's policy in regard to corrupt, fraudulent and prohibited practices as per ITC5.
- e) In competing for (and, if the award is made to us, in executing) the Contract, we undertake to observe the laws against fraud and corruption, including bribery, as well as laws against anti-competitive practices, including

bid rigging in force in Kenya; we hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption or anti-competitive practices.

- f) We confirm that we are not insolvent, in receivership, bankrupt or on the process of being wound up.
- g) The bidder shall declare in the Technical Proposal Submission Form, that in competing for and executing a contract, it shall undertake to observe the laws of Kenya against fraud and corruption including bribery, as well as against anti-competitive practices including bid-rigging.
- h) We are not guilty of any serious violation of fair employment laws and practices. We undertake to observe the laws of Kenya against fraud and corruption including bribery, as well as against collusive and anti-competitive practices, including bid rigging. To this effect we have signed the “Certificate of Independent Proposal Determination” attached below. We also undertake to adhere by the Code of Ethics for persons participating in Public Procurement and Asset Disposal Activities in Kenya, copy available from *_(specify website)* during the procurement process and the execution of any resulting contract.
- i) We, along with any of our sub-Bidders are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the PPRA.
- j) Except as stated in the ITC12 and Data Sheet, we undertake to negotiate a Contract on the basis of the proposed Key Experts. We accept that the substitution of Key Experts for reasons other than those stated in ITC Clause 12 and ITC Clause 29.3 and 29.4 may lead to the termination of Contract negotiations.
- k) Our Proposal is binding upon us and subject to any modifications resulting from the Contract negotiations.
- l) We understand that the Procuring Entity is not bound to accept any Proposal that it receives.

We undertake, if our Proposal is accepted and the Contract is signed, to initiate the Services related to the assignment no later than the date indicated in Clause 32.2 of the Data Sheet.

We remain, Yours sincerely,

Authorized Signature *{In full and initials}*: Name and Title of Signatory:

Name of Bidder *(company's name or JV's name)*:

Contact information *(phone and e-mail)*:

{For a joint venture, either all members shall sign or only the lead member, in which case the power of attorney to sign on behalf of all members shall be attached}

2. CERTIFICATE OF INDEPENDENT PROPOSAL DETERMINATION - (MANDATORY)

I, the undersigned, in submitting the accompanying TECHNICAL PROPOSAL SUBMISSION FORM to the _____[Name of Procuring Entity]

for: _____[Name and number of tender] in response to the request for tenders made by: _____[Name of Tenderer] do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of [Name of Tenderer] that:

1. I have read and I understand the contents of this Certificate;
2. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;
4. For the purposes of this Certificate and the Tender, I understand that the word “competitor” shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:
 5. Has been requested to submit a Tender in response to this request for tenders;
 6. could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;
 7. The Tenderer discloses that [check one of the following, as applicable]:
 8. The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
 9. The Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements;
 10. In particular, without limiting the generality of paragraphs(5)(a) or (5) (b) above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 11. prices;
 12. methods, factors or formulas used to calculate prices;
 13. the intention or decision to submit, or not to submit, a proposal; or
 14. the submission of a proposal which does not meet the specifications of the request for proposals; except as specifically disclosed pursuant to paragraph(5)(b) above;
 15. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this RFP relates, except as specifically authorized by the procuring Entity or as specifically disclosed pursuant to paragraph(5)(b) above;
 16. The terms of the RFP have not been, and will not be, knowingly disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official proposed opening, or of the awarding of the Contract, which ever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph(5)(b) above.

Name _____

Title _____

Date _____

[Name, title and signature of authorized agent of Bidder and Date]

3. APPENDIX TO FORM OF PROPOSAL ON FRAUD AND CORRUPTION CLAUSE (for information)

(Appendix shall not be modified)

Purpose

the government of Kenya's Anti-Corruption and Economic Crime laws and their sanction's policies and procedures, Public Procurement and Asset Disposal Act (*no. 33 of 2015*) and its Regulation, and any other Kenya's Acts or Regulations related to Fraud and Corruption, and similar offences, shall apply with respect to Public Procurement Processes and Contracts that are governed by the laws of Kenya.

Requirements

The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Bidders, Contractors and Suppliers; any Sub-contractors, Sub-Bidders, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts, and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1 above.

Kenya's public procurement and asset disposal act (*no.33 of 2015*) under Section 66 describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted below highlight Kenya's policy of no tolerance for such practices and behavior:

- (1) a person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
- (2) A person referred to under sub section (1) who contravenes the provisions of that sub-section commits an offence;
- (3) Without limiting the generality of the subsection (1) and (2), the person shall be: -
 - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
 - b) if a contract has already been entered into with the person, the contract shall be avoidable;
- (4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
- (5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement—
 - i) Shall not take part in the procurement proceedings;
 - ii) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
 - iii) Shall not be a sub-contractor for the tender to whom was awarded contract, or a member of the group of tenderers to whom the contract was awarded, but the sub-contractor appointed shall meet all the requirements of this Act.
- (6) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;
- (7) If a person contravenes sub section (1) with respect to a conflict of interest described in subsection (5)(a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer.
- (8) Incompliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:
 - a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
 - i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - ii) “fraudulent practice” is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;

- iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- v) “obstructive practice” is:
 - i) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
 - ii) Acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3e. below.
- b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.
- c) Rejects a proposal or award of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-Bidders, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or debar or recommend to appropriate authority (ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;
- e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Bidders, Contractors, and Suppliers and their Sub-contractors, Sub-Bidders, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect² all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and
- f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a “Self-Declaration Form” as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

¹For the avoidance of doubt, a party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in

A consultancy, and tendering, either directly or as a nominated sub-contractor, nominated Bidder, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract.

² Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Investigating Authority or persons appointed by the Procuring Entity to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/audit, and making copies thereof as relevant; interviewing staff and other relevant individuals;

performing physical inspections and site visits; and obtaining third party verification of information.

4. FORM TECH-2: BIDDER'S ORGANIZATION AND EXPERIENCE - (MANDATORY)

Form TECH-2: a brief description of the bidder's organization and an outline of the recent experience of the bidder that is most relevant to the assignment. In the case of a joint venture, information on similar assignments shall be provided for each partner. For each assignment, the outline should indicate the names of the bidder's Key Experts and Sub-Bidders who participated, the duration of the assignment, the contract amount (total and, if it was done in a form of a joint venture or a sub-consultancy, the amount paid to the bidder), and the bidder's role/involvement.

A - Bidder's Organization

Provide here a brief description of the background and organization of your company, and-in case of a joint venture-of each member for this assignment.

B - Bidder's Experience

1. List only previous similar assignments successfully completed in the last [.....] years.
2. List only those assignments for which the bidder was legally contracted by the Procuring Entity as a company or was one of the joint venture partners. Assignments completed by the bidder's individual experts working privately or through other consulting firms cannot be claimed as the relevant experience of the bidder, or that of the bidder's partners or sub-Bidders, but can be claimed by the Experts themselves in their Curriculum Vitae (CV).
3. The bidder shall substantiate their claimed experience by presenting copies of relevant documents such as the form of contract (not the whole contract), purchase order, service order, performance certificate, etc.; which shall be included in the proposal as part of *Form Tech 7 Mandatory Documentary Evidence*.

Assignment name:	Approx. value of the contract [KES, US\$ etc.]:
Country:	Duration of assignment (months):
Name of Procuring Entity:	Total N° of staff-months of the assignment:
Contact Address: Email:	Approx. value of the services provided by your firm under the contract:
Start date (month/year): Completion date:	N° of professional staff-months provided by associated Bidders:
Role on Assignment: (E.g. Lead Member in ABC JV, or Sole Bidder):	Name of senior professional staff of your firm involved and functions performed:
Narrative description of Assignment:	
Description of actual services provided by your staff within the assignment:	
Name of Consulting Firm:	Name and Title of Signatory:

5. FORM TECH-3: COMMENTS AND SUGGESTIONS - (MANDATORY)

Form TECH-3: The bidder to provide comments and suggestions on the Terms of Reference, counterpart staff and facilities to be provided by the Procuring Entity that could improve the quality/effectiveness of the assignment; and on requirements for counterpart staff and facilities, which are provided by the Procuring Entity, including: administrative support, office space, local transportation, equipment, data, etc.

A - On the Terms of Reference

{Improvements to the Terms of Reference, if any}

B - On Counterpart Staff and Facilities

{Include comments on counterpart staff and facilities to be provided by the Procuring Entity. For example, administrative support, office space, local transportation, equipment, data, background reports, etc., if any}

6. FORM TECH-4: DESCRIPTION OF APPROACH, METHODOLOGY, AND WORK PLAN - (MANDATORY)

Form TECH-4: a description of the approach, methodology and work plan in responding to the terms of reference for performing the assignment, including a detailed description of the proposed methodology and staffing for training, if the Terms of Reference specify training as a specific component of the assignment.

{The structure of your Technical Proposal:

a) Technical Approach and Methodology

b) Work Plan

c) Organization and Staffing}

i) Technical Approach and Methodology. *{Please explain your understanding of the objectives of the assignment as outlined in the Terms of Reference (TORs), the technical approach, and the methodology you would adopt for implementing the tasks to deliver the expected output(s), and the degree of detail of such output. Please do not repeat/copy the TOR sin here.}*

ii) Work Plan. *{Please outline the plan for the implementation of the main activities/tasks of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Procuring Entity), and tentative delivery dates of their ports. The proposed work plan should be consistent with the technical approach and methodology, showing your understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents (including reports) to be delivered as final output(s) should be included here. The work plan should be consistent with the Work Schedule Form.}*

iii) Organization and Staffing. *{Please describe the structure and composition of your team, including the list of the Key Experts, Non-Key Experts and relevant technical and administrative support staff.}*

7. FORM TECH-5: WORK SCHEDULE AND PLANNING FOR DELIVERABLES - (MANDATORY)

8. FORM TECH- 6A: TEAM COMPOSITION, ASSIGNMENT, AND KEY EXPERTS' INPUTS - (MANDATORY)

9. FORM TECH-6B: CURRICULUM VITAE (CV) - (MANDATORY)

Position Title and No.	{e.g., K-1, Team Leader}
Name of Expert:	{Insert full name}
Date of Birth:	{day/month/year}
Country of Citizenship	

Education: {List college/university or other specialized education, giving names of educational institutions, dates attended, degree(s)/diploma(s) obtained}

Employment record relevant to the assignment: {Starting with present position, list in reverse order. Please provide dates, name of employing organization, titles of positions held, types of activities performed and location of the assignment, and contact information of previous Procuring Entity's and employing organization(s) who can be contacted for references. Past employment that is not relevant to the assignment does not need to be included.}

Period	Employing organization and your title/position. Contact Infor for references	Country	Summary of activities performed relevant to the Assignment
[e.g., May 2011-present]	[e.g., Ministry of, advisor/Bidder to... For references: Tel...../e-mail.....; Mr. Bbbbbb, deputy manager]		

Membership in Professional Associations and Publications:_____

Language Skills (indicate only languages in which you can work):_____

Adequacy for the Assignment:

Detailed Tasks Assigned on Bidder's Team of Experts:	Reference to Prior Work/Assignments that Best Illustrates Capability to Handle the Assigned Tasks
{List all deliverables/tasks as in TECH- 5 in which the Expert will be involved)	

Expert's contact information :(e-mail..... phone.....)

Certification:

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications, and my experience, and I am available to undertake the assignment in case of an award. I understand that any misstatement or misrepresentation described herein may lead to my disqualification or dismissal by the Procuring Entity, and/or sanctions by the PPRA.

Name of Expert _____ Signature _____ Date _____

_____ {day / month/year}

Name of authorized _____ Signature _____ Date _____

Representative of the bidder (the same who signs the Proposal

10. FORM TECH-7: MANDATORY SUPPORT DOCUMENTS

[The bidder shall use this form to submit all the required support documentary evidence as required in the RFP, especially the mandatory and eligibility criteria specified in the Data Sheet ITC 21.1]

a) Certificate of Incorporation/Certificate of Registration

{Insert here a copy of certificate of incorporation or registration}

b) Tax Compliance Certificate

{Bidder to insert a copy of the tax compliance certificate from Kenya Revenue Authority or similar body in the case of foreign consulting firms}

c) Practice License or Certificate for the Firm

{If required, Bidder to insert a copy of the firm's practice license or registration certificate issued by the professional body specified under Data Sheet ITC 21.1}

d) Similar Bidder Assignments Experience

{Bidder to insert here copies of the form of contract, purchase order, service order, and performance certificate or similar evidence of similar assignments carried out by the firm. The assignments shall be the same as those provided under FORM TECH 2B}

e) Academic Certificates

{Bidder to insert copies of the required relevant academic certificates relevant to the assignment for all the key experts}

f) Professional Certificates

{Bidder to insert copies of professional certificates and relevant short-term trainings to demonstrate professional qualifications for all the key experts}

g) Professional Membership of Key Experts

{If applicable, Bidder to insert copies of professional membership certificate for its key experts}

h) Certificate of Independent Proposal Determination

(The Form is available on Tech FORM TECH-1: TECHNICAL PROPOSAL SUBMISSION FORM).

11. FORM TECH - 8: SELF-DECLARATION FORMS

FORM SD1 -(MANDATORY)

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

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

1. THAT I am the Company Secretary/Chief Executive/Managing Director/Principal Officer/Director of (Insert name of the Company) who is a Bidder in respect of **Tender No.** for..... (Insert tender title/description) for..... (*Insert name of the Procuring entity*) and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.
3. THAT what is deponed to here in above is true to the best of my knowledge, information and belief.

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

Bidder Official Stamp

FORM SD2 - (MANDATORY)

**SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY
CORRUPT OR FRAUDULENT PRACTICE.**

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

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of.....
..... (*insert name of the Company*) who is a Bidder in respect of **Tender No.**
..... for (*insert tender title/description*)
for (*insert name of the Procuring entity*) and duly authorized and
competent to make this statement.
2. THAT the aforesaid Bidder, its servants and/or agents /subcontractors will not engage in any corrupt or
fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management,
Staff and/or employees and/ or agents of..... (*insert name of the Procuring entity*) which is the
procuring entity.
3. THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to any
member of the Board, Management, Staff and/or employees and/or agents of..... (*name of the
procuring entity*).
4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders
participating in the subject tender.
5. THAT what is deponed to herein above is true to the best of my knowledge information and belief.

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

Bidder Official Stamp

12. DECLARATION AND COMMITMENT TO THE CODE OF ETHICS - (MANDATORY)

I (person) on behalf of
(Name

of the Business/ Company/Firm) declare that I have read and fully understood the contents of the Public Procurement & Asset Disposal Act, 2015, Regulations and the Code of Ethics for persons participating in Public Procurement and Asset Disposal Activities in Kenya and my responsibilities under the Code.

I do hereby commit to abide by the provisions of the Code of Ethics for persons participating in Public Procurement and Asset Disposal.

Name of Authorized signatory.....

Sign.....

Position.....

Office address..... Telephone.....

E-mail.....

Name of the Firm/Company.....

Date.....

(Company Seal/ Rubber Stamp where applicable)

Witness

Name.....

Sign.....

Date.....

13. FORM TECH - 9: TENDER-SECURING DECLARATION FORM {r 46 and 155(2)} - (MANDATORY)

[The Bidder shall complete this Form in accordance with the instructions indicated]

Date:[insert date (as day, month and year) of Tender Submission]

Tender No.:[insert number of tendering process]

To:[insert complete name of Purchaser]

I/We, the undersigned, declare that:

1. I / We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.
2. I / We accept that I/we will automatically be suspended from being eligible for tendering in any contract with the Purchaser or the period of time of [insert number of months or years] starting on [insert date], if we are in breach of our obligation (s) under the bid conditions, because we—(a) have withdrawn our tender during the period of tender validity specified by us in the Tendering Data Sheet; or (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the instructions to tenders.
3. I / We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer (s), upon the earlier of:
 - a) Our receipt of a copy of your notification of the name of the successful Tenderer; or
 - b) Thirty days after the expiration of our Tender.
4. I / We understand that if I am / we are / in a Joint Venture, the Tender Securing Declaration must be in the name of the Joint Venture that submits the bid, and the Joint Venture has not been legally constituted at the time of bidding, the Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed: Capacity / title (director or partner or sole proprietor, etc.) Name:

Duly authorized to sign the bid for and on behalf of: [insert complete name of Tenderer]
Dated on day of [Insert date of signing]

Seal or stamp

SECTION 4. FINANCIAL PROPOSAL - STANDARD FORMS

{Notes to Bidder shown in brackets {...} provide guidance to the bidder to prepare the Financial Proposals; they should not appear on the Financial Proposals to be submitted.}

Financial Proposal Standard Forms shall be used for the preparation of the Financial Proposal according to the instructions provided in Section 2.

FIN-1 Financial Proposal Submission Form

FIN-2 Summary of Costs

FIN-3 Breakdown of Remuneration

FIN-4 Reimbursable expenses

1. FORM FIN-1: FINANCIAL PROPOSAL SUBMISSION FORM - (MANDATORY)

..... {Location, Date}

To: [Name and address of Procuring Entity]

Dear Sirs:

We, the undersigned, offer to provide the redevelopment works for..... [Insert title of assignment]

in accordance with your Request for Proposal dated..... [Insert Date] and our Technical Proposal.

Our attached Financial Proposal is for the amount of..... {Indicate the corresponding to the amount currency} {Insert amounts in words and figures}, including of all taxes in accordance with ITC24.2 in the Data Sheet. The estimated amount of local taxes is..... {Insert currency} {Insert amount in words and figures}.

{Please note that all amounts shall be the same as in Form FIN-2}.

Our Financial Proposal shall be valid and remain binding upon us, subject to the modifications resulting from Contract negotiations, for the period of time specified in the ITC12.1 Datasheet.

Commissions and gratuities paid or to be paid by us to an agent or any third party relating to preparation or submission of this Proposal and Contract execution, paid if we are awarded the Contract, are listed below:

Name and Address, Amount and Purpose of Commission of Agents, Currency or Gratuity

{If no payments are made or promised, add the following statement: "No commissions or gratuities have been or are to be paid by us to agents or any third party relating to this Proposal and Contract execution."}

We understand you are not bound to accept any Proposal you receive. We remain,

Yours sincerely,

Signature..... (of Bidder's authorized representative) {In full and initials}: Full name: {insert full name of authorized representative} Title: {insert title/ position of authorized representative}

Name of Bidder..... (company's name or JV's name): Capacity: {insert the person's capacity to sign for the bidder} Physical Address: {insert the authorized representative's address}

Phone: {insert the authorized representative's phone and fax number, if applicable} Email: {insert the authorized representative's email address}

{For a joint venture, either all members shall sign or only the lead member/Bidder, in which case the *power of attorney to sign on behalf of all members shall be attached*}

2. FORM FIN-2: SUMMARY OF COSTS - (MANDATORY)

Item	Cost			
	{Bidder must state the proposed Costs in accordance with ITC 16.4 of the Data Sheet; delete columns which are not used}			
	{Insert Foreign Currency # 1}	{Insert Foreign Currency # 2, if used}	{Insert Foreign Currency # 3, if used}	{Insert Local Currency, if used and/or required (16.4 Data Sheet)}
Cost of the Financial Proposal				
Including:				
(1) Remuneration				
(2) Reimbursables				
Subtotal [Remuneration + Reimbursables]				
Taxes:				
{insert type of tax e.g., VAT or sales tax}				
{e.g., withholding tax on experts' remuneration}				
{insert type of tax}				
Total Taxes				
Total Cost of the Financial Proposal: {Should match the amount in Form FIN-1}				

3. FORM FIN-3A: BREAKDOWN OF REMUNERATION - (MANDATORY)

When used for Lump-Sum contract assignment, information to be provided in this Form shall only be used to demonstrate the basis for the calculation of the Contract's ceiling amount; to calculate applicable taxes at contract negotiations; and, if needed, to establish payments to the bidder for possible additional services requested by the Procuring Entity. This Form shall not be used as a basis for payments under Lump-Sum contracts.

A. Remuneration _____								
No	Name	Position (as in TECH- 6)	Person-month Remuneration Rate	Time Input in Person/Month (from TECH- 6)	{Currency # 1- as in FIN-2}	{Currency # 2- as in FIN-2}	{Currency# 3- as in FIN-2}	{Local Currency- as in FIN- 2}
	Key Experts							
K-1			[Home]					
			[Field]					
K-2								
	Non-Key Experts							
N-1			[Home]					
N-2			[Field]					
	Total Costs							

4. **FORM FIN 3B: BIDDERS'S REPRESENTATIONS REGARDING COSTS AND CHARGES – (NOT APPLICABLE)**

{This Form FIN 3B shall be used for Time-Based contracts only. If Lumpsum Contract is used, the Procuring Entity shall delete the FORMFIN-3B, FORM FIN-3C and FORM FIN-3D from the RFP before issuance to Bidders}

Bidder:Country:

Assignment:Date:

We hereby confirm that:

- a) The basic fees indicated in the attached table are taken from the firm's pay roll records and reflect the current rates of the Experts listed which have not been raised other than within the normal annual pay increase policy as applied to all the bidder's Experts;
- b) attached are true copies of the latest pay slips of the Experts listed;
- c) the a way-from-home office allowances indicated below are those that the bidders or has agreed to pay for this assignment to the Experts listed;
- d) the factors listed in the attached table for social charges and overhead are based on the firm's average cost experiences for the latest three years as represented by the firm's financial statements; and
- e) said factors for overhead and social charges do not include any bonuses or other means of profit-sharing.

..... [Name of Bidder]

Signature of Authorized Representative

Name:

Title:

Date:

5. FORM 3C: FORM FOR BIDDER'S REPRESENTATIONS REGARDING COSTS AND CHARGES – (NOT APPLICABLE)
{This Form FIN 3C shall be used for Time-Based contracts only}

(Expressed in {insert name of currency*})

Personnel		1	2	3	4	5	6	7	8
Name	Position	Basic Remuneration Rate per Working Month/Day/Year	Social Charges ¹	Overhead ¹	Subtotal	Profit ²	Away from Home Office Allowance	Proposed Fixed Rate per Working Month/Day/Hour	Proposed Fixed Rate per Working Month/Day/Hour ¹
Home Office									
Procuring Entity's Country									

{* If more than one currency is used, use additional table(s), one for each currency}

1. Expressed as percentage of 1
2. Expressed as percentage of 4

6. FORM FIN 3D: BREAKDOWN OF REMUNERATION RATES [FOR TIME BASED CONTRACTS ONLY] – (NOT APPLICABLE)

1. Review of Remuneration Rates

- 1.1 The remuneration rates are made up of salary or base fee, social costs, overheads, profit, and any premium or allowance that may be paid for assignments away from headquarters or a home office. Form FIN3 C can be used to provide a breakdown of rates.
- 1.2 The Form FIN 3C shall be completed and attached to the Financial Form-3. As agreed at the negotiations, breakdown sheets shall form part of the negotiated Contract and included in its Appendix D or C.
- 1.3 At the negotiations the firm shall be prepared to disclose its audited financial statements for the last three years, to substantiate its rates, and accept that its proposed rates and other financial matters are subject to scrutiny. The Procuring Entity is charged with the custody of government funds and is expected to exercise prudence in the expenditure of these funds.

2. Rate details are discussed below:

- (i) Salary is the gross regular cash salary or fee paid to the individual in the firm's home office. It shall not contain any premium for work away from headquarters or bonus, except where these are included bylaw or government regulations.
- (ii) Bonuses are normally paid out of profits. To avoid double counting, any bonuses shall not normally be included in the "Salary" and should be shown separately. Where the bidder's accounting system is such that the percentages of social costs and overheads are based on total revenue, including bonuses, those percentages shall be adjusted downward accordingly. Where national policy requires that 13 months' pay be given for 12 months' work, the profit element need not be adjusted downward. Any discussions on bonuses shall be supported by audited documentation, which shall be treated as confidential.
- (iii) Social Charges are the costs of non-monetary benefits and may include, inter alia, social security (including pension, medical, and life insurance costs) and the cost of a paid sick and/or annual leave. In this regard, a paid leave during public holidays or an annual leave taken during an assignment if no Expert's replacement has been provided is not considered social charges.
- (iv) Cost of Leave The principles of calculating the cost of total days leave per annum as a percentage of basic salary is normally calculated as follows:

$$\text{Leave cost as percentage of salary} = \frac{\text{total days leave} \times 100}{[365 - w - ph - v - s]}$$

Where w = weekends, ph = public holidays, v = vacation, and s = sick leave.

Please note that leave can be considered as a social cost only if the Procuring Entity is not charged for the leave taken.

- (v) Overheads are the bidder's business costs that are not directly related to the execution of the assignment and shall not be reimbursed as separate items under the Contract. Typical items are home office costs (non-billable time, time of senior Bidder's staff monitoring the project, rent of headquarters' office, support staff, research, staff training, marketing, etc.), the cost of Bidder's personnel not currently employed on revenue-earning projects, taxes on business activities, and business promotion costs. During negotiations, audited financial statements, certified as correct by an independent auditor and supporting the last three years' overheads, shall be available for discussion, together with detailed lists of items making up the overheads and the percentage by which each relates to basic salary. The Procuring Entity does not accept an add-on margin for social charges, overhead expenses, etc. for Experts who are not permanent employees of the bidder. In such case, the bidder shall be entitled only to administrative costs and a fee on the monthly payments charged for sub-contracted Experts.
- (vi) Profit is normally based on the sum of the Salary, Social costs, and Overheads. If any bonuses paid on a regular basis are listed, a corresponding reduction shall be made in the profit amount. Profit shall not be allowed on travel or any other reimbursable expenses.
- (vii) Away from Home Office Allowance or Premium or Subsistence Allowances Some Bidders pay allowances to Experts working away from headquarters or outside of the home office. Such allowances are calculated as a percentage of salary (or a fee) and shall not draw overheads or profit. Sometimes, by law, such allowances may draw social costs. In this case, the amount of this social cost shall still be shown under social costs, with the net allowance shown separately.

7. FORM FIN - 4 BREAKDOWN OF REIMBURSABLE – (NOT APPLICABLE)

When used for Lump-Sum contract assignment, information to be provided in this Form shall only be used to demonstrate the basis for calculation of the Contract ceiling amount, to calculate applicable taxes at contract negotiations and, if needed, to establish payments to the bidder for possible additional services requested by the Procuring Entity. This form shall not be used as a basis for payments under Lump-Sum contracts. This form shall be filled for Time-Based Contracts to form the basis of contract negotiations.

B. Reimbursable Expenses_____								
Nº	Type of Reimbursable Expenses	Unit	Unit Cost	Quantity	{Currency # 1- as in FIN-2}	{Currency # 2- as in FIN-2}	{Currency# 3- as in FIN-2}	{Local Currency- as in FIN-2}
	{e.g., Per diem allowances**}	{Day}						
	{e.g., international flights}	{Ticket}						
	{e.g., In/out airport transportation}	{Trip}						
	{e.g., Communication costs between Insert place and Insert place}							
	{e.g., reproduction of reports}							
	{e.g., Office rent}							
								
	{Training of the Procuring Entity's personnel – if required in TOR}							
Total Costs								

Legend:

“Per diem allowance” is paid for each night the expert is required by the Contract to be away from his/her usual place of residence. Procuring Entity can set up a ceiling.

SECTION 5. TERMS OF REFERENCE

1. INTRODUCTION

The County Government of Mombasa is established under Article 6 and Fourth Schedule of the Constitution of Kenya 2010. The County Governments are corporate entities/bodies with perpetual succession, capacity to enter into contracts, capable of suing and being sued in their corporate name. The County Governments as new structure of devolved governance started their operations precisely on 2013.

2. THE KENYA DEVOLVED SYSTEM OF GOVERNANCE AND THE COUNTY GOVERNMENT ADMINISTRATION STRUCTURE

2.1 Objects and Principles of Devolved Government

The objects of the devolution of government are provided for under article 174 of the constitution as indicated hereunder—

- a) To promote democratic and accountable exercise of power;
- b) To foster national unity by recognizing diversity;
- c) Give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them;
- d) To recognize the right of communities to manage their own affairs and to further their development;
- e) To protect and promote the interests and rights of minorities and marginalized communities;
- f) To promote social and economic development and the provision of proximate, easily accessible services throughout Kenya;
- g) To ensure equitable sharing of national and local resources throughout Kenya;
- h) To facilitate the decentralization of State organs, their functions and services, from the capital of Kenya; and
- i) To enhance checks and balances and the separation of powers.

2.2 Principles of devolved government

Article 175 of the constitution provide that County governments established under this Constitution shall reflect the following principles—

- a) County governments shall be based on democratic principles and the separation of powers;
- b) County governments shall have reliable sources of revenue to enable them to govern and deliver services effectively; and
- c) No more than two-thirds of the members of representative bodies in each county government shall be of the same gender.

2.3 County executive committees

Article 179 of the Constitution provides for the County Executive Committee which is the top decision making for the county executive and which vests with all the authority of the County Executive.

Article 179 provides the following in regard to the authority, composition and leadership of the County Executive:-

- (1) The executive authority of the county is vested in, and exercised by, a county executive committee.
- (2) The county executive committee consists of—
 - a) The county governor and the deputy county governor; and
 - b) Members appointed by the county governor, with the approval of the assembly, from among persons who are not members of the assembly.
- (4) The number of members appointed under clause (2) (b) shall not exceed—
 - a) one-third of the number of members of the county assembly, if the assembly has less than thirty members; or
 - b) Ten, if the assembly has thirty or more members.
- (5) The county governor and the deputy county governor are the chief executive and deputy chief executive of the county, respectively.
- (6) When the county governor is absent, the deputy county governor shall act as the county governor.
- (7) Members of a county executive committee are accountable to the county governor for the performance of their functions and exercise of their powers.

3. AN OVERVIEW OF THE KIZINGO ESTATE SITE

Kizingo Estate is located right at the heart of Mombasa Central Business District. It is arguably one of Mombasa County's well-secured residential areas that boasts of Kenya's coastal based State House. It is a very prime area in the residential area of Kizingo. It has an acreage of approximately 0.326 acres. There are schools, health facilities and shopping activities within close proximity. The area is very ideal for a high end residential apartment.

The existing development is composed of a total of Six (6) three bed roomed houses and several other informal structures used either as residential or business premises.

The proposed redevelopment is to construct a minimum of 100 modern and affordable housing units broken down as follows:

1. Two Bedroom
2. Three Bedroom
3. Parking Lots

The development shall be in tandem with the master plan proposed by the Development Partner and shall utilize the available space to achieve the following:

Average Parking Ratio = 80%

Plot Ratio = 8%

Plot Coverage = 41%

Unit Ratios

2 bedroom 60%

3 bedroom 40%

The development shall provide onsite parking for the users of the premises with priority being given to the owners of the housing

units;

The Development shall consider the commercial and social uses of the site.

The Project shall integrate the following Planning Principles:

1. **Densification:** To ensure the highest and best use of land.
2. **Compact Development:** To optimize on land use, the Project is expected to adopt a vertical development approach.
3. **Mixed Income Groups:** The intended solution of the Project is to cater for different income groups.
4. **Self-Reliance:** The Project shall include support services such as playgrounds, schools or community halls.
5. **Environmental Sustainability:** The developers shall ensure the use of Green technology and energy conservation in developing the Project.
6. **Human Centered Development:** The proposed redevelopment shall take into account the needs of the residents and the larger public and as such, the designs of the units shall adequately address those needs.

SITE VISIT

The Bidder is advised to visit and examine the sites and their surrounding and obtain for itself at its own cost and responsibility, all information that may be necessary for preparing the bid(s) and entering into a contract.

The Bidder and any of its personnel or agents will be granted permission by CGM to access the land for the purpose of such visit, but only upon the express condition that the Bidder, its personnel or agents, will release and indemnify CGM from and against all liability in respect of and will be responsible for personal injury (whether fatal or otherwise), loss of or damage to property and any other loss, damage, costs and expenses however caused, which but for the exercise of such permission, would not have arisen.

CGM shall organize site visits at certain dates as indicated in the Appendix to Instructions to Bidders. A representative of CGM will be available to meet the visiting Bidders at the sites. The representative(s) will not be available at any other time for site inspection visits. Bidders must provide their own transport.

4. OBJECTIVE OF THE ASSIGNMENT

The key objective of this agreement is for the tenderer to redevelop the County Estate of Kizingo under the Mombasa County Government Urban Renewal and Redevelopment of Old Estates programme.

5. SCOPE OF WORK

The following outlines the scope of work for the assignment: -

The Bidder shall be expected to provide their best design solutions for the site and offer competitive prices for developing the units based on the output specifications provided by the CGM.

The design solutions shall include a complete sets of all architectural, landscape and engineering services drawings and Bills of Quantities and detailed specifications necessary to complete the project in accordance with the requirements of the contract documents.

From the approved drawings and detailed specifications, the Bidder shall furnish all labour, materials, equipment, services and transportation necessary for the complete construction of the project, including site works, structures, utilities and landscaping

6. OUTPUT/DELIVERABLES

The following outlines the key deliverables for the Kizingo Estate redevelopment project:-

The proposed redevelopment is to construct a minimum of 100 modern and affordable housing units broken down as follows:

- Two Bedroom
- Three Bedroom
- Parking Lots

7.1 Development Partner's Responsibility for the Works:

A. Generally

- The Development Partner shall be fully responsible for all work performed under this contract and no Sub-Contractor will be recognized as such.
- For purposes of assessing responsibility to the Development Partner, all persons engaged in the work shall be considered as employees of the development partner.
- The Development Partner shall give its personal attention to the fulfillment of the contract and keep all phases of the work under its control.
- CGM will not arbitrate among Sub-Contractors nor between the Development Partner and one or more Sub-Contractors concerning responsibility for performing any part of the Project.

Quality Control

The Development Partner shall be fully responsible for the quality of materials and workers still in the project. The Development Partner shall not rely upon the inspection and testing provided by CGM other than those special inspections and tests performed by CGM's selected laboratories for which there are written reports.

BURDEN OF DAMAGE

From the issuance of the Official Notice to Proceed until formal acceptance of the project by CGM, the Development Partner shall have the charge and care of and shall bear the risk of damage to the project and materials and equipment for the project. The Development Partner, at its own expense, shall promptly rebuild, repair, restore and make good all such damage to any portion or to all of the project and materials therefore before the acceptance of the project by CGM except for such damage as is proximately caused by acts of CGM or public enemy.

In case of suspension of work from any cause whatsoever, the Development Partner shall be responsible for all materials and shall properly store them, if necessary and shall provide suitable drainage and erect temporary structures where necessary. If the Development Partner damages any property belonging to CGM, CGM may, in addition to other remedies available to it, retain from money due to the Development Partner an amount sufficient to ensure repair of the damage or an amount to contribute towards repair of the damage.

The Development Partner shall be responsible for any damage to the project and materials and equipment for the project.

Protection of Adjoining Facilities

The Development Partner shall protect adjoining property and nearby buildings, roads and other facilities and improvements from dust, dirt, debris and other nuisances arising out of Development Partner's operations. Dust shall be controlled by sprinkling water or other effective methods acceptable to CGM.

An erosion and sedimentation control program shall be initiated, which includes measures addressing erosion caused by wind and water sediment in runoff from site.

A regular watering program shall be initiated to adequately control the amount of fugitive dust in accordance with applicable Law.

Safety

The Development Partner shall exercise precaution at all times for the protection of persons and their property. The Development Partner shall install adequate safety guards and protective devices for all equipment and machinery, whether used in the work or permanently installed as part of the project. The Development Partner shall also provide and adequately maintain all proper temporary walks, roads, guards, railings, lights and warning signs. The Development Partner shall comply with all applicable laws relating to safety precautions, including the safety regulations of the Project Manager. If the Development Partner designates other employees, its Foreman shall have the duty of prevention of accidents. The Development Partner shall institute a safety program, which includes all trades on the site. Renovation, expansion, or remodel work of any existing building may expose workers to lead-containing materials such as paint, flashing and pipe joints. The Development Partner shall comply with all applicable laws addressing such exposure. The CGM through its Project Manager may bring to the attention of the Development Partner a possible hazardous situation in the field regarding the safety of personnel on the site. The Development Partner shall be responsible for verifying that all National and County Government workplace safety guidelines are being observed. In no case shall this right to notify the Development Partner absolve the Development Partner of its responsibility for monitoring safety conditions. Such notification shall not imply that anyone other than the Development Partner has assumed any responsibility for field safety operations. In the event of an accident, the Development Partner shall make available to CGM, copies of its accident report to its insurance carrier. The Development Partner shall determine the cause of the accident and immediately correct any equipment, procedure or condition contributing to the accident.

Utilities

If the Development Partner discovers utility facilities not identified in the contract documents, the Development Partner shall immediately notify CGM and the utility involved in writing of such discovery. When the Development Partner is required by the plans and specifications to locate, remove or relocate utility facilities not identified in the contract documents with reasonable accuracy, she/he shall be compensated for any reasonable actual added cost incurred.

- The Development Partner shall also be compensated for the cost of repairing any damage resulting from the discovery of such unidentified utility facility when such damage does not result from the failure of the Development Partner to exercise reasonable care.
- All such compensation to the Development Partner shall be based on an actual cost plus Development Partner and subcontractor mark-up except that both the Development Partner's and sub-contractor's mark-up shall be reduced by (6) percent each, where the damages results from the failure of the Development Partner or sub-contractor to exercise reasonable care.
- CGM or the public utility, where it is the owner of the utility facilities shall have the sole discretion to perform repairs, or relocation work or permit the Development Partner to do such repairs or relocation work at a reasonable price, where such work is required to facilitate the project.
- The Development Partner shall not be held liable / responsible for liquidated damages arising out of delay in the completion of the project which is caused by the failure of CGM or the owner of the utility to provide for removal or relocation of such unidentified utility facilities.
 1. With the exception of the identification of main trunk line utility facilities in the contract documents, the foregoing provisions of sub- clause (i) shall not apply to and CGM shall have no obligation to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the project can be inferred from the presence of other visible facilities such as buildings, meter and junction boxes on or adjacent on the site of the construction.
 2. Except as expressly provided in sub-clauses (i) and (ii) above, the Development Partner shall be responsible at its own cost for all work, expense or special precautions caused by the existence or proximity of utilities encountered at the site or in the performance of the project work including without limitation.
- Repair of any damage that may result including any damage resulting from hand or exploratory excavation.
- The Development Partner should note that the utilities that may be encountered at the site may include communication cables or electrical cables conducting high voltage. When excavating in the vicinity of the ducts enclosing such cables, special precautions are to be observed by the Development Partner at its own cost and shall include the following

:

- a. All cables and their enclosure ducts shall be exposed by careful hand excavation so as not to damage the ducts or cables nor;
 - b. Cause injury to persons and appropriate warnings signs, barricades and safety devices shall be erected.
3. The Development Partner shall provide to CGM as-built drawings of all utilities encountered and constructed indicating the size, horizontal location and vertical location based on the project bench mark or a stable datum.

7.20 Responsibility to Secure and Pay for Permits, Licenses, Utility Connections Etc.

The Development Partner shall secure all permits and licenses required for any operations required under this contract and shall pay all costs relating thereto as well as all other fees and changes that are required by the Project Manager, Telephony Company, special district or quasi-Project Managerial entity. It is the Development Partner's responsibility to ascertain the necessity of such permits and licenses in preparing its Bid and include in its Bid the cost thereof as well as adjustments for any delays, which may be caused by securing permits and licenses.

7.21 Patented or Copyrighted Materials:

The Development Partner shall assume all costs arising from the use of patented or copyrighted materials, equipment, devices or processes used on or incorporated in the project and agrees to save harmless, defend and indemnify CGM's Consultants, CGM's employees from all suits, actions or claims for or on account of the use of any patented or copyrighted materials, equipment, devices or processes.

7.22 Property Rights in Materials and Equipment:

Nothing in this contract shall be construed as vesting in Development Partner any property in the materials or equipment after they have been attached to or permanently placed in or upon the work or soil or after payment has been made for the value of the materials or equipment delivered to the site of the work whether or not they have been so attached as placed.

All such materials or equipment shall become the property of CGM upon being so attached or placed or upon payment of the value of the materials or equipment delivered on the site but not yet installed and the Development Partner warrants that all such property shall pass to CGM free and clear of all liens, claims, security interests or encumbrances.

7.23 Taxes:

The Development Partner shall pay all taxes imposed by law (Kenya Revenue Authority) which are levied or become payable as a result of the Development Partner's performance under this contract.

7.24 Contract Time:

a) Time is of Essence:

All time limits specified in this contract are of the essence of the contract.

b) Starting and Completion Dates:

CGM shall designate in the Notice to Proceed the starting date of the contract on which the Development Partner shall immediately begin and thereafter diligently execute the work to completion.

The Development Partner agrees to complete the work on the date specified for completion of the Development Partner's performance in the contract unless the adjustment arises under unusual circumstances.

The Development Partner may complete the work before the completion date if it will not interfere with CGM's or other Contractors engaged in other related or adjacent work. The work shall be regarded as completed as noted on CGM's Notice of Completion.

7.25 Labour Force and Foremen:

At all times the Development Partner shall provide sufficient labour to properly execute the work and to ensure completion of each part in accordance with the schedule and within the contract time.

The Development Partner shall make certain that competent workers are employed who are skilled in the type of work required and that workmanship is of the best, regardless of the quality of material.

If in the judgment of CGM, any person is incompetent or disorderly, the Development Partner shall promptly remove such person from the project and shall not re-employ such person thereon.

The Development Partner shall retain a competent, full time on- site Foreman to represent

the Development Partner and to direct the project at all times while any work under this contract is being performed

The Foreman shall prepare a daily report, which includes worker count and work in progress and shall provide the report to CGM upon request.

The Development Partner shall make certain that all Sub- Contractors employed are properly registered and are in good standing with the Project Manager's requirements

7.26 Limitation of Construction Operations:

The Development Partner shall limit the area and nature of the construction operations to that which is authorized in the plans and specifications or approved in writing by CGM.

The Development Partner shall be responsible to others engaged in the related or adjacent work for all damage to work, to persons and to property and for loss caused by failure to complete the work within the specified time for completion.

The Development Partner shall co-ordinate its work with the work of others so that no discrepancies shall result in the project.

7.27 Drawings Reflecting Actual Construction:

During the course of construction, the Development Partner shall maintain drawings daily to show the project as it is actually constructed.

Every sheet of plans and specifications, which differs from the actual construction, shall be marked and sheets so changed shall be noted on the title of the plans and specifications.

All variation orders shall be shown by reference to sketch drawings and any supplementary drawings or change order drawings shall be included.

The Development Partner shall review the "as-built" drawings with the Project Manager at least once a month to demonstrate that all changes that have occurred are being fully and accurately recorded.

The altered contract drawings shall be sufficiently detailed so that future work on the project or in adjacent areas may be conducted with a minimum of difficulty.

Prior to the completion of the project, and prior to release of the final retention payments, the "as-built" drawings and specifications shall be transmitted to the Project Manager for

further handling with a copy of the transmittal to CGM.

Additionally, the Development Partner shall turn over to CGM a re-drafted and complete set of “as-built” drawings of the actual construction.

Final payment will not be made to the Development Partner until the “as-built” drawings are received and spot checked by CGM. Corrections if any shall be made as necessary.

8. REPORTING AND COORDINATION OF THE PROJECT

The project partner shall report to the CGM and shall work closely with the project implementation committee that will have representatives from both parties throughout the period of the project implementation.

9. DURATION AND TIME-FRAME

The project is expected to be completed within **Thirty Six (36) months** upon commencement of the project as per the contractual agreement.

10. REQUIRED PERSONNEL SKILLS AND EXPERIENCE

Bidders are to provide the Project Management Team Organization chart and CVs for the project Architectural firm, Quantity Surveying firm, Civil & Structural Engineering firm, Electrical and Mechanical Engineering firm, Construction Manager, Project Manager and Facilities Manager. Each project design team member should have a minimum experience of ten years and above in handling housing projects of similar size as the project

10.1 COVER

The tender documents must be in a sealed envelope legibly indicating the EOI Number, title page, project title, assignment name, firm name, logo, and contact information. The bid document must be bound and duly paginated sequentially on all the pages (both sides of a leaf).

10.2 COVER LETTER

The document must have a one page signed and stamped cover letter from the firm as an acknowledgement and submission statement.

10.3 GENERAL BACKGROUND AND OVERVIEW OF FIRM

Narrative description of the firm, number of employees, history, affiliates (partners/ joint ventures), main areas of business and awards. These should demonstrate the primary purpose, integrity and credibility of the firm.

If a joint venture or consortia approach, consider separate sub-sections identifying each partner firm or member organization.

10.4 UNDERSTANDING OF THE ASSIGNMENT

A section that describes the firm's understanding of the purpose, objective, and development context of the project as well as a brief discussion of key issues, opportunities, and challenges.

10.5 TEAM COMPETENCE AND LOCAL PARTNERS

Where the firm has partnered with other firms, a joint venture agreement must be attached. In 1-2 paragraphs identify and describe local partners or local experts. When selecting local partners, it is essential to select a partner that has technical qualifications.

A certified local partner with technical skills and capacity will contribute to a more effective EOI and subsequent proposal.

The firm should also provide the details on all the experts who will be engaged on this assignment. Please provide a summary bio of all the experts using the template (Annex 2) attached. Copies of all relevant academic and professional certificates should also be attached.

Each expert should be clearly identified for all technical experts required as per the designations under the technical requirements.

10.6 OTHER GUIDELINES

- a)** Attach all the relevant supporting documents for preliminary evaluation as guided in Sec. 22.1 of
- b)**

10.7 EVALUATION PROCESS

Stage 1; Preliminary Evaluation

CGM will only evaluate bids determined to be responsive to the requirements of the bid documents in accordance with the Data sheet.

Responsive Bids will be evaluated in the following steps;

Step 1: Evaluation of Mandatory Requirements

Evaluation of Mandatory Requirements will be assessed. The Bidder will be expected to meet the minimum eligibility in accordance with the Data sheet.

The Bidders should furnish all supporting evidence to support their technical and financial capability. Any Bidder found not to have met the mandatory requirements will be declared to be non-responsive and shall not be eligible for the next stage of the evaluation process.

The “**TECHNICAL PROPOSAL**” and “**FINANCIAL PROPOSAL**” of such Bidders shall be returned unopened.

Only those Bidders who pass the mandatory requirements evaluation stage will proceed to the next stage of technical evaluation

Step 2: Evaluation of Technical Proposal

In this stage the Bidders’ technical proposals will be assessed. The Bidders should furnish all the information required to support their technical proposal.

The evaluation shall be done by the Evaluation Committee in accordance with the Instructions to Bidders and the Standard Forms contained in this RFP. Technical Proposals will be assessed in accordance with the following parameters:

- a. The overall development concept and designs.
- b. Conformity of the development concept to applicable laws and regulations;
- c. Appropriateness of proposed construction methods and technology;
- d. Adherence to the planning principles outlined in the RFP;

Bidders who shall not pass the technical evaluation stage will have been found to be technically incapable and shall not be eligible for the next stage of the evaluation process. Their Financial Proposals shall be returned unopened.

A technical score (TS) shall be awarded to each evaluated Bidder as per the evaluation criteria explained in **Clause 15- Technical Proposal** and those who will have attained the required cut off marks at the technical evaluation stage will have their technical bids declared successful . All such Bidders shall be eligible for the next stage of financial evaluation.

The bidders who qualify at this stage will proceed to Stage 3 on Financial Evaluation.

Stage 3: Financial Evaluation of the Proposals

In this stage the Bidders' Financial Proposals will be assessed in accordance with the following parameters with the format explained in **Clause 16-Financial Bid** used as the evaluation criteria.

1. Sale price proposed for individual units (Studio Apartments, 1 BR, 2 BR & 3 BR);
2. Number of housing units to be developed;
3. Total number of units to be allocated to CGM;
4. Proposed mortgage facility / Tenant Purchase Scheme to be offered by the Developer to end buyers;
5. Elaborate marketing strategy for selling the developed units.

A Financial Score (FS) shall be awarded to each evaluated Bidder. The final score for each Bidder shall be arrived at by aggregating the Technical and Financial scores.

The bid evaluation committee shall evaluate the financial bids within 30 days of notification of the results of the technical evaluation.

CGM may at any time terminate procurement proceedings before award and shall not be liable to any person for the termination.

CGM shall give prompt notice of the termination to the Bidders and on request give its reasons for termination within 14 days of receiving the request from any Bidder.

Persons not officially involved in the evaluation of the bids shall not attempt in any way to influence the evaluation.

Any person who has a conflict of interest with respect to the procurement shall not participate in the procurement proceedings.

SECTION 6. CONDITIONS OF CONTRACT AND CONTRACT FORMS

CONTRACT FOR BIDDER'S SERVICES

Lump-Sum Contract Consulting Services for:

Contract No.:_____

Contract Description:_____

Between

_____ *[Name of the Procuring Entity]*

and

_____ *[Name of the bidder]*

Date:

FORM OF CONTRACT - LUMP-SUM

(Text in brackets [] is optional; all notes should be deleted in the final text)

This *CONTRACT* (herein after called the “Contract”) is made the *[number]* day of the month of *[month]*, *[year]*, between, on the one hand, *[name of Procuring Entity]* (herein after called the “Procuring Entity”) and, on the other hand, *[name of Bidder]* (herein after called the “Bidder”).

[If the bidder consists of more than one entity, the above should be partially amended to read as follows: “... (hereinafter called the “Procuring Entity”) and, on the other hand, a Joint Venture (name of the JV) consisting of the following entities, each member of which will be jointly and severally liable to the Procuring Entity for all the bidder's obligations under this Contract, namely, [name of member] and [name of member] (herein after called the “Bidder”).]

WHEREAS

- a) The Procuring Entity has requested the bidder to provide certain consulting services as defined in this Contract (herein after called the “Services”);
- b) the bidder, having represented to the Procuring Entity that it has the required professional skills, expertise and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract;
- c) the Procuring Entity has set aside a budget and funds toward the cost of the Services and intends to apply a portion of these funds towards payments under this Contract;

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents attached here to shall be deemed to form an integral part of this Contract:
 - a) The General Conditions of Contract;
 - b) The Special Conditions of Contract;
 - c) Appendices:
 - Appendix A: Terms of Reference
 - Appendix B: Key Experts
 - Appendix C: Breakdown of Contract Price
 - Appendix D: Form of Advance Payments Guarantee
2. In the event of any inconsistency between the documents, the following order of precedence shall prevail: The Special Conditions of Contract; the General Conditions of Contract; Appendix A; Appendix B; Appendix C; Appendix D. Any reference to this Contract shall include, where the context permits, a reference to its Appendices.
3. The mutual rights and obligations of the Procuring Entity and the bidder shall be asset for thin the Contract, in particular:
 - a) The bidder shall carryout the Services in accordance with the provisions of the Contract; and
 - b) the Procuring Entity shall make payments to the bidder in accordance with the provisions of the Contract.

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

For and on behalf of..... *[Name of Procuring Entity] [Authorized Representative of the Procuring Entity–name, title and signature]*

For and on behalf of..... *[Name of Bidder or Name of a Joint Venture] [Authorized Representative of the bidder–name and signature]*

[Note: For a joint venture, either all members shall sign or only the lead member, in which case the power of attorney to sign on behalf of all members shall be attached.]

For and on behalf of each of the members of the bidder..... *[Insert the Name of the Joint Venture] [Name of the lead member]*

[Authorized Representative on behalf of a Joint Venture] [Add signature blocks for each member if all are

signing]

SECTION 7: GENERAL CONDITIONS OF CONTRACT

General Provisions

1.1 Duty to Carefully Examine these Instructions

Bidders are advised to carefully examine the instructions contained herein and be satisfied with the conditions that must be satisfied prior to submitting a proposal and to the conditions that affect the award of the contract.

1.2 Necessity for Careful Examination of Site Plan, Specifications

The Bidder shall carefully examine the project site and shall investigate and be satisfied as to the conditions to be encountered, the character and quantity of surface and sub-surface materials or obstacles to be encountered, rights of way and easements at or near the site, the work to be performed and the materials to be furnished as required by the RFP. Any failure by the Bidders to acquaint themselves with the information that is available or with reasonable investigations that may be available will not relieve them from responsibility to properly estimate the difficulty or cost to perform the works.

1.3 Clarification During Bidding

The Bidder shall examine the RFP documents in preparing the Bid and shall report to CGM any omissions, discrepancies or apparent errors found in the RFP document. Prior to the date of Bid opening, the Bidder shall submit a written request to CGM as per Clause 3.6.1 for clarification and CGM may give such clarification in the form of an addendum to all Bidders. Only CGM's authorized personnel is authorized to answer questions or prepare addenda relating to the project. Information obtained from any other source shall not bind either party, may not be relied upon and shall have no standing in any event that may occur.

1.4 Proposal Documents:

Each proposal will consist of:

- I. Mandatory Requirements;
- II. Technical Proposal; and
- III. Financial Proposal

- e. Proposal Package:

Any proposal submitted that is not signed by the Bidder or the Bidder's duly authorized representative shall be rejected by FT

- f. Power of Attorney:

When an agent signs the bid, a power of attorney shall be submitted with the proposal. Failure to submit the power of Attorney may result in rejection of the bid as irregular and unauthorized. However, a Power of Attorney is not necessary in the case of a Partner in a partnership.

1.5 Competitive Bidding

If more than one proposal is offered by an individual or business entity or combination thereof, under the same or different names, all such proposals may be rejected.

I. Commencement, Completion, Modification and Termination of Contract

2. Effectiveness of Contract

- 2.1 This Contract shall come into force and effect on the date (the "Effective Date") of the Procuring Entity's notice to the bidder instructing the bidder to begin carrying out the project. This notice shall confirm that the effectiveness conditions, if any, listed in the SCC have been met.

3. Termination of Contract for Failure to Become Effective

- 3.1 If this Contract has not become effective within such time period after the date of Contract signature as specified in the SCC, either Party may, by not less than twenty-two (22) days written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect there to.

4. Commencement of the Project

- 4.1 The Project partner shall confirm availability of all resources and begins carrying out the project not later than the number of days after the Effective Date specified in the SCC.

5. Expiration of Contract

- 5.1 Unless terminated earlier pursuant to Clause GCC19hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the SCC and after the completion of the whole project.

6. Entire Agreement

- 6.1 This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

7. Modifications or Variations

- 7.1 Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the project, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party.

8. Force Majeure

a. Definition

- 8.1 For the purposes of this Contract, “Force Majeure” means event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible under the circumstances, and subject to those requirements, includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action confiscation or any other action by Government agencies.
- 8.2 Force Majeure shall not include (i) any event which has been caused by the negligence or intentional action of a Party or such Party's Experts, Sub-Bidders or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both take into account at the time of the conclusion of this Contract and avoid or overcome in the carrying out of its obligations here under.
- 8.3 Force Majeure shall not include insufficiency of funds or failure to make any payment required here under.

b. No Breach of Contract

- 8.4 The failure of a Party to fulfill any of its obligations here under shall not be considered to be a breach of, or default under, this Contract in so far as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

c. Measures to be taken

- 8.5 A party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.
- 8.6 A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible,

and in any case not later than fourteen (14) calendar days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.

- a) Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.
- b) During the period of their inability to perform the Services as a result of an event of Force Majeure, the bidder, upon instructions by the Procuring Entity, shall either:
- c) demobilize, in which case the bidder shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the Procuring Entity, in reactivating the Services; or
- d) Continue with the Services to the extent reasonably possible, in which case the bidder shall continue to be paid under the terms of this Contract and be reimbursed or additional costs reasonably and necessarily incurred.

8.7 In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clauses GCC 44 & 45.

9. Suspension

9.1 The Procuring Entity may, by written notice of suspension to the bidder, suspend all payments to the bidder here under if the bidder fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) Shall request the bidder to remedy such failure within a period not exceeding thirty (30) calendar days after receipt by the bidder of such notice of suspension.

10. Termination

10.1 This Contract may be terminated by either Party as per provisions set up below:

a. By the Procuring Entity

10.2 The Procuring Entity may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause. In such an occurrence, the Procuring Entity shall give at least thirty (30) calendar days' written notice of termination to the bidder in case of the events referred to in (a) through (d); at least sixty (60) calendar days' written notice in case of the event referred to in (e); and at least five (5) calendar days' written notice in case of the event referred to in (f):

- a. If the bidder fails to remedy a failure in the performance of its obligations here under, as specified in a notice of suspension pursuant to Clause GCC 18;
- b. If the bidder becomes (or, if the bidder consists of more than one entity, if any of its members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go in to liquidation or receivership whether compulsory or voluntary;
- c. If the bidder fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GCC 45.1;
- d. If, as the result of Force Majeure, the bidder is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days;
- e. If the Procuring Entity, in its sole discretion and for any reason whatsoever, decides to terminate this Contract;
- f. If the bidder fails to confirm availability of Key Experts as required in Clause GCC13.

10.3 Furthermore, if the Procuring Entity determines that the bidder has engaged in corrupt, fraudulent, collusive, coercive [or obstructive] practices, in competing for or in executing the Contract, then the Procuring Entity may, after giving fourteen (14) calendar days written notice to the bidder, terminate the bidder's employment under the Contract.

b. By the bidder

- a) The bidder may terminate this Contract, by not less than thirty (30) calendar days' written notice to the Procuring Entity, in case of the occurrence of any of the events specified in paragraphs(a)through(d)of this Clause.
- b) If the Procuring Entity fails to pay any money due to the bidder pursuant to this Contract and not subject to dispute pursuant to Clause GCC45.1withinforty-five (45) calendar days after receiving written notice from the bidder that such payment is overdue.
- c) If, as the result of Force Majeure, the bidder is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days.
- d) If the Procuring Entity fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC45.1.
- e) If the Procuring Entity is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the bidder may have subsequently approved in writing) following the receipt by the Procuring Entity of the bidder's notice specifying such breach.

c. Cessation of Rights and Obligations

- 10.4 Upon termination of this Contract pursuant to Clauses GCC 12 or GCC 19 hereof, or upon expiration of this Contract pursuant to Clause GCC14, all rights and obligations of the Parties here under shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause GCC22, (iii) the bidder's obligation to permit in section, copying and auditing of their accounts and records set forth in Clause GCC25, and (iv) any right which a Party may have under the Applicable Law.

d. Cessation of Services

- 10.5 Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GCC 19a or GCC 19b, the bidder shall immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the bidder and equipment and materials furnished by the Procuring Entity, the bidder shall proceed as provided, respectively, by Clauses GCC27or GCC28.

e. Payment up on Termination

- 10.6 Up on termination of this Contract, the Procuring Entity shall make the following payments to the bidder:
- a) Payment or Services satisfactorily performed prior to the effective date of termination; and
 - b) In the case of termination pursuant to paragraphs (d) and (e) of Clause GCC 19.1.1, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract, including the cost of the return travel of the Experts.

J. Obligations of the bidder

11. General

a. Intent of Contract Documents:

The intent of the contract documents is to provide CGM with a project that is complete in all respects. All items necessary or reasonably required are to be provided to produce a complete and operational project.

b. Scope of the Work

- 11.1 The bidder shall employ and provide such qualified and experienced Experts and Sub-Bidders as are required to carry out the project works.
- 11.2 The bidder may subcontract part of the Services to an extent and with such Key Experts and Sub- Bidders as may be approved in advance by the Procuring Entity. Notwithstanding such approval, the bidder shall retain full responsibility for the Services.

- 11.3 The Bidder shall be expected to provide their best design solutions for the site and offer competitive prices for developing the units based on the output specifications provided by the CGM.
- 11.4 The design solutions shall include a complete sets of all architectural, landscape and engineering services drawings and Bills of Quantities and detailed specifications necessary to complete the project in accordance with the requirements of the contract documents.
- 11.5 From the approved drawings and detailed specifications, the Bidder shall furnish all labour, materials, equipment, services and transportation necessary for the complete construction of the project, including site works, structures, utilities and landscaping.

c. Laws and Codes Applicable to the project

- 11.6 For any item for which the above codes are not applicable, the Bidder shall comply with the requirements of the latest edition of the Kenya Building Code. Codes and specifications incorporated by reference shall be those of the latest edition at the time of receiving proposals, unless otherwise specified.
- 11.7 CGM shall select a firm(s) to provide materials testing and inspection services during construction. The testing and inspection services firms are solely responsible to CGM and the Project Managers for observation of construction, determination of adherence to the contract documents (including approved plans and specifications) and compliance with the applicable codes and standards.

d. Plans and Specifications

- 11.8 The plans and specifications shall state the design codes, standards and requirements used for the development of the plans including the edition and applicable sections.
- 11.9 Plans and specifications shall include a quality control programme and an implementation plan to ensure that the completed project complies in all respects to the project requirements.
- 11.10 The design professionals adopted by the Bidder shall specify all the tests that are required by the building code and that are appropriate to achieve the project goals. The design professionals on record shall be retained to provide normal construction administration services and shall make periodic visits to site to observe the quality of the works.
- 11.11 The final design drawings, specifications and calculations shall be signed and stamped by the appropriate registered professionals as complying with the requirements of the applicable codes, standards, practices and regulations.
- 11.12 The design professionals on record shall retain full responsibility for the design.
- 11.13 The Development Partner shall incorporate changes, if any, resulting from plan check, peer review and/or CGM's requirements into the final design without additional cost to CGM. Such final drawings and specifications shall be re- submitted to CGM for approval.

e. Plan Approval by CGM

- 11.14 No plans shall be approved for construction without the express written approval of CGM's authorized representative.
- 11.15 At the discretion of CGM, the project may be approved in parts provided that each part is assessed as in full compliance with the applicable requirements and can be completed without compromising compliance of the total project.
- 11.16 Any changes, alterations, substitutions or modifications made to the approved plans during construction must be approved in writing by CGM's authorized representative, where they may be construed to impact on the adherence to the applicable codes, standards or regulations.
- 11.17 The Development Partner shall incorporate without additional cost to CGM, any changes, alterations, substitutions or modifications made to the approved plans that are required during construction to satisfy

code requirements, including those not previously identified in the approved plans, or to properly implement the approved plans, or where observed workmanship and / or discovered conditions so require.

11.18 The Development Partner shall be responsible for payment of applicable fees and shall incorporate any modifications required in the drawings and detailed specifications without additional cost to CGM.

11.19 CGM shall issue a certificate of completion when satisfied that the approved plans have been implemented and that all inspection and technical code and standards compliance issues identified during construction have been satisfactorily resolved.

f. Drawings and Specifications

11.20 **Quality Requirements:** The Development Partner shall submit to CGM for approval, a complete set of drawings and detailed specifications necessary to construct the project, including drawings and detailed specifications for site layout, utilities and landscaping.

These drawings and specifications have been prepared by registered professionals engaged by CGM in compliance with the Kenyan law.

11.21 **Plan Review and Testing / Inspection Services:**

CGM and the Development Partner shall each appoint a Project Manager to oversee /co-ordinate the project. The Project Manager shall also have the responsibility for enforcement of all applicable codes, standards and related responsibilities.

CGM shall review the plans and specifications for adherence to applicable codes and standards.

CGM shall select a firm(s) to provide materials testing and inspection services during construction. Testing and inspection services firm(s) shall be solely responsible to the Project Manager appointed by the County for observance of construction, determination of adherence to the contract documents (including approved plans and specifications) and compliance with the applicable codes and standards.

g. Approvals Prior to Construction:

11.22 Review and approval of all drawings and detailed specifications must be obtained from CGM before start of construction. The Development Partner shall proceed with earthworks, foundations and other elements while final plans and specifications for the balance of the work are being completed.

11.23 The Development Partner is responsible for final approvals and approval of portions of the work by CGM does not relieve the Development Partner of its responsibility for construction should changes be required if certain items of work are disapproved or changed due to plan check. The responsibility for a totally integrated design in accordance with the contract documents will remain with the Development Partner.

h. Submittals

11.24 The Development Partner shall submit all detailed fabrication drawings, material list and manufacturer's equipment brochures setting forth in detail the work as it is to be performed by the Development Partner. Submittals shall be approved by CGM prior to use of the materials for the works.

i. Divisions of the Performance specifications

11.25 The performance specifications are divided into sections for convenience as set forth in the standard format. The actual limitations of work in the various trades and/or sections of the specifications are the responsibility of the Development Partner.

j. Layout of the Work

11.26 The Development Partner shall prepare surveys and design for excavations and shorings required for the project and assured local regulations.

12. CONDUCT OF WORK

i. Laws to be Observed – Generally:

- 12.1 The Development Partner shall observe all National and County Government Laws that affect the work under this contract.
- 12.2 The Development Partner shall hold harmless, defend and indemnify CGM against any claim arising from the violation of any law, whether by itself or its agents, employees or sub- contractors.
- 12.3 If a conflict arises between the provisions of this contract and any other law, the Development Partner shall immediately notify CGM’s Project Manager in writing.
- 12.4 “Law” as used in this paragraph includes statutes and regulations adopted as well as executive orders, authoritative interpretations and other rules and directives issued by legally constituted authority.

ii. Laws to be observed – Regarding Labor:

12.5 Labor:

The Development Partner shall comply with the provisions of the Kenyan Labour Laws.

The Development Partner shall permit access by representatives of CGM upon reasonable notice to its books, records, accounts, other sources of information and its facilities as CGM shall require ascertaining compliance with this Clause.

The Development Partner and its Sub-Contractors shall give written notice of their obligations under this Clause to labour organizations with which they have a collective bargaining or other agreement.

12.6 Prevailing Wage:

1. Wage rates shall be minimum rates applicable as approved by the Cabinet Secretary that may be paid by the Development Partner on a public works contract.

Public works also means hauling refuse from a public works site to an outside disposal location.

Nothing herein contained shall be construed as preventing the Development Partner from paying more rates set forth.

No extra compensation whatsoever will be allowed by CGM due to the inability of the Development Partner to hire labour at minimum rates for the necessity for payment by the Development Partner of subsistence, travel time, overtime or other added compensations, all of which possibilities are elements to be considered and ascertained to the Development Partner’s own satisfaction in preparing the bid.

2. If it becomes necessary to employ crafts other than those listed, the Development Partner shall notify CGM immediately and CGM shall/ will ascertain additional prevailing rates and the rates thus demanded shall be applicable as minimum from time of initial employment.
3. The Development Partner and any Sub-Contractor under the Development Partner shall comply fully with all labour laws.
4. The Development Partner and Sub-Contractors shall keep an accurate payroll record showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week and actual per diem wages paid to each journeyman, apprentice or worker employed in connection with the works.

Each payroll record shall contain verification by written declaration that the information contained in the payroll record is true and correct and that the Development Partner and Sub-Contractors have complied with the requirements.

For work performed by its employees on the project, the Development Partner's and Sub-Contractor's payroll records shall be available for inspection at all reasonable hours and a certified copy shall be made available upon request to CGM's authorized representative.

- 5.** The Development Partner is required to submit a minimum of the first two weeks of certified payroll and the Hourly Labor Rate Worksheet for its workers.

Additional weeks of certified payroll records may be required at the discretion of CGM.

12.7 Workers' Compensation:

The Development Partner shall be required to secure payment of Workers' Compensation to its employees in accordance with Labor Laws and shall file with CGM prior to performing the works, the certification required.

Apprentice

Every apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade in which they are employed and shall be employed only in the work of the craft or trade to which they are indentured.

The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship agreements under which a person is training.

12.8 Education, Counseling and Training Programs:

All educational, counseling and vocational guidance programs and all apprenticeship and on-the-job training programs, under this contract, shall be open to all qualified persons, without regard to race, sex, color, religion, national origin or ancestry.

Such programs shall be conducted to encourage the fullest development of the interests, skills, aptitudes and capacities of all students and trainees with special attention to the problems of culturally deprived, educationally handicapped or economically disadvantaged persons.

Expansion of training opportunities under these programs shall also be encouraged with a view toward involving larger numbers or participants from these segments of the labor force where the need for upgrading levels of skills is the greatest.

The Development Partner shall obtain copies of such safety orders as are applicable to the type of work to be performed and shall be governed by their requirements in all construction operations.

The Development Partner shall fully inform each Sub- Contractor and materials supplier as to the requirements of the applicable safety orders.

iii. Environmental Requirements:

Air and Water Pollution Control

The Development Partner shall comply with all air and water pollution control rules, regulations, ordinances and statutes that apply to the work performed under the contract including any air pollution control rules, regulations, ordinances and statutes adopted under the authority of CGM.

In the absence of any applicable air pollution control rules, regulations, ordinances or statutes governing solvents, all solvents, including but not limited to the solvent solutions of paints, thinners, curing compounds and liquid asphalt used on the project, shall comply with the applicable material requirements of the Kenya Bureau of Standards.

All containers of solvent paint, thinner, curing compound or liquid asphalt shall be labeled to indicate that the contents fully comply with these requirements.

Unless otherwise provided in the special provisions, material to be disposed of shall not be burned either inside or outside the premises.

A regular watering program shall be initiated to adequately fugitive dust.

Exposed soil surfaces shall be sprayed with water at least daily and as needed to mitigate dust.

Trucks hauling dirt from the site shall be covered in accordance with applicable requirements by the County Government.

To reduce exhaust emissions, unnecessary idling of construction vehicles and equipment shall be avoided.

Construction equipment shall be fitted with modern emission control devices and shall be kept in proper time.

Sound Control Requirements:

The Development Partner shall comply with all sound control and noise level rules, regulations and ordinances which apply to the work.

In the absence of any such rules, regulations and ordinances, the Development Partner shall conduct its work to minimize disruption to others due to sound and noise from the workers and shall be responsive to CGM's request to reduce noise levels.

Loading and unloading of construction materials will be scheduled so as to minimize disruptions to any activities. Construction activities will be scheduled to minimize disruption to the adjacent premises.

k. Conflict of Interests

- The bidder shall hold the Procuring Entity's interest paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.

a. Bidder Not to Benefit from Commissions, Discounts, etc.

- The payment of the bidder pursuant to GCC F (Clauses GCC 38 through 42) shall constitute the bidder's only payment in connection with this Contract and, subject to Clause GCC21.1.3, the bidder shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations here under, and the bidder shall use its best efforts to ensure that any Sub-Bidders, as well as the Experts and agents of either of them, similarly shall not receive any such additional payment.
- Furthermore, if the bidder, as part of the Services, has the responsibility of advising the Procuring Entity on the procurement of goods, works or services, the bidder shall at all times exercise such responsibility in the best interest of the Procuring Entity. Any discounts or commissions obtained by the bidder in the exercise of such procurement responsibility shall be for the account of the Procuring Entity.

b. Bidder and Affiliates Not to Engage in Certain Activities

- The bidder agrees that, during the term of this Contract and after its termination, the bidder and any entity affiliated with the bidder, as well as any Sub-Bidders and any entity affiliated with such Sub-Bidders, shall be disqualified from providing goods, works or non-consulting services resulting from or directly related to the bidder's Services for the preparation or implementation of the project.

c. Prohibition of Conflicting Activities

- The bidder shall not engage and shall cause its Experts as well as its Sub-Bidders not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.

d. Strict Duty to Disclose Conflicting Activities

- The bidder has an obligation and shall ensure that its Experts and Sub-Bidders shall have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Procuring Entity, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the bidder or the termination of its Contract.

l. Confidentiality

- Except with the prior written consent of the Procuring Entity, the bidder and the Experts shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the bidder and the Experts make public the recommendations formulated in the course of, or because of, the Services.

m. Liability of the bidder

- Subject to additional provisions, if any, set for in the SCC, the bidder's liability under this Contract shall be as determined under the Applicable Law.

n. Insurance to be taken out by the bidder

- The bidder (i) shall take out and maintain and shall cause any Sub-Bidders to take out and maintain, at its (or the Sub-Bidders', as the case may be) own cost but on terms and conditions approved by the Procuring Entity, insurance against the risks, and for the coverage specified in the SCC, and (ii) at the Procuring Entity's request, shall provide evidence to the Procuring Entity showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid. The bidder shall ensure that such insurance is in place prior to commencing the Services as stated in Clause GCC13.

o. Accounting, Inspection and Auditing

- The bidder shall keep and shall make all reasonable efforts to cause its Sub-Bidders to keep, accurate and systematic accounts and records in respect of the Services and in such form and detail as will clearly identify relevant time changes and costs.
- The bidder shall permit and shall cause its Sub-Bidders to permit, the PPRA and/ or persons appointed by the PPRA to inspect the Site and /or all accounts and records relating to the performance of the Contract and the submission of the Proposal to provide the Services, and to have such accounts and records audited by auditors appointed by the PPRA if requested by the PPRA. The bidder's attention is drawn to Clause GCC10 which provides, interlaid, that acts intended to materially impede the exercise of the PPRA's inspection and audit rights provided for under this ClauseGCC25.2 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility under the PPRA's prevailing sanctions procedures.)

p. Reporting Obligations

- The bidder shall submit to the Procuring Entity the reports and documents specified in Appendix A, in the form, in the numbers and within the time periods set forth in the said Appendix.

q. Proprietary Rights of the Procuring Entity in Reports and Records

- Unless otherwise indicated in the SCC, all reports and relevant data and information such as maps, diagrams, plans, databases, other documents and software, supporting records or material compiled or prepared by the bidder for the Procuring Entity in the course of the Services shall be confidential and become and remain the absolute property of the Procuring Entity. The bidder shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Procuring Entity, together with a detailed inventory thereof. The bidder may retain a copy of such documents, data and/or software but shall not use the same for purposes unrelated to this Contract without prior written approval of the Procuring Entity.
- If license agreements are necessary or appropriate between the bidder and third parties for purposes of development of the plans, drawings, specifications, designs, databases, other documents and software, the bidder shall obtain the Procuring Entity's prior written approval to such agreements, and the Procuring Entity

shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned. Other restrictions about the future use of these documents and software, if any, shall be specified in the SCC.

r. Equipment, Vehicles and Materials

- Equipment, vehicles and materials made available to the bidder by the Procuring Entity or purchased by the bidder wholly or partly with funds provided by the Procuring Entity, shall be the property of the Procuring Entity and shall be marked accordingly. Upon termination or expiration of this Contract, the bidder shall make available to the Procuring Entity an inventory of such equipment, vehicles and materials and shall dispose of such equipment, vehicles and materials in accordance with the Procuring Entity's instructions. While in possession of such equipment, vehicles and materials, the bidder, unless otherwise instructed by the Procuring Entity in writing, shall insure them at the expense of the Procuring Entity in an amount equal to their full replacement value.
- Any equipment or materials brought by the bidder or its Experts into Kenya for the use either for the project or personal use shall remain the property of the bidder or the Experts concerned, as applicable.

s. Description Experts

- The title, agreed job description, minimum qualification and estimated period of engagement to carry out the Services of each of the bidder's Key Experts are described in Appendix B.

t. Replacement of sub-contractors.

Once the Sub-Contractors have been listed, provisions of the subletting and subcontracting to any proposed substitution of subcontractors must be approved by the Project Manager.

The Development Partner must clearly advertise the specific bond requirements for the project including the requirement of a bond and the amount of the bond, in order to be eligible to substitute a Sub-Contractor.

When requested by the Project Manager, the Development Partner shall submit a Sub-Contractor Status Report, which will be compared with the list of approved contractor.

If any Sub-Contractors are still outstanding at the time of submittal, a follow-up request will be made.

No substitution of any Sub-Contractors would be allowed without written approval of CGM.

u. Assistance and Exemptions

- Unless otherwise specified in the SCC, the Procuring Entity shall use its best efforts to:
 - a. Assist the bidder with obtaining work permits and such other documents as shall be necessary to enable the bidder to perform the Services.
 - b. Assist the bidder with promptly obtaining, for the Experts and, if appropriate, their eligible dependents, all necessary entry and exit visas, residence permits, exchange permits, and any other documents required for their stay in Kenya while carrying out the Services under the Contract.
 - c. Facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Expert and their eligible dependents.
 - d. Issue to officials, agents and representatives of the Government all such instructions and information as may be necessary or appropriate for the prompt and effective implementation of the Services.
 - e. Assist the bidder and the Experts and any Sub-Bidders employed by the bidder for the Services with obtaining exemption from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity in Kenya according to the applicable law in Kenya
 - f. Assist the bidder, any Sub-Bidders and the Experts of either of them with obtaining the privilege, pursuant to the applicable law in Kenya, of bringing in to Kenya reasonable amounts of foreign currency for the purposes of the Services or for the personal use of the Experts and of withdrawing any such amounts as may be earned therein by the Experts in the execution of the Services.
 - g. Provide to the bidder any such other assistance as may be specified in the SCC.

v. Access to the project site

The Development Partner shall at all times permit CGM and / or its Project Manager to visit and inspect the work and the shops where work is in preparation and shall maintain proper facilities and provide safe access for such inspection.

Work requiring testing, inspection or verification shall not be covered up without such test, inspection or approval.

The Development Partner shall notify the Project Manager in writing at least 24 hours in advance of the Project Manager being required to inspect the work.

w. Change in the Applicable Law Related to Taxes and Duties

- If, after the date of this Contract, there is any change in the applicable law in Kenya with respect to taxes and duties which increases or decreases the cost incurred by the bidder in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the bidder under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the Contract price amount specified in Clause GCC 39.1

x. Services, Facilities and Property of the Procuring Entity

- The Procuring Entity shall make available to the bidder and the Experts, for the purposes of the Services and free of any charge, the services, facilities and property described in the Terms of Reference (Appendix A) at the times and in the manner specified in said Appendix A.

y. Counterpart Personnel

- The Procuring Entity shall make available to the bidder free of charge such professional and support counterpart personnel, to be nominated by the Procuring Entity with the bidder's advice, if specified in Appendix A.
- Professional and support counterpart personnel, excluding Procuring Entity's liaison personnel, shall work under the exclusive direction of the bidder. If any member of the counterpart personnel fails to perform adequately any work as signed to such member by the bidder that is consistent with the position occupied by such member, the bidder may request the replacement of such member, and the Procuring Entity shall not unreasonably refuse to act upon such request.

z. Payment Obligation

- In consideration of the Services performed by the bidder under this Contract, the Procuring Entity shall make such payments to the bidder for the deliverables specified in Appendix A and in such manner as is provided by GCCF below.

K. Payments to the bidder

aa. Contract Price

- The Contract price is fixed and is set forth in the SCC. The Contract price breakdown is provided in Appendix C.
- Any change to the Contract price specified in Clause 38.1 can be made only if the Parties have agreed to the revised scope of Services pursuant to Clause GCC 16 and have amended in writing the Terms of Reference in Appendix A.

bb. Taxes and Duties

- The bidder, Sub-Bidders and Experts are responsible for meeting any and all tax liabilities arising out of the Contract unless it is stated otherwise in the SCC. Currency of Payment
- Any payment under this Contract shall be made in the currency (ies) of the Contract.

cc. Mode of Billing and Payment

- The total payments under this Contract shall not exceed the Contract price.
- The payments under this Contract shall be made in lump-sum installments against deliverables specified in Appendix A. The payments will be made according to the payment schedule stated in the SCC.
- Advance payment: Unless otherwise indicated in the SCC, an advance payment shall be made against an advance payment bank guarantee acceptable to the Procuring Entity in an amount (or amounts) and in a currency (or currencies) specified in the SCC. Such guarantee (I) is to remain effective until the advance payment has been fully set off, and (ii) is to be in the form set forth in Appendix D, or in such other form as the Procuring Entity shall have approved in writing. The advance payments will be set off by the Procuring Entity in equal portions against the lump-sum installments specified in the SCC until said advance payments have been fully set off.
- The Lump-Sum Installment Payments. The Procuring Entity shall pay the bidder within sixty (60) days after the receipt by the Procuring Entity of the deliverable(s) and the cover invoice for the related lump-sum installment payment. The payment can be withheld if the Procuring Entity does not approve the submitted deliverable(s) as satisfactory in which case the Procuring Entity shall provide comments to the bidder within the same sixty (60) days period. The bidder shall thereupon promptly make any necessary corrections, and there after the fore going process shall be repeated.
- The Final Payment: The final payment under this Clause shall be made only after the final report has been submitted by the bidder and approved as satisfactory by the Procuring Entity. The Services shall then be deemed completed and finally accepted by the Procuring Entity. The last lump-sum installment shall be deemed approved for payment by the Procuring Entity within ninety (90) calendar days after receipt of the final report by the Procuring Entity unless the Procuring Entity, within such ninety (90) calendar day period, gives written notice to the bidder specifying in detail deficiencies in the Services, the final report. The bidder shall thereupon promptly make any necessary corrections, and there after the fore going process shall be repeated.
- All payments under this Contract shall be made to the accounts of the bidder specified in the SCC.
- With the exception of the final payment under 40.2.3 above, payments do not constitute acceptance of the whole Services nor relieve the bidder of any obligations here under.

dd. Interest on Delayed Payments

- If the Procuring Entity had delayed payments beyond thirty (30) days after the due date stated in Clause GCC 41.2.2, interest shall be paid to the bidder on any amount due by, not paid on, such due date for each day of delay at the annual rate stated in the SCC.

L. Fairness and Good Faith

ee. Good Faith

- The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

M. Settlement of Disputes

ff. Amicable Settlement

- The Parties shall seek to resolve any dispute amicably by mutual consultation.
- If either Party objects to any action or in action of the other Party, the objecting Party may file a written Notice

of Dispute to the other Party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within fourteen (14) days after receipt. If that Party fails to respond within fourteen (14) days, or the dispute cannot be amicably settled within fourteen (14) days following the response of that Party, Clause GCC 45.1 shall apply.

gg. Dispute Resolution

- Any dispute between the Parties arising under or related to this Contract that cannot be settled amicably may be referred to by either Party to the adjudication/arbitration in accordance with the provisions specified in the SCC.

SECTION 8: SPECIAL CONDITIONS OF CONTRACT

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(a)	The Contract shall be construed in accordance with the law of Kenya
4.1	The language is: English
6.1 and 6.2	The addresses are <i>[fill in at negotiations with the selected firm]</i>: Procuring Entity: i) THE COUNTY SECRETARY AND HEAD OF PUBLIC SERVICE COUNTY GOVERNMENT OF MOMBASA

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	P.O. BOX 390440 - 80100 MOMBASA. Bidder: Attention: _____ Facsimile: _____ E-mail: _____
8.1	<i>If the bidder is a Joint Venture consisting of more than one entity, the name of the JV member whose address is specified in Clause SCC6.1 should be inserted here.]</i> The Lead Member on behalf of the JV is _____ <i>[insert name of the member]</i>
9.1	The Authorized Representatives are: For the Procuring Entity: THE COUNTY SECRETARY AND HEAD OF PUBLIC SERVICE For the bidder: <i>[name, title]</i>_____
11.1	The effectiveness conditions are the following: <i>[Note: If there are no effectiveness conditions, state "N/A"]</i> OR <i>List here any conditions of effectiveness of the Contract, e.g., receipt by the bidder of an advance payment, and by the Procuring Entity of an advance payment guarantee (see Clause SCC45.1(a)), etc.]</i>
12.1	Termination of Contract for Failure to Become Effective: The time period shall be _____ <i>[insert time period, e.g.: four months]</i>.
13.1	Commencement of Services: The number of days shall be _____ <i>[e.g.: ten]</i>. Confirmation of Key Experts' availability to start the Assignment shall be submitted to the Procuring Entity in writing as a written statement signed by each Key Expert.
14.1	Expiration of Contract: The time period shall be 36 months.
21.1.3.	The Procuring Entity reserves the right to determine on a case-by-case basis whether the bidder should be disqualified from providing goods, works or non-consulting services due to a conflict of a nature described in Clause GCC 21.1.3: Yes
23.1	No additional provisions.
24.1	<i>Not Applicable</i>
27.1	The additional rights to the use of the documents are: <i>Not Applicable</i>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
27.2	<i>Not Applicable</i>
32.1 (a) through (f)	<i>Not Applicable</i>
32.1(g)	<i>Not Applicable</i>
38.1	The Contract price is: _____ <i>[insert amount and currency for each currency as applicable]</i> <i>[indicate: inclusive or exclusive]</i> of local taxes. Any local taxes chargeable in respect of this Contract for the Services provided by the bidder shall <i>[insert as appropriate: “be paid” or “reimbursed”]</i> by the Procuring Entity <i>[insert as appropriate: “for “or “to”]</i> the bidder. The amount of such taxes is _____ <i>[insert the amount as finalized at the Contract’s negotiations on the basis of the tax amounts provided by the bidder in Form FIN-2 of the bidder’s Financial Proposal.</i>
39.1 and 39.2	<i>Not Applicable</i>
40.2	The payment schedule: Payment shall be made within 45 days from the date of receipt of invoice and shall be subject to (i) submission to the Procuring Entity of the prerequisite Report and/or payment request documents, and, (ii) approval and acceptance of the said reports and documents by the Procuring Entity]
40.2.1	<i>Not Applicable</i>
40.2.4	<i>Not Applicable</i>
41.1	<i>Not Applicable</i>
44.1	Any dispute arising out of this Contract which cannot be amicably settled between the parties, shall be referred by either party to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the chairman of the Chartered Institute of Arbitrators, Kenya branch, on the request of the applying party.

SECTION 9: APPENDICES

Appendix A – Terms of Reference

[Note: This Appendix shall include the final Terms of Reference (TORs) worked out by the Procuring Entity and the bidder during the negotiations; dates for completion of various tasks; location of performance for different tasks; detailed reporting requirements and list of deliverables against which the payments to the bidder will be made; Procuring Entity's input, including counterpart personnel assigned by the Procuring Entity to work on the bidder's team; specific tasks or actions that require prior approval by the Procuring Entity.

Insert the text based on the Section 5 (Terms of Reference) of the ITC in the RFP and modified based on the Forms TECH-1 through TECH-5 of the bidder's Proposal. Highlight the changes to Section 5 of the RFP]

.....

Appendix B - Key Experts

[Insert a table based on Form TECH-6 of the bidder's Technical Proposal and finalized at the Contract's negotiations. Attach the CVs (updated and signed by the respective Key Experts) demonstrating the qualifications of Key Experts.]

Appendix C – Breakdown of Contract Price

{Insert the table with the unit rates to arrive at the breakdown of the lump-sum price. The table shall be based on [Form FIN-3andFIN-4] of the bidder's Proposal and reflect any changes agreed at the Contract negotiations, if any. The footnote shall list such changes made to [FormFIN-3andFIN-4] at the negotiations or state that none has been made.}

Appendix D - Form of Advance Payment Guarantee

[Note: See Clause GCC 41.2.1 and SCC 41.2.1]

Bank Guarantee for Advance Payment_____ [Bank's Name and Address of Issuing Branch or Office] Beneficiary: _____ [Name and Address of Procuring Entity]

Date: _____

ADVANCEPAYMENTGUARANTEE No.: _

We have been informed that _ [name of Bidder or a name of the Joint Venture, same as appears on the signed Contract] (herein after called" the bidder") has entered into Contract No. _____ [reference number of the contract] dated _____ with you, for the provision of _ [brief description of Services] (herein after called" the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of _____ [amount in figures] () [amount in words] is to be made against an advance payment guarantee.

At the request of the bidder, we _____ [name of bank] here by irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ [amount in figures] () [amount in words]¹ upon receipt by us of your first demand in writing accompanied by a written statement stating that the bidder are in b reach of their obligation under the Contract because the bidder have used the advance payment for purposes other than toward providing the Services under the Contract.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the bidder on their account number at _____ [name and address of bank].

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment

repaid by the bidder as indicated in copies of certified monthly statements which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of the monthly payment certificate indicating that the bidder has made

Full repayment of the amount of the advance payment, or on the day of_____,² whichever is earlier.

Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

[Signature]

Note: *All italicized text is for indicative purposes only to assist in preparing this form and shall be deleted from the final product.*

SECTION 10. NOTIFICATION FORMS

1 NOTIFICATION OF INTENTION TO AWARD

Procuring Entity:_____ *[insert the name of the Entity]* Contract title: _____
_____ *[insert the name of the contract]* RFP No: _____
_____ *[insert RF Preference number]*

This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period. During the Standstill Period you may:

- a) Request a debriefing in relation to the evaluation of your Proposal, and/or
- b) Submit a Procurement-related Complaint in relation to the decision to award the contract.

The successful Bidder

Name:	<i>[insert name of successful Bidder]</i>
Address:	<i>[insert address of the successful Bidder]</i>
Contract price:	<i>[insert contract price of the successful Bidder]</i>

i) Short listed Bidders

[INSTRUCTIONS: insert names of all short-listed Bidders and indicate which Bidders submitted Proposals. Where the selection method requires it, state the price offered by each Bidder as readout, and as evaluated. Include overall technical scores and scores assigned for each criterion and sub-criterion.]

	Submitted Proposal	Overall technical score	Financial Proposal Price	Evaluated Financial Proposal Price (If applicable)	Combined Score and ranking (if applicable)
[insert name]	[yes/no]	Criterion (i): [insert score] Criterion (ii): [insert score] Criterion (iii): [insert score] <u>Sub-criterion a:</u> 1: [insert score] 2: [insert score] 3: [insert score] <u>Sub-criterion b:</u> 1: [insert score] 2: [insert score] 3: [insert score] <u>Sub-criterion c:</u>etc. Criterion (iv): [insert score] Criterion (v): [insert score] Total score: [insert score]	[Proposal price]	[evaluated price]	<u>Combined Score:</u> [combined score] <u>Ranking:</u> [ranking]
[insert name]	[yes/no]	Criterion (i): [insert score] Criterion (ii): [insert score] Criterion (iii): [insert score] <u>Sub-criterion a:</u> 1: [insert score] 2: [insert score] 3: [insert score] <u>Sub-criterion b:</u> 1: [insert score] 2: [insert score] 3: [insert score] <u>Sub-criterion c:</u>etc. Criterion (iv): [insert score] Criterion (v): [insert score] Total score: [insert score]	[Proposal price]	[evaluated price]	<u>Combined Score:</u> [combined score] <u>Ranking:</u> [ranking]
[insert name]	[yes/no]	Criterion (i): [insert score] Criterion (ii): [insert score] Criterion (iii): [insert score] <u>Sub-criterion a:</u> 1: [insert score] 2: [insert score] 3: [insert score] <u>Sub-criterion b:</u> 1: [insert score] 2: [insert score] 3: [insert score] <u>Sub-criterion c:</u>etc. Criterion (iv): [insert score] Criterion (v): [insert score]	[Proposal price]	[evaluated price]	<u>Combined Score:</u> [combined score] <u>Ranking:</u> [ranking]

		Total score: <i>[insert score]</i>			
<i>[insert name]</i>					

ii) Reason/s why your Proposal was unsuccessful *[Delete if the combined score already reveals the reason].*

[INSTRUCTIONS; State the reason/s why this Bidder's Proposal was unsuccessful. Do NOT include: (a) a point by point comparison with another Bidder's Proposal or (b) information that is marked confidential by the bidder in its Proposal.]

iii) How to request a debriefing *[This applies only if your proposal was unsuccessful as stated under point (3) above].*

DEADLINE: The deadline to request a debriefing expires at midnight on *[insert date]* (local time).

You may request a debriefing in relation to the results of the evaluation of your Proposal. If you decide to request a debriefing, your written request must be made within five (5) Business Days of receipt of this Notification of Intention to Award.

Provide the contract name, reference number, name of the bidder, contact details; and address the request for debriefing as follows:

Attention: *[insert full name of person, if applicable]*

Title/position: *[insert title/position]*

name of Procuring Entity]

Email address: *[insert email address]*

Fax number: *[insert fax number] delete if not used*

If your request for a debriefing is received within the 5 Business Days deadline, we will provide the debriefing within five (5) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (5) Business Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.

The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.

If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fourteen (14) Business Days from the date of publication of the Contract Award Notice.

(iv) How to Make a Complaint

DEADLINE: The deadline for submitting a Procurement-related Complaint challenging the decision to award the contract expires on midnight, *[insert date]* (local time).

Provide the contract name, reference number, name of the bidder, contact details; and address the Procurement-related Complaint as follows:

Attention: *[insert full name of person, if applicable]*

Title/position: *[insert title/position]*

Agency: *[insert name of Procuring Entity]*

Email address: *[insert email address]*

Fax number: *[insert fax number] delete if not used*

[At this point in the procurement process] [Upon receipt of this notification] you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.

In summary, there are four essential requirements:

You must be an 'interested party'. In this case, that means a Bidder who has submitted a Proposal in this selection process and is the recipient of a Notification of Intention to Award.

The complaint can only challenge the decision to award the contract.

You must submit the complaint within the deadline stated above.

You must include, in your complaint, all of the information required by the Procuring Entity.

(v) Standstill Period

DEADLINE: The Standstill Period is due to end at midnight on *[insert date]* (local time).

The Standstill Period lasts ---- (specify the number of business days as per Data Sheet 30.1) Business Days as specified in the Data Sheet after the date of transmission of this Notification of Intention to Award.

The Standstill Period may be extended. This may happen where we are unable to provide a debriefing within the five (5) Business Day deadline. If this happens, we will notify you of the extension.

If you have any questions regarding this Notification, please do not hesitate to contact us.

On behalf of _____ *[insert the name of the Procuring Entity]*: Signature: _____ Name: _____
_____ Title/position: _____ Telephone: _____ Email: _____

2 REQUEST FOR REVIEW

FORM FOR REVIEW (r.203(1))

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

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

BETWEEN

..... APPLICANT

AND

.....RESPONDENT (Procuring Entity)

Request for review of the decision of the..... (Name of the Procuring Entity ofdated the...day of20.....in the matter of Tender No.....of20.... for(Tender description).

REQUEST FOR REVIEW

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

- 1.
- 2.

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

- 1.
- 2.

SIGNED (Applicant) Dated on..... day of/...20.....

FOR OFFICIAL USE ONLY Lodged with the Secretary Public Procurement Administrative Review Board on.....day of20.....

SIGNED

Board Secretary

3 LETTER OF AWARD

[use letterhead paper of the Procuring Entity] [date]_____To: _____ [name and address of the winning Bidder] Subject: Notification of Award Contract No.

This is to notify you that your Proposal dated *[insert date]* for consulting services for *[name of the assignment]* as negotiated with you on _____ for the contract amount of _____ *[Insert amount in numbers and words and name of currency]* is here by accepted by our agency.

You are requested to: (i) sign and return the draft negotiated Contract attached here with within eight (8) Business Days from the date of receipt of this notification; and (ii) furnish the additional information on beneficial ownership in accordance with the Data Sheet of ITC 32.1 within eight (8) days using the Beneficial Ownership Disclosure Form, included in Section 7 of the Request of Proposals.

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Agency: _____

Attachment: *Draft Negotiated Contract*

4 BENEFICIAL OWNERSHIP DISCLOSURE FORM

INSTRUCTIONS TO BIDDERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE FORM

This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful Bidder. In case of joint venture, the bidder must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.

For the purposes of this Form, a Beneficial Owner of a Bidder is any natural person who ultimately owns or controls the bidder by meeting one or more of the following conditions:

- *Directly or indirectly holding 25% or more of the shares.*
- *Directly or indirectly holding 25% or more of the voting rights.*

Request for Proposal Reference No.: _____ [insert identification no] Name of the Assignment: _____ [insert name of the assignment] to: _____ [insert complete name of Procuring Entity]

In response to your notification of award dated _____ [insert date of notification of award] to furnish additional information on beneficial ownership: _____ [select one option as applicable and delete the options that are not applicable]

I) We here by provide the following beneficial ownership information.
Details of beneficial ownership

Identity of Beneficial Owner	Directly or indirectly holding 25% or more of the shares (Yes / No)	Directly or indirectly holding 25 % or more of the Voting Rights (Yes / No)	Directly or indirectly having the right to appoint a majority of the board of the directors or an equivalent governing body of the bidder (Yes / No)
<i>[include full name (last, middle, first), nationality, country of residence]</i>			

OR

ii) We declare that there is no Beneficial Owner meeting one or more of the following conditions: directly or indirectly holding 25% or more of the shares. Directly or indirectly holding 25% or more of the voting rights. Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the bidder.

OR

iii) We declare that we are unable to identify any Beneficial Owner meeting one or more of the following conditions. [If this option is selected, the bidder shall provide explanation on why it is unable to identify any Beneficial Owner]

Directly or indirectly holding 25% or more of the shares. Directly or indirectly holding 25% or more of the voting rights.

Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the bidder]"

Name of the bidder:[insert complete name of the bidder]_____*

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

Title of the person signing the Proposal: [insert complete title of the person signing the Proposal]

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

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

** In the case of the Proposal submitted by a Joint Venture specify the name of the Joint Venture as Bidder. In the event that the bidder is a*

Joint venture, each reference to "Bidder" in the Beneficial Ownership Disclosure Form (including this Introduction there to) shall be read to refer to the joint venture member.

*** Person signing the Proposal shall have the power of attorney given by the bidder. The power of attorney shall be attached with the Proposal Schedules.*