



**NATIONAL CONSTRUCTION
AUTHORITY**

**TENDER FOR
PROVISION OF CONSULTANCY SERVICES
FOR DEVELOPMENTAL EDITING,
PROOF READING AND PRINTING
OF VARIOUS STUDIES BY NCA**

TENDER NO. NCA/T/13/2023-2024

CLOSING DATE: THURSDAY 14TH DECEMBER, 2023 AT 11.00AM

**The Manager Supply Chain
National Construction Authority
P.O. Box 21046-00100
Nairobi-Kenya
E-MAIL: procurement@nca.go.ke
TEL: +254(0)2712096/2712098**

**The Executive Director
National Construction Authority KCB
Towers, 9th Floor, Kenya Road, Upper Hill.
P O Box 21046 – 00100 Nairobi. E-MAIL:
info@nca.go.ke**

SECTION I (A) LETTER OF INVITATION

Date: 5th December, 2023

Tender No.: NCA/T/13/2023-2024

TENDER NAME: PROVISION OF CONSULTANCY SERVICES FOR DEVELOPMENTAL EDITING, PROOF READING AND PRINTING OF VARIOUS STUDIES BY NCA.

1. The National Construction Authority (NCA) has set aside funds in its budget and funding from Government of Kenya towards the cost of provision of consultancy services for developmental editing, proof reading and printing of various studies by NCA for a period of three months.
 2. The Authority now invites bids from all eligible bidders for consultancy services for developmental editing, proof reading and printing of various studies by NCA for a period of three months. More details on the Services are provided in Section V Terms of Reference.
 3. The tender has **Seven lots** and bidders are at liberty to bid for **one or more lots** depending on their qualifications. Every lot will be evaluated and awarded independent of the other lots.
 4. Qualified, eligible and interested candidates may obtain further information and inspect the bidding documents during office hours at Supply Chain Office at the National Construction Authority (NCA) Headquarters on 9th floor KCB Towers, Kenya Road, Upper Hill between 8.00am and 5.00pm Kenyan Time, Monday to Friday except lunchtime between 1.00pm to 2.00pm and on public holidays. More details on the Services are provided in PART 2 - Services' Requirements, Section V - Description of Services of the Tender Document.
 5. A complete set of tender documents may be purchased or obtained by interested tenderers upon payment of a non- refundable fee of Kshs 1000 in cash or Banker's Cheque and payable to the address given below.
 6. Tender documents may be obtained electronically from the website www.nca.go.ke or public procurement information portal www.tenders.go.ke. Tender documents obtained electronically will be free of charge. Bidders who download the tender document must arrange to register with NCA the company name, postal, physical, email and telephone address for the purposes of receiving any further tender clarifications and/or addendums if need be. Registration can be done through email address: procurement@nca.go.ke
 7. All bids must be accompanied by original bid security of Ksh.75,000 in the format stipulated in the Public Procurement and Asset Disposal Act 2015 valid for 150 days from date of tender opening.
 8. Tenderers shall submit one original and one copy of tender document properly bound and sequentially serialized/paginated in the form of i.e. 1,2,3,4.....on each page including all the attachments.
 9. The Tender includes the following documents:
 - Section 1: Letter of Invitation
 - Section2: Instructions to Consultants and Data Sheet
 - Section 3: Technical Proposal Standard Forms
 - Section 4: Financial Proposal Standard Forms
 - Section 5: Terms of Reference
 - Section 6: Standard Forms of Contract (Lump-Sum)
- a) Completed tenders must be delivered to the address given below **on or before 11:00 am on Thursday, 14th December, 2023.**
 - b) Electronic Tenders will not be permitted.

- a) Tenders will be opened immediately after the deadline date and time specified above. Tenders will be publicly opened in the presence of the Tenderers' designated representatives who choose to attend at NCA Boardroom on 9th Floor KCB Towers, Upper Hill.
- b) Late tenders will be rejected.
- c) The addresses referred to above are: The Manager Supply Chain,
National Construction Authority,
KCB Towers 9th Floor, Kenya Road Upper Hill,
P.O. Box 21046-00100,
Nairobi-Kenya
E-MAIL: procurement@nca.go.ke
TEL: +254(700 021 222)

Manager Supply Chain,
For; Executive Director
National Construction Authority

SECTION 2. INSTRUCTIONS TO CONSULTANTS AND DATA SHEET

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

A. GENERAL PROVISIONS

a) 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 Consultant.
- b) "Applicable Law" means the laws and any other instruments having the force of law in Kenya.
- c) "Procuring Entity" means the entity that is carrying out the consultant selection process and signs the Contract for the Services with the selected Consultant.
- d) "Consultant" means a legally-established professional consulting firm or an entity that may provide or provides the Services to the Procuring Entity under the Contract.
- e) "Contract" means a legally binding written agreement signed between the Procuring Entity and the Consultant 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).
- f) "Data Sheet" means an integral part of the Instructions to Consultants (ITC) Section 2 that is used to reflect specific assignment conditions to supplement, but not to overwrite, the provisions of the ITC.
- g) "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.
- h) "Experts" means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or Joint Venture member(s).
- i) "Government" means the Government of the Republic of Kenya.
- j) "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.
- k) "Joint Venture (JV)" means an association with or without a legal personality distinct from that of its members, of more than one Consultant 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.
- 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 CV is considered in the technical evaluation of the Consultant's proposal.
- m) "ITC" (this Section 2 of the RFP) means the Instructions to Consultants that provides the Consultants with all information needed to prepare their Proposals.
- n) "Letter of RFP" means the letter of invitation being sent by the Procuring Entity to the Consultants.
- o) "Non-Key Expert(s)" means an individual professional provided by the Consultant or its Sub consultant and who is assigned to perform the Services or any part thereof under the Contract and whose CVs are not evaluated individually.
- p) "Proposal" means the Technical Proposal and the Financial Proposal of the Consultant.
- q) "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.

- r) "RFP" means the Request for Proposals to be prepared by the Procuring Entity for the selection of Consultants.
- s) "Services" means the work to be performed by the Consultant pursuant to the Contract.
- t) "Sub-consultant" means an entity to whom the Consultant intends to subcontract any part of the Services while the Consultant remains responsible to the Procuring Entity during the whole performance of the Contract.
- v) "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 Consultant, and expected results and deliverables of the assignment.

2. Introduction

- 2.1 The Procuring Entity named in the Data Sheet intends to select a Consultant from those listed in the Request for Proposals (RFP), in accordance with the method of selection specified in the Data Sheet.
- 2.2 The Consultant 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 Consultant.
- 2.3 The Consultants 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 Consultants' expense.
- 2.4 The Procuring Entity will timely provide, at no cost to the Consultants, the inputs, relevant project data, and reports required for the preparation of the Consultant's Proposal as specified in the Data Sheet.

3. Conflict of Interest

- 3.1 The Consultant 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 Consultant 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 Consultant 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 Consultants 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 Consultant (including its Experts and Sub-consultants) or any of its Affiliates shall not be hired for any assignment that, by its nature, may conflict with another assignment of the Consultant for the same or for another Procuring Entity.

(iii) *Conflicting Relationships*

Relationship with the Procuring Entity's staff: a Consultant (including its Experts and Subconsultants) 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.

4. Unfair Competitive Advantage

4.1 Fairness and transparency in the selection process require that the Consultants 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 Consultants together with this RFP all information that would in that respect give such Consultant any unfair competitive advantage over competing Consultants.

5. Corrupt and Fraudulent Practices

5.1 Consultant firms or any of its members shall not be involved in corrupt, coercive, obstructive, collusive or fraudulent practice. Consultant 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 Consultant found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Consultants 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, Consultants shall permit and shall cause their agents (where declared or not), subcontractors, sub-consultants, service providers, suppliers, and their personnel, to permit the Government and its agencies to inspect all accounts, records and other documents relating to any shortlisting process, Proposal submission, and contract performance (in the case of award), and to have them audited by auditors, investigators or compliance officers.

6. Eligibility

6.1 In selection of Consultants, 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 Consultants 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 Consultant's responsibility to ensure that its Experts, joint venture members, Sub-consultants, 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 ITC 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 7
- 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 consultants. 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

7. General Considerations

7.1 In preparing the Proposal, the Consultant 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.

8. Cost of Preparation of Proposal

8.1 The Consultant 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 Consultant.

9. Language

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

10. Documents Comprising the Proposal

10.1 The Proposal shall comprise the documents and forms listed in the Data Sheet.

10.2 The Consultant 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 Consultant 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.

11. Only One Proposal

11.1 The Consultant (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 Consultant, 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-consultant, or the Consultant'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.

12. Proposal Validity

a. Proposal Validity Period

12.1 The Data Sheet indicates the period during which the Consultant's Proposal must remain valid after the Proposal submission deadline.

12.2 During this period, the Consultant 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 Consultant'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 Consultants who submitted Proposals prior to the submission deadline to extend the Proposals' validity.

12.5 If the Consultant 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 ITC 12.7.

12.6 The Consultant has the right to refuse to extend the validity of its Proposal in which case such Proposal will not be further evaluated.

b. Substitution of Key Experts at Validity Extension

12.7 If any of the Key Experts become unavailable for the extended validity period, the Consultant 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 Consultant 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.

c. Sub-Contracting

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

13. Clarification and Amendment of RFP

13.1 The Consultant 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 Consultants. 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 Consultants and will be binding on them. The Consultants 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 Consultants reasonable time to take an amendment into account in their Proposals.

13.4 The Consultant 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.

14. Preparation of Proposals—Specific Considerations

14.1 While preparing the Proposal, the Consultant must give particular attention to the following: (a) If a Consultant considers that it may enhance its expertise for the assignment by associating with other consultants in the form of a Joint Venture or as Sub-consultants, it may do so long as only one Proposal is submitted, in accordance with ITC 11. Above. A Consultant cannot associate with shortlisted Consultant(s). When associating with non-shortlisted/non-invited firms in the form of a joint venture or a sub-consultancy, the shortlisted/invited Consultant shall be a lead member. If shortlisted/invited Consultant 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 Consultant'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.

15. 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 ITC 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 Consultant 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.

16. 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 consultant selection method, any Consultant 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 Consultant and its Sub -consultants 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 Consultant 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

17. Submission, Sealing, and Marking of Proposals

- 17.1 The Consultant shall submit a signed and complete Proposal comprising the documents and forms in accordance with ITC 10 (Documents Comprising Proposal). Consultants 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 Consultant has the option of submitting its Proposals electronically.
- 17.2 An authorized representative of the Consultant 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.

18. 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..... (The time and date for proposal opening date)”. 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 ITC 11;
 - 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.

19. Confidentiality/Canvassing

19.1 From the time the Proposals are opened to the time the Contract is awarded, the Consultant 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 Consultants 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 Consultants or any one on behalf of the Consultant 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 Consultant wishes to contact the Procuring Entity on any matter related to the selection process, it should do so only in writing.

20. 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 Consultants' 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 ITC 22.

20.2 At the opening of the Technical Proposals the following shall be read out: (i) the name and the country of the Consultant 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.

21. Proposals Evaluation

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

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

22. Evaluation of Technical Proposals

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.
- 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 are from eligible countries.
- 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 Consultant is not insolvent, in receivership, bankrupt or in the process of being wound up.
- k) The Consultant, its sub-consultants and experts have not engaged in or been convicted of corrupt or fraudulent practices.
- l) The Consultant 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) The Consultant, its sub-consultants and experts have no conflicts of interest.

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.

23. Public Opening of Financial Proposals

23.1 Unsuccessful Proposals

After the technical evaluation is completed, the Procuring Entity shall notify those Consultants 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 Consultant'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 Consultant is invited to negotiate the Contract. Only the Financial Proposal of the technically top ranked Consultant 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 Consultant.

When the selection is based on the SSS method and if the invited Consultant meets the minimum technical score required passing, the financial proposal shall be opened and the Consultant 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 Consultants 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 Consultant'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 Consultants sufficient time to decide for attending the opening and shall be no less than five (5) Business Days from the date of notification of the results of the technical evaluation, described in ITC 22.1 and 22.2.

The Consultant's attendance at the opening of the Financial Proposals (in person, or online if such option is indicated in the Data Sheet) is optional and is at the Consultant's choice.

The Financial Proposals shall be opened publicly by the Procuring Entity's opening committee in the presence of the representatives of the Consultants and anyone else who chooses to attend. Any interested party who wishes to attend this public opening should contact the Procuring Entity as indicated in the Data Sheet. At the opening, the names of the Consultants, and the overall technical scores, including the break-down by criterion, shall be read aloud. The Financial Proposals will then be inspected to confirm that they have remained sealed and unopened. These Financial Proposals shall be then opened, and the total prices read aloud and recorded. Copies of the record shall be sent to all Consultants who submitted Proposals.

24. 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 Consultant is deemed to have included all prices in the Financial Proposal, so neither arithmetical correction nor price adjustments shall be made. The total price, net of taxes understood as per ITC 24 below, specified in the Financial Proposal (Form FIN-1) shall be considered as the offered price.

25. Taxes

25.1 Subject to ITC 24.2, all taxes are deemed to be included in the Consultant'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.

26. 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.

27. 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.

28. 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 Consultants 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 Consultants 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 Consultants 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.

29. 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 Consultant that achieves the highest combined technical and financial score will be notified and invited for negotiations.

b. Fixed Budget Selection (FBS) Method

29.2 In the case of FBS, those Proposals that exceed the budget indicated in ITC 14.1.4 of the Data Sheet shall be rejected. The Procuring Entity's evaluation committee will select the Consultant with the highest ranked Technical Proposal that does not exceed the budget indicated in the RFP, notify and invite such Consultant 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 Consultant whose Proposal is the lowest evaluated total price among those Proposals that achieve the minimum technical score required to pass, notify the Consultant and invite the Consultant 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 Consultant for negotiations.

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

30.1 The Procuring Entity shall send to each Consultant (that has not already been notified that it has been unsuccessful) the Notification of Intention to Award the Contract to the successful Consultant. 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 Consultant 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;

31. 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 Consultant (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 Consultants 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

32. Negotiations

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

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

32.3 Availability of Key Experts

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

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 Consultant, including but not limited to death or medical incapacity. In such case, the Consultant 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 Consultant'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 consultants 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 Consultant 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 consultants 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 Consultant 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 Consultant 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.

33. Conclusion of Negotiations

33.1 The negotiations are concluded with a review of the finalized draft Contract, which then shall be initiated by the Accounting Officer and the Consultant'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 Consultant in writing of all pending issues and disagreements and provide a final opportunity to the Consultant to respond. If disagreement persists, the Procuring Entity shall terminate the negotiations informing the Consultant of the reasons for doing so. The Procuring Entity will invite the next-ranked Consultant to negotiate a Contract. Once the Procuring Entity commences negotiations with the next-ranked Consultant, the Procuring Entity shall not reopen the earlier negotiations.

34. Letter of Award

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

35. Signing of Contract

35.1 The Contract shall be signed prior to the expiration of the Proposal Validity Period and promptly after expiry of the Standstill Period, specified in ITC 28.1 and upon satisfactorily addressing any complaint that has been filed within the Standstill Period.

35.2 The Consultant is expected to commence the assignment on the date and at the location specified in the Data Sheet.

36. 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 consultants that submitted proposals; (e) names of all Consultants whose Proposals were rejected or were not evaluated; (f) the name of the successful consultant, the final total contract price, the contract duration and a summary of its scope.

36.2 Consider carefully the information on Consultants 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.

37. Procurement Related Complaint and Administrative Review

37.1 The procedures for making Procurement-related Complaints shall be specified in the **TDS**.

37.2 A request for administrative review shall be made in the form provided under contract forms

SECTION 2 (B). DATA SHEET

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
A. General Provisions	
1(j)	Electronic procurement system shall NOT be used
2.1	National Construction Authority The consultant selection method shall be: Least Cost Selection Method (LCSM)
2.2	Financial Proposal to be submitted together with Technical Proposal in a single envelope and will all be opened on the tender opening date; provision of consultancy services for developmental editing, proof reading and printing of various studies by NCA for a period of three Months.
2.3	A pre-proposal conference will be held: No
2.4	<i>As indicated in the Terms of Reference</i>
3.3 (iv)	<i>As indicated on PPADA 2015</i>
4.1	N/A
6.2	Maximum number of members in the Joint Venture (JV) shall be: TWO
6.6 (a)	Debarred firms are not eligible to participate in the Tendering process
6.7	The margin of preference will be indicated where applicable
B. Preparation of Proposals	
10.1	The Proposal shall comprise the following: Technical Proposal: TECH-1: Technical Proposal Submission Form TECH-2: Consultant's Organization and Experience
11.1	TECH-3: Comments and Suggestions TECH-4: Description of Approach, Methodology and Work plan TECH-5: Work Schedule and Planning for Deliverables TECH-6: Team Composition, Assignment, and Key Experts' Input TECH-7: Mandatory Documentary Evidence AND Financial Proposal: (1) FIN-1: Financial Proposal Submission Form (2) FIN-2: Summary of Costs Which will all be opened on the tender opening date.
12.1	Participation of Sub-consultants, and Key Experts in more than one Proposal is NOT permissible:
12.1	Proposals must remain valid for 120 days after the proposal submission deadline.

13.1	<p>Clarifications may be requested no later than three (3) days prior to the submission deadline. The contact information for requesting clarifications is: Manager Supply Chain</p> <p>National Construction Authority, KCB Towers, 9th Floor, Kenya Road, Upper Hill, P.O Box 21046- 00100, NAIROBI, KENYA. +254 709 126102/172/173 E-mail: procurement@nca.go.ke</p>
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14.1 (a)	N/A
14 (b)	N/A
14 (c)	<i>The budget for the assignment is: Kshs. 7,500,000</i>
14 (d)	Key Experts shall not appear in more than one proposal:
16.1(b)	<i>All reimbursable cost must be factored in the tender sum</i>
16.2	As indicated in the PPADA 2015
16.3	“Information on the Consultant’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
C.	Submission, Opening and Evaluation
17.1	The Consultants <i>shall not</i> have the option of submitting their Proposals electronically.
17.5	The Consultant must submit a combined Technical and financial proposal one (1) original and one (1) copy clearly marked “original” and “copy”

18.5	<p>The Tender must be submitted no later than:</p> <p>Date: Thursday, 14th December, 2023. Time: 11:00 am East African Time The Tender submission address is: National Construction Authority KCB Towers, 9th Floor Kenya Road, Upper hill P O Box 21046 – 00100 Nairobi, Kenya</p>
20.1	An online option of the opening of the bids is offered: No
20.2	<p>In addition, the following information will be read aloud at the opening of the tender:</p> <p>Name of Bidder Bid Amount Tender security Origin of tender security</p>
22.1	Other eligibility and mandatory criteria shall be as indicated in the evaluation criteria.
22.2	The Criteria, sub-criteria, and point system for the evaluation of the Technical Proposals: <i>Is indicated in the evaluation criteria</i>
	The minimum technical score (St) required to pass is: 80%
23.4	Financial proposal shall be opened the same day and time with the technical proposal
25.2	<p>For the evaluation, the Procuring Entity will include separate items of:</p> <p>(a) all local identifiable indirect taxes such as sales tax, excise tax, VAT, or similar taxes levied on the contract's invoices; and (b) All additional local indirect tax on the remuneration of services rendered by experts.</p> <p>The tender sum must include all applicable taxes in Kenya</p>
26.1	The tender sum must be in Kenya Shillings

<p>29.1 (QCBS only)</p>	<p>The lowest evaluated Financial Proposal (Fm) is given the maximum financial score (Sf) of 100. The formula for determining the financial scores (Sf) of all other Proposals is calculated as following: $Sf = 100 \times Fm / F$, in which “Sf” is the financial score, “Fm” is the lowest price, and “F” the price of the proposal under consideration.</p> <p>The weights given to the Technical (T) and Financial (P) Proposals are: $T = 0.70$ and $P = 0.30$</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: $S = St \times T\% + Sf \times P\%$.</p>
<p>31</p>	<p>The Standstill Period shall be: 14 days</p> <p>The procedures for making a procurement related complaint are detailed in the Public Procurement and Asset Disposal Act and Regulations. If a Consultant wishes to make a procurement related complaint or appeal, the Consultant shall submit its complaint to the Public Procurement Administrative Review Board.</p>
<p>D. Negotiations and Award</p>	
<p>32.1</p>	<p>Expected date and address for contract negotiations: To be notified</p>
<p>35.2</p>	<p>Expected date for the commencement of the Services: Date: The contract signing date or notified then</p> <p>Location: As indicated in Terms of Reference</p>
<p>36.1</p>	<p>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</p>
<p>37.1</p>	<p>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. If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to:</p> <p>Title/position: Director General, PPRA Procuring Entity: National Construction Authority Email address: complaints@ppra.go.ke</p> <p>In summary, a Procurement-related Complaint may challenge any of the following:</p> <ul style="list-style-type: none"> (i) the terms of the Tender Documents; and (ii) The Procuring Entity’s decision to award the contract.

6. Evaluation Criteria

Mandatory Requirements

Tenderers **MUST** meet the following **mandatory** requirements before being considered for the detailed Technical Evaluation: -

S/N	Mandatory Eligibility criteria	Responsiveness (YES/NO)
1.	Certificate of incorporation/registration	
2.	Copy of CR12 for limited companies, CR13 for Partnerships or National Identification Card/Passport for Sole Proprietor	
3.	Dully filled, signed and stamped Technical Proposal Submission Form	
4.	Dully filled, signed and stamped Financial Proposal Submission Form	
5.	Dully filled, signed and stamped price schedule	
6.	Valid Tax Compliance Certificate	
7.	The Team Leader must have a PHD degree in Engineering, Construction Management, Architecture, Building Economics, Land Economics, Sociology, Environmental Science, Project Management, Finance, Business, Journalism, Management, Economics, or any other relevant field or equivalent qualification from a recognized university	
8.	Original bid security of Ksh.75,000 valid for 150 days from date of tender opening	
9.	Dully filled, signed and stamped SD1 form	
10.	Dully filled, signed and stamped SD2 form	
11.	Dully filled, signed and stamped declaration and commitment to the code of ethics form	
12.	Dully filled, signed and stamped certificate of independent tender determination form	
13.	Valid business permit from county Government for the year 2023	
14.	Detail work plan in form of Gantt chart indicating milestones for the duration of the assignment.	
15.	Audited accounts dully signed and stamped by a registered Certified Public Accountant for the last three years (2019, 2020 and 2021 or 2020, 2021 & 2022 whichever set is applicable.	
16.	Submit clearly marked original and copy of Tender document which MUST be paginated/ serialized/ Numbered sequentially and initialed on all pages including all attachments in the form of 1,2,3.... !	
FINAL DETERMINATION (R/NR)		

Note:

Tenderers have to meet all the mandatory requirements to proceed for Technical Evaluation.

	TECHNICAL EVALUATION	
1.	SPECIFIC EXPERIENCE OF THE FIRM RELEVANT TO THE ASSIGNMENT (For All Lots)	
	a) Five (5) specific similar Experience for Public Institution Clients (Ministries, Parastatals or SAGAs) as required for each Lot - (5 marks each consultancy maximum 25 marks)	25
	b) Two (2) general consultancy Experience in other Corporate Clients- (3 marks each, maximum 6 marks) <i>(Attach LSO/ Contract / completion certificates from each institution.)</i> <i>Note: For a bidder to participate in any Lot, they must provide contracts for similar experience as per the requirements for each Lot i.e. Lot 1, 2,3,4,5,6,7</i>	6
	Recommendation letters from five (5) Institutions listed under (a) above in client letter head which MUST be signed (3 marks each)	15
2.	TEAM LEADER (For All Lots)	
a)	Professional Qualification	
	• Valid and professional Practicing license from relevant professional registration body (Attach copies of certificates) (3 marks)	3
	Professional Experience A minimum of 10 years demonstrated experience in providing developmental editing and proof reading, publication of technical papers, journals or books and technical journals peer reviews (prorate 1 mark for each year up to a maximum of ten (10))	10
b)	Experience in provision of at least one other similar assignments of similar nature <i>(list any 3 No. books/papers published within in last 10years or any other relevant information to support qualification)</i> <i>(Attach proof or publication) (prorate 4 marks for each book/paper published up to a maximum of twelve (12))</i>	12

3.	QUALIFICATION AND EXPERIENCE OF LEAD CONSULTANTS	
a)	LOT I - Educational Qualification for Lead Consultant ABMT Report	
	• Master's degree Engineering, Construction Management, Architecture, Building Economics, Land Economics or related field. (5 marks)	5
	• Valid and professional Practicing license (3 marks) (Attach CV and copies of academic certificates)	3

	Professional Experience	
	<ul style="list-style-type: none"> • Experience in consultancy services, Minimum of 3 years' demonstrated experience in the area of design, engineering, supervision of construction on site, developing project specifications, drafting of tender documents, bill of quantities etc. for infrastructure projects in Kenya (prorate 2 mark for each year up to a maximum of three years) (Attach CV in format provided) 	6
b)	LOT II - Educational Qualification for Lead consultant MSME report	
	<ul style="list-style-type: none"> • Master's degree in social studies, economics, finance, strategic management, Urban management, Business administration, project management or related field. (5 marks) 	5
	<ul style="list-style-type: none"> • Valid and professional Practicing license (3 marks) (Attach CV and copies of academic certificates) 	3
	Professional Experience	
	<ul style="list-style-type: none"> • Experience in consultancy services, Minimum of 3 years' demonstrated experience in the area of MSME's businesses in Kenya in accordance with Kenyan standards and regulations on MSME involvement in the economic development of the country (prorate 2 mark for each year up to a maximum of three years) (Attach CV in format provided) 	6
c)	LOT III - Educational Qualification for Lead consultant Construction Waste Report	
	<ul style="list-style-type: none"> • Master's degree in Environmental studies or related field. (5 marks) 	5
	<ul style="list-style-type: none"> • Registration with NEMA as lead expert (1 marks) 	1
	<ul style="list-style-type: none"> • Valid and professional Practicing license (2 marks) (Attach CV and copies of academic certificates) 	2
	Professional Experience	
	<ul style="list-style-type: none"> • Experience in consultancy services, Minimum of 3 years' demonstrated experience in the area of existing Kenyan Environmental Safeguards laws and regulations, and waste management systems/practices; (prorate 2 mark for each year up to a maximum of three years) (Attach CV in format provided) 	6
d)	LOT IV - Educational Qualification for Lead consultant Covid report	
	<ul style="list-style-type: none"> • Master's degree in economics, project management, construction management, Business (e.g business administration/ business analytics/ business information systems), Public Health or related field. (5 marks) 	5
	<ul style="list-style-type: none"> • Valid and professional Practicing license (3 marks) (Attach CV and copies of academic certificates) 	3

	Professional Experience	
	<ul style="list-style-type: none"> •Experience in consultancy services, Minimum of 3 years' demonstrated experience in the area of construction business management or and Public health. <p><i>(prorate 2 mark for each year up to a maximum of three years)</i> <i>(Attach CV in format provided)</i></p>	6
e)	LOT V - Educational Qualification for Lead consultant Technology Transfer Report	
	<ul style="list-style-type: none"> •Master's degree in Engineering, Construction management/ Architecture, building economics, construction management, project management, education science or related field. (5 marks) 	5
	<ul style="list-style-type: none"> •Valid and professional Practicing license (3 marks) <p>(Attach CV and copies of academic certificates)</p>	3
	Professional Experience	
	<ul style="list-style-type: none"> • Experience in consultancy services, Minimum of 3 years' demonstrated experience in training, capacity building and education for industry practitioners. <p><i>(prorate 2 mark for each year up to a maximum of three years)</i> <i>(Attach CV in format provided)</i></p>	6
f)	LOT VI - Educational Qualification for Lead consultant PPP report	
	<ul style="list-style-type: none"> •Master's degree in Engineering, Construction management/ Architecture, building economics, land economics, project management or related field. (5 marks) 	5
	<ul style="list-style-type: none"> •Valid and professional Practicing license (3 marks) <p>(Attach CV and copies of academic certificates)</p>	3
	Professional Experience	
	<ul style="list-style-type: none"> •Experience in consultancy services, Minimum of 3 years' demonstrated experience in the area of design, engineering, supervision of construction on site, developing project specifications, drafting of tender documents, bill of quantities etc for any PPP infrastructure projects. <p><i>(prorate 2 mark for each year up to a maximum of three years)</i> <i>(Attach CV in format provided)</i></p>	6
g)	LOT VII - Educational Qualification Lead consultant Socio-Economic report	
	<ul style="list-style-type: none"> •Master's degree in Engineering, sociology, anthropology, gender studies, finance, construction management or related field. (5 marks) 	5
	<ul style="list-style-type: none"> •Valid and professional Practicing license (3 marks) <p>(Attach CV and copies of academic certificates)</p>	3

	Professional Experience	
	<ul style="list-style-type: none"> •Experience in consultancy services, Minimum of 3 years' demonstrated experience in the area of research and data analysis <i>(prorate 2 mark for each year up to a maximum of three years)</i> <i>(Attach CV in format provided)</i> 	6
4.	QUALIFICATIONS AND EXPERIENCE FOR SUPPORT STAFF (For All Lots)	
	<p>Other staff at least 2No. per Lot</p> <p>With minimum qualification of a diploma in graphic design, editing, report writing or equivalent(3 mark for each staff) (Attach CV and copies of academic certificates)</p>	6
5.	<p>FINANCIAL CAPABILITY:</p> <p>Liquidity ratio for the three financial years:</p> <ul style="list-style-type: none"> • Greater than 2:1 <i>(3 marks each year)</i> • Equal to 2:1 <i>(1 mark each)</i> • Less than 1:1 <i>(0 mark)</i> 	9
	Total points	100
	The minimum technical score required to pass is: 80 %	

NB; to qualify for financial evaluation a bidder must score a minimum of 80% percent

FINANCIAL EVALUATION

The Bidder who shall be determined as the **lowest evaluated bidder per lot** after surpassing the minimum technical score shall be considered and recommended for award.

AWARD

Award will be to the lowest evaluated bidder per Lot

SECTION 3. TECHNICAL PROPOSAL – STANDARD FORMS

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

I. FORMTECH-I: TECHNICAL PROPOSAL SUBMISSION FORM

{Bidders Address and Date}

To:

National Construction Authority,
KCB Towers, 9th Floor, Kenya Road, Upper
Hill, P.O Box 21046-00100, NAIROBI, KENYA.

Dear Sirs:

We, the undersigned, offer to provide the consulting services for in accordance with this document dated..... We are hereby submitting our Proposal, which includes this Technical Proposal and a Financial Proposal.

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

We hereby declare that:

- a) All the information and statements made in this Proposal are true and we accept that any misinterpretation or misrepresentation contained in this Proposal may lead to our disqualification by the Procuring Entity or maybe sanctioned by the PPRA.
- b) Our Proposal shall be valid and remain binding upon us for the period of time specified in the Data Sheet, Clause 12.1.
- c) We have no conflict of interest in accordance with ITC3.
- d) We meet the eligibility requirements as stated in ITC6, and we confirm our understanding of our obligation to abide by the Government's policy in regard to corrupt, fraudulent and prohibited practices as per ITC5.
- e) In competing for (and, if the award is made to us, in executing) the Contract, we undertake to observe the laws against fraud and corruption, including bribery, as well as laws against anti-competitive practices, including bid rigging in force in Kenya; we hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption or anti-competitive practices.
- f) We confirm that we are not insolvent, in receivership, bankrupt or on the process of being of being wound up.
- g) The Consultant 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 anticompetitive 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 www.ppra.go.ke during the procurement process and the execution of any resulting contract.

- (I) We, along with any of our sub-consultants 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.
- (e) Except as stated in the ITC12 and Data Sheet, we undertake to negotiate a Contract on the basis of the proposed Key Experts. We accept that the substitution of Key Experts for reasons other than those stated in ITC Clause12 and ITCClause32 may lead to the termination of Contract negotiations.
- (j) Our Proposal is binding upon us and subject to any modifications resulting from the Contract negotiations.
- (k) 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 35.2 of the Data Sheet. We remain,

Yours sincerely,
Authorized Signature _____ {In full and initials}:

Name and Title of Signatory: _____

Name of Consultant: _____ (company's name or JV's name):

Contact information (phone and e-mail): _____

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

2. CERTIFICATE OF INDEPENDENT PROPOSAL DETERMINATION

I, the undersigned, in submitting the accompanying **Technical Proposal Submission Form** to the.....
..... (Name of procuring entity) **for**.....
.....Tender no.....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:
 - a) Has been requested to submit a Tender in response to this request for tenders;
 - b) could potentially submit a tender in response to this request for tenders, based on their Qualifications, abilities or experience;
- 5. The Tenderer discloses that [check one of the following, as applicable]:
 - a) The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
 - b) 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;
- 6. 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:
 - a) prices;
 - b) methods, factors or formulas used to calculate prices;
 - c) the intention or decision to submit, or not to submit, a proposal; or
 - d) 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;
- 7. 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 authority or as specifically disclosed pursuant to paragraph(5)(b) above;
- 8. The terms of the RFP have not been, and will not be, knowingly disclosed by the Consultant, directly or indirectly, to any competitor, prior to the date and time of the official proposed opening, or of the awarding of the Contract, whichever 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 Consultant and Date]

3. APPENDIX TO FORM OF PROPOSAL ON FRAUD AND CORRUPTION CLAUSE

(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), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts ,and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1 above.

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

- (1) a person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
- (2) A person referred to under sub section (1) who contravenes the provisions of that sub-section commits an offence;
- (3) Without limiting the generality of the subsection (1) and (2), the person shall be: -
 - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
 - b) if a contract has already been entered into with the person, the contract shall be avoidable;
- (4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
- (5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement—
 - i) Shall not take part in the procurement proceedings;
 - ii) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
 - iii) Shall not be a sub-contractor for the tender to whom was awarded contract, or a member of the group of tenderers to whom the contract was awarded, but the sub-contractor appointed shall meet all the requirements of this Act.
- (6) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;
- (7) If a person contravenes sub section (1) with respect to a conflict of interest described in subsection (5)(a) and the contract is awarded to the person or his relative or to another person in whom one of them

had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer.

- (8) Incompliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:
- a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
 - i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - ii) "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
 - iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party; v) "obstructive practice" is:
 - i) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
 - ii) Acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3e. Below.
 - b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.
 - c) Rejects a proposal or award of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, subcontractors, 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), Consultants, Contractors, and Suppliers and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect all accounts, records and other documents relating to the procurement process, selection and/or

¹ For 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 consultant, 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 there

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.

of as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.

3. FORM TECH-2: CONSULTANT'S ORGANIZATION AND EXPERIENCE

Form TECH-2: a brief description of the Consultant's organization and an outline of the recent experience of the Consultant 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 Consultant's Key Experts and Sub-consultants 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 Consultant), and the Consultant's role/involvement.

A - Consultant'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 - Consultant's Experience

1. List only previous similar assignments successfully completed in the last three (3) years.
2. List only those assignments for which the Consultant was legally contracted by the Procuring Entity as a company or was one of the joint venture partners. Assignments completed by the Consultant's individual experts working privately or through other consulting firms cannot be claimed as the relevant experience of the Consultant, or that of the Consultant's partners or sub-consultants, but can be claimed by the Experts themselves in their Curriculum Vitae (CV).
3. The Consultant 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, etc.]:	
Country:	
Duration of assignment (months):	
Name of Procuring Entity:	
Total N ^o 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 ^o of professional staff-months provided by associated Consultants:	
Role on Assignment: (E.g. <i>Lead Member in ABC JV, or Sole Consultant</i>):	
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:

4. **FORM TECH-3: COMMENTS AND SUGGESTIONS**

Form TECH-3: The Consultant 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}

5. **FORMTECH-4: DESCRIPTION OF APPROACH, METHODOLOGY, AND WORK PLAN**

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.}*


	Activities												
	1)												
	2)												
	3) etc.												

D-3	Final Report												
	Activities												
	1)												
	2)												
	3) etc.												

- 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

NON-KEY																																																					

- 1. For Key Experts, the input should be indicated individually for the same positions as required under the ITC 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.

 time input



Part time input

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

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 ydfor title/position. Contact Infor referenc	Country	Summary of activities performed relevant to the Assignment
[e.g., May 2011 present]	[e.g., Ministry of, advisor/consultant to... For references: Tel...../email..... 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 Consultant'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 by the Procuring Entity, and/or sanctions by the PPRA.

{ day / month/year }

Name of authorized
 Name of Expert

Signature.
 Signature

Date_____

Date_____

Representative of the Consultant (the same who signs the Proposal)

8. FORMTECH-7: MANDATORY SUPPORT DOCUMENTS

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

- a) Certificate of Incorporation/Certificate of Registration

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

- b) Tax Compliance Certificate

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

- d) Similar Consulting Assignments Experience

{Consultant 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

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

- f) Professional Certificates

{Consultant 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, Consultant 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)

FORM TECH - 8: SELF-DECLARATION FORMS
FORM SDI

**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

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.....(in sert 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's Official Stamp

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

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.....

Email.....

Name of the Firm/Company.....

Date.....

(Company Seal/ Rubber Stamp where applicable)

Witness

Name

Sign.....

Date.....

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

[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 Consultant shown in brackets {...} provide guidance to the Consultant 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

FORM FIN-1: FINANCIAL PROPOSAL SUBMISSION FORM

(Amended and issued pursuant to PPRA CIRCULAR No. 02/2022)

..... {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 ITC24.2 in the Data Sheet.

The estimated amount of local taxes is..... {Insert currency} {Insert amount in words and figures}.

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

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

We commit to provide to the procuring entity the Beneficial Ownership Information in conformity with the Beneficial Ownership Disclosure Form upon receipt of notification of intention to enter into a contract in the event we are the successful tenderer in this subject procurement proceeding.

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

Name of Consultant..... (company's name or JV's name): Capacity: {insert the person's capacity to sign for the Consultant} 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/consultant, in which case the power of attorney to sign on behalf of all members shall be attached}

FORM FIN-2: SUMMARY OF COSTS

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

FORM FIN 3B: CONSULTANT'S REPRESENTATIONS REGARDING COSTS AND CHARGES

{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 Consultants}

Consultant: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 Consultant's Experts;
- b) attached are true copies of the latest pay slips of the Experts listed;
- c) the away-from-home office allowances indicated below are those that the Consultant 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 Consultant]

Signature of Authorized Representative

Name:

Title:

Date:

{* 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

1. Review of Remuneration Rates

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

2 Rate details are discussed below:

- (i) Salary is the gross regular cash salary or fee paid to the individual in the firm's home office. It shall not contain any premium for work away from headquarters or bonus, except where these are included by law 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 Consultant'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 Consultant'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 Consultant's staff monitoring the project, rent of headquarters' office, support staff, research, staff training, marketing, etc.), the cost of Consultant's personnel not currently employed on revenue-earning projects, taxes on business activities, and business promotion costs. During negotiations, audited financial statements, certified as correct by an independent auditor and supporting the last three years' overheads, shall be available for discussion, together with detailed lists of items making up the overheads and the percentage by which each relates to basic salary. The Procuring Entity does not accept an add-on margin for social charges, overhead expenses, etc. for Experts who are not permanent employees of the Consultant. In such case, the Consultant 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 Consultants pay allowances to Experts working away from headquarters or outside of the home office. Such allowances are calculated as a percentage of salary (or a fee) and shall not draw overheads or profit. Sometimes, by law, such allowances may draw social costs. In this case, the amount of this social cost shall still be shown under social costs, with the net allowance shown separately.

FORM FIN-4 BREAKDOWN OF REIMBURSABLE

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 Consultant 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 _____								
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**}								
{e.g., International flights}								
{e.g., In/out airport transportation}								

	{e.g., Communication costs between Insert place and Insert place}							
	e.g., 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.

PRICE SCHEDULE FORM

LOT NO.	DESCRIPTION	TOTAL COST (KSH)
1	Review of the Study on Alternative Building Material and Technologies (ABMT Report)	
2	Review of the Study on Involvement of Micro, Small and Medium Enterprises (MSMEs) in the Construction Industry in Kenya (MSME Report)	
3	Review of the Study on Construction Waste in Kenya: The Need for Sustainable Waste Management Practices (C&DWM Report)	
4	Review of the Study on the Effect of Covid-19 Pandemic on the Business Resilience of Contractors in Kenya (Covid-19) Study Report	
5	Review of the Study on the Performance of Technology Transfer in the Construction Industry of Kenya (Technology Transfer Report)	
6	Review of the study on Assessment of factors influencing participation of local firms in PPP infrastructure projects in Kenya (PPP Report)	
7	Review of the study on the role of socio-economic factors on performance of rural road projects in Kenya	

Note: Award will be to the lowest evaluated bidder per lot

Bidder Name:

Signature:

Date:

Stamp:

SECTION 5.

TERMS OF REFERENCE FOR PROVISION OF SERVICES FOR DEVELOPMENTAL EDITING, PROOFREADING, AND PRINTING OF VARIOUS STUDIES BY NCA

INTRODUCTION

The National Construction Authority as established under the National Construction Authority Act No.41 of 2011 has the broad mandate to oversee the construction industry and coordinate its development. Among other functions, the Authority is required to undertake or commission research into any matter relating to the construction industry and disseminate its findings.

The National Construction Authority has 7No. completed Researches in line with its Mandate. These include:

1. Study on Alternative Building Materials and Technologies (ABMT): Promoting Models for Affordable Housing;
2. Study on the Involvement of Micro, Small, and Medium Enterprises (MSMEs) in the Construction Industry in Kenya;
3. Study on Construction Waste Management (CWM) in Kenya: The Need for Sustainable Waste Management Practices;
4. The effect of Covid-19 pandemic on the business resilience of contractors in Kenya;
5. Research on the Performance of Technology Transfer in the Construction Industry of Kenya;
6. Assessment of factors influencing participation of local firms in PPP infrastructure projects in Kenya;
7. The role of socio-economic factors on performance of rural road projects in Kenya and

The Authority intends to publish these 7No. reports categorized in lots and thus this consultancy aims at developmental, and copy editing the reports thereof to generate publishable formats and thereafter make prints for circulation.

OBJECTIVE OF THIS ASSIGNMENT

The objective of this assignment is to:

- a. Edit, copyedit and proofread the draft research reports in selected lot(s) and produce a final publishable format; and
- b. Submit a final soft copy version of the report.
- c. Design and print ten copies of each report.

SCOPE OF WORK

The scope of the service shall include the execution of all necessary tasks and services to achieve the objectives described above.

This will include but not limited to the following tasks.

Task 1: Review of the Research Reports

The Consultant is expected to read, comprehend, edit, copyedit, enhance and proofread the reports to produce a final version that will be ready for publication.

The editing process will include a revision of the current texts with tables and figures to achieve an optimal flow of information and presentation of the findings.

The editing process might entail substantive re-drafting and synthesizing of parts of the existing text in order to make the report more readable and understandable by **non-expert** audiences.

For this task the consultant will be required to refer to external credible sources of information in relation to the study and enrich where necessary in consultation with NCA's, Manager for Construction Research & Business Development .

Task 2: Design and Typesetting of the final Report.

The Consultant is expected to edit, proof-read and design (*page layout, typography and cover page design*) the report

They are expected to produce at least two interim samples of the booklets for review and approval by the National Construction Authority before final submission of the final approved version.

The consultant MUST ensure consensus with the Authority and therefore should expect several rounds of comments and discussions at this stage for which patience and flexibility will be essential.

Task 3: Publication and Printing of the Research report

The Consultant shall thereafter make **ten (10)** printouts of the report according to the specifications issued here below in each of the lots..

Specifications for the booklets in each of the seven (7) lots listed in 4 below are:

Size: B5

Pages: 80gsm bond full color

Cover: 300gsm artboard with matt lamination

Finish: Stitching and perfect binding

Number: 10 Copies

EXISTING LOTS

A Consultant is expected to choose **one or more** studies whose content is outlined below for review depending on one's capacity.

Lot 1

Review of the Study on Alternative Building Materials and Technologies (ABMT Report)

The Consultant is expected to detail on the following themes:

- a) Globalization and Construction Materials & Technologies
- b) International Best Practices in Policy, Legal, and Institutional Frameworks for Alternative Construction Material and Technologies
- c) Building Material Standards Development in Kenya
- d) Factors Influencing the Adoption and Application of Alternative Construction Materials and Technologies in Kenya
- e) Framework for Alternative Construction Material and Technologies
- f) Any other

Lot 2

Review of the Study on Involvement of Micro, Small and Medium Enterprises (MSMEs) in the Construction Industry in Kenya (MSME Report)

The Consultant is expected to detail on the following themes:

- a) MSMEs in construction
- b) Challenges facing MSMEs in the delivery of Affordable Housing Projects.
- c) Sustained interventions toward the involvement of MSMEs in Affordable Housing Projects
- d) Any other

Lot 3

Review of the Study on Construction Waste in Kenya: The Need for Sustainable Waste Management Practices (C&DWM Report)

The Consultant is expected to detail on the following themes:

- a) State of construction waste management practices in Kenya
- b) Circular economy in the construction industry and its application in the Kenyan context.
- c) Legal improvements & Policy Priorities.
- d) Globalization and best practices, lessons learned in regard to Sustainable Construction waste management.
- e) Recommendations and implementation framework for sustainable construction waste management.
- f) Any other

Lot 4

Review of the Study on the Effect of Covid-19 Pandemic on the Business Resilience of Contractors in Kenya (Covid-19 Study Report)

The Consultant is expected to detail on the following themes:

- a) Impact of COVID-19 pandemic on contractors' business.
- b) Factors that adversely affect contractors' business resilience.
- c) Globalization and best practices, lessons learned in regard to business resilience
- d) Framework for enhancing contractors' business resilience in the wake of COVID-19 and other pandemics.
- e) Any other

Lot 5

Review of the Study on the Performance of Technology Transfer in the Construction Industry of Kenya (Technology Transfer Report)

The Consultant is expected to detail on the following themes:

- a) Level of technology transfer and its determinants in the construction industry in Kenya.
- b) Relationships between the level of technology transfer and the factors that influence it.
- c) Technology transfer and performance outcome.
- d) Globalization and best practices, lessons learned in regard to technology transfer.
- e) Policy, legal, and Institutional framework
- f) Framework for enhancing technology transfer in the construction industry in Kenya
- g) Any other

Lot 6

Review of the study on Assessment of factors influencing participation of local firms in PPP infrastructure projects in Kenya (PPP Report)

The Consultant is expected to detail on the following themes:

- a) Operational context of PPP infrastructure projects in Kenya and best practice
- b) Level of participation of local contractors in PPP infrastructure projects in Kenya
- c) Framework for enhancing local firms' participation in PPP infrastructure projects in Kenya
- d) Any Other

Lot 7

Review of the study on The role of socio-economic factors on performance of rural road projects in Kenya

The Consultant is expected to detail on the following themes:

- a) Role of gender aspects on the performance of rural road construction projects in Kenya
- b) Relationship between access to financing aspects and the performance of rural road construction projects in Kenya
- c) Impact of organization dimensions on rural road construction project performance
- d) Any other

Note:

- 1) Final publishable report should be submitted accompanied by a valid plagiarism test report with a percentage not exceeding 20%
- 2) The consultant is expected to prepare and attend a stakeholder peer review workshop for the edited report and generate a comments matrix which will be considered in the final research report.

PROJECT GOVERNANCE

Obligations of the consultant

- (i) The consultant shall carry out this assignment as outlined in a professional manner in keeping with internationally accepted standards, using qualified and appropriate staff. The agreed deliverables and timelines should be observed
- (ii) He shall endeavor to provide his services with diligence and within the time agreed upon in the contract. In this regard, the consultant shall submit the full curriculum vitae of each of the members of the team it proposes for the project. The consultant shall endeavor to maintain staff presented and considered qualified for nomination.
- (iii) The consultant shall be responsible for arranging for all necessary office and living accommodation, transportation, equipment and supplies, surveys, investigations, materials testing, secretarial services, related to the performance of the works.
- (iv) The consultant shall call and organize review meetings in order to do presentation to the NCA. The meetings shall take place one week after submission of report
- (v) The consultant shall be responsible for providing his staff with all their financial requirements for successful implementation of the study.
- (vi) The consultant shall gather/procure all necessary data, information and equipment needed in the execution of the assignment and realization of the desired outputs.

- (vii) The consultant shall be responsible for the printing of the specified reports, drawings, maps, etc.
- (viii) The consultant shall be liable to pay all duties and taxes in connection with this project including VAT and other taxes payable under the Laws of Kenya. No tax or duty exemption shall be given to the consultant. The consultant shall be deemed to have taken the above into consideration while preparing his financial proposal.
- (ix) At the completion of the assignment, the consultant shall submit reports and documents in soft and hard copy, working files, calculations and computer data properly organized in the English language. The reports shall include the workings, assumptions, tests done, source of obtaining information, different methodology used for reaching logical conclusion. These documents shall remain the property of the National Construction Authority (NCA) and will not be used for any other purpose other than those intended under this tender unless prior written permission is obtained from NCA. The Authority will issue completion certificate to this effect after successful completion of the assignment.
- (x) The consultant shall be required to maintain confidentiality at all times.

Note:

The issues listed in this Terms of Reference are not exhaustive. While performing the services, the consultant is encouraged to use their professional judgement and experience to review all relevant factors and to bring these to the attention of the Client.

Obligations of the client

a) Documents and Reports

The Client will supply all pertinent data and information and give such assistance as shall reasonably be required for by the Consultant to conduct his duties under this contract save that such assistance shall not be extended to the provision of any supplies or services. **The Consultant will be required to pay for purchase fee of maps, manuals, and other documents where required.**

The Client will:

- (i) Provide the Consultant with any assistance as the Consultant may be entitled to in accordance with the Terms of Reference;
- (ii) Provide the Consultants with all relevant documents, Final study reports, data, any existing photographs and other information pertaining to the exercise that are available with the NCA;

b) Liaison

The Clients' shall provide liaison with other Ministries and Departments in order to introduce the Consultant to them. The Consultant shall be fully responsible for

collecting data and information from these agencies, including paying for it where necessary.

c) Correspondence

The Client shall ensure that correspondence exchange in respect of the implementation of the exercise is treated promptly in order to avoid any delay. Correspondence by e-mail shall be on Microsoft Outlook (for Client).

REPORTING

(i) Inception Reports

This report shall give a brief description of the consultant’s establishment plan for the assignment, methodologies to be used, staffing, programme of executing the assignment and such remarks as deemed appropriate.

The report shall be submitted 7 days after commencement date of the assignment. The consultant shall submit two (2) copies of the inception report.

(ii) The first progress reports

The Consultant shall prepare and present the first progress report. The report will include but not limited to the first draft of the copyedited reports whose content is described in task one above and shall contain all supporting materials.

The report shall be submitted 28 days after commencement date of the assignment.

(iii) The second progress report

The Consultant shall prepare and present the second progress report. The report will include but not limited to;

- i. The final drafts of the copyedited reports *(including all comments)* and
- ii. The first drafts of the advocacy brief whose content is described in task two above and shall contain all supporting materials.

The report shall be submitted 42 days after the commencement date of the assignment.

(iv) Final Reports

The final Reports will comprise all components covered under Task one, task two and Task three. The final report shall be submitted 56 days after the commencement of the assignment accompanied by a plagiarism test report (20%) or less for each publishable research report.

DELIVERABLES

The key deliverables for this assignment are as follows;

- a) **A final report of the selected lot (s) in section 4:** The report to be the source documents for reference in electronic format and including executive summaries of

no more than 4 pages each complete with references. Reports to be submitted in editable version preferably MS Word and PDF.

b) 10 copies of booklets for each report in the selected lot (s):

The 10 copies of the report/s should be printed according to the Authority's specifications and standards and as outlined under task 2. The consultant shall ensure production and delivery of the printed booklets within 3 weeks after approval. In addition, submit a printable PDF version of the edited/reviewed report with high quality resolution of at least 1,200 dpi.

NB: Each deliverable by the consultant will be reviewed by NCA team constituted for the purpose of the assignment.

THE TIME FRAME AND PROPOSED WORK PLAN

The consultancy is expected to take a maximum of **90 days** from the date of signing of the contract;

No.	Activity/Reports	Timeline (Number of days after commencement)
1.	Submission of Inception Report.	7 days after commencement
2.	Submission of the First Progress reports	28 days after commencement
3.	Submission of the Second progress reports	42 days after commencement
4.	Presentation of Final draft at NCA validation workshop	49 days after commencement
5.	Submission and handing over of Final Report.	56 days after commencement
6.	Submission of 10. No printed booklets	84 days after commencement

NB:

Each deliverable by the consultant will be reviewed by NCA team constituted for the purpose of the assignment. The consultant shall be required to make a presentation on the inception report and the draft reports before the review team incorporates their suggestions in the final report in readiness for approval.

Submission of Reports

The above reports shall be submitted to:

*Executive Director, National Construction Authority
11th Floor, KCB Plaza, Kenya Road Upper Hill*

P.O. Box 21046-00100

NAIROBI

Tel: +254 0700021222

email; m.akech@nca.go.ke

HOW TO APPLY

Mandatory Requirements

To be eligible firms/individuals shall submit Company Profile consisting of the following:

- Certificate of Incorporation/Registration
- Corporate PIN Certificate
- Valid Tax Compliance Certificate
- Joint venture agreement witnessed by commissioner of oaths (*shall apply for consortiums/Partnership arrangements*)
- Past experience of the applicant (individual/firm) or a partner in applying consortium in undertaking developmental editing and proof reading.
- Duly Completed, Stamped & Signed Confidential Business Questionnaire
- Signed and Stamped Declaration not to engage in any corrupt practice
- Certified CVs for 4No. Key staff as in 9.2 below

Interested qualified candidates are requested to download the tender document, fill and submit before the indicated opening day.

The bidder is required to indicate their relevant experience, availability, estimated number of days to undertake the assignment and lump sum fee to be charged.

To be successful a bidder must meet all the requirements

Consultants team qualifications

The Consultant shall provide qualified key staff for the assignment, and shall prepare a work program and a corresponding manning schedule, showing the timing of activities and the corresponding staff input required for execution of the services. The Consultant shall engage only such key staff whose CVs have been approved by the Client.

The Consultant must provide in the proposal CVs and copies of highest education certificates for all professional and technical staff.

The requirements of the key staff for executing the assignments are as follows:

No	Expertise	Qualifications and Experience
1.	Project leader <i>(this applies to all the lots)</i>	<p>PHD degree in Engineering, Construction Management, Architecture, Building Economics, Land Economics, Sociology, Environmental Science, Project Management, Finance, Business, Journalism, Management, Economics, or any other relevant field or equivalent qualification.</p> <p>A minimum of 10 years demonstrated experience in providing developmental editing and proof reading, publication of technical papers, journals or books and technical journals peer reviews.</p> <p>The Team Leader must be registered with relevant professional registration body and have successfully carried out at least one other similar assignment of similar nature <i>(list any 3No. books/papers published within last 10years or any other relevant information to support qualification)</i>.</p> <p>Experience in working in the construction industry in Kenya and its environs will be an added advantage.</p> <p>Good communication in English and writing skills, especially in report writing, are essential.</p> <p>Valid and professional Practicing license from relevant professional registration body</p>
2.	Lead Consultant ABMT Report <i>(this applies only to lot 1)</i>	<p>Masters degree in Engineering, Construction Management, Architecture, Building Economics, Land Economics or related field.</p> <p>Minimum of 3 years' demonstrated experience in the area of design, engineering, supervision of construction on site, developing project specifications, drafting of tender documents, bill of quantities etc. for infrastructure projects of in Kenya.</p> <p>Experience in the use of emerging trends in construction products will be an added advantage.</p> <p>Good communication in English and writing skills, especially in report writing, are essential.</p> <p>Valid and professional Practicing license from relevant professional registration body</p>
3.	Lead Consultant	Masters degree in environmental studies or related field and must be registered with NEMA as lead expert.

	<p>Construction Waste Report <i>(this applies only to lot 3)</i></p>	<p>The specialist should have minimum 3 yrs. experience</p> <p>The specialist should have hands-on demonstrable experience with existing Kenyan Environmental Safeguards laws and regulations, and Waste management systems/practices.</p> <p>Knowledge in green rating tools in sub-Saharan Africa and other emerging markets will be an added advantage.</p> <p>Good communication in English and writing skills, especially in report writing, are essential.</p> <p>Valid and professional Practicing license from relevant professional registration body</p>
4.	<p>Lead Consultant MSME Report <i>(this applies only to lot 2)</i></p>	<p>Masters degree in social studies, economics, finance, Strategic Management, Urban management, Business Administration, Project Management or related field with over 3 yrs. experience</p> <p>The specialist should have hands-on demonstrable experience with existing MSME businesses in Kenya.</p> <p>The expert will ensure that consultations with interested and affected parties are conducted in accordance with Kenya standards and regulations on MSME involvement in the economic development of the country.</p> <p>Good communication in English and writing skills, especially in report writing, are essential.</p> <p>Valid and professional Practicing license from relevant professional registration body</p>
5.	<p>Lead Consultant Covid Report <i>(this applies only to lot 4)</i></p>	<p>Masters degree in Economics, Project Management, Construction Management, business (e.g. Business administration/business analytics/ business information systems), Public health or related field.</p> <p>Minimum of 3 years demonstrated experience in construction business management.</p> <p>Experience in public health management will be an added advantage.</p> <p>Good communication in English and writing skills, especially in report writing, are essential.</p> <p>Valid and professional Practicing license from relevant professional registration body</p>
6.	<p>Lead Consultant</p>	<p>Masters degree in Engineering, Construction Management/ Architecture, Building Economics, Land Economics,</p>

	Technology Transfer Report <i>(this applies only to lot 5)</i>	<p>Construction Management, Project Management, Education Science or related field. .</p> <p>Minimum of 3 years demonstrated experience in training, capacity building and education for industry practioners.</p> <p>Good communication in English and writing skills, especially in report writing, are essential.</p> <p>Valid and professional Practicing license from relevant professional registration body</p>
7.	Lead Consultant PPP report <i>(this applies only to lot 6)</i>	<p>Masters degree in Engineering, Construction Management, Architecture, Building Economics, Land Economics, Construction Management, Project Management, or related field.</p> <p>Minimum of 3 years' demonstrated experience in the area of design, engineering, supervision of construction on site, developing project specifications, drafting of tender documents, bill of quantities etc. for any PPP infrastructure projects.</p> <p>Good communication in English and writing skills, especially in report writing, are essential.</p> <p>Valid and professional Practicing license from relevant professional registration body</p>
8.	Lead Consultant Socio-Economic report	<p>Masters degree in Engineering, sociology, anthropology, gender studies, finance, Construction Management or related field.</p> <p>Minimum of 3 years demonstrated experience in research and data analysis.</p> <p>Good communication in English and writing skills, especially in report writing, are essential.</p> <p>Valid and professional Practicing license from relevant professional registration body</p>
9.	At least 2No. Support staff per Lot. <i>(This applies to all the Lots.)</i>	<p>The consultant to hire extra personnel at his own cost to complement the delivery of quality report. The extra personnel shall be declared in advance before commencement of the assignment and their CVs attached in the proposal.</p> <p>Expert personnel competent in graphic design, editing, report writing etc. will be considered an added advantage.</p>

Note:

If applying for more than one (1) lot, the consultant shall have a project leader and a commensurate number of lead consultants as detailed in table above. Further, the consultant shall have demonstrable equal capacity of support staff (at least two per lot)

SUBMISSION OF BID

Consultants meeting the above criteria are invited to submit proposals to Executive Director, National Construction Authority with the subject line: *“Provision of services for developmental editing and proof reading for **either** Lot 1, 2, 3, 4,5, 6 and 7 by NCA”*.

If the consultant has demonstrable capacity, it may bid for more than 1 lot.

The body of the proposal should not be more than 5 pages and should include the following:

- 1) A cover letter outlining relevant experience as outlined in the TORs above.
- 2) An outline of the methodological approach, analytical plan, potential technical and operational challenges, and strategies to ensure timely, high-quality deliverables.
- 3) A list of key activities, linked to the proposed consultancy, within a scheduled timeframe.
- 4) A staffing and management plan, including details of team composition and specific qualifications of staff.
- 5) A statement indicating the consultant availability for the duration of the contract and flexibility up to a six-month contract extension should delays arise.
- 6) The proposal should also include **Annexes**, which are not included in the 5-page limit, such as:
 - i. Project price schedule budget (**MUST attach**)
 - ii. List of two (2) references who can attest to the team’s experience and expertise as it relates to this program (including daytime phone numbers and email contacts).
 - iii. Countersigned CVs of the proposed staff to be involved in these activities as it relates to demonstrating the skills and knowledge needed to fulfill the Terms of Reference.

PAYMENT

Payment for the assignment shall be paid once after submission and acceptance of the final report. After receiving all the required documentation, the Authority will pay within a period of 30 days.

SECTION 6. CONDITIONS OF CONTRACT AND CONTRACT FORMS

Preface

1. This Section includes two types of standard contract forms for: A Lump-Sum Contract and a Time-Based Contract. Each type includes General Conditions of Contract (“GCC”) that shall not be modified, and Special Conditions of Contract (“SCC”). The SCC includes clauses specific to each contract to supplement, but not over- write or otherwise contradict, the General Conditions of Contract.
2. Lump-Sum Contract. This type of contract is used mainly for assignments in which the scope and the duration of the Services and the required output of the Consultant are clearly defined. Payments are linked to outputs (deliverables) such as draft or final reports, drawings, bill of quantities, bidding documents, or software programs. Lump-sum contracts are easier to administer because they operate on the principle of a fixed price for a fixed scope, and payments are due on clearly specified out puts and milestones. Never the less, quality control of the Consultant's outputs by the Procuring Entity s paramount.
3. Time-Based Contract. This type of contract is appropriate when it is difficult to define or fix the scope and the duration of the services, either because they are related to activities carried out by others for which the completion period may vary, or because the input of the consultants required for attaining the objectives of the assignment is difficult to assess. In time-based contracts the Consultant provides services on a timed basis according to quality specifications, and Consultant's remuneration is determined on the basis of the time actually spent by the Consultant in carrying out the Services and is based on (i) agreed upon unit rates for the Consultant's experts multiplied by the actual time spent by the experts in executing the assignment, and (ii) reimbursable expenses using actual expenses and/or agreed unit prices. This type of contract requires the Procuring Entity to closely supervise the Consultant and to be involved in the daily execution of the assignment.
4. The templates are designed for use in assignments with consulting firms and shall not be used for contracting of individual experts. In some consultancy assignments such as design and construction supervision, both Lump- Sum and Time-Based Contracts are used and signed with the Consultant. In that case, the Lump-Sum Contract would apply for the design part of the Services while the construction supervision part would be based on a Time- Based Contract. In such event, both types of contracts shall be signed at the same time.

CONTRACT FOR CONSULTANT'S SERVICES

Lump-Sum Contract

Consulting Services for:

Contract No.: _____

Contract Description: _____

Between

_____ *[Name of the Procuring Entity]*

and

_____ *[Name of the Consultant]*

Date: _____

I. 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 Consultant] (herein after called the "Consultant").

[If the Consultant 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 Consultant's obligations under this Contract, namely, [name of member] and [name of member] (herein after called the "Consultant").]

WHEREAS

- a) The Procuring Entity has requested the Consultant to provide certain consulting services as defined in this Contract (herein after called the "Services");
 - b) the Consultant, 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

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.

- 2. The mutual rights and obligations of the Procuring Entity and the Consultant shall be asset for thin the Contract, in particular:
 - a) The Consultant shall carryout the Services in accordance with the provisions of the Contract; and
 - b) the Procuring Entity shall make payments to the Consultant 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 Consultant or Name of a Joint Venture] [Authorized Representative of the Consultant—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 Consultant..... *[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

I. Definitions

I.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) “Procuring Entity” means the Procuring Entity that signs the Contract for the Services with the Selected Consultant.
- c) “Consultant” means a legally - established professional consulting firm or entity selected by the Procuring Entity to provide the Services under the signed Contract.
- d) “Contract” means the legally binding written agreement signed between the Procuring Entity and the Consultant and which includes all the attached documents listed in its paragraph I of the Form of Contract (the General Conditions (GCC), the Special Conditions (SCC), and the Appendices).
- 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 I I.
- g) “Experts” means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or JV member(s) assigned by the Consultant to perform the Services or any part thereof under the Contract.
- h) “Foreign Currency” means any currency other than the Kenya Shilling.
- 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 in to account in the technical evaluation of the Consultant's proposal.
- m) “Local Currency” means the Kenya Shilling.
- n) “Non-Key Expert(s)” means an individual professional provided by the Consultant or its Subconsultant to perform the Services or any part thereof under the Contract.
- o) “Party” means the Procuring Entity or the Consultant, as the case may be, and “Parties” means both.

- 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 Consultant pursuant to this Contract, as described in Appendix A hereto.
- r) "Sub-consultants" means an entity to whom/which the Consultant 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 Consultant or a Sub-consultant.

2. Relationship between the Parties

- 2.1 Nothing contained here in shall be construed as establishing a relationship of master and servant or of principal and agent as between the Procuring Entity and the Consultant. The Consultant, subject to this Contract, has complete charge of the Experts and Subconsultants, if any, performing the Services and shall be fully responsible for the Services performed by the moron their behalf here under.

3 Law Governing Contract

- 3.1 This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.

4 Language

- 4.1 This Contract has been executed in the language specified in the SCC, 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 language specified in Clause GCC4. Any such notice, request or consent shall be deemed to have been give nor 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 here to 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 Consultant is a Joint Venture, the members hereby authorize the member specified in the SCC to act on their behalf in exercising all the Consultant'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 Consultant 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 and laws in regard to corrupt and fraudulent or prohibited practices as set forth in its laws and policies.

a. Commissions and Fees

- 10.2 The Procuring Entity requires the Consultant to disclose any commissions, gratuities or fees that may have been paid or are to be paid to agents 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 the 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.

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 Consultant instructing the Consultant 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 hereto.

13 Commencement of Services

13.1 The Consultant shall confirm availability of Key Experts and begin 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 GCC 19 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the SCC.

- 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.

16.2 In cases of substantial modifications or variations.**17 Force Majeure****a. Definition**

- 17.1 For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and makes a Party's performance of its obligations here under 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 then negligence or intentional action of a Party or such Party's Experts, Sub-consultants or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both take into account at the time of the conclusion of this Contract and avoid or overcome in the carrying out of its obligations here under.

17.3 Force Majeure shall not include in sufficiency of funds or failure to make any payment required here under.

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.

17.7 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.

17.8 During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the Procuring Entity, shall either:

a demobilize, in which case the Consultant shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the Procuring Entity, in reactivating the Services; or

b Continue with the Services to the extent reasonably possible, in which case the Consultant shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred.

17.9 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 47 & 48.

18 Suspension

18.1 The Procuring Entity may, by written notice of suspension to the Consultant, suspend all payments to the Consultant here under if the Consultant fails to perform for many 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 Consultant to remedy such failure within a period not exceeding thirty (30) calendar days after receipt by the Consultant of such notice of suspension.

19 Termination

19.1 This Contract may be terminated either by Party as per provisions setup below:

a. By the Procuring Entity

19.1.1 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 Consultant 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 Consultant 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 Consultant becomes (or, if the Consultant 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 into liquidation or receivership whether compulsory or voluntary;
- c If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GCC 48.1;
- d If, as the result of Force Majeure, the Consultant 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 Consultant fails to confirm availability of Key Experts as required in Clause GCC 13.

19.1.2 Furthermore, if the Procuring Entity determines that the Consultant 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 Consultant, terminate the Consultant's employment under the Contract.

b. By the Consultant

19.1.3 The Consultant 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.

a If the Procuring Entity fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clauses GCC 48.1 within forty-five (45) calendar days after receiving written notice from the Consultant that such payment is overdue. b If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days.

- c If the Procuring Entity fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC 48.1.
- d 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 Consultant may have subsequently approved in writing) following the receipt by the Procuring Entity of the Consultant's notice specifying such breach.

c. Cessation of Rights and Obligations

19.1.4 Upon termination of this Contract pursuant to Clauses GCC 12 or GCC 19 hereof, or upon expiration of this Contract pursuant to Clause GCC 14, 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 GCC 22, (iii) the Consultant's obligation to permit inspection, copying and auditing of their

accounts and records set forth in Clause GCC 25, and (iv) any right which a Party may have under the Applicable Law.

d. Cessation of Services

19.1.5 Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GCC 19a or GCC 19b, the Consultant 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 Consultant and equipment and materials furnished by the Procuring Entity, the Consultant shall proceed as provided, respectively, by Clauses GCC 27 or GCC 28.

e. Payment upon Termination

19.1.6 Upon termination of this Contract, the Procuring Entity shall make the following payments to the Consultant:

- a remuneration for Services satisfactorily performed prior to the effective date of termination, and reimbursable expenditures for expenditures actually incurred prior to the effective date of termination; and pursuant to Clause 42;
- 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. OBLIGATIONS OF THE CONSULTANT

20 General

a. Standard of Performance

20.1 The Consultant 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 Consultant 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 Consultant shall employ and provide such qualified and experienced Experts and Subconsultants as are required to carry out the Services.

20.3 The Consultant may subcontract part of the Services to an extent and with such Key Experts and Subconsultants as may be approved in advance by the Procuring Entity. Notwithstanding such approval, the Consultant shall retain full responsibility for the Services.

b. Law Applicable to Services

20.4 The Consultant 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-consultants, comply with the Applicable Law.

20.5 Throughout the execution of the Contract, the Consultant 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,

20.6 The Procuring Entity shall notify the Consultant in writing of relevant local customs, and the Consultant shall, after such notification, respect such customs.

21 Conflict of Interests

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

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

21.1.1 The payment of the Consultant pursuant to GCC F (Clauses GCC 41 through 46) shall constitute the Consultant's only payment in connection with this Contract and, subject to Clause GCC 21.1.3, the Consultant 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 Consultant shall use its best efforts to ensure that any Sub-consultants, as well as the Experts and agents of either of them, similarly shall not receive any such additional payment.

21.1.2 Furthermore, if the Consultant, as part of the Services, has the responsibility of advising the Procuring Entity on the procurement of goods, works or services, shall at all times exercise such responsibility in the best interest of the Procuring Entity. Any discounts or commissions obtained by the Consultant in the exercise of such procurement responsibility shall be for the account of the Procuring Entity.

b. Consultant and Affiliates Not to Engage in Certain Activities

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

c. Prohibition of Conflicting Activities

21.1.4 The Consultant shall not engage and shall cause its Experts as well as its Sub-consultants 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

21.1.5 The Consultant has an obligation and shall ensure that its Experts and Sub-consultants 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 Consultant or the termination of its Contract.

22 Confidentiality

22.1 Except with the prior written consent of the Procuring Entity, the Consultant 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 Consultant and the Experts make public the recommendations formulated in the course of, or because of, the Services.

23 Liability of the Consultant

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

24 Insurance to be taken out by the Consultant

24.1 The Consultant (i) shall take out and maintain and shall cause any Sub-consultants to take out and maintain, at its (or the Sub-consultants', 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 Consultant 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 Consultant shall keep and shall make all reasonable effort to cause its Sub-consultants 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 Consultant shall permit and shall cause its Sub-consultants 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 Consultant's attention is drawn to Clause GCC10 which provides, inter alia, that acts intended to materially impede the exercise of the PPRA's inspection and audit rights provided for under this Clause

GCC25.2 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility under the PPRA's prevailing sanctions procedures.)

26 Reporting Obligations

26.1 The Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant and third parties for purposes of development of the plans, drawings, specifications, designs, databases, other documents and software, the Consultant 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 Consultant by the Procuring Entity, or purchased by the Consultant 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 Consultant 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 Consultant, unless otherwise instructed by the Procuring Entity in writing, shall insure the mat the expense of the Procuring Entity in an amount equal to their full replacement value.

28.2 Any equipment or materials brought by the Consultant or its Experts into, as applicable.

D. CONSULTANT'S EXPERTS AND SUB-CONSULTANTS

29 Description of Key Experts

29.1 The title, agreed job description, minimum qualification and time-input estimates to carry out the Services of each of the Consultant'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 Consultant's written request and due to circumstances outside the reasonable control of the Consultant, including but not limited to death or medical incapacity. In such case, the Consultant shall forth with provide as are placement, a person of equivalent or better qualifications and experience, and at the same rate of remuneration.

31**Removal of Experts or Sub-consultants**

31.1 If the Procuring Entity finds that any of the Experts or Sub-consultant has committed serious misconduct or has been charged with having committed a criminal action, or shall the Procuring Entity determine that Consultant's Expert or Sub-consultant has engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice while performing the Services, the Consultant 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-consultants 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 Consultant to provide a replacement.

31.3 Any replacement of the removed Experts or Sub-consultants shall possess better qualifications and experience and shall be acceptable to the Procuring Entity.

31.4 The Consultant shall bear all costs arising out of or incidental to any removal and/or replacement of such Experts.

32**Replacement/ Removal of Experts–Impact on Payments**

32.1 Except as the Procuring Entity may otherwise agree, (i) the Consultant shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and (ii) the remuneration to be paid for any of the Experts provided as a replacement shall not exceed the remuneration which would have been payable to the Experts replaced or removed.

33**Working Hours, Overtime, Leave, etc.**

33.1 Working hours and holidays for Experts are set forth in Appendix B. To account for travel time to/from Kenya, experts carrying out Services inside Kenya shall be deemed to have commenced or finished work in respect of the Services such number of days before their arrival in, or after their departure from, Kenya as is specified in Appendix B.

- 33.2 The Experts shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in Appendix B, and the Consultant's remuneration shall be deemed to cover these items.
- 33.3 Any taking of leave by Key Experts shall be subject to the prior approval by the Consultant who shall ensure that absence for leave purposes will not delay the progress and or impact adequate supervision of the Services.

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:

- a Assist the Consultant with obtaining work permits and such other documents as shall be necessary to enable the Consultant to perform the Services.
- b Assist the Consultant 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 Experts 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 Consultant and the Experts and any Subconsultants employed by the Consultant 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 Consultant, any Sub-consultants and the Experts of either of them with obtaining the privilege, pursuant to the applicable law in Kenya, of bringing into 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 there in by the Experts in the execution of the Services.
- g Provide to the Consultant any such other assistance as may be specified in the SCC.

33 Access to Project Site

- 33.1 The Procuring Entity warrants that the Consultant 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 Consultant 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 Consultant or any Sub-consultants 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 Consultant in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Clause GCC41.1

35 Services, Facilities and Property of the Procuring Entity

35.1 The Procuring Entity shall make available to the Consultant 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.

35.2 In case that such services, facilities and property shall not be made available to the Consultant as and when specified in Appendix A, the Parties shall agree on (i) any time extension that it may be appropriate to grant to the Consultant for the performance of the Services, (ii) the manner in which the Consultant shall procure any such services, facilities and property from other sources, and (iii) the additional payments, if any, to be made to the Consultant as a result thereof pursuant to Clause GCC 41.3.

36 Counterpart Personnel

36.1 The Procuring Entity shall make available to the Consultant free of charge such professional and support counterpart personnel, to be nominated by the Procuring Entity with the Consultant's advice, if specified in Appendix A.

36.2 If counterpart personnel are not provided by the Procuring Entity to the Consultant as and when specified in Appendix A, the Procuring Entity and the Consultants shall agree on (i) how the affected part of the Services shall be carried out, and (ii) the additional payments, if any, to be made by the Procuring Entity to the Consultant as a result thereof pursuant to Clause GCC 41.3.

36.3 Professional and support counterpart personnel, excluding Procuring Entity's liaison personnel, shall work under the exclusive direction of the Consultant. If any member of the counterpart personnel fails to perform adequately any work assigned to such member by the Consultant that is consistent with the position occupied by such member, the Consultant 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 Consultant under this Contract, the Procuring Entity shall make such payments to the Consultant and in such manner as is provided by GCCF below.

F. PAYMENTS TO THE CONSULTANT

Contract Price

38. The Contract price is fixed and is set forth in the SCC. The Contract price breakdown is provided in Appendix C.

38.1 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 Consultant, Sub-consultants 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.

40.2.1 *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.

40.2.2 *The Lump-Sum Installment Payments.* The Procuring Entity shall pay the Consultant 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 Consultant within the same sixty (60) days period. The Consultant shall thereupon promptly make any necessary corrections, and there after the fore going process shall be repeated.

40.2.3 *The Final Payment:* The final payment under this Clause shall be made only after the final report has been submitted by the Consultant 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 Consultant specifying in detail deficiencies in the Services, the final report. The Consultant shall thereupon promptly make any necessary corrections, and there after the fore going process shall be repeated.

40.2.4 All payments under this Contract shall be made to the accounts of the Consultant specified in the SCC.

40.2.5 With the exception of the final payment under 40.2.3 above, payments do not constitute acceptance of the whole Services nor relieve the Consultant 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 40.2.2, interest shall be paid to the Consultant 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 inaction 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 considerate and responds 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 44.1 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 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) and 3.1: Applicable law	The Contract shall be construed in accordance with the law of Kenya
4.1: Language	The language is: English.
6.1 and 6.2: Communications	<p>The addresses are: Client : National Construction Authority Attention : Executive Director Facsimile : +254 709 126 102/172/173 E-mail (where permitted): info@nca.go.ke</p> <p>Consultant : Attention : _____ Facsimile : _____ E-mail (where permitted) : _____</p>
8.1: Authority of member in charge	<i>Authorized Member of the J. V</i>
9.1: Authorized representatives	<p>The Authorized Representatives are: For the Client: Executive Director</p> <p>For the Consultant: __[name, title]</p>
11.1: Effectiveness of Contract	The Contract shall come into force at the date of Contract signature or such other date as agreed. There is effectiveness condition where applicable.
12.1: Termination of Contract	As guided by the PPADA 2015
13.1: Commencement of Services	To be advised during contract signing
14.1: Expiration of Contract	The time period shall be: 3 months as indicated in the TORs
23.1: Liability of the Consultant	Determined under the applicable law
24.1: Insurance to be taken out by the Consultant	N/A
27.1-27.2:	The Consultant shall not use the documents for purposes unrelated to this Contract without the prior written approval of the Client.]

32.1 Assistance and Exemptions	N/A
38.1 Contract Price	Kenya Shillings(<i>Insert Tender sum</i>)
39.1 Taxes and Duties	Tender sum is inclusive of all applicable Taxes
40.2 Mode of Billing and Payments	As per the Terms of reference
40.2.1 Advance Payment	N/A
40.2.4 Payments	Consultant awarded the contract
41.1 Interest on delayed payments	As guided by PPADA 2015
44.1: Dispute Resolution	In case of a dispute between the tenderer & NCA, the same shall be resolved amicably between the parties in the first instance failure to which the dispute shall be referred to arbitration as per the provisions of the Arbitration Act of 1995(Cap 49) before a single arbitrator to be agreed on by the parties and in failure of such an agreement by the Chairperson for the time being of the Chartered Institute of Arbitrators Kenya Branch and any award given shall be final

SECTION 9

Appendices

1. Appendix A : Terms of Reference
2. Appendix B: Description of key experts

(Service provider to list the title, agreed job description, minimum qualification and estimated period of engagement)

3. Appendix C: Contract price breakdown (Service provider to provide a breakdown of contract price)
4. Appendix D: Reimbursable expenses N/A
5. Appendix E: Form of Advance Payment

SECTION 10. NOTIFICATION FORMS

1. NOTIFICATION OF INTENTION TO AWARD

Procuring Entity: _____ *[insert the name of the Entity]*

Contract title: _____ *[insert the name of the contract]*

RFP No: _____ *[insert RF Preference number]*

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

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

The successful Consultant

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

i) Short listed Consultants

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

	Submi	Overall	Financial Proposal Price	Evaluated Financial Proposal Price (If applicable)	Combined Score and ranking (if applicable)
[insert [yes/n	Criterion (i):	[Proposal price] Criterion Criterion	[evaluated price]	<u>Combined Score:</u> [combined score]	<u>Ranking:</u> [ranking]

		<p><u>Sub-</u></p> <p>1: [insert</p> <p>2: [insert</p> <p>3: [insert</p> <p><u>Sub-</u></p>			

1: [insert

2: [insert

3: [insert

Sub-criterion

.....etc.

Criterion (iv):

Criterion (v):

		Total score:			
<i>[insert</i>	<i>[yes/no]</i>	Criterion (i):	<i>[Proposal price]</i>	<i>[evaluated price]</i>	<u>Combined Score:</u> <i>[combined score]</i> <u>Ranking:</u> <i>[ranking]</i>
		Criterion (ii):			
		Criterion (iii):			

		<p><u>Sub-criterion</u></p> <p>1: [insert</p> <p>2: [insert</p> <p>3: [insert</p> <p><u>Sub-criterion b:</u></p> <p>1: [insert score]</p> <p>2: [insert score]</p> <p>3: [insert score]</p> <p><u>Sub-criterion</u></p> <p>.....etc.</p> <p>Criterion (iv):</p> <p>Criterion (v):</p>			

		Total score:			
[insert	[yes/no]	Criterion (i):	[Proposal price]	[evaluated price]	<u>Combined Score:</u> [combined score] <u>Ranking:</u> [ranking]
		Criterion (ii):			
		Criterion (iii):			

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

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

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

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

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

Provide the contract name, reference number, name of the Consultant, contact details; and address the request for debriefing 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

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 Consultant, 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 Consultant who has submitted a Proposal in this selection process and is the recipient of a Notification of Intention to Award.

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

You must submit the complaint within the deadline stated above.

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

(v) Standstill Period

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

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

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

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

On behalf of _____ [*insert the name of the Procuring Entity*]:

Signature: _____

Name: _____

Title/position: _____

Telephone: _____

Email: _____

2. REQUEST FOR REVIEW

FORM FOR REVIEW(r.203(1))

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

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

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (Procuring Entity)

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

REQUEST FOR REVIEW

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

- 1.
- 2.

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

- 1.
- 2.

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

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

SIGNED

Board Secretary

3. LETTER OF AWARD

[use letterhead paper of the Procuring Entity] [date]_____To: _____ [name and address of the winning

Consultant] Subject: Notification of Award Contract No.....

This is to notify you that your Proposal dated the _____*[insert date]* for consulting services for *[name of assignment]* as negotiated with you on _____ for the contract amount of

_____ *[Insert amount in numbers and words and name of currency]* is here by accepted by our agency.

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

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Agency: _____

Attachment: Draft Negotiated Contract

	Details of all Beneficial Owners		% of shares a person holds in the company Directly or indirectly	% of voting rights a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)	Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)							
						Indirect.....							
	<table border="1"> <tr> <td data-bbox="159 1825 459 1870">Full Name</td> <td data-bbox="459 1825 494 1870"></td> </tr> <tr> <td data-bbox="159 1870 459 1982">National identity card number or Passport number</td> <td data-bbox="459 1870 494 1982"></td> </tr> <tr> <td data-bbox="159 1982 459 2094">Personal Identification Number (where applicable)</td> <td data-bbox="459 1982 494 2094"></td> </tr> <tr> <td data-bbox="159 2094 459 2139">Nationality(ies)</td> <td data-bbox="459 2094 494 2139"></td> </tr> </table>	Full Name		National identity card number or Passport number		Personal Identification Number (where applicable)		Nationality(ies)				<p>1. Having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer: Yes -- ---No----</p>	<p>1. Exercises significant influence or control over the Company body of the Company (tenderer) -----No-----</p>
Full Name													
National identity card number or Passport number													
Personal Identification Number (where applicable)													
Nationality(ies)													

	Details of all Beneficial Owners	% of shares a person holds in the company Directly or indirectly	% of voting rights a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)	Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)												
	<table border="1"> <tr> <td data-bbox="164 405 459 450">Date of birth [dd/mm/yyyy]</td> <td data-bbox="459 405 488 450"></td> </tr> <tr> <td data-bbox="164 450 459 495">Postal address</td> <td data-bbox="459 450 488 495"></td> </tr> <tr> <td data-bbox="164 495 459 539">Residential address</td> <td data-bbox="459 495 488 539"></td> </tr> <tr> <td data-bbox="164 539 459 584">Telephone number</td> <td data-bbox="459 539 488 584"></td> </tr> <tr> <td data-bbox="164 584 459 629">Email address</td> <td data-bbox="459 584 488 629"></td> </tr> <tr> <td data-bbox="164 629 459 2132">Occupation or profession</td> <td data-bbox="459 629 488 2132"></td> </tr> </table>	Date of birth [dd/mm/yyyy]		Postal address		Residential address		Telephone number		Email address		Occupation or profession				<p>2. Is this right held directly or indirectly?:</p> <p>Direct.....</p> <p>Indirect.....</p>	<p>2. Is this influence or control exercised directly or indirectly?</p> <p>Direct.....</p> <p>Indirect.....</p>
Date of birth [dd/mm/yyyy]																	
Postal address																	
Residential address																	
Telephone number																	
Email address																	
Occupation or profession																	

	Details of all Beneficial Owners	% of shares a person holds in the company Directly or indirectly	% of voting rights a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)	Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)

II) Am fully aware that beneficial ownership information above shall be reported to the Public Procurement Regulatory Authority together with other details in relation to contract awards and shall be maintained in the Government Portal, published and made publicly available pursuant to Regulation 13(5) of the Companies (Beneficial Ownership Information) Regulations, 2020. (Notwithstanding this paragraph Personally Identifiable Information in line with the Data Protection Act shall not be published or made public). *Note that Personally Identifiable Information (PII) is defined as any information that can be used to distinguish one person from another and can be used to deanonymize previously anonymous data. This information includes National identity card number or Passport number, Personal Identification Number, Date of birth, Residential address, email address and Telephone number.*

III) In determining who meets the threshold of who a beneficial owner is, the Tenderer must consider a natural person who in relation to the company:

- (a) holds at least ten percent of the issued shares in the company either directly or indirectly;
- (b) exercises at least ten percent of the voting rights in the company either directly or indirectly;
- (c) holds a right, directly or indirectly, to appoint or remove a director of the company; or
- (d) exercises significant influence or control, directly or indirectly, over the company.

IV) What is stated to herein above is true to the best of my knowledge, information and belief.

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

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

Designation of the person signing the Tender: [insert complete title of the person signing the Tender]

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

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

Bidder Official Stamp

mmmmmm

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]

V) 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 Consultant (Yes / No)
[include full name (last, middle, first), nationality, country of residence]			

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 Consultant.

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 Consultant 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 Consultant]”

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

*Name of the person duly authorized to sign the Proposal on behalf of the Consultant: ** [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 Consultant. In the event that the Consultant is a*

Joint venture, each reference to "Consultant" 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 Consultant. The power of attorney shall be attached with the Proposal Schedules.*