



REPUBLIC OF KENYA

**MINISTRY OF DEVOLUTION AND PLANNING
STATE DEPARTMENT OF DEVOLUTION**

Kenya Devolution Support Programme (KDSP)

**TENDER NO. MODP/SDD/KDSP/RFP/13/2016-2017
IFMIS NO. 445612**

**CONSULTANCY SERVICES FOR THE
DEVELOPMENT OF AN INVESTMENT PROJECT
PROPOSAL (IPP)**

CLOSING/OPENING DATE: 22/5/2017

TABLE OF CONTENTS

INTRODUCTION	Page 3
SECTION I - TENDER NOTICE.....	4
SECTION II - INFORMATION TO CONSULTANTS.....	5
SECTION III - TERMS OF REFERENCE.....	14
SECTION IV - TECHNICAL PROPOSAL.....	15
SECTION V - FINANCIAL PROPOSAL.....	16
SECTION VI - STANDARD CONTRACT FORM.....	17

INTRODUCTION

1. This standard Request for Proposals for selection of individual professional consultants has been prepared for use by public entities in Kenya. It has been found necessary for selection of individual consultants who are also regulated by their professional institutions or associations as opposed to selection of consultants who could be either individuals or body corporate.
2. This Request for proposals will be used for open tendering, restricted tendering or request for proposals.
3. The general conditions of contract in the Standard contract Form should not be modified and instead the special conditions of the contract may where necessary be modified by the procuring entity, for use, to reflect the unique circumstances of the particular assignment.

SECTION I



REPUBLIC OF KENYA

MINISTRY OF DEVOLUTION AND PLANNING

STATE DEPARTMENT OF DEVOLUTION

Kenya Devolution Support Programme (KDSP)

TENDER NOTICE

The Ministry of Devolution and Planning, State Department of Devolution, (SDD) invites tenders from interested, eligible and competent individuals consultants or consultancy firms to tender for the following works and consultancy services: -

Tender Number	Tender Description	Eligible Category	Closing Date and Time
MODP/SDD/KDSP/ RFP/13/2016-2017 IFMIS NO. 445612	Consultancy Services for the Development of an Investment Project Proposal	Open to ALL bidders	22 nd May 2017 at 10.00 a.m.

Interested bidders may access and download detailed tender documents and their corresponding Terms of Reference from the:

- i. IFMIS Supplier Portal: <http://supplier.treasury.go.ke> by citing the unique IFMIS Tender numbers for the tender.
- ii. The Ministry's Website www.devolutionplanning.go.ke.
- iii. [Tender portal: http://supplier.treasury.go.ke](http://supplier.treasury.go.ke), and click on "link to tenders"

The tenders **MUST** be submitted through IFMIS SUPPLIER PORTAL: supplier.treasury.go.ke. Bidders who may experience challenges in accessing and uploading their tender in the IFMIS Tender Portal should contact the IFMIS Department, Treasury Building on 5th Floor or Supply Chain Management Office on 1st floor, Telposta towers, Wing C, Kenyatta Avenue, for assistance.

Duly completed tender documents (Hard Copy of exact replica of the one submitted in the IFMIS Portal) should be enclosed in a plain sealed envelope clearly marked with the tender name and tender number should be deposited in the tender box on 1st floor of Teleposta Towers, Wing C, Kenyatta Avenue, Nairobi, Kenya during office hours (Weekdays 8.00 am to 5.00 pm) or be addressed to:

**Principal Secretary,
Ministry of Devolution and Planning,
State Department of Devolution,
P. O. Box 30004 – 00100.
NAIROBI, KENYA**

All tenders should be received on or before **22nd May 2017 at 10.00 a.m.** (East African Time). Bids will be opened immediately thereafter in the presence of the bidders or their representatives who choose to attend at the 6th floor boardroom, Telposta Towers, Kenyatta Avenue, Nairobi.

Prices quoted should be net inclusive of all Government taxes and other expenses must remain valid for **150 days** from the closing/opening date of the tender.

Consultants should attach copies of the tax compliance certificates, identity cards and Certificate of Incorporation .

The Government of the Republic of Kenya reserves the right to accept, terminate or reject any tender without assigning reasons for its decision thereof.

**Principal Secretary
State Department of Devolution**

SECTION II - INFORMATION TO CONSULTANTS

Table of Contents

	Page
2.1 Introduction.....	6
2.2 Clarification and amendments to the RFP documents.....	7
2.3 Preparation of proposals.....	7
2.4 Financial proposal.....	8
2.5 Submission receipt and opening of proposals	9
2.6 Evaluation of proposals (General).....	10
2.7 Evaluation of Technical proposals.....	10
2.8 Opening and evaluation of Financial proposals.....	11
2.9 Negotiations.....	12
2.10 Award of Contract.....	12
2.11 Confidentiality.....	12
2.12 Appendix to Information to Consultants.....	13

SECTION II - INFORMATION TO CONSULTANTS

2.1 Introduction

- 2.1.1 The State Department of Devolution will select an individual consultant among those invited to submit proposals or those who respond to the invitation for proposals in accordance with the method of selection detailed under this section and consistent with the regulations.
- 2.1.2 The consultants are invited to submit a technical proposal and a financial proposal for consulting services required for the assignment stated in the letter of invitation (Section I)
- 2.1.3 In the assignment where the procuring entity intends to apply standard conditions of engagement and scales of fees for professional services, which scale of fees will have been approved by a relevant authority, a technical proposal only may be invited and submitted by the consultants. In such a case the highest ranked individual consultant in the technical proposals shall be invited to negotiate a contract on the basis of the set scale of fees. The technical proposals will be the basis for contract negotiations and ultimately for a signed contract with the selected individual consultant.
- 2.1.4 The consultants must familiarize themselves with local conditions as regards the assignment and take them into account in preparing their proposals. To obtain adequate information on the assignment and on the local conditions, consultants are encouraged to liaise with the procuring entity regarding any information that they may require before submitting a proposal.
- 2.1.5 The client will provide the inputs and services specified in the special conditions of contract needed to assist the individual consultant to carry out the assignment.
- 2.1.6 The cost of preparing the proposal and negotiating the contract including any visit to the procuring entity are not reimbursable as a direct cost of the assignment. The procuring entity is not bound to accept any of the proposals submitted.
- 2.1.7 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.

2.2 Clarification and amendment to the RFP documents

- 2.2.1 Individual consultant may request clarification of any of the RFP documents not later than Seven (7) days before the deadline for the submission of the proposals. Any request for clarification must be sent in writing by post, fax email to the procuring entity's address indicated in the special conditions of contract. The procuring entity will respond by post, fax or email to such requests and will send written copies of the response (including an explanation of the query but without identifying the source of inquiry) to all individual consultants invited to submit proposals.
- 2.2.2 At any time before the deadline for submission of the proposals, the procuring entity may for any reason; either at its own initiative or in response to a clarification requested by an intended individual consultant amend the RFP. Any amendment shall be issued in writing, fax or email to all invited individual consultants and will be binding on them. The procuring entity may at its discretion extend the deadline for the submission of the proposals.
- 2.2.3 Clarification of tenders shall be requested by the tenderer to be received by the procuring entity not later than 7 days prior to the deadline for submission of tenders.

2.2.4 The procuring entity shall reply to and clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.

2.3 Preparation of proposals

2.3.1 The individual consultant's proposal shall be written in English language.

2.3.2 In preparing the Technical proposal, the individual consultants are expected to examine the documents consisting the RFP in detail. Material deficiencies in providing the information requested may result in rejection of a proposal.

2.3.3 While preparing the Technical proposal, the individual consultant must give particular attention to the following:

- (a) If an individual consultant considers that he/she does not have all the expertise required for the assignment he/she may suggest in the proposals other individual(s) who will assist in the assignment but they will not be party to the contract for the purpose of the performance of the assignment. An individual consultant will not propose other individual consultants invited to submit proposals for the assignment. Any individual consultant in contravention of this requirement shall automatically be disqualified.
- (b) For all the staff who will be involved in the exercise of the proposals to consultant must indicate their responsibility in the assignment and also the staff time as necessary.
- (c) The curriculum vitae (CV) of the staff proposed must be submitted with the proposal.

2.3.4 The Technical proposal shall provide the following information;

- (a) The individual consultants CV and a brief of any recent experience of assignment of a similar nature. For each assignment the brief should indicate the profiles of staff involved, contract amount and the individual consultant's involvement.
- (b) Any comments or suggestions on the Terms of Reference and a list of service and facilities requested to be provided by the procuring entity.
- (c) A description of the methodology and work plan for performing the proposed assignment.
- (d) Any additional information requested in the special conditions of contract.

2.3.5 The Technical proposal shall be separate from the financial proposal and shall not include any financial information.

2.4 Financial proposal

2.4.1 In preparing the financial proposal, the individual consultants are expected to take into account the time required in completing the assignment as outlined in the RFP documents. The financial proposal will therefore be quoted in fees per day or month. The financial proposal may also include other costs as necessary, which will be considered as reimbursables.

2.4.2 The Financial proposal should include the payable taxes.

2.4.3 The fees shall be expressed in Kenya Shillings.

2.4.4 The Financial proposal must remain valid for 150 days after the submission date. During this period, the individual consultant is expected to keep available at his own cost any staff proposed

for the assignment. The procuring entity will make best efforts to complete negotiations within this period. If the procuring entity wishes to extend the validity period of the proposals, the consultants who do not agree, have the right not to extend the validity of their proposals.

2.4.5 The financial proposal must comply with the law governing the profession of the consultant.

2.5 Submission, Receipt and opening of proposals

2.5.1 The technical proposal and the financial proposal (if required) shall be prepared in indelible ink. It shall contain no interlineations or overwriting, except as necessary to correct errors made by the individual consultants. The individual consultant must initial any such corrections.

2.5.2 For each proposal the individual consultants shall prepare the proposals in the number of copies indicated in the special conditions of contract. Each Technical proposal and financial proposal shall be marked “ORIGINAL” or “COPY” as appropriate. If there are any discrepancies between the original and the copies of the proposal, the original shall govern.

2.5.3 The original and all copies of the Technical proposal shall be placed in a sealed envelope clearly marked “TECHNICAL PROPOSAL”, and the original and all copies of the financial proposal in a sealed envelope duly marked “FINANCIAL PROPOSAL”. Both envelopes shall be placed in an outer envelope and sealed. This outer envelope shall bear the procuring entities address and other information indicated in the appendix to the instructions to consultants and clearly marked “DO NOT OPEN” before (**as indicated in Appendix to Information to consultants**).

2.5.4 The completed Technical and Financial proposals must be delivered at the submission address on or before the time and date of the submission of the proposals indicated in the appendix to the instructions to consultants. Any proposals received later than the closing date for submission of proposals shall be rejected and returned to the individual consultant unopened. For this purpose the inner envelope containing the technical and financial proposals will bear the address of the individual consultant submitting the proposals.

2.5.5 After the deadline for submission of proposals the outer envelope and the technical proposals shall be opened immediately by the opening committee. The financial proposals shall be marked with the individual consultants number allocated at the time of opening the outer envelope and the technical proposals but shall remain sealed and in the custody of a responsible officer of the procuring entity up to the time set for opening them.

2.6 Evaluation of the Proposal (General)

2.6.1 From the time the proposals are opened to the time of the contract award, if any individual consultant wishes to contact the procuring entity on any matter relating to his/her proposal, he/she should do so in writing at the address indicated in the appendix to the instructions to consultants. Any effort by an individual consultant to influence the procuring entity’s staff in the evaluation of proposals companion proposals or awards of contract may result in the rejection of the individual consultant proposal.

2.6.2 The proposal evaluation committee shall have no access to the Financial Proposal, which in any case will remain sealed, until the technical evaluation is concluded or finalized.

2.7 Evaluation of Technical Proposals

2.7.1 The evaluation committee appointed by the procuring entity to evaluate the proposals shall carry out the evaluation of technical proposals following the criteria set out in the terms of reference based on the following points criteria

	<u>CRITERIA</u>	<u>POINTS</u>
(i)	Qualifications of the consultant	20
(ii)	Experiencerelated to the assignment	30
(iii)	Methodology in response to the TOR	40
(iv)	Skills and competence	<u>10</u>
	Total points	100

2.7.2 Any proposal which will be examined and found not to comply with all the requirements for submission of the proposals will be declared non responsive. All the proposals found to have complied with all the requirements for submission of proposal shall be declared responsive by the evaluation committee

2.7.3 Each responsive proposal will be given a technical score (ST). Any technical proposal which fails to achieve the total minimum score indicated in the appendix to the information to tenderers shall be rejected at this stage and will not proceed to the next stage of evaluation. The respective financial proposal will be returned to the individual consultant unopened.

2.8 Opening and Evaluation of Financial Proposals

2.8.1 After completion of the evaluation of Technical proposals the procuring entity shall notify the individual consultants whose proposal did not meet the minimum technical score or were declared non responsive to the RFP and terms of reference. The notification will indicate that their financial proposals shall not be opened and will be returned to them unopened after the completion of the selection process and contract award. At the same time, the procuring entity shall simultaneously notify the consultants who have secured the minimum technical score that they have passed the technical qualifications and inform them the date and time set by the procuring entity for opening their financial proposal. They will also be invited to attend the opening ceremony if they wish to do so.

2.8.2 The financial proposals shall be opened by the procuring entity in the presence of the individual consultants who choose to attend the opening. The name of the individual consultant, the technical score and the proposed fees shall be read out aloud and recorded. The evaluation committee shall prepare minutes of the opening of the financial proposals.

2.8.3 The formulae for determining the financial score (SF) unless an alternative formula is indicated in the appendix to the information to tenderers shall be as follows:

$$Sf = 100 \times fm/f \text{ where}$$

Sf is the financial score

Fm is the lowest fees quoted and

F is the fees of the proposal under consideration.

The lowest fees quoted will be allocated the maximum score of 100

- 2.8.4 The individual consultants proposals will be ranked according to their combined technical score (st) and financial score (sf) using the weights indicated in the appendix to the instructions to consultants. Unless otherwise stated in the appendix to the instructions to consultants the formulae for the combined scores shall be as follows;

$$S = ST \times T\% + SF \times P\%$$

Where

S, is the total combined scores of technical and financial scores

St is the technical score

Sf is the financial score

T is the weight given to the technical proposal and

P is the weight given to the financial proposal

Note P + T will be equal to 100%

The individual consultant achieving the highest combined technical and financial score will be invited for negotiations.

2.9 Negotiations

- 2.9.1 Negotiations will be held at the same address indicated in the appendix to the information to consultants. The purpose of the negotiations is for the procuring entity and the individual consultant to reach agreements on all points regarding the assignment and sign a contract.
- 2.9.2 The negotiations will include discussions on the technical proposals, the proposed methodology and work plan, staff and any suggestions made by the individual consultant to improve the Terms of reference. The agreed work plan and Terms of reference will be incorporated in the description of the service or assignment and form part of the contract.
- 2.9.3 The negotiations will be concluded with a review of the draft contract. If negotiations fail, the procuring entity will invite the individual consultant whose proposal achieved the second highest score to negotiate a contract.

2.10 Award of Contract

- 2.10.1 The contract will be awarded after successful negotiations. After negotiations are completed, the procuring entity will promptly notify the other individual consultants that they were unsuccessful and return the financial proposals of the individual consultants who did not pass technical evaluation.
- 2.10.2 The selected individual consultant is expected to commence the assignment on the date indicated in the appendix to the information to consultants or any other date agreed with the procuring entity.

2.11 Confidentiality

- 2.11.1 Information relating to evaluation of proposals and recommendations of contract award shall not be disclosed to the individual consultants who submitted the proposal or to other persons not

officially concerned with the process, until the winning individual consultant has been notified that he/she has been awarded the contract.

2.12 Appendix to information to consultants

Note on the Appendix to Information to Consultants

1. The Appendix to information to consultants is intended to assist the State Department of Devolution in providing specific information in relation to corresponding claims in the information to consultants included in Section II and the appendix has to be prepared for each specific consultancy.
2. The State Department of Devolution specify in the Appendix to information to consultant and requirements specific to the circumstances of the State Department of Devolution, the assignment of the consultancy and the proposals evaluation criteria that will apply to the RFP Consultancy.
3. In preparing the appendix, the following aspects have been taken into consideration.
 - (a) The information that specifies or complements provisions of Section II to be incorporated.
 - (b) Amendments of Section II as necessitated by the circumstances of the specific consultancy to be also incorporated
 - (c) Section II should remain unchanged and any changes or amendments should be introduced through the appendix.

2.12.1 Appendix to Information to Consultants

The following information for procurement of consultancy services and selection of consultants shall complement or amend the provisions of the information to consultants, wherever there is a conflict between the provisions of the information to consultants and the provisions of the Appendix to Information to consultants, provisions of the Appendix herein shall prevail over those of the information to consultants.

Information To Consultants	Appendix to Information to consultants
2.1 Introduction	<ul style="list-style-type: none"> (i). Request for proposal is open to interested local qualified individual consultant. (ii). Consultants are encouraged to familiarize themselves with the detailed term of reference to respond appropriately. (iii). No tender security is required (iv). The Request for proposal closing/opening date is on Monday, 22nd May, 2017 at 10.00 a.m. (East African Time). (v). The Government of the Republic of Kenya reserves the right to accept or reject the tender in whole or part without assigning reasons for its decision thereof.
2.2 Clarification and amendment	<ul style="list-style-type: none"> (i). The tender MUST be submitted through IFMIS SUPPLIER PORTAL: supplier.treasury.go.ke. (ii). Request for proposal MUST be addressed to, <ul style="list-style-type: none"> Principal Secretary, Ministry of Devolution and Planning, State Department of Devolution, P.O. Box 30004 - 00100, NAIROBI. Telephone +254-202217475 +254-202215245 (iii). All communication between the consultant and the procuring entity shall be in writing. (iv). State Department of Devolution (SDD) may conduct verification/inspection exercise (Due diligence) to verify/ascertain authenticity of the information and documents submitted by the consultant. (v). Interested consultant/firm may obtain further information, clarification and peruse Request for proposal document at Head of Supply Chain Management Services office, State Department of Devolution (SDD) at Teleposta Towers 1st floor, Wing C, Kenyatta Avenue, Nairobi
2.3 Preparation of Proposals	<ul style="list-style-type: none"> (i). Consultant MUST not modify, substitute, alter/change the STANDARD TENDER DOCUMENT for Request for proposal. Consultants are only required to attach the necessary documents to the standard tender

	<p>document.</p> <p>Any modifications, substitution, alterations/change of the STANDARD TENDER DOCUMENT will lead to disqualification of the bid.</p> <p>(ii). Consultant MUST submit detailed CV with detailed work experience, referees among others and relevant copies of the certificates of the ALL the key and support staff to be involved in the consultancy.</p> <p>(iii). Consultant MUST indicate the responsibilities of the staff to be involved in the assignment.</p> <p>(iv). The Consultant MUST meet ALL the mandatory requirements to qualify for technical evaluation.</p> <p>(v). The Consultant MUST submit the necessary and relevant information required as per Terms of Reference (ToR)</p> <p>(vi). The Consultant MUST completely fill, sign and stamp the relevant documents.</p> <p>(vii). The Consultant MUST ensure they comply with ALL the mandatory requirements.</p>
2.4 Financial Proposal	<p>(i). Financial proposal MUST be in Kenya Shillings.</p> <p>(ii). The Request for Proposal MUST be valid for 150 days from closing/opening date and time</p> <p>(iii). The financial proposal MUST include government taxes and all other expenses.</p> <p>(iv). The Consultant MUST submit a detailed schedule of financial proposal indicating the deliverables.</p> <p>(v). The consultant with the highest combined score (technical and financial) will be invited for negotiations.</p>
2.5 Submission, Receipt and Opening of proposals	<p>(vi). The submission of the Request for Proposal bid document MUST be in TWO separate envelopes, TECHNICAL and FINANCIAL Proposals.</p> <p>(vii). The TECHNICAL proposal MUST be in Original and Copy. The ‘ORIGINAL’ and ‘COPY’ must be marked clearly on the bid documents and must be placed in a sealed envelope clearly marked TECHNICAL PROPOSAL. NB. The STANDARD TENDER DOCUMENT for Request for Proposal must be part of TECHNICAL PROPOSAL.</p> <p>The FINANCIAL proposal MUST be in Original and Copy. The ‘ORIGINAL’ and ‘COPY’ must be marked clearly on the bid documents and must be placed in a sealed envelope clearly marked FINANCIAL PROPOSAL.</p> <p>viii). Both envelopes of the TECHNICAL AND FINANCIAL PROPOSALS shall be placed in an outer envelope and sealed and the envelope shall bear the tender</p>

	<p>number and name.</p> <p>(ix). The outer envelope bearing TECHNICAL and FINANCIAL PROPOSAL shall be deposited in the State Department of Devolution Tender Box located at Telposta Towers, 1st Floor, Wing C, along Kenyatta Avenue, outside Supply Chain Management offices, during normal working hours (8am to 5pm, East African Time), on or before 22nd MAY, 2017 at 10.00 a.m. (East African Time).</p> <p>(x). Request for proposal bid documents submitted after the deadline shall NOT be accepted.</p> <p>(xi). Bidders/representatives are free to attend the Request for Proposal bid opening exercise at the State Department of Devolution Board Room No. 660 situated at 6th floor, Telposta Towers, along Kenyatta Avenue, Nairobi on the closing/opening date and time.</p> <p>(xii). Only the TECHNICAL PROPOSAL will be opened on the closing/opening date and time.</p> <p>(xiii). Only financial proposals of the consultants who pass technical evaluation shall be opened.</p> <p>(xiv). Those bidders who will not qualify at the technical evaluation level will have their financial bids returned un-opened.</p> <p>(xv). Bulky Request for proposal bid documents that will not fit in the tender box shall be received at the Head of Supply Chain Management Office at State Department of Devolution 1st Floor, Wing C, along Kenyatta Avenue, Nairobi during normal working hours (8am to 1pm and 2pm to 5pm East African Time).</p>
2.6 Evaluation of the Proposal (General)	<p>(i). The evaluation shall be carried out as per the detailed Evaluation Criteria set in the Request for Proposal tender documents.</p> <p>(ii). The evaluation will be carried out in three stage evaluation process;</p> <p>(a). Preliminary stage: - Proposal must meet all the mandatory requirements stage to proceed to the next stage.</p> <p>(b). Technical Stage: - Proposal must attain a minimum of 70% score to proceed to the next stage of evaluation (financial).</p>
2.7 Evaluation of Technical Proposals	<p>(i) Evaluation shall be carried out in strict adherence to the Terms of Reference</p> <p>(ii) Evaluation shall be carried out in line with the detailed evaluation criteria set out in the Request for Proposal documents.</p>

	(iii) Technical Proposal that attain a minimum of 70% score shall be considered responsive and shall proceed to the next stage (financial evaluation).
2.8 Opening and evaluation of financial Proposals	<p>(i) Only Technical Proposal that attained a minimum of 70% score at technical evaluation shall be considered at this stage and their financial proposals will be opened.</p> <p>(ii) Invited Bidders/representative will be free to attend the financial proposal opening exercise.</p> <p>(iii) Bidders whose Technical Proposals were not successful shall not be invited for the Opening of the Financial Proposals neither shall they be notified of the results of the Technical Proposals' Evaluation until the process of Tender Evaluation is completed and Tender Award results are published/announced (in conformity to ITC Clause No. 2.11.1).</p> <p>(iv) The Financial Proposals of the Consultants with the responsive Technical Proposals shall be ranked and one with most economical quotation shall be recommended for Contract Negotiation</p>
2.9 Negotiations	The technically responsive Request for Proposal/Tender who has most economical Financial Proposal shall be invited for negotiation.
2.10 Award of Contract	The consultant will commence the obligation of the contract immediately after negotiations or as may be agreed upon at contract signing.
2.11 Confidentiality	The clients and consultant shall ensure confidentiality during contract period.

2.12.2 MANDATORY REQUIREMENTS

S/No.	REQUIREMENTS
1.	Submission of Request for Proposal document in the right format (Original and Copy format)
2.	Consultant <u>MUST</u> not modify, substitute, alter/change the STANDARD TENDER DOCUMENT for Request for proposal.
3.	The consultant <u>MUST</u> submit copies of the certificate of registration/incorporation and identification documents (Identity Card or copy of Passport,
4.	Consultant <u>MUST</u> submit copy of Valid Tax compliance certificate
5.	The Consultant <u>MUST</u> duly fill completely, sign and stamp Anti-corruption declaration commitment/Pledge
6.	The consultant <u>MUST</u> submit a detailed CV dully signed accompanied with copies of certificates
7.	All pages in the document submitted should be numbered

NB: - Tenderers MUST meet ALL the mandatory requirements to qualify for Detailed Technical Evaluation.

3 SECTION III:- GENERAL CONDITIONS OF CONTRACT FOR CONSULTANCY SERVICES

3.1 Obligations of the Consultant
3.2 Obligations of the Client23.....
3.3 Personnel ...34.....
3.4 Payment 34.....
3.5 Liability and Insurance 35.....
3.6 Variations 36.....
3.7 Confidentiality 37.....
3.8 Copyright of Documents 38.....
3.9 Disputes 39.....
311 Termination 39
3.10 General 40 Provisions

SECTION III: - GENERAL CONDITIONS OF CONTRACT FOR CONSULTANCY SERVICES

3.1 Definitions and Interpretation

3.1.1 Definitions

3.1.1.1 Agreement

The Agreement is: - the contract between the Consultant and the Client. The documents forming the contract are listed in the Form of Agreement for Engagement of Consultant.

3.1.2 Client

The Client is: - the Party named as the Client in the Agreement.

3.1.2.1 Client's Representative

The Client's Representative is: - the person named as the Client's Representative.

3.1.3 Confidential Information

Confidential Information means:

- any professional advice or other information of a sensitive nature, whether or not specifically identified as confidential; and
- any information about the Parties, or their businesses, or their clients gained during the currency of this Agreement that is not already in the public domain.

3.1.4 Consultant

The Consultant is: - the Party named as the Consultant in the Agreement.

3.1.5 Consultant's Representative

The Consultant's Representative is: - the person named as the Consultant's Representative in Appendix D.

3.1.6 Contractor

Contractor means: - a person or entity that the Client engages to carry out the whole or part of the Works and includes any subcontractor engaged by a Contractor.

3.1.7 Intellectual Property

3.1.7.1 **New Intellectual Property means:** - all intellectual property rights, including, but not limited to, copyright, in all concepts, designs, drawings, specifications, plans, studies, reports, and documentation collated, prepared or created by the Consultant (or persons on behalf of the Consultant) in carrying out the Services but not including preexisting Intellectual Property.

3.1.7.2 **Pre-existing Intellectual Property means:** - all intellectual property rights owned by the Consultant or any third party and provided or used by the Consultant in carrying out the Services.

3.1.7.3 **Client's Intellectual Property means:** - all intellectual property rights owned by the Client and provided to the Consultant for the purposes of carrying out the Services or the Works.

3.1.8. Key Personnel

3.1.8.1 **Key Personnel are:** - the persons named as the Consultant's and/or Sub consultant's Key Personnel in Appendix D or E, including the Consultant's Representative.

3.1.9 Other Consultant

3.1.9.1 **Other Consultant means:** - a person or entity listed in Appendix F (other than the Consultant) the Client engages to carry out other consulting or advisory services related to the Services. It does not include a Contractor.

3.1.10 Party

3.1.10.1 **Party means:** - the Client or Consultant; "Parties" means the Client and the Consultant and "Third Party" means any other person or

entity as the context requires, including a Contractor and Other Consultants, but excluding sub consultants.

3.1.11 Services

3.1.11.1 **The Services are:** - the services listed in Appendix A (Page 105).

3.1.12 Sub consultant

3.1.12.1 **Sub consultant means:** - a person or entity, as listed in Appendix E, engaged by the Consultant to assist in the provision of the Services, together with any sub consultants appointed under clause 2.4.

3.1.13 Variation

3.1.13.1 **Variation means:** - a change in scope, time of supply or scale of the Services.

3.1.14 Working Day

3.1.14.1 **A Working Day is:** - a calendar day other than a Saturday, Sunday, statutory or public holiday.

3.1.15 Works

Works means: the physical and other works (if any) relating to the Services, to be carried out by a Contractor or by the Client, including goods and equipment to be supplied to the Client.

3.1.2.1 Interpretation

In these General Conditions of Contract for Consultancy Services, the singular shall include the plural, the masculine shall include the feminine, and vice versa where the context requires.

A reference to a Party includes their respective successors, executors and administrators.

3.2 Obligations of the Consultant

3.2.1 The Services

The Consultant must: - provide the Services set out in Appendix A; and

- perform the Services in accordance with the timetable set out in Appendix A; and
- advise the Client promptly if additional briefing or information is required from the Client to avoid any delay to the provision of Services or Works; and
- act for the Client as set out or implied in Appendix A; and
- notify the Client in writing within 10 Working Days if the Consultant thinks a Client direction is a Variation, and as soon as practicable if the Consultant thinks any other circumstance is a Variation. The notice shall include details of the estimated cost of the Services, likely or estimated impact on the Programme and completion date for the Services and make recommendations on how to proceed.

3.2.2 Duty of Care

In providing the Services, the Consultant must use the degree of skill, care and diligence reasonably expected of a professional consultant providing services similar to the Services.

3.2.3 Duty of Independent Judgment

Where the Services require the Consultant to certify, decide or use discretion under a contract between the Client and a Third Party, the Consultant must act independently, and with professional skill and judgment, according to the terms of the contract between the Client and the Third Party.

3.2.4 Sub Consultants

Subject to clause 12.8, the Consultant shall appoint, direct and pay any Sub consultant. The Consultant is responsible to the Client for the services of any Sub consultant.

The sub-contracting of any of the Services shall not relieve the Consultant from any liability or obligation under the Agreement.

If the Client decides for good reason that a Sub consultant is unsuitable, the Client can require the Consultant not to have that Sub consultant perform the

Services. The Consultant shall then replace that Sub consultant. Sub consultants may be appointed at any time subject to approval by the Client.

3.2.5 Other Consultants

The Consultant must direct and/or co-ordinate the work of Other Consultants where required by the Services. The Consultant shall not be responsible for the services and/or work of Other Consultants.

3.2.6 Ordering Client Materials or Services

The Consultant must obtain the Client's written approval before purchasing or ordering any goods or services, materials or equipment on behalf of the Client.

3.2.7 Client Concerns

The Consultant must remedy any concerns notified by the Client under clause 3.3 to the satisfaction of the Client, or agree with the Client a plan for remedying any such concerns, before proceeding to the next stage of the Services.

3.2.8 Conflicts of Interest

The Consultant must try to ensure that conflicts of interest do not arise, and notify the Client immediately in writing if it is thought that a conflict of interest may arise or has arisen.

Where a conflict of interest is identified and the Client has given informed consent, the Consultant must establish structures and practices which:

- ensure that the conflict is avoided in practice; or
- if avoidance is not practicable, ensure that the effects of conflict are minimized.

In either situation, the Consultant must inform the Client of the structures and practices that have been established.

3.2.9 Instructions to Contractors

The Consultant may instruct the Contractor and/or vary the Works to the extent authorized in Appendix A. The Consultant must not instruct a Contractor to

vary the Works in a material way beyond this authority, unless an emergency occurs. In emergency circumstances, the Consultant may vary the Works and shall immediately notify the Client about the changes.

3.2.10 Health and Safety

The Consultant must have in place a health and safety management plan that is appropriate for the Services and comply with any health and safety plan operated by the Party or Third Party in control of the site.

The Consultant is responsible for health and safety issues relating to the provision of the Services including, but not limited to:

- complying with the Consultant's obligations under the Health and Safety in Employment Act 1992 (HSEA); and
- where the Services expressly include management duties in relation to the Works, assisting the Client in complying with the Client's obligations, in relation to the Contractor, under the HSEA including raising health and safety issues with the Contractor and the party in control of the workplace.

Should the Client disregard the Consultant's proper written recommendation on an HSEA matter, the Consultant is deemed to have met the Consultant's obligations in this clause in respect of that matter.

3.2.11 Public Statements

The Consultant must not make any public or media statements to anyone about this Agreement, the Services or the Works without the Client's written approval.

3.2.12 Delay

If at any time the Consultant's performance falls behind the Programme set out in Appendix A (as amended from time to time in accordance with the Agreement), then the Consultant shall notify the Client and, where due to matters within the control of the Consultant, shall take all practicable steps to remedy such delay.

3.3 Obligations of the Client

3.3.1 Payment

The Client must pay the Consultant for the Services according to the terms and conditions set out in Appendix B and elsewhere in this Agreement.

3.3.2 Provision of Information to the Consultant

The Client must:

- provide, free of charge, the information listed in Appendix F; and
- declare any ownership or proprietary rights any other person may have to this information and pay for any royalties or fees; and
- in response to the Consultant's request, provide additional relevant information, within a timeframe that does not materially delay the Services or the Works; and
- accept responsibility for the accuracy of information provided. The Consultant is expected to review all the information provided to ensure that it contains no manifest errors or omissions. No Variation will exist if the information contains manifest errors or omissions that the Consultant should reasonably have been expected to find.

3.3.3 Client Decisions

The Client must respond to any written request from the Consultant for a decision within a reasonable time, to avoid or minimize any delay to the provision of the Services or Works.

If the Services are to be provided in stages, then the Client must approve the current stage before the Consultant may proceed with the next stage. If the Client has any concerns with the current stage, the Client shall notify the Consultant of these in writing prior to giving approval for the Consultant to proceed to the next stage.

3.3.4 Assistance to the Consultant

The Client must co-operate with the Consultant and not obstruct the proper performance of the Services.

The Client must, as soon as practicable:

- provide, free of charge, the personnel, equipment and facilities described in Appendix F; and
- allow the Consultant to visit the site and other locations associated with the Services; and
- obtain and pay for all consents, certificates, approvals, authorities, licences and permits that are needed to lawfully carry out the Works, except where they are to be obtained by the Consultant as set out in Appendix A.

3.3.5 Other Consultants

Where the Consultant has to direct and/or co-ordinate the work of Other Consultants, the Client must include in the conditions of contract with the Other Consultants a requirement that the Other Consultants have the required insurance and that they will work under the direction of, and co-operate with, the Consultant. The amount of insurance required by each Other Consultant shall be the amount specified in Appendix F. If no sum is specified, it shall be not less than that required of the Consultant under Section 6 and the Special Conditions, unless the Client and Consultant specifically agree otherwise.

The Client shall arrange and must pay for the services provided by Other Consultants.

The Client shall be responsible for the services or work provided by Other Consultants.

Where the Client wishes to appoint an Other Consultant not included in Appendix F, the Client shall, where relevant, confer with the Consultant prior to the appointment of an Other Consultant regarding the scope of work, conditions of contract and selection of the Other Consultant.

3.3.6 Instructions to Others

If, under this Agreement, the Consultant has to direct and/or co-ordinate work carried out by Other Consultants and/or Third Parties directly contracted to the Client, the Client shall give all instructions to such Other Consultants and/or Third Parties through the Consultant.

3.3.7 Matters Affecting the Services

As soon as the Client becomes aware of anything that will materially affect the scope or timing of the Services, the Client must inform the Consultant in writing.

3.3.8 Health & Safety

The Client shall provide to the Consultant a list of known identified hazards relevant to the Services and as set out in Appendix G, and any health and safety management plan operated by the Client that is relevant to the Services.

On sites where there is multiple provision of services and works, the Client shall establish a clear hierarchy of responsibilities related to health and safety management between all parties.

The Consultant does not assume any obligation of the Client under the Health & Safety in Employment Act 1992, unless that obligation is part of the Services.

3.3.9 Approvals

Where approval of the Client is sought under this Agreement, it shall not be unreasonably withheld or delayed.

Where the Client gives its consent, review or approval in respect of any matter arising in relation to the Services, such consent, review or approval shall not reduce the liability of the Consultant in respect of the matter approved except:-

- where the matter being approved reasonably carries some risk; and
- the risk has been identified to the Client in writing; and
- the Client has accepted that risk in writing.

3.4 Personnel

3.4.1 Client's Representative

The Client's Representative has authority to give the Consultant instructions on the Client's behalf; and may monitor, review, approve, accept, reject or confirm any part, or all, of the Services.

If the Client changes the Client's Representative, the Client shall first inform the Consultant in writing.

3.4.2 Consultant's Representative

The Consultant's Representative has authority to receive instructions on behalf of the Consultant and for coordinating and providing the Services as agreed on a day-to-day basis, and must communicate with the Client's Representative when required.

3.4.3 Key Personnel

The written approval of the Client shall be obtained by the Consultant before Key Personnel can be replaced or substituted.

If the Client decides for good reason that one of the Key Personnel is unsuitable:

- the Client can require the Consultant not to have that person perform the Services; and
- the Consultant shall then replace that person with someone acceptable to the Client; and
- the Client shall not bear any cost or liability arising from the replacement of that person.

3.5 Payment

3.5.1 Time for Payment

The Client must pay the Consultant all amounts claimed and due under this Agreement within the time set out in the Special Conditions.

3.5.2 Disputed and Unpaid Invoices

If the Client disputes an invoice, or part of an invoice, the Client must promptly give the reasons for withholding the disputed amount and pay any undisputed amount.

Where an invoice, or part of an invoice, is not disputed and is not paid as required in clause 5.1, the Client must pay interest on the unpaid amount from due date to the date of actual payment at the Consultant's non-penalty overdraft interest rate.

3.6 Liability and Insurance

3.6.1 Consultant's Liability

Where the Consultant breaches this Agreement, the Consultant is liable to the Client for reasonably foreseeable claims, damages, liabilities (including any liability of the Client to a third party), losses or expenses caused directly by the breach.

The Consultant shall not be liable to the Client under this Agreement for the Client's indirect, consequential or special loss, or loss of profit, however arising, whether under contract, in tort or otherwise.

3.6.2 Limitation of Liability

The maximum aggregate amount payable, whether in contract, tort or otherwise, in relation to claims, damages, liabilities, losses or expenses, is as specified in the Special Conditions.

3.6.3 Contributory Conduct

If either Party is found liable to the other (whether in contract, tort or otherwise), and the claiming Party and/or a Third Party has contributed to the loss or damage, the liable Party shall only be liable to the proportional extent of its own contribution.

3.6.4 Duration of Liability

Neither party shall be liable for any loss or damage occurring after the period stated in the Special Conditions from the date on which the Services were completed.

3.6.5 Insurance

The Consultant shall take out and maintain for the duration of the Services:

- professional indemnity insurance for the amount of the liability under clause 6.2; and
- public liability insurance cover as set out in the Special Conditions; and
- provision for reasonable defense costs.

The Consultant shall use all reasonable endeavors to maintain professional indemnity insurance for the duration of liability stated under clause 6.4. If at any time the Consultant is unable to obtain or maintain professional indemnity cover as required by the Agreement, or if any material change to the terms and

conditions of the cover occurs, the Consultant shall, as soon as practicable, notify the Client in writing.

3.6.6 Proof of Insurance

If the Client asks, the Consultant must produce certificates evidencing the currency of such cover and proving that professional indemnity and public liability insurance policies meet the requirements in clause 6.5.

3.7 Variations

3.7.1 Variations to the Services

The Client may order a Variation to the Services, in writing, or may ask the Consultant to propose a Variation to the Services, the impact of which on the cost, Programme and completion date for the Services shall be agreed as in 7.2.

Where the Consultant notifies the Client under clause 2.1 that any direction or circumstance should be treated as a Variation, the Client shall as soon as practicable after receiving such notice, but within 10 Working Days, notify the Consultant in writing whether or not it considers the direction or other circumstances to be a Variation.

If the Client does not consider the direction or other circumstance to be a Variation then the Client and Consultant shall attempt to resolve the matter as soon as practicable, and if a Variation entitlement is agreed, proceed as in 7.2.

3.7.2 Agreement of Variations

The Client and the Consultant shall agree, in writing, the value of the Variation and its impact on the Programme and completion date for the Services, or the mechanism under which the value and impact on the Programme and completion date for the Services will be derived.

Where practicable the value of the Variation and impact on the Programme and completion date for the Services shall be agreed between the parties prior to the Variation works progressing.

Where the value of the Variation cannot practicably be agreed between the Parties prior to the Variation works commencing, the parties shall agree to a

budget for the Variation works that shall not be exceeded without further agreement between the Parties.

3.7.3 Failure to Agree

In the event that the Parties are unable to reach agreement on the value and impact on the Programme and completion date for the Services, the matter shall be treated as a dispute and resolved in accordance with clause 10.

3.8 Confidentiality

3.8.1 Client Obligations

The Client must:

- identify Confidential Information at the time it is supplied to the Consultant; and
- keep all Confidential Information relating to the Consultant confidential and only use it for the purposes it was made available; and
- not disclose Confidential Information relating to the Consultant without the Consultant's written approval, unless it is necessary for the purposes of the Services or the Works to disclose it to any appropriate third party, or as required by law.

3.8.2 Consultant Obligations

The Consultant must:

- identify Confidential Information at the time it is supplied to the Client; and
- keep all Confidential Information relating to the Client or the Client's project confidential and only use it for the purposes it was made available; and
- not disclose any Confidential Information relating to the Client or the Client's project or the Works without the Client's written approval, unless it is necessary for the purposes of the Services or Works to disclose it to any appropriate third party, or as required by law.

3.8.3 Exclusions

Information shall cease to be Confidential Information when the information is publicly available through no unauthorized act of either Party.

If either Party is legally bound to disclose Confidential Information, that Party must first advise the other Party what information will be provided and limit the information to that required by the law.

3.8.4 Return of Confidential Information

Upon request, and except as in clause 11.3, the Consultant must promptly return to the Client or destroy all Confidential Information which is in the Consultant's possession or control.

3.9 Copyright of Documents

3.9.1 Subject to clause 9.6 all new Intellectual Property held in any medium, whether electronic or otherwise, shall be jointly owned by the Client and the Consultant. The Client and the Consultant hereby grant to the other an unrestricted royalty-free license in perpetuity to copy or use such New Intellectual Property and each Party is free to make whatever use they wish of the New Intellectual Property without any obligation to obtain the other's consent or to account for any future benefits.

3.9.2 All Pre-existing Intellectual Property shall remain the property of the original owner. The Client's Intellectual Property shall remain the property of the Client. The Consultant hereby grants to the Client, or agrees to procure the grant to the Client of, an unrestricted royalty-free licence to use and copy Pre-existing Intellectual Property to the extent reasonably required to enable the Client to make use of the Services or use, adapt, update or amend the Works. The Client hereby grants to the Consultant, an unrestricted royalty-free license to use and copy the Client's Intellectual Property provided to the Consultant to the extent reasonably required to enable the Consultant to provide the Services.

3.9.3 The Consultant confirms (save in respect of any of the Client's Intellectual Property and subject to clause 9.4) that the New Intellectual Property, the Preexisting Intellectual Property, the Services and the Services as incorporated in the Works will not infringe any intellectual property or other rights of any third party.

- 3.9.4 The Consultant does not warrant the suitability of the New Intellectual Property for any purpose other than the Services or any other use stated in the Agreement.
- 3.9.5 The Client owns, or has the right to use, Confidential Information disclosed or provided to the Consultant under this Agreement.
- 3.9.6 The ownership of data and factual information collected by the Consultant and paid for by the Client shall, after payment by the Client, lie with the Client.

3.10 Disputes

- 3.10.1 If there is a dispute between the Parties in relation to this Agreement, or any matter arising from it, the Parties will in good faith in the first instance use their best endeavours to resolve the dispute themselves.
- 3.10.2 If the dispute cannot be resolved by the Parties themselves within a reasonable time, then they must explore whether the dispute can be resolved by use of mediation or other alternative resolution technique.
- 3.10.3 If the dispute is not settled within a reasonable time, then either Party may refer the dispute to arbitration by a sole arbitrator under the provisions of the Arbitration Act, Cap 49 (1995) and the substantive law of Kenya. The arbitrator will be appointed by agreement between the Parties within 15 working days of written notice of referral by the referring party to the other or, failing agreement, by the President of the Kenya Law Society or its successor body, or any nominee of the President. In either case, the arbitrator must not be a person who has participated in any informal dispute resolution procedure in respect of the dispute.
- 3.10.4 No dispute arising gives either Party the right to suspend their obligations under the terms of this Agreement.

3.11 Termination

3.11.1 Termination of the Agreement

The Client may terminate this Agreement at any time, or under the provisions of clause 12.4, by written notice to the Consultant. As soon as this notice is received, the Consultant shall stop the Services.

The Consultant may terminate this Agreement by written notice only if the Client has materially breached the terms of the Agreement.

At the completion of the Services the Agreement is hereby terminated.

Termination of this Agreement shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.

3.11.2 Payment on Early Termination

If the Client terminates this Agreement, or the Consultant terminates this Agreement because the Client has breached it, then the Client must immediately pay the Consultant for Services provided to the date of termination.

If the Client terminates the Agreement for reasons other than a default by the Consultant, or if the Consultant terminates the Agreement because of a default by the Client, the Client must also pay any reasonable costs that the Consultant incurs solely because of the early termination of the Agreement

3.11.3 Return of Property/Equipment

At the end of the Services, the Consultant must return to the Client any property, including the Client's Intellectual Property, or equipment of the Client which is in the Consultant's possession or control.

Notwithstanding any other provision in this Agreement the Consultant shall be entitled to retain a copy of all documentation including Confidential Information, drawings, specifications, reports, correspondence, computer files and records of every description for its record keeping purposes only. Such documentation shall include all relevant New, Pre-existing and Client's Intellectual Property. The Consultant shall treat all such documentation as Confidential Information and shall mark it confidential.

3.11.4 Transfer of New Intellectual Property

In the event of termination by the Client, the Consultant shall provide reasonable assistance to the Client in the transfer of the Services (including delivering copies of any New Intellectual Property in the Consultant's control) to the new consultant provided that the Client has made all payments due and owing under the Agreement.

3.12 General Provisions

3.12.1 Law and Currency

This Agreement is subject to Kenya law. References to dollars are references to Kenya dollars unless otherwise stated. Any arbitration or court proceedings about this Agreement, or the Services, must be brought and heard in Kenya.

3.12.2 Consumer Guarantees Act

The Client and the Consultant agree that, where the Services are provided for the Client's business purposes, the provisions of the Consumer Guarantees Act 1993 are excluded in relation to the Services.

3.12.3 Changes in Legislation

If, after the date of this Agreement, the cost or duration of the Services alter because of changes or additions to any statute, regulation or by-law, or requirements of any authority that has jurisdiction over any part of the Works or the Services, the agreed changes to cost and duration of the Services will be treated as a Variation.

3.12.4 Events beyond Control

Should any event occur which: - is beyond the control of either Party; and

- is neither directly nor indirectly caused by either Party; and
- prevents the performance of the Services (in whole or in part) required under this Agreement,

then those Services will be suspended until such time that it becomes practicable to recommence the Services. This does not include events personal to either Party, such as ill-health or lack of funding or resources.

In the event that there is a reasonable likelihood that the Services are not able to be recommenced, then this Agreement may be terminated by the Client.

In circumstances where the Services or part of the Services have to be suspended or delayed, the Consultant will be allowed extra time to complete the Services and such extra time should be reasonable in the circumstances.

In the event that the suspension continues for greater than 6 months, then this Agreement may be terminated by the Consultant.

3.12.5 Advertising

The Consultant must first obtain the Client's written permission if it wants to put up a sign on or near the site of the Works (or to which the Services relate) that directly or indirectly shows its involvement with the Works

3.12.6 Reporting

The Client and the Consultant shall review and discuss the progress of the Services, as agreed from time to time, or as reasonably requested.

3.12.7 Notices

All demands, notices, requirements and consents this Agreement authorises or requires, or that relate to this Agreement, must be in writing and will take effect from receipt at any one of the addresses shown in the Special Conditions. These may be delivered:

- by hand or by facsimile, in which case a written confirmation of receipt is required, or
- by registered letter, or
- by email, in which case receipt will take effect upon receipt by the sender of the email message indicating that the email has been opened at the recipient's terminal, provided that any communication received, or deemed received after 5pm, or on a day which is not a Working Day, shall be deemed not to have been received until the next Working Day.

3.12.8 No Assignment

The Consultant must not assign, transfer or subcontract all or part of its rights or obligations under this Agreement without the Client's prior written approval. This approval may be refused without the need to give reasons, except that, in the case where the Consultant requests approval to subcontract

to a related company of the Consultant, such approval shall not be unreasonably withheld.

If the Consultant assigns or transfers its rights, the Consultant will remain liable for the performance of its obligations under this Agreement, unless specifically stated to the contrary in any written consent to an assignment or transfer.

3.12.9 Survival of Provisions

The provisions of clauses 2.10, 2.11, 5, 6, 8 and 9 shall continue in effect after termination of the Agreement.

3.12.10 No Waiver

Any waiver given by either Party in connection with this Agreement is binding only if it is in writing, and then strictly in accordance with the terms on which it is given. Subject to this clause, no waiver given by either Party for the purposes of this Agreement affects or limits that Party's rights against the other Party under this Agreement.

3.12.11 Severability

Each term of this Agreement is separately valid and binding. If for any reason either Party cannot rely on any term, all other terms will remain valid and binding, and the Parties will negotiate in good faith for an alternative term with similar financial effect for both Parties.

3.12.12 No Partnership

Nothing in this Agreement is to be construed as evidence of a partnership between the Parties.

3.12.13 GST

Where there is a reference to any payment under this Agreement, GST (or any similar tax) is to be added to the amount of that payment.

3.12.14 Client's Regulatory Functions

If the Client has regulatory functions outside of the Agreement, the Client shall be deemed not to be acting in the capacity of the Client under this Agreement when exercising these functions in good faith

SECTION IV: - SPECIAL CONDITIONS OF CONTRACT

The Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract.

- 4.1 The participating candidates are required to furnish the procuring entity the following **Mandatory Documents/Information**: -
- (a) Ensure that the Request for Proposal Document is submitted in the right format (Original and Two (2No.) Copies);
 - (b) The Tenderer **MUST** not modify, substitute, alter/change the **STANDARD TENDER DOCUMENT** for Request for Proposal.
 - (c) The Tenderer **MUST** submit copies of Certificate of Incorporation/Registration of Business Name from AG Chambers.
 - (d) Tenderer **MUST** submit copy of Tax compliance certificate (PLUS Value Added Tax (VAT) Certificate and PIN No. certificate).
 - (e) **Form of Tender and Confidential Business Questionnaire MUST** be dully filled, stamped and signed by the applicant/an authorized representative who has a power of attorney (and evidence provided thereof).
 - (f) The Anti-Corruption Declaration Commitment/Pledge **MUST** be dully filled, stamped and signed by the applicant/an authorized representative who has a power of attorney (and evidence provided thereof).
 - (g) Valid Trade License/s – copies **MUST** to be attached as appropriate.
 - (h) Reliable communication services e.g. fixed line telephone, fax, P.O. Box, Cellphone Numbers, Emails and Website address, etc.
 - (i) Evidence of past performance – copies of Purchase Orders (P.Os.) from established organizations be attached (if any).
 - (j) All pages in the bid document should be serialized and be stamped.

- 4.2 The Successful Tenderers shall be required to furnish the Procuring Entity with a Performance Security of Ten Percent (10%) of the total Tender Sum by signing the Contract.
- 4.3 **Tenderers shall be required to provide evidence of financial stability for at least three years preceding the current audit year. These should be in form of audited accounts and/or bank statements.** Failure to submit the evidence may render the Request for Proposal/tender non-responsive.
- 4.4 Tenderers shall be required to submit their Offers in the ORIGINAL and Two (2No.) copies each one marked “ORIGINAL OFFER” and the other “COPY OF OFFER”. The original and copy shall be sealed in separate envelopes duly marked as “ORIGINAL” and “COPY”. The TECHNICAL PROPOSAL and the FINANCIAL PROPOSAL shall also be sealed separately ORIGINALS and COPIES as appropriate. The envelopes shall then be sealed in one plain unmarked outer envelope bearing only the tender number and name **pursuant to clause 16 of the General Information.**
- 4.5 Prices quoted **shall be in Kenya Shillings.**
- 4.6 **Tenderers are required to ensure that all pages of their Tender Documents are properly serialized, stamped and signed.**
- 4.7 **The Document should be Properly Bound. Loose Tender Documents will be declared non responsive.**
- 4.8 Blacklisted and suspended firms are not eligible for this procurement.

SECTION III- TERMS OF REFERENCE (TOR)

Notes on the preparation of the Terms of Reference

The terms of reference are the initial statement to the consultants, of the services to be performed and should therefore be clear and precise and should contain the following sections;

- (a) Background information
- (b) Objectives of the assignment
- (c) Scope of work or services of the assignment
- (d) Training requirements (where applicable)
- (e) Reporting systems and time schedules
- (f) Evaluation Criteria
- (g) Personnel, facilities and other requirements to be provided by the procuring entity and
- (h) Terms of payment

TERMS OF REFERENCE

CONSULTANCY SERVICES FOR THE FOR THE DEVELOPMENT OF AN INVESTMENT PROJECT PROPOSAL (IPP)

1. Introduction

Implementation of devolution has shifted investment opportunities to counties. These opportunities need to be leveraged to harness the benefit of both foreign and local investments across the country, which include technology transfer, local economic development, employment creation, private sector development and domestic and foreign firm partnerships through value chains. Investment leads to overall development and competitiveness of the local business sector. There is therefore a need for improved investment environment, which involves mainstreaming investment across a broad range of policy areas that affect the investment climate.

However, there are capacity gaps for most stakeholders charged with the responsibility of promoting investment promotion and facilitation. These gaps span institutional, human resources, skills, knowledge, and infrastructure.

The National Government is mandated by the Constitution to provide capacity building and technical assistance to County Governments for effective service delivery. In carrying out this mandate the State department of Devolution with the support of development partners formulated the National Capacity Building Framework (NCBF) to address capacity needs of both levels of government. It is under the aegis of this framework that the State Department of Devolution is coordinating capacity building programs in different sectors including trade and investment.

The State Department of Devolution in collaboration with Key Stakeholders has drafted a concept note on capacity building in key result areas of investment promotion and facilitation to address the identified gaps. It is the lead agency in coordination of the development of the concept note with key stakeholders.

2. Objectives

The objective of the consultancy is to support the State Department of Devolution in the development of Investment Project Proposal for Improved Trade and Investment Promotion in National and Counties. The proposed project aims at ensuring improved quality trade and investment information for effective planning and action at county and national levels. The consultancy consists of the following parts:

- a) Preparing the Project proposal documents including, inter alia, the preparation of the project appraisal document and the project operations manual and related annexes.
- b) Conducting a stock-taking and assessment of the existing technical, institutional and human resources capacity of the county and national trade and investment promotion services and identifying gaps, and

- c) Carrying out national and county consultations with various stakeholders with specific attention being paid to local champions and capacity development groups.

Scope of the Work

In carrying out the assignment, the Consultant is required to employ a collaborative approach in ensuring that inputs are obtained from a wide cross section of stakeholders. The project will establish linkages with planned and on-trade and investment improvement programs to facilitate complementarities and reduce potential for duplication. It will be formulated in keeping with the format, content and quality required by the Trade and Investment Capacity Building Technical Committee. Specifically, the consultant is required to:

- i. Prepare a draft Investment Project Proposal (IPP) to address the objectives of the capacity building initiative to improve the trade and investment environment in counties and in-keeping with the format and content stipulated in the template for detailed investment proposals.
- ii. Develop strategies to address institutional, knowledge, skills, policy, legal and strategy gaps constraining investment which form part of bureaucratic exigencies.
- iii. Review relevant documentation and literature related to the project. Relevant literature and documentation includes, but is not limited to:
 - Devolution Policy
 - National Investment Policy, (Draft), domiciled at Kenya Investment Authority;
 - The County Government Act, 2012
 - The Urban Areas and Cities Act, 2011,
 - The Public Finance Management Act 2012,
 - The Intergovernmental Relations Act, 2012
 - Transition to devolved Government Act 2012
 - The trade policy
 - The Export Policy
 - The SME Policy
 - Diaspora Policy
 - World Bank project profile template for loans and grants
- iv. Define the project preparation arrangements including the technical coordination of each component/activity as appropriate;
- v. Define the project activities under each Component incorporating all technical comments as they arise;
- vi. Define the baseline and annual targets, and monitoring mechanisms for indicators which are defined in the project;

- vii. Develop and execute a plan for consultation with relevant government agencies at both levels of government, non-profits, universities; private sector and community organizations;
- viii. Revise draft project to incorporate stakeholder feedback and prepare final Investment Project Proposal
- ix. Define a strategy for resource mobilization that will attract funding to support implementation of the Capacity Building project for Improving Trade and Investment Promotion in Counties;

3. Deliverables

The principal delivery of this consultancy will be a finalized project document with a work plan and budget. Other deliverables shall include:

- a) An inception report, inclusive of a detailed work plan for the consultancy, at the start of the contract period;
- b) A draft project document including costing and budget, cost benefit analysis, a log frame/result framework, monitoring and evaluation plan, risk log and outline of institutional arrangements;
- c) Consultation meetings and interviews as agreed in the work plan;
- d) Final project document incorporating the elements outlined above, which will include stakeholder feedback and feedback from the Technical Committee;
- e) A validation workshop to solicit stakeholders views
- f) Submit five (3) Copies of final report, electronic form, and presentation at the project end

4. Timelines and Payment Schedules

This work is expected to take a maximum of 60 days. The payment schedule is as indicated in the matrix below.

MILESTONE	DELIVERABLES	PROPOSED TIMELINE	% PAYMENT
Inception	Inception report	15 days	10%
Development of the project proposal	Draft project proposal	30 days	40%
Stakeholder consultation	Consultative Workshop report		
Finalization of the Investment Project Proposal	Final Investment Project Proposal	15 days	50%

5. Consultant Qualifications and Experience

The following are the minimum qualifications and experience expected of the consultants/
Consultancy Firm:

- a) Lead Consultant: A Master’s degree in Economics, Public Policy, or Business Administration
- b) Other Consultants should have a minimum of a degree in relevant areas
- c) Minimum 10 Years expertise and experience in investment and trade design and development of projects;
- d) Wide knowledge and/or familiarity of investment climate at national and county levels;
- e) Proven ability to generate and sustain ongoing consultation and meaningful participatory processes;
- f) Good understanding of devolution matters;
- g) Wide knowledge of the trade and investment sectors;
- h) Significant expertise and experience in conducting social and environmental assessment/analysis; and
- i) Excellent communication skills and knowledge of English language

6. Consultant Selection Criteria
Technical Evaluation Criteria

No.	Criteria	Weight	Maximum Points	
1.	Qualifications (10 marks)	20%	20	
	A Master’s degree in Economics, Public Policy, Trade, Finance, or Business Administration			10
	Other Consultants with minimum Bachelors Degree (Minimum of 2)			10
2.	Firm Experience	30%	30	
	Relevant Experience Minimum 10 Years experience in the development of projects and investment for private sector			10
	Should have undertaken a minimum of 3 similar assignment in the last 5 years			10
	Experience in Trade and Investment in public Sector			5
	Understanding of local economic development and Kenyan devolution			5
3.	Methodology	40%		
	Understanding of the Terms of Reference			15
	Proposed Methodology			15

	Presentation of the a work plan		10
4.	Competences	10%	
	Analytical skills and Knowledge sharing		5
	Specialized computer software skills		2
	Design and development of projects		3

Bidders who score 70% and above in the Technical Evaluation stage shall proceed to the Financial Evaluation stage.

Application process

Applicants are required to submit a detailed CV with copies of certificates, and other relevant testimonials.

SECTION IV - TECHNICAL PROPOSAL (TP)

Notes on the Preparation of Technical Proposal

The technical proposal shall be prepared and submitted by the consultants.

It shall contain the following:-

- (a) Submission letter
- (b) Particulars of the consultant and ALL support staff including Detailed Curriculum vitae (CV) and copies of the certificates
- (c) Comments and suggestions of the consultant on the terms of reference, personnel, facility, and other requirements to be provided by the procuring entity.
- (d) Description of the methodology and work plan for performing the assignment
- (e) Any proposed staff to assist in the assignment and their experience
- (f) Consultancy services activities time schedule.

SECTION V - FINANCIAL PROPOSAL (FP)

Notes on the Preparation of Financial Proposal

The financial proposal shall be prepared and submitted by the consultants. It shall contain the following.

- (a) Submission letter indicating total fees
- (b) Summary of costs
- (c) Detailed payment schedules and expected completion.
- (d) Breakdown of fees per activity
- (e) Breakdown of reimbursable costs/expenses per activity
- (f) Miscellaneous expenses
- (g) Form of Tender

SECTION VI - STANDARD CONTRACT FORMS

6.1 Form of Tender

To: Date.

.....
.....

Name and address of procuring entity
No.....

Tender

Tender Name.....
.....
.....

Gentlemen and/or Ladies:-

1. Having examined the Tender documents including Addenda No. (Insert numbers) the receipt of which is hereby duly acknowledged, we the undersigned, offer to provide consultancy Services for the Consultancy Services for the Development of an Investment Project Proposal in conformity with the said Tender document for the sum of **KShs**.....
.....
.....
or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

2. We undertake, if our Tender is accepted, to provide the Insurance Cover Services in accordance with the conditions of the tender.

3. We agree to abide by this Tender for a period of[number] days from the date fixed for Tender opening of the Instructions to Tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

4. This Tender, together with your written acceptance thereof and your notification of award, shall constitute a Contract between us subject to the signing of the contract by both parties.

5. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this _____ day of _____ 20_____

[Signature]

[In the capacity of]

Duly authorized to sign tender for and on behalf of _____

6.2 CONFIDENTIAL BUSINESS QUESTIONNAIRE

You are requested to give the particular indicated in Part 1 and either Part 2(a), 2(b), or 2(c)
Whichever applies to your type of business

You are advised that it is a serious offence to give false information on this Form.

Part _____ General:

Business Name

Location of business premises

Plot No. Street/Road

Postal Address Tel. No.Fax Email

Nature of business

Registration Certificate No.

Maximum value of business which you can handle at any one time Kshs...

Name of your bankers Branch

Part 2(a) – Sole Proprietor:

Your name in full Age

Nationality Country of origin

Citizenship details.....

Party 2(b) – Partnership

Give details of partners as follows

	Name	Nationality	Citizenship Details	Shares
1.....				
2.....				
3.....				
4.....				
5.....				

Part 2(c) – Registered Company:

Private or public

State the nominal and issued capital of the company –

Nominal Kshs..

Issued Kshs.....

Give details of all directors as follows

	Name	Nationality	Citizenship Details	Shares
1.....				
2.....				
3.....				
4.....				
5.....				

Date.....Signature of Tenderer

If a citizen, indicate under “Citizenship Details” whether by Birth, Naturalization or Registration

6.3 ANTI-CORRUPTION DECLARATION COMITMENT/ PLEDGE

(Sections 62 of the PPAD Act, 2015)

I/We/Messrs.....

of Street, Building, P O Box.....

.....

Contact

Phone

E mail.....

Declare that Public Procurement is based on a free and fair competitive Tendering process which should not be open to abuse.

I/We

declare that I/We will not offer or facilitate, directly or indirectly, any inducement or reward to any public officer, their relations or business associates, in connection with

Tender/Tender No

for or in the subsequent performance of the contract if I/We am/are successful and I/We am/are not debarred from participating in procurement proceedings.

Authorized Signature.....

Name.....

Title of Signatory.....

6.4 INDIVIDUAL PROFESSIONAL CONSULTANTS

(Lump-sum payment)

The contract form shall be completed by the procuring entity after the award of the contract and negotiation of the contract. It will be signed by both parties pursuant to the information to consultants clause 2.10.2

This Agreement, [hereinafter called “the Contract”) is entered into this _____ [insert starting date of assignment], by and between.

_____ [Insert Client’s name] of [or whose registered office is situated at] _____ [insert Client’s address] (hereinafter called “the Client”) of the one part AND

_____ [Insert Consultant’s name] of [or whose registered office is situated at] _____ [insert Consultants address] (hereinafter called “the Consultant”) of the other part.

WHEREAS the Client wishes to have the Consultant perform the services [hereinafter referred to as “the Services”, and

WHEREAS the Consultant is willing to perform the said Services,

NOW THEREFORE THE PARTIES hereby agree as follows:-

1. **Services**
 - (i) The Consultant shall perform the Services Specified in Appendix A, “Terms of Reference and Scope of Service, “which is made an integral part of this Contract.
 - (ii) The Consultant shall provide the personnel listed Appendix B, “Consultant’s Personnel,” to perform the Services.
 - (iii) The Consultant shall submit to the Client the reports in the form and within the time periods specified in Appendix C, “ Consultant’s Reporting Obligations.”

(Appendices A, B, and C to be prepared as appropriate)

2. **Term** The Consultant shall perform the Services during the period commencing on _____ [insert starting date] and through to _____ [insert completion date], or any other period(s) as may be subsequently agreed by the parties in writing.

3. **Payment**
 - A. Ceiling

For Services rendered pursuant to Appendix A, the Client shall pay the Consultant an amount not to Exceed _____ [insert amount]. This amount has been established based on the understanding that it includes all the Consultant's costs and profits as well as any tax obligation that may be imposed on the Consultant.

B. Schedule of Payments

The schedule of payments is specified below (Modify in order to reflect the output required as described in Appendix C.)

Kshs. _____ upon the Client's receipt of the Draft report, acceptable to the Client; and

Kshs. _____ upon the Client's receipt of the Final report, acceptable to the Client.

Kshs. _____ Total

C. Payment Conditions

Payment shall be made in Kenya Shillings unless otherwise specified not later than thirty (30) days following submission by the Consultant of invoices in duplicate to the Coordinator designated in Clause 4 here below. If the Client has delayed payments beyond thirty (30) days after the due date hereof, simple interest shall be paid to the Consultant for each day of delay at a rate three Percentage points above the prevailing Central Bank of Kenya's average rate for base lending.

4. **Project Administration** A.

Coordinator
The Client designates _____

Director Capacity Building as Client's Coordinator; the Coordinator will be responsible for the Coordination of activities under this Contract, for acceptance and approval of the reports and of other deliverables, by the Client and for receiving and approving invoices for payment.

B. Reports

The reports listed in Appendix C, "Consultant's

Reporting Obligations,” shall be submitted in the Course of the assignment and will constitute the basis for the payments to be made under paragraph 3.

5. **Performance Standards** The Consultant undertakes to perform the Services with the highest standards of professional and ethical competence and integrity. The Consultant shall promptly replace any employees assigned under this Contract that the Client considers unsatisfactory.
6. **Confidentiality** The Consultant shall not, during the term of this Contract and within two years after its expiration Disclose any proprietary or confidential Information relating to the Services, this Contract Or the Client’s business or operations without the Prior written consent of the Client.
7. **Ownership of Material** Any studies, reports or other material, graphic, software or otherwise prepared by the Consultant for the Client under the Contract shall belong to and remain the property of the Client. The Consultant may retain a copy of such documents and software.
8. **Consultant Not to be Engaged in certain Activities** The Consultant agrees that during the term of this Contract and after its termination the Consultant and any entity affiliated with the Consultant shall be disqualified from providing goods, works or services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.
9. **Insurance** The Consultant will be responsible for taking out any appropriate insurance coverage.
10. **Assignment** The Consultant shall not assign this Contract or sub-contract any portion of it without the Client’s prior written consent.
11. **Law Governing Contract and Language** The Contract shall be governed by the laws of Kenya and the language of the Contract shall be English language
12. **Dispute Resolution** Any dispute arising out of the Contract which cannot be amicably settled between the parties shall be referred by either party to the arbitration

and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the chairman of the Chartered Institute of Arbitrators, Kenya branch, On the request of the applying party.

For the Client

For the Consultant

Full name _____

Full name _____

Title _____

Title _____

Signature _____

Signature _____

Date _____

Date _____

6.5 REQUEST FOR REVIEW FORM

FORM RB 1

**REPUBLIC OF KENYA
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 of20.....in the matter of Tender
No.....of20...

REQUEST FOR REVIEW

I/We.....,the above named Applicant(s), of address: Physical
address.....Fax 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.
- etc.

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

- 1.
- 2.

SIGNED(Applicant)

Dated on.....day of/...20...

FOR OFFICIAL USE ONLY

Lodged with the Secretary Public Procurement Administrative Review Board on
day of20.....

SIGNED
Board Secretary