



COUNTY GOVERNMENT OF MOMBASA

TENDERNO: CGM/PRO/T/008/2021-2022

**REQUEST FOR PROPOSAL ON SETTING UP AND OPERATING A
COMPLIMENTARY HAZARDOUS WASTE TREATMENT
FACILITY AT KIPEVU, MOMBASA COUNTY THROUGH JOINT
VENTURE PARTNERSHIP**

TENDER DOCUMENT

**THE COUNTY SECRETARY AND HEAD OF PUBLIC
SERVICE**
COUNTY GOVERNMENT OF MOMBASA

P.O. BOX 390440 - 80100

MOMBASA.

Email: info.mombasacounty@gmail.com

APRIL 2022

TABLE OF CONTENTS

Table of Contents

TABLE OF CONTENTS	2
SECTION 1 –REQUEST FOR PROPOSAL	6
SECTION 2. INSTRUCTIONS TO BIDDERS AND DATA SHEET	8
A. GENERALPROVISIONS	8
Meanings/Definitions.....	8
Introduction	9
Conflict of Interest.....	9
Unfair Competitive Advantage	10
Corrupt and Fraudulent Practices.....	10
Eligibility	10
B. Preparation of Proposals	11
1. General Considerations.....	11
2. Cost of Preparation of Proposal.....	11
3. Language	12
4. Documents Comprising the Proposal	12
5. Only One Proposal.....	12
6. Proposal Validity	12
7. Clarification and Amendment of RFP	13
8. Preparation of Proposals–Specific Considerations	13
9. Technical Proposal Format and Content	13
10. Financial Proposal	14
C. SUBMISSION, OPENING AND EVALUATION.....	14
11. Submission, Sealing, and Marking of Proposals	14
12. Sealing and Marking of Proposals.....	14
13. Confidentiality/Canvassing.....	15
14. Opening of Technical Proposals	15
15. Proposals Evaluation	15
16. Evaluation of Mandatory Preliminary Equipment.....	16
17. Public Opening of Financial Proposals	16
18. Correction of Errors.....	17
19. Taxes.....	17
20. Conversion to Single Currency.....	17
21. Abnormally Low Prices.....	17
22. Abnormally High Prices	18
23. Combined Quality and Cost Evaluation	18

24. Notification of Intention to enter into a Contract/Notification of Award	18
25. Standstill Period.....	19
D. NEGOTIATIONS AND AWARD.....	19
26. Negotiations	19
27. Conclusion of Negotiations	20
28. Letter of Award	20
29. Signing of Contract.....	20
30. Publication of Procurement Contract	20
31. Procurement Related Complaint and Administrative Review	21
SECTION 2 (B). DATA SHEET.....	22
SECTION 3. TECHNICAL PROPOSAL – STANDARD FORMS	27
FORM TECH-1: TECHNICAL PROPOSAL SUBMISSION FORM – (MANDATORY).....	27
CERTIFICATE OF INDEPENDENT PROPOSAL DETERMINATION - (MANDATORY).....	29
1. APPENDIX TO FORM OF PROPOSAL ON FRAUD AND CORRUPTION CLAUSE (for information)	31
2. FORM TECH-2: BIDDER'S ORGANIZATION AND EXPERIENCE - (MANDATORY)	34
3. FORM TECH-3: COMMENTS AND SUGGESTIONS - (MANDATORY)	35
4. FORM TECH-4: DESCRIPTION OF APPROACH, METHODOLOGY, AND WORK PLAN - (MANDATORY).....	35
5. FORM TECH-5: WORK SCHEDULE AND PLANNING FOR DELIVERABLES - (MANDATORY) 36	
6. FORM TECH- 6A: TEAM COMPOSITION, ASSIGNMENT, AND KEY EXPERTS' INPUTS - (MANDATORY).....	37
7. FORM TECH-6B: CURRICULUM VITAE (CV) - (MANDATORY).....	38
8. FORM TECH-7: MANDATORY SUPPORT DOCUMENTS	39
9. FORM TECH - 8: SELF-DECLARATION FORMS	40
FORM SD2 - (MANDATORY)	41
SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE.....	41
10. DECLARATION AND COMMITMENT TO THE CODE OF ETHICS - (MANDATORY)	42
11. FORM TECH - 9: TENDER-SECURING DECLARATION FORM {r 46 and 155(2)} - (MANDATORY).....	43
SECTION 4. FINANCIAL PROPOSAL - STANDARD FORMS	44
FORM FIN-1: FINANCIAL PROPOSAL SUBMISSION FORM - (MANDATORY).....	45
FORM FIN-2: SUMMARY OF COSTS - (MANDATORY)	46
FORM FIN-3A: BREAKDOWN OF REMUNERATION - (MANDATORY)	47
FORM FIN 3B: BIDDERS'S REPRESENTATIONS REGARDING COSTS AND CHARGES – (NOT APPLICABLE)	48
FORM 3C: FORM FOR BIDDER'S REPRESENTATIONS REGARDING COSTS AND CHARGES – (NOT APPLICABLE)	49
FORM FIN 3D: BREAKDOWN OF REMUNERATION RATES [FOR TIME BASED CONTRACTS ONLY] – (NOT APPLICABLE)	50

FORM FIN - 4 BREAKDOWN OF REIMBURSABLE – (NOT APPLICABLE)	51
SECTION 5. TERMS OF REFERENCE	52
1. INTRODUCTION	52
THE KENYA DEVOLVED SYSTEM OF GOVERNANCE AND THE COUNTY GOVERNMENT ADMINISTRATION STRUCTURE	52
AN OVERVIEW OF THE HAZMART TREATMENT PLANT	53
OBJECTIVE OF THE ASSIGNMENT	54
2. SCOPE OF WORK	55
3. OUTPUT/DELIVERABLES	56
4. REPORTING AND COORDINATION OF THE ASSIGNMENT	57
5. DURATION AND TIME-FRAME	57
6. REQUIRED PERSONNEL SKILLS AND EXPERIENCE	57
7. COVER	58
8. COVER LETTER	58
9. GENERAL BACKGROUND AND OVERVIEW OF FIRM	58
10. UNDERSTANDING OF THE ASSIGNMENT	59
11. TEAM COMPETENCE AND LOCAL PARTNERS	59
12. OTHER GUIDELINES	59
13. EVALUTION PROCESS	59
SECTION 6. CONDITIONS OF CONTRACT AND CONTRACT FORMS	62
CONTRACT FOR BIDDER'S SERVICES	63
FORM OF CONTRACT - LUMP-SUM	64
SECTION 7: GENERAL CONDITIONS OF CONTRACT	64
SECTION 8: SPECIAL CONDITIONS OF CONTRACT	75
SECTION 9: APPENDICES	78
Appendix A – Terms of Reference	78
Appendix B - Key Experts	78
Appendix C – Breakdown of Contract Price	78
Appendix D - Form of Advance Payment Guarantee	78
SECTION 10. NOTIFICATION FORMS	80
NOTIFICATION OF INTENTION TO AWARD	80
REQUEST FOR REVIEW	84
LETTER OF AWARD	85
BENEFICIAL OWNERSHIP DISCLOSURE FORM (CONFIRM IF THIS IS THE LATEST UPDATED	

BENEFICIAL FORM).....	86
------------------------------	-----------

SECTION 1 – REQUEST FOR PROPOSAL

DATE: 23RD MAY 2022

REFERENCE NO: TENDER NO. CGM/PRO/T/008/2021-2022

**NAME OF ASSIGNMENT: REQUEST FOR PROPOSAL ON SETTING UP AND
OPERATING A COMPLIMENTARY HAZARDOUS
WASTE TREATMENT FACILITY AT KIPEVU,
MOMBASA COUNTY THROUGH JOINT VENTURE
PARTNERSHIP**

Dear Sir/ Madam,

The County Government of Mombasa invites sealed proposals from eligible bidders registered with NEMA or any Recognized International Institute tasked with monitoring and management of hazardous wastes.

A firm will be selected through the National Competitive (NCB) Bidding procedures specified in the Public Procurement and Asset Disposal Act, 2015 and is open to all eligible Tenderers as defined in the Act and this proposal document.

1. The Bidding documents can be downloaded from the county website www.mombasa.go.ke at no fee
2. Tender security **shall not be applicable.**
3. 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.**
4. 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 the county not later than 1000HRS on 23rd May 2022.**
5. Bulky tenders shall be submitted at the office of **Director of Procurement & Supplies located on the 2nd floor of County Assembly Building BEFORE 1000HRS EAST AFRICAN TIME, ON 23rd May 2022** to be addressed as shown below;

Sealed envelopes shall be marked as follows;

TENDER NO.: CGM/PRO/T/008/2021-2022

TENDER NAME: REQUEST FOR PROPOSAL FOR SETTING UP AND OPERATING
A COMPLIMENTARY HAZARDOUS WASTE TREATMENT
FACILITY AT KIPEVU, MOMBASA COUNTY THROUGH
JOINT VENTURE PARTNERSHIP

“DO NOT OPEN BEFORE 1000HOURS ON 23rd May 2022

Addressed to:

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

6. Tenders shall be publicly opened immediately thereafter in the presence of bidders/representatives who choose to attend the opening process at 10.00 a.m. in the Finance Boardroom, County Assembly Hall 2nd Floor.
7. 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.
8. Canvassing or lobbying for the tender shall lead to automatic disqualification.

**COUNTY SECRETARY.
COUNTY GOVERNMENT OF MOMBASA.**

SECTION 2. INSTRUCTIONS TO BIDDERS AND DATA SHEET

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

A. GENERAL PROVISIONS

Meanings/Definitions

- a) “Affiliate(s)” means an individual or an entity that directly or indirectly controls, is controlled by, or is under common control with the Bidder.
- b) “Accepted Respondent” means the bidder who is pre-qualified by the Contracting Authority
- c) “Applicable Law” means the laws and any other instruments having the force of law in Kenya.
- d) “Procuring Entity” means the entity that is carrying out the Bidder selection process and signs the Contract for the Services with the selected Bidder.
- e) “CGM” means County Government of Mombasa
- f) “Contract” means a legally binding written agreement signed between the Procuring Entity and the Bidder and includes all the attached documents listed in its Clause 1 (the General Conditions of Contract (GCC), the Special Conditions of Contract (SCC), and the Appendices).
- g) “Data Sheet” means an integral part of the Instructions to Bidders (ITB) Section 2 that is used to reflect specific assignment conditions to supplement, but not to over-write, the provisions of the ITB.
- h) “Day” means a calendar day unless otherwise specified as "Business Day". A Business Day is any day that is an official working day in Kenya and excludes official public holidays.
- i) “Developer” means The company or grouping of companies who will respond to implement projects for identified sections
- j) “DoEWE” means Department of Environment, Waste Management and Energy
- k) “Experts” means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Bidder, Sub-Bidder or Joint Venture member(s).
- l) “Government” means the Government of the Republic of Kenya.
- m) “In writing” means communicated in written form such as by mail, e-mail, fax, including, if specified in the Data Sheet, distributed or received through the electronic-procurement system used by the Procuring Entity with proof of receipt.
- n) “Joint Venture (JV)” means an association with or without a legal personality distinct from that of its members, of more than one Bidder where one member has the authority to conduct all business for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Procuring Entity for the performance of the Contract.
- o) “Key Expert(s)” means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose CV is considered in the technical evaluation of the Bidder's proposal.
- p) “KPA” means Kenya Ports Authority
- q) “ITB” (this Section 2 of the RFP) means the Instructions to Bidders that provides the Bidders with all information needed to prepare their Proposals.
- r) “Letter of RFP” means the letter of invitation being sent by the Procuring Entity to the Bidders.

- s) “Master Developer” means the company or grouping of companies, who as a condition of a land disposition, will implement the responsibilities prescribed by the Contracting Authority for implementing a development plan containing the master plan area. The master developer is responsible for the implementation of the development and disposition of sites from planning refinement to final buildout, overseeing site preparation and infrastructure development, financing, marketing and asset management. The master developer will delineate their roles, relationship, and responsibilities in an appropriate written agreement with Developers interested in various specific sections
- t) “NEMA” means National Environment Management Authority
- u) “Non-Key Expert(s)” means an individual professional provided by the Bidder or its Sub-Bidder and who is assigned to perform the Services or any part thereof under the Contract and whose CVs are not evaluated individually.
- v) “Proposal” means the Technical Proposal and the Financial Proposal of the Bidder.
- w) “Public Procurement Regulatory Authority (PPRA)” means the statutory authority of the Government of Kenya that mandated with the role of regulating and monitoring compliance with the public procurement law and regulations.
- x) “Respondent” means Any Master Developer / Developer who submits a Proposal in response to this RFP
- y) “RFP” means the Request for Proposals to be prepared by the Procuring Entity for the selection of Bidders.
- z) “Services” means the work to be performed by the Bidder pursuant to the Contract.
- aa) “Sub-Bidder” means an entity to whom the Bidder intends to subcontract any part of the Services while the Bidder remains responsible to the Procuring Entity during the whole performance of the Contract.
- bb) “Terms of Reference (TORs)” means the Terms of Reference that explains the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of the Procuring Entity and the Bidder, and expected results and deliverables of the assignment.

Introduction

- 2.1 The Procuring Entity named in the Data Sheet intends to select a Bidder from those listed in the Request for Proposals (RFP), in accordance with the method of selection specified in the Data Sheet.
- 2.2 The Bidder are invited to submit a Technical Proposal and a Financial Proposal, for consulting services required for the assignment named in the Data Sheet. The Proposal will be the basis for negotiating and ultimately signing the Contract with the selected Bidder.
- 2.3 The Bidders should familiarize themselves with the local conditions and take them into account in preparing their Proposals, including attending a pre-proposal conference if one is specified in the Data Sheet. Attending any such pre-proposal conference is optional and is at the Bidders' expense.
- 2.4 The Procuring Entity will timely provide, at no cost to the Bidders, the inputs, relevant project data, and reports required for the preparation of the Bidder's Proposal as specified in the Data Sheet.

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.

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.

Corrupt and Fraudulent Practices

- 5.1 Bidder firms or any of its members shall not be involved in corrupt, coercive, obstructive, collusive or fraudulent practice. Bidder firms or any of its members that are proven to have been involved in any of these practices shall be automatically disqualified and would not be awarded a contract.
- 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.

Eligibility

- 6.1 In selection of Bidders, short-listing shall be composed of firms or individuals who belong to the same line of professional business and who are almost of the same capability.
- 6.2 Unless otherwise specified in the Data Sheet, the Procuring Entity permits Bidders including proposed

experts, joint ventures and individual members from all countries and categories to offer consulting services. The maximum number of members so far JV shall be specified in the TDS.

- 6.3 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for submission of proposals, but it shall be a condition of contract award and signature. AJV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website www.cak.go.ke
- 6.4 Public Officers of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.
- 6.5 It is the Bidder's responsibility to ensure that it's Experts, joint venture members, Sub-Bidders, agents (declared or not), sub-contractors, service providers, suppliers and/or their employees meet the eligibility requirements.
- 6.6 As an exception to the foregoing ITB 6.1 and 6.2 above:
- a) Sanctions-A firm or an individual that has been debarred from participating in public procurement shall be ineligible to be awarded a contract, or to benefit from the contract, financially or otherwise, during the debarment period. The list of debarred firms and individuals is available from the website of PPRA www.ppra.go.ke.
 - b) Prohibitions-Firms and individuals of a country or goods in a country maybe ineligible if:
 - i) As a matter of law or official regulations, Kenya prohibits commercial relations with that country; or
 - ii) By an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or services from that country or any payments to any country, person, or entity in that country.
 - c) Restrictions for Government-owned Enterprises-Government-owned enterprises or institutions in Kenya shall be eligible only if they can establish that they
 - i) Are legally and financially autonomous,
 - ii) Operate under commercial law, and
 - iii) That they are not dependent agencies of the Procuring Entity.
 - d) Restrictions for public employees - Government officials and civil servants and employees of public institutions shall not be hired for consulting contracts.
- 6.7 Margin of Preference and Reservations-no margin of preference shall be allowed in the selection of Bidders. Reservations may however be allowed to a specific group of businesses (these groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case may be), and who are appropriately registered as such by the authority to be specified in the Data Sheets. A procuring entity shall ensure that the invitation to submit proposals specifically includes only businesses or firms belonging to one group.

B. Preparation of Proposals

1. 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.

2. 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.

3. 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.

4. Documents Comprising the Proposal

- 10.1 The Proposal shall comprise the documents and forms listed in the Data Sheet.
- 10.2 The Bidder shall declare in the Financial 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.
- 10.3 The Bidder shall furnish information on commissions, gratuities and fees, if any, paid or to be paid to agents or any other party relating to this Proposal and, if awarded, Contract execution, as requested in the Financial Proposal Submission Form.

5. 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.

6. Proposal Validity

a. Proposal Validity Period

- 12.1 The Data Sheet indicates the period during which the Bidder's Proposal must remain valid after the Proposal submission deadline.
- 12.2 During this period, the Bidder shall maintain its original Proposal without any change, including the availability of the Key Experts, the proposed rates and the total price.
- 12.3 If it is established that any Key Expert nominated in the Bidder's Proposal was not available at the time of Proposal submission or was included in the Proposal without his/her confirmation, such Proposal shall be disqualified and rejected for further evaluation and may be subject to sanctions in accordance with IT C5.

b. Extension of Validity Period

- 12.4 The Procuring Entity will make its best effort to complete the negotiations within the proposal's validity period. However, should the need arise, the Procuring Entity may request, in writing, all Bidders who submitted Proposals prior to the submission deadline to extend the Proposals' validity.
- 12.5 If the Bidder agrees to extend the validity of its Proposal, it shall be done without any change in the original Proposal and with the confirmation of the availability of the Key Experts, except as provided in ITB 12.7.
- 12.6 The Bidder has the right to refuse to extend the validity of its Proposal in which case such Proposal will not be further evaluated.

c. Substitution of Key Experts at Validity Extension

- 12.7 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.

- 12.8 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

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

7. Clarification and Amendment of RFP

- 13.1 The Bidder may request a clarification of any part of the RFP during the period indicated in the Data Sheet before the Proposals' submission deadline. Any request for clarification must be sent in writing, or by standard electronic means, to the Procuring Entity's address indicated in the Data Sheet. The Procuring Entity will respond in writing, or by standard electronic means, and will send written copies of the response (including an explanation of the query but without identifying its source) to all Bidders. Should the Procuring Entity deem it necessary to amend the RFP as a result of a clarification, it shall do so following the procedure described below:
- 13.2 At any time before the proposal submission deadline, the Procuring Entity may amend the RFP by issuing an amendment in writing or by standard electronic means. The amendment shall be sent to all invited Bidders and will be binding on them. The Bidders shall acknowledge receipt of all amendments in writing.
- 13.3 If the amendment is substantial, the Procuring Entity may extend the proposal submission deadline to give the Bidders reasonable time to take an amendment into account in their Proposals.
- 13.4 The Bidder may submit a modified Proposal or a modification to any part of it at any time prior to the proposal submission deadline. No modifications to the Technical or Financial Proposal shall be accepted after the deadline.

8. 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 long as only one Proposal is submitted, in accordance with ITB 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.

9. Technical Proposal Format and Content

- 15.1 The Technical Proposal shall be prepared using the Standard Forms provided in Section 3 of the RFP and shall comprise the documents listed in the Data Sheet under ITB 10.1. The Technical Proposal shall not include any financial information. A Technical Proposal containing material financial information shall be

declared non- responsive.

- 15.2 Bidder shall not propose alternative Key Experts. Only one CV shall be submitted for each Key Expert position. Failure to comply with this requirement will make the Proposal non-responsive.

10. Financial Proposal

- 16.1 The Financial Proposal shall be prepared using the Standard Forms provided in Section 4 of the RFP. It shall list all costs associated with the assignment, including (a) remuneration for Key Experts and Non-Key Experts, (b) reimbursable expenses indicated in the Data Sheet. Irrespective of the Bidder selection method, any Bidder that does not submit itemized and priced financial proposal, or merely refers the Procuring Entity to other legal instruments for the applicable minimum remuneration fees shall be considered non-responsive.

a. Price Adjustment

- 16.2 For assignments with a duration exceeding 18 months, a price adjustment provision for foreign and/or local inflation for remuneration rates apply if so, stated in the Data Sheet.

b. Taxes

- 16.3 The Bidder and its Sub-Bidders and Experts are responsible for meeting all tax liabilities arising out of the Contract unless stated otherwise in the Data Sheet. Information on taxes in Kenya is provided in the Data Sheet.

c. Currency of Proposal

- 16.4 The Bidder may express the price for its Services in the currency or currencies as stated in the Data Sheet. If indicated in the Data Sheet, the portion of the price representing local cost shall be stated in Kenya Shillings.

d. Currency of Payment

- 16.5 Payment under the Contract shall be made in the currency or currencies in which the payment is requested in the Proposal.

C. SUBMISSION, OPENING AND EVALUATION

11. Submission, Sealing, and Marking of Proposals

- 17.1 The Bidder shall submit a signed and complete Proposal comprising the documents and forms in accordance with ITB 10 (Documents Comprising Proposal). Bidders shall mark as “CONFIDENTIAL” information in their Proposals which is confidential to their business. This may include proprietary information, trade secrets or commercial or financially sensitive information. The submission can be done by mail or by hand. If specified in the Data Sheet, the Bidder has the option of submitting its Proposals electronically.
- 17.2 An authorized representative of the Bidder shall sign the original submission letters in the required format for both the Technical Proposal and the Financial Proposals and shall initial all pages of both. The authorization shall be in the form of a written power of attorney attached to the Technical Proposal.
- 17.3 A Proposal submitted by a Joint Venture shall be signed by all members so as to be legally binding on all members, or by an authorized representative who has a written power of attorney signed by each member's authorized representative.
- 17.4 Any modifications, revisions, interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Proposal.
- 17.5 The signed Proposal shall be marked “ORIGINAL”, and its copies marked “COPY” as appropriate. The number of copies is indicated in the Data Sheet. All copies shall be made from the signed original. If there are discrepancies between the original and the copies, the original shall prevail.

12. Sealing and Marking of Proposals

- 18.1 The firm shall deliver the Proposals in a single sealed envelope, or in a single sealed package, or in a single

sealed container bearing the name and Reference number of the assignment, addressed to the Procuring Entity and a warning **“DO NOT OPEN BEFORE 1000 HOURS ON 11/5/2022”**. Within the single envelope, package or container, the Firm shall place the following separate, sealed envelopes:

- 18.2 In the single sealed envelope, or in a single sealed package, or in a single sealed container the following documents shall be closed and shall be addressed as follows:
- i) in an envelope or package or container marked “ORIGINAL”, all documents comprising the Technical Proposal, as described in ITB11;
 - ii) in an envelope or package or container marked “COPIES”, all required copies of the Technical Proposal;
 - iii) in an envelope or package or container marked “ORIGINAL”, all required copies of the Financial Proposal; and
- 18.3 The inner envelopes or packages or containers shall:
- i) Bear the name and address of the Procuring Entity.
 - ii) Bear the name and address of the Firm; and
 - iii) Bear the name and Reference number of the Assignment.
- 18.4 If an envelope or package or container is not sealed and marked as required, the Procuring *Entity* will assume no responsibility for the misplacement or premature opening of the proposal. Proposals that are misplaced or opened prematurely will not be accepted.
- 18.5 The Proposal or its modifications must be sent to the address indicated in the Data Sheet and received by the Procuring Entity no later than the deadline indicated in the Data Sheet, or any extension to this deadline. Any Proposal or its modification received by the Procuring Entity after the deadline shall be declared late and rejected, and promptly returned unopened.

13. 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.

14. Opening of Technical Proposals

- 20.1 The Procuring Entity's opening committee shall conduct the opening of the Technical Proposals in the presence of the Bidders' authorized representatives who choose to attend (in person, or online if this option is offered in the Data Sheet). The opening date, time and the address are stated in the Data Sheet. The envelopes with the Financial Proposal shall remain sealed and shall be securely stored by the Procuring Entity or with a reputable public auditor or independent authority until they are opened in accordance with ITB 22.
- 20.2 At the opening of the Technical Proposals the following shall be read out: (i) the name and the country of the Bidder or, in case of a Joint Venture, the name of the Joint Venture, the name of the lead member and the names and the countries of all members; (ii) the presence or absence of a duly sealed envelope with the Financial Proposal; (iii) any modifications to the Proposal submitted prior to proposal submission deadline; and (iv) any other information deemed appropriate or as indicated in the Data Sheet.

15. Proposals Evaluation

- 21.1 Subject to provision of ITB 15.1, the valutors 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 ITB 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 ITB12.7. While evaluating the Proposals, the Evaluation Committee will conduct the evaluation solely on the basis of the submitted Technical and Financial Proposals.

16. 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.

17. 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 ITB 22.1 and 22.2.

18. 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 ITB 24 below, specified in the Financial Proposal (Form FIN-1) shall be considered as the offered price.

19. Taxes

- 25.1 Subject to ITB 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.

20. 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.

21. 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.

22. 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.

23. 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 ITB 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.

24. 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;

25. 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.

D. NEGOTIATIONS AND AWARD

26. 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 ITB 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.

27. 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.

28. Letter of Award

- 34.1 Upon expiry of the Standstill Period, specified in ITB 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.

29. 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 ITB 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.

30. 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.

31. 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 ITB 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: <i>Quality and Cost Based Selection Method (QCBS)</i>
2.2	Financial Proposal to be submitted together with Technical Proposal in separate envelopes: Yes The name of the assignment is: REQUEST FOR PROPOSAL ON SETTING UP AND OPERATING A COMPLIMENTARY HAZARDOUS WASTE TREATMENT FACILITY AT KIPEVU, MOMBASA COUNTY IN A JOINT VENTURE PARTNERSHIP
2.3	There shall be site visit on 16th May 2022 . Bidders are requested to convene at the site, 1000hrs . Bidders are advised to facilitate their own transportation.
2.4	The Procuring Entity will provide all the relevant and necessary information upon request to facilitate this exercise.
3.3 (iv)	<i>Not Applicable</i>
4.1	<i>Not Applicable</i>
6.2	Maximum number of members in the Joint Venture (JV) shall be FOUR (4).
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	<i>Not Applicable</i>
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 ITB Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	<p>The Proposal shall comprise of the following mandatory requirements presented in an orderly manner as follows: -</p> <p>1st Inner Envelope (A) with the Technical Proposal:</p> <ul style="list-style-type: none"> 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 Workplan 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 <p>AND</p> <p>2nd Inner Envelope (B) with the Financial Proposal:</p> <ul style="list-style-type: none"> 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
11.1	Participation of the Bidder, and Key Experts in more than one Proposal is permissible: <i>NOT ALLOWED</i>
12.1	Proposals must remain valid for <i>a period of 120</i> days after the proposal submission deadline.
13.1	<p>Clarifications may be requested not later than 7 days prior to the submission deadline.</p> <p>The contact information for requesting clarifications is: email; info.mombasacounty@gmail.com</p>
14 (b) (do not use for Fixed Budget method)	<i>Not applicable</i>
14 (c) and 26.2 [use for Fixed Budget	<i>Not applicable</i>

Reference to ITB Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
method]	
14 (d)	Key Experts shall not appear in more than one proposal
16.1(b)	<i>Not applicable</i>
16.2	A price adjustment provision applies to remuneration rates: N/A
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 The Financial Proposal should state local costs in Kenya Shillings: Yes
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: 11/5/2022 Time:1000 HOURS 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 1000 HRS on 23rd May 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: 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: 28th May 2022 Time: 1000 HOURS

Reference to ITB Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS																																						
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: <table><tr><th>SN</th><th>Subject of Interest</th><th>Maximum Score</th></tr><tr><td>1.</td><td>Land use Plan and structural design of the plant.</td><td>5</td></tr><tr><td>2.</td><td>Type of technology used within the plant; <i>i. Technology used in Treatment of the waste (30 marks)</i> <i>ii. Technology used in storage (5 marks)</i> <i>iii. Technology used in Disposal (5 marks)</i></td><td>30</td></tr><tr><td>3.</td><td>Throughput time of the waste from the point of waste inception to the exit point as a bi-product or non-recyclable waste and the disposal method.</td><td>5</td></tr><tr><td>4.</td><td>Presence of multimodal high circularity hazardous material treatment technology.</td><td>5</td></tr><tr><td>5.</td><td>The value of products i. Number of bi-products after the treatment process ii. The financial value of the bi-products per annum</td><td>5</td></tr><tr><td>6.</td><td>The percentage of non-recyclable waste per tonne (<i>The lower the percentage the better the treatment rate</i>)</td><td>5</td></tr><tr><td>7.</td><td>i. Availability of a monitoring system from collection of waste to the end product to track the flow of waste. ii. Provision of framework for coordination in collection and treatment</td><td>5</td></tr><tr><td>8.</td><td>The types of hazardous waste materials that the plant can take in and the capacity of each category of the waste intake per day.</td><td>5</td></tr><tr><td>9.</td><td>Quantity of treatable waste per given time period (<i>Calculate daily quantity, monthly quantity and annual quantity</i>)</td><td>5</td></tr><tr><td>10.</td><td>Mitigation practices for potential environmental and socio-economic issues that may arise</td><td>5</td></tr><tr><td>11.</td><td>i. Experience in performing projects of similar magnitude. General Experience of the firm in developing and running waste management plants in the last 5 years (<i>Provide proof of completion of the said projects</i>) – 10 marks ii. Experience of key technical experts (15 Marks)<ul style="list-style-type: none">Environmental Science/Related Field - <i>Post graduate qualification (Team Leader)</i> – 6 MarksEnvironmental Engineer/Related Field (Key Expert) – 3 Marks</td><td>25</td></tr></table>			SN	Subject of Interest	Maximum Score	1.	Land use Plan and structural design of the plant.	5	2.	Type of technology used within the plant; <i>i. Technology used in Treatment of the waste (30 marks)</i> <i>ii. Technology used in storage (5 marks)</i> <i>iii. Technology used in Disposal (5 marks)</i>	30	3.	Throughput time of the waste from the point of waste inception to the exit point as a bi-product or non-recyclable waste and the disposal method.	5	4.	Presence of multimodal high circularity hazardous material treatment technology.	5	5.	The value of products i. Number of bi-products after the treatment process ii. The financial value of the bi-products per annum	5	6.	The percentage of non-recyclable waste per tonne (<i>The lower the percentage the better the treatment rate</i>)	5	7.	i. Availability of a monitoring system from collection of waste to the end product to track the flow of waste. ii. Provision of framework for coordination in collection and treatment	5	8.	The types of hazardous waste materials that the plant can take in and the capacity of each category of the waste intake per day.	5	9.	Quantity of treatable waste per given time period (<i>Calculate daily quantity, monthly quantity and annual quantity</i>)	5	10.	Mitigation practices for potential environmental and socio-economic issues that may arise	5	11.	i. Experience in performing projects of similar magnitude. General Experience of the firm in developing and running waste management plants in the last 5 years (<i>Provide proof of completion of the said projects</i>) – 10 marks ii. Experience of key technical experts (15 Marks) <ul style="list-style-type: none">Environmental Science/Related Field - <i>Post graduate qualification (Team Leader)</i> – 6 MarksEnvironmental Engineer/Related Field (Key Expert) – 3 Marks	25
SN	Subject of Interest	Maximum Score																																					
1.	Land use Plan and structural design of the plant.	5																																					
2.	Type of technology used within the plant; <i>i. Technology used in Treatment of the waste (30 marks)</i> <i>ii. Technology used in storage (5 marks)</i> <i>iii. Technology used in Disposal (5 marks)</i>	30																																					
3.	Throughput time of the waste from the point of waste inception to the exit point as a bi-product or non-recyclable waste and the disposal method.	5																																					
4.	Presence of multimodal high circularity hazardous material treatment technology.	5																																					
5.	The value of products i. Number of bi-products after the treatment process ii. The financial value of the bi-products per annum	5																																					
6.	The percentage of non-recyclable waste per tonne (<i>The lower the percentage the better the treatment rate</i>)	5																																					
7.	i. Availability of a monitoring system from collection of waste to the end product to track the flow of waste. ii. Provision of framework for coordination in collection and treatment	5																																					
8.	The types of hazardous waste materials that the plant can take in and the capacity of each category of the waste intake per day.	5																																					
9.	Quantity of treatable waste per given time period (<i>Calculate daily quantity, monthly quantity and annual quantity</i>)	5																																					
10.	Mitigation practices for potential environmental and socio-economic issues that may arise	5																																					
11.	i. Experience in performing projects of similar magnitude. General Experience of the firm in developing and running waste management plants in the last 5 years (<i>Provide proof of completion of the said projects</i>) – 10 marks ii. Experience of key technical experts (15 Marks) <ul style="list-style-type: none">Environmental Science/Related Field - <i>Post graduate qualification (Team Leader)</i> – 6 MarksEnvironmental Engineer/Related Field (Key Expert) – 3 Marks	25																																					

Reference to ITB Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS		
		<ul style="list-style-type: none">Industrial Chemistry/Related Field (Key Expert) – 3 MarksPublic Health (Support Staff) – 3 MarksAccounting Personnel(Support Staff) - – 3 Marks	
		TOTAL	100
	The minimum technical score (TS) required to pass is: <u>80%</u>		
23.4	An online option of the opening of the Financial Proposals is offered: No		
25.2	Not applicable		
26.1	All currencies should be stated in a single one Kenya Shillings .		
29.1 (QCBS only)	<p>The lowest evaluated Financial Proposal (Fm) is given the maximum financial score (Sf) of 20.</p> <p>The formula for determining the financial scores (Sf) of all other Proposals is calculated as following: Sf = 100 x Fm/ F, in which “Sf” is the financial score, “Fm” is the lowest price, and “F” the price of the proposal under consideration.</p> <p>The weights given to the Technical (T) and Financial (P) Proposals are: T = 0.8 and P = 0.2]</p> <p>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 x T% + Sf x P%.</p>		
31	<p>The Standstill Period (Period between notification and award of the project) shall be: 14 days.</p> <p>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.</p>		
D. Negotiations and Award			
32.1	Expected date and address for contract negotiations: <i>to be advised by the Procuring Entity if applicable</i>		
35.2	Expected date for the commencement of the Services: Date: <i>to be advised by the Procuring Entity</i>		
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.}

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 the consulting 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 ITB3.
- d) We meet the eligibility requirements as stated in ITB6, 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 ITB5.
- 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 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 ITB12 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 ITB Clause12 and ITB 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}

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]

1. 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 award¹ 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.

2. 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:

3. 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}

4. 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.}*

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

N°	Deliverables ¹ (D-..)	Months											
		1	2	3	4	5	6	7	8	9	.....	n	TOTAL
D-1	{e.g., Deliverable #1: Report A												
	1) data collection												
	2) drafting												
	3) inception report												
	4) incorporating comments												
	5)												
	6) delivery of final report to Procuring Entity}												
D-2	{e.g., Deliverable #2:.....}												
N													

- 1 List the deliverables with the breakdown for activities required to produce them and other benchmarks such as the Procuring Entity's approvals. For phased assignments, indicate the activities, delivery of reports, and benchmarks separately for each phase.
- 2 Duration of activities shall be indicated in a form of a bar chart.
- 3 Include a legend, if necessary, to help read the chart.

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

N°	Name	Expert's input (in person/month) per each Deliverable (listed in TECH-5)										Total time-input (in Months)			
		Position		D-1		D-2		D-3	.....	D-...			Home	Field	Total
KEY EXPERTS															
K-1	{e.g., Mr. Abbbb}	[Team Leader]	[Home] [Field]	[2 month] [0.5 m]		[1.0] [2.5]		[1.0] [0]							
K-2															
K-3															
N															
										Subtotal					
NON-KEY EXPERTS															
N-1			[Home] [Field]												
N-2															
N															
										Subtotal					
										Total					

1.For Key Experts, the input should be indicated individually for the same positions as required under the ITB Data Sheet 21.2

2.Months are counted from the start of the assignment/mobilization. One (1) month equals twenty-two (22) working (billable) days. One working (billable) day shall be not less than eight (8) working (billable) hours.

3“Home” means work in the office in the expert’s country of residence. “Field” work means work carried out in Kenya, or outside the normal residence of the Expert in Kenya or any other country outside the expert’s country of residence.



Full time input



Part time input

7. 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)

8. 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 ITB 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 ITB 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).

9. 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

10. 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 here by 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.....

11. 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

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 consulting services 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 ITB24.2 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 ITB12.1 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*}

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

Item	Cost			
	{ Bidder must state the proposed Costs in accordance with ITB 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 }				

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							

**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:

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

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 abase 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' over heads, 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 over heads 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.

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.

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

1.1 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.

1.2 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.

1.3 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.

AN OVERVIEW OF THE HAZMART TREATMENT PLANT

The County Government of Mombasa through the Department of Environment, Waste Management and Energy is committed to protecting human health by safeguarding the environment. The exponential growth of the city's population, economic activities along the coastal fringe and the City of Mombasa's proximity to the port have all contributed to an increase in generation of hazardous materials, including but not limited to oil sludge, ballast water, Industrial Process Wastewater, Hydrostatic Testing Water. Most of these waste is scavenged on and partially processed with various components of economic value being recovered. However, this is done with little or no safeguards to address spills, components monitoring and no drainage/treatment system for containment of discharges from the process. The port city interphase is plagued by haphazard disposal of various by products/ partially degraded materials that are potentially toxic and harmful to the environment and marine life

To this end the County Government of Mombasa proposes to set up a fully functional and properly configured hazardous materials treatment plant, to ensure tracking and accountability in HAZMART processing, reuse products and disposal. The County seeks to collaborate with the private sector through engaging strategic partners to undertake the development and operation of an iconic HAZMART treatment plant with world class operational process technology in line with The Mombasa County Solid Waste Management Act 2021 and The Kenya Waste Management Guidelines 2006.

The objectives of are;

1. To promote and further enhance the global competitiveness of Kenya's Gate City Mombasa.
2. Significantly reduce the amount of environmental pollution within the county.
3. Provide a framework for coordination in the collection and treatment of hazmat in Mombasa County
4. Set up and deploy multimodal, high throughput and high circularity hazardous materials treatment technology.
5. Establish a system of continuous monitoring to minimize change in risk, contain accidental releases and ensure facility integrity.
6. Integration of system to complement existing facilities is of added advantage

The proposed project site is Kipevu. The total area is 6.77Ha, Plot no. MN/VI/2549. Interested bidders are kindly asked to note that the plot has an existing sewerage treatment facility.

The CGM in liaison with the National government will acquire the piece of land where the HAZMART treatment plant will be constructed at Kipevu. Details of the location of the intended plant are as appended below in this RFP. In addition, the CGM will provide world class amenities to serve this treatment plant to ensure a sustainable facility that will greatly contribute to the waste management of hazardous materials that are disposed of within the port. Furthermore, the project will be earmarked as a project of strategic significance to Mombasa County and the entire coastal region as it will play a key role in dealing with waste disposal that has plagued the region for a long time with water bodies being the biggest recipient of the waste. Thus it will be designated as a project of Strategic national importance and designated a Special Planning Area.

The award of HAZMART treatment plant as a special planning area, owing to its unique waste management potential, CGM realizes that the success of the HAZMART treatment plant is key in controlling the hazardous waste. By this conferment the planning of the project can be fast tracked and the construction commence because the bureaucratic process for approval of private investors is cut by this acclamation. As an SPA the plant will increase the volume of waste that is treated within Kipevu and more importantly it will deal with oil wastes, ballast water, Industrial Process Wastewater, Hydrostatic Testing Water that come off the water vessels that dock within Mombasa significantly reducing water pollution. Aside from environmental protection the plant will also create job opportunities for local residents that will be running the plant during construction and during its operation.

OBJECTIVE OF THE ASSIGNMENT

The key objective of the assignment is to design and set up a hazardous waste treatment plant and operate it on behalf of CGM

2. SCOPE OF WORK

The proposed HAZMART treatment plant will provide a new unique to opportunity to create a plant that deals with hazardous waste and oil spillages, ballast water, Industrial Process Wastewater, Hydrostatic Testing Water and other non-biodegradable wastes. This will also significantly deal with waste management problem that has given rise to huge dumpsites within the county.

Respondents to this RFP may respond as Master Developer or Developers for specific sections highlighted below.

- Treatment section; drip pads, containment building, incinerators, boilers and industrial furnaces
- Storage section; containers, tanks, land fills
- Disposal section; surface impoundments, waste pillages, land treatment units, sewerage system
- And any other section that the developer will deem important should be included in the plan.

Early anchor Developers within the Development will be prioritized.

The densities for the various sections are also provided to Master Developers / interested Developers for specific sections.

The objective is to create a CGM premise where CGM will be the anchor tenant. Developers may express interest to Build Operate Transfer the CGM office premise (or part thereof). CGM through the DoEWE responsible for Government office accommodation will also look to review potential to ring fence its existing office accommodation budgets and or development budgets for this plant.

The Master Developer should:

1. Have the ability to finance or obtain financing to undertake the HAZMART treatment plant construction and sustain the construction process
2. Have the ability to undertake extensive planning refinement studies of the existing master plan to address infrastructure issues, environmental issues, and land development issues not fully developed and/or addressed in the current master plan.
3. Have the capacity to undertake the onsite infrastructure (or part thereof subject to negotiations) in return for development rights (subject to negotiations).
4. Have relationships to crowd in investment and have access to Developers with interest in various sections.
5. Have relationships with KPA, NEMA and environment related companies as they are the key stakeholders in the proposed plant
6. Have relationships with other professional firms to build the necessary team.
7. Have knowledge of the various local laws that impact on a project of this complexity and size and understand local staffing relationships.

8. Have-extensive experience in all phases of the project development and have experience in environment conservation and hazardous waste management and disposal.

The Developer / Investor on a specific section within the HAZMART treatment plant should:

1. Demonstrate the ability to finance or obtain financing to commence the specific section within the treatment plant.
2. Early anchor investors with demonstrable funding to undertake early quick win developments within the treatment plant will be prioritized should they demonstrate ability to mobilise and fund within 90 days' post execution of contract.
3. Have the right partners to demonstrate their expertise to undertake the specific sectional construction within the treatment plant that they have expressed an interest in.

Anchor Developers may express an interest for any of the specific sections listed in the attached Land Use Plan within HAZMART.

3. OUTPUT/DELIVERABLES

b. Land use plan

The master developer is required to deliver a plan on how they intend to use site land and provide adequate mapping of the sectional allocation of key plant amenities and sections.

c. Plant Amenities required

The Master Developer will pay for the amenities costs to obtain the right to construct the Kipevu Treatment Plant. The pre-qualified respondents will have the option to submit to develop sectional amenities or the entire plant amenities required within the plant.

d. RFP Requirements

WE will pre-qualify Master Developers / Developers with the following baseline guidelines:

- i. Demonstrate financial capacity, experience and expertise in delivering large scale projects.
- ii. Demonstrate how prior large scale projects were financed and evidencing how the financing arrangements were put in place taking into account global sourcing of finance where applicable, time and quantum.
- iii. Demonstrate capacity, experience and expertise in technical teams to undertake planning, preparation of business case and risk management.
- iv. Demonstrate experience around converting early anchor projects into live projects and deliver early stage projects that will generate value to the CGM
- v. Submit strategies to demonstrate the limited fiscal space in Kenya while engaging with the CGM on leveraging synergies and structuring financing solutions to ensure the onsite infrastructure and a state of the art treatment plant is delivered.

- vi. Demonstrate strong linkages with international investors, international bodies on environmental matters, NEMA, KPA and other bodies with interest in environmental conservation.
- vii. Demonstrate experience and adoption of sustainable green technologies and efficient use of power and water technologies in hazardous waste management.
- viii. Must be willing to comply with the existing laws and regulations in the Republic of Kenya, CGM and other subsidiary laws.

4. REPORTING AND COORDINATION OF THE ASSIGNMENT

The tenderer shall report to the Chief Officer for the Department of Environment, Waste and Energy but shall work closely with the project implementation committee that will be appointed by the Chief Officer Department of Environment, Waste and Energy

5. DURATION AND TIME-FRAME

The interested qualified bidders are required to provide the intended project completion period.

6. REQUIRED PERSONNEL SKILLS AND EXPERIENCE

In order to demonstrate the availability of qualified personnel, the proposers are required to provide curriculum vitae (CVs) of the key personnel in various disciplines within their organization to be engaged in providing design, tendering, construction, financing and supervision services for the execution of the project. Only CV's of personnel specifically working on the project should be submitted with the organizational chart showing their anticipated role.

Organization of Project Team/Description of Team Members and Responsibilities

Considering the complexity of the assignment, it is assumed proposers will be required to draw upon staffing and knowledge resources from around the world. Also, given the size of the project, it is assumed that teams consisting of multiple consultants and contractors and financiers will be assembled. If teaming is proposed, the proposer should identify the roles and responsibilities of each team member and how they will be utilized on the development project.

Proposers should demonstrate their ability to mobilize staff from resources quickly and efficiently so that the full depth of the firm's / JV / consortium experience can be applied as needed to the design, construction and financing. Knowledge of local processes and material specifications will be critical in matching international design concepts with local construction. They should meet the latest sustainability criteria in Kenya and the new facilities should be designed with amongst others transport integration, climate change, energy conservation in mind.

7. COVER

The tender documents must be in a sealed envelope legibly indicating the Tender 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).

8. COVER LETTER

A cover letter, not exceeding two pages in length, containing the Respondents single point of contact details (names, full physical address, address, email, telephone number) of who will handle all communications associated with their submittal and stating the areas of expertise the firm is able to offer and which role the Respondent would be interested to participate as Master Developer or Developer and which precinct within the Hazmart Plant.

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

9. 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.

The proposers should also provide a brief description of the Developers organization and an outline of the recent experience relevant to the Hazmart Plant. The profile should contain a summarized listing of the relevant projects completed within the last 10 years by the Developer indicating the type of expertize offered particularly in reaching financial close and successfully completing developments and the value of the developments provided and completed.

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

10. 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.

11. 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 RFP 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.

12. OTHER GUIDELINES

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

13. EVALUTION PROCESS

Stage 1; Preliminary Evaluation

Documentary evidence in form of copies must be provided for the requirements stated below. 100% compliance will be required to proceed to the next evaluation stage. Failure to provide ANY of the requirements leads to disqualification. The bidder has to pass ALL the criteria.

STAGE 1: PRELIMINARY/MANDATORY REQUIREMENT SCORE 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 for Kenyan firms.
- 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.
- n) Any other requirement that is stated in the Data sheet.

Bidders who pass this stage will be eligible for technical evaluation

Stage 2; Technical Evaluation

The county shall evaluate Request for Proposal according to specific criteria based on the guidelines provided in this document. The bidders will require **TO SCORE A TOTAL OF 80 MARKS** to progress to the Financial evaluation. The bidders who do not qualify for the Technical Evaluation will not be considered any further in the process. The scoresheet will

TECHNICAL EVALUATION SCORESHEET

SN	Subject of Interest	Maximum Score
1.	Land use Plan and structural design of the plant.	5
	Type of technology used within the plant; <i>i. Technology used in Treatment of the waste (30 marks)</i> <i>ii. Technology used in storage (5 marks)</i> <i>iii. Technology used in Disposal (5 marks)</i>	40
2.	Throughput time of the waste from the point of waste inception to the exit point as a bi-product or non-recyclable waste and the disposal method.	5
3.	Presence of multimodal high circularity hazardous material treatment technology.	5
4.	The value of products i. Number of bi-products after the treatment process ii. The financial value of the bi-products per annum	5
iii.	The percentage of non-recyclable waste per tonne (<i>The lower the percentage the better the treatment rate</i>)	5
iv.	i. Availability of a monitoring system from collection of waste to the end product to track the flow of waste. ii. Provision of framework for coordination in collection and treatment	5
iii.	The types of hazardous waste materials that the plant can take in and the capacity of each category of the waste intake per day.	5
iv.	Quantity of treatable waste per given time period (<i>Calculate daily quantity, monthly quantity and annual quantity</i>)	5
v.	Mitigation practices for potential environmental and socio-economic issues that may arise	5
vi.	i. Experience in performing projects of similar magnitude. General Experience of the firm in developing and running waste management plants in the last 5 years (<i>Provide proof of completion of the said projects</i>) ii. Experience of key technical experts (<i>Academic qualifications, Certifications from professional bodies, Work experience</i>)	15
	TOTAL	100

Bidders who attain a score of 80% of the 100% will proceed to financial evaluation.

However, the marks will be converted to create a technical score (TS) that will be added to the financial score to determine the winners.

Technical Score (TS) = [Attained marks (Y)/100]x80

Stage 3: Financial Evaluation Financial Capability and Commitments;

A brief sentence or two indicating that the firm and/ or its partners through either singly or in a joint venture have the financial resources and management strength to execute the assignment and that the firm and/ or its partners can provide evidence of such capacity if requested for. The firm and/ or its partners must provide a performance bond of 10% of the contract price upon award which will be based on Quality and Cost Based Selection (QCBS).

The financial evaluation will be scored out of 20 marks and what the bidders attain at this stage will be added to the technical score attained to get the winner which will be calculated as shown below;

FINANCIAL SCORE SHEET

SN	Subject of Interest	Maximum Score
	Percentage of financial income generated from the plant allocated to the County Government of Mombasa	6
	Amount of waste handled in tonnage handled on behalf of the County Government of Mombasa	6
	Strategic plan to enhance Global competitiveness of the gate city of Mombasa and the contribution to the region's economy.	5
	Time period of the Joint Venture Partnership with the County Government of Mombasa	3
	TOTAL	20

Final Score = Technical Score (TS) + Financial Score (FS)

The bidders who qualify at this stage will be considered for approval for award unless the requirement for negotiation and other subsequent procurement proceedings arise.

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

A. General Provisions

1. Definitions

1.1 Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- a) “Applicable Law” means the laws and any other instruments having the force of law in Kenya.
- b) “Bidder” means a legally established professional consulting firm or entity selected by the Procuring Entity to provide the Services under the signed Contract.
- c) “Contract” means the legally binding written agreement signed between the Procuring Entity and the Bidder and which includes all the attached documents listed in its paragraph 1 of the Form of Contract (the General Conditions (GCC), the Special Conditions (SCC), and the Appendices).
- d) “Procuring Entity” means the Procuring Entity that signs the Contract for the Services with the selected Bidder.
- e) “Day” means a working day unless indicated otherwise.
- f) “Effective Date” means the date on which this Contract comes into force and effect pursuant to Clause GCC 11.
- g) “Experts” means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Bidder, Sub-Bidder or JV member(s) assigned by the Bidder to perform the Services or any part thereof under the Contract.
- h) “Foreign Currency” means any currency other than the currency of Kenya.
- i) “GCC” means these General Conditions of Contract.
- j) “Government” means the government of Kenya.
- k) “Joint Venture (JV)” means an association with or without a legal personality distinct from that of its members, of more than one entity where one member has the authority to conduct all businesses for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Procuring Entity for the performance of the Contract.
- l) “Key Expert(s)” means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose Curricula Vitae (CV) was taken into account in the technical evaluation of the Bidder's proposal.
- m) “Local Currency” means the Kenya Shillings, the currency of Kenya.
- n) “Non-Key Expert(s)” means an individual professional provided by the Bidder or its Sub-Bidder to perform the Services or any part here of under the Contract.
- o) “Party” means the Procuring Entity or the Bidder, as the case may be, and “Parties” means both of them.
- p) “SCC” means the Special Conditions of Contract by which the GCC may be amended or supplemented but not over-written.
- q) “Services” means the work to be performed by the Bidder pursuant to this Contract, as described in Appendix A hereto.
- r) “Sub-Bidders” means an entity to whom/which the Bidder subcontracts any part of the Services while

remaining solely liable for the execution of the Contract.

- S) “Third Party “means any person or entity other than the Government, the Procuring Entity, the Bidder or a Sub-Bidder.

2. Relationship between the Parties

- 2.1 Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the Procuring Entity and the Bidder. The Bidder, subject to this Contract, has complete charge of the Experts and Sub-Bidders, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

3. Law Governing Contract

- 3.1 This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Laws of Kenya.

4. Language

- 4.1 This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

5. Headings

- 5.1 The headings shall not limit, alter or affect the meaning of this Contract.

6. Communications

- 6.1 Any communication required or permitted to be given or made pursuant to this Contract shall be in writing in the English Language. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the SCC.
- 6.2 A Party may change its address for notice here under by giving the other Party any communication of such change to the address specified in the SCC.

7. Location

- 7.1 The Services shall be performed at such locations as are specified in Appendix A hereto and, where the location of a particular task is not so specified, at such locations, whether in Kenya or elsewhere, as the Procuring Entity may approve.

8. Authority of Member in Charge

- 8.1 In case the Bidder is a Joint Venture, the members hereby authorize them ember specified in the SCC to act on their behalf in exercising all the Bidder's rights and obligations towards the Procuring Entity under this Contract, including without limitation the receiving of instructions and payments from the Procuring Entity.

9. Authorized Representatives

- 9.1 Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Procuring Entity or the Bidder may be taken or executed by the officials specified in the SCC.

10. Corrupt and Fraudulent Practices

- 10.1 The government requires compliance with its policy regarding corrupt and fraudulent/prohibited practices as set forth in its laws and policies.
- 10.2 **Commissions and Fees-**The Procuring Entity requires the Bidder to disclose any commissions, gratuities or fees that may have been paid or are to be paid to a gents or any other party with respect to the selection

process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee. Failure to disclose such commissions, gratuities or fees may result in termination of the Contract by the Procuring Entity and/or sanctions by the PPRA.

B. Commencement, Completion, Modification and Termination of Contract

11. Effectiveness of Contract

- 11.1 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 Services. This notice shall confirm that the effectiveness conditions, if any, listed in the SCC have been met.

12. Termination of Contract for Failure to Become Effective

- 12.1 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.

13. Commencement of Services

- 13.1 The Bidder shall confirm availability of Key Experts and begins carrying out the Services not later than the number of days after the Effective Date specified in the SCC.

14. Expiration of Contract

- 14.1 Unless terminated earlier pursuant to Clause GCC19 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the SCC.

15. Entire Agreement

- 15.1 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.

16. Modifications or Variations

- 16.1 Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, 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.

17. Force Majeure

a. Definition

- 17.1 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.
- 17.2 Force Majeure shall not include (i) any event which is 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 hereunder.
- 17.3 Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

b. No Breach of Contract

- 17.4 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

- 17.5 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.
- 17.6 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 for additional costs reasonably and necessarily incurred.
- 17.7 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.

18. Suspension

- 18.1 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.

19. Termination

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

a. By the Procuring Entity

- 19.2 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.

19.3 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 GCC45.1 within forty-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

19.4 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

19.5 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

19.6 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.

C. Obligation s of the Bidder

20. General

a. Standard of Performance

- 20.1 The Bidder shall perform the Services and carry out the Services with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Bidder shall always act, in respect of any matter relating to this Contract or to the Services, as a faithful adviser to the Procuring Entity, and shall at all times support and safeguard the Procuring Entity's legitimate interests in any dealings with the third parties.
- 20.2 The Bidder shall employ and provide such qualified and experienced Experts and Sub-Bidders as are required to carry out the Services.
- 20.3 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.

b. Law Applicable to Services

- 20.4 The Bidder shall perform the Services in accordance with the Contract and the Applicable Law and shall take all practicable steps to ensure that any of its Experts and Sub-Bidders, comply with the Applicable Law.
- 20.5 Throughout the execution of the Contract, the Bidders shall comply with the import of goods and services prohibitions in Kenya when
- a As a matter of law or official regulations, Kenya prohibits commercial relations with that country; or
 - b by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods from that country or any payments to any country, person, or entity in that country.
- 20.6 The Procuring Entity shall notify the Bidder in writing of relevant local customs, and the Bidder shall, after such notification, respect such customs.

21. Conflict of Interests

- 21.1 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.

- 21.2 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.
- 21.3 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

- 21.4 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

- 21.5 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

- 21.6 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.

22. Confidentiality

- 22.1 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.

23. Liability of the Bidder

- 23.1 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.

24. Insurance to be taken out by the Bidder

- 24.1 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.

25. Accounting, Inspection and Auditing

- 25.1 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.
- 25.2 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 in eligibility under the PPRA's prevailing sanctions procedures.)

26. Reporting Obligations

- 26.1 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.

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

- 27.1 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.
- 27.2 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.

28. Equipment, Vehicles and Materials

- 28.1 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.
- 28.2 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.

D. Bidder's Experts and Sub-Bidders

29. Description of Key Experts

- 29.1 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.

30. Replacement of Key Experts

- 30.1 Except as the Procuring Entity may otherwise agree in writing, no changes shall be made in the Key Experts.
- 30.2 Notwithstanding the above, the substitution of Key Experts during Contract execution may be considered only based on the Bidder's written request and due to circumstances outside the reasonable control of the Bidder, including but not limited to death or medical incapacity. In such case, the Bidder shall forth with provide as a replacement, a person of equivalent or better qualifications and experience, and at the same rate of remuneration.

31. Removal of Experts or Sub-Bidders

- 31.1 If the Procuring Entity finds that any of the Experts or Sub-Bidder has committed serious misconduct or has been charged with having committed a criminal action, or shall the Procuring Entity determine that Bidder's Expert or Sub Bidder have engaged in corrupt, fraudulent, collusive, coercive [or obstructive] practice while performing the Services, the Bidder shall, at the Procuring Entity's written request, provide a replacement.
- 31.2 In the event that any of Key Experts, Non-Key Experts or Sub-Bidders is found by the Procuring Entity to be incompetent or incapable in discharging assigned duties, the Procuring Entity, specifying the grounds therefore, may request the Bidder to provide a replacement.
- 31.3 Any replacement of the removed Experts or Sub Bidders shall possess better qualifications and experience and shall be acceptable to the Procuring Entity.
- 31.4 The Bidder shall bear all costs arising out of or incidental to any removal and/or replacement of such Experts.

E. Obligations of the Procuring Entity

32. Assistance and Exemptions

- 32.1 Unless otherwise specified in the SCC, the Procuring Entity shall use its best efforts to:
- Assist the Bidder with obtaining work permits and such other documents as shall be necessary to enable the Bidder to perform the Services.
 - 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.

33. Access to Project Site

- 33.1 The Procuring Entity warrants that the Bidder shall have, free of charge, unimpeded access to the project site in respect of which access is required for the performance of the Services. The Procuring Entity will be responsible for any damage to the project site or any property thereon resulting from such access and will indemnify the Bidder and each of the experts in respect of liability for any such damage, unless such damage is caused by the willful default or negligence of the Bidder or any Sub-Bidders or the Experts of either of them.

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

- 34.1 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

35. Services, Facilities and Property of the Procuring Entity

- 35.1 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.

36. Counterpart Personnel

- 36.1 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.
- 36.2 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 assigned 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.

37. Payment Obligation

- 37.1 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.

F. Payments to the Bidder

38. Contract Price

- 38.1 The Contract price is fixed and is set forth in the SCC. The Contract price breakdown is provided in Appendix

C.

- 38.2 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.

39. Taxes and Duties

- 39.1 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
- 39.2 Any payment under this Contract shall be made in the currency (ies) of the Contract.

40. Mode of Billing and Payment

- 40.1 The total payments under this Contract shall not exceed the Contract price set forth in Clause GCC 38.1.
- 40.2 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.
- 40.3 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.
- 40.4 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.
- 40.5 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.
- 40.6 All payments under this Contract shall be made to the accounts of the Bidder specified in the SCC.
- 40.7 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.

41. Interest on Delayed Payments

- 41.1 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.

G. Fairness and Good Faith

42. Good Faith

- 42.1 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.

H. Settlement of Disputes

43. Amicable Settlement

- 43.1 The Parties shall seek to resolve any dispute amicably by mutual consultation.
- 43.2 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.

44. Dispute Resolution

- 44.1 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	<p>The addresses are <i>[fill in at negotiations with the selected firm]</i>:</p> <p>Procuring Entity:</p> <p style="padding-left: 40px;">i) THE COUNTY SECRETARY AND HEAD OF PUBLIC SERVICE COUNTY GOVERNMENT OF MOMBASA P.O. BOX 390440 - 80100 MOMBASA.</p> <p>Bidder: Attention: _____ Facsimile: _____ E-mail: _____</p>
8.1	<p><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></p> <p>The Lead Member on behalf of the JV is _____ <i>[insert name of the member]</i></p>
9.1	<p>The Authorized Representatives are:</p> <p>For the Procuring Entity: THE COUNTY SECRETARY AND HEAD OF PUBLIC SERVICE</p> <p>For the Bidder: <i>[name, title]</i>_____</p>
11.1	<p>The effectiveness conditions are the following: <i>[Note: If there are no effectiveness conditions, state "N/A"]</i></p> <p>OR</p> <p><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></p>
12.1	<p>Termination of Contract for Failure to Become Effective:</p> <p>The time period shall be _____ <i>[insert time period, e.g.: four months]</i>.</p>
13.1	<p>Commencement of Services:</p> <p>The number of days shall be _____ <i>[e.g.: ten]</i>.</p> <p>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.</p>
14.1	<p>Expiration of Contract:</p> <p>The time period shall be 36 <i>months</i>.</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
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>
27.2	<i>Not Applicable</i>
32.1 (a) through (f)	<i>Not Applicable</i>
32.1(g)	<i>Not Applicable</i>
38.1	<p>The Contract price is: _____ <i>[insert amount and currency for each currency as applicable]</i> <i>[indicate: inclusive or exclusive]</i> of local taxes.</p> <p>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.</p> <p>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></p>
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 <i>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]</i>
40.2.1	<i>Not Applicable</i>
40.2.4	<i>Not Applicable</i>
41.1	<i>Not Applicable</i>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
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 ITB 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: _____

ADVANCE PAYMENT GUARANTEE 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 breach 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

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>

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]	[Proposal price]	[evaluated price]	<u>Combined Score:</u> [combined score] <u>Ranking:</u> [ranking]

		<u>Sub-criterion c:</u> <u>.....etc.</u> Criterion (iv): <i>[insert score]</i> Criterion (v): <i>[insert score]</i> Total score: <i>[insert score]</i>			
<i>[insert name]</i>	.....	....	....	....	.....

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.]

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 our 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]*

ame 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: _____

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

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 ITB 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*

BENEFICIAL OWNERSHIP DISCLOSURE FORM (CONFIRM IF THIS IS THE LATEST UPDATED BENEFICIAL 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 in directly 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.*

PROPOSED SITE AND SIZE

