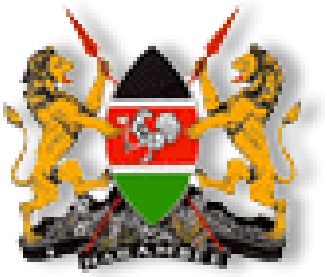


REPUBLIC OF KENYA
THE NATIONAL TREASURY
STATE DEPARTMENT FOR PUBLIC INVESTMENTS AND ASSETS MANAGEMENT
P. O. BOX 30007-00100
NAIROBI

REQUEST FOR PROPOSALS (RFP)

FOR

TRANSACTION ADVISORY SERVICES FOR THE KARURA 90MW HYDROPOWER DAM

RFP NO. PPPD/0&S/RFP/08/2025-2026

ISSUED ON:16TH MARCH, 2026

PRE-BID DATE:19TH MARCH, 2026 AT 0930 HOURS (VIRTUAL)

CLOSING DATE: 16TH APRIL, 2026 AT 1530 HOURS

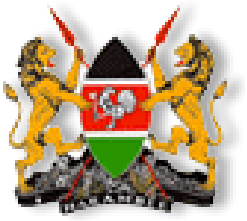
TABLE OF CONTENTS

PROPOSAL FOR SELECTION OF CONSULTING FIRM(S) 1
SECTION 1: LETTER OF REQUEST FOR PROPOSAL 2
SECTION 2. INSTRUCTIONS TO CONSULTANTS AND DATA SHEET 3
SECTION 2 (B). DATA SHEET 20
SECTION 3. TECHNICAL PROPOSAL – STANDARD FORMS 29
1. FORMTECH-1: TECHNICAL PROPOSAL SUBMISSION FORM 29
2. CERTIFICATE OF INDEPENDENT PROPOSAL DETERMINATION 31
Purpose 32
Requirements 32
3. FORM TECH-2: CONSULTANT'S ORGANIZATION AND EXPERIENCE 35
A - Consultant's Organization 35
3.FORMTECH-3: COMMENTS AND SUGGESTIONS 36
5. FORM TECH-5: WORK SCHEDULE AND PLANNING FOR DELIVERABLES 37
7. FORM TECH-6B: CURRICULUM VITAE (CV) 39
8. FORMTECH-7: MANDATORY SUPPORT DOCUMENTS 41
FORM TECH - 8: SELF-DECLARATION FORMS 42
9. FORM SD2 43
10. DECLARATION AND COMMITMENT TO THE CODE OF ETHICS 44
(Company Seal/ Rubber Stamp where applicable) 44
11. TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE 45
Instruction to Tenderer 45
a) Tenderer's details 45
e) Conflict of interest disclosure 46
FORM TECH - 9: TENDER-SECURING DECLARATION FORM {r 46 and 155(2)} 48
SECTION 4. FINANCIAL PROPOSAL - STANDARD FORMS 49
FORM FIN-1: FINANCIAL PROPOSAL SUBMISSION FORM 50
12. FORM FIN-2: SUMMARY OF COSTS 51
FORM FIN-3A: BREAKDOWN OF REMUNERATION 52
FORM 3C: FORM FOR CONSULTANT'S REPRESENTATIONS REGARDING COSTS AND CHARGES 54
FORM FIN 3D: BREAKDOWN OF REMUNERATION RATES [FOR TIME BASED CONTRACTS ONLY] 64
1. Review of Remuneration Rates 64
2 Rate details are discussed below: 64
FORM FIN-4 BREAKDOWN OF REIMBURSABLE EXPENSES 66
Legend: 66
SECTION 5. TERMS OF REFERENCE (TOR) 67
1. INTRODUCTION 67
2. DESCRIPTION AND SCOPE OF THE PROJECT 67
Project Description 67
Contracting Authorities 67
3. OBJECTIVE OF THE TRANSACTION ADVISORY SERVICES 68

Domestic Capital Mobilization 69
4. THE TRANSACTION ADVISOR TEAM 70
5. SCOPE OF THE TRANSACTION ADVISORY WORK 70
PHASE I: FEASIBILITY STUDY AND PROJECT IMPLEMENTATION SCHEDULE 71
Task 1: Project Feasibility Assessment 71
Task 1.1: Review and update existing technical assessments 71
Lifecycle Costing and Commercial Viability 72
Ancillary and Auxiliary Revenue Assessment 73
Task 1.2: Project Due Diligence 73
Task 1.2.1 Economic and Social Cost Benefit Analysis (ECSBA) 73
Task 1.2.2 Financial Viability Assessment 74
Task 1.2.3 Legal Due Diligence 74
Task 1.2.4 Site Due Diligence 76
Task 1.2.5 Environmental and Social Safeguards Sustainability 76
Task 2: Procurement Options and PPP Structure Analysis 77
Task 2.1: Options Development, Evaluation and Selection 78
Task 2.2: Financial Modeling 79
Task 2.3: Structuring 80
Task 2.4: Market Sounding 81
Task 2.5: Summary Recommendations, Project Implementation Plan and Feasibility Study Report 82
Task 3: Support to KenGen on Securing PPP Committee Approval and All Other Government Approvals 82
PHASE 2: PPP PROCUREMENT 83
Task 1: Approval and administration of the bidding process 83
Task 1.1: Detailed Procurement Plan 83
Task 1.2: Pre-qualification 84
Task 1.3: Bid Evaluation Criteria and Tender Process Design 85
Task 1.4: Request for Proposals (RFP) 85
Task 1.5: Draft PPP Project Agreements 86
Task 1.6: Necessary Approvals 86
Task 1.7: Administration of the Bidding Process 87
Task 1.8: Evaluation of Bids, updating of Value for Money and Fiscal Commitment/ Contingent Liability Evaluation 87
Task 1.9: PPP agreement, Power Purchase Agreement (PPA) negotiations, PPP agreement management plan 87
Task 1.10: PPP agreement signature, financial closure, and close-out report and case study 90
PHASE 3: PROJECT BASED LEARNING (To run concurrently with Phases 1 and 2) 90
6. TRANSACTION ADVISOR SKILLS AND EXPERIENCE 91
Qualification Requirements of the firm 91
Qualifications Requirements of Key Personnel 93
7. DURATION OF THE ASSIGNMENT 102
8. DELIVERABLES OF THE ASSIGNMENT 102
9. REMUNERATION SCHEDULE AND DISBURSEMENT ARRANGEMENTS 104
Remuneration schedule 104

10. INSTITUTIONAL ARRANGEMENTS AND COUNTERPART ASSISTANCE 105
11. BID EVALUATION CRITERIA 106
The selection method shall be quality and cost-based. The evaluation committee shall evaluate the proposals on the basis of their compliance and responsiveness to ToR's. 106
ANNEX 1: ENVIRONMENTAL, SOCIAL AND LAND ACQUISITION STUDIES 107
1. Purpose and Legal Basis 107
2. Environmental and Social Safeguards Strategy 107
2.1. Government-Led Safeguards at Feasibility Stage *(This will be undertaken by the Transaction Advisor).* 107
2.2. Private Partner-Led Full Statutory ESIA. *(This will be undertaken by the Concessionaire or Private Party and not the Transaction Advisor).* 107
3. Government-Led Safeguards 107
3.1. Objective 108
3.2. Scope of the Government-Led preliminary ESIA 108
3.3. Full Resettlement Action Plan (RAP) 109
3.4. Stakeholder Engagement 109
4. Private Partner-Led Full Statutory ESIA 109
5. Integration with PPP Procurement 110
SECTION 6. CONDITIONS OF CONTRACT AND CONTRACT FORMS 110
Preface 110
CONTRACT FOR CONSULTANT'S SERVICES 112
SECTION 7: GENERAL CONDITIONS OF CONTRACT 113
A. General Provisions 113
2. Relationship between the Parties 114
3. Law Governing Contract 115
4. Language 115
5. Headings 115
6. Communications 115
7 Location 115
8 Authority of Member in Charge 115
9 Authorized Representatives 115
10 Corrupt and Fraudulent Practices 115
B. Commencement, Completion, Modification and Termination of Contract 115
12 Termination of Contract for Failure to Become Effective 116
13 Commencement of Services 116
14 Expiration of Contract 116
15 Entire Agreement 116
16 Modifications or Variations 116
17 Force Majeure 116
18 Suspension 117
19 Termination 117
a. By the Procuring Entity 117
c. Cessation of Rights and Obligations 118
d. Cessation of Services 118
e. Payment up on Termination 119
C. Obligation s of the Consultant 119
a. Standard of Performance 119
b. Law Applicable to Services 119
21 Conflict of Interests 119
a. Consultant Not to Benefit from Commissions, Discounts, etc. 120
b. Consultant and Affiliates Not to Engage in Certain Activities 120

c. Prohibition of Conflicting Activities 120
d. Strict Duty to Disclose Conflicting Activities 120
22 Confidentiality 120
23 Liability of the Consultant 120
24 Insurance to be taken out by the Consultant 120
25 Accounting, Inspection and Auditing 121
26 Reporting Obligations 121
27 Proprietary Rights of the Procuring Entity in Reports and Records 121
28 Equipment, Vehicles and Materials 121
D. Consultant's Experts and Sub-consultants 122
30 Replacement of Key Experts 122
31 Removal of Experts or Sub-consultants 122
E. Obligations of the Procuring Entity 122
33 Access to Project Site 123
34 Change in the Applicable Law Related to Taxes and Duties 123
35 Services, Facilities and Property of the Procuring Entity 123
36 Counterpart Personnel 123
37 Payment Obligation 123
F. Payments to the Consultant 124
39 Taxes and Duties 124
40 Mode of Billing and Payment 124
40.3 Interest on Delayed Payments 125
If the Procuring Entity had delayed payments beyond thirty (30) days after the due date stated in Clause GCC 41.2.2, interest shall be paid to the 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. 125
G. Fairness and Good Faith 125
H. Settlement of Disputes 125
43 Dispute Resolution 125
SECTION 9: APPENDICES 133
Appendix A – Terms of Reference 133
Appendix B - Key Experts 133
Appendix C – Remuneration Cost Estimates 133
Appendix D: Reimbursable Expenses Cost Estimates 134
SECTION 10. NOTIFICATION FORMS 135
2 REQUEST FOR REVIEW 140
REQUEST FOR REVIEW 140
SIGNED 140
BENEFICIAL OWNERSHIP DISCLOSURE FORM 142
Details of beneficial ownership 142



PROPOSAL FOR SELECTION OF CONSULTING FIRM(S)

1) **NAME AND CONTACT ADDRESSES OF PROCURING ENTITY**

The Principal Secretary,
The National Treasury,
State Department for Public Investments & Assets Management
P.O. Box 30007 – 00100, Nairobi, Kenya
Email: Procurement@PPPunit.go.ke

2) RFP Number:
PPPD/0&S/RFP/08/2025-2026

3) Name of Assignment:
TRANSACTION ADVISORY SERVICES FOR THE KARURA 90MW HYDROPOWER DAM

SECTION 1: LETTER OF REQUEST FOR PROPOSAL

Date: 16th March, 2026

Reference No.: PPPD/O&S/RFP/08/2025-2026

Name of Assignment: TRANSACTION ADVISORY SERVICES FOR THE KARURA 90MW HYDROPOWER DAM

TO: ***[All Eligible and Qualified Consultants]***

Dear Messrs._____

1. The National Treasury, State Department for Public Investments and Assets Management has set aside funds in its budget toward the cost of the subject consulting services.

2. The Procuring Entity now invites proposals to provide the following consulting services (here in after called "the services"): **Transaction Advisory Services for the Karura 90MW Hydropower Dam.** More details on the Services are provided in Section 5 Terms of Reference.

3. This Request for Proposals (RFP) is open to eligible and qualified consultants.

4. If a Consultant is a Joint Venture (JV), the full name of the JV shall be used and all members, starting with the name of the lead member. Where sub-consultants have been proposed, they shall be named. The maximum number of JV members shall be specified in the DS.

5. It is not permissible to transfer this RFP to any other firm.

6. A firm will be selected under [QCBS] method and in a format as described in this RFP, in accordance with the Public Procurement and Asset Disposal Act 2015, a copy of which is found at the following website: www.ppra.go.ke.

7. The: Section 1: Letter of Request for Proposals
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)**

8. Please inform us within five days, in writing at the address below or by E-mail **procurement@PPPkenya.go.ke**
   a) That you have received this Request for Proposals; and
   b) Whether you intend to submit a proposal alone or intend to enhance your experience by requesting permission to associate with other firm(s) (if permissible under Section 2, Instructions to Consultants (ITC), Data Sheet14.1.1).

9. Details on the proposal's submission date, time and address are provided in the ITC 17.7and ITC 17.9 of the Data Sheet.

Yours sincerely,

Cyrell Odede,
Principal Secretary, State Department for Public Investments and Assets Management
P.O BOX 30007-00100, Nairobi-Kenya
Telephone No: +254-20 3225000
procurement@PPPkenya.go.ke

SECTION 2. INSTRUCTIONS TO CONSULTANTS AND DATA SHEET

A. GENERALPROVISIONS

1. 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) Section2 that is used to reflect specific assignment conditions to supplement, but not to over-write, 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 Consultant 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 Sub-consultants) 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 short-listing 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 **Data Sheet**.

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. A JV 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 it's 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 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-ownedEnterprises-Government-ownedenterprisesorinstitutionsinKenya 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 thereby 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 ITC 6.

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 score, 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 fall 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 in to 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 with non-shortlisted Consultant(s), if permitted in the **Data Sheet**. In all such

cases a shortlisted Consultant must obtain the written approval of the Procuring Entity prior to the submission of the Proposal. 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, OPENINGAND 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 TECHNICAL PROPOSAL SUBMISSION 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 been 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 10.1;

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 23.

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 10.1, the evaluators 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 23.1.

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 eligibility and mandatory criteria to be used in preliminary examination of proposals are listed in the **Data Sheet**. Proposals that do not meet these requirements shall be disqualified and shall not be considered further in the technical evaluation of the proposals.

22.2 The Procuring Entity evaluation committee shall evaluate the Technical Proposals on the basis of their responsiveness to the Terms of Reference and the RFP, applying the evaluation criteria, sub-criteria, and point system specified in the **Data Sheet**. 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 Single Sourcing Selection

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 to pass, 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 23.1 to 23.3.

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

25. Taxes

25.1 Subject to ITC 25.2, 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 in voices (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 sand 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(c) 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 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 in capacity. 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 aremuchhigherthanthetypicallychargedratesbyconsultantsinsimilarcontractsortheprofessionalpractice. 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 Sand 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 initialed 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 31.1, 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 31.1 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 **Data Sheet**

37.2 A request for administrative review shall be made in the form provided under contract forms 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 be used: **(a) NO** The Electronic Procurement System: The Procuring Entity shall use the following electronic-procurement system to manage this Request for Proposal (RFP) process: **N/A** The electronic-procurement system shall be used to manage the following part of the RFP process: **N/A**
2.1	Name of the Procuring Entity: **The National Treasury, State Department for Public Investments and Assets Management** The consultant selection method is: **Quality-Cost Based Selection (QCBS)**
2.2	Financial Proposal to be submitted together with Technical Proposal in separate envelopes: **Yes** The name of the assignment is: **TRANSACTION ADVISORY SERVICES FOR THE KARURA 90MW HYDROPOWER DAM**
2.3	A pre-proposal conference will be held: Yes Date of pre-proposal conference **19th March, 2026** Time: **0930 Hours** Address: **Virtual** **https://teams.microsoft.com/l/meetup-join/19%3ameeting_MDQ2Zjk2NmQtMDM3NC00ZDE0LTlhNzYtNTk3YjQyMGFiNTU1%40thread.v2/0?context=%7b%22Tid%22%3a%2228b92e8c-96e5-4887-88d5-fdc7b672ab97%22%2c%22Oid%22%3a%22f3c2d28c-a595-444a-adf3-9484b63b58c4%22%7d** Telephone: E-mail: **Procurement@PPPkenya.go.ke** Title of contact person: **Procurement Expert**
2.4	The Procuring Entity will provide the following inputs, project data, reports, etc. to facilitate the preparation of the Proposals: **Terms of Reference**
3.3 (iv)	The Consultants shall not be hired under the circumstances in conflicting activities; Public officers or other civil servants in Kenya.
4.1	If "Unfair Competitive Advantage" applies to the selection, explain how it is mitigated, including listing the reports, information, documents, etc. and indicating the sources where these can be downloaded or obtained by the Consultants: **N/A**
6.2	Maximum number of members in the Joint Venture (JV) shall be: three (3)

6.6 (a)	The list of debarred firms and individuals is available at the PPRA's website **www.ppra.go.ke** or email **complaints@ppra.go.ke**
6.7	The business will be registered with **NOT APPLICABLE**
Reference to ITC Clause	**PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS**
B. Preparation of Proposals	
10.1	The Proposal shall comprise the following: 1st Inner Envelope with the Technical Proposal: Power of Attorney to sign the Proposal TECH-1: Technical Proposal Submission Form TECH-2: Consultant's Organization and Experience TECH-3: Comments and Suggestions TECH-4: Description of Approach, Methodology and Workplan TECH-5: Work Schedule and Planning for Deliverables TECH-6: Team Composition, Assignment, and Key Experts' Input TECH-7: Mandatory Documentary Evidence AND 2nd Inner Envelope with the Financial Proposal: (1) FIN-1: Financial Proposal Submission Form (2) FIN-2: Summary of Costs (3) FIN-3: Breakdown of Remuneration (4) FIN-4: Breakdown of Reimbursable Expenses
11.1	Participation of Sub-consultants, and Key Experts in more than one Proposal is permissible: **NO**
12.1	Proposals must remain valid for **180 days** after the proposal submission deadline.
13.1	Clarifications may be requested no later than **Seven (7) days** prior to the submission deadline. The contact information for requesting clarifications is: E-mail: **Procurement@PPPunit.go.ke**
14 (b) (do not use for Fixed Budget Method)	Estimated total cost of the assignment:
14 (c) and 26.2 [use for Fixed Budget method]	The total available budget for this Fixed-Budget assignment is: *[insert currency]* (*choose one*: inclusive or exclusive of taxes). Proposals exceeding the total available budget will be rejected-N/A
14 (d)	Key Experts shall not appear in more than one proposal: **Yes**
16.1(b)	The Financial Proposal will include (but not limited to) the following reimbursable expenses: 1. a per diem allowance, including hotel, for experts for every day of absence

	from the home office for the purposes of the Services; 2. cost of travel by the most appropriate means of transport and the most direct practicable route; 3. cost of office accommodation, including overheads and back-stop support; 4. communications *costs;*

Reference to ITC Clause	**PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS**
	5. cost of purchase or rent or freight of any equipment required to be provided by the Consultants; 6. cost of reports production (including printing) and delivering to the Procuring Entity; 7. other allowances where applicable and provisional or fixed sums (if any) 8. Any other charges, if applicable
16.2	A price adjustment provision applies to remuneration rates: **No**
16.3	The Procuring Entity has **NOT** obtained an exemption for the Consultant from payment of taxes in Kenya as per *the KRA website* 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 the following currencies: Local currency or any foreign freely convertible currency
C. Submission, Opening and Evaluation	
17.1	The Consultant **SHALL NOT** have the option of submitting his Proposal electronically.
17.5	The Consultant must submit: (a) Technical Proposal: One (1) Original and one (1) copy; (b) Financial Proposal: One (1) Original and one (1) copy; (c) One (1) electronic copy of the Proposal (Technical & Financial) in PDF format on a flash disk. The Financial Proposal folder shall be password protected and shall remain inaccessible until the financial opening stage. *The password shall be submitted only upon written request after completion of the technical evaluation and at financial opening.* **Tender documents must be paginated/serialized and bound with a table of contents. All bidders are required to submit their documents paginated in a continuous ascending order from the first page to the last in this format; (i.e. 1, 2, 3… n where n is the last page). The numbering MUST be sequential, Sec.74.1(i) of the Public Procurement and Assets Disposal Act, 2015.**
18.5	The Proposal must be submitted no later than: Date: **16th April, 2026** Time: **1530 Hours** The Proposal Submission Address is; **Public Private Partnership Directorate,**

	Attention: Procurement Expert **6th Floor, Re-Insurance Plaza,** **Building No.4 Aga Khan Walk/Taifa Road** **Nairobi, Kenya**
20.1	An online option of the opening of the Technical Proposals is offered: Yes, the access link will be shared with participating firms.
20.2	In addition, the following information will be read aloud at the opening of the Technical Proposals: (i) 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;
22.1	Other eligibility and mandatory criteria shall be:

No.	**PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS**	
1	The Consultant shall submit a complete Technical Proposal and Financial Proposal in separate envelopes, including a soft copy on a flash disk. Bidders are advised to ensure that their submissions are properly paginated in accordance with the requirements of ITC 17.5.	(a) Technical Submission Forms (b) Mandatory Support Documents (c) Sealed Financial Proposal Envelope
2	The Consultant shall be a recognized legal entity.	Certificate of Registration or Incorporation from country of jurisdiction. In cases of joint ventures, certificates shall be required for each of the joint venture partners
3	Joint Ventures	If the proposal is submitted by a joint venture or a consortium of firms, attach a letter of intent or a copy of an existing joint venture agreement
4	The Consultant shall have legal capacity to enter a contract if awarded.	A power of attorney authorizing the individual signing the bid to act on behalf of the firm or consortium.
5	The Consultant has fulfilled its tax obligations.	Submission of a copy of the firm's valid tax compliance certificate or its equivalent from relevant authorities where the business operations of tenderer are domiciled
6	The Consultant shall have legal capacity to enter a contract if awarded.	A Power of Attorney authorizing the individual signing the bid to act on behalf of the firm or consortium.
7	The Consultant guarantees that it shall not withdraw its proposal, refuse to sign the contract if awarded, or fail to furnish any required professional indemnity insurance.	(a) Technical Proposal Submission Form (b) Tender Securing Declaration Form
8	The Consultant is not insolvent, in receivership, bankrupt, or in the process of being wound up.	Technical Proposal Submission Form

	9	The Consultant meets all the eligibility requirements required in ITC 3 to 6, including the requirements for conflict of interest, unfair competitive advantage, corrupt and fraudulent practice, collusive practices, and eligibility.	Technical Proposal Submission Form
	10	The Consultant is not guilty of violation of fair employment laws and practices.	Technical Proposal Submission Form
	8	Mandatory forms	Self Declaration Forms
	Pass or Fail to qualify for technical evaluation.		

The Technical Proposal Submission Form is accompanied by the Certificate of Independent Proposal Determination and the APPENDIX TO FORM OF PROPOSAL ON FRAUD AND CORRUPTION CLAUSE (for information).

22.2 **TECHNICAL EVALUATION**

The Criteria, sub-criteria, and point system for the evaluation of the Technical Proposals:

I. Experience of the Consultant, as a firm relevant to the Assignment: ***Total Marks 30***

a) Experience in project structuring, financial analysis, financial advisory, procurement, and negotiations of PPPs or project financed projects in the energy sector with evidence of having led Transaction Advisory assignments on at least three (3) PPP/project-financed projects, with at least two (2) financially closed projects. Significant merit will be given for a large hydropower project. Additional credit will also be given to experience in Africa**- 6 Marks;**

b) Experience in project structuring, financial analysis, financial advisory, procurement, and negotiations of at least two (2) project financed hydropower projects or PPP hydropower projects. Each project demonstrated will earn two (2) marks with the maximum score for this requirement being **four (4) marks;**

c) Experience in engineering, planning, technical designs, construction supervision and procurement for hydropower dam projects (only experience in the last 15 years will get credit, with preference given for more recent experience); Additional credit will be given to experience in Africa**- 5 Marks;**

d) Experience in the preparation of operations and maintenance schedules or experience in consultancy for operation and maintenance for dams, hydropower projects. (only experience in the last 15 years will get credit, with preference given for more recent experience); Additional credit will be given to experience in Africa**- 5 Marks;**

e) Experience in commercial and contract law in undertaking legal feasibility studies, drafting PPP contractual agreements and other related documents/agreements for PPPs- **3 Marks;**

f) Demonstrate experience in structuring financing for infrastructure projects from institutional capital providers, such as pension funds or debt instruments in capital markets. Additional credit will be awarded for experience demonstrated on projects in Sub-Saharan Africa. A maximum of 3 marks will be awarded for this requirement, with 2 marks allocated for the core experience and 1 additional mark/credit for relevant experience in Sub-Saharan Africa- **3 Marks;**

g) Experience in carrying out Environmental and Social Impact Assessments (ESIA), Environmental and Social Management Plans (ESMPs), Resettlement Action Plans (RAP) and related safeguards studies for at least two large dams, hydropower or water sector projects in Africa. Each dam experience is 2 marks- **4 Marks.**

Attach documentary evidence to support the above by providing copies of relevant documents such as the Form of Contract (not the entire contract), reference letters, performance certificates, etc., which shall be included as part of the proposal.

II. Adequacy and quality of the proposed methodology, and work plan in responding to the Terms of Reference (TORs):

(a) Technical approach and methodology	8
(b) Work plan	6
(c) Organization and staffing	6
Total points for criterion (ii):	**20**

[Notes to Consultant: The Procuring Entity will assess whether the proposed methodology is clear, responds to the TORs, work plan is realistic and implementable; overall team composition is balanced and has an appropriate skill mix; and the work plan has right input of Experts

III. Key Experts' qualifications and competence for the Assignment: {Notes to Consultant: each position number corresponds to the same for the Key Experts in Form TECH-6 to be prepared by the Consultant}-**40 Marks**

The Procuring Entity will assess whether the proposed team composition is as per qualifications listed in the TORs.

a) Position K-1: PPP Expert/ Transaction Structuring Expert -Team Leader - **7 Marks**
b) Position K-2: Dam Expert **- 6 Marks**
c) Position K-3: PPP Financial Expert **- 5 Marks**
d) Position K-4: PPP Legal Expert - **4 Marks**
e) Position K-5: Environmental & Social (E&S) Safeguards specialist- **4 Marks**
f) Position K-6: Social Development and Resettlement Specialist- **4 Marks**
g) Position K-7: Power Systems Engineer- **3 Marks**
h) Position K-8: Hydropower Plant Engineer- **4 Marks**
i) Position K-9: Hydromechanical Engineer-**3 Marks**

No.	Position	Qualifications
K-1	PPP Expert/ Transaction Structuring Expert -Team Leader - **7 Marks**	Academic Qualifications-**1 Mark** Relevant Work Experience -**6 Marks**
K-2	Dam Expert **- 6 Marks**	Academic Qualifications-**1 Mark** Relevant Work Experience -**5 Marks**
K-3	PPP Financial Expert **- 5 Marks**	Academic Qualifications-**1 Mark** Relevant Work Experience -**4 Marks**
K-4	PPP Legal Expert - **4 Marks**	Academic Qualifications-**1 Mark** Relevant Work Experience -**3 Marks**
K-5	Environmental & Social (E&S) Safeguards specialist- **4 Marks**	Academic Qualifications-**1 Mark** Relevant Work Experience -**3 Marks**
K-6	Social Development and Resettlement Specialist- **4 Marks**	Academic Qualifications-**1 Mark** Relevant Work Experience -**3 Marks**
K-7	Power Systems Engineer- **3 Marks**	Academic Qualifications-**1 Mark** Relevant Work Experience -**2 Marks**
K-8	Hydropower Plant Engineer- **4 Marks**	Academic Qualifications-**1 Mark** Relevant Work Experience -**3 Marks**
K-9	Hydromechanical Engineer-**3 Marks**	Academic Qualifications-**1 Mark** Relevant Work Experience -**2 Marks**

IV. Transfer of knowledge and training program (relevance of approach and methodology):

Total Marks 4

(a) Relevance of training program 2
(b) Training approach and methodology 1
(c)Qualifications of experts and trainers 1

V. Participation by Kenya citizens among proposed Key Experts: ***5 Marks***
(To earn the full 6 marks, four Kenyan citizens must be designated as key experts-Each Expert 1.5 Marks)

Total points for the five criteria*:*100

The minimum technical score (St) required to pass is *80%*

23.4	An online option of the opening of the Financial Proposals is offered: yes, the access link will be shared with participating firms in advance.
25.2	For evaluation purposes, financial proposals shall be assessed based on bid amounts exclusive of taxes. The Procuring Entity will include separate items of: (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.

	Therefore, bidders must indicate/itemize in their financial forms separate items of all local identifiable and applicable taxes including Withholding Taxes (WHT) and VAT to be levied. If a Contract is awarded, at Contract negotiations, all such taxes will be discussed, finalized using the itemized list and included in the Contract amount as a separate line, also indicating which taxes shall be paid by the Consultant and which taxes are withheld and paid by the Procuring Entity on behalf of the Consultant.
26.1	The single currency for the conversion of all prices expressed in various currencies into a single one is ***Kenya Shillings*** The official source of the selling exchange rate is: **Central Bank of Kenya** The date of the exchange rate is **Deadline for submission of proposals**
29.1 (QCBS only)	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 x Fm/ F, in which "Sf" is the financial score, "Fm" is the lowest price, and "F" the price of the proposal under consideration. The weights given to the Technical (T) and Financial (P) Proposals are: T = 0.80, and P = 0.20 Proposals are ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) as following: S = St x T% + Sf x P%.
31	The Standstill Period shall be: **14 days** 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.
D. Negotiations and Award	
32.1	Expected date and address for contract negotiations: Date: **To be communicated with the recommended firm** Address**: To be communicated with the recommended firm**
35.2	Expected date for the commencement of the Services: Date: **To be advised upon contract signing with the recommended firm.**
36.1	The publication of the contract award information following the completion of the contract negotiations and contract signing will be done as following: The publication will be done within **30 days** after the contract signing
37.1	The procedures for making a Procurement-related Complaints are detailed in the "Regulations" available from the PPRA Website **www.ppra.go.ke** or email **complaints@ppra.go.ke**. 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:

	For the attention: The Secretary Title/position: *The Board Secretary* Procuring Entity: *Public Procurement Administrative Review Board* Email address: info@ppra.go.ke In summary, a Procurement-related Complaint may challenge any of the following: (i) the terms of the Tender Documents; and (ii) the Procuring Entity's decision to award the contract.

SECTION 3. TECHNICAL PROPOSAL – STANDARD FORMS

1. FORMTECH-1: TECHNICAL PROPOSAL SUBMISSION FORM

{Location, Date}

To: *[Name and address of Procuring Entity]*

Dear Sirs:

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

{If the 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 may be 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 ITC 3.
d) We meet the eligibility requirements as stated in ITC 6, and we confirm our understanding of our obligation to abide by the Government's policy in regard to corrupt, fraudulent and prohibited practices as per ITC5.
e) In competing for (and, if the award is made to us, in executing) the Contract, we undertake to observe the laws against fraud and corruption, including bribery, as well as laws against anti-competitive practices, including bid rigging in force in Kenya; we hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption or anti-competitive practices.
f) We confirm that we are not insolvent, in receivership, bankrupt or on the process of being wound up.
g) The 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 anti-competitive practices, including bid rigging. To this effect we have signed the "Certificate of Independent Proposal Determination" attached below. We also undertake to adhere by the Code of Ethics for persons participating in Public

Procurement and Asset Disposal Activities in Kenya, copy available from **PPRA** during the procurement process and the execution of any resulting contract.

(l) 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 andITCClause29.3 and 29.4 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 32.2 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):*
Stamp……..

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

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

1. I have read and I understand the contents of this Certificate;
2. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;
4. For the purposes of this Certificate and the Tender, I understand that the word "competitor" shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:
   - Has been requested to submit a Tender in response to this request for tenders;
   - 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]:**
   - ☐ The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
   - ☐ 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:
   - prices;
   - methods, factors or formulas used to calculate prices;
   - the intention or decision to submit, or not to submit, a proposal; or
   - 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]

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

(Appendix shall not be modified)

Purpose

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

Requirements

The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), 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[1] 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, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;

d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or debar or recommend to appropriate authority (ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;

e) Requires that a clause be included in Tender documents and Request for Proposal

documents requiring (i) Tenderers (applicants/proposers),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[2]all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and

f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a "Self-Declaration Form" as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

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[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 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 [.....] 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, US$ etc.]:**
Country:	Duration of assignment (months):
Name of Procuring Entity:	Total Nº 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:	Nº of professional staff-months provided by associated Consultants:
Role on Assignment: *(E.g. Lead Member in ABC JV, or Sole Consultant)*:	Name of senior professional staff of your firm involved and functions performed:
Narrative description of Assignment:	
Description of actual services provided by your staff within the assignment:	
Name of Consulting Firm:	Name and Title of Signatory:

3.FORMTECH-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}

4. 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:

4.a Technical Approach and Methodology

4.b Work Plan

4.c Organization and Staffing}

- *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.}*

- *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.}

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

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

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

1 List the deliverables with the breakdown for activities required to produce them and other benchmarks such as the Procuring Entity's approvals. For phased assignments, indicate the activities, delivery of reports, and benchmarks separately for each phase.

2 Duration of activities shall be indicated in form of a bar chart

3 Include a legend if necessary, to help read the chart.

Name_____

Title_____

Date _____

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

FORMTECH- 6A: TEAM COMPOSITION, ASSIGNMENT, AND KEY EXPERTS' INPUTS

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

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

Full time input Part time input

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

Membership in Professional Associations and Publications:

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

Adequacy for the Assignment:

Detailed Tasks Assigned on 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 or dismissal by the Procuring Entity, and/or sanctions by the PPRA.

Name of Expert_____Signature_____Date_____
{day / month/year}

Name of authorized _____Signature._____Date_____

Representative of the 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} -Not Applicable

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: <u>SELF-DECLARATION FORMS</u>

FORM SD1

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

I, ……., of 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

9. 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 …….. .....(insert tender title/description) for .....*(insert name of the Procuring entity)* and duly authorized and competent to make this statement.

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

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

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

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

…….. ……
(Title) (Signature) (Date)

Bidder Official Stamp

10. DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

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

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

Name of Authorized signatory.....

Sign…….....

Position…….....

Office address……..

Telephone…….. E-mail ……..... Name of the

Firm/Company…….....

Date……

(Company Seal/ Rubber Stamp where applicable)

Witness

Name ……

Sign……

Date……

11. TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE

Instruction to Tenderer

Tender is instructed to complete the particulars required in this Form, *one form for each entity if Tender is a JV.* Tenderer is further reminded that it is an offence to give false information on this Form.

a) Tenderer's details

	ITEM	DESCRIPTION
1	Name of the Procuring Entity	
2	Reference Number of the Tender	
3	Date and Time of Tender Opening	
4	Name of the Tenderer	
5	Full Address and Contact Details of the Tenderer.	1. Country 2. City 3. Location 4. Building 5. Floor 6. Postal Address 7. Name and email of contact person.
6	Current Trade License Registration Number and Expiring date	
7	Name, country and full address (*postal and physical addresses, email, and telephone number*) of Registering Body/Agency	
8	Description of Nature of Business	
9	Maximum value of business which the Tenderer handles.	
10	State if Tenders Company is listed in stock exchange, give name and full address (*postal and physical addresses, email, and telephone number*) of state which stock exchange	

General and Specific Details

a) **Sole Proprietor,** provide the following details.

Name in full_____Age_____

Nationality_____Country of Origin_____

Citizenship _____

b) **Partnership,** provide the following details

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

c) **Registered Company,** provide the following details.

i) Private or public Company _____

ii) State the nominal and issued capital of the Company: -

Nominal Kenya Shillings (Equivalent)_____

Issued Kenya Shillings (Equivalent)_____

iii) Give details of Directors as follows.

	Names of Director	**Nationality**	**Citizenship**	**% Shares owned**
1				
2				
3				

d) **DISCLOSURE** OF INTEREST-Interest of the Firm in the Procuring Entity.

i) Are there any person/persons in..... (*Name of Procuring Entity)* who has/have an interest or relationship in this firm? Yes/No.....

If yes, provide details as follows.

	Names of Person	**Designation in the Procuring Entity**	**Interest or Relationship with Tenderer**
1			
2			
3			

e) **Conflict of interest disclosure**

	Type of Conflict	**Disclosure YES OR NO**	**If YES provide details of the relationship with Tenderer**
1	Tenderer is directly or indirectly controlled by or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Tender has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of		

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
	the Procuring Entity regarding this tendering process.		
5	Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender.		
6	Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract specified in this Tender Document.		
7	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract.		
8	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision of the such Contract.		
9	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.		

f) Certification

On Behalf of the Tenderer, I certify that the information given above is complete, current and accurate as at the date of submission.

Full Name _____

Title or Designation _____

_____ _____

Signature Date

Bidder Official Stamp

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 **180 days** starting on proposal submission deadline, 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

FIN-3 Breakdown of Remuneration FIN-4 Reimbursable expenses

FORM FIN-1: FINANCIAL PROPOSAL SUBMISSION FORM

……{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}*
Bidder Official Stamp……..

{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}

12. 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*
Cost of the Financial Proposal				
Including:				
(1) Remuneration				
(2) Reimbursables				
Subtotal exclusive of taxes [Remuneration+ Reimbursables]				
Taxes:				
{insert type of tax· e.g., VAT or sales tax}				
{e.g., withholding tax on experts' remuneration}				
{*insert type of tax*}				
Total Taxes				
Total Cost of the Financial Proposal: {Should match the amount in Form FIN-1}				

FORM FIN-3A: BREAKDOWN OF REMUNERATION

When used for Lump-Sum contract assignment, information to be provided in this Form shall only be used to demonstrate the basis for the calculation of the Contract's ceiling amount; to calculate applicable taxes at contract negotiations; and, if needed, to establish payments to the 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.

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

13. 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) theaway-from-homeofficeallowancesindicatedbelowarethosethattheConsultanthasagreedtopayforthis 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: .....

FORM 3C: FORM FOR CONSULTANT'S REPRESENTATIONS REGARDING COSTS AND CHARGES
{This Form FIN 3C shall be used for Time-Based contracts only}

(Expressed in {insert name of currency*})

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

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

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

FORM FIN 3D: BREAKDOWN OF REMUNERATION RATES [FOR TIME BASED CONTRACTS ONLY]

1. Review of Remuneration Rates

1.1 The remuneration rates are made up of salary or abase fee, social costs, overheads, profit, and any premium or allowance that may be paid for assignments away from headquarters or a home office. Form FIN3 C can be used to provide a breakdown of rates.

1.2 The Form FIN 3C shall be completed and attached to the Financial Form-3. As agreed at the negotiations, breakdown sheets shall form part of the negotiated Contract and included in its Appendix D or C.

1.3 At the negotiations the firm shall be prepared to disclose its audited financial statements for the last three years, to substantiate its rates, and accept that its proposed rates and other financial matters are subject to scrutiny. The Procuring Entity is charged with the custody of government funds and is expected to exercise prudence in the expenditure of these funds.

2 Rate details are discussed below:

(i) *Salary* is the gross regular cash salary or fee paid to the individual in the firm's home office. It shall not contain any premium for work away from headquarters or bonus, except where these are included 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:

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

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 over heads, shall be available for discussion, together with detailed lists of items making up the overheads and the percentage by which each relates to basic salary. The Procuring

Entity does not accept an add-on margin for social charges, overhead expenses, etc. for Experts who are not permanent employees of the 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 over heads or profit. Sometimes, by law, such allowances may draw social costs. In this case, the amount of this social cost shall still be shown under social costs, with the net allowance shown separately.

FORM FIN-4 BREAKDOWN OF REIMBURSABLE EXPENSES

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____								
N°	Type of Reimbursable Expenses	Unit	Unit Cost	Quantity	{Currency # 1- as in FIN-2}	{Currency # 2- as in FIN-2}	{Currency# 3- as in FIN-2}	{Local Currency- as in FIN-2}
	{e.g., Per diem allowances**}	{Day}						
	{e.g., International flights}	{Ticket}						
	{e.g., In/out airport transportation}	{Trip}						
	{e.g., Communication costs between Insert place and Insert place}							
	{e.g., reproduction of reports}							
	{e.g., Office rent}							
	.....							
	{Training of the Procuring Entity's personnel – if required in TOR}							
	Total Costs							

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

SECTION 5. TERMS OF REFERENCE (TOR)

1. INTRODUCTION

The Public Private Partnerships Directorate (PPPD) at the National Treasury on behalf of and in consultation with the Contracting Authority (CA), Kenya Electricity Generating Company PLC (KenGen), and the State Department for Energy (SoE) seeks to engage a Transaction Advisor (TA) to assist in carrying out detailed feasibility studies and the procurement of a Private Party for the Karura Hydropower Project through a PPP arrangement ("the Project").

The Project will be implemented in a phased approach and the Consultant is expected to advise on the appropriate packages after carrying out technical and commercial due diligence as well as appropriate grid stability and capacity studies for hydro power generation.

The Transaction Advisor is to conduct a comprehensive viability assessment of the proposed Project to identify the optimal project structure that will attract private sector participation in accordance with the PPP framework.

2. DESCRIPTION AND SCOPE OF THE PROJECT

Project Description

The Karura Hydropower Project is a strategic energy initiative situated within the Tana River cascade, specifically located between the Kindaruma and Kiambere Hydroelectric Power Stations.

The main features of this project include a hydropower plant designed to harness the residual hydraulic head of Tana River, a diversion weir and reservoir system optimized for grid stability, and associated power evacuation infrastructure to integrate clean energy into the national grid.

The project aligns with the Kenya Vision 2030 and the Least Cost Power Development Plan (LCPDP), aiming to displace expensive thermal peaking plants with sustainable, dispatchable renewable energy.

Contracting Authorities

The proposed PPP Project for Karura Hydropower Dam will be implemented by the Kenya Electricity Generating Company PLC, (KenGen) under the State Department for Energy herein after referred to as Contracting Authority.

3. OBJECTIVE OF THE TRANSACTION ADVISORY SERVICES

The Contracting Authority (CA), with technical assistance from the PPPD wishes to procure the Karura Hydropower Dam Project through a competitive bidding process pursuant to Section 46 of the PPP Act, 2021. The Contracting Authority seeks the services of a Transaction Advisor (TA) to review and validate existing feasibility studies and update it to comply with the PPP Act, 2021; recommend the best PPP model for the procurement of the Project based on an analysis of several alternative technical and PPP models, develop transaction documents for the procurement, support project agreement negotiations and provide transaction advisory support through to financial close.

The objective of the assignment will focus on the following project preparation activities as detailed under Section 5:

a) Review the existing feasibility study and update them to comply with the requirements of the PPP Act, including assessing PPP options, proposing output specifications based on developed reference design and ensuring that the analysis explicitly assesses and confirms Value for Money (VFM) for the proposed PPP structure.
b) Preparation of Financial Model, assessment of resultant tariff and affordability. Quantifying VGF if necessary, to achieve affordability.
c) Preparation and finalization of procurement documents including the Request for Qualification (RFQ) (Prequalification Questionnaire, if necessary) Request for Proposal (RFP) (including competitive dialogue phase, if chosen), and the Invitation to Submit Binding Offers, Project Agreement, and its annexes including Technical Specifications and any other schedules relevant to a Project.
d) Assistance in obtaining all necessary approvals of project documents.
e) Undertake Environmental and Social Safeguards assessments in accordance with Annex 1.
f) Support in conducting a competitive PPP procurement process as per the PPP Act, Cap 430 of the Laws of Kenya including preparation of bid documents.
g) Active participation in structuring of the PPP for well-balanced risk allocation and bankability.
h) Active participation in bid review, evaluation and scoring and provision of guidance, wherever needed, in particular during the dialogue with bidders and their lenders. Data room design and documentation, if needed.
i) Support commercial close activities entailing supporting ne signing of Project agreements.
j) Support in achievement of financial close entailing signing of the financing agreements including negotiating any government support measures such as Letters of Support.

k) Develop the contract management framework for the Project and conduct training of the Government personnel (management and other key staff) for PPP procurement, monitoring and management to international standards in the respective areas.
l) Throughout all stages the TA will support, as appropriate, in securing the necessary approvals for the project.

The project preparation activities must meet all the relevant requirements and standards based on industry best practices. As an integral part of the scope of works, the TA will advise on the institutional and organizational framework and capacity building requirements for transaction implementation and subsequent PPP contract management and will ensure knowledge transfer and capacity building of the Contracting Authorities team, to ensure capacity is developed on power project PPP transaction implementation and PPP contract management.

Domestic Capital Mobilization

Kenya's local financial markets - local capital markets, pension funds, local banks and insurance sector - collectively represent a reliable and critical source of long-term capital for financing infrastructure development. The size, stability, and growth of these sectors position them as essential partners in providing the patient capital necessary for large-scale, transformative infrastructure PPP projects that align with Kenya's Vision 2030 goals. The pension industry has an accumulated asset base of approximately KES 2 trillion while the insurance sector has an asset base of KES 1 trillion. The pension sector has previously invested in PPPs and the Government of Kenya is keen on increasing mobilization of local institutional capital into PPP projects. Leveraging local financial markets is essential as it reduces reliance on external debt, mitigates forex risks, increases project acceptability thus mitigating political risk and strengthens the capacity of domestic institutions.

This policy direction has since been affirmed by Government, following its decision to establish the National Infrastructure Fund as a vehicle for mobilizing blended public and private financing for strategic national infrastructure projects. This underscores the Government's commitment to unlocking domestic capital markets and strengthening Kenya's financial sovereignty in the delivery of infrastructure.

Consequently, in structuring the Karura Hydropower Project, the Transaction Advisor is expected to explore means of mobilizing local capital to contribute to the sources of capital where possible.

4. THE TRANSACTION ADVISOR TEAM

The Transaction Advisor (TA) will be a firm or consortium of firms, collectively covering the range of financial, technical, environmental, legal and other expertise required to procure the Project through a PPP transaction. The firm requirements are as specified in this TOR.

The TA will provide all needed support, inputs, documentation, services and content for all phases of the Project to achieve successful financial close as detailed in Section 5 below.

5. SCOPE OF THE TRANSACTION ADVISORY WORK

This section describes the minimum required tasks to be performed by the TA, as an example, without in any way limiting the scope of activities the TA may need to fulfill in order to achieve financial close.

The scope of work is divided into three phases, namely:

Phase I: Review and update of the existing Feasibility Study including updating land acquisition and resettlement strategy where needed and supporting in acquiring all the PPP approvals needed for this stage of the project.

Phase II: Development of the Transaction Documents, tender process organization, and support on transaction implementation through to Financial Close.

Phase III: Project Based Learning. This entails capacity building for the Project Implementation Team (Contracting Authorities & PPP Directorate), including knowledge and skills transfer. This phase shall be implemented simultaneously with phases I and II.

The Consultant shall develop an integrated implementation plan for the Assignment and coordinate its implementation. This will entail, but not be limited to, the following:

- Developing a detailed approach, methodology, work plan and timeline for implementing the Assignment that is consistent with the approach and methodology.
- Presenting an integrated approach to the Government.
- Preparing a list of documents and key meetings with stakeholders required for implementing the Assignment.

The TA shall capture all the above activities in an **Inception Report.**

PHASE I: FEASIBILITY STUDY AND PROJECT IMPLEMENTATION SCHEDULE

The Transaction Advisor is expected to update an existing feasibility study (to be provided to the selected bidder) and complete the feasibility study to comply with the PPP Act. The feasibility study is intended to answer the following four key questions:

1. Is the project viable – from a technical, economic, social, environmental and financial perspective? This should include an assessment of affordability for the end user and the public sector, including an assessment of the tariff requirements for the project based on power generated and project costs.
2. What is the preferred technical solution to achieving the Project's objectives vs. other options which will need to be considered?
3. What is the most appropriate form of PPP for the project as defined by the proposed responsibilities of the private sector, and the key risk allocation.

Task 1: Project Feasibility Assessment

The Transaction Advisor shall be provided with the existing feasibility that was previously conducted by GOK for the project. The Transaction Advisor shall be required to build upon the existing feasibility work by undertaking the following tasks:

Task 1.1: Review and update existing technical assessments

The TA shall assess technical configurations and commercial structuring options for the Project, building upon the existing feasibility work undertaken. The Study shall evaluate projected market demand for the power to be generated, including demand forecasts and revenue implications.

In detail, the TA will undertake the following:

a) Validate and update the existing Feasibility Study to a standard that provides a sound basis for determining Project Feasibility and satisfies the requirements of the PPP Act.
b) Define preliminary technical performance outputs including the capacity of the power plant, electrical energy generation, system efficiency and operation stability indices, , availability factor, load factor, heat rate, gross and net generation. Develop risk matrix and analysis and develop a comprehensive Technical Risk Register identifying and assessing key technical risks including construction, design, operational, hydrological variability, permitting, and market interface risks, and recommend an appropriate allocation of such technical risks among the Government, the prospective Private Partner, and other relevant stakeholders in accordance with PPP best practice.

c) Prepare a preliminary Operations and Maintenance (O&M) Plan for costing purposes including staffing, maintenance cycles, dam safety monitoring, and energy consumption assumptions and evaluate related cost-sharing mechanisms.
d) Review existing power demand studies, current and projected power generation mix and assessments of future energy requirements, including justification for development of proposed hydropower capacity for the project.
e) Verify and assess the power generation potential, hydrological data, and associated technical studies.
f) Identify key hydrological, operational, and structuring risks arising from existing studies and update the same to address any such risks.
g) Carry out a grid stability study, including updated evacuation plans, grid connection details, and system integration requirements.
h) Prepare reference designs for the project and its assess cost estimates.
i) Consider alternative structuring options, including integrated generation and transmission versus disaggregated models.
j) Recommend the appropriate installed capacity and update the same to address any such risks and advise whether there is need for phased development of the Project.
k) Examine the tariff regime applicable to the project and evaluate whether it is capable of supporting the investment costs of this Project, taking into account whole project lifecycle cost analysis.
l) Advice on the optimal financing structure that meet PPP suitability criteria while remaining within end-user affordability threshold.
m) Carry out site investigations comprising of geotechnical investigations, topographical surveys

Lifecycle Costing and Commercial Viability

a) The TA shall estimate the full lifecycle costs of the Project based on:
    I. Preliminary outline engineering designs (reference designs developed by the TA) and estimated construction and operations & maintenance costs;
    II. Any proposed phasing of capital expenditure;
    III. Maintenance, management, and operating costs, taking into account current maintenance practices and regulatory requirements;
    IV. Asset replacement and major maintenance schedules; and
    V. Economic life of the facilities.
b) Evaluate integrated versus separate commercial models for the power and irrigation components.
c) Examine the tariff regime for the project and evaluate whether it is capable of supporting the investment cost of this project in particular taking into account the life cycle cost analysis above while identifying commercially viable components and components that would require viability gap funding.

d) Assess overall project bankability under alternative structuring scenarios.
e) Design and structure an indicative and optional stapled financing, ensuring that financing terms are transparent, competitive, and market-tested.
f) Present the optional stapled financing to all prequalified bidders as part of the RFP, ensuring neutrality, non-exclusivity, and standardized access.

Ancillary and Auxiliary Revenue Assessment

The Study shall identify and evaluate additional revenue streams where possible and commercial development potential capable of enhancing overall project bankability and financial sustainability, including but not limited to:

a) Climate finance and carbon credits;
b) Reservoir-based tourism and eco-tourism development (recreation facilities, lodges, water sports);
c) Aquaculture and fisheries within the reservoir; and
d) Biodiversity offsets or conservation finance mechanisms.

Task 1.2: Project Due Diligence

The Project Due Diligence will evaluate the feasibility of the Project, based on the preferred Technical and Commercial configuration determined above. This due diligence will cover:

i. Economic and Social Cost Benefit Analysis.
ii. Financial Viability.
iii. Legal and Regulatory due diligence.
iv. Technical and Site due diligence.
v. Environmental and Disaster Risk Assessment.
vi. Risk identification and analysis.
vii. Social impact assessment, land acquisition strategy and resettlement action plan.

Task 1.2.1 Economic and Social Cost Benefit Analysis (ECSBA)

The ECSBA will comprise both a qualitative and quantitative assessment of the economic and social costs and benefits of the proposed project, including a determination of the Economic Internal Rate of Return for the project.

The TA will conduct a comprehensive economic analysis (including externalities) of the Projects. As part of this analysis, the Consultant shall calculate the Economic Internal Rate of Return ("EIRR") of the Projects along with accompanying justifications and clarifications. Methodology and methods to be used will be made clear (e.g. the least cost methodology, the with-and-without projects methodology, cost-benefit analysis (CBA), contingent valuation, etc.).

Task 1.2.2 Financial Viability Assessment

The TA will develop a Project Financial Model and will evaluate the following:

i. The Financial Viability of the Project including determination of Project and Equity IRRs
ii. Project Financing Needs – up front and recurring as driven by Capex requirements
iii. Project Funding Needs – assessment of annual funding requirements to cover O&M, debt service and other recurring costs
iv. Revenue requirements – assessment of revenue requirements to cover the Project's Funding Needs
v. Revenue Sources – necessary tariff levels required to support various levels of IRR, the potential need for public sector funding support for the Project – quantum, form, timing, delivery
vi. The Affordability of the Project for consumers and the public sector
vii. The potential fiscal impact of the Project
viii. The project tariff requirements supported by **Tariff modelling** to assess affordability for consumers & EPRA compliance
ix. FOREX risk analysis

The TA will be required to develop a Public Sector Comparator ("**PSC**") and a shadow bid model to undertake a Value for Money ("**VFM**") analysis of the Project. The TA shall compute the Fiscal Commitments and Contingent Liability (FCCL) impact of the Project.

Task 1.2.3 Legal Due Diligence

The Legal Due Diligence will examine the complete applicable legal, regulatory and institutional framework within which the Project will be implemented in order to identify any impediments to Project implementation and advise how any such impediments should be addressed.

The due diligence will also examine the implications of alternative forms of procurement and alternative PPP structures which will be considered in Task 2 and will identify a legally sound approach for the establishment of the preferred PPP approach.

A general outline of parameters governing suitable PPP models shall be presented, based on international best practice and specific local circumstances. This will include and commence with a high-level analysis of principles paramount to those PPP options from both the viewpoint of a potential investor as well as the public party, leading onto the local legal implications of the identified and preferred PPP models. Parallel to that, the existing regulatory and institutional framework will be assessed as to its actual effectiveness and as

to its ability to accommodate the envisaged future PPP option, identifying any deficiencies and cornerstones of the current/future regulatory set up.

The TA will, inter alia, carry out the following tasks:

1. Review applicable national and county legislation, regulations, administrative issuances, policies and institutional arrangements relevant to the Project and proposed PPP structures. In reviewing applicable law the TA should consider among others the following:
    i. Water rights and abstraction permits
    ii. Riparian and reservoir zoning compliance
    iii. Alignment with Energy Act 2019 licensing (Generation License & PPA compliance)
2. Legal due diligence to identify legal risks, constraints, and required approvals for project implementation; assess the viability of alternative PPP structures for the project, including the Contracting Authorities' capacity to manage and monitor the project once operational, while identifying the gaps in the legal and regulatory framework and recommend required governance, institutional or regulatory improvements.
3. Develop a permits and approvals schedule outlining a legal pathway for land acquisition (Land Act + NLC procedures).
4. Provide legal structuring support by translating the agreed risk allocation framework into enforceable contractual provisions, providing legal input into the Heads of Terms, and advising on government support instruments and contingent liability implications.
5. Provide support for procurement documentation by drafting and/or reviewing the RFQ and RFP from a legal compliance perspective, drafting and/or reviewing the PPP/Project Agreement, Power Purchase Agreement (PPA) and all related agreements, ensuring consistency across the contractual documentation suite, and supporting bidder clarification processes and issuance of addenda.
6. Provide negotiation and financial close support by participating in negotiations with bidders and the preferred bidder, incorporating negotiated outcomes into the final agreements, reviewing financing documentation to ensure alignment with the Project Agreements, supporting preparation of documentation required for statutory and regulatory approvals, and coordinating legal opinions required for financial close.
7. Support contract management preparation by developing a PPP contract management framework and preparing legal compliance guidance and checklists.
8. Formulate appropriate institutional arrangements and contractual structure for the Project taking into consideration the roles and responsibilities of KenGen,

PPP Directorate, other Government agencies & entities (e.g., KETRACO, KPLC, APRA and WRA), county governments, private sector, and other stakeholders, including consumers and public at large.

9. Provide advice on appropriate Institutional and Organizational Framework and Capacity Building needs for project procurement and subsequent contract management – including advice on:
    i. public sector side procurement management and procurement steering arrangements
    ii. resourcing, training and capacity building needs for the public-sector side
    iii. operational arrangements between public sector side and advisers during procurement
    iv. contract management arrangements
    v. resourcing, training and capacity building needs for contract management function
10. Prepare terms of reference for Independent Engineer required under PPP Act, 2021 to assist during project implementation
11. Assist in resolving legal issues associated with the management of the social, economic and environmental impacts of the project in a manner consistent with the Constitution of Kenya (2010) and other relevant national and county legislation, taking into consideration international best practices.

Task 1.2.4 Site Due Diligence

The TA will carry out a due diligence on the Project site with a view to identifying any impediments to Project implementation and advising on how such impediments should be addressed, covering, inter alia:

i. Land requirements and availability
ii. Title, rights of way, easements, encumbrances
iii. Site access and construction logistics
iv. Resettlement
v. Land acquisition process and costing
vi. Existing utilities and infrastructure constraints
vii. Required permits and approvals related to site development

Task 1.2.5 Environmental and Social Safeguards Sustainability

The TA shall review the already undertaken Environmental and Social Safeguards assessments for **Karura Dam Project** and update the studies to comply with the scope,

methodology, safeguards strategy and deliverables prescribed under Annex 1 (Environmental, Social and Land Acquisition Studies).

Environmental and social safeguards shall follow a structured two-stage approach:

a) Government-Led Safeguards activities to be undertaken by the Transaction Advisor in accordance to this section of the TOR and Annex 1. The TA shall review the already undertaken Environmental and Social Safeguards assessments for Karura Dam Project and update the studies to comply with the scope of Government-Led safeguards activities under Annex 1
b) Private Partner-Led full Statutory ESIA to be undertaken by the Concessionaire or Private Party upon commercial close, in compliance with applicable law. This will not be undertaken by the Transaction Advisor.

All E&S outputs shall inform the Feasibility Study Report, project structuring and risk allocation, and be integrated into the PPP procurement documentation (RFQ/RFP and draft PPP agreements), consistent with **Annex 1**.

All E&S work shall be undertaken in accordance with:

a) Kenyan environmental law and NEMA requirements (including EMCA and subsidiary regulations);
b) Applicable international E&S standards where relevant to project financing (including IFC Performance Standards and Equator Principles, where applicable); and
c) The **Environmental, Social and Land Studies framework set out in Annex 1** to these Terms of Reference, which forms an integral part of this assignment.

Task 2: Procurement Options and PPP Structure Analysis

Having established the Project Feasibility, the TA will determine the optimum way of procuring the Project through Public Private Partnership framework and the most appropriate PPP arrangement for implementation of the Project. In the analysis the TA must consider all infrastructure which needs to be developed for the Project; including generation assets, transmission assets, access and supporting infrastructure, the Dam, recognizing that different procurement and PPP options may be appropriate for different types of infrastructure.

Task 2.1: Options Development, Evaluation and Selection

The TA will:

1. Describe a range of credible alternative procurement and PPP options including justification for their selection. Options must include Public Sector Comparator. For each option the TA will set out:
    i. The key roles and responsibilities of the private sector and of the public sector
    ii. The key risk allocation under each option
2. Develop, describe and justify a set of evaluation criteria to be used in evaluating alternative procurement and PPP options to include, inter alia:
    i. Value for Money assessment. The Value for Money assessment is expected to examine both the choice between traditional public sector and PPP procurement, as well as alternative risk allocations between the alternative PPP options. The report should present clearly how the Public Sector Comparator Model, the Risk Adjusted Public Sector Comparator Model, the PPP Reference Model and the Risk Adjusted PPP Reference Model have been developed and populated with data
    ii. Affordability for users and the public sector
    iii. Assessment of Fiscal Impact including any contingent liabilities for the public sector
    iv. Private sector feedback on attractiveness, bankability and risk allocation, based on a Preliminary Market Sounding amongst potential operators, developers, investors and financiers
3. Present the results of the Evaluation
4. Provide a detailed description of the preferred Procurement Option and PPP Structure, including:
    i. Key Risk Allocation
    ii. Outline Payment Mechanism/ Tariff arrangements
    iii. Indicative Financing Structure and sources – private sector bank debt, multilateral debt, public sector debt, project bonds, grants (indicate source), developer equity, other (specify)
    iv. Key Heads of Terms for the proposed PPP Structure

In support of the Options Analysis, the TA will:

1. Develop a detailed and comprehensive Financial Model
2. Carry out Market Sounding to determine the optimal risk allocations/ PPP structures

Task 2.2: Financial Modeling

The Transaction Advisor is expected to build a detailed and comprehensive Financial Modeling developed. In particular, the financial model is expected to include:

i. The Economic Cost Benefit Analysis of the Project and Alternative Technical Solutions (Task 1.2.1)
ii. The Financial Viability Analysis, including but not limited to the determination of revenue requirements to meet Project Funding needs, the determination of necessary tariff levels, the evaluation of affordability for both user pays and public sector pays models, including fiscal and public sector borrowing impact (Task 1.2.2)
iii. The Project's Financing requirements and the evaluation of alternative financing structures and sources (Task 2.1)
iv. An evaluation of alternative procurement options and PPP options, including Value for Money analysis (Task 2.1)
v. The detailed design of the Payment Mechanism/ Tariff arrangements. This shall be supported by a **Tariff Modelling** to assess affordability to consumers and EPRA compliance
vi. Sensitivity analysis for the purpose of quantifying the financial impacts of different structuring options
vii. Fiscal and Contingent Liability Computations of the base case.

In the implementation phase the Financial Model shall act as a shadow Bid Model and assist in evaluating bids and their robustness.

The Financial Model will be used to analyse the market potential for private sector investors and lenders, assess the financial risks involved for both the public and the private parties, assess the impact of various project inputs on the earnings and net cash flow potential and compute the refinancing mechanisms of capital expenditure costs.

The Financial Model will be used to compare alternative Project procurement and PPP options, and propose an optimized project structure for the transaction from the financial point of view.

The Financial Model should be designed to provide for analysis of project structuring options including the imposition of appropriate project financing constraints including, but not limited to, debt service coverage ratio (DSCR), Loan Life Coverage Ratio (LLCR) and Project Life Coverage Ratio (PLCR) which optimize scenarios for the disbursement of available projected cash flows to potential project creditors and other ratios.

In detail, the TA will undertake the following comparative financial analyses of the Project:

1. Review and discuss applicable approaches for enhancing the project's attractiveness to both investors and their lenders/financing institutions, such as Viability Gap Funding (VGF) and/or operational subsidies, fee payment mechanisms, performance guarantees including Take-or-Pay provisions in the Power Purchase Agreements (PPAs), pre-conditions of a private operator for meeting service obligations, as well as specific default and risk clauses, and step-in rights of lenders and the contracting authority.
2. Conduct a project risk analysis to determine, assess, allocate and manage risks (such as, but not limited to project, commercial/market risk, environmental, financial, political, economic, force majeure and legal risks) during all project stages. The risk analysis should cover valuation, allocation and mitigation measures. In doing so, assessment and applicability of various risk mitigation mechanisms should be carried out, including review of the extent to which the risks of the project can be underwritten by commercial insurance cover and the likely cost of such cover.
3. Based on the risk analysis, prepare a contingent liability model for use by the PPPD, KenGen and ultimately the Public Debt Management Office that quantifies the contingent liabilities, how the same shall be managed and the funding requirements.
4. The project's risk analysis and allocation and contingent liabilities model shall be presented to representatives of the Contracting Authorities and the PPP Directorate soon after the submission of the Feasibility Study.

In their proposals, Bidders should describe in detail the structure and functionality of the Financial Models they would develop and also the methodologies and tools they would employ in carrying out the necessary financial analysis.

Task 2.3: Structuring

The TA shall undertake a detailed risk analysis, and recommend a structure that is allowabble under the PPP Act, robust and bankable for the Project. This will entail the following:

a) Reviewing the existing risk analysis and allocation matrix, payment mechanism, value for money assessment, and key terms and conditions for similar environmental Project.
b) Preparing a Detail Risk Register capturing the different risks of the Project along with recommended approaches for risk avoidance, mitigation and allocation.
c) Providing technical, legal, environmental and social, commercial and financial inputs to the risk register.
d) Devising a payment mechanism that aligns with the risk analysis and output specifications of the Project while ensuring it is bankable to lenders and viable for the private sector.

e) Recommending suitable payment and security mechanisms to improve the Project's bankability.
f) Assess if the project will need VGF and if need be, conduct a tariff sensitivity analysis to achieve commercial viability from a socially acceptable tariff.
g) Analyzing different PPP options suitable for the Project and recommending the preferred option.

Task 2.4: Market Sounding

To enable the preparation of a responsive Feasibility Study Report, the TA shall undertake a Market Sounding exercise that shall include the following tasks:

a) Organize a meeting with the CAs officials to provide an overview of the approach to market sounding.
b) Prepare a Market Sounding document that will include a Project Profile (which will cover the objectives of KenGen, an overview of the Project, the process and timetable for procurement, outline Risk Allocation), as well as a summary of the key issues to be discussed with and questions to be asked of the market, i.e. equity investors, debt financiers, contractors and operators, the process of how the market sounding will be conducted, the proposed list of parties to be approached
c) Provide the Project Profile to the identified private parties and hold discussions with them, either telephonically, or if practical and cost effective, face to face
d) Organize and participate in a half-day workshop with the CAs and other stakeholders to review findings of the market sounding and determine key areas that will need consideration in preparing the Feasibility Report;
e) Prepare a Market Sounding Report (which will form an appendix to the Feasibility Study) that will summarize the findings from the exercise and will consist of, but is not limited to, the following information:

    i. Market sounding objective;
    ii. Key issues that needed to be considered;
    iii. List of companies consulted;
    iv. List of questions with answers from the one-on-one sessions;
    v. Summary findings and matters considered in the Feasibility Report and;
    vi. A Lender's Market Feedback Analysis Report.

In summary, the TA will organize consultation discussions with potential market participants including, but not limited to, potential developers, operators, equity partners, investors, lenders and guarantors to fulfill the market sounding requirements. The conclusions drawn from these consultation meetings shall be taken into account in the preparation of the feasibility report and in designing the PPP transaction structure.

Task 2.5: Summary Recommendations, Project Implementation Plan and Feasibility Study Report

The TA will prepare a comprehensive Feasibility Study Report in accordance with the requirements of the PPP Act. This Report will present the analysis carried out, the conclusions reached and the recommendations made concerning the Project Feasibility and the preferred method of procurement including recommended PPP structure, as well as legal, regulatory, institutional, financial, funding, tariff, structure, environmental, social and risk allocation recommendations necessary for the successful implementation of the Project.

a) The Report will include a complete description of the Project as structured, based on the recommendations contained in the Report, covering:

b) A summary of how the proposed PPP project addresses CAs' strategic objectives and its consistency with the sector's master plans;
c) A summary of the output specifications for the Project;
d) Other potential commercial activities that the PPP Company may undertake to augment revenues and lessen the fees charged to the off-taker;
e) A list of significant Government assets which will be used for the Project (such as land and existing structures, access roads, transmission lines, power sub-stations, etc.);
f) A summary of the fiscal implications and potential contingent liabilities for the public sector;
g) A detailed description of the type of PPP project proposed and its envisaged payment mechanism/ tariff regime
h) A detailed description of the proposed Key Risk Allocation;
i) Draft Heads of Terms for the Project Agreement;

The Report will also include a detailed Project Implementation Plan which will set out a clear timetable for the Project Implementation and will cover all the tasks required of all parties to procure the Project, identifying: Tasks, Timing, Responsibilities for each task, and the Key approval/ decision points and milestones.

Task 3: Support to KenGen on Securing PPP Committee Approval and All Other Government Approvals

The Feasibility Study Report will be submitted in the first instance to KenGen and the PPP Directorate, and subsequently to the PPP Committee through PPP Directorate. The TA shall assist the CAs to address all PPP Directorate concerns and provide address requested clarifications if any to facilitate approval by the PPP Committee and any other relevant government entity including Energy and Petroleum Regulatory Authority (EPRA).

If it is determined at the feasibility study stage that the project will not be implemented under PPP arrangements, the consultancy services shall be deemed to have been completed under the contract and the Transaction Advisor shall be paid for the milestone(s) completed. The PPP Directorate shall not be liable for any further payment and the contract shall terminate.

PHASE 2: PPP PROCUREMENT

The TA will work with the CAs to implement the PPP procurement process in accordance with the PPP Act.

The TA is expected to provide complete project management of the entire procurement process, including identifying and managing, together with the CAs, the tasks of all parties required for successful procurement implementation.
The work of the TA will include, inter alia, the tasks described below:

Task 1: Approval and administration of the bidding process

The TA must prepare a complete set of procurement documents, complying with applicable law and other relevant policies and guidelines. The following steps and deliverables are envisioned, subject to the TA's recommendations in the Feasibility Study and the requirements of applicable law and related regulations.

The TA must also provide KenGen with all the necessary drafting, bidder communication and administrative support necessary for the entire procurement process through to financial close to be conducted in accordance with law and policy, and to the highest standards of efficiency, quality and integrity.

Task 1.1: Detailed Procurement Plan

The TA will design a complete procurement plan and process, based on applicable procurement requirements, including:

a) Advice on optimum bid strategy and bid criteria

b) Advice on mechanisms to maximize competition while avoiding unrealistic bids and project vulnerability from overly aggressive bidding.

c) Review of information to be provided by KenGen to bidders to manage third party liabilities. Recommending the documents to be shared with the potential bidders along with the Tender Documents.

d) Design of pre-qualification and bidding procedures and evaluation criteria including advice and justification on the best-value bidding parameter, including, but not

limited to least cost/NPV, least viability gap funding, lowest average tariff, shortest concession period, lowest operating subsidy, highest concession fees, etc

e) Design of key aspects of the tender procedure, for example the number of stages in the process, use of competitive dialogue, deciding whether and to what extent to accept variant bids and non-conforming bids, how many bidders must bid before the process is valid, what rules to set in relation to the assessment of bids (scoring regimes, timing of bids and rejecting of excessively low bids) and how to maximize competition without sacrificing quality of bids.

f) Design of the bidder communication strategy, including marketing, road shows, bidder conferences, data room creation and management (actual and virtual), dialogue meetings, and mechanisms to gather bidder comments and concerns and resolving them.

g) Information Memorandum and other marketing materials

h) Tender documentation

i) The PPP contract (including all annexes) that implements the chosen PPP approach:

    i. applying the risk matrix and heads of terms developed during the Feasibility Study, updated, if needed, to address all project issues and market context,

    ii. incorporating, as appropriate, the outputs from the financial model,

    iii. explaining to the CAs whether and to what extent certain provisions could be amended (eg in the process of negotiations) without disturbing the key risk allocation goals of the CAs,

j) All advice shall be compliant with applicable law (and considering any constraints or opportunities associated with applicable law), international best practice and market feedback.

The TA will prepare and deliver a draft procurement plan to KenGen, and subsequently a final procurement plan. The TA will conduct workshops with the Project Implementation Team (KenGen and PPP Directorate representatives) to explain risk assessment and allocation, the procurement plan and the roles and responsibilities of all parties.

Task 1.2: Pre-qualification

The TA will design and administer a pre-qualification (request for qualification (RFQ)) process with the intention of:

a) ensuring that CAs' objectives and requirements are communicated clearly to the market

b) determining the extent and nature of interest from the private sector

c) pre-qualifying a competitive number of competent bidders in an equitable and transparent way.

The desired result is that every pre-qualified bidder is capable of implementing the Project to the standards required and considering the risk allocation established in the Feasibility Study. The TA will:

a) prepare all the necessary RFQ documentation, including advertising and marketing material;

b) set up and administer the process by which the CAs can pre-qualify the parties, including responding to questions and interfacing with bidders; and

c) help the CAs evaluate and pre-qualify bidders.

As part of this process, the TA shall develop a tightly focused promotional campaign for the Project, which may include (based on the advice of the TA) short press briefings, advertisement inserts to be published in international trade publications and business newspapers, followed up by the targeted marketing of identified companies.

Prequalification submissions will be evaluated in accordance with the Act, and the TA will prepare a Prequalification Evaluation Report for approval.

Task 1.3: Bid Evaluation Criteria and Tender Process Design

The TA will:

a) design a suitable bid evaluation process and criteria;

b) design a suitable tender process that will help ensure compliant, high quality and comparable bids;

c) devise effective systems for communicating with bidders during the tender process; and

d) inspire market confidence.

If appropriate, a system that allows for variant bids and a best and final offer (BAFO) may be designed.

Task 1.4: Request for Proposals (RFP)

The TA will prepare an RFP document in accordance with best industry practice and applicable laws and regulations, consistent with the results of the Feasibility Study. The RFP must concisely set out:

a) design criteria

b) the output and performance specifications

c) requirements for compliant bids

d) a risk profile as established in the feasibility study

e) stapled financing option with proposed sources of financing taking into consideration Section 2.3 on Domestic Capital Mobilization

f) the payment mechanism

g) tariff arrangements

h) the bid process

i) evaluation criteria

j) bidder communication systems and procedures

k) bid forms – technical and financial bid submission forms, bid letter, statement of compliance etc

l) all other information necessary to ensure compliant, high quality and comparable bids.

The TA shall assist in discussions with local institutional capital providers, multilaterals and DFIs willing to provide stapled financing for the project.

Task 1.5: Draft PPP Project Agreements

The TA will prepare a draft PPP Project Agreement and related agreements (eg Power Purchase Agreement, Direct Agreement, Shareholders Agreement, ToR for Independent Engineer/ Expert), in close liaison with the CAs, implementing the risk allocation regime and using best practice to maximize competition and minimize project costs, while protecting the CAs' interests, particularly regarding project implementation and manageability over the term of the project. The TA shall also develop the proposed PPP governance and contract management framework for the Project.

The project agreement will include all necessary annexes and subsidiary documentation, such as: Output specifications, Performance specifications, service levels, project scope, CAs requirements, technical specification, project performance monitoring regime, insurance requirements, independent expert agreement, Lenders' direct agreement, Power Purchase Agreement (PPA), Handover Requirements, and any other direct agreement between any public authority and the private party and/or its lenders

Task 1.6: Necessary Approvals

The TA will compile all documentation necessary for the CAs to obtain the approvals required to enable the procurement process to begin, including the AG's office if necessary and the PDMO in the event that the estimated fiscal commitment and contingent liabilities have materially changed from the Feasibility stage.

Task 1.7: Administration of the Bidding Process

The TA will provide all necessary support to the CAs for the efficient and professional management of the bidding process. This includes managing a data room, facilitating structured engagement between the TA, KenGen and bidders, helping the CAs communicate effectively with bidders (including responding to bidder queries, managing bidder conferences and one-on-one/ dialogue meetings), amending documents further to bidder comments, receiving bids, helping in bid evaluation processes, etc.

Task 1.8: Evaluation of Bids, updating of Value for Money and Fiscal Commitment/ Contingent Liability Evaluation

Bids will be evaluated with the support of the TAs in accordance with the PPP Act and with the framework for bid evaluation developed earlier.

Value for money, affordability, fiscal impact, and potential contingent liabilities must be reassessed for the received bids.

The results of the bidding and evaluation of bids must be presented in a single bid evaluation report (with relevant annexures) that demonstrates clearly how value for money will be achieved by the preferred bidder and the implications of the preferred bid on affordability, the fiscus and public sector contingent liabilities. The TA will provide this report and any other documents required by law, in the form and content sufficient to secure the approval of the selected preferred bidder. The report must clearly indicate the preferred and second-ranked bidders.

Task 1.9: PPP agreement, Power Purchase Agreement (PPA) negotiations, PPP agreement management plan

The Consultant shall assist the Contracting Authorities and the PPP Directorate in its negotiations with the preferred bidder until the signing of the Project Agreements ("**Commercial Close**"). The Consultant shall include assisting in drafting and negotiating Power Purchase Agreement (PPA) and all other associated agreements as will be recommended and developed by the TA.

The Consultant will assist with the negotiations with the preferred bidder to reach an agreement on outstanding elements of the Project Agreements. In case negotiations are not successful, the Consultant will support the Contracting Authority and the PPP Directorate in negotiations with the reserve bidder (second-highest-scoring bidder) in the same manner.

The TA will assist the CAs in final negotiations with the preferred bidder (if any). This will involve:

i. Draft the negotiation criteria to guide the Contracting Authorities and the PPP Directorate in negotiations with the preferred bidder;

ii. Evaluate the terms of negotiation proposed by the preferred bidder from the perspectives of impact on the Government risk profile and the sanctity of the procurement process.

iii. Assist the Government in negotiating with the preferred bidder by recommending the positions to take on the terms being negotiated (including categorising issues appropriately, developing timelines for completion, and planning negotiation tactics) and drafting suitable responses subject to approval by the Government.

iv. Review and advice on technical, legal, financial and accountable aspects of the project's contractual documentation and other proposals made by the preferred bidder.

v. Amend the Projects Agreements and any other relevant agreements consistent with the final outcome of the negotiations.

vi. Review proposed sub-contracts, in particular with construction contractors and operators, and ensure conformity with the PPP Project Agreements and the Procurement Documents.

vii. Document any agreed changes to the technical provisions arising out of negotiations and implement them in the final contract documents as appropriate.

viii. Advice on public and private sector satisfaction of the conditions precedent to the PPP contract, often including the validity of licenses and permissions obtained by the preferred bidder, formation of corporate vehicles in the form required, financial close of the project financing, and implementation of the commercial requirements for performance of the project,

ix. Manage relationships with second-ranked and third-ranked bidders, including managing bid bonds and ongoing discussions to prepare for the eventual withdrawal of the preferred bidder,

x. Assist the Contracting Authorities and the PPP Directorate in validating the contracts as needed.

xi. Manage the preparation of the execution versions of the Project Agreements and any other relevant agreement.

xii. Assist in monitoring the obligations of the Government under the Project Agreements and recommending actions to the Government to ensure they are met.

xiii. Assist the Contracting Authorities in evaluating requests, if any, raised by the Private Party that are meant for achieving Financial Close and recommending suitable responses.

xiv. Support the Contracting Authorities and the PPP Directorate in the discussions about the Lenders' Direct Agreement (legal and financial) and eventual amendments to the Project Agreements.

xv. Manage and assist with additional sets of negotiations with lenders. This may involve extended discussions of Government financial participation to protect the lenders from specific risks.

xvi. Review and negotiation of the financial documentation (which will often have a direct effect on the rights and obligations of the Government Legal opinions as required e.g. that transaction is binding on its terms, on security and financial management structure, on revenue structure and current regulatory mechanism.

xvii. Assist the Contracting Authorities and the PPP Directorate in the finalisation of all financial documentation necessary to reach the financial close of the project in a timely manner and, in the discussions with the Private Party and its potential Financiers, advising the Contracting Authorities for the CAs' best interest in order to preserve the general balance of risks and responsibilities.

xviii. Coordinate with the other advisors for the Private Party as required, if any, managing the achievement of conditions precedent and making sure that the Contracting Authorities have met all conditions precedent that must be satisfied to achieve Financial Close.

xix. Review the Private Party's audited financial model and verify that the adjustment required in payments is fair and the process of adjustment is followed. The financial model will be updated and adjusted at financial close / signing of financing agreements with the relevant data such as the latest macroeconomic values and long-term swap rate wherever necessary and appropriate.

The TA will ensure that all agreements reached are incorporated into all the financial, commercial and legal documentation, and will assist with drafting the necessary and related correspondence.

The final terms of the agreement, each as negotiated with the preferred bidder, must be approved in accordance with the PPP Act. The TA will be responsible for compiling the necessary submissions for the CAs to secure this approval.

The TA will, in close liaison with the CAs, draft a comprehensive Contract Management Framework for the CAs. This will include a clear, complete and easy to follow guide for the CAs on the implementation of the PPP Project, with mapping of the different rights and

obligations of all parties, including the role of the Independent Expert (IE) and guidance to the CAs on processes, remedies and mechanisms set out in the PPP contract, all other project agreements at law, and will be in accordance with the provisions of the PPP Project Agreements. The TA will be required to carry out a two-day training workshop with the CAs and other government stakeholders, including those who will form a part of the contract management team.

Task 1.10: PPP agreement signature, financial closure, and close-out report and case study

The TA will provide all necessary help to the CAs with all functions and activities related to signing the final Project Agreement and through to Financial Close. The TA must also compile a comprehensive close-out report and case study and must incorporate any additional factors that may be required by the CAs. The close-out report will be a confidential document of KenGen and the PPP Directorate. The redacted Case Study and Technical Feasibility Report will become a public document, made available on various government websites:

a) Monitoring the obligations of the Government under the Project Agreement and recommending actions to the Government to ensure they are met.
b) Assisting the Government in evaluating requests, if any, raised by the private counterpart that are meant for achieving Financial Close and recommending suitable responses.
c) Supporting the Contracting Authority and the PPP Directorate in the discussions about the Lenders' Direct Agreement (legal and financial) and eventual amendments to the Project Agreement.
d) Assisting the Contracting Authority and the PPP Directorate in the finalisation of all financial documentation necessary to reach in a timely manner the financial close of the project and, in the discussions with the concessionaire and its potential creditors, advising the Contracting Authority for the CA's best interest in order to preserve the general balance of risks and responsibilities.
e) Updating financial model to reflect executed financing agreements

The TA will also compile a comprehensive close-out report and will incorporate any additional factors that may be required by the CAs. The close-out report will be a confidential document of the CAs and the PPP Directorate.

PHASE 3: PROJECT BASED LEARNING (To run concurrently with Phases 1 and 2)

To ensure knowledge and skills transfer by the TA to KenGen and the PPP Directorate, the TA will be required to provide classroom-based and on-the-job capacity building to a

cohort of at least 30 No. Public officials comprising of the CAs and PPP Directorate (Project Implementation Team) at critical points of the project preparation process.

All bidders are therefore expected to enumerate a clear and deliberate approach, as to how knowledge and skills will be transferred to Project implementation Team and any other Project Teams that would be tasked to carry out various roles in the course of the preparation and implementation of the project to effectively manage the PPP contract and supervise the Project Company post Financial Close. In particular, the Project Implementation Team will shadow the respective TA expert teams at every stage of the PPP project preparation and structuring i.e. inception stage; feasibility study stage; pre-tender stage, tender and at project closeout stage.

6. TRANSACTION ADVISOR SKILLS AND EXPERIENCE

The Transaction Advisor (TA) shall comprise either a single firm or a consortium of firms and/or individual experts, collectively demonstrating the full range of required expertise, including public–private partnership structuring, design and engineering, hydropower development, Dam Engineering, large-scale irrigation systems, financial advisory, legal advisory, and environmental and social safeguards and Resettlement Action Plan. The Lead Advisor shall enter into contract with the Client (National Treasury). The Lead Advisor will be held accountable in terms of the Transaction Advisor contract for ensuring Project deliverables and for the professional conduct and integrity of the team.

Team members may not be changed or removed without the prior written approval of the CAs and the PPP Directorate, and replacement with someone at least as qualified and capable.

Qualification Requirements of the firm

The Consultant shall comprise either a single firm or a consortium of firms, led by a Technical Advisor (Design and Engineering Firm). The lead firm shall be responsible for overall coordination, integration of deliverables, and quality assurance across all workstreams. The Consultant (or consortium collectively) shall demonstrate the following skills and experience:

i. Experience in project structuring, financial analysis, financial advisory, procurement, and negotiations of PPPs or project financed projects in the energy sector with evidence of having led Transaction Advisory assignments on at least three (3) PPP/project-financed projects, with at least two (2) of these projects having achieved financial close. Additional credit will also be given to experience in Africa;

ii. Experience in project structuring, financial analysis, financial advisory, procurement, and negotiations of at least two (2) project financed hydropower projects or PPP hydropower projects. Each project demonstrated will earn two (2) marks with the maximum score for this requirement being four (4) marks;
iii. Experience in engineering, planning, technical designs, construction supervision and procurement for hydropower dam projects (only experience in the last 15 years will get credit, with preference given for more recent experience); Additional credit will be given to experience in Africa;
iv. Experience in the preparation of operations and maintenance schedules or experience in consultancy for operation and maintenance for dams, hydropower projects. (only experience in the last 15 years will get credit, with preference given for more recent experience); Additional credit will be given to experience in Africa;
v. Experience in commercial and contract law in undertaking legal feasibility studies, drafting PPP contractual agreements and other related documents/agreements for PPPs;
vi. Experience in structuring financing for infrastructure projects from institutional capital providers, such as pension funds or debt instruments in capital markets. Additional credit will be awarded for experience demonstrated on projects in Sub-Saharan Africa. A maximum of 3 marks will be awarded for this requirement, with 2 marks allocated for the core experience and 1 additional mark/credit for relevant experience in Sub-Saharan Africa;
vii. Experience in carrying out Environmental and Social Impact Assessments (ESIA); Environmental and Social Management Plans (ESMPs), Resettlement Action Plans (RAP) and related safeguards studies for at least two large dams, hydropower or water sector projects in Africa. Each dam experience is 2 marks.

NB: Under each of the experience criteria, firms are expected to clearly state relevant projects or transactions for the experience required, the country where the project was done, and the stage in the PPP project cycle where the firm reached with the project. This should be supported by relevant documentation (TA contract award letters, completion certificates, letters of recommendation or extracted relevant sections of the consultancy contracts etc).

Given the field-intensive nature of the assignment, the Consultant shall demonstrate the capacity to maintain a continuous and effective operational presence in Kenya for the duration of the assignment. This requirement may be satisfied through an existing operations office in Kenya or through a formal association with a Kenyan consulting firm (joint venture or sub-consultancy) with the relevant technical capability and experience sufficient. Evidence of such arrangements shall be provided in the proposal by the bidders.

Qualifications Requirements of Key Personnel

Bidders are free to propose their own team structure, however they are advised that the Contracting Authorities expects, as a minimum, the personnel specified as Key Experts under this section of the TOR

Bidders must propose distinct individuals for each key expert position; personnel cannot be duplicated across multiple roles. Bidders may propose two complementary (not alternative) CVs for one position if they do not have personnel with the full range of expertise required for such position. However, bidders must make it explicitly clear that this is what they are doing in order to ensure proper evaluation.

The Key Experts required are as indicated below and will be evaluated against the Expertise Expectations set out in the table below:

No.	Position	Expertise Expectations
1.	**PPP Expert/ Transaction Structuring Expert -Team Leader**	• A university degree in Finance, Management, Economics, Engineering, Law or any other relevant field. • Postgraduate qualification in PPP, Infrastructure Finance or Project Finance shall be an added advantage. • A minimum of 10 years' demonstrated experience in infrastructure project management and development, with at least 7 years providing PPP transaction advisory services/ development of large infrastructure projects on PPP basis including extensive experience in project structuring and risk analysis, allocation and management; project agreements; bid process management including preparation of bidding process documentation and post-bid process monitoring. • Successful preparation of PPP/project finance or IPP projects with at least three (3) financially closed projects, of which one (1) should be in the water sector. • Relevant qualifications and experience in power infrastructure development, operation & maintenance projects in general, and in developing countries in particular. • Experience in hydropower development, construction production/generation projects will be an additional merit. • Good English communication and writing skills,

		especially in report writing, are essential.
2.	**Dam Expert/Team Leader**	• A university degree in civil and Structural Engineering, Geotechnical Engineering. • A postgraduate qualification in Civil Engineering, Dam Engineering, or related disciplines will be an added advantage. • Specialized training in dam safety, dam risk assessment, and dam instrumentation will be an added advantage. • A minimum of fifteen (15) years of professional experience in the engineering with at least 10 years' experience specifically in design, construction, operation, and maintenance of dams, including demonstrated experience in the design of large dams (above 30 meters in height in accordance with ICOLD standards) and dam safety investigations, monitoring, risk management, and preparation of Emergency Action Plans (EAPs). The expert shall have hands-on experience in construction supervision and field assignments, preferably in complex, remote, or developing country contexts. • Demonstrated proficiency in dam engineering and hydrological modelling software: numerical modelling for seepage, stress-strain, and flood routing. • Transaction advisory experience for PPP/project finance or IPP projects is an added advantage
3.	**PPP Financial and Economic Expert**	• A relevant university degree in Finance, Economics, Engineering or relevant technical field • A post graduate qualification in Finance is an added advantage • At least 7 years of professional experience in PPPs and project finance transactions including IPPs, with a proven track record in financial evaluation and financial modelling of PPP projects including value for money, Public Sector Comparator analysis, affordability and fiscal impact assessment, economic viability assessments, etc. • Demonstrated project finance financial modelling and audit skills and in dealing with project finance structures

		and products • Experience in economic viability analysis and familiarity with tariff setting in the power and/or water sectors • Experience in at least two (2) PPP or Independent Power Producer (IPP) transactions that reached financial close, each with capex exceeding USD 100 million • Good English communication and writing skills, especially in report writing, are essential
4.	**PPP Legal Expert**	• A university degree in Law. Bachelor of Laws (LL.B) degree. • Admission to practice law in a recognized jurisdiction. • Postgraduate qualification in commercial law, project finance, energy law or PPP shall be an added advantage. • A minimum of 10 years' demonstrated experience in international law, Commercial Law, Contract Law, drafting PPP contractual agreements and other related documents/ agreements; PPP procurement, managing bidding process, and resolving legal issues, policy and institutional assessment; and, successful preparation of PPP projects with at least two financially closed PPP projects. • Participation in at least three (3) project finance infrastructure transactions with at least one being a project in the energy sector or being an IPP. • Demonstrate understanding of Kenya's Legal and Institutional Framework with specific knowledge of Kenya's PPP legal framework, including the PPP Act, Public Procurement and Asset Disposal Act, Energy Act and Water Act. • Good English communication and writing skills, especially in report writing, are essential.
5.	**Environmental Safeguards specialist**	• A university degree in sociology, social work, social anthropology, or environmental sciences, development studies or another related field. An advanced degree will be an added advantage. • A minimum of ten (10) years of demonstrated experience in the assessment and management of

		environmental and social risks for large-scale infrastructure projects with at least two (2) similar assignment in energy/water/dam or agriculture projects. (Water, Energy, Transport, or Agriculture), preferably in Sub-Saharan Africa. • Participation in ESIA, RAP, SA and VMGP preparation, land acquisition in dam projects/ water project requirements that met the requirements of an International Financial Institution, such as the World Bank, IFC or an Equator bank, AfDB, or EIB • Must be accredited by a relevant and recognized professional body. The candidate must be registered as a lead expert with Kenya's National Environment Management Authority (NEMA). (Evidenced by valid practising license). • Demonstrated experience in applying Environmental and Social Management Frameworks and development partner safeguard policies (including involuntary resettlement, indigenous peoples, and physical cultural resources) in large infrastructure projects specifically Dam. • Experience in assessment of PPP infrastructure projects is an added advantage, particularly in energy sector • Experience in assessing social risks including labour influx and displacement, GBV risks, vulnerability assessments, gender and disability inclusion, and development of mitigation measures. • Demonstrated experience in stakeholder consultations in accordance with Kenyan regulations and development partner standards. • Demonstrated proficiency in written and spoken English, with strong report writing skills. • The E&S Team Leader will be stationed in Nairobi, Kenya, for the duration of the assignment and will be required to coordinate the efforts
6.	**Social Development and Resettlement**	• A degree in Sociology / Anthropology /Community/Rural Development or any social science discipline from a recognized university (Development Studies, Social

	Specialist	Anthropology, Sociology, Gender and Development, International Development or a related field).. • A postgraduate degree in social science or any other related field will be an added advantage. • 10 years' in conducting socio-economic surveys and demonstrate experience in at least three (3) projects of similar scope and nature, particularly involving land acquisition, involuntary resettlement, and livelihood restoration. Specific experience on this requirement for dam projects will be an added advantage. • Experience in the assessment and management of social and environmental risks for large-scale infrastructure projects (Water, Energy, Transport or Agriculture), including social impact assessment, gender analysis and community health and safety for publicly and privately funded investment projects in Sub-Saharan Africa. • Experience in applying IFC and development partner Environmental and Social Management Frameworks and safeguard policies including the Environmental and Social Framework (ESF) and ESS7 (including involuntary resettlement, indigenous peoples and physical cultural resources) in large infrastructure or PPP projects will be an added advantage. • Excellent written and oral communication skills in English (knowledge of Kiswahili will be an added advantage), with the ability to present complex issues to diverse audiences. • The Social and Resettlement Specialist will be required to spend at least 75% of their time in the project site to ensure the right level of supervision for the various succeeding social aspects of the various studies – ESIA, RAP, Social Assessment and VMGP.
7.	**Power Systems Engineer**	• A university degree in Electrical Engineering or related field. • A postgraduate qualification in power and electrical engineering shall be an added advantage. . • Minimum of ten (10) years of demonstrated experience in power systems analysis and planning, grid

		interconnection design, including a minimum of three (3) projects involving transmission/distribution network design and power system studies (load flow, short circuit, stability), proficiency in tools such as PSS®E/DIgSILENT/ETAP. • Demonstrated strong knowledge of grid codes and experience in substation and transmission system design. • Demonstrated proficiency in written and spoken English, with strong report writing skills.
8.	**Hydropower Plant Engineer**	• A university degree in Mechanical, Electrical Engineering or related field. A postgraduate qualification in the relevant field shall be an added advantage. • Minimum of ten (10) years of demonstrated experience in the design of hydropower plants, including evidence of undertaking at least two (2) hydropower projects each of a minimum capacity of 100 MW that have been successfully commissioned and are operational. • Minimum of five (5) years of experience in the operation and maintenance of hydropower plants. • Demonstrated proficiency in written and spoken English, with strong report writing skills.
9.	**Hydromechanical Engineer**	• A university degree in Mechanical Engineering or related field. A postgraduate qualification in the relevant field shall be an added advantage. • Minimum of ten (10) years of demonstrated experience in the design of hydromechanical systems (gates, penstocks, valves, turbines) including evidence of undertaking at least two (2) hydropower projects each of a minimum capacity of 100 MW that have been successfully commissioned and are operational. • Minimum of five (5) years of experience in the operation and maintenance of hydropower plants. • Demonstrated proficiency in written and spoken English, with strong report writing skills

Non-Key Experts / Short-Term Specialists

The Consultant may mobilize the following additional non-key experts as short-term specialists as and when required. The description below of the non-key experts is not intended to be prescriptive and will not be scored but is provided as a guide for consideration by bidders:

No.	Position	Expert Suggested Qualifications
1.	Land Expert and Land Valuer	• A bachelor's degree in Land Economist or associated discipline. A relevant postgraduate qualification will be an added advantage. • At least ten (7) years of professional experience in land acquisition and transactions. Demonstrated experience in land acquisition processes including contact with the relevant institutions in Kenya such as surveying and National Land commission. • Demonstrated proficiency in written and spoken English, with strong report writing skills.
2.	Geotechnical Expert	• A bachelor's degree in Geotechnical Engineering, Civil Engineering or a related field. Postgraduate qualifications is an added advantage. • A minimum of ten (10) years of professional experience in geotechnical investigations for large dam or water infrastructure projects, including foundation investigations, slope stability assessment, seepage analysis, and preparation or review of geotechnical investigation reports. • Demonstrated experience in planning and supervising field investigations (borehole drilling, in-situ testing, laboratory testing) and interpreting results for design and construction purposes. • Demonstrated proficiency in written and spoken English, with strong report writing skills.
3.	Geological Expert	• A bachelor's degree in Geology, Engineering Geology, Geophysics, Geotechnical Engineering, Civil Engineering or a related field. Postgraduate qualifications is an added advantage. • A minimum of ten (10) years of professional experience in

No.	Position	Expert Suggested Qualifications
		geological investigations for the design and construction of large dams or water infrastructure projects. • Demonstrated experience in engineering geological mapping, fault and fracture analysis, foundation assessment, reservoir rim stability evaluation, and identification of construction materials (borrow areas and quarries). • Experience in supervising geological field investigations and interpreting results for dam design and safety assessment will be an added advantage. • Demonstrated proficiency in written and spoken English, with strong report writing skills.
4.	Topographical Surveyor	• A bachelor's degree in Geospatial Engineering, Geomatics, Surveying, or a related field. A relevant postgraduate qualification will be an added advantage. • A minimum of ten (10) years of professional experience in topographical and land surveys for large infrastructure or water resources projects. • Demonstrated experience in terrain mapping, preparation of topographic maps and digital terrain models (DTMs), and supervision of field survey activities. • Must be registered with the Institution of Surveyors of Kenya (ISK) or an equivalent recognised professional body. • Demonstrated proficiency in written and spoken English, with strong report writing skills.
5.	Climate Change Expert	• A university degree in Climate Science, Environmental Science, Meteorology, Hydrology, Water Resources Engineering, Environmental Engineering, Atmospheric Science or a related field. Postgraduate qualifications is an added advantage. • At least ten (10) years of experience in climate risk assessment, hydrological and climate change impact analysis for large infrastructure or water resources projects. • Demonstrated experience in climate modelling, rainfall and temperature trend analysis, and assessment of climate risks for hydropower, water resources or irrigation projects. • Experience in climate resilience and adaptation planning for infrastructure projects, including assessment of flood and

No.	Position	Expert Suggested Qualifications
		drought risks. • Demonstrated proficiency in written and spoken English, with strong report writing skills.
6.	GIS Expert	• A bachelor's degree in GIS, Geospatial Engineering, Geomatics, Geography or a related field. Postgraduate qualifications will be an added advantage. • A minimum of ten (10) years of experience in the development and management of geospatial databases and cartographic production using GIS. • Demonstrated experience in preparing thematic maps and spatial analysis for environmental and social assessments of large infrastructure projects. • Experience in GIS support for site characterization of hydropower or water infrastructure projects will be an added advantage. • Proficiency in GIS software such as ArcGIS or QGIS is required. • Demonstrated proficiency in written and spoken English, with strong report writing skills.
7.	Hydraulic Engineer	• A bachelor's degree in civil engineering with specialization in Hydraulic Engineering, Water Resources Engineering or a related field. Postgraduate qualifications will be an added advantage. • A minimum of ten (10) years of professional experience in hydraulic design and analysis for dams or large water infrastructure projects. • Demonstrated experience in flood routing analysis, spillway and outlet works design, river diversion, and hydraulic safety assessments. • Experience in physical or numerical hydraulic modelling will be an added advantage. • Demonstrated proficiency in written and spoken English, with strong report writing skills.
8.	Hydrologist	• A university degree in Hydrology, Water Resources Engineering, Civil Engineering (with specialisation in Hydraulics/Hydrology), Environmental Engineering or a related field. A Master's degree will be an added advantage. • A minimum of ten (10) years of professional experience in

No.	Position	Expert Suggested Qualifications
		dam or large water infrastructure projects, including hydrological and hydraulic modelling, water balance analysis, flood estimation and sedimentation assessment. • Demonstrated experience in river basin hydrology, reservoir yield analysis and climate variability assessment for large infrastructure projects. • Demonstrated proficiency in written and spoken English, with strong report writing skills.

7. DURATION OF THE ASSIGNMENT

Considering that several activities will be undertaken concurrently, the above services are expected to require approximately 13 calendar months. In addition, an estimated cumulative period of two months will be required to obtain government approvals at various stages. Consequently, the total duration from the commencement of services to the project's financial close is expected to be approximately **15 calendar months.** The appointed TA is expected to sign a contract for 15 months, extendable at no extra cost for a further 12 months in the event that Financial Close has not been reached.

Bidders are expected to provide a comprehensive and detailed Project Implementation Plan, preferably using Microsoft Project, or equivalent software, indicating all the key tasks, deliverables, milestones, responsibilities, timetables and critical path for successful project implementation, capturing as a bare minimum the following tasks. The bidders may propose timelines, and the detailed plan will be discussed and agreed with the Contracting Authorities and PPP Directorate before signing the contract.

8. DELIVERABLES OF THE ASSIGNMENT

The general deliverables of the project are as represented in the table below with indicative timelines:

No.	Deliverable	Target Timeline (Time from contract signing)
Phase I		
1	Inception Report	2 weeks

2	Review of existing feasibility and updating: • Updated and/or validated draft Feasibility Study Report including drafts of Project Financial Model, Hydrological survey report, Geotechnical report, Site selection and suitability assessment (Site Due Diligence Report) and all other requirements in accordance with this TOR. • Location plan (electronic copy) • Draft deliverables under Annex 1 (Environmental, Social and Land Acquisition Studies)	2 months
3	Updated final Feasibility Study Phase Deliverables including: • Complete feasibility Study Report including Project Financial Model, Hydrological survey report, Geotechnical report, Site selection and suitability assessment (Site Due Diligence Report) and all other requirements in accordance with this TOR. • Location plan (electronic copy) • All deliverables under Annex 1 including government-led preliminary ESIA, Full RAP and Land acquisition plan, • Market sounding report • Communication Strategy and Plan/Required Disclosures	5 months
Phase I Completion		**5 months**
Phase II		
4	RFQ stage procurement documentation and completion of the RFQ process	6 months
5	RFP bidding stage documents, including RFP, proposed staple-financing structure, draft PPP project agreements, Design Criteria and Performance Specifications, evaluation criteria, including any other relevant bid documents	7 months
6	Completion of the RFP bidding process and evaluation of bids, and delivery of the evaluation report	8 months
8	Negotiated Project Agreement & Negotiation Report	9 months

9	Commercial Close, Project's contract management framework and case study	10 months
10	Financial close, delivery of the close-out report and Case Study	13 months
Phase II Completion		**13 months**

* Phase III shall be implemented simultaneously with phases I and II.

All reports shall be submitted to the contracting authorities in electronic format as well as MS Word document and printed in 6 copies. Models and workflow, process and data diagrams shall be submitted electronically in their appropriate dynamic application files.

The TA, in close coordination with the Project Implementation Team composed of representatives of, shall conduct quality reviews to obtain feedback on all draft versions of deliverables as appropriate. The TA shall make presentations to the Project Implementation Team on each deliverable (e.g. draft Feasibility Study), with the team's key experts present.

9. REMUNERATION SCHEDULE AND DISBURSEMENT ARRANGEMENTS

The Transaction Advisor will be paid on a lump-sum basis in a freely convertible currency acceptable to the Contracting Authority.

Bidders must submit bids in the formats prescribed in this RFP. Bidders should specify a fixed amount in an acceptable currency to the Contracting Authority for each of:

i. Phase 1 (the "Phase 1 Amount") – 45% of the Contract Amount

ii. Phase 2 (the "Phase 2 Amount") – 55% of the Contract Amount

After Phase 1 KenGen will decide whether to proceed with Phase 2. If KenGen decides not to proceed with Phase 2, the contract with the TA will be terminated.

Remuneration schedule

The following remuneration schedule is set for each phase of the contract. Bidders should keep these in mind in writing their proposals.

Deliverable No.	**Milestone / Deliverable**	**Payment (% of Contract Amount)**
1	Delivery and approval of Inception Report	10%
2	Delivery of Draft Feasibility Study	15%
3	Delivery & Acceptance of the Final Feasibility Study	20%

Total – Phase 1		**45%**
4	Completion of RFQ process	15%
6	Delivery of RFP, bid evaluation criteria, draft PPP Agreement and related agreements Completion of bidding process, evaluation of bids, and submission of Bid Evaluation Report	20%
7	Completion of negotiations and execution of the PPP Agreement (Commercial Close)	10%
8	Achievement of Financial Close and delivery of the Close-Out Report and Case Study	10%
Total – Phase 2		**55%**
Total – Phase 1 and 2		**100%**

10. INSTITUTIONAL ARRANGEMENTS AND COUNTERPART ASSISTANCE

The National Treasury will sign the contract (lump sum) with the selected firm for providing transaction advisory services. The Transaction Advisor shall then work closely with KenGen, PPP Directorate and other government agencies as may be required during the assignment.

A Project Implementation Team (PIT), composed of representatives from KenGen, and the PPP Directorate, will be established to review and assess the acceptability of project deliverables. During the tender stage, a Prequalification Committee, Proposal Evaluation Team, (Contract) Negotiation Committee, and other bodies specified in the PPP Act, 2021 shall be appointed by KenGen. The TA shall submit an Inception Report including an updated detailed work plan for project implementation, covering tasks and responsibilities of all parties involved, not just the TA's personnel. Every two weeks thereafter and every week during Phase 2, the TA will hold progress meetings with the PIT to discuss any key constraints encountered by the TA, work planned for the subsequent period, inputs and support needed from the contracting authority(ies) and other parties and will update the work plan accordingly.

KenGen shall provide the Transaction Advisor with all available pertinent data and previous studies, if any, useful to the Project. KenGen will liaise with other agencies to ensure that the TA has access to all information required as may be allowed under Kenyan laws.

The TA will be responsible for providing all necessary facilities and logistical support for its staff, including office space, vehicles, miscellaneous transportation, office equipment (computers, printers, telephone, and internet services), survey and

investigation equipment, communications, utilities, office supplies and other miscellaneous costs for carrying out the services as per the requirements of the TOR. Further, the TA will need to provide all the administrative, technical professional, and support staff needed to carry out their services including market/demand survey teams, social surveys teams, etc. as deemed necessary.

11. BID EVALUATION CRITERIA

The selection method shall be quality and cost-based. The evaluation committee shall evaluate the proposals on the basis of their compliance and responsiveness to ToR's.

ANNEX 1: ENVIRONMENTAL, SOCIAL AND LAND ACQUISITION STUDIES

1. Purpose and Legal Basis

This Schedule sets out the requirements for Environmental, Social and Land Acquisition Studies to be undertaken as part of the Feasibility Study for the proposed **Karura Dam Project**, to be implemented under a Public–Private Partnership (PPP) framework.

The assignment shall be undertaken in accordance with:

- The Public Private Partnerships Act, 2021 and applicable Regulations;
- The Environmental Management and Coordination Act (EMCA) and subsidiary regulations;
- The Land Act, 2012 and applicable National Land Commission (NLC) guidelines;
- The Physical and Land Use Planning Act, 2019;
- The Water Act, 2016 and applicable Water Resources Authority (WRA) regulations;
- Applicable international lender environmental and social standards (including IFC Performance Standards, where relevant).

2. Environmental and Social Safeguards Strategy

Environmental and social safeguards shall follow a structured two-stage approach:

2.1. Government-Led Safeguards at Feasibility Stage *(This will be undertaken by the Transaction Advisor).*

- Preparation of a Government-led preliminary **PPP Environmental and Social Impact Assessment (Government-Led Preliminary ESIA)** in accordance with Section 3 below;
- Preparation of a full **Resettlement Screening and a Resettlement Action Plan (RAP)**;
- Preparation of a Stakeholder Engagement Plan (SEP)
- Preparation of a Land Acquisition Plan (LAP);
- Identification of environmental and social permitting pathway and approvals register
- Develop Terms of Reference for the Private Partner-led Full ESIA.

2.2. Private Partner-Led Full Statutory ESIA. *(This will be undertaken by the Concessionaire or Private Party and not the Transaction Advisor).*

- Preparation of a **Full Statutory ESIA Study Report** based on final engineering designs;
- Obtaining all required NEMA approvals and licenses;
- Compliance with applicable lender environmental and social standards prior to Financial Close.

This approach ensures that land acquisition, reservoir-related displacement, and major site-related risks are identified and addressed prior to concession award, while preserving the requirement for a design-based ESIA by the Private Partner.

3. Government-Led Safeguards

This shall be undertaken by the Transaction Advisor

3.1. Objective

The Transaction Advisor shall prepare a PPP Environmental and Social Safeguards assessment to:

- Identify and assess material environmental and social risks through a preliminary ESIA;
- Inform project structuring and risk allocation;
- Provide baseline environmental and social data;
- Define mitigation principles for procurement documents;
- Develop Terms of Reference for the Private Partner-led Full ESIA;
- Prepare the full RAP (Resettlement Action Plan);
- Prepare a Land Acquisition Plan (LAP).

The Government-Led PPP ESIA shall not replace the statutory ESIA required under EMCA. The full statutory ESIA shall be undertaken by the private party/concessionaire based on their proposed detailed design and not the Transaction Advisor.

3.2. Scope of the Government-Led preliminary ESIA

The Government-led preliminary ESIA is based on the TA concept/reference design and shall identify environmental and social impacts associated with:

- Dam construction and associated civil works;
- Reservoir impoundment and inundation area;
- Hydropower plant development and operation (approximately 700MW installed capacity);
- Irrigation infrastructure development (including conveyance systems, canals, pumping stations, and command area development covering up to 500,000 acres);
- Access roads, borrow areas, construction camps and auxiliary facilities;
- Associated transmission or evacuation infrastructure (where applicable).

The preliminary assessment shall include, at a minimum:

- Hydrological impacts and downstream flow regime (including environmental flows);
- Sedimentation and reservoir management considerations;
- Biodiversity, aquatic ecology and habitat impacts;
- Water quality and public health implications (including vector-borne disease risks);
- Community health and safety, including dam safety and emergency preparedness considerations;
- Noise, dust and construction-phase impacts;
- Climate resilience and climate change implications (including flood and drought risk);
- Cumulative impacts and induced development impacts;
- Decommissioning and long-term asset management considerations.

3.3. Full Resettlement Action Plan (RAP)

The Transaction Advisor shall assess whether land acquisition, physical displacement, economic displacement, wayleaves or easements arise from:

- Dam footprint and reservoir inundation area;
- Irrigation corridors and command areas;
- Access roads and associated infrastructure;
- Borrow pits, quarries, and ancillary facilities.

The Transaction Advisor shall prepare a full **Resettlement Action Plan (RAP)** compliant with Kenyan law and applicable lender standards. The RAP shall include but not limited to:

- Land Acquisition Plan (LAP)
- Census of Project Affected Persons;
- Asset inventory and valuation at replacement cost;
- Livelihood restoration measures;
- Compensation and entitlement framework;
- Grievance redress mechanism;
- Costed implementation schedule and institutional responsibilities.

Land acquisition and compensation, where required, shall be undertaken by Government prior to Financial Close or, where appropriate, considered as part of the project cost to be financed by the private party.

3.4. Stakeholder Engagement

The Transaction Advisor shall prepare an initial **Stakeholder Engagement Plan (SEP)**, including:

- Stakeholder identification and mapping;
- Consultation and disclosure strategy;
- Public participation framework in accordance with EMCA and applicable laws;
- Grievance redress mechanism;
- Roles and responsibilities.

Stakeholder engagement activities shall inform both the Government-Led PPP ESIA and RAP.

4. Private Partner-Led Full Statutory ESIA

The Private Partner/Concessionaire shall be responsible for:

- Preparing a Full ESIA Study Report based on final engineering designs compliant with relevant statute;
- Obtaining NEMA approvals and all required environmental licenses with assistance from Contracting Authority where needed;
- Complying with applicable lender environmental and social standards;
- Satisfying environmental and social conditions precedent prior to Financial Close.

The ESIA prepared at Feasibility Stage shall serve as a baseline reference document.

5. Integration with PPP Procurement

The Transaction Advisor shall ensure that environmental and social obligations are clearly reflected in the PPP procurement documentation, including:

- Allocation of environmental and social responsibilities between Government and the Private Partner;
- Updating of RAP (where applicable) prior to concession award;
- Identification of residual environmental and social risks;
- Definition of environmental and social conditions precedent to Financial Close;
- Environmental and social monitoring, reporting and compliance obligations under the PPP Agreement.

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 is 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

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

1. Definitions

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

a) "Applicable Law" means the laws and any other instruments having the force of law in Kenya.

b) "Consultant" means a legally-established professional consulting firm or entity selected by the Procuring Entity to provide the Services under the signed Contract.

c) "Contract" means the legally binding written agreement signed between the Procuring Entity and the Consultant and which includes all the attached documents listed in its

paragraph1of the Form of Contract (the General Conditions (GCC), the Special Conditions (SCC), and the Appendices).

d) "Procuring Entity" means the Procuring Entity that signs the Contract for the Services with the selected Consultant.

e) "Day" means a working day unless indicated otherwise.

f) "Effective Date" means the date on which this Contract comes into force and effect pursuant to Clause GCC 11.

g) "Experts" means, collectively, Key Experts, Non-Key Experts, or any other personnel of the 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 currency of Kenya.

i) "GCC" mean these General Conditions of Contract.

j) "Government" means the government of Kenya.

k) "Joint Venture (JV)" means an association with or without a legal personality distinct from that of its members, of more than one entity where one member has the authority to conduct all businesses for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Procuring Entity for the performance of the Contract.

l) "Key Expert(s)" means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose Curricula Vitae (CV)was taken into account in the technical evaluation of the Consultant's proposal.

m) "Local Currency" means the Kenya Shillings, the currency of Kenya.

n) "Non-Key Expert(s)" means an individual professional provided by the Consultant or its Sub-consultant to perform the Services or any part here of under the Contract.

o) "Party" means the Procuring Entity or the Consultant, as the case may be, and "Parties" means both of them.

p) "SCC" means the Special Conditions of Contract by which the GCC may be amended or supplemented but not over-written.

q) "Services" means the work to be performed by the 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.

(t) "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 herein 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 Sub-consultants, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

3. Law Governing Contract

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

4. Language

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

5. Headings

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

6. Communications

6.1 Any communication required or permitted to be given or made pursuant to this Contract shall be in writing in the English Language. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the SCC.

6.2 A Party may change its address for notice here under by giving the other Party any communication of such change to the address specified in the SCC.

7 Location

7.1 The Services shall be performed at such locations as are specified in Appendix A hereto and, where the location of a particular task is not so specified, at such locations, whether inKenya 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 them ember 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 regarding corrupt and fraudulent/prohibited practices as set forth in its laws and policies.

10.2 **Commissions and Fees-**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 other party, the amount and currency, and the purpose of the commission, gratuity or fee. Failure to disclose such commissions, gratuities or fees may result in termination of the Contract by the Procuring Entity and/or sanctions by the PPRA.

B. Commencement, Completion, Modification and Termination of Contract

11 Effectiveness of Contract

11.1 This Contract shall come into force and effect on the date (the "Effective Date") of the Procuring Entity's notice to the 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 there to.

13 Commencement of Services

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

14 Expiration of Contract

14.1 Unless terminated earlier pursuant to Clause GCC19hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the SCC.

15 Entire Agreement

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

16 Modifications or Variations

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

17 Force Majeure

a. Definition

17.1 For the purposes of this Contract," Force Majeure" means event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible under the circumstances, and subject to those requirements, includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action confiscation or any other action by Government agencies.

17.2 Force Majeure shall not include (i) any event which his caused by the 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 over come in the carrying out of its

obligations here under.

17.3 Force Majeure shall not include insufficiency 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.

a) Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.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:

b) 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

c) 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 or additional costs reasonably and necessarily incurred.

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

18 Suspension

18.1 The Procuring Entity may, by written notice of suspension to the Consultant, suspend all payments to the Consultant here under if the Consultant fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i)shall specify the nature of the failure, and (ii) Shall request the 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 by either Party as per provisions set up 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 in to 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 45.1;

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 GCC13.

b. 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.By the Consultant

a) 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.

b) If the Procuring Entity fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause GCC45.1withinforty-five (45) calendar days after receiving written notice from the Consultant that such payment is overdue.

c) 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.

d) If the Procuring Entity fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC45.1.

e) If the Procuring Entity is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the 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 GCC14, all rights and obligations of the Parties here under shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause GCC22,
(iii) the Consultant's obligation to permit in section, copying and auditing of their accounts and records set forth in Clause GCC25, and (iv) any right which a Party may have under the Applicable Law.

d. Cessation of Services

19.1.5. 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 GCC27or GCC28.

e. Payment up on Termination

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

a) Payment or Services satisfactorily performed prior to the effective date of termination; and

b) In the case of termination pursuant to paragraphs (d) and (e) of Clause GCC 19.1.1, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract, including the cost of the return travel of the Experts.

C. Obligation s of the Consultant

16. 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 Sub-consultants 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 Sub- consultants 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, Kenya prohibits any import of goods from that country or any payments to any country, person, or entity in that country.

20.6. The Procuring Entity shall notify the 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 interest 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 38 through 42) shall constitute the Consultant's only payment in connection with this Contract and, subject to Clause GCC21.1.3,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, the Consultant 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 for 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 efforts 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, interlaid, that acts intended to materially impede the exercise of the PPRA's inspection and audit rights provided for under this ClauseGCC25.2 constitute a prohibited practice subject to contract termination (as well as to a determination of in eligibility under the PPRA's prevailing sanctions procedures.)

26 Reporting Obligations

26.1 The 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 them at the expense of the Procuring Entity in an amount equal to their full replacement value.

28.2 Any equipment or materials brought by the Consultant or its Experts into Kenya for the use either for the project or personal use shall remain the property of the Consultant or the Experts concerned, as applicable.

D. Consultant's Experts and Sub-consultants

29 Description of Key Experts

29.1 The title, agreed job description, minimum qualification and estimated period of engagement to carry out the Services of each of the 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 in capacity. In such case, the Consultant shall forth with provide as a replacement, a person of equivalent or better qualifications and experience, and at the same rate of remuneration.

31 Removal of Experts or Sub-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 of Sub consultant have 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 in competent or in capable 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.

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 FacilitatepromptclearancethroughcustomsofanypropertyrequiredfortheServicesandofth epersonal effects of the Expert sand 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 Sub-consultants 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 in to Kenya reasonable amounts of foreign currency for the purposes of the Services or for the personal use of the Experts and of withdrawing any such amounts as may be earnedtherein 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 Contract price amount specified in Clause GCC 39.1

35 Services, Facilities and Property of the Procuring Entity

35.1 The Procuring Entity shall make available to the 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.

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 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 as signed 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 for the deliverables specified in Appendix A and in such manner as is provided by GCCF below.

F. Payments to the Consultant

38 Contract Price

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

38.2 Any change to the Contract price specified in Clause 38.1 can be made only if the Parties have agreed to the revised scope of Services pursuant to Clause GCC 16 and have amended in writing the Terms of Reference in Appendix A.

39 Taxes and Duties

39.1 The 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.

40.3 **Interest on Delayed Payments**

If the Procuring Entity had delayed payments beyond thirty (30) days after the due date stated in Clause GCC 41.2.2, interest shall be paid to the 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

41 Good Faith

41.1 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

42 Amicable Settlement

43.1.2 The Parties shall seek to resolve any dispute amicably by mutual consultation.

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

43 Dispute Resolution

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

SECTION 8: SPECIAL CONDITIONS OF CONTRACT

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(a)	The Contract shall be construed in accordance with the law of Kenya
4.1	The language is: English

6.1 and 6.2	The addresses are *[fill in at negotiations with the selected firm]*: **For Procuring Entity** The Principal Secretary, The National Treasury, State Department for Public Investments and Assets Management Treasury Building, Harambee Avenue P.O. Box 30007 – 00100 Nairobi Email: Procurement@PPPunit.go.ke **For the Service Provider** Consultant: _ Attention: _ Facsimile: _____ E-mail:
8.1	*[If the Consultant consists only of one entity, state "N/A";* *OR* *If the Consultant is a Joint Venture consisting of more than one entity, the name of the JV member whose address is specified in Clause SCC6.1 should be inserted here.]* The Lead Member on behalf of the JV is _____*[insert name of the member] (to be included during contract perpetration)*
9.1	The Authorized Representatives are: For the Procuring Entity: ***The Principal Secretary, The National Treasury, State Department for Public Investments and Assets Management*** For the Consultant: *[name, title]* (*to be included during contract perpetration*)
11.1	The effectiveness conditions are the following: *N/A*
12.1	Termination of Contract for Failure to Become Effective: The time period shall be 1 Month
13.1	Commencement of Services: The number of days shall be: **Ten (10) days** Confirmation of Key Experts' availability to start the Assignment shall be submitted to the Procuring Entity in writing as a written statement signed by each

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	Key Expert.
14.1	Expiration of Contract: The time period shall be: **15 months from contract signing date**
21.1.3.	The Procuring Entity reserves the right to determine on a case-by-case basis whether the Consultant should be disqualified from providing goods, works or non-consulting services due to a conflict of a nature described in Clause GCC 21.1.3: **Yes**
23.1	The following limitation of the Consultant's Liability towards the Procuring Entity can be subject to the Contract's negotiations: "Limitation of the Consultant's Liability towards the Procuring Entity: (a) Except in the case of gross negligence or willful misconduct on the part of the Consultant or on the part of any person or a firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused by the Consultant to the Procuring Entity's property, shall not be liable to the Procuring Entity: (i) for any indirect or consequential loss or damage; and (ii) for any direct loss or damage that exceeds two times the total value of the Contract; (b) This limitation of liability shall not (i) affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services; (ii) be construed as providing the Consultant with any limitation or exclusion from liability which is prohibited by the Applicable Law.
24.1	The insurance coverage against the risks shall be as follows: ***to be included during contract perpetration*)** *[Delete what is not applicable except (a)].* (a) Professional liability insurance, with a minimum coverage of _____*[insert amount and currency which should be not less than the total ceiling amount of the Contract]*;
27.1	The additional rights to the use of the documents are: **This shall be done under applicable laws**
27.2	The Consultant shall not use these *[insert what applies……. documents and software….]* for purposes unrelated to this Contract without the prior written approval of the Procuring Entity.] *to be included during contract perpetration*)

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	[OR] [The Procuring Entity shall not use these *[insert what applies……. documents and software…….]* for purposes unrelated to this Contract without the prior written approval of the Consultant.] *[OR]* [Neither Party shall use these *[insert what applies……. documents and software……]* for purposes unrelated to this Contract without the prior written approval of the other Party.]
32.1 (a) through (f)	*[List here any changes or additions to Clause GCC 32.1. If there are no such changes or additions, indicate Not Applicable.] NOT APPLICABLE*
32.1(g)	*[List here any other assistance to be provided by the Procuring Entity. If there is no such other assistance, indicate Not Applicable for this Clause SCC 32.1(g).] NOT APPLICABLE*
38.1	The Contract price is: _____*[insert amount and currency for each currency as applicable] [indicate:* inclusive *or* exclusive*]* of local taxes. *to be included during contract perpetration*) Any local taxes chargeable in respect of this Contract for the Services provided by the Consultant shall *[insert as appropriate: "*be paid*" or "*reimbursed*"]* by the Procuring Entity *[insert as appropriate:* "for "or "to*"]* the Consultant. The amount of such taxes is _____[insert the amount as finalized at the Contract's negotiations on the basis of the tax amounts provided by the Consultant in Form FIN-2 of the Consultant's Financial Proposal. *to be included during contract perpetration*)
39.1 and 39.2	The Procuring Entity warrants that *[choose one applicable option consistent with the ITC 16.3 and the outcome of the Contract's negotiations (Form FIN-2]* *If ITC16.3 indicates a tax exemption status, include the following:* "the Consultant, the Sub-consultants and the Experts shall be exempt from" *OR* *If ITC16.3 does not indicate the exemption and, depending on whether the Procuring Entity shall pay the withholding tax or the Consultant has to pay, include the following:* "the Procuring Entity shall pay on behalf of the Consultant, the Sub-consultants and the Experts," *OR "*the Procuring Entity shall reimburse the Consultant, the Sub-consultants and the Experts*"]* any taxes, duties, fees, levies and other impositions imposed, under the applicable law in the Procuring Entity's country, on the Consultant, the Sub- consultants and the Experts in respect of: (a) any payments whatsoever made to the Consultant, Sub-consultants and the Experts (other than nationals or permanent residents of Kenya), in connection with the carrying out of the Services;

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	(b) any equipment, materials and supplies brought into Kenya by the Consultant or Sub-consultants for the purpose of carrying out the Services and which, after having been brought into such territories, will be subsequently withdrawn by them; (c) any equipment imported for the purpose of carrying out the Services and paid for out of funds provided by the Procuring Entity and which is treated as property of the Procuring Entity; (d) any property brought into Kenya by the Consultant, any Sub-consultants or the Experts (other than nationals or permanent residents of Kenya), or the eligible dependents of such experts for their personal use and which will subsequently be withdrawn by them upon their respective departure from the Procuring Entity's country, provided that: (i) the Consultant, Sub-consultants and experts shall follow the usual customs procedures of Kenya in importing property into Kenya; and (ii) if the Consultant, Sub-consultants or Experts do not withdraw but dispose of any property in the Procuring Entity's country upon which customs duties and taxes have been exempted, the Consultant, Sub-consultants or Experts, as the case may be, (a) shall bear such customs duties and taxes in conformity with the regulations of Kenya, or (b) shall reimburse them to the Procuring Entity if they were paid by the Procuring Entity at the time the property in question was brought into the Procuring Entity's country.
40.2	The payment schedule: ***to be included during contract perpetration*)** *[Payment of installments shall be linked to the deliverables specified in the Terms of Reference in as detailed in this bid document]* 1st payment: *[insert the amount of the installment, percentage of the total Contract price, and the currency. If the first payment is an advance payment, it shall be made against the bank guarantee for the same amount as per GCC 41.2.1]. E.g., "Twenty (20) percent of the lumpsum contract price shall be paid upon submission and approval of the Inception Report* 2nd payment: Example: Sixty (60) percent of the lumpsum Contract Price shall be paid upon submission of an acceptable Draft Report. 3rd and Final Payment: Example: Twenty (20) percent of the lumpsum Contract Price shall be paid upon submission and approval of the Final Report. *[Total sum of all installments shall not exceed the Contract price set up in SCC38.1. Every Payment shall be subject to (i) submission to the Procuring Entity of the prerequisite Report and/or payment request documents, and, (ii) approval and acceptance of the said reports and documents by the Procuring Entity]*

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
40.2.1	*[The advance payment could be in either the foreign currency, or the local currency, or both; select the correct wording in the Clause here below. The advance bank payment guarantee should be in the same currency(ies)]* The following provisions shall apply to the advance payment and the advance bank payment guarantee: (1) An advance payment [of *[insert amount]* in foreign currency] [and of *[insert amount]* in Kenya Shillings] shall be made within *[insert number]* days after the receipt of an advance bank payment guarantee by the Procuring Entity. The advance payment will be set off by the Procuring Entity in equal portions against [list the payments against which the advance is offset].**Not Applicable** (2) The advance bank payment guarantee shall be in the amount and in the currency of the currency (ies) of the advance payment. (3) The bank guarantee will be released when the advance payment has been fully set off.
40.2.4	The accounts are: ***to be included during contract perpetration*)** for foreign currency: *[insert account]*. for local currency: *[insert account]*.
41.1	The interest rate is: *[insert rate]*.

44.1	Disputes shall be settled by arbitration in accordance with the following provisions: Selection of Arbitrators. Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three (3) arbitrators, in accordance with the following provisions: Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to *[name an appropriate international professional body, e.g., the Federation Internationale des Ingenieurs-Conseil (FIDIC) of Lausanne, Switzerland]* for a list of not fewer than five (5) nominees and, on receipt of such list, the Parties shall alternately strike names therefrom, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the date of the list, *[insert the name of the same professional body as above]* shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute. Where the Parties do not agree that the dispute concerns a technical matter, the Procuring Entity and the Consultant shall each appoint one (1) arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two (2) arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by *[name an appropriate international appointing authority, e.g., the Secretary General of the Permanent Court of Arbitration, The Hague; the Secretary General of the International Centre for Settlement of Investment Disputes, Washington, D.C.; the International Chamber of Commerce, Paris; etc.]*. (c) If, in a dispute subject to paragraph (b) above, one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the *[name the same appointing authority as in said paragraph (b)]* to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute. 2.Rules of Procedure. Except as otherwise stated herein, arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in force on the date of this Contract. 3. Substitute Arbitrators. If for any reason an arbitrator is unable to perform his/her function, a substitute shall be appointed in the same manner as the original arbitrator.

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	4. Nationality and Qualifications of Arbitrators. The sole arbitrator or the third arbitrator appointed pursuant to paragraphs 1(a) through 1(c) above shall be an internationally recognized legal or technical expert with extensive experience in relation to the matter in dispute and shall not be a national of the Consultant's home country *[If the Consultant consists of more than one entity, add:* or of the home country of any of their members or Parties*]* or of the Government's country. For the purposes of this Clause, "home country" means any of: (a) the country of incorporation of the Consultant *[If the Consultant consists of more than one entity, add:* or of any of their members or Parties*]*; or (b) the country in which the Consultant's [or any of their members' or Parties'] principal place of business is located; or (c) the country of nationality of a majority of the Consultant's [or of any members' or Parties'] shareholders; or (d) the country of nationality of the Sub-consultants concerned, where the dispute involves a subcontract.
	5. Miscellaneous. In any arbitration proceeding hereunder: (a) proceedings shall, unless otherwise agreed by the Parties, be held in *[select a country which is neither the Procuring Entity's country nor the Consultant's country]*; (b) the *[type of language]* language shall be the official language for all purposes; and (c) the decision of the sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.

SECTION 9: APPENDICES

Appendix A – Terms of Reference

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

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

……

.....

Appendix B - Key Experts

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

……

Appendix C – Remuneration Cost Estimates

1. **Monthly rates for the Experts:**

   [Insert the table with the remuneration rates. The table shall be based on [Form FIN-3] of the Consultant's Proposal and reflect any changes agreed at the Contract negotiations, if any. The footnote shall list such changes made to [Form FIN-3] at the negotiations or state that none has been made.]

2. *[When the Consultant has been selected under Quality-Based Selection method, or the Procuring Entity has requested the Consultant to clarify the breakdown of very high remuneration rates at the Contract's negotiations also add the following:*

   "The agreed remuneration rates shall be stated in the attached Form: Breakdown of Agreed Fixed Rates in Consultant's Contract. This form shall be prepared on the basis of Appendix A to Form FIN-3 of the RFP "Consultants' Representations regarding Costs and Charges" submitted by the Consultant to the Procuring Entity prior to the Contract's negotiations.

   Should these representations be found by the Procuring Entity (either through inspections or audits pursuant to Clause GCC 25.2 or through other means) to be materially in complete or in accurate, the Procuring Entity shall be entitled to introduce appropriate modifications in the remuneration rates affected by such materially in complete or inaccurate representations. Any such modification shall have retroactive effect and, in case remuneration has already been paid by the Procuring Entity before any such modification,(i) the Procuring Entity shall been titled to offset any excess payment against the next monthly payment to the Consultants, or (ii) if there are no further payments to be made by the Procuring Entity to the Consultants, the Consultants shall reimburse to the Procuring Entity any excess payment with in thirty (30)days of receipt of a written claim of the Procuring Entity. Any such claim by the Procuring Entity for reimbursement must be made within twelve (12) calendar months after receipt by the Procuring Entity of a final report and a final statement approved by the Procuring Entity in accordance with Clause GCC45. 1(d) of this Contract."

BREAKDOWN OF AGREED FIXED RATES IN CONSULTANT'S CONTRACT

We hereby confirm that we have agreed to pay to the Experts listed, who will be involved in performing the Services, the basic fees and away from the home office allowances (if applicable) indicated below:

*(Expressed in [insert name of currency]) **

Experts		*1*	*2*	*3*	*4*	*5*	*6*	*7*	*8*
Name	*Position*	*Basic Remuneration rate per Working Month/Day/ Year*	*Social Charges1*	*Overhead1*	*Subtotal*	*Profit2*	*Away from Home Office Allowance*	*Agreed Fixed Rate per Working Month/Day/ Hour*	*Agreed Fixed Rate per Working Month/Day/ Hour1*
Home									
Work in Kenya									

Expressed as percentage of 1
1 Expressed as percentage of 4
** If more than one currency, add a table*

*Signature*_____*Date*_____

*Name and Title:*_____

Appendix D: Reimbursable Expenses Cost Estimates

1. {Insert the table with the Reimbursable Expenses rates. The table shall be based on [Form FIN- 4] of the Consultant's Proposal and reflect any changes agreed at the Contract negotiations, if any. The foot note shall list such changes made to [FormFIN-4] at the negotiations or state that none has been made.]

2. All reimbursable expenses shall be reimbursed at actual cost, unless otherwise explicitly provided in this Appendix, and in no event shall reimbursement be made in excess of the Contract amount.

3. Appendix E: Form Of advance Payments Guarantee

[*Note:* See Clause GCC 41.2 and

SCC41.2] Bank Guarantee for Advance

Payment

_____*[Bank's Name and Address of Issuing Branch or Office]*

Beneficiary:_____*[Name and Address of Procuring Entity]* Date:_____

ADVANCE PAYMENT GUARANTEE No._____

We have been informed that_____*[name of consultant or a name of the Joint Venture, same as appears on the signed Contract]* (herein after called" the Consultant") has entered into Contract No.___ _____*[Reference number of the contract] dated*_____with you, for the provision of_____*[brief description of Services]* (hereinafter called" the Contract").

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

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

Itisaconditionforanyclaimandpaymentunderthisguaranteetobemadethattheadvancepaymentreferredto above must have been received by the Consultant on their account number_____at _____*[name and address of bank].*

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Consultant as indicated in copies of certified monthly statements which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of the monthly payment certificate indicating that the Consultant has made full repayment of the amount of the advance payment, or on the day of, 2__, earlier.[2]

whichever is Consequently, any demand for payment under this guarantee must be received by us at this office o n or before that date. This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No.758.

[Signature (s)]

_____

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

[1] *The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency (ies) of the advance payment as Specified in the Contract, or in a freely convertible currency acceptable to the Procuring Entity.*

[2] *Insert the expected expiration dates. In the event of an extension of the time for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the procuring Entity might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months] [one year], in response to the Procuring Entity's written request for such extension, such request to be presented to the Guarantorbefore the expiry of the guarantee."*

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-relatedComplaintinrelationtothedecisiontoawardthecontract.

The successful Consultant

Name:	[*insert name of successful Consultant*]
Address:	[*insert address of the successful Consultant*]
Contract price:	[*insert contract price of the successful Consultant*]

i) Short listed Consultants

[INSTRUCTIONS: insert names of all short-listed Consultants and indicate which Consultants 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.]

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

[*insert name*]	[*yes/no*]	Criterion (i): [*insert score*] Criterion (ii): [*insert score*] Criterion (iii): [*insert score*] <u>Sub-criterion a:</u> 1: [*insert score*] 2: [*insert score*] 3: [*insert score*] <u>Sub-criterion b:</u> 1: [*insert score*] 2: [*insert score*] 3: [*insert score*] <u>Sub-criterion c:</u> ……..etc. Criterion (iv): [*insert score*] Criterion (v): [*insert score*] Total score: [*insert score*]	[*Proposal price*]	[*evaluated price*]	<u>Combined Score</u>: [*combined score*] <u>Ranking</u>: [*ranking*]
[*insert name*]	[*yes/no*]	Criterion (i): [*insert score*] Criterion (ii): [*insert score*] Criterion (iii): [*insert score*] <u>Sub-criterion a:</u> 1: [*insert score*] 2: [*insert score*] 3: [*insert score*] <u>Sub-criterion b:</u> 1: [*insert score*] 2: [*insert score*] 3: [*insert score*] <u>Sub-criterion c:</u> <u>……etc.</u> Criterion (iv): [*insert score*] Criterion (v): [*insert score*] Total score: [*insert score*]	[*Proposal price*]	[*evaluated price*]	<u>Combined Score</u>: [*combined score*] <u>Ranking</u>: [*ranking*]
[*insert name*]	…..	….	….	….	…..

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

[INSTRUCTIONS; State the reason/s why <u>this</u> 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 of ……dated the…day of ……..20…….in the matter of Tender No…….....of ……..20…... 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 of ……..20……

SIGNED

Board Secretary

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_____*[insert date]* for consulting services for *[name of the assignment] as* negotiated with you on_____for the contract amount of _____*[Insert amount in numbers and words and name of currency]* is here by accepted by our agency.

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

Authorized Signature:_____

Name and Title of Signatory:_____

Name of Agency:_____

Attachment: *Draft Negotiated Contract*

BENEFICIAL OWNERSHIP DISCLOSURE FORM

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

This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful tenderer pursuant to Regulation 13 (2A) and 13 (6) of the Companies (Beneficial Ownership Information) Regulations, 2020. In case of joint venture, the tenderer must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.

For the purposes of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the legal person (tenderer) or arrangements or a natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person (Tenderer) or arrangement.

Tender Reference No.:_____[*insert identification no*] Name of the Tender Title/Description:_____

_____*[insert name of the assignment]* to:

_____*[insert complete name of Procuring Entity]*

In response to the requirement in 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]*

l) We here by provide the following beneficial ownership information.

Details of beneficial ownership

	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)**
	Full Name		Directly---------- % of shares	Directly…… …….. % Of voting	1.Having the right to appoint a majority of the	1.Exercises significant influence or
	National identity card number or					
	Details of all Beneficial Owners		**% Of**	**% of voting**	**Whether a person**	**Whether a**

			shares a person holds in the company Directly or indirectly	**rights a person holds in the company**	**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)	**person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)**
1.	Passport number			rights Indirectly------ ----% of	board of the directors or an equivalent governing body	control over the Company body of the Company (tenderer**)** Yes -----No----- 2. Is this influence or control exercised directly or indirectly? Direct…… ….. Indirect……
				voting rights	of the Tenderer: Yes – – – No ----· 2. Is this right held directly or indirectly? Direct…… …… Indirect…… ……..	
	Personal Identification Number (where applicable)		Indirectly----------% of shares			
	Nationality					
	Date of birth *[dd/mm/yyyy]*					
	Postal address					
	Residential address					
	Telephone number					
	Email address					
	Occupation or profession					

2.	Full Name		Directly--- ---------- % of shares Indirectly- ---------- %	Directly…… …….. % of voting rights Indirectly------ ----% of voting rights	1. Having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer:	1. Exercis es significant influence or control over the Company body of the Company
	National identity card number or Passport number					
	Personal Identification Number (where					

	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**	**Whether a person directly or indirectly exercises significant influence or control over the Company**
					governing body of	**(tenderer) (Yes**
					the Tenderer (Yes / No)	**/ No)**
	applicable)		of shares		Yes -----No----	(tenderer**)** Yes ---------- No-- 2. Is this influence or control exercised directly or indirectly? Direct…… Indirect……
					2. Is this right held	
	Nationality(ies)				directly or indirectly?	
	Date of birth *[dd/mm/yyyy]*				Direct…… ……	
	Postal address					
	Residential address				Indirect…… ……..	
	Telephone number					
	Email address					
	Occupation or profession					
3.						
etc.						

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) isdefined 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

Directly or indirectly holding 25% or more of the shares. Directly or indirectly holding25% 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]*

*NameofthepersondulyauthorizedtosigntheProposalonbehalfoftheConsultant: ** [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.*

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]*