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**TENDER REF. NO.: - MODP/SDD/RFP/KSDP/16/2016/2017**

**IFMIS NO. 445393**

**CONSULTANCY SERVICES FOR ANNUAL CAPACITY  
AND PERFORMANCE ASSESSMENT (ACPA)**

**(SELECTION OF CONSULTANTS)**

**FINANCIAL YEAR 2017/2018**

**CLOSING DATE: 29<sup>TH</sup> MAY, 2017**

**TIME: 10:00AM (EAST AFRICAN TIME)**

A complete tender document can be downloaded from supplier portal  
<https://supplier.treasury.go.ke>

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## **INTRODUCTION**

1. This Standard Request for Proposals (SRFP) has been prepared for use by public entities in Kenya in the procurement of consultancy services and selection of consultants.
2. The SRFP includes Standard form of Contract for Large Assignments and small assignment which are for lump sum or time based payments.
3. A separate SRFP has been provided for selection of individual professional consultants.
4. The General Conditions of Contract should not be modified and instead the Special Conditions of Contract should be used to reflect the unique circumstances of the particular assignment. Similarly the information to consultants should only be clarified or amended through the Appendix to information to Consultants.
5. This SRFP document shall be used where a shortlist of consultancy firms already exist or has been obtained through a shortlist after an advertisement of Expression of Interest for Consultancy required.



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

**SECTION I - INVITATION TO TENDER**

*Date* 9<sup>TH</sup> MAY, 2017

**TENDER REF NO.: - MODP/SDD/RFP/KSDP/16/2016/2017**

**TENDER NAME: - CONSULTANCY SERVICES FOR THE ANNUAL  
CAPACITY AND PERFORMANCE  
ASSESSMENT (ACPA)**

1.1 The State Department of Devolution, Ministry of Devolution and Planning invites proposals for the following consultancy services for the Annual Capacity and Performance Assessment (ACPA).

1.2 The request for proposals (RFP) includes the following documents: -

- Section I: - Invitation to Tender
- Section II: - Information to consultants  
Appendix to information to Consultants
- Section III: - General Conditions of Contract for Consultancy Services
- Section IV: - Special Conditions of Contract for Consultancy Services
- Section V: - Terms of Reference
- Section VI: - Technical proposals
- Section VII: - Financial proposal
- Section VIII: - Evaluation Criteria
- Section IX: - Standard Forms
- Section X: - Standard Contract Form

REPUBLIC OF KENYA



STATE DEPARTMENT OF DEVOLUTION  
MINISTRY OF DEVOLUTION AND PLANNING

LETTER OF TENDER INVITATION

REQUEST FOR PROPOSAL (RFP) FOR CONSULTANCY SERVICES

Tender No.	<b>MODP/SDD/RFP/KSDP/16/2016/2017 IFMIS NO. 445393</b>
Country	<b>Kenya</b>
Project	<b>Kenya Devolution Support Program (KDSP)</b>
<b>Eligibility:</b>	<b>CONSULTING FIRMS</b>
<b>TITLE:</b>	<b>CONSULTANCY SERVICES FOR ANNUAL CAPACITY &amp; PERFORMANCE ASSESSMENT (ACPA)</b>

The Government of Kenya, together with Development Partners, has developed a National Capacity Building Framework (NCBF) to frame efforts to build capacity around the new devolved governance arrangements. The NCBF covers both national and county capacity. The Government is now developing a Medium-Term Implementation program to implement the National Capacity Building Framework.

The Government intends to provide support to counties in Kenya in terms of capacity building, improved systems and procedures and performance-based funding for development investments over a period of 5 years starting from January 2016 under a new Program with the name: Kenya Devolution Support Program (KSDP) supported by the World Bank. The Program will include the introduction of a Capacity & Performance-Based Grant – named **Capacity & Performance Grants (CPG)** to counties to provide additional incentives for improved county performance in five core results areas: -

- 1) **Public Financial Management (PFM),**
- 2) **Human Resource Management (HRM),**
- 3) **Planning, and M&E/Accountability,**
- 4) **Civic Education and Participation and**
- 5) **Implementation/Service Delivery Progress.**

**Objectives of the Assignment**

The objective of the assignment is to provide highly professional, objective and credible **assessment results of counties' performance**. The assessment will be conducted on a number of indicators (minimum access conditions (MACs),

minimum performance conditions (MPCs) and performance measures (PMs)) that will be identified and communicated to counties in advance of the assessment. The indicators will **relate to a number of core minimum access conditions (for access to grants)**, minimum performance conditions and performance measures, which are more qualitative measures for the counties' performance. **The Capacity and Performance Assessment Manual provides a full overview of the conditions and measures.** The results of the MACs, MPCs and PMs will be used to identify counties, which can get access to the grants and the size of these grants. Assessment of the performance measures will also be applied to provide incentives for counties to improve performance identify capacity development gaps and provide lessons learned on areas in needs of attention and support.

The Ministry of Devolution and Planning (State Department of Devolution) now invites eligible firms to tender their applications by submitting a **Request for Proposal for Consultancy Services for Annual Capacity Performance Assessment.**

Interested and eligible consultants/consortiums is required to submit their application in English language with the following specific information

- Experience in similar assignments
- Availability of appropriate key staff to be involved in the assignment
- A brief profile of the firm including description of the firm/consortium members, incorporation details, joint venture details etc.

Interested consultants may obtain further information from the Ministry's website: **[www.devolutionplanning.go.ke](http://www.devolutionplanning.go.ke)** or at Capacity Building and Technical Assistance Department, Ministry of Devolution and Planning (State Department of Devolution), Bazaar House, 4<sup>th</sup> Floor, Moi Avenue, Nairobi, Kenya during office hours (0800hrs and 1700hrs - East Africa Time).

- The attention of interested consultants is drawn to paragraph 1.9 of the World Bank's **guidelines selection and employment of consultants under IBRD loans and IDA credits and Grants by World Bank borrowers** January 2011 (consultants' guidelines setting forth the WB policy on conflict of interest).
- Consultants may associate with other firms in the form of joint venture or a sub-consultancy to enhance their qualification (provide group agreement to the effect).
- A consultant will be selected in accordance with quality and cost based selection (QCBS) selection method as set out in the consultants' guidelines.

Interested bidders can access and download detailed Tender Documents and their corresponding Terms of Reference from the:

- i. IFMIS Supplier Portal: <http://supplier.treasury.go.ke> by clicking on the unique IFMIS Tender numbers for each of the tenders.
- ii. The Ministry's Website [www.devolutionplanning.go.ke](http://www.devolutionplanning.go.ke).

iii. Tender portal: <http://supplier.treasury.go.ke>, and click on “link to tenders”

Tenders clearly marked “**TENDER NO: MODP/SDD/RFP/KSDP/16/2016/2017; Consultancy Services for Annual Capacity and Performance Assessment (ACPA)**” - shall be submitted through IFMIS SUPPLIER PORTAL: [supplier.treasury.go.ke](http://supplier.treasury.go.ke) and a backup hard copy document; One ORIGINAL (1No.) and Two Copies (2No.) be submitted to the address stated under No. (3) below. Bidders who may experience challenges in accessing and uploading their tender documents in the IFMIS Tender Portal should contact the IFMIS Department, Treasury Building on 5<sup>th</sup> Floor or Supply Chain Management Office (SDD) on 1<sup>st</sup> floor, Teleposta towers, Wing C, Kenyatta Avenue, for assistance.

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

or be deposited in the **Tender Box** located at **Teleposta Towers, 1st Floor, Kenyatta Avenue, Nairobi between 0800hrs and 1700hrs (East Africa Time), on or before 29<sup>th</sup> May, 2017 at 1000hrs (East Africa Time).**

Applications will be opened immediately thereafter at the **conference room on the 6<sup>th</sup> Floor Teleposta Towers, Kenyatta Avenue** in the presence of tenderers or their representatives who choose to attend.

**NB:** i. Applications through email shall not be accepted.  
ii. Late submissions will not be accepted.

**Micah Pkopus Powon, CBS**  
**PRINCIPAL SECRETARY**

## SECTION II – INFORMATION TO CONSULTANTS (ITC)

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## **SECTION II: - INFORMATION TO CONSULTANTS (ITC)**

### **2.1 Introduction**

2.1.1 The Client named the Appendix to “ITC” will select a firm among those invited to submit a proposal, in accordance with the method of selection detailed in the appendix. The method of selection shall be as indicated by the procuring entity in the Appendix.

2.1.2 The consultants are invited to submit a Technical Proposal and a Financial Proposal, or a Technical Proposal only, as specified in the Appendix “ITC” for consulting services required for the assignment named in the said Appendix. A Technical Proposal only may be submitted in assignments where the Client intends to apply standard conditions of engagement and scales of fees for professional services which are regulated as is the case with Building and Civil Engineering Consulting services. In such a case the highest ranked firm of the technical proposal shall be invited to negotiate a contract on the basis of scale fees. The proposal will be the basis for Contract negotiations and ultimately for a signed Contract with the selected firm.

2.1.3 The consultants must familiarize themselves with local conditions and take them into account in preparing their proposals. To obtain first hand information on the assignment and on the local conditions, consultants are encouraged to liaise with the Client regarding any information that they may require before submitting a proposal and to attend a pre-proposal conference where applicable. Consultants should contact the officials named in the Appendix “ITC” to arrange for any visit or to obtain additional information on the pre-proposal conference. Consultants should ensure that these officials are advised of the visit in adequate time to allow them to make appropriate arrangements.

2.1.4 The Procuring entity will provide the inputs specified in the Appendix “ITC”, assist the firm in obtaining licenses and permits needed to carry out the services and make available relevant project data and reports.

2.1.5 Please note that (i) the costs of preparing the proposal and of negotiating the Contract, including any visit to the Client are not reimbursable as a direct cost of the assignment; and (ii) the Client is not bound to accept any of the proposals submitted.

- 2.1.6 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate.
- 2.1.7 The price to be charged for the tender document shall not exceed Kshs.5,000/=
- 2.1.8 The procuring entity shall allow the tenderer to review the tender document free of charge before purchase.

## **2.2 Clarification and Amendment of RFP Documents**

- 2.2.1 Consultants may request a clarification of any of the RFP documents only up to seven [7] days before the proposal submission date. Any request for clarification must be sent in writing by paper mail, cable, telex, facsimile or electronic mail to the Client's address indicated in the Appendix "ITC". The Client will respond by cable, telex, facsimile or electronic mail 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 invited consultants who intend to submit proposals.
- 2.2.2 At any time before the submission of proposals, the Client may for any reason, whether at his own initiative or in response to a clarification requested by an invited firm, amend the RFP. Any amendment shall be issued in writing through addenda. Addenda shall be sent by mail, cable, telex or facsimile to all invited consultants and will be binding on them. The Client may at his discretion extend the deadline for the submission of proposals.

## **2.3 Preparation of Technical Proposal**

- 2.3.1 The Consultants proposal shall be written in English language
- 2.3.2 In preparing the Technical Proposal, consultants are expected to examine the documents constituting this 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, consultants must give particular attention to the following:

- (i) If a firm considers that it does not have all the expertise for the assignment, it may obtain a full range of expertise by associating with individual consultant(s) and/or other firms or entities in a joint venture or sub-consultancy as appropriate. Consultants shall not associate with the other consultants invited for this assignment. Any firms associating in contravention of this requirement shall automatically be disqualified.
- (ii) For assignments on a staff-time basis, the estimated number of professional staff-time is given in the Appendix. The proposal shall however be based on the number of professional staff-time estimated by the firm.
- (iii) It is desirable that the majority of the key professional staff proposed be permanent employees of the firm or have an extended and stable working relationship with it.
- (iv) Proposed professional staff must as a minimum, have the experience indicated in Appendix, preferably working under conditions similar to those prevailing in Kenya.
- (v) Alternative professional staff shall not be proposed and only one Curriculum Vitae (CV) may be submitted for each position.

2.3.4 The Technical Proposal shall provide the following information using the attached Standard Forms;

- (i) A brief description of the firm's organization and an outline of recent experience on assignments of a similar nature. For each assignment the outline should indicate *inter alia*, the profiles of the staff proposed, duration of the assignment, contract amount and firm's involvement.
- (ii) Any comments or suggestions on the Terms of Reference, a list of services and facilities to be provided by the Client.
- (iii) A description of the methodology and work plan for performing the assignment.
- (iv) The list of the proposed staff team by specialty, the tasks that would be assigned to each staff team member and their timing.

- (v) CVs recently signed by the proposed professional staff and the authorized representative submitting the proposal. Key information should include number of years working for the firm/entity and degree of responsibility held in various assignments during the last ten (10) years.
- (vi) Estimates of the total staff input (professional and support staff staff-time) needed to carry out the assignment supported by bar chart diagrams showing the time proposed for each professional staff team member.
- (vii) A detailed description of the proposed methodology, staffing and monitoring of training, if Appendix “A” specifies training as a major component of the assignment.
- (viii) Any additional information requested in Appendix “A”.

2.3.5 The Technical Proposal shall not include any financial information.

## **2.4 Preparation of Financial Proposal**

- 2.4.1 In preparing the Financial Proposal, consultants are expected to take into account the requirements and conditions outlined in the RFP documents. The Financial Proposal should follow Standard Forms (Section D). It lists all costs associated with the assignment including; (a) remuneration for staff (in the field and at headquarters), and; (b) reimbursable expenses such as subsistence (per diem, housing), transportation (international and local, for mobilization and demobilization), services and equipment (vehicles, office equipment, furniture, and supplies), office rent, insurance, printing of documents, surveys, and training, if it is a major component of the assignment. If appropriate these costs should be broken down by activity.
- 2.4.2 The Financial Proposal should clearly identify as a separate amount, the local taxes, duties, fees, levies and other charges imposed under the law on the consultants, the sub-consultants and their personnel, unless Appendix “A” specifies otherwise.
- 2.4.3 Consultants shall express the price of their services in Kenya Shillings.
- 2.4.4 Commissions and gratuities, if any, paid or to be paid by consultants and related to the assignment will be listed in the Financial Proposal submission Form.

2.4.5 The Proposal must remain valid for 60 days after the submission date. During this period, the consultant is expected to keep available, at his own cost, the professional staff proposed for the assignment. The Client will make his best effort to complete negotiations within this period. If the Client wishes to extend the validity period of the proposals, the consultants shall agree to the extension.

## **2.5 Submission, Receipt, and Opening of Proposals**

2.5.1 The original proposal (Technical Proposal and, if required, Financial Proposal; see para. 1.2) shall be prepared in indelible ink. It shall contain no interlineation or overwriting, except as necessary to correct errors made by the firm itself. Any such corrections must be initialed by the persons or person authorised to sign the proposals.

2.5.2 For each proposal, the consultants shall prepare the number of copies indicated in Appendix “A”. 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 clearly marked “**FINANCIAL PROPOSAL**” and warning: “**DO NOT OPEN WITH THE TECHNICAL PROPOSAL**”. Both envelopes shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address and other information indicated in the Appendix “ITC” and be clearly marked, “**DO NOT OPEN, EXCEPT IN PRESENCE OF THE OPENING COMMITTEE.**”

2.5.4 The completed Technical and Financial Proposals must be delivered at the submission address on or before the time and date stated in the Appendix “ITC”. Any proposal received after the closing time for submission of proposals shall be returned to the respective consultant unopened.

2.5.5 After the deadline for submission of proposals, the Technical Proposal shall be opened immediately by the opening committee. The Financial Proposal shall remain sealed and deposited with a responsible officer of the client department up to the time for public opening of financial proposals.

## **2.6 Proposal Evaluation General**

2.6.1 From the time the bids are opened to the time the Contract is awarded, if any consultant wishes to contact the Client on any matter related to his proposal, he should do so in writing at the address indicated in the Appendix “ITC”. Any effort by the firm to influence the Client in the proposal evaluation, proposal comparison or Contract award decisions may result in the rejection of the consultant’s proposal.

2.6.2 Evaluators of Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded.

## **2.7 Evaluation of Technical Proposal**

2.7.1 The evaluation committee appointed by the Client shall evaluate the proposals on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria as follows

	<b>Points</b>
(i) Specific experience of the consultant related to the Assignment	(5-10)
(ii) Adequacy of the proposed work plan and methodology in Responding to the terms of reference	(20-40)
(iii) Qualifications and competence of the key staff for the Assignment	(30-40)
(iv) Suitability to the transfer of Technology Programme (Training)	<u>(0-10)</u>
<b>Total Points</b>	<b><u>100</u></b>

Each responsive proposal will be given a technical score (St). A proposal shall be rejected at this stage if it does not respond to important aspects of the Terms of Reference or if it fails to achieve the minimum technical score indicated in the Appendix “ITC”.

## **2.8 Public Opening and Evaluation of Financial Proposal**

2.8.1 After Technical Proposal evaluation, the Client shall notify those consultants whose proposals did not meet the minimum qualifying mark or were considered non-responsive to the RFP and Terms of Reference, indicating that their Financial Proposals will be returned after completing the selection process. The Client shall simultaneously notify the consultants who have secured the minimum qualifying mark, indicating the date and time set for opening the Financial Proposals and stating that

the opening ceremony is open to those consultants who choose to attend. The opening date shall not be sooner than seven (7) days after the notification date. The notification may be sent by registered letter, cable, telex, facsimile or electronic mail.

- 2.8.2 The Financial Proposals shall be opened publicly in the presence of the consultants' representatives who choose to attend. The name of the consultant, the technical. Scores and the proposed prices shall be read aloud and recorded when the Financial Proposals are opened. The Client shall prepare minutes of the public opening.
- 2.8.3 The evaluation committee will determine whether the financial proposals are complete (i.e. whether the consultant has costed all the items of the corresponding Technical Proposal and correct any computational errors. The cost of any unpriced items shall be assumed to be included in other costs in the proposal. In all cases, the total price of the Financial Proposal as submitted shall prevail.
- 2.8.4 While comparing proposal prices between local and foreign firms participating in a selection process in financial evaluation of Proposals, firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias in proposal prices. However, there shall be no such preference in the technical evaluation of the tenders. Proof of local incorporation and citizenship shall be required before the provisions of this sub-clause are applied. Details of such proof shall be attached by the Consultant in the financial proposal.
- 2.8.5 The formulae for determining the Financial Score (Sf) shall, unless an alternative formulae is indicated in the Appendix "ITC", be as follows:-  
$$Sf = 100 \times \frac{F_M}{F}$$
where Sf is the financial score; F<sub>M</sub> is the lowest priced financial proposal and F is the price of the proposal under consideration. Proposals will be 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 = I) indicated in the Appendix. The combined technical and financial score, S, is calculated as follows: -  $S = St \times T \% + Sf \times P \%$ . The firm achieving the highest combined technical and financial score will be invited for negotiations.
- 2.8.6 The tender evaluation committee shall evaluate the tender within 30 days of from the date of opening the tender.

- 2.8.7 Contract price variations shall not be allowed for contracts not exceeding one year (12 months).
- 2.8.8 Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price
- 2.8.9 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.

## **2.9 Negotiations**

- 2.9.1 Negotiations will be held at the same address as “address to send information to the Client” indicated in the Appendix “ITC”. The aim is to reach agreement on all points and sign a contract.
- 2.9.2 Negotiations will include a discussion of the Technical Proposal, the proposed methodology (work plan), staffing and any suggestions made by the firm to improve the Terms of Reference. The Client and firm will then work out final Terms of Reference, staffing and bar charts indicating activities, staff periods in the field and in the head office, staff-months, logistics and reporting. The agreed work plan and final Terms of Reference will then be incorporated in the “Description of Services” and form part of the Contract. Special attention will be paid to getting the most the firm can offer within the available budget and to clearly defining the inputs required from the Client to ensure satisfactory implementation of the assignment.
- 2.9.3 Unless there are exceptional reasons, the financial negotiations will not involve the remuneration rates for staff (no breakdown of fees).
- 2.9.4 Having selected the firm on the basis of, among other things, an evaluation of proposed key professional staff, the Client expects to negotiate a contract on the basis of the experts named in the proposal. Before contract negotiations, the Client will require assurances that the experts will be actually available. The Client will not consider substitutions during contract negotiations unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the firm may be disqualified.
- 2.9.5 The negotiations will conclude with a review of the draft form of the Contract. To complete negotiations the Client and the selected firm will initial the agreed Contract. If negotiations fail, the Client will invite the



firm whose proposal received the second highest score to negotiate a contract.

- 2.9.6 The procuring entity shall appoint a team for the purpose of the negotiations.

## **2.10 Award of Contract**

- 2.10.1 The Contract will be awarded following negotiations. After negotiations are completed, the Client will promptly notify other consultants on the shortlist that they were unsuccessful and return the Financial Proposals of those consultants who did not pass the technical evaluation.

- 2.10.2 The selected firm is expected to commence the assignment on the date and at the location specified in Appendix “A”.

- 2.10.3 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

- 2.10.4 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

- 2.10.5 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

- 2.10.6 To qualify for contract awards, the tenderer shall have the following:
- (a) Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.
  - (b) Legal capacity to enter into a contract for procurement
  - (c) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
  - (d) Shall not be debarred from participating in public procurement.

## **2.11 Confidentiality**

- 2.11.1 Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals or to other persons not officially concerned with the process, until the winning firm has been notified that it has been awarded the Contract.

## **2.12 Corrupt or fraudulent practices**

- 2.12.1 The procuring entity requires that the consultants observe the highest standards of ethics during the selection and award of the consultancy contract and also during the performance of the assignment. The tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.
- 2.12.2 The procuring entity will reject a proposal for award if it determines that the consultant recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.
- 2.12.3 Further a consultant who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

## **Appendix to information to consultants**

### **Note on the Appendix to Information to Consultants**

1. The Appendix to information to consultant is intended to assist the procuring entity 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 Procuring entity should specify in the appendix information and requirements specific to the circumstances of the procuring entity, 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 should be 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.

## 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 and to consultants and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the information to consultants.

Information to Consultants	Appendix to Information to consultants (ITC)
2.1 Introduction	<p>(1) The Client for this procurement shall be the <b>State Department of Devolution, Ministry of Devolution and Planning</b>, who invites request for proposal from all interested local qualified individual consultants and firms.</p> <p>(2) Interested bidders may access and download detailed Tender Documents and their corresponding Terms of Reference from the:</p> <p>(1) IFMIS Supplier Portal: <a href="http://supplier.treasury.go.ke">http://supplier.treasury.go.ke</a> by clicking on the unique IFMIS Tender numbers for each of the tenders;</p> <p>(2) The Ministry’s Website <a href="http://www.devolutionplanning.go.ke">www.devolutionplanning.go.ke</a>; and</p> <p>(3) Tender portal: <a href="http://supplier.treasury.go.ke">http://supplier.treasury.go.ke</a>, and click on “link to tenders”.</p> <p>(3) The Method which shall be employed in the selection of a successful Consultant to carry out this assignment shall be “Quality and Cost based Selection”.</p> <p>(4) The participating candidates shall be required to submit both Technical and Financial Proposals.</p> <p>(5) The name, objectives, and description of the assignment shall be: - <b>Annual Capacity Performance Assessment for the Forty Seven (47No.) County Governments.</b></p> <p>(6) A pre-proposal conference will not be held but the interested candidates shall be required to familiarize themselves with the assignment and thereon submit their applications.</p> <p>(7) The name(s), address(es) and telephone numbers of the Client’s official(s) are: -</p> <p style="text-align: center;"><b>Principal Secretary State Department of Devolution Ministry of Devolution and Planning P.O. Box 30004 – 00100 Nairobi – Kenya Tel. No. +254 202 217 475 _____</b></p> <p>(8) The Client will provide the following inputs: - <b>will organize the training/internalization of the performance assessment manual of the assessment team members prior to the annual performance assessment. The client will also support the team in organizing the first introductory meetings with the state and county representatives through submission of prior notice and accompanying letters. The client will also support the team in getting access to core documents at the central government level</b></p>

Information to Consultants	Appendix to Information to consultants (ITC)
	<p><b>such as budget progress reports, audit reports, guidelines and regulations etc. _____</b></p> <p>(9) (ii) 6 teams of three assessors will cover a total of 47 counties, divided in the following way:  a) 1 assessment team will cover 7 counties  b) 5 assessment teams will each cover 8 counties.  in order to complete the assessment within a period of 90 days.</p> <p>(10) (iv) The minimum required experience of proposed professional staff is: - <b>Five (5No.) Years</b></p> <p>(11) (vii) Training shall not be a specific component of this assignment.  (viii) Additional information in the Technical Proposal shall be <b>as outlined in the Terms of Reference.</b></p> <p>(12) <b>The Financial proposal should include all liable taxes e.g. VAT, etc.</b></p> <p>(13) Tenderers shall be required to furnish the Procuring Entity with a <b>Tender Security (Bid Bond) of Two Percent (2%) of the total Tender Sum from a Bank or a reputable Insurance Company registered with the Public Procurement Regulatory Authority (PPRA) to remain in force for One Hundred and Eighty (180No.) Days</b> from the date of Tender closing/Opening.</p> <p>(14) The Successful Tenderer shall be required to furnish the Procuring Entity with a Performance Security of Ten Percent (10%) of the total Tender Sum before signing the Contract.</p> <p>(15) Tenders shall remain valid for <b>One Hundred and Fifty (150No.) days</b> from the date of Tender Closing/Opening. A tender valid for a shorter period shall be rejected by the Procuring entity as non-responsive.</p> <p>(16) 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.</p>
2.2 Clarification and Amendment	<p>(1) Request for proposal <b>MUST</b> be addressed to,  <b>Principal Secretary,  Ministry of Devolution and Planning,  State Department of Devolution,  P.O. Box 30004-00100,  NAIROBI.  Telephone +254-202217475  +254-202215245</b></p> <p>(2) All communication between the tenderer and the procuring entity shall be in writing</p> <p>(3) The State Department of Devolution (SDD) may conduct verification/inspection exercise (due diligence) to verify/ascertain authenticity of the information and documents submitted by the tenderer.</p> <p>(4) Interested firm may obtain further information and clarification on the tender from <b>Head, Supply Chain Management Services office, State Department of Devolution (SDD) at Teleposta Towers 1<sup>st</sup> floor, Wing C, Kenyatta Avenue, Nairobi.</b></p>

Information to Consultants	Appendix to Information to consultants (ITC)
2.3 Preparation of Proposals	<p>(1) Tenderer <b><u>MUST</u></b> not modify, substitute, alter/change the <b>STANDARD TENDER DOCUMENT</b> for Request for proposal. Tenderers are only required to attach the necessary documents to the standard tender document (the Tenderers <b><u>MUST</u></b> ensure that the sections and clauses of the Tender Documents which shall be required at the Contract preparation and signing are re-submitted intact and are dully stamped and signed as per the provisions of Section 135 of the Public Procurement and Asset Disposal Act, 2015). Any modifications, substitution, alterations/change of the <b>STANDARD TENDER DOCUMENT</b> will lead to automatic disqualifications of the bid.</p> <p>(2) Tenderer <b><u>MUST</u></b> submit detailed CV with detailed work experience, referees among others and relevant copies of the certificates of <b><u>ALL</u></b> the key and support staff to be involved in the consultancy.</p> <p>(3) Tenderer <b><u>MUST</u></b> indicate the responsibilities of the staff to be involved in the assignment.</p> <p>(4) The Tenderer <b><u>MUST</u></b> meet <b><u>ALL</u></b> the mandatory requirements to qualify for technical evaluation.</p> <p>(5) The Tenderer <b><u>MUST</u></b> submit the necessary and relevant information required as per Terms of Reference (ToR).</p> <p>(6) The Tenderer <b><u>MUST</u></b> completely fill, sign and stamp the relevant documents.</p> <p>(7) The Tenderer <b><u>MUST</u></b> ensure they comply with <b><u>ALL</u></b> the mandatory requirements.</p>
2.4 Financial Proposal	<p>(1) The Financial Proposal rates <b><u>MUST</u></b> be in Kenya Shillings;</p> <p>(2) The Request for Proposal rates <b><u>MUST</u></b> be valid for 150 days from the date and time of Tender closing/opening;</p> <p>(3) The Financial Proposal rates <b><u>MUST</u></b> include government taxes and all other expenses;</p> <p>(4) The Tenderer <b><u>MUST</u></b> submit a detailed schedule of Financial Proposal indicating the deliverables; and</p> <p>(5) The Proposal with the lowest evaluated bid shall be eligible for tender award.</p>
2.5 Submission, Receipt and Opening of proposals	<p>(1) Tenders clearly marked <b>“TENDER NO: MODP/SDD/RFP/KSDP/18/2016/2017; Consultancy Services for Annual Capacity and Performance Assessment (ACPA)”</b> - shall be submitted through IFMIS SUPPLIER PORTAL: <a href="http://supplier.treasury.go.ke">supplier.treasury.go.ke</a> and a backup hard copy document; One ORIGINAL (1No.) and Two Copies (2No.) be submitted to the address stated under No. (3) below.</p> <p>(2) Consultants must submit an original and <b>two additional copies of each proposal</b>. <b>NB. The STANDARD TENDER DOCUMENT for Request for Proposal must be part of TECHNICAL PROPOSAL.</b></p> <p>(3) The proposal submission address is: <b>__ tenders shall be enclosed in plain sealed envelopes marked with tender reference number and name and be deposited in the Tender Box</b></p>

Information to Consultants	Appendix to Information to consultants (ITC)
	<p>situated at <u>the 1<sup>st</sup> Floor of Teleposta Towers, at the Junction of Kenyatta Avenue, Nairobi</u> or be addressed to: -</p> <p style="text-align: center;">Principal Secretary State Department of Devolution Ministry of Devolution and Planning P.O. Box 30004 – 00100 Nairobi – Kenya</p> <p>(4) Proposals must be submitted no later than the following date and time: <b>Monday, 29<sup>th</sup> May, 2017 at 10.00 A.M (East African Time) time.</b></p> <p>(5) Duly completed tender documents 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 1<sup>st</sup> floor of Teleposta Towers, Wing C, Kenyatta Avenue, Nairobi, Kenya during office hours (Weekdays 8.00am to 5.00pm). Bid document <b><u>MUST</u></b> be in separate envelopes, TECHNICAL and FINANCIAL Proposals.</p> <p>(6) The TECHNICAL proposal <b><u>MUST</u></b> be in Original and Two (2No.) Copies. The ‘ORIGINAL’ and ‘COPIES’ must be marked clearly on the bid documents and must be placed in a sealed envelope clearly marked <b>TECHNICAL PROPOSAL</b>.</p> <p>(7) The FINANCIAL proposal <b><u>MUST</u></b> be in Original and Two (2No.) Copies. The ‘ORIGINAL’ and COPIES’ <b><u>MUST</u></b> be <b><u>MARKED</u></b> clearly on the bid documents and <b><u>MUST</u></b> be placed in a sealed envelope clearly marked <b>FINANCIAL PROPOSAL</b>.</p> <p>(8) Both envelopes of the <b>TECHNICAL</b> and <b>FINANCIAL PROPOSALS</b> shall be placed in an outer envelope and sealed and the envelope shall bear the tender number and name.</p> <p>(9) The outer envelope bearing <b>TECHNICAL</b> and <b>FINANCIAL PROPOSAL</b> shall be deposited in the State Department of Devolution Tender Box located at Teleposta Towers, 1<sup>st</sup> Floor, Wing C, along Kenyatta Avenue, outside Supply Chain Management offices, during normal working hours (8am to 5pm, East Africa Time), on <b>29<sup>th</sup> May, 2017 at 10.00AM (East African Time)</b>.</p> <p>(10) Request for proposal bid documents submitted after the deadline shall NOT be accepted.</p> <p>(11) Bidders/representatives are free to attend the Request for Proposal bid opening exercise at the <b>State Department of Devolution Board Room No. 660 situated at 6<sup>th</sup> floor, Teleposta Towers, along Kenyatta Avenue, Nairobi on the closing/opening date and time.</b></p> <p>(12) Only the <b>TECHNICAL PROPOSAL</b> will be opened on the closing/opening date and time.</p> <p>(13) Only financial proposals of the tenderers who pass technical evaluation shall be opened.</p> <p>(14) Those bidders who will not qualify at the technical evaluation level will have their financial bids returned unopened.</p>

Information to Consultants	Appendix to Information to consultants (ITC)
	(15) Bulky Request for proposal bid documents that will not fit in the tender box shall be received at the Head of <b>Supply Chain Management Office at State Department of Devolution 1<sup>st</sup> Floor, Wing C, along Kenyatta Avenue, Nairobi during normal working hours (8am to 1pm and 2pm to 5pm East African Time).</b>
2.6 Evaluation of the Proposal (General)	<p>(1) The address to send information to the Client is:  <b>Principal Secretary  State Department of Devolution  Ministry of Devolution and Planning  P.O. Box 30004 – 00100  Nairobi – Kenya</b></p> <p>(2) The evaluation shall be carried out as per the detailed Evaluation Criteria set in the Request for Proposal tender documents;</p> <p>(3) The evaluation will be carried out in <b>three stage</b> evaluation process;</p> <p>(4) Preliminary stage: - Proposal must meet all the mandatory requirements stage to proceed to the next stage;</p> <p>(5) Technical Stage: - Proposal must attain a minimum of 70% score to proceed to the next stage; and</p>
2.7 Evaluation of Technical Proposals	<p>(1) The bids which meets all the mandatory requirements are the ones who will be eligible to undergo the technical evaluation.  The Technical Proposal shall be marked on the scale of 100% and bids who shall score 70% and above shall be shall proceed to the financial evaluation.  The Financial Proposals of the bids who have scored 70% and above in the evaluation of their Technical Proposals shall proceed the Financial Evaluation.</p> <p>(2) Evaluation shall be carried out in strict adherence to the Terms of Reference.</p> <p>(3) Evaluation shall be carried out in line with the detailed evaluation criteria set out in the Request for Proposal documents.</p>
2.8 Opening and evaluation of financial Proposals	<p>(1) Only Technical Proposals that attained a minimum of 70% score at Technical Evaluation shall be considered at this stage and opened.</p> <p>(2) Invited Bidders/representative will be free to attend the Financial Proposal opening exercise.</p> <p>(3) 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>(4) The Financial Proposals of the Consultants with the responsive Technical Proposals shall ranked and one with most economical quotation shall 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	The consultant will commence the obligation of the contract immediately



<b>Information to Consultants</b>	<b>Appendix to Information to consultants (ITC)</b>
Contract	after negotiations or as may be agreed upon at the signing of contract.
2.11 Confidentiality	The clients and consultancy firm shall ensure confidentiality during contract period.
2.12	(2) The <b>Anti-Corruption Declaration Commitment/Pledge <u>MUST</u></b> be dully filled, stamped and signed by the applicant/an authorized representative who has a power of attorney (and evidence provided thereof).

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

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## **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-today 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.

- 4.4 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 Tenderers shall be required to furnish the Procuring Entity with a **Tender Security of Two Percent (2%) of the total Tender Sum from a Bank or a reputable Insurance Company registered with the Public Procurement Regulatory Authority (PPRA)** to remain in force for **One Hundred and Eighty (180No.) Days** from the date of Tender closing/opening.
- 4.3 Tenders shall remain valid for **One Hundred and Fifty (150No.) days**. A tender valid for a shorter period shall be rejected by the Procuring entity as non-responsive.

- 4.4 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.
- 4.5 **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.
- 4.6 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.**
- 4.7 Prices quoted **shall be in Kenya Shillings.**
- 4.8 **Tenderers are required to ensure that all pages of their Tender Documents are properly serialized, stamped and signed.**
- 4.9 **The Document should be Properly Bound. Loose Tender Documents will be declared non responsive.**
- 4.10 Blacklisted and suspended firms are not eligible for this procurement.
- 4.11 Special conditions of contract as relates to the GCC

## **SECTION V: - TERMS OF REFERENCE**

5.1 Terms of Reference are the initial statement to the consultant of the services to be performed and should therefore be clear and precise and should contain the following sections:

5.1.1	Definitions and concepts applied in the ToR	47
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5.2 This Section should be prepared very carefully by the procuring entity to ensure that the consultancy assignment is well understood by the consultants.

## **TERMS OF REFERENCES (TOR) FOR THE ANNUAL CAPACITY & PERFORMANCE ASSESSMENT OF 47 COUNTIES IN KENYA FOR THE ASSESSMENTS FOR THE FY 2017/18**

### **5.1.1 Definitions and concepts applied in the ToR: -**

- a) Kenya Devolution Support Program (KDSP) (a Program for Results) is a Program implemented by the GoK, MoDP and supported by the World Bank.
- b) Annual Capacity & Performance Assessment (ACPA): Is the annual assessment of the performance/capacity of the counties. This is expected to start at the beginning of September 2017.
- c) The Client: The Ministry of Devolution and Planning (MoDP).
- d) KDSP– Secretariat: Is a secretariat under the MoDP, with the task to coordinate and support the organization and management of the capacity & performance grants and related tasks.
- e) KDSP Technical Committee: Is an inter-governmental body to be formed by representatives from MoDP, National Treasury, CRA, PPOA, IGFRC, CoG and to coordinate activities under the KDSP and all issues related with the capacity & performance grants (CPG). The Committee will also verify the final results from the ACPA.
- f) Consultant: The consultant to be contracted to conduct the annual capacity & performance assessment.
- g) Contract duration: From September 2017 - February 2018.

### **5.1.2 Background: -**

The Government of Kenya, together with Development Partners, has developed a National Capacity Building Framework (NCBF) to frame efforts to build capacity around the new devolved governance arrangements. The NCBF covers both national and county capacity. The government is now developing a Medium-Term Implementation program to implement the National Capacity Building Framework. The Government is providing support to counties in Kenya in terms of capacity building, improved systems and procedures and performance-based funding for development investments over a period of 5 years starting from January 2016 under a new Program namely, Kenya Devolution Support Program (KSDP), supported by the World Bank. The Program will include the introduction of a Capacity & Performance-Based Grant – named **Capacity & Performance Grants (CPG)** to counties to provide additional incentives for improved county performance in five core results areas: 1) Public Financial Management (PFM), 2) Human Resource Management (HRM), 3) Planning, and M&E/Accountability, 4) Civic education and participation and 5) Implementation/service delivery progress.

The new CPGs will be provided to counties, to provide incentives for improved performance and accelerated capacity development. The access to the grants will



depend on first the “level 1 minimum access conditions”, which will open access to funding of capacity building (CB) activities, and the minimum performance conditions, which will open for access to larger size of capacity & performance grant allocations, which can be used for both CB activities and sectoral investments. The number of counties, which comply with the minimum access conditions and the minimum performance conditions will be determined in the Annual Capacity & Performance Assessments (ACPAs), and the size of the grants will in the future depend on the performance on a set of Performance Measures (PMs) starting in the next Fiscal Year. The ACPAs will be contracted out to a neutral and professional private company on an annual basis to ensure sufficient capacity, timeliness and objectivity in the annual results, which should be ready prior to the counties’ planning and budgeting process.

The consultant contracted will ensure that all counties are assessed in due time following the time-plan and guidelines in this ToR as well as in the Performance Assessment Manual. The final assessment results shall be ready by February 2018 and before the start of the county planning and budgeting cycle for FY 2018/2019 and will provide inputs to the Budget Policy Statements and the Division of Revenue Act (DORA) and the County Allocation Revenue Act (CARA).

### **5.1.3 General Objectives of the Assignment**

The objective of the assignment is to provide highly professional, objective and credible **assessment results of counties’ performance**. The assessment will be conducted on a number of indicators (minimum access conditions, minimum performance conditions and performance measures) that will be identified and communicated to counties in advance of the assessment. The indicators will relate to a number of core minimum access conditions (for access to grants), minimum performance conditions and performance measures, which are more qualitative measures for the counties’ performance. **The Capacity and Performance Assessment Manual provides a full overview of the conditions and measures**. The results of the MACs, MPCs and PMs will be used to identify counties, which can get access to the grants and the size of these grants. Assessment of the performance measures will also be applied to provide incentives for counties to improve performance identify capacity development gaps and provide lessons learned on areas in needs of attention and support.

### **5.1.4 The specific objectives of the annual capacity & performance assessments (ACPAs) are to: -**

- a) Verify compliance of the counties with key provisions of the laws and national guidelines and manuals especially the Public Financial Management Act, 2012, the County Act and other legal documents;
- b) Verify whether the audit reports of the OAG of the counties follow the agreements under the KDSP, which is important for the use of findings in the ACPA;

- c) Measure capacity of county governments to achieve performance criteria derived from the core areas of the NBCF;
- d) Use the system to support determination of whether counties have sufficient safeguards in place to manage discretionary development funds and are therefore eligible to access various grants, such as the new CPG. Although the system is developed for the CPG, it is expected that the results over time may inform other (conditional) grants as well;
- e) Promote incentives and good practice in administration, resource management and service delivery through show-casing the good examples and identifying areas which need improvements;
- f) Assist the counties to identify functional capacity gaps and needs. This is expected to serve as a major input in institutional development / strengthening activities and to focus and direct the Capacity Building support to be provided by the central level under the NBCF;
- g) Provide counties with a management tool to review their performance, and to learn from other counties, as well as focusing on performance enhancements in general;
- h) Enhance downwards, horizontal and upward accountability.
  - Encourage and facilitate closer coordination and integration of development activities at the county level, especially through sharing of assessment results and
  - Joint deliberations on the cause of the results and ways and means to improve;
- i) Contribute to the general monitoring and evaluation (M&E) system for counties and sharing of information about counties' operations.

To support this, the GoK seeks to engage a professional and independent consultancy firm to conduct the **external annual capacity & performance assessment** of 47 counties. The ACPA, covered by this TOR, will start from August 2017. This assessment will primarily focus on performance relating to FY 2016/2017. However in the case of some performance measures, the consultant will review performance as at the point of time of the assessment. The quality of the assessment results is pertinent as they will guide the actual grant allocations in FY 2018/2019 for some of the measures and for others they will be of importance for the established baselines as well as for targeting of the Capacity Building support to needed areas of performance.

Firms can submit their EOI individually **or as a consortium of firms indicating the lead consultant and attaching a signed binding agreement amongst themselves and power(s) of attorney to the lead consultant.**

As the timeliness of the audit reports is important for the ACPA, as well as to the disbursement of funds to counties under the Capacity & Performance Grants, the consultant will review both:

- a) The dates of the submission of each county's financial statements to the Office of the Auditor General (OAG);
- b) The timing of the finalization, submission (to National and county legislatures) and publication of the audit report by OAG for each county.

The assessment conducted by the consultant will undergo a strong external Quality Assurance (QA) under the management of the MoDP/KDSP Secretariat<sup>1</sup>. This Quality Assurance will also ensure that the results are highly professional, neutral and with a high level of integrity. The consultant will be required to review and address issues raised by this QA function throughout the duration of the work. Finally, the Technical Committee will verify the results.

### **5.1.5 Scope of Work: -**

The consultant will be contracted to perform the full annual capacity & performance assessment starting from September 2017 to February 2018. The performance assessment will cover the counties' compliance with a set of minimum access conditions (MACs) for access to grants (MCs), a set of Minimum Performance Conditions (MPCs) and set of defined Performance Measures (PMs), which are be outlined in the Annual Capacity & Performance Assessment Manual (ACPA) and which will be available for the consultants prior to the start of the ACPA. **Annex 1** provides examples of the type of MACs, MPCs and PMs to be reviewed, but these may be adjusted prior to the actual assessment. The MACs will determine access to the first level of the CPG, the MPC to the second level of grants and the PMs will impact on the actual size of the allocation. The consultant will also review of the completion and publication of the county audit reports by the OAG against the conditions and agreements in the KDSP Program Operational Manual.

The consultant will strictly follow the ACPA manual, in terms of both procedures and content, including use of indicators, reporting formats, scoring, etc. Although not all the conditions and performance measures will impact on the actual allocation of funds to the counties in the first full assessment, the procedures for the future ACPA will be applied to provide a realistic baseline, and to ensure that performance gaps are targeted in the CB support to be provided.

The ACPA results will be based on clear professional, objective review of facts compared with the stated benchmarks and requirements. It should as far as possible, be "evidence" based – i.e., performance achieved is assessed on the basis

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<sup>1</sup> For the access to the CPG, the World Bank will also verify the results as they will impact on the disbursement from the World Bank to the Government of Kenya.

of identifiable (documentary) evidence. The Consultant should be able to provide evidence that conclusively and indisputably supports the assessment results<sup>2</sup>.

A detailed work-plan will be developed in collaboration between the consultant and the client in the end of the training/internalization session in September, detailing: dates of field visit, dates for introductory briefing and presentation of the performance assessment to country representatives, date for delivery of draft reports, draft final reports and final reports. The consultant will also be ready throughout the assignment to clarify issues and comments from the QA function under the MoDP as well as to provide additional information in areas where scoring may be less clear or missing.

The consultant will be required to strictly adhere to the work plan agreed with the Client in initial phase of the work. This is important because the ACPA is an input to the process of deciding on allocation of funds, which has a fixed time-plan, see the time-table below.

The consultant will participate in a two-days training session organized by MoDP, where the system and procedures will be internalized and views from the assessors harmonized, and questions to the indicators clarified.

The Consultant will, together with any other necessary actions, review the documents mentioned in annexes to the CPAM which will be availed to the consultant minimum one month before the actual assessment.

In terms of the actual execution of the ACPA, the consultant will collect data at the central level (e.g. from CoB, OAG, NT and MoDP) as well as the county level, and conduct field-work in each of the counties to be assessed.

The assessors (minimum 3 assessors (of which one is the Team Leader) to be working in each county) will collect information from national government level agencies, consult the relevant ministries and oversight agencies, and stay minimum 3 days in each county (field-visit). The team will have 2 additional days for reporting and one day on average per county for travel between counties. Therefore, the consultant should plan that the teams will use on average 6 days per county.

At the end of the assessment in each county, the consultant will **debrief** the county executive level on the preliminary findings and issues derived from the assessment (Note: At this stage the consultant should not share the final results with the counties).

During the ACPA the Consultant will carry out the ACPA exercise with team members: meeting relevant county officials; securing documents as evidence of performance achieved; carrying out inspections and investigation through visits to a small sample of sub-project sites to verify the authenticity of the performance as

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<sup>2</sup> It should also be noted that the quality of the results will impact in the evaluation of the opportunities to get new contracts on the ACPA.

necessary; requesting and documenting reasons or justification for specific under/over performance; meeting together internally as a team to check/integrate results and coordinate activities; and preparing the preliminary ACPA report for the county.

The consultant will produce draft county assessment reports as well as a synthesis report (which is an overview of the performance of all counties, with comparison of their performance and including simulations of allocations against the scores). The consultant will also calculate the amounts of funds to each county using the results from the scores as well as the allocation formula applied for the grant (to be provided by MoDP/KDSP Secretariat prior to the assignment), which will be submitted to the client: MoDP<sup>3</sup>.

The Quality Assurance function in the MoDP (under the KDSP Secretariat) will provide comments on the reports submitted. The consultant will respond to the issues raised by Quality Assurance Function under the MoDP<sup>4</sup>, and incorporate these in the draft final reports. The draft final reports will again be reviewed and verified by the Technical Committee under

KDSP and the World Bank. During this process, the Technical Committee consisting of representatives from the MoDP, NT, CoG, CRA and others will provide guidance on the process and results to MoDP, see below and under the time-plan/process, and make final decisions on the results after review and verification.

Based on comments received to the draft final reports the consultant will then produce a final assessment report encompassing the country assessments and the synthesis report (with an overview of the findings and comparison of performance across the counties) following standards and formats in the CPAM, and submit this to the MoDP-KDSP Secretariat and the World Bank. The consultant may also be called to meetings with the MoDP and the other agencies to explain and present results from the assessment.

As the timeliness of the audit reports from OAG is important for the counties' access to the grants under the KDSP, the consultant will also review the timing of submission of the annual financial statements from the counties to OAG, the dates of receipts of these statements by OAG, and the dates of the finalization, submission and publication of the audit report (final report with audit opinion for the audit of financial statements for county executives and assemblies) for each of the 47 counties involved.

### **5.1.6 Timing of the Assignment**

The assignment will be carried out from September 2017 – February 2018 (with actual field work in October-November 2017), with some introductory training planned for September 2017 prior to the assessment.

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<sup>3</sup> At the same time a copy of these draft report will be submitted to the World Bank for review.

<sup>4</sup> And from the World Bank Review.

### **5.1.7 Input and Degree of Expertise and Experiences**

The description of the Consultant's team, provided below, is indicative. The firms invited to submit proposals should propose their own team structure, composition and staffing levels, based on their own evaluation of the TOR's requirements and assessment, however with the minimum requirement in place. It is expected that the team as a minimum will include 3 experts/assessors per team: Skills required:

- Public Finance Management
- Planning and M&E
- Human Resource and Performance Management
- Devolution and Intergovernmental Relations
- Social and Environmental Safeguard
- Public governance
- Local Government, infrastructure delivery and contract management

One of the team members should be identified as the **team leader** for each team. Additionally, an overall coordinator for the assignment should be identified. This may be one of the team members, or a dedicated coordinator.

The team members will be experienced experts (minimum 3-5 years of experience), and have experiences from reviews, assessments and/or audits of LGs. One of the experts (with more experience) will be the team leader for the assessment. The assessment can be attended by interested parties after agreement between the consultant and MoDP/KDSP Secretariat.

It should be noted that if/and when additional performance measures, which require more technical skills are added, the team composition may also be reviewed and expanded under mutual agreement between the client and the consultant to be contracted.

### **5.1.8 Skill Requirements for the ACPA Team**

All team members provided should have a solid professional background in the areas to be addressed in the performance assessment, which apart from the specific expertise described in the previous paragraph, would include performance assessment and evaluation, and program/project management.

The team leader shall have very strong interpersonal, analytic, writing and communication skills. In addition, the team member should have substantial expertise in data collection, application and presentation.

The following performance assessment teams will be required in order to complete the assessment within 90 days:

- 6 teams of three assessors will cover a total of 47 counties, divided in the following way: -
  - a) 1 assessment team will cover 7 counties
  - b) 5 assessment teams will each cover 8 counties.

Each team will have a minimum of 3 assessors, hence a total of at least 18 assessors will be required, see below for further details.

During the first week of the assignment, a time-plan will be agreed with the plan on how to divide the counties, but a proposal on this should be included in the Technical Proposal.

#### **5.1.9 Input in terms of man-days**

It is expected that the teams will use 3 full days in each county and use 1 full day per county for travel to/from + 2 days for reporting = 6 days per county per assessment.

With 3 assessors per county, this mean that a total of 18 days @ 47 counties or about **846 man-days**. All days are including preparation, transport, field-work and reporting. In addition, the consultant should budget for a few days for the training. The consultant should also budget for follow-up and administration particularly for the 6 team leaders and the assessment coordinator as well as some days for review of the submission of annual financial statements and overview of the audit reports (timeliness of production of final audit reports), attending meetings with the KDSP Secretariat and responding to issues raised by the KDSP Secretariat, KDSP Technical Committee or by counties (during the complaints / grace period).

#### **5.1.10 Other inputs**

In addition to the man-power, the consultant is expected to organize all transport and logistics for the assessment.

#### **5.1.11 Outputs and deliverables**

The consultancy firm will have to submit the following reports for the annual performance assessment: -

- a) A short Inception Report, within three (3) weeks of commencing the assignment giving a brief outline of the methodology, detailed work plan and activity schedule, team composition, reporting schedule and any other key issues regarding the execution of the assignment;
- b) A detailed draft Assessment Report for each county by the end of the first week of December 2017 to the KDSP Secretariat;
- c) A draft Overall Assessment Report (National Synthesis Report) summarizing the outcome of the process and indicating the performance status of each county and the provisional allocation of grants to be received by counties, subject to the findings of the annual county audit report. The Overall Assessment Report shall include a matrix tabulation of all of the individual assessment scores following the structure to be detailed in the ACPA, 2015 and in accordance with standards and formats. The synthesis report will be due by end of December 2017 and should follow the formats defined in the ACPA, 2015. The report should be submitted to the KDSP Secretariat in the MoDP.

- d) Draft Final reports of the county assessments and the synthesis report with incorporation of: -
  - i. The audit report findings;
  - ii. The comments from the quality assurance function of the World Bank;
  - iii. The target for final submission is the first week of January, subject to timely publication of county audit reports by OAG.
  - iv. The calculations of grant amounts, based on the formula availed to the team.
  - v. An overview of the status of the audit report (dates of submission of annual financial statements from counties, dates of receipts of these reports by OAG, and dates of production of the final county audit reports from OAG).
- e) Draft final report with incorporation of comments to the reports and make presentation to the Technical Committee.
- f) A final report to the KDSP Secretariat.

The consultant shall submit hard and soft copies for each county (three copies) and synthesis report (three copies) for the overall assessment.

#### **5.1.12 Institutional set-up of the Assignment: -**

The Consultant shall undertake the assignment under the overall supervision of the KDSP Secretariat under the MoDP and the KDSP Technical Committee. The KDSP Secretariat will review all results from the consultants and check that the Capacity & Performance Assessment Manual (CPAM) has been applied and that the assignment is completed. The KDSP Secretariat will also ensure that the Quality Assurance function is operationalized, and conduct sample checks of results (by a neutral team). This Quality Assurance function / system, which will operate in addition to the system applied by the contracted company to ensure full objectivity of the annual performance assessments as detailed in the CPAM, 2016. Consultants will be requested to respond and follow-up on issues raised by the QA function under the KDSP. As the results impact on the relationship between the GoK and the World Bank under the KDSP, the World Bank will also get a copy of the draft as well as final reports for review.

The work of the consultants will be technically overseen and guided by the **KDSP Secretariat through the Program Coordinator** and the KDSP Technical Committee, which will have representatives from MoDP, NT, NEMA, CRA, PPOA, COG and others. All results and outputs will be reviewed by these groups as well as by the World Bank review function.

#### **5.1.13 Technical Proposal Evaluation Criteria: -**



ITEM	Weight	Maximum Points
<b>1. Qualification of Team leader</b> <ul style="list-style-type: none"> <li>• Bachelor's degree in relevant field (the 5)</li> <li>• Post graduate diploma/ Masters in and related fields</li> <li>• A member of a professional institutional such as CPA, or CPS</li> <li>• Masters</li> <li>• PhD</li> </ul>	25%	10 5 5 3 2
<b>2. Approach to and methodology for Annual Performance Assessment</b> <ul style="list-style-type: none"> <li>• Approach and Methodology</li> <li>• Work Plan</li> <li>• Organization</li> </ul>	30%	10 10 10
<b>3. Relevant Experience of the team</b> <ol style="list-style-type: none"> <li>a) 7 continuous years' experience in relevant KRAs</li> <li>b) Training experience</li> <li>c) Management experience</li> <li>d) World Bank or development partner funded project experience</li> <li>e) Experience in Public Sector</li> </ol>	30%	10 5 5 5 5
<b>4. Team Competencies:</b> <ol style="list-style-type: none"> <li>a) Knowledge of Accts, Finance civic education, Planning and Monitoring and Evaluation procurement, Environment and social safeguards and Human resource Management.</li> <li>b) Computer proficiency standard computer applications</li> <li>c) Interpersonal skills</li> </ol>	15%	10 3 2
<b>Total</b>		<b>100</b>

The Technical Proposal shall be marked on the scale of 100% and bids who shall score 70% and above shall proceed to the financial evaluation. Note that the scores of the 6 teams will be weighted together.

#### 5.1.14 Proposed Payment Schedule: -

The payment will be as follows: -

- a) Ten percent (10%) of the Contract Price shall be paid on signing the Contract and submission and acceptance of inception report;
- b) Sixty percent (60%) of the Contract Price shall be paid upon submission of satisfactory draft assessment reports and draft synthesis reports with grant calculations.
- c) Thirty percent (30%) of the Contract Price upon submission of detailed final Assessment Reports for each of the assessed counties and the final synthesis report acceptable to the Client

#### 5.1.15 Support Provided by the Client: -

The Client will support the team: -

- a) Access to necessary documents to enable to the consultant carry out the assessment.
- b) The client will introduce the consultant to the County Governments and Central Government.

**5.1.16 References and Documents:**

- a) Constitution of Kenya, 2010;
- b) County Governments Act, 2012;
- c) Public Finance Management Act, 2012 and related regulations;
- d) Public Audit Act, 2015;
- e) Public Procurement and Assets Disposal Act, 2015 and related regulations;
- f) The Urban Areas and Cities Act, 2011 ;
- g) County Financial Accounting and Reporting Manual, March 2015;
- h) KDSP Program Operational Manual; Capacity and Performance Assessment, Capacity and Performance Grants Manual; an
- i) County audit reports for FY2015/2016 and FY 2016/2017.

## **SECTION V: - TECHNICAL PROPOSAL**

### **Notes on the preparation of the Technical Proposals**

- 5.2** In preparing the technical proposals the consultant is expected to examine all terms and information included in the RFP. Failure to provide all requested information shall be at the consultants own risk and may result in rejection of the consultant's proposal.
- 5.3** The technical proposal shall provide all required information and any necessary additional information and shall be prepared using the standard forms provided in this Section.
- 5.4** The Technical proposal shall not include any financial information unless it is allowed in the Appendix to information to the consultants or the Special Conditions of contract.

## SECTION VI - TECHNICAL PROPOSAL

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## 6.1 TECHNICAL PROPOSAL SUBMISSION FORM

[\_\_\_\_\_ Date]

To: **\_ Principal Secretary, State Department of Devolution, Ministry of Devolution and Planning, P.O. Box 30004 - 00100, Nairobi – Kenya.** \_ [*Name and address of Client*]

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for

\_\_\_\_\_

\_\_\_\_\_ [*Title of consulting services*] in accordance with your Request for Proposal dated \_\_\_\_\_ [*Date*] and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal, [and a Financial Proposal sealed under a separate envelope-*where applicable*].

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

We remain,

Yours sincerely,

\_\_\_\_\_ [*Authorized Signature*]:

\_\_\_\_\_ [*Name and Title of Signatory*]

:

\_\_\_\_\_ [*Name of Firm*]

:

\_\_\_\_\_ [*Address:*]

## 6.2 FIRM'S REFERENCES

### Relevant Services Carried Out in the Last Five Years That Best Illustrate Qualifications

Using the format below, provide information on each assignment for which your firm either individually, as a corporate entity or in association, was legally contracted.

Assignment Name: -		Country: -
Location within Country: -		Professional Staff provided by Your Firm/Entity(profiles): -
Name of Client: -		Clients contact person for the assignment: -
Address: -		No of Staff-Months; Duration of Assignment: -
Start Date (Month/Year): -	Completion Date (Month/Year): -	Approx. Value of Services (Kshs):
Name of Associated Consultants. If any: -		Staff provided by Associated Consultants: No of Months of Professional
Name of Senior Staff (Project Director/Coordinator, Team Leader) Involved and Functions Performed: -		
Narrative Description of project: -		
Description of Actual Services Provided by Your Staff: -		

Firm's Name: \_\_\_\_\_

Name and title of signatory; \_\_\_\_\_

*(May be amended as necessary)*

**6.3 COMMENTS AND SUGGESTIONS OF CONSULTANTS ON THE TERMS OF REFERENCE AND ON DATA, SERVICES AND FACILITIES TO BE PROVIDED BY THE CLIENT.**

---

On the Terms of Reference: -

- 1.
- 2.
- 3.
- 4.
- 5.

On the data, services and facilities to be provided by the Client: -

- 1.
- 2.
- 3.
- 4.
- 5.

## **6.4 DESCRIPTION OF THE METHODOLOGY AND WORK PLAN FOR PERFORMING THE ASSIGNMENT**

---



**6.5 TEAM COMPOSITION AND TASK ASSIGNMENTS**

**1. Technical/Managerial Staff**

Name	Position	Task

**2. Support Staff**

Name	Position	Task

## 6.6 FORMAT OF CURRICULUM VITAE (CV) FOR PROPOSED PROFESSIONAL STAFF

Proposed Position: \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Name of Staff: \_\_\_\_\_

Profession: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Years with Firm: \_\_\_\_\_ Nationality: \_\_\_\_\_

Membership in Professional Societies: \_\_\_\_\_

---

Detailed Tasks Assigned: \_\_\_\_\_

---

### **Key Qualifications:**

*[Give an outline of staff member's experience and training most pertinent to tasks on assignment. Describe degree of responsibility held by staff member on relevant previous assignments and give dates and locations].*

---

### **Education:**

*[Summarize college/university and other specialized education of staff member, giving names of schools, dates attended and degree[s] obtained.]*

---

### **Employment Record:**

*[Starting with present position, list in reverse order every employment held. List all positions held by staff member since graduation, giving dates, names of employing organizations, titles of positions held, and locations of assignments.]*

---

### **Certification:**

I, the undersigned, certify that these data correctly describe me, my qualifications, and my experience.

\_\_\_\_\_ Date: \_\_\_\_\_  
*[Signature of staff member]*

\_\_\_\_\_ Date: \_\_\_\_\_  
*[Signature of authorised representative of the firm]*

Full name of staff member: \_\_\_\_\_

Full name of authorized representative: \_\_\_\_\_

## 6.7 TIME SCHEDULE FOR PROFESSIONAL PERSONNEL

Months (in the Form of a Bar Chart)

Name	Position	Reports Due/ Activities	1	2	3	4	5	6	7	8	9	10	11	12	Number of months

Reports Due: \_\_\_\_\_

Activities Duration: \_\_\_\_\_

Signature: \_\_\_\_\_  
(Authorized representative)

Full Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

## 6.8 ACTIVITY (WORK) SCHEDULE

### 6.1.3 Field Investigation and Study Items

*[1<sup>st</sup>, 2<sup>nd</sup>, etc. are months from the start of assignment)*

	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	5 <sup>th</sup>	6 <sup>th</sup>	7 <sup>th</sup>	8 <sup>th</sup>	9 <sup>th</sup>	10 <sup>th</sup>	11 <sup>th</sup>	12 <sup>th</sup>	
Activity (Work)													
_____													
_____													
_____													
_____													

### 6.1.3 Completion and Submission of Reports

Reports	Date
1. Inception Report	
4. Interim Progress Report (a) First Status Report (b) Second Status Report	
3. Draft Report	
4. Final Report	

## **SECTION VII - FINANCIAL PROPOSAL**

### Notes on preparation of Financial Proposal

- 6.1 The Financial proposal prepared by the consultant should list the costs associated with the assignment. These costs normally cover remuneration for staff, subsistence, transportation, services and equipment, printing of documents, surveys etc as may be applicable. The costs should be broken down to be clearly understood by the procuring entity.
- 6.2 The financial proposal shall be in Kenya Shillings or any other currency allowed in the request for proposal and shall take into account the tax liability and cost of insurances specified in the request for proposal.
- 6.3 The financial proposal should be prepared using the Standard forms provided in this part

**SECTION VII - FINANCIAL PROPOSAL STANDARD FORMS**

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**7.1 FINANCIAL PROPOSAL SUBMISSION FORM**

\_\_\_\_\_ [Date]

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
*[Name and address of Client]*

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for (\_\_\_\_\_) *[Title of consulting services]* in accordance with your Request for Proposal dated (\_\_\_\_\_) *[Date]* and our Proposal. Our attached Financial Proposal is \_\_\_\_\_ for \_\_\_\_\_ the \_\_\_\_\_ sum \_\_\_\_\_ of (\_\_\_\_\_) *[Amount in words and figures]* inclusive of the taxes.

We remain,

Yours sincerely,

\_\_\_\_\_ *[Authorized Signature]*  
:  
\_\_\_\_\_ *[Name and Title of Signatory]:*  
\_\_\_\_\_ *[Name of Firm]*  
\_\_\_\_\_ *[Address]*

**7.2 SUMMARY OF COSTS**

Costs	Currency(ies)	Amount(s)
Subtotal		
Taxes		
Total Amount of Financial Proposal		<hr/>



**7.3****BREAKDOWN OF PRICE PER ACTIVITY**

Activity NO.: _____	Description: _____
Price Component	Amount(s)
Remuneration	
Reimbursables	
Miscellaneous Expenses	
Subtotal	_____

**7.4**

**BREAKDOWN OF REMUNERATION PER ACTIVITY**

Activity No. _____ Name: _____				
Names	Position	Input (Staff months, days or hours as appropriate.)	Remuneration Rate	Amount
Regular staff  (i) (ii)  Consultants  Grand Total				_____

## 7.5 REIMBURSABLES PER ACTIVITY

Activity No: \_\_\_\_\_ Name: \_\_\_\_\_

No.	Description	Unit	Quantity	Unit Price	Total Amount
1.	Air travel	Trip			
2	Road travel	Kms			
3.	Rail travel	Kms			
4.	Subsistence Allowance	Day			
	Grand Total				

## 7.6 MISCELLANEOUS EXPENSES

Activity No. \_\_\_\_\_ Activity Name: \_\_\_\_\_

No.	Description	Unit	Quantity	Unit Price	Total Amount
1.	Communication costs____ _____ (telephone, telegram, telex)				
2.	Drafting, reproduction of reports				
3.	Equipment: computers etc.				
4.	Software				
	Grand Total				_____

## SECTION VIII: – EVALUATION CRITERIA

### Evaluation & Award Criteria

The Procuring entity shall evaluate and award the contract to the successful tenderer(s) whose tender has been determined to be substantially responsive as detailed herein, provided further that the tenderer is determined to be technically qualified to perform the contract satisfactorily.

7.1 Preliminary evaluation of the Request for Proposals shall be done on the basis of the Mandatory Requirements as set out here below.

Whether or not: -

- a) The Tenderer **MUST** not modify, substitute, alter/change the **STANDARD TENDER DOCUMENT** for Request for Proposal
- b) The Tenderer **MUST** submit copies of Certificate of The submission of the Request for Proposal document is in the right format (Original and Copies as set out).
- c) 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) Tenderers shall be required to furnish the Procuring Entity with a **Tender Security of Two Percent (2%) of the total Tender Sum from a Bank or a reputable Insurance Company registered with the Public Procurement Regulatory Authority (PPRA)** to remain in force for **One Hundred and Eighty (180No.) Days** from the date of Tender closing/Opening.
- g) 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).
- h) The tender is valid for the period required
- i) All required documents and information have been submitted.

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

7.2 Upon completion of Preliminary Evaluation, Technical Evaluation shall then be done by subjecting the Technical Proposal to the requirements as stipulated in the ToRs.

- 7.3 Non-conforming tenders will be rejected at this stage and only technically compliant tenders will be subjected to financial evaluation.
- 7.4 The Financial Quotations of the technically responsive Request for Proposals/Tenders shall be ranked so that the most economical tender may be awarded the contract to undertake the Consultancy Services for Annual Capacity and Performance Assessment (ACPA).

## **SECTION IX: - STANDARD FORMS**

### **Notes on the sample Forms**

- 9.1 **Form of Tender** - The form of tender must be completed by the tenderer and submitted with the tender documents. It must also be duly signed by duly authorized representatives of the tenderer.
- 9.2 **Confidential Business Questionnaire Form** - This form must be completed by the tenderer and submitted with the tender documents.
- 9.3 **Tender Security Form**- When required by the tender documents the tender shall provide the tender security either in the form included herein or in another format acceptable to the procuring entity.
- 9.4 **Performance Security Form** - The performance security form should not be completed by the tenderers at the time of tender preparation. Only the successful tenderer will be required to provide performance security in the form provided herein or in another form acceptable to the procuring entity.
- 9.5 **Letter Of Notification Of Award** -
- 9.6 **Anti-Corruption Declaration Commitment/Pledge**
- 9.7 **FORM RB 1 - Public Procurement Administrative Review Board**

**9.1 FORM OF TENDER**

To .....  
.....  
.....

Date. ....

Name and address of procuring entity

Tender No.....

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 to Conduct Annual Capacity and Performance Assessment (ACPA)** under this tender in conformity with the said Tender document for the sum of **KShs** ..... (amount in figures) .....  
..... (amount in words)  
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]

authorized to sign tender for and on behalf of \_\_\_\_\_



## 9.2 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 1- 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

### 9.3 TENDER SECURITY FORM

Whereas ..... [name of the tenderer]  
(hereinafter called "the tenderer") has submitted its tender dated ..... [date of submission of tender] for the supply, installation and commissioning of ..... [name and/or description of the equipment]  
(hereinafter called "the Tender") ..... KNOW ALL PEOPLE by these presents that WE ..... of ..... having our registered office at ..... (hereinafter called "the Bank"), are bound unto ..... [name of Procuring entity] (hereinafter called "the Procuring entity") in the sum of ..... for which payment well and truly to be made to the said Procuring entity, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

THE CONDITIONS of this obligation are:-

1. If the tenderer withdraws its Tender during the period of tender validity specified by the tenderer on the Tender Form; or
2. If the tenderer, having been notified of the acceptance of its Tender by the Procuring entity during the period of tender validity:
  - (a) fails or refuses to execute the Contract Form, if required; or
  - (b) fails or refuses to furnish the performance security in accordance with the Instructions to tenderers;

We undertake to pay to the Procuring entity up to the above amount upon receipt of its first written demand, without the Procuring entity having to substantiate its demand, provided that in its demand the Procuring entity will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

This tender guarantee will remain in force up to and including thirty (30) days after the period of tender validity, and any demand in respect thereof should reach the Bank not later than the above date.

\_\_\_\_\_  
[signature of the bank]  
(Amend accordingly if provided by Insurance Company)

**9.4 PERFORMANCE SECURITY FORM**

WHEREAS ..... [*name of tenderer*] (hereinafter called “the tenderer”) has undertaken, in pursuance of Contract No. \_\_\_\_\_ [*reference number of the contract*] dated \_\_\_\_\_ 20 \_\_\_\_\_ to \_\_\_\_\_ supply ..... [*description of goods*] (hereinafter called “the Contract”).

AND WHEREAS it has been stipulated by you in the said Contract that the tenderer shall furnish you with a bank guarantee by a reputable bank for the sum specified therein as security for compliance with the Tenderer’s performance obligations in accordance with the Contract.

AND WHEREAS we have agreed to give the tenderer a guarantee:

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the tenderer, up to a total of ..... [*amount of the guarantee in words and figure*] and we undertake to pay you, upon your first written demand declaring the tenderer to be in default under the Contract and without cavil or argument, any sum or sums within the limits of ..... [*amount of guarantee*] as aforesaid, without you needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Signed and seal of the Guarantors

\_\_\_\_\_  
[*name of bank or financial institution*]

\_\_\_\_\_  
[*address*]

\_\_\_\_\_  
[*date*]

**9.5 LETTER OF NOTIFICATION OF AWARD**

Address of Procuring Entity

\_\_\_\_\_  
\_\_\_\_\_

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RE: Tender No. \_\_\_\_\_

Tender Name \_\_\_\_\_

This is to notify that the contract/s stated below under the above mentioned tender have been awarded to you.

\_\_\_\_\_  
\_\_\_\_\_

- 1. Please acknowledge receipt of this letter of notification signifying your acceptance.
- 2. The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.
- 3. You may contact the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.

*(FULL PARTICULARS)* \_\_\_\_\_  
\_\_\_\_\_

SIGNED FOR ACCOUNTING OFFICER

**9.6 ANTI-CORRUPTION DECLARATION COMMITMENT/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.....

**9.7 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 of ..... 20 ..... in the matter of Tender No. .... of  
.....20...

**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.
- etc

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**

**SECTION X: - STANDARD FORMS OF CONTRACT**

- a. ANNEX I – LARGE ASSIGNMENTS (LUMP-SUM PAYMENTS)
- b. ANNEX II – LARGE AND SMALL ASSIGNMENTS (TIME –BASED PAYMENTS)
- c. ANNEX III – SMALL ASSIGNMENTS (LUMP-SUM PAYMENTS)

**NOTES**

- 1. LARGE ASSIGNMENT \_\_\_\_\_ Exceeding Ksh 5,000,000
- 2. SMALL ASSIGNMENT \_\_\_\_\_ Not exceeding Ksh. 5,000,000
- 3. TIME BASED PAYMENT \_\_\_ Time based fixed fee Exact duration of contract not fixed
- 4. LUMP-SUM PAYMENT \_\_\_\_\_ Stated fixed contract sum.

**ANNEX I**

**REPUBLIC OF KENYA**

**STANDARD FORM OF CONTRACT**

**FOR**

**CONSULTING SERVICES**

**Large Assignments  
(Lump- Sum payment)**



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## **Special Notes**

1. The Lump-Sum price is arrived at on the basis of inputs – including rates – provided by the Consultant. The Client agrees to pay the Consultant according to a schedule of payments linked to the delivery of certain outputs, usually reports. Lump-sum contracts have the simplicity of administration, the Client having only to be satisfied with the outputs without monitoring the staff inputs and should be used for large Assignments in for example Design; Engineering; Supervision and Management Services; Master plans; Economic and Feasibility studies; and Surveys.
2. The Contract includes four parts: Form of Contract, the General Conditions of Contract, the Special Conditions of Contract and the Appendices. The Client using this standard contract should not alter the General Conditions. Any adjustment to meet any specific project features should be made only in the Special Conditions.

**CONTRACT FOR CONSULTANT'S SERVICES**

**Large Assignments (Lump-Sum Payments)**

between

---

*[name of the Client]*

AND

---

*[name of the Consultant]*

Dated: \_\_\_\_\_ *[date]*

# I. FORM OF CONTRACT

## Large Assignments (Lump-Sum Payments)

This Agreement (hereinafter called the “Contract”) is made the \_\_\_\_\_ day of the month of \_\_\_\_\_ [month], [year], between \_\_\_\_\_, [name of client] of \_\_\_\_\_ [or whose registered office is situated at] \_\_\_\_\_ [location of office] (hereinafter called the “Client”) of the one part AND

\_\_\_\_\_ [name of consultant] of [or whose registered office is situated at] \_\_\_\_\_ [location of office] (hereinafter called the “Consultant”) of the other part.

### WHEREAS

- (a) the Client has requested the Consultant to provide certain consulting services as defined in the General Conditions of Contract attached to this Contract (hereinafter called the “Services”);
- (b) the Consultant, having presented to the Client that he has the required professional skills and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract;

NOW THEREFORE the Parties hereto hereby agree as follows:

- 1. The following documents attached hereto shall be deemed to form an integral part of this Contract:
  - (a) The General Conditions of Contract;
  - (b) The Special Conditions of Contract;
  - (c) The following Appendices: [*Note: If any of these Appendices are not used, they should be deleted from the list*]
    - Appendix A: Description of the Services
    - Appendix B: Reporting Requirements
    - Appendix C: Key Personnel and Sub consultants
    - Appendix D: Breakdown of Contract Price in Foreign Currency
  
    - Appendix E: Breakdown of Contract Price in Local Currency
    - Appendix F: Services and Facilities Provided by the Client
- 2. The mutual rights and obligations of the Client and the Consultants shall be as set forth in the Contract; in particular:
  - (a) The Consultant shall carry out the Services in accordance with the provisions of the Contract; and
  - (b) The Client shall make payments to the Consultant in accordance with the provisions of the Contract.

(v)

IN WITNESS WHEREOF, the Parties hereto 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 client]*

*[Full name of Client's authorised representative]* \_\_\_\_\_

*[Title]* \_\_\_\_\_

*[Signature]* \_\_\_\_\_

*[Date]* \_\_\_\_\_

For and on behalf of \_\_\_\_\_ *[name of consultant]*

*[Full name of Consultant's Authorized representative]* \_\_\_\_\_

*[Title]* \_\_\_\_\_

*[Signature]* \_\_\_\_\_

*[Date]* \_\_\_\_\_

## II. GENERAL CONDITIONS OF CONTRACT

### 1. GENERAL PROVISIONS

#### 1.1 Definitions

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

- (a) “Applicable Law” means the laws and any other instruments having the force of law in the Republic of Kenya as they may be issued and in force from time to time;
- (b) “Contract” means the Contract signed by the Parties, to which these General Conditions of Contract (GC) are attached together with all the documents listed in Clause 1 of such signed Contract;
- (c) “Contract Price” means the price to be paid for the performance of the Services in accordance with Clause 6 here below;
- (d) “Foreign Currency” means any currency other than the Kenya Shilling;
- (e) “GC” means these General Conditions of Contract;
- (f) “Government” means the Government of the Republic of Kenya;
- (g) “Local Currency” means the Kenya Shilling;
- (h) “Member”, in case the Consultant consists of a joint venture of more than one entity, means any of these entities; “Members” means all these entities, and “Member in Charge” means the entity specified in the SC to act on their behalf in exercising all the Consultant’s rights and obligations towards the Client under this Contract;
- (i) “Party” means the Client or the Consultant, as the case may be and “Parties” means both of them;
- (j) “Personnel” means persons hired by the Consultant or by any Sub-consultant as employees and assigned to the performance of the Services or any part thereof;
- (k) “SC” means the Special Conditions of Contract by which the GC may be amended or supplemented;
- (l) “Services” means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A; and

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- (m) “Sub consultant” means any entity to which the Consultant subcontracts any part of the Services in accordance with the provisions of Clauses 3 and 4.

**1.2 Law Governing the Contract**

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

**1.3 Language**

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

**1.4 Notices**

Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed or when sent by registered mail, telex, telegram or facsimile to such Party at the address specified in the SC.

**1.5 Location**

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

**1.6 Authorized Representatives**

Any action required or permitted to be taken and any document required or permitted to be executed under this Contract by the Client or the Consultant may be taken or executed by the officials specified in the SC.

**1.7 Taxes and Duties**

The Consultant, Sub consultant[s] and their personnel shall pay such taxes, duties, fees and other impositions as may be levied under the Laws of Kenya, the amount of which is deemed to have been included in the Contract Price.

**2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT**

**2.1 Effectiveness of Contract**

This Contract shall come into effect on the date the Contract is signed by both Parties or such other later date as may be stated in the SC.

**2.2 Commencement of Services**

The Consultant shall begin carrying out the Services thirty (30) days after the date the Contract becomes effective or at such other date as may be specified in the SC.

**2.3 Expiration of Contract**

Unless terminated earlier pursuant to Clause 2.6, this Contract shall terminate at the end of such time period, after the Effective Date, as is specified in the SC.



## **2.4 Modification**

Modification of the terms and Conditions of this Contract, including any modification of the scope of the Services or the Contract Price, may only be made by written agreement between the Parties.

## **2.5 Force Majeure**

### **2.5.1 Definition**

For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party and which makes a Party’s performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

### **2.5.2 No Breach of Contract**

The failure of a Party to fulfill any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

### **2.5.3 Extension of Time**

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.

### **2.5.4 Payments**

During the period of his inability to perform the Services as a result of an event of Force Majeure, the Consultant shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by him during such period for the purposes of the Services and in reactivating the Service after the end of such period.

## **2.6 Termination**

### **2.6.1 By the Client**

The Client may terminate this Contract by not less than thirty (30) days’ written notice of termination to the Consultant, to be given after the occurrence of any of the events specified in this Clause;

- (a) if the Consultant does not remedy a failure in the performance of his obligations under the Contract within thirty (30) days after being notified or within any further period as the Client may have subsequently approved in writing;
- (b) if the Consultant becomes insolvent or bankrupt;

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(c) if, as a 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) days; or

(d) if the Consultant, in the judgment of the Client, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this clause;

(e) “Corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the selection process or in Contract execution.

“fraudulent practice” means a misrepresentation of facts in order to influence a selection process or the execution of Contract to the detriment of the Client, and includes collusive practice among consultants (prior to or after submission of proposals) designed to establish prices at artificial non-competitive levels and to deprive the Client of the benefits of free and open competition.

(f) if the Client in his sole discretion decides to terminate this Contract.

### **2.6.2 By the Consultant**

The Consultant may terminate this Contract by not less than thirty (30) days’ written notice to the Client, such notice to be given after the occurrence of any of the following events;

(a) if the Client fails to pay any monies due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause 7 within sixty (60) days after receiving written notice from the Consultant that such payment is overdue; or

(b) if, as a 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) days.

### **2.6.3 Payment upon Termination**

Upon termination of this Contract pursuant to Clauses 2.6.1 or 2.6.2, the Client shall make the following payments to the Consultant:

(a) remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination;

(b) except in the case of termination pursuant to paragraphs (a) and (b) of Clause 2.6.1, reimbursement of any reasonable costs incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel and their eligible dependents.

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### **3. OBLIGATIONS OF THE CONSULTANT**

#### **3.1 General**

The Consultant shall perform the Services and carry out his obligations with all due diligence, efficiency and economy in accordance with generally accepted professional techniques and practices and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the Client and shall at all times support and safeguard the Client's legitimate interests in any dealing with Sub consultants or third parties.

#### **3.1 Conflict of Interests**

##### **3.2.1 Consultant Not to benefit from Commissions, Discounts, Etc.**

- (i) The remuneration of the Consultant pursuant to Clause 6 shall constitute Consultant's sole remuneration in connection with this Contract or the Services and the Consultant shall not accept for his own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of his obligations under the Contract and the Consultant shall use his best efforts to ensure that his personnel, any sub consultant[s] and agents of either of them similarly shall not receive any such additional remuneration.
- (ii) For a period of two years after the expiration of this Contract, the Consultant shall not engage and shall cause his personnel as well as his sub consultant[s] and his/their personnel not to engage in the activity of a purchaser (directly or indirectly) of the assets on which he advised the Client on this Contract nor shall he engage in the activity of an adviser (directly or indirectly) of potential purchasers of such assets.

Where the Consultant as part of the Services has the responsibility of advising the Client on the procurement of goods, works or services, the Consultant will comply with any applicable procurement guidelines and shall at all times exercise such responsibility in the best interest of the Client. Any discounts or commissions obtained by the Consultant in the exercise of such procurement shall be for the account of the Client.

##### **3.2.2 Consultant and Affiliates Not to be Otherwise interested in Project**

The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and his affiliates, as well as any Sub-consultant and any of his affiliates, shall be disqualified from providing goods, works or services.

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(other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.

### **3.2.3 Prohibition of Conflicting Activities**

Neither the Consultant nor his sub-consultant[s] nor their personnel shall engage, either directly or indirectly in any of the following activities: -

- (a) during the term of this Contract, any business or professional activities in the Republic of Kenya which would conflict with the activities assigned to them under this Contract; or
- (b) after the termination of this Contract, such other activities as may be specified in the SC.

### **3.3 Confidentiality**

The Consultant, his sub-consultant[s] and the personnel of either of them shall not, either during the term of this Contract or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract or the Client's business or operations without the prior written consent of the Client.

### **3.4 Insurance to be Taken Out by the Consultant**

The Consultant (a) shall take out and maintain and shall cause any sub-consultant[s] to take out and maintain, at his (or the sub-consultants', as the case may be) own cost but on terms and conditions approved by the Client, insurance against the risks and for the coverage, as shall be specified in the SC; and (b) at the Client's request, shall provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums have been paid.

### **3.5 Consultant's Actions requiring Client's prior Approval**

The Consultant shall obtain the Client's prior approval in writing before taking any of the following actions;

- (a) entering into a subcontract for the performance of any part of the Services,
- (b) appointing such members of the personnel not listed by name in Appendix C ("Key Personnel and Sub-consultants").

### **3.6 Reporting Obligations**

The Consultants shall submit to the Client the reports and documents specified in Appendix A in the form, in the numbers, and within the periods set forth in the said Appendix.

### **3.7 Documents prepared by the Consultant to be the Property of the Client**

All plans, drawings, specifications, designs, reports and other documents and software submitted by the Consultant in accordance with Clause 3.6 shall become and remain the property of the Client shall, not later than upon termination

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or expiration of this Contract, deliver all such documents and software to the Client together with a detailed inventory thereof. The Consultant may retain a copy of such documents and software. Neither Party shall use these documents for purposes unrelated to this Contract without the prior approval of the other Party.

## **4 CONSULTANT'S PERSONNEL**

**4.1 Description of Personnel** The titles, agreed job descriptions, minimum qualifications and estimated periods of engagement in the carrying out of the Services of the Consultant's Key Personnel are described in Appendix C. The Key Personnel and Sub consultants listed by title as well as by name in Appendix C are hereby approved by the Client

### **4.2 Removal and/or Replacement of Personnel**

- (a) Except as the Client may otherwise agree, no changes shall be made in the Key Personnel. If for any reason beyond the reasonable control of the Consultant, it becomes necessary to replace any of the Key Personnel, the Consultant shall provide as a replacement a person of equivalent or better qualifications.
- (b) If the Client finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) the Client has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultant shall, at the Client's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Client.
- (a) The Consultant shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

## **5. OBLIGATIONS OF THE CLIENT**

### **5.1 Assistance and Exemptions**

The Client shall use his best efforts to ensure that he provides the Consultant such assistance and exemptions as may be necessary or due performance of this Contract.

### **5.2 Change in the Applicable Law**

If after the date of this Contract, there is any change in the Laws of Kenya with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Consultant, 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 and corresponding

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adjustments shall be made to the amounts referred to in Clause 6.2 (a) or (b), as the case may be.

### **5.3 Services and Facilities**

The Client shall make available to the Consultant the Services and Facilities listed under Appendix F

## **6. PAYMENTS TO THE CONSULTANT**

### **6.1 Lump-Sum Remuneration**

The Consultant's total remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all staff costs, Sub-consultants' costs, printing, communications, travel, accommodation and the like and all other costs incurred by the Consultant in carrying out the Services described in Appendix A. Except as provided in Clause 5.2, the Contract Price may only be increased above the amounts stated in Clause 6.2 if the Parties have agreed to additional payments in accordance with Clause 2.4.

### **6.2 Contract Price**

- (a) The price payable in foreign currency is set forth in the SC.
- (b) The price payable in local currency is set forth in the SC.

### **6.3 Payment for Additional Services**

for the purposes of determining the remuneration due for additional services as may be agreed under Clause 2.4, a breakdown of the lump-sum price is provided in Appendices D and E.

### **6.4 Terms and Conditions of Payment**

Payments will be made to the account of the Consultant and according to the payment schedule stated in the SC. Unless otherwise stated in the SC, the first payment shall be made against the provision by the Consultant of a bank guarantee for the same amount and shall be valid for the period stated in the SC. Any other payment shall be made after the conditions listed in the SC for such payment have been met and the Consultant has submitted an invoice to the Client specifying the amount due.

### **6.5 Interest on Delayed Payment**

Payment shall be made within thirty (30) days of receipt of invoice and the relevant documents specified in Clause 6.4. 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 .

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## **7. SETTLEMENT OF DISPUTES**

- 7.1 Amicable Settlement** The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.
- 7.2 Dispute Settlement** Any dispute between the Parties as to matters arising pursuant to this Contract that cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may 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.

Number of GC Clause	Amendments of and Supplements to Clauses in the General Conditions of Contract
---------------------	--

1.1(i) The Member in Charge is \_\_\_\_\_ [name of Member]

1.4 The addresses are:

Client: - \_\_\_\_\_ **State Department of Devolution** \_\_\_\_\_

Attention: - \_\_\_\_\_ **Mr. Martin Anyango** \_\_\_\_\_

Telephone: - \_\_\_\_\_ **+254 722 749 638** \_\_\_\_\_

Telex: - \_\_\_\_\_

Facsimile: - \_\_\_\_\_

Consultant: - \_\_\_\_\_

Attention: - \_\_\_\_\_

Telephone: - \_\_\_\_\_

Telex: - \_\_\_\_\_

Facsimile: - \_\_\_\_\_

1.6 The Authorized Representatives are: -

For the Client: - \_\_\_\_\_ **State Department of Devolution:**  
**Mr. Martin Anyango** \_\_\_\_\_

For the Consultant: - \_\_\_\_\_

2.1 The date on which this Contract shall come into effect is (\_\_\_\_\_) [date].

*Note: The date may be specified by reference to conditions of effectiveness of the Contract, such as receipt by Consultants of advance payment and by Client of bank guarantee*

2.2 The date for the commencement of Services is \_\_\_\_\_ [date]

2.3 The period shall be \_\_\_\_\_ [length of time].

*Note: Fill in the period, e.g., twenty-four (24) months or such other period as the Parties may agree in writing.*

2.4 The risks and coverage shall be: -

(i) Professional Liability \_\_\_\_\_

(ii) Loss of or damage to equipment and property \_\_\_\_\_

6.2(a) The amount in foreign currency or currencies is \_\_\_\_\_ [Insert amount].



6.2(b) The amount in local Currency is \_\_\_\_\_ *[Insert amount]*

6.4 Payments shall be made according to the following schedule:

*Note: (a) This sample Clause should be specifically drafted for each Contract and the following installments are indicative only; (b) if the payment of foreign currency and of local currency does not follow the same schedule, add a separate schedule for payment in local currency; and (c) if applicable, detail further the nature of the report evidencing performance, as may be required, e.g., submission of study or specific phase of study, survey, drawings, draft bidding documents, etc., as listed in Appendix B, Reporting Requirements. In the example provided, the bank guarantee for the repayment is released when the payments have reached 50 percent of the lump-sum price, because it is assumed that at that point, the advance has been entirely set off against the performance of services.*

- a) Ten percent (10%) of the Contract Price shall be paid on signing the Contract and submission and acceptance of inception report;
- b) Sixty percent (60%) of the Contract Price shall be paid upon submission of satisfactory draft assessment reports and draft synthesis reports with grant calculations.
- c) Thirty percent (30%) of the Contract Price upon submission of detailed final Assessment Reports for each of the assessed counties and the final synthesis report acceptable to the Client

## **5 Appendices**

### **APPENDIX A – DESCRIPTION OF THE SERVICES**

*Give detailed descriptions of the Services to be provided, dates for completion of various tasks, place of performance for different tasks, specific tasks to be approved by Client, etc.*

### **APPENDIX B – REPORTING REQUIREMENTS**

*List format, frequency, and contents of reports; persons to receive them; dates of submission; etc. If no reports are to be submitted, state here “Not applicable.”*

### **APPENDIX C – KEY PERSONNEL AND SUBCONSULTANTS**

*List under: C-1 Titles [and names, if already available], detailed job descriptions and minimum qualifications of Personnel and staff-months for each.*

*C-2 List of approved Sub consultants (if already available); same information with respect to their Personnel as in C-1.*

### **APPENDIX D – BREAKDOWN OF CONTRACT PRICE IN FOREIGN CURRENCY**

*List here the elements of cost used to arrive at the breakdown of the lump-sum price – foreign currency portion:*

- 1. Monthly rates for Personnel (Key Personnel and other Personnel).*
- 2. Reimbursable expenditures.*

*This appendix will exclusively be used for determining remuneration for additional services.*

### **APPENDIX E – BREAKDOWN OF CONTRACT PRICE IN LOCAL CURRENCY**

*List here the elements of cost used to arrive at the breakdown of the lump-sum price – local currency portion.*

- 1. Monthly rates for Personnel (Key Personnel and other Personnel).*
- 2. Reimbursable expenditures.*

*This appendix will exclusively be used for determining remuneration for additional services.*

### **APPENDIX F – SERVICES AND FACILITIES PROVIDED BY THE CLIENT**

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# **ANNEX II**

## **SAMPLE CONTRACT FOR CONSULTING SERVICES**

### **LARGE ASSIGNMENTS AND Small Assignments**

#### **Time-Based Payments**

**SAMPLE CONTRACT FOR CONSULTING SERVICES  
SMALL ASSIGNMENTS  
TIME-BASED PAYMENTS**

**CONTRACT**

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 Consultant’s 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 Services,” which is made an integral part of this Contract.
- (ii) The Consultant shall provide the reports listed in Appendix B, “Consultant’s Reporting Obligations,” within the time periods listed in such Appendix and the personnel listed in Appendix C, “Cost Estimate of Services, List of Personnel and Schedule of Rates” to perform the Services.

**2. Term**

The Consultant shall perform the Services during the period commencing \_\_\_\_\_ [Insert start date] and continuing 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 a ceiling of \_\_\_\_\_ [Insert ceiling amount]. This amount has been established based on the understanding that it includes all of the Consultant’s costs and profits as well as any tax obligation that may be imposed on the Consultant. The payments made under the Contract consist of the Consultant’s remuneration as defined in sub-paragraph (B) below and of the reimbursable expenditures as defined in sub-paragraph (C) below.

**(i)**

**B. Remuneration**

The Client shall pay the Consultant for Services rendered at the rate(s) per man/month spent (or per day spent or per hour spent, subject to a maximum of eight hours per day) in accordance with the rates agreed and specified in Appendix C, “Cost Estimate of Services, List of Personnel and Schedule of Rates”.

**C. Reimbursables**

The Client shall pay the Consultant for reimbursable expenses which shall consist of and be limited to:

- (i) normal and customary expenditures for official road and air travel, accommodation, printing and telephone charges; air travel will be reimbursed at the cost of less than first class travel and will need to be authorized by the Client’s coordinator;
- (ii) such other expenses as approved in advance by the Client’s coordinator.

**D. Payment Conditions.**

Payment shall be made in Kenya shillings unless otherwise specified not later than thirty {30} days following submission of invoices in duplicate to the Coordinator designated in Clause 4 herebelow. If the Client has delayed payments beyond thirty (30) days after the 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.

The parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

**4. Project Administration**

**A. Coordinator**

The Client designates \_\_\_\_\_ *[Insert name]* as Client’s Coordinator; the Coordinator shall be responsible for the coordination of activities under the Contract, for receiving and approving invoices for payment and for acceptance of the deliverables by the Client.

**B. Timesheets.**

During the course of their work under this Contract, including field work, the Consultant’s employees providing services under this Contract may be required to complete timesheets or any other document used to identify time spent as well as expenses incurred, as instructed by the Project Coordinator.

**C. Records and Accounts**

The Consultant shall keep accurate and systematic records and accounts in respect of the Services which will clearly identify all charges and expenses. The Client reserves the right to audit or to

(ii)

nominate a reputable accounting firm to audit the Consultant's records relating to amounts claimed under this Contract during its term and any extension and for a period of three months thereafter.

**5. Performance Standard**

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 or 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 Subcontract any portion thereof 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 this Contract which cannot be amicably settled between the parties, shall be referred by either party to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the chairman of the Chartered Institute of Arbitrators, Kenya branch, on the request of the applying party.

**FOR THE CLIENT**

Full name: - \_\_\_\_\_  
Title: - \_\_\_\_\_  
Signature: - \_\_\_\_\_  
Date: - \_\_\_\_\_

**FOR THE CONSULTANT**

Full name: - \_\_\_\_\_  
Title: - \_\_\_\_\_  
Signature: - \_\_\_\_\_  
Date: - \_\_\_\_\_

## **LIST OF APPENDICES**

Appendix A: Terms of Reference and Scope of Services

Appendix B: Consultant's reporting Obligation

Appendix C: Cost Estimate of Services, List of Personnel and Schedule of Rates

## APPENDIX C

Cost Estimate of Services, List of Personnel and Schedule of Rates.

### (1) Remuneration of Staff

	Name	Rate (per month/day/hour in currency)	Time spent(numberof month/day/ hour)	Total (currency)
(a)	Team Leader			
(b)				
(c)				
				Sub-Total (1)

### (2) Reimbursables

	Rate	Days	Total
(a)	Air Travel		
(b)	Road Transportation		
(c)	Per Diem		
			Sub-Total (2)

TOTAL COST \_\_\_\_\_

Physical Contingency \_\_\_\_\_

CONTRACT CEILING \_\_\_\_\_

(v)



# **ANNEX III**

## **SAMPLE CONTRACT FOR CONSULTING SERVICES**

**Small Assignments**  
Lump-sum payments

**SAMPLE CONTRACT FOR CONSULTING SERVICES  
SMALL ASSIGNMENTS  
LUMP-SUM PAYMENTS**

**CONTRACT**

This Agreement, [hereinafter called "the Contract"] is entered into this \_\_\_\_\_ *[Insert starting date of assignment]*, by \_\_\_\_\_ and \_\_\_\_\_ *[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 Consultant's 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 Services," which is made an integral part of this Contract.
  - (ii) The Consultant shall provide the personnel listed in 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."

**2. Term** The Consultant shall perform the Services during the period commencing on \_\_\_\_\_ *[Insert starting date]* and continuing 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 of 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

(i)

reflect the output required as described in Appendix C.)  
Kshs \_\_\_\_\_ upon the Client's receipt of a copy of this Contract signed by the Consultant;

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 \_\_\_\_\_ [insert name] 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

(ii)

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; \_\_\_\_\_

## **LIST OF APPENDICES**

- Appendix A: Terms of Reference and Scope of Services
- Appendix B: Consultant's Personnel
- Appendix C: Consultant's reporting Obligations