



Kenya National Highways Authority

Quality Highways, Better Connections

REQUEST FOR PROPOSALS

FOR

INDIVIDUAL CONSULTANCY SERVICES FOR WORKS SUPERVISION

OF

GRAVELLING OF RHAMU-OLA-BANISA (B80) ROAD

AND

GRAVELLING OF BANISA-KUKUBA-DANABA (B80) ROAD

TENDER NO. KENHA/2687/2023

JUNE, 2023

**DIRECTOR - MAINTENANCE
KENYA NATIONAL HIGHWAYS
AUTHORITY
P.O. Box 49712-00100
NAIROBI**

**DIRECTOR GENERAL
KENYA NATIONAL HIGHWAYS
AUTHORITY
P.O. Box 49712-00100
NAIROBI**



Section 1: Letter of Invitation

TENDER NOTICE

TENDER No: KENHA/2687/2023

TENDER FOR INDIVIDUAL CONSULTANCY SERVICES FOR WORK SUPERVISION OF GRAVELLING OF RHAMU –OLA-BANISA (B80) ROAD AND BANISA-KUKUBA-DANABA (B80) ROAD.

1. The Government of Kenya has allocated funds towards the cost of Graveling of Rhamu – Ola - Banisa (B80) Road and Banisa – Kukuba - Danaba (B80) Road to ease accessibility to Government institutions and important corridor that supports tourism sector, security operations, distribution of livestock and agricultural products within local and international markets.
2. The implementing agency, Kenya National Highways Authority intends to apply a portion of the funds to eligible payments under the contract for which this Request for Proposals is issued.
3. The Kenya National Highways Authority (KeNHA) is a State Corporation established under the Kenya Roads Act, 2007, with the responsibility for the management, development, rehabilitation and maintenance of national roads.
4. The Kenya National Highways Authority now invites sealed proposals from eligible Individual Consultants to provide the following consulting services: **Supervision of Graveling of Rhamu – Ola - Banisa (B80) Road and Banisa – Kukuba - Danaba (B80) Road.**
5. The following are mandatory requirements that **MUST** be submitted together with the proposal
 - **Duly signed** Curriculum vitae (CVs) of the Individual Consultant
 - Current Tax Compliance Certificate (To be checked by KRA TCC)
 - **Certified** copies of certificates and testimonial of the Individual Consultant
 - Proof of Registration as a Consulting Engineer for Planning, Design and Supervision of Road Works by Engineers Board of Kenya (**EBK**).
 - Consultant **EBK** Practising Licence
 - Litigation history (**sworn affidavit**)
 - Curriculum vitae (CVs) of the individual consultant **duly signed** by the proposed individual
 - Copy of **valid** Tax Compliance Certificate (Will be verified on the KRA TCC Checker)
 - Details of Current work load

- Client satisfaction on previous and current assignments. Evidence of having successfully carried out design/design review and work supervision of a road works as an Individual Consultant.
 - All forms to be filled are duly filled.
 - The tender has been duly signed by the person lawfully authorized to do so through the power of attorney.
 - The required number of copies of the tender document have been submitted.
 - The tender is valid for the period required
6. There shall be a **mandatory Pre-bid conference on Tuesday 13th June, 2023 at 10.00am** at Barabara Plaza, Jomo Kenyatta International Airport, Mazao Road, Off Airport North Road, Block C, 2nd Floor Boardroom.
 7. Bidders shall sequentially serialise all pages of each tender submitted; failure to which the bidder shall be disqualified.

Please note that all pages of the tender documents submitted by bidders shall be sequentially serialized. That is, serialization shall be undertaken by the bidder, by doing fresh numbering on its documents. The pagination of the tender documents as downloaded from the KeNHA website should not be used as a means of Serialization. The bidder's serialization should follow the same logical sequence from the first page to the end
 8. An Individual consultant will be selected under Quality-and Cost-Based Selection (QCBS) and procedures described in this RFP, in accordance with the Public Procurement and Asset Disposal Act, 2015 and Regulations. The above details will be submitted with the proposal.
 9. The eligible Individual Consultant must not be currently engaged in supervision works of an on-going roads project
 10. Interested eligible candidates may obtain further information and inspect tender documents from the **Procurement Office, Kenya National Highways Authority, Barabara Plaza, Jomo Kenyatta International Airport, Mazao Road, Off Airport North Road, Block C, Second Floor, from 6th June, 2023** during normal working hours.
 11. The RFP includes the following documents:
 - Section 1 - Letter of Invitation
 - Section 2 - Instructions to Consultants (including Data Sheet)
 - Section 3 - Technical Proposal – Standard Forms
 - Section 4 - Financial Proposal – Standard Forms
 - Section 5 - Terms of Reference
 - Section 6 - Standard Forms of Contract
 12. Details on the proposal's submission date, time and address are provided in the ITC 18.5of the Data Sheet.

NOTE:

- **Certificates/licenses may be verified from the issuing authorities or agencies**

13. A complete set of tender documents may be obtained by interested tenderers from the Kenya National Highways Authority website: www.kenha.co.ke from the offices indicated in the table above during normal working hours upon payment of a non – refundable fee of **Kshs. 1,000 (One thousand shillings only)** in form of banker’s cheque only payable to Kenya National Highways Authority.
14. Completed tender documents are to be enclosed in plain sealed envelope clearly marked with tender name, reference number and addressed to:

Deputy Director, Supply Chain Management
Kenya National Highways Authority,
Barabara Plaza, JKIA, Nairobi, Off Mazao Road (Opposite KCAA Headquarters)
P. O. Box 49712 - 00100,
NAIROBI, KENYA

15. The tender to be deposited in the Tender Box on the Barabara Plaza, JKIA, Nairobi, Off Mazao Road (Opposite KCAA Headquarters) to be received on or before **Thursday 22nd June 2023.**
16. **All interested bidders are required to continually check the Kenya National Highways Authority website: www.kenha.co.ke for any tender addendums or clarifications that may arise before submission date.**
17. Opening of the bids will take place immediately thereafter at the Board Room, 2rd Floor, the Barabara Plaza, JKIA, Nairobi, Off Mazao Road (Opposite KCAA Headquarters), in the presence of Tenderers/Representatives who wish to attend.

Yours sincerely,

**Deputy Director, Supply Chain
Management Kenya National
Highways Authority,
Barabara Plaza, JKIA, Nairobi, Off Mazao Road (Opposite KCAA
Headquarters) P. O. Box 49712 - 00100,
NAIROBI, KENYA**

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SECTION A:-

INFORMATION TO CONSULTANTS

- 1. Introduction**
- 1.1 The Client named in Annex “A” will select a consultant among those invited to submit a proposal, in accordance with the method of selection detailed under this section.
- 1.2 The consultants are invited to submit a Technical Proposal only, as specified in Annex “A” for consulting services required for the assignment named in the said Annex. A Technical Proposal only may be with Building and Civil Engineering Consulting services. The consultant whose technical proposal is ranked highest 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 Consultant.
- 1.3 A Consultant/ Resident Engineer will be selected under Quality and Cost Based Selection (QCBS) procedures and in a Full Technical Proposal (FTP) format described in this RFP
- 1.4 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 Annex “A” 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.
- 1.5 The Client will provide the inputs specified in Annex “A”, make available relevant project data and reports.
- 1.6 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. Clarification and Amendment of RFP Documents**
- 2.1 Consultants may request a clarification of any of the RFP only up to seven [7] days before the proposal submission date. Any request for clarification must be sent in writing by papermail, cable, telex, facsimile or electronic mail to the Client’s address indicated in Annex “A”. 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 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 consultant, amend the RFP. Any amendment shall be issued in writing through Tender Notice. Tender Notice 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.
- 3. Preparation of Proposal**
- 3.1 The Consultants proposal shall be written in English language.
- Technical Proposal**
- 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.

- 3.3 While preparing the Technical Proposal, consultants must give particular attention to the following:
- (i) The consultant must as a minimum, have the experience indicated in Annex “A”, preferably working under conditions similar to those prevailing in Kenya.
- 3.4 The Technical Proposal shall provide the following information using the attached Standard Forms;
- (i) A brief description of 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 consultant’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) Any additional information requested in Annex “A”.
- 3.5 The Proposal must remain valid for 90 days after the submission date. 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 who do not agree have the right not to extend the validity of their proposals.

Financial Proposal

3.6 The Financial Proposal shall be prepared using the Standard Forms provided in Section B (2) of the RFP. It shall list all costs associated with the assignment, including remuneration as indicated in this RFP.

a. Price Adjustment

3.7 For assignments with a duration exceeding 12 months, a price adjustment provision for local inflation for remuneration rates applies.

b. Taxes

3.8 The Consultant shall be responsible for meeting all tax liabilities arising out of the Contract.

c. Currency of Proposal

3.9 The Consultant shall express the price for his Services in Kenya Shillings

d. Currency of Payment

3.10 Payment under the Contract shall be made in Kenya Shillings.

3.11 The Proposal must remain valid for **90 days** after the submission date. 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 who do not agree have the right not to extend the validity of their proposals.

4. Submission, Receipt, and Opening of Proposals

- 4.1 The original proposals (Technical Proposal and Financial Proposal) shall be prepared in indelible ink. It shall contain no interlineations or corrections except as necessary to correct errors made by the Consultant himself. Any such corrections must be initialed by the consultant.
- 4.2 The consultant shall prepare the number of copies indicated in Annex "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.
- 4.3** The originals and all copies of the Technical Proposal and Financial Proposal shall be placed in separate sealed envelopes clearly marked "**TECHNICAL PROPOSAL,**" and "**FINANCIAL PROPOSAL**". The envelopes shall be placed into an outer envelope and sealed. These outer envelopes shall bear the submission address and other information indicated in Annex "A" and be clearly marked, "**DO NOT OPEN, EXCEPT IN PRESENCE OF THE TENDER OPENING COMMITTEE.**"
- 4.4 The completed Technical Proposals and Financial Proposals must be delivered at the submission address on or before the time and date stated in Annex "A". Any proposals received after the closing time for submission of proposals shall be returned to the respective consultant unopened.
- 4.5 The Client's Tender Opening committee shall conduct the opening of the Technical Proposals in the presence of the shortlisted Consultants' authorized representatives who choose to attend. The opening date, time and the address are stated in this RFP in Annex "A". The envelopes with the Financial Proposal shall remain sealed and shall be securely stored by the client until they are opened in accordance with Clause 7 of this section.
- 4.6 At the opening of the Technical Proposals the following shall be read out: (i) the name (ii) the presence or absence of a duly sealed envelope with the Financial Proposal; (iii) any modifications to the Proposal submitted prior to proposal submission deadline; and (iv) any other information deemed appropriate
- 4.7 Subject to provision of Clause 7 of this section, the evaluators of the Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded.
- 4.8 The Consultant is not permitted to alter or modify his Proposal in any way after the proposal submission deadline. While evaluating the Proposals, the Client will conduct the evaluation solely on the basis of the submitted Technical and Financial Proposals.

5. Proposal Evaluation

- 5.1 From the time the bids are opened to the time the Contract is awarded, if any consultant wishes to contact

General

the Client on any matter related to his proposal, he should do so in writing at the address indicated in Annex “A”. Any effort by a consultant to influence the Client in the proposal evaluation, proposal comparison or Contract award decisions may result in the rejection of the Consultant’s proposal.

6. Evaluation of Technical Proposals

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

	Points
I. Organization, Methodology and Workplan	50
II. Description and Qualifications of the consultant	50
Total Points	<u>100</u>

The weighted average score for the Technical proposal shall be 75% i.e the Technical Proposal shall Constitute 75% of the overall score

7.Public Opening of Financial Proposals

7.1 After the technical evaluation is completed, the Client shall notify in writing those Consultants that have achieved the minimum overall technical score indicated in Annex “A” and inform them of the date, time and location for the opening of the Financial Proposals. The opening date should allow the Consultants sufficient time to make arrangements for attending the opening. The Consultant’s attendance at the opening of the Financial Proposals is optional and is at the Consultant’s choice.

7.2 The Financial Proposals shall be opened by the Client’s evaluation committee in the presence of the representatives of those Consultants whose proposals have passed the minimum technical score. The Financial Proposals will then be inspected to confirm that they have remained sealed and unopened. These Financial Proposals shall be then opened, and the total prices read aloud and recorded. The Financial bids of the bidders who do not attain the minimum technical score shall not be opened and shall be returned to the bidders.

The weighted average score for the Financial proposal shall be 25% i.e the Financial Proposal Shall Constitute 25% of the overall score with the lowest bidder attaining 25% and the other bidders scored on a pro-rata basis.

8. Award of Contract

8.1 The Contract will be awarded to the consultant who scores the highest weighted score (Technical and Financial) provided that that score is above the minimum score specified in Annex “A”.

9. Confidentiality

9.1 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.

Any attempt by shortlisted Consultants or anyone on behalf of the Consultant to influence improperly the Client in the evaluation of the Proposals or Contract award decisions may result in the rejection of its Proposal.

Notwithstanding the above provisions, from the time of the Proposals' opening to the time of Contract award publication, if a Consultant wishes to contact the Client on any matter related to the selection process, he should do so only in writing.

SECTION B: -

1. TECHNICAL PROPOSAL – STANDARD FORMS

These forms shall include;

- i) Technical Proposal submission form.
- ii) Consultant's references.
- iii) Comments and suggestions of Consultant on the Terms of Reference and on data, services and facilities to be provided by the Client.
- iv) Description of the methodology and work plan for performing the assignment.
- v) Format of curriculum vitae (CV) for the consultant.
- vi) Activity (work) schedule.

(i). TECHNICAL PROPOSAL SUBMISSION FORM

[_____ Date]

To: _____ [Name and address of Client)

Ladies/Gentlemen:

I, 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. I am hereby
submitting my Proposal, which includes this Technical Proposal.

I understand you are not bound to accept any Proposal you receive.

I remain,

Yours sincerely,

_____ [Signature]:

_____ [Name of Signatory:]

_____ [Address:]

(ii). CONSULTANT’S REFERENCES

**Relevant Services Carried Out in the Last Six Years
That Best Illustrate Qualifications**

Using the format below, provide information on each assignment for which you were either individually or in association, was legally contracted.

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

Firm’s Name: _____

Name and title of signatory; _____

(iii) 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.

(iv) DESCRIPTION OF THE METHODOLOGY AND WORK PLAN FOR PERFORMING THE ASSIGNMENT

(v). FORMAT OF CURRICULUM VITAE (CV) FOR THE CONSULTANT

Name of the Consulting Engineer:

Profession:

Date of Birth:

Years of experience: _____ **Nationality:** _____

Membership in Professional bodies/Societies: _____

Detailed Tasks Assigned: _____

Key Qualifications:

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

Education:

[Summarize college/university and other specialized education of Consulting Engineer, 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 the Consulting Engineer since graduation, giving dates, names of employing organizations, titles of positions held, and locations of ¹⁶ *assignments.]*

Certification:

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

_____ **Date:** _____

[Signature of Consulting Engineer]

Full name of Consulting Engineer:

(vi). TIME SCHEDULE FOR PROFESSIONAL PERSONNEL – CONSTRUCTION PERIOD

Months (in the Form of a Bar Chart)

Reports Due/ Activities	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18

Reports Due: _____

Title: _____ **Full name:** _____

Activities Duration: _____

Address: _____ **Signature:** _____

(vii). TIME SCHEDULE FOR PROFESSIONAL PERSONNEL – DEFECTS LIABILITY PERIOD

Months (in the Form of a Bar Chart)

Reports Due/ Activities	1	2	3	4	5	6

Reports Due: _____

Signature: _____

Activities Duration: _____

Full Name: _____

Title: _____

Address: _____

(viii). ACTIVITY (WORK) SCHEDULE

(a). Supervision Activities

(M0, M1, M3 are months from the start of assignment)

	M1	M2	M3	M4	...Mn	M(n+ 1)	M(n +2)	M(n+ 3)
Activity (Work)								

2. FINANCIAL PROPOSAL-STANDARD FORMS

Payment to the Resident Engineer of the fee due for supervision will be made in monthly installments. The fee will be a fixed agreed monthly rate inclusive of all taxes and levies as shall be filled in the table below. During the Defects Liability Period the Resident Engineer may be paid for a total of six (6) months only which shall be spread over the entire Defects Liability period of Twenty Four(24) Months.

Activity 1	Phase 1	Construction Works	Remuneration/months	
	Position	Input Months	Remuneration/ month (Kshs)	Total amount
	Resident Engineer	18		
Activity II	Phase 2	Defects Liability Period	Remuneration /month (kshs)	
	Resident Engineer	6		
Total				

SECTION C:-

TERMS OF REFERENCE FOR INDIVIDUAL CONSULTANCY SERVICES FOR WORKS SUPERVISION OF GRAVELLING CONSTRUCTION OF RHAMU–OLA-BANISA AND BANISA-KUKUBA-DANABA (B80) ROAD.

1.0 BACKGROUND INFORMATION

1.1 General

The Kenya National Highways Authority, represented by the Director General (The Employer) intends to procure consultancy services for works supervision of Graveling of Rhamu – Ola - Banisa and Banisa – Kukuba - Danaba (B80) Road located in Mandera County, North Eastern Region.

The Consultant will render all technical support services which may be deemed relevant to the above work. The detailed description of the consulting services to be performed is described in these Terms of Reference (TOR).

1.2 Selection Criteria

The Consultant selected to undertake the assignment shall have had extensive experience in the Design/Design Review and Construction Supervision of road projects.

1.3 Project Description

1.3.1 Project Location

The road section is situated in Mandera County within the jurisdiction of the North Eastern Region of the Kenya National Highways Authority.

The site of the works shall be the area within the road reserve and any other places as may be designated in the Contract. These works involve Graveling of the Rhamu – Ola- Banisa and Banisa-Kukuba-Danaba (80) Road sections forms an approximate **190km** stretch of road.

The site of the works shall be the area within the road reserve and any other area as may be designated in the contract.

2.0 CONTRACT OBJECTIVES

The overall objective of the programme is to attain a sustainable, safe road network, which facilitates economic growth and improves living standards in Kenya.

The specific objectives of this contract are to ensure ease accessibility to Government institutions and important corridor that supports tourism sector, distribution of livestock and agricultural products within local and international markets.

The Consultant will be appointed as the Engineer's Representative and shall provide services to include but not be limited to the following:

2.1.1 The Consultant shall review engineering survey and materials investigations for the entire alignment and design standards for the road and any additional town/market roads;

- 2.1.2 The Consultant shall carry out an engineering survey and design Review including engineering cost estimates, materials investigations for the entire alignment and design standards for the road and any additional town/market roads;
- 2.1.3 Carry out design of Feeder/Spur/town roads if any.
- 2.1.4 Prepare land acquisition (where very necessary) and utility map drawings and develop the cost estimates for the same.
- 2.1.5 Ensure the project road is constructed to the required standard, and within the contract sum.
- 2.1.6 Approve work programme and working drawings prepared by the Contractor.
- 2.1.7 Review and approve the Contractor's Traffic Management Plan.
- 2.1.8 Carry out Environmental and Social Impact Study for the project and update reports on the same, and obtain the NEMA licence for the project if necessary.
- 2.1.9 Carry out Environmental Audit and monitoring in accordance with the environmental management plans.
- 2.1.10 Supervise all construction works.
- 2.1.11 Enforce environmental mitigation measures.
- 2.1.12 Check and forward interim and final payment certificates for approval by the Engineer.
- 2.1.13 Evaluate contractual claims and forward recommendations to the Engineer.
- 2.1.14 Prepare monthly progress and end of project reports
- 2.1.15 Conduct project cost appraisals and advise the Client.
- 2.1.16 Provide training to Client's personnel
- 2.1.17 Prepare As-built drawings
- 2.1.18 Prepare final completion report

3.0 ASSUMPTIONS & RISKS

3.1 Assumptions underlying the project intervention

In order to achieve the project purpose, it is essential that sufficient funds are made available for the construct of the project road and that after completion of the project sufficient funds shall be allocated each year from Fuel Levy Fund for maintenance thereafter.

Furthermore, it is assumed that construction supervision will ensure that the works are properly carried out in accordance with specifications and plans. Traffic regulations will have to be enforced, particularly in so far as axle loads are concerned. The recommendations on improving road safety and mitigating environmental impact shall be implemented. The Government agreement will be granted for training of staff as provided for under the project.

3.2 Risks

There are no major risks regarding the physical construction of the project road. In the medium term, it may be possible to reconstruction of the most trafficked 3,000 km of Kenyan classified roads to

maintainable form through a combination of donor, GOK – Development and fuel levy fund contributions. The extension of controls on axle loads to the whole network seems unlikely in the foreseeable future. In conclusion, the project purposes are very likely to be achieved but the overall objectives are only likely to be attained in respect of the most trafficked part of the prioritized road network.

4. SCOPE OF THE WORK

4.1 General

The Consultant shall conscientiously fulfill, to the highest professional standards, the role of the Engineer's Representative to supervise the construction of the works and to ensure that they are constructed in accordance with the FIDIC Conditions Contract and Special Conditions of Contract, the Standard and Special Specifications and Contract Drawings or any amendments thereto; and to ensure that so far as is reasonably possible, within the Contract Price and Contract Period allowed under the Contract or any agreed amendments thereto;

The consultancy services detailed in this document are for the works supervision for Gravelling of Rhamu – Ola-Banisa (B80) Road and Banisa-Kukuba-Danaba (80) Road and any other inclusion thereof.

4.2 Location and Extent of Contract

The road section is situated in Mandera County within the jurisdiction of the North Eastern Region of the Kenya National Highways Authority.

The site of the works shall be the area within the road reserve and any other places as may be designated in the Contract. These works involve Gravelling construction of Rhamu–Ola-Banisa and Banisa-Kukuba-Danaba (B80) Road sections which form an approximate **190km** stretch of road.

4.3 Scope of Work

The scope of the works shall be as identified in the contract.

4.4 Specific activities

The responsibilities delegated to the Consultant will call for the services listed below, without, however, being necessarily and strictly restricted to the items identified. The Consultant shall be expected to act with utmost integrity adhering to the required professional ethics

Phase 1: Works Supervision

- i. Review of the existing designs and production of new designs.
- ii. Designing the non-designed component of the road under construction and any other inclusions.
- iii. Review of the Contractor's work programmes and monitoring, on a day-to-day basis, of the Contractor's adherence to these programmes.
- iv. Approval of the Contractor's proposed materials sites.
- v. Issuance of Site Instructions.
- vi. Verification of quality of works performed and materials used.
- vii. Verification of measurements and issuance of interim payment certificates.
- viii. Compilation of Progress Reports.
- ix. Advising the Engineer on problems arising during the execution of the works.
- x. Monitoring of sound use of resources and protection of the environment.

- x. Requesting HIV/AIDS awareness campaigns by the consultant hired.
- xi. Coordination with third parties, e.g. public utilities, traffic police.
- xii. Analysis of any claims submitted by the contractor(s).
- xiii. Services at Taking Over of the works.
- xiv. Training of the client's staff on Contract Supervision in preparation for registration as a professional Engineer with the Engineer Board of Kenya.

Phase 2: Services during Defects Liability Period

- Inspection of defect rectification works and maintenance.
- Services at End of Defects Liability of the works.
- Preparation of Final Completion Report, Final Accounts and As-built drawings.

4.3 DETAILED DESCRIPTION OF THE SERVICES

4.3.1 Phase I: Works Supervision

4.3.1.1 Review of work programs and monitoring of the adherence to these programmes

The Consultant will scrutinize the Contractor's work programme, schedule of plant and cash-flow projections. Where appropriate he will request clarification without, however, imposing any modifications on the Contractor. The Consultant has, however, the right to reject a works programme that is either unrealistic, will imply unacceptable obstruction of the normal traffic flows or is unacceptable for other major considerations to be indicated by the Consultant with reference to the stipulations of the contract. Once the work programme(s) is (are) approved, a parallel schedule of services to be rendered by third parties (public utilities, Traffic Police Department, etc.) will be submitted by the Contractor for approval by the Consultant.

The Consultant will inspect the Contractor's proposed materials sites and conduct necessary confirmatory testing before approving them for acquisition and use on the works.

The Consultant will review the measures for traffic management proposed by the Contractor with respect to traffic diversions and passage of traffic through the works in order to ensure minimal disruption of normal traffic flows and further to ensure that the measures proposed will in no case compromise the safety of the road users.

The Consultant will issue the final setting out data and finished levels by way of site instructions to the Contractor to allow him to proceed with the detailed setting out of works.

The Consultant will be responsible for identifying those items requiring the approval of the Engineer and bring these items to his attention. The Consultant will be responsible for informing

the Contractor clearly and unambiguously on decisions made by the Engineer on these and all other issues of relevance to the good execution of the contract.

The Consultant SHALL organize monthly progress site meetings and shall monitor the progress of the works and shall report on these issues to all parties concerned in his Monthly Progress Reports.

The Contractor is responsible for the construction and handing over of the works in accordance with that contract. The Consultant will insist that the responsibility for any modifications to the contract, requested by the Contractor, is retained by the Contractor and that the procedures by which he may request these changes are formally presented to and acknowledged by him.

The Consultant shall ensure that an adequate record of measurements is kept for the purpose of establishing accurate as-built drawings and that a sufficient number of fixed monuments be consolidated as a permanent reference of coordinates.

The Consultant shall train the Client's staff seconded to the project on all aspects of road works supervision as shall be the case on site with the aim of imparting knowledge and preparation for registration as a professional Engineer with the Engineer's board of Kenya.

4.3.2.2 Verification of Quality of works

The Consultant shall verify that all works are carried out in conformity with the Standard and Special specifications. He shall request the Contractor to issue written method statements to both the Contractor's foremen and the Consultant's inspectors for each relevant action and shall ensure that the work methods agreed are strictly adhered to.

4.3.2.3 Verification of Quantity of works performed

The consultant shall verify the adequacy of the primary setting out of works in accordance with the new approved design. The Consultant shall ensure that adequate references will be established for the verification of quantities to be brought into the works.

The Consultant shall ensure that an adequate record of measurements is kept for the purpose of establishing accurate as-built drawings and that a sufficient number of fixed monuments be consolidated as a permanent reference of coordinates. Particular attention will be given to the establishment of stable reference points in areas where settlements are to be expected.

4.3.2.4 Verification of Quality of materials used

The Contractor will test all materials to be used for the works prior to incorporating them in the works. The Consultant will check the quality of these materials in accordance with the Conditions of Contract for compliance with the Standard and Special Specifications.

The Consultant shall in principal, carry out these tests on site in a site laboratory to be provided through the works contract. Staff to assist him will be provided under the Works Contract and/or from the Employer.

Tests for which the site laboratory does not have the equipment required may be carried out in third party laboratories under the relevant stipulations of the conditions of the works contract and shall be paid through the works contract.

4.3.2.5 Verification of measurements and issuance of interim payment certificates

The Consultant and the Contractor shall measure jointly all works completed, using mutually agreed methods and frequencies. Wherever the Consultant finds necessary, additional verifications of the measurements shall be undertaken.

In addition, the Consultant and the Contractor shall estimate jointly and on a weekly basis the progress of the works. Towards the end of each month, these estimates will serve to establish the quantities payable to the Contractor's interim payment certificate for that period.

The Consultant shall ensure that at all times during the implementation of the contract; the Engineer will be in a position to issue an interim payment certificate within 30 days from the end of the month in question.

The Consultant shall finalize at regular intervals all measurements taken and agreed with the Contractor for completed sections of the road and shall take off quantities on which basis the final accounts will be elaborated in draft after the Taking Over Certificate is issued and in final after the Defects Liability Period. The draft accounts shall be established during the month following Taking Over of the works and shall be analysed in the Final Project Completion Report.

4.3.2.6 Compilation of Progress Reports

The Consultant shall compile Monthly Progress Reports to inform all parties concerned in a transparent and concise way about the progress of works (including critical path analysis and progress photographs), the financial situation of the project and about possible difficulties encountered. On completion of every 3 months, the Consultant shall prepare Quarterly Progress Reports.

The Consultant shall maintain documentary and photographic records. The documentary records shall include a daily Site Diary and details of all contractual correspondence and data; all work stoppages or delays; accidents on site; official visitors to site; weather records; details of all daily site activities showing the start and end time and full details of the personnel and equipment resources employed per activity. It shall contain detailed records of the Contractor's equipment on site and its date of manufacture, previous hours worked and condition, its precise date of arrival or removal from site, the date commissioned to commence work, its availability and utilisation. Equipment availability figures for each category of equipment shall be established.

In respect of photographic data, the Consultant shall maintain a record of digital progress photographs (using a digital camera to be provided under the Works Contract) taken throughout the Contract period at set locations and of any construction activity of technical or contractual interest at any time. Each photograph is to be captioned with; reference number, time, date, precise location, subject and points of particular note. These digital data shall be stored on a CD-ROM together with the captions and shall be made available to the Engineer on a monthly basis.

4.3.2.7 Advice on problems arising during the execution of the works

In the event problems of engineering nature arise during the execution of the works, the Consultant will address these problems and suggest solutions. In the event the nature of these problems will justify so, they will be subject to a special report to the Engineer. Any instruction to the Contractor providing a clarification of or a variation to specifications and/or drawings will be given in writing.

Variation Orders shall be issued in respect of variations to specifications and/or drawings. These Variation Orders will need prior consent by the Engineer and the Employer in the event they will give rise to additional expenditure and/or an extension of the Contract period.

Problems of non-engineering nature shall be brought to the attention of the Engineer, who will decide whether these problems can best be analysed on site by the Consultant or referred to other competent bodies. The consultant shall not be requested to deal with problems regarding land acquisition, right of way and damage to third party property and shall only play a coordinating role with respect to problems regarding public utilities and traffic management outside the construction site, unless these problems relate to the Contractor's deviation roads.

4.3.2.8 Monitoring of sound use of resources and protection of the environment

The Consultant shall monitor human and material resources mobilised by the Contractor and keep a comprehensive record of these resources and the use made thereof. In his periodic reporting the Consultant shall relate resources mobilised and works performed. Unbalanced resources or discrepancies between projected outputs and works performed will be brought to the attention of the Contractor.

The Consultant shall monitor the environmental impact of the works and issue the necessary instructions to the Contractor whenever avoidable damage to the environment occurs or is likely to occur. In particular, the Consultant shall monitor the full respect of the following recommendations for environmental protection during implementation of the project:

- (i) Advise on proper location of Contractor's campsites to an area so as to minimise disruption to local population, fauna and flora and watercourses; provision of adequate drainage facilities and treatment of sewage and waste disposals and ensure that camp areas are dismantled and rehabilitated once construction is completed
- (ii) Minimise water and soil pollution caused by runoff waters;
- (iii) Minimise noise and dust levels.
- (iv) Shape and landscape all borrow pit and quarry sites.
- (v) Minimise the risk of soil erosion, stabilize bridge sites and the inlets and outlets of culverts on erosive soils with gabions or stone pitching.

4.3.2.9 HIV/AIDS awareness campaigns

In this respect, the Consultant shall request the local Ministry of Health District Aids Coordinator to carry out structured and regular HIV/AIDS awareness campaigns to target the workers and staff on the project.

4.3.2.10 Coordination with third parties

The Consultant shall ensure that all parties involved in the works will be informed about the developments on site relevant to their respective competences. Representative of public utility firms, traffic police, local government and water management bodies shall be invited from time to time to site whenever necessary to hold special coordination meetings.

4.3.2.11 Analysis of Contractor's claims

Any claims submitted by the contractor during the course of the works will be analyzed by the Consultant and appropriate advice will be given to the Engineer on their validity. These services are deemed to be part of the responsibilities of the consultant and do not entitle him to any additional fees.

4.3.2.12 As-built drawings

The Consultant shall keep a precise record of all modifications to the plans ordered from the Contractor and enter these modifications in electronic format in the relevant drawings. At End of Defects Liability Period of the works the electronic files will be edited and a comprehensive file titled “As built drawings” will be issued to the Employer and the Engineer in electronic format and hard copy.

4.3.2.13 Substantial Completion of the works

When the works are nearing substantial completion, the consultant shall inspect the works jointly with the contractor and shall establish lists specifying the remaining works. These works may concern corrections to work already done or completion of outstanding works. The Consultant shall call, once these actions have been completed to his satisfaction, a substantial completion inspection in which both Employer and the Engineer may participate.

The Consultant shall prepare a Taking Over Certificate to be signed by the parties concerned after the Substantial Completion inspection. A list of works remaining to be done and any defects noted during the inspection will be appended to the certificate, specifying the time within which these works are to be completed or when defects have to be corrected.

4.3.3 Phase 2: Services During the Defects Liability Period

Three man-month input is foreseen for the Resident Engineer during the maintenance period which should be utilized on intermittent basis as deemed appropriate for the following services (without being limited to):

- Inspection of designated outstanding works and correction of defects.
- Drawing the attention of the Contractor to any defects as soon as such defects are noticed on the road and supervision of the subsequent repairs.
- Assisting in the Defects Liability inspection and preparing the Defects Liability certificate.
- Finalizing the final As-built Drawings within 30 days after Substantial Completion inspection.
- Documentation of contractual matters pertaining to the works and completion of the Final Project Completion Report, Final Accounts.

The Consultant shall give necessary instructions for the Contractor to avail those specific site facilities that shall be required during the maintenance period with respect to the site office, laboratory, houses and equipment and vehicles.

At the end of the maintenance period, and provided that all defects shall have been completed to his satisfaction, the Consultant shall convene a defects liability inspection in which Engineer

may participate, following which the Consultant shall prepare a Defects Liability certificate to be signed by the parties concerned.

4.4 PROJECT MANAGEMENT, CONTRACTUAL FRAMEWORK AND RESPONSIBILITIES

4.4.1 The Employer for the supervision contract will be the Director General, Kenya National Highways Authority. The Engineer for the contract will be the Director (Maintenance) of the Kenya National Highways Authority.

4.4.2 The consultant selected for the supervision of the works, hereinafter called the Consultant, will be the Engineer's Representative for the works contract. The Engineer will delegate certain of his responsibilities for the implementation of the works contract to the Engineer's Representative within the framework of the FIDIC Conditions of Contract.

4.4.3 Responsibilities that the Engineer will retain with respect to the works contract will include all legal and financial issues arising from claims and disputes by third parties relating to land tenure, national planning, damage caused to commercial interests and issues of similar nature. The Engineer will also retain the responsibilities for the project budget and the management of the financial allocations to the contracts, conclusion of these contracts and issuing of commencement orders and variation orders. In these matters he will closely liaise with the Engineer.

4.4.4 The Engineer shall identify a Project Engineer, who will facilitate decision making in matters pertaining to the works contract that are either not covered by the delegation of powers to the Consultant or that need a decision by the Engineer once the Consultant has fulfilled all his obligations under these Terms of Reference. The Project Engineer will be the Consultant's day-to-day contact person in the Authority. The Consultant will keep the Project Engineer informed in a detailed way of all developments on site. The Project Engineer will visit the site regularly and will assist in all site meetings.

4.4.5 A model letter setting the Delegation of Powers is attached in Annex B to these RFP.

5. LOGISTICS AND TIMING

5.1 Project location:

The Project is located in Mandera County, North Eastern Region. It starts at Rhamu through Banisa, Kukuba and terminates at Danaba (B80) Road. The approximate project length is 190 Km.

5.2 Project period:

The Contract period shall be 24 *months*, including ;-

Phase 1: Works supervision - 18 *months* works contract period.

Phase 2: Services During Maintenance Period – 6 *months spread across 24 months*.

6. REQUIREMENTS

6.1. STAFF REQUIRED

The Consultant shall provide the following staff required for the performance of the duties described above:

Position		Man Months
1	Resident Engineer	24

Qualifications and skills

Must possess University Degree BSc (Civil Engineering) or equivalent and be a registered engineer in the category of Consultant with Engineers Board of Kenya or equivalent such as Member of the Institution of Civil Engineers (U.K.), Diplom Ingenieur Hoch und Tiefbau (D) etc.

General professional experience

a minimum of 15 years practical post-qualification experience

Specific professional experience

(i) Must have extensive broad experience in highway design and works contract administration and more specifically have recent service as a resident engineer in at least two projects of a contract sum of at least 800Million each within the last 6 years. Knowledge of FIDIC contract procedures is desirable. Previous experience on road projects in East Africa will be an advantage. Information regarding the specific professional experience shall be confirmed from the respective clients.

(ii) MUST be a registered consultant with Engineers Board of Kenya.

Other Requirements

- Have a valid Tax compliance certificate (To be verified through KRA TCC)
- Have a valid Engineer's Practicing Licence
- Show Proof of continuous professional development gained in the last 3 years
- Show proof of University loan clearance if applicable

6.2 WORK SCHEDULE

The consultant shall propose a schedule of activities which will ensure that all duties entrusted to him, will be adequately performed. This schedule, together with a comprehensive statement

justifying the proposed deployment will be incorporated in the methodology statement.

6.3 FACILITIES TO BE PROVIDED BY THE EMPLOYER

Under the Terms and Conditions of the Works Contracts, the Consultant shall be facilitated under the Preliminary items as provided for in the works Contract.

It shall be the responsibility of the Consultant to supervise the supply and provision and maintenance of the said buildings, furniture, equipment and vehicles by the Works Contractor in accordance with the works contract. The Consultant shall ensure that any items designated to revert to the Employer after completion of the Works Contract are officially handed over in good condition as soon as they are no longer required on the Works Contract.

7.0 REPORTS

The Consultant shall prepare Monthly Progress Reports during the period of execution of the works contract, and submit them within 7 days after the end of the reporting month. Quarterly Summary Reports shall be prepared every successive period of 3 months and submitted within 7 days after the end of the reporting period. The Provisional Completion Report including Provisional Accounts is to be submitted within 7 days after the Provisional Acceptance of the last section of the works. The Final Project Completion Report, Final Accounts are to be submitted within 7 days after the Defects Liability Certificate of the works.

Submission & approval of reports:

To:
Director (Maintenance)
Kenya National Highways Authority
P. O. Box 49712 - 00100
Nairobi

The reports shall be written in English, and shall be submitted in the number of copies tabulated below.

The Final Project Completion Report shall comprehensively evaluate the project with regard to both the works contract and the supervision service contract, include a summary of the principle difficulties encountered during construction and the means employed to overcome them, changes made in the original designs, modifications to the technical specifications and conditions of contract, all variation orders, utilisation of provisional sums, variation of prices, utilization of contingency amounts, cumulative monthly payments to the contractor designated by dates and a similar schedule for the supervision contract. The report make any overall observations or

recommendations that the Consultant wishes to draw to the attention of the Engineer and the Employer as regards the works contract or the service contract.

In their Methodology Statement, the Consultant shall provide a fixed layout for these reports. The reports shall be submitted to the Engineer as follows:

Report	No. of copies
Monthly Progress Reports	5
Quarterly Progress Summary Reports	5
Provisional Completion Report	5
Provisional Accounts	5
Final Project Completion Report	6
Final Accounts	5

2.0 MONITORING AND EVALUATION

8.1 Definition of indicators

In his Technical Proposal (Organization and Methodology), the Consultant shall propose relevant key indicators for monitoring project progress, results, activities and assumptions and show how these will be monitored.

As a minimum, the Consultant will regularly review the physical work progress in terms of number of km of road construction and completed to various levels in compliance with the drawings and specifications in relation to the Contractor's approved work programme and cashflow projections, schedule of plant and manpower resources. The Consultant will regularly appraise this information in his Progress Reports and in Site Meetings and discuss them with the Contractor and Engineer.

8.2 Reviews and evaluations

Project reviews and evaluation applying monitoring indicators will be presented in the regular progress reports and the Final Project Completion Report will contain an overall assessment.

SECTION D: CONDITIONS OF ENGAGEMENT

1.0 GENERAL

1.1 Definitions

a) **“Client”**

Means the “Director General, Kenya National Highways Authority” by whom the Resident Engineer is employed for the purposes of fulfilling this Agreement

b) **“Engineer”**

Means the “Director (Maintenance)” appointed by the “Client” to act as his agent with duties and authority as stated in the Works Contract.

c) **“Resident Engineer”**

Means an individual who is prequalified for the position of a Supervision Engineer for Construction Projects as a Resident Engineer by the Kenya National Highways Authority, and is appointed as set forth under the Works Supervision Agreement. The Resident Engineer shall be delegated supervision powers by the Engineer.

d) **“Works”**

Means the works as defined in schedule I.

e) **“Works Supervision”**

Means the duties of the Resident Engineer in the administration of the Works Contract and the technical control of the Works as delegated to him by the Engineer.

1.2 Duration of Engagement

This Contract shall come into effect on the date the contract is signed by both Parties.

The Resident Engineer shall commence the services from the date he receives the commencement letter and in any case not later than 30 days from the date of the letter.

Unless terminated under Clause 1.6.1 or 1.6.3 of these conditions the Resident Engineer’s appointment under this Agreement shall terminate when the Resident Engineer shall make and issue the certificate authorizing the final payment for the construction of the Works including all authorized claims or after the completion of any Works expressly carried out to meet with contract clauses concerning retention monies whichever is the later.

1.3 Care and Diligence

The Resident Engineer shall exercise all reasonable skill, care and diligence in the discharge of the duties agreed to be performed. The Resident Engineer shall not without the prior approval of the Engineer through the Resident Engineer authorize any modification of the Works which results in the Works Cost exceeding the approved Contract Sum.

1.4 Cost of the Works

The cost of the Works or any part thereof shall be deemed to include: -

(a) The cost to the Client of the Works, from whatever cause arising, including any payments made to the Contractor in settlement of Claims, and before deduction of liquidated damages or penalties (if any) payable by the Contractor to the Client. Such cost shall exclude: -

- Administration expenses incurred by the Client.
- Professional fees and out-of-pocket expenses.
- Salaries, traveling, out-of-pocket expenses of resident site staff unless the works are carried out by direct labour.
- Interest on capital during construction, and the cost of raising monies required for carrying out the construction of the Works.
- Cost of land, wayleaves and other compensation.

(b) A fair valuation of the labour, materials, manufactured goods, machinery or other facilities provided by the Client, and of the use and waste (including all costs of repair) of construction plant and equipment belonging to the Client which they shall require to be used in the carrying out of the Works.

(C)The market value, as though they were purchased new of any second-hand materials, manufactured goods and machinery incorporated in the works.

1.5 Non-Assignment

The Resident Engineer shall not have the right to assign or transfer the benefit and obligations of this Agreement or any part thereof, and the same shall automatically come to an end on his demise, but without prejudice to the accrued rights of either party against the other under this Agreement.

1.6 Termination

Termination of the Resident Engineer's appointment under this agreement shall not prejudice the accrued rights or claims of either party to this Agreement.

1.6.1 Termination by the Client

- A. The Client may terminate this Contract, by not less than thirty (30) days' written notice of termination to the Resident Engineer, to be given after the occurrence of any of the events specified in paragraphs (b) through (f) of this Clause and sixty (60) days' in the case of the event referred to in (f).
- B. If the Resident Engineer does not acknowledge receipt of the letter of commencement within thirty (30) days from the date of the letter, his contract ceases immediately, so long as there is proof that the Engineer delivered the letter to him within fifteen (15) days of the date of the letter:
- C. If the Resident Engineer defaults in accordance with Clause 1.7.1:
- D. If the Resident Engineer 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;
- E. If the Resident Engineer becomes bankrupt;
- F. If, as the result of Force Majeure, the Resident Engineer is unable to perform a material portion of the Services for a period of not less than sixty (60) days;
- G. If the Resident Engineer, in the judgment of the client had engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this clause:

“Corrupt practice,” means any action as defined in the Anti-Corruption and Economic Crimes Act of the laws of Kenya.

“Fraudulent practice,” means a misrepresentation of facts as defined in the Laws of Kenya.

H. If the Resident Engineer is incapacitated, termination of his services shall be in accordance with the Public Service Commission Act Cap 185 of the Laws of Kenya and as expounded in the Code of Regulation (COR) for Public Servants.

1.6.2 Termination By the Resident Engineer

The Resident Engineer 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 events specified in paragraph (a) and (b) of this Clause;

- a) If the client fails to fulfill any of his obligations pursuant to Clause 3, within reasonable time.
- b) If, as the result of Force Majeure, the Resident Engineer is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

1.6.3 Termination for Convenience

The Client and the Resident Engineer may mutually agree to terminate the Contract for the convenience of both parties after each party has issued a written notice of not less than thirty (30) days. Upon termination pursuant to this Clause the remuneration of the Resident Engineer will be mutually agreed but will not exceed **an aggregate total three months** salary.

1.6.4 Payment Upon Termination

Upon termination of this Contract pursuant to Clauses 1.6.1 or 1.6.2, the Client shall make the following payments to the Resident Engineer.

- a) Remuneration pursuant to Clause 3 for Services satisfactorily performed prior to the effective date of termination;
- b) Except in the case of termination pursuant to paragraphs (c) and (d) of Clause 1.6.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract.
- c) In case of termination due to Clause 1.6.1 paragraph (c) the Assistant Resident Engineer shall be paid for sixty (60) days but in any case not more than what he would have been paid for the remaining contract period.

1.7 Default

1.7.1 Default By the Resident Engineer.

(a) If at any time during the execution of this Agreement: -

- i. Any unnecessary delay shall occur in carrying out the work, duties and services to be performed, or any part thereof through the default of the Resident Engineer.
- ii. The Resident Engineer shall fail to comply with any instructions given by the Engineer.
Then the Engineer may serve notice upon the Assistant Resident Engineer in respect of any of the foregoing defaults requiring him to take remedial action by a specified date.

(b) If the Resident Engineer: -

- (i) Shall fail to comply with any requirement of such notice to the entire satisfaction of the Engineer or
- (ii) Shall comply with the requirement of such notice to the satisfaction of the Engineer but shall again become liable to be served with a notice under paragraph (a) of this clause; or
- (iii) Shall assign or sublet the contract or any part thereof without permission in writing from the Engineer; or
- (iv) Shall become bankrupt.

Then the Client may at once by notice, by registered post, determine the employment of the Resident Engineer under this Contract and the Client may then complete the work, duties and services to be performed by his own staff directly or by the employment of another Resident Engineer or other person.

1.7.2 Default by the Client

The Client shall be in default if he fails to meet any of his obligations as stated in Clause 3 of these conditions of Engagement.

1.8 Force Majeure

1.8.1 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 this obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

1.8.2 Indemnification

In the event of war hostilities (whether war be declared or not) invasion, act of foreign enemies, rebellion, revolution, insurrection or military or usurped power, civil war, riot (other than amongst the Resident Engineer's own employees) or commotion or disorder, or any other event as reasonable foresight and ability on the part of the Resident Engineer could not foresee or reasonably provide against, then the Client shall compensate the Resident Engineer for any additional expenses incurred in the implementation of this Agreement. The Resident Engineer shall as soon as any such increase in cost comes to his knowledge, forthwith notify the Client thereof in writing. The Client will then consider terminating the Contract on this ground.

1.8.3 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) had informed the other Party as soon as possible about the occurrence of such an event.

1.9 Ownership of Documents and Copyright

All documents prepared by the Client in connection with the Works are the property and copyright of the Client, and the Resident Engineer shall not be entitled, either directly or indirectly, to make use of

such documents for the carrying out of any work beyond the Works to which this Agreement relates, without the prior approval of the Client.

All documents prepared by the Resident Engineer in connection with the Works are the property and copyright of the Client, and the Client shall be entitled, either directly or indirectly, to make use of such documents for the carrying out of any work beyond the Works to which this Agreement relates.

1.10 Dispute Resolution

1.10.1 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.

1.10.2 Adjudication

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 or the other Party's request for such amicable settlement may be referred to the Adjudication of a person to be agreed upon between the Parties, or failing agreement, some person appointed by the Chairman of the Institute of Arbitrators, Kenya Branch.

1.10.3 Arbitration

Finally when everything else fails, the matter will be referred to Arbitration.

1.11 Jurisdiction

This Agreement shall be governed by and construed in all respects in accordance with the Laws of Kenya.

2 OBLIGATIONS OF THE RESIDENT ENGINEER ON SUPERVISION

2.1 General

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

2.2 Conflict of Interests

2.2.1 Resident Engineer not to benefit from Commissions, Discounts, etc.

The Resident Engineer's sole remuneration pursuant to Clause 3 shall constitute the Resident Engineer's sole remuneration in connection with this Contract or the Services, and the Resident Engineer 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. The Resident Engineer shall use his best efforts to ensure that the site staff, similarly, shall not receive any such additional remuneration.

2.2.2 Prohibition of Conflicting Activities

Neither the Resident Engineer nor the site staff shall engage, either directly or indirectly, during the term of this Contract in any business or professional activities that would conflict with the activities assigned to them under this Contract. In any case the Resident Engineer must not act contrary to the Public Officers Ethics Act of the Laws of Kenya.

2.2.3 Confidentiality

The Resident Engineer shall not, either during or after the expiration of this Contract, disclose any property or confidential information relating to the Project, the Services, this Contract, or the Client's business or operations without prior written consent of the Client.

2.3 Resident Engineer Site Staff

The Engineer will be responsible for the provision of properly qualified and experienced resident staff for the supervision of the construction of the Works. The Resident Engineer shall agree with the Engineer on the numbers and qualification of the individuals selected for employment on the site.

2.4 Duties of the Resident Engineer

The Resident Engineer will be responsible to the Engineer for inter alia: -

- i. Carrying out any pre-Contract services as instructed by the Engineer.
- ii. Advising the Client on the appointment of the resident site staff.
- iii. Issuing instructions to the Contractor.
- iv. Detailed Supervision and administration of the Construction Works in accordance with the Works Contract.
- v. Preparing such detailed design work as may be necessary for the issuing of proper instructions to the Contractor.
- vi. Examining Contractor's proposals and details and making recommendations to the Engineer.
- vii. Measurement of the Works.
- viii. Preparation of Certificates for payment to the Contractor.
- ix. Preparation of Progress Reports, maintenance of Records, preparation and handing over of as-built Drawings and the Project Completion Report (PCR) to the Engineer.
- x. Assisting the Engineer in settling disputes or differences which may arise between the Client and the Contractor.
- xi. Supervision, administration and discipline (by recommending disciplinary measures to the Engineer) of the resident site staff for the efficient performance of their duties.
- xii. Liaison with all relevant authorities to ensure the orderly progress of the Work and to assist in the upkeep of good public relations.

- xiii. Advising the Engineer of any faults in design, specifications, costing, and selection of materials, design standards, and construction methods if these become apparent during construction, and making recommendations to the Engineer.
- xiv. Receive notices, details, preparing preliminary evaluation of Contractors claims and making recommendations to the Engineer.
- xv. Train the client's staff seconded to the project in preparation for registration with the Engineer's Board of Kenya as professional Engineers.

2.5 Consultations with the Engineer

- (a) The Resident Engineer shall allow for the attendance at the Nairobi office of the Engineer when necessary for consultation and advice during the course of the Supervision of the Works.

2.6 Response to Contractual Issues

Issues affecting the Works shall be addressed by the Resident Engineer in accordance with the Works Contract.

2.7 Professional Indemnity Cover

The Resident Engineer shall provide Professional Indemnity Cover of Kshs. 200,000.00 (Kenya Two Hundred and fifty thousand).

3 OBLIGATIONS OF THE CLIENT ON SUPERVISION

3.1 Resources and Facilities

The Client shall provide through the Works Contract all facilities, resources, equipment, vehicles, staff, accommodation, offices, laboratories, stationery utilities, communication and anything else necessary for the satisfactory execution of the services.

3.2 Materials Testing, Survey Equipment and Site Transport

The Client will provide through the Works Contract or otherwise for all site transport, survey and materials testing equipment as is necessary for the resident site staff to carry out their supervisory duties.

3.3 Response to Contractual Issues.

Issues affecting the Works shall be addressed by the Client in accordance with the Works Contract.

3.4 Payment to Resident Engineer for Supervision of Works

- a) Payment to the Resident Engineer of the fee due for supervision will be made in monthly installments. The fee will be a fixed agreed monthly rate of Ksh....., inclusive of all taxes and levies.
- b) All payments will be made to the Resident Engineer within 30 days of the submission of their accounts to the Engineer in accordance with this Clause.

- c) The above-mentioned monthly fee shall be subject to price escalation effective 12 months from the date the Resident Engineer receives the letter of commencement according to the following formula;

$$P = P_0 \times (I/I_0)$$

P = Adjusted price in Kshs.

P₀ = Initial monthly fee as per this contract.

I₀ = Consumer price index, upper-income group, published by the Central Bureau of Statistics for the month the Assistant Resident Engineer receives the letter of commencement.

I = Consumer price index, upper income group, published by the Central Bureau of Statistics obtained at the end of the quarter.

3.5 Interest on Delayed Payment

If the client has delayed payments beyond thirty (30) days after the due date hereof, simple interest shall be paid to the Resident Engineer for each day of delay at a rate above the prevailing Central Bank of Kenya's average rate for base lending.

3.6 Payment During the Defects Liability Period

During the Defects Liability Period the Resident Engineer shall be paid for a total of Six (6) months only. This payment shall be spread over the entire period of Defects Liability of Twelve (12) Months.

3.7 Project Completion Report

The final monthly payment to the Resident Engineer shall be made upon submission of the Project Completion Report.

ANNEX “A”

Clause Reference

1.1 & 2.1 The name of the Client is:
Director General
Kenya National Highways Authority (KeNHA)

The method of selection is: ***Quality and Cost Based Selection***

1.2 A Technical Proposal only is requested: ***NO***

The name, objectives, and description of the assignment are:

Individual Consultancy Services for Provision of Works Supervision Services for Gravelling of Rhamu – Ola-Banisa (B80) Road and Banisa – Kukuba - Danaba (80) Road, Contract No. KENHA/2687/2023 to carry out Works Supervision.

1.3 A pre-proposal conference will be held: ***Yes***

The address (es) and telephone numbers of the Client’s official(s) are:

Director General
KeNHA
P.O. Box 49712-00100
Nairobi
Email: dg@kenha.co.ke

or

Director -Maintenance
KeNHA
P.O. Box 49712-00100
Nairobi
Email: dg@kenha.co.ke

1.4 The Client will provide the following inputs subject to availability, at a nominal fee to be indicated at the time of tendering:

- i). Standard specifications for Road and Bridge construction (1986)***
- ii). Drawings***
- iii). Contract Document***

The client shall also give assistance to facilitate the timely granting of the Consultant and his personnel of:

- i). Unobstructed access to all sites and locations involved in carrying out the services.***

3.3 (i) The duration required to complete the assignment is Fifteen (18) months for Construction and Six (6) months for defects liability period.

An Evaluation grid is attached (Annex C).

3.4 (vii) Training is a specific component of this assignment: ***YES***

(viii) Additional information in the Technical Proposal includes: ***N/A***

3.6 *deleted*

3.7 Taxes:

The Consultant shall be liable to pay all taxes, duties and levies including VAT and withholding tax in accordance with the laws of Kenya and the Client shall not reimburse any amount paid in this context.

4.2 Consultants must submit an original and 2 (Two) additional copies of each proposal.

4.3 The proposal submission address is:

**Deputy Director, Supply Chain Management
Kenya National Highways Authority,
Barabara Plaza, JKIA, Nairobi, Off Mazao Road (Opposite KCAA
Headquarters)P. O. Box 49712 - 00100,
NAIROBI, KENYA**

The outer envelope shall also be clearly marked:

***“INDIVIDUAL CONSULTANCY SERVICES FOR PROVISION OF
WORKS SUPERVISION SERVICES FOR GRAVELLING
CONSTRUCTION OF RHAMU – OLA-BANISA (B80) ROAD AND
BANISA-KUKUBA-DANABA (80) ROAD, TENDER NO.
KENHA/2687/2023”.***

4.4 Proposals must be submitted no later than the following date and time:

Deposited in the Tender Box located at KeNHA’s head office in Barabara Plaza, Block C, 2nd floor, so as to be received on or before 11.00am Thursday, 22nd June, 2023

5.1 The address to send information to the Client is:

***Director General
Kenya National Highways Authority (KeNHA)
P.O. Box 49712-00100
Nairobi***

5.3 The Technical proposal shall constitute 75% of the overall score while the Financial Proposal shall Constitute 25% of the overall score. The minimum weighted technical score required to pass is 55 *i.e* $(x/100 * 75=55)$
The minimum weighted overall score shall be 70/100.

The assignment is expected to commence immediately after signing of the contract by all parties

5.9 *The weights for the Technical score are as follows:-*

	<i>Points</i>
<i>(i) Organization, Methodology and Work plan</i>	<i>50</i>
<i>(ii) Description and Qualifications of the consultant</i>	<i>50</i>
<i>Total Points</i>	<u><i>100</i></u>

ANNEX “B”

MODEL LETTER OF DELEGATION OF POWERS TO ENGINEER’S REPRESENTATIVE



Ref. No.

Date:

Addressee

**DELEGATION OF POWERS OF THE ENGINEER/
APPOINTMENT AS RESIDENT ENGINEER**

I write to confirm that you are hereby appointed the Resident Engineer to perform the duties of supervision on the above road project with the following specific limitations on the powers and authority of the Engineer as stipulated in the Conditions of Contract.

The Engineer in this contract shall be the Director (Maintenance) and the Engineer’s Representative shall be the Regional Director - North Eastern.

Limitation

- Clause 5 - **Documents Mutually Explanatory**
- Clause 7 - **Further Drawings and Instructions**
With the limitations described in Clause 51 below.
- Clause 13 - **Work to be to the satisfaction of the Engineer**
- Clause 15 - **Contractor’s Superintendence**
With the reservation of approval by us of the Contractor’s Agent, or any subsequent change thereof, you are authorized to deal with any relative matters concerning superintendence.

- Clause 16 (2) - **Contractor's Employees**
Within the limitation given in Clause 15 above.
- Clause 18 - **Boreholes and Explanatory Excavation**
Within the limitations given in Clause 51.
- Clause 20 (1) - **Care of Works**
- Clause 30 (3) - **Settlement of Extraordinary Traffic Claims**
You are authorized to receive report of damage or injury to highways or bridges.
- Clause 31 - **Opportunities for other Contractors**
- Clause 33 - **Clearance of Site on Completion**
- Clause 35 - **Returns of Labour etc.**
- Clause 36 (1) - **Quality of Materials, Workmanship and Tests**
Within the limitations given in Clause 51 below.
- Clause 36 (4) - **Costs of Test not Provided for etc.**
Within the limitations given in Clause 51 below.
- Clause 37 - **Inspection of Operations**
- Clause 38 (2) - **Uncovering and Making Openings**
- Clause 39 (1) - **Removal of Improper Work and Materials**
- Clause 42 (1) - **Possession of Site**
You are authorized to receive Contractor's proposals as regards programme affecting possession of the site.
- Clause 48 (1) - **Taking Over Certificate**
It is your duty to arrange for substantial completion inspection and prepare minutes of the same. Taking over certificates shall be issued by this office.
- Clause 51 (1) - **Variation and Orders for Variations to be in Writing**
Our approval must be obtained prior to any Variation being authorized.
- Clause 52 - **Valuation of Variations and Power of Engineer to Fix Rates.**
Subject to our final approval you are authorized to enter into negotiations on the value of Variation and new rates. You

are also authorized to receive notification of Contractor's intention to claim and to inform the Contractor of Engineer's approval of the value of Variations and new rates.

- Clause 52 (3) - **Variations Exceeding 15% of the Contract Price**
Subject to our approval you are authorised to receive details of the proposed amendment to the Contract Price from the Contractor.
- Clause 52 (4) - **Dayworks**
You are authorized to order minor works to be carried out on a daywork basis. Minor works in this case are regarded as those estimated to be less than Kshs. 25,000/= (Twenty Five Thousand Shillings). You are also authorized to receive receipt of other vouchers. You must closely monitor Dayworks Expenditure against the scheduled cost.
- Clause 52 (5) - **Claims**
Subject to our approval you are authorized to receive details of claims and examine matters of fact and such like with the Contractor.
- Clause 53(5),(7),(8) - **Plant, Temporary Works and Materials**
- Clause 56 - **Works to be Measured**
You are authorized to measure the works and to keep up to date records of all measurements used in compiling certificates, subject to our approval.
- Clause 58 (2) - **Use of Provisional Sums**
You are authorized to order expenditure against provisional sums subject to individual limit of Kshs. 25,000 (Twenty Five Thousand Shillings only).
- Clause 58 (3) - **Production of Vouchers etc.**
- Clause 59 (4) - **Payments to Nominated Sub-Contractors**
You are authorized to demand from the Contractor proof of payments to nominated Sub-Contractors and recommendations to us to make accordingly.
- Clause 60 (1) - **Monthly Payments**

You are authorized to receive the statement referred to in Sub-Clause (2) hereof and to evaluate the amount of the interim certificate therein referred to. The evaluation made by you is subject to our approval.

- Clause 62 (1) - **Defects Liability Certificate**
It is your duty to arrange for inspection of the site at the end of the Defects Liability Period and prepare minutes of the same. The Defects Liability certificate shall be issued by this office.
- Clause 64 - **Urgent Repairs**
Subject to our approval, you are authorised to issue instructions to the Contractor to carry our urgent repairs. Any dispute concerning the liability for the urgent repairs shall be referred to the Engineer.
- Clause 70 - **Variation of Price**
You are authorised to deal with requests for Variation of Price within the limits of this Clause and subject to our approval.
- In addition, it should be noted that the Resident Engineer has authority to act as described in the following Clauses:-
- Clause 6 (1) - **Custody for Drawings**
Requirements for Drawings
- Clause 6 (2) - **Drawings on Site**
Use of Drawings
- Clause 14 - **Programme**
Receipt & approval of programme.
- Clause 17 - **Setting Out**
- Clause 19 - **Watching and Lighting**
- Clause 21 - **Insurance etc.**
Receipt of Insurance
- Clause 23 (2) - **3rd Party Insurance.**
- Clause 24 (2) - **Insurance**
Receipt of Insurance
- Clause 27 - **Fossils**
- Clause 30 (2) - **Specials Loads**

- Clause 38 - **Examination of Works**
- Clause 45 - **Night or Sunday Work**
Authorisation of work at night or locally recognized days of rest.

You should operate strictly within your delegated powers and authority, as you will personally be held liable for any ultra vires actions.

By copy of this letter, the Contractor is being informed of your appointment as the Resident Engineer.

Ag. DIRECTOR (MAINTENANCE)

Cc: The Managing Director
M/sConstruction Co. Ltd
P. O. Box

ANNEX “C”

EVALUATION GRID

ITEM	MAXIMUM SCORE
<i>1. ORGANISATIONS AND METHODOLOGY</i>	
(a) Rationale	5
(b) Strategy	20
(c) Time table of activities	15
(d) Methodology on training of client’s staff	<u>10</u>
Total score for Organisation and Methodology	50
2. PERSONNEL - Resident Engineer	
(a) Qualification and Skills	10
(b) General Professional Experience	15
(c) Specific Professional Experience	<u>25</u>
Total Score for personnel	50
Totals (1+2)	<u>100%</u>

In this proposal the total score is calculated by weighting the technical and financial scores and adding them as per the formula and instructions below.

The formulae for determining the Financial Score (Sf) shall, be as follows: -

$$Sf = 100 \times FM/F$$

Where:

Sf is the financial score;

FM is the lowest priced financial proposal

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 = 1) indicated in the weightings below. The combined technical and financial score, S, is calculated as follows: - $S = St \times T \% + Sf \times P \%$. The Consultant that achieves the highest combined technical and financial score will be notified.

The minimum technical score required to pass is **75%**

Weightings: **T = 0.8** **P = 0.2**