Kenya National Highways Authority

Quality Highways, Better Connections

REQUEST FOR PROPOSAL

FOR

CONSULTANCY SERVICES FOR ROAD RESERVE SURVEY AND TITLE SURVEY OF DUNDORI-OLKALOU-NJABINI (B21) ROAD SECTION_98KM

TENDER NO: KeNHA/2762/2024

DATE: APRIL 2024

DIRECTOR (HIGHWAY DESIGN & SAFETY) **KENYA NATIONAL HIGHWAYS AUTHORITY** **P.O. BOX 49712-00100** **NAIROBI**	**DIRECTOR GENERAL** **KENYA NATIONAL HIGHWAYS AUTHORITY** **P.O. BOX 49712-00100** **NAIROBI**

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ACRONYMS

CAD	Computer Aided Design
DoS	Director of Survey
GIS	Geographic Information System
GNSS	Global Navigation Satellite System
GPS	Global Positioning System
IPC	Iron Pin in Concrete
IPCU	Iron Pin in Concrete Underground
ISK	Institution of Surveyors of Kenya
KeNHA	Kenya National Highways Authority
KeRRA	Kenya Rural Roads Authority
KRB	Kenya Roads Board
KURA	Kenya Urban Roads Authority
MoLPWH & UD	Ministry of Lands, Public Works, Housing and Urban Development
MoR & T	Ministry of Road & Transport
PIDs	Preliminary Index Diagrams
RIMs	Registry Index Maps
UTM	Universal Transverse Mercator
LSB	Land Surveyors Board

SECTION 1 (A) - REQUEST FOR PROPOSAL (RFP)

Date: **9th April 2024**

Reference No.: **KeNHA/2765/2024**

Name of Assignment:

CONSULTANCY SERVICES FOR ROAD RESERVE SURVEY AND TITLE SURVEY OF DUNDORI-OLKALOU-NJABINI (B21) ROAD SECTION_98KM

To: **All Eligible Bidders**

Dear Messrs._____

1. The Kenya National Highways Authority has set aside funds in its budget toward the cost of the subject consulting services.

The Procuring Entity now invites proposals to provide the following consulting services (here in after called "the services"): "**CONSULTANCY SERVICES FOR ROAD RESERVE SURVEY AND TITLE SURVEY OF DUNDORI-OLKALOU-NJABINI (B21) ROAD SECTION_98KM".**

(More details on the Services are provided in Section 5: Terms of Reference).

The following are mandatory requirements that **must** be submitted together with the proposal.

- Copy of certificate of incorporation/Registration.
- Copy of CR12 form (issued within the last six (6) months from the tender opening date). Attach copy (ies) of National Identification documents (ID/Passport) for all Directors/ Partners / Sole proprietor.
- Confidential Business Questionnaire duly filled, signed & stamped.
- Curriculum vitae (CVs) of the proposed key staff **duly signed** by the proposed individuals.
- Copy of a valid tax compliance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 3.14 for Kenyan firms.
- Certified copies of certificates and testimonial of the proposed key staffs.
- Letters of availability for the assignment signed by the proposed key staffs.
- Details of Current workload
- Firm has submitted a sealed financial proposal.
- The Proposal is valid for the required number of days.
- The Technical Proposal is signed by the person with power of attorney, without material deviation, reservation, or omission.
- The Technical Proposal is complete with all the forms and required documentary evidence submitted.
- The Consultant is not insolvent, in receivership, bankrupt or in the process of being wound up.
- The Consultant, its sub-consultants and experts have not engaged in or been convicted of corrupt or fraudulent practices.
- The Consultant is neither precluded from entering into a Contract nor debarred by PPRA.
- The firm has not proposed employing public officials, civil servants and employees of public institutions.
- The Consultant, its sub-consultants and experts have no conflicts of interest.
- A person proposed as Key personnel by more than one bidder for the same bid shall cause the disqualification of the bidders.
- Current sworn affidavit on litigation history issued by a Commissioner for Oaths or Notaries public within the last three (3) months.
- Submission of audited Financial Accounts for the last three years (2020, 2021 & 2022).

- Bidders shall sequentially serialize all pages of each tender submitted. Any written Pages or document attached, or inserted Documents **MUST** be sequentially serialized. **A Guide Note on Serialization is outlined in the Notes below.**

2. This Request for Proposals (RFP) has been addressed to all Eligible Bidders.
3. If a Consultant is a Joint Venture (JV), the full name of the JV shall be used and all members, starting with the name of the lead member. Where sub-consultants have been proposed, they shall be named. The maximum number of JV members shall be specified in the Data Sheet.
4. It is not permissible to transfer this RFP to any other firm.
5. Section 1: Letter of Request for Proposals
   Section 2: Instructions to Consultants and Data Sheet
   Section 3: Technical Proposal Standard Forms
   Section 4: Financial Proposal Standard Forms
   Section 5: Terms of Reference
   Section 6: Standard Forms of Contract
6. A Consultant Firm 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 of which is found at the following website: www.ppra.go.ke. The above details shall form part of the Proposal.
7. Interested firms may inspect the Request for Proposal documents from the Supply Chain Management office, Kenya National Highways Authority Headquarters, Barabara Plaza, Jomo Kenyatta International Airport, Mazao Road, Block C 2nd Floor, during normal working hours.
8. Prices quoted should be inclusive of all taxes, must be expressed in Kenya shillings and shall remain valid for a period of **140 days** from the closing date of the tender.
9. A complete set of tender documents may be obtained by interested tenderers from the Kenya National Highways Authority (KeNHA) website: **www.kenha.co.ke** or Public Procurement Information Portal (PPIP) website **www.tenders.go.ke** free of charge or from KeNHA Headquarters Office, Barabara Plaza, 2nd Floor Block C Supply Chain Department during normal working hours upon payment of non-refundable fee of Kshs, 1,000.00 (One thousands shillings only) in form of a banker's cheque payable to Kenya National Highways Authority.
10. Completed tender documents are to be enclosed in plain sealed envelope clearly marked in accordance with instruction to Consultant (ITC) 10.1 (Section 2 (B). Data Sheet) and submitted to:-

Kenya National Highways Authority,
Supply Chain Management Office,
2nd Floor, Block C, North Wing, Barabara Plaza,
Mazao Road off Airport South Road, P. O. Box 49712-00100,
NAIROBI, KENYA.

and deposited in the Tender Box at the Barabara Plaza, Block C, Second Floor, JKIA, Nairobi, Off Mazao Road (Opposite KCAA Headquarters), to be received on or before**, 30th April 2024 at 11.00 AM.**

Please note that bulky tenders which do not fit in the Tender Box shall be delivered to the Supply Chain Management office at Barabara Plaza, Block C, 2nd Floor, South Wing, Jomo Kenyatta International Airport (JKIA), Off Airport South Road, along Mazao Road.

11. ***All interested bidders are required to continually check the Kenya National Highways Authoritywebsite: www.kenha.co.ke or Public Procurement Information Portal (PPIP) website www.tenders.go.ke for any tender addendums or clarifications that may arise before the submission date.***

NOTE:

- **Clarity on Serialization of Tender Documents by Prospective Bidders. 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 page one up to the last including attachments/appendices and the document should be bound.**
- **Firms or entities in a joint venture, association or sub-consultancy shall individually meet the mandatory requirements above and attach a duly signed agreement.**
- **To enhance Equity each bidder may tender for all Six (6 No.) bids but can only be awarded one (1 No.) bid that shall be favourable to the Employer.**
- **Any firm having two or more ongoing assignments with Kenya National Highways Authority (KeNHA) need not apply.**
- **Certificates/licences may be verified from the issuing authorities or agencies.**

Yours sincerely,

Deputy Director, Supply Chain Management
For: Director General

SECTION 2 (A) - INSTRUCTIONS TO CONSULTANTS AND DATA SHEET

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

A. GENERAL PROVISIONS

1. Meanings/Definitions

a) "Affiliate(s)" means an individual or an entity that directly or indirectly controls, is controlled by, or is under common control with the Consultant.

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

c) "Procuring Entity" means the entity that is carrying out the consultant selection process and signs the Contract for the Services with the selected Consultant.

d) "Consultant" means a legally-established professional consulting firm or an entity that may provide or provides the Services to the Procuring Entity under the Contract.

e) "Contract" means a legally binding written agreement signed between the Procuring Entity and the Consultant and includes all the attached documents listed in its Clause 1 (the General Conditions of Contract (GCC), the Special Conditions of Contract (SCC), and the Appendices).

f) "Data Sheet" means an integral part of the Instructions to Consultants (ITC) Section2 that is used to reflect specific assignment conditions to supplement, but not to over-write, the provisions of the ITC.

g) "Day" means a calendar day unless otherwise specified as "Business Day". A Business Day is any day that is an official working day in Kenya and excludes official public holidays.

h) "Experts" means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or Joint Venture member(s).

i) "Government" means the Government of the Republic of Kenya.

j) "In writing "means communicated in written form such as by mail, e-mail, fax, including, if specified in the Data Sheet, distributed or received through the electronic-procurement system used by the Procuring Entity with proof of receipt.

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

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

m) "ITC" (this Section 2 of the RFP) means the Instructions to Consultants that provides the Consultants with all information needed to prepare their Proposals.

n) "Letter of RFP" means the letter of invitation being sent by the Procuring Entity to the Consultants.

o) "Non-Key Expert(s)" means an individual professional provided by the Consultant or its Sub-consultant and who is assigned to perform the Services or any part thereof under the Contract and whose CVs are not evaluated individually.

p) "Proposal" means the Technical Proposal and the Financial Proposal of the Consultant.

q) "Public Procurement Regulatory Authority (PPRA)" means the statutory authority of the Government of Kenya that mandated with the role of regulating and monitoring compliance with the public procurement law and regulations.

r) "RFP" means the Request for Proposals to be prepared by the Procuring Entity for the selection of consultants.

s) "Services" means the work to be performed by the Consultant pursuant to the Contract.

t) "Sub-consultant" means an entity to whom the Consultant intends to subcontract any part of the Services while the Consultant remains responsible to the Procuring Entity during the whole performance of the Contract.

u) "Terms of Reference (TORs)" means the Terms of Reference that explains the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of the Procuring Entity and the Consultant, and expected results and deliverables of the assignment.

2. Introduction

2.1 The Procuring Entity named in the Data Sheet intends to select a consultant from those listed in the Request for Proposals (RFP), in accordance with the method of selection specified in the Data Sheet.

2.2 The Consultant are invited to submit a **Technical Proposal** and a **Financial Proposal**, for consulting services required for the assignment named in the Data Sheet. The Proposal will be the basis for negotiating and ultimately signing the Contract with the selected Consultant.

2.3 The Consultants should familiarize themselves with the local conditions and take them into account in preparing their Proposals, including attending a pre-proposal conference if one is specified in the Data Sheet. Attending any such pre-proposal conference is optional and is at the Consultants' expense.

2.4 The Procuring Entity will timely provide, at no cost to the Consultants, the inputs, relevant project data, and reports required for the preparation of the Consultant's Proposal as specified in the Data Sheet.

3. Conflict of Interest

3.1 The Consultant is required to provide professional, objective, and impartial advice, always holding the Procuring Entity's interest's paramount, strictly avoiding conflicts with other assignments or its own corporate interests and acting without any consideration for future work.

3.2 The Consultant has an obligation to disclose to the Procuring Entity any situation of actual or potential conflict that impacts its capacity to serve the best interest of the Procuring Entity. Failure to disclose such situations may lead to the disqualification of the Consultant or the termination of its Contract.

3.3 Without limitation on the generality of the foregoing, and unless stated otherwise in the Data Sheet, the Consultants shall not be hired under the circumstances set forth below:

i) Conflicting Activities

Conflict between consulting activities and procurement of goods, works or non-consulting services: a firm that has been engaged by the Procuring Entity to provide goods, works, or non-consulting services for a project, or any of its Affiliates, shall be disqualified from providing consulting services resulting from or directly related to those goods, works, or non-consulting services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, or any of its Affiliates, shall be disqualified from subsequently providing goods or works or non-consulting services resulting from or directly related to the consulting services for such preparation or implementation.

ii) Conflicting Assignments

Conflict among consulting assignments: A Consultant (including its Experts and Sub-consultants) or any of its Affiliates shall not be hired for any assignment that, by its nature, may conflict with another assignment of the Consultant for the same or for another Procuring Entity.

iii) Conflicting Relationships

Relationship with the Procuring Entity's staff: a Consultant (including its Experts and Sub-consultants) that has a close business or personal relationship with senior management or professional staff of the Procuring Entity who has the ability to influence the bidding process and: (i) are directly or indirectly involved in the preparation of the Terms of Reference for the assignment,(ii) the selection process for the Contract, or (iii) the supervision of the Contract, may not be awarded a Contract, unless the conflict stemming from such relationship has been resolved in a manner that determines there is no conflict to affect this selection process.

iv) Others

Any other types of conflicting relationships as indicated in the Data Sheet.

4. Unfair Competitive Advantage

4.1 Fairness and transparency in the selection process require that the Consultants or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the assignment in question. To that end, the Procuring Entity shall indicate in the Data Sheet and make available to all Consultants together with this RFP all information that would in that respect give such Consultant any unfair competitive advantage over competing Consultants.

5. Corrupt and Fraudulent Practices

5.1 Consultant firms or any of its members shall not be involved in corrupt, coercive, obstructive, collusive or fraudulent practice. Consultant firms or any of its members that are proven to have been involved in any of these practices shall be automatically disqualified and would not be awarded a contract.

Collusive practices

5.2 The Procuring Entity requires compliance with the provisions of the Competition Act 2010,

regarding collusive practices in contracting. Any Consultant found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Consultants shall be required to complete and sign the "Certificate of Independent Proposal Determination" annexed to the Proposal Form.

5.3 In further pursuance of this policy, Consultants shall permit and shall cause their agents (where declared or not), subcontractors, sub-consultants, service providers, suppliers, and their personnel, to permit the Government and its agencies to inspect all accounts, records and other documents relating to any short-listing process, Proposal submission, and contract performance (in the case of award), and to have them audited by auditors, investigators or compliance officers.

6 Eligibility

6.1 In selection of Consultants, short-listing shall be composed of firms or individuals who belong to the same line of professional business and who are almost of the same capability.

6.2 Unless otherwise specified in the Data Sheet, the Procuring Entity permits Consultants including proposed experts, joint ventures and individual members from all countries and categories to offer consulting services. The maximum number of members so far JV shall be specified in the TDS.

6.3 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for submission of proposals, but it shall be a condition of contract award and signature. AJV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website www.cak.go.ke

6.4 Public Officers of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.

6.5 It is the Consultant's responsibility to ensure that it's Experts, joint venture members, Sub-consultants, agents (declared or not), sub-contractors, service providers, suppliers and/or their employees meet the eligibility requirements.

6.6 As an exception to the foregoing ITC 6.1 and 6.2above:

a) Sanctions-A firm or an individual that has been debarred from participating in public procurement shall be ineligible to be awarded a contract, or to benefit from the contract, financially or otherwise, during the debarment period. The list of debarred firms and individuals is available from the website of PPRA www.ppra.go.ke.

b) Prohibitions-Firms and individuals of a country or goods in a country maybe ineligible if:

i) As a matter of law or official regulations, Kenya prohibits commercial relations with that country; or

ii) By an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or services from that country or any payments to any country, person, or entity in that country.

c) Restrictions for Government-owned Enterprises-Government-owned enterprises or institutions in Kenya shall be eligible only if they can establish that they

i) Are legally and financially autonomous,

ii) Operate under commercial law, and

iii) That they are not dependent agencies of the Procuring Entity.

d) Restrictions for public employees - Government officials and civil servants and employees of public institutions shall not be hired for consulting contracts.

6.7 Margin of Preference and Reservations-no margin of preference shall be allowed in the selection of consultants. Reservations may however be allowed to a specific group of businesses (these groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case may be), and who are appropriately registered as such by the authority to be specified in the Data Sheets. A procuring entity shall ensure that the invitation to submit proposals specifically includes only businesses or firms belonging to one group.

B. PREPARATION OF PROPOSALS

7 General Considerations

7.1 In preparing the Proposal, the Consultant is expected to examine the RFP in detail. Material deficiencies in providing the information requested in the RFP may result in rejection of the Proposal.

8 Cost of Preparation of Proposal

8.1 The Consultant shall bear all costs associated with the preparation and submission of its Proposal, and the Procuring Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the selection process. The Procuring Entity is not bound to accept any proposal and reserves the right to annul the selection process at any time prior to Contract award, without there by incurring any liability to the Consultant.

9 Language

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

10 Documents Comprising the Proposal

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

10.2 The Consultant shall declare in the Financial Proposal Submission Form, that in competing for and executing a contract, it shall undertake to observe the laws of Kenya against fraud and corruption including bribery, as well as against anti-competitive practices including bid rigging.

10.3 The Consultant shall furnish information on commissions, gratuities and fees, if any, paid or to be paid to agents or any other party relating to this Proposal and, if awarded, Contract execution, as requested in the Financial Proposal Submission Form.

11 Only One Proposal

11.1 The Consultant (including the individual members of any Joint Venture) shall submit only one Proposal, either in its own name or as part of a Joint Venture in another Proposal. If a Consultant, including any Joint Venture member, submits or participates in more than one proposal, all such proposals shall be disqualified and rejected. This does not, however, preclude Sub-consultant, or the Consultant's staff from participating as Key Experts and Non-Key Experts in more than one Proposal when circumstances justify and if stated in the Data Sheet.

11.2 Members of a joint venture may not also make an individual Proposal, be a subcontractor in a separate proposal or be part of another joint venture for the purposes of the same Contract.

11.3 Should a Joint Venture subsequently win the Contract, it shall consider whether an application for exemption from the Competition Authority of Kenya is merited pursuant to Section 25 of the Competition Act 2010.

12 Proposal Validity

a. Proposal Validity Period

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

12.2 During this period, the Consultant shall maintain its original Proposal without any change, including the availability of the Key Experts, the proposed rates and the total price.

12.3 If it is established that any Key Expert nominated in the Consultant's Proposal was not available at the time of Proposal submission or was included in the Proposal without his/her confirmation, such Proposal shall be disqualified and rejected for further evaluation and may be subject to sanctions in accordance with IT C5.

b. Extension of Validity Period

12.4 The Procuring Entity will make its best effort to complete the negotiations within the proposal's validity period. However, should the need arise, the Procuring Entity may request, in writing, all Consultants who submitted Proposals prior to the submission deadline to extend the Proposals' validity.

12.5 If the Consultant agrees to extend the validity of its Proposal, it shall be done without any change in the original Proposal and with the confirmation of the availability of the Key Experts, except as provided in ITC 12.7.

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

c. Substitution of Key Experts at Validity Extension

12.7 If any of the Key Experts become unavailable for the extended validity period, the Consultant shall provide a written adequate justification and evidence satisfactory to the Procuring Entity together with the substitution request. In such case, a replacement Key Expert shall have equal or better qualifications and experience than those of the originally proposed Key Expert. The technical evaluations core, however, will remain to be based on the evaluation of the CV of the original Key Expert.

12.8 If the Consultant fails to provide a substitute Key Expert with equal or better qualifications, or if the provided reasons for the replacement or justification are unacceptable to the Procuring Entity, such Proposal will be rejected.

d. Sub-Contracting

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

13 Clarification and Amendment of RFP

13.1 The Consultant may request a clarification of any part of the RFP during the period indicated in the Data Sheet before the Proposals' submission deadline. Any request for clarification must be sent in writing, or by standard electronic means, to the Procuring Entity's address indicated in the Data Sheet. The Procuring Entity will respond in writing, or by standard electronic means, and will send written copies of the response (including an explanation of the query but without identifying its source) to all Consultants. Should the Procuring Entity deem it necessary to amend the RFP as a result of a clarification, it shall do so following the procedure described below:

13.2 At any time before the proposal submission deadline, the Procuring Entity may amend the RFP by issuing an amendment in writing or by standard electronic means. The amendment shall be sent to all invited Consultants and will be binding on them. The Consultants shall acknowledge receipt of all amendments in writing.

13.3 If the amendment is substantial, the Procuring Entity may extend the proposal submission deadline to give the Consultants reasonable time to take an amendment in to account in their Proposals.

13.4 The Consultant may submit a modified Proposal or a modification to any part of it at any time prior to the proposal submission deadline. No modifications to the Technical or Financial Proposal shall be accepted after the deadline.

14 Preparation of Proposals–Specific Considerations

14.1 While preparing the Proposal, the Consultant must give particular attention to the following:

(a) If a consultant considers that it may enhance its expertise for the assignment by associating with other consultants in the form of a Joint Venture or as Sub-consultants, it may do so as long as only one Proposal is submitted, in accordance with ITC 11. Above. A Consultant cannot associate with shortlisted Consultant(s). When associating with non-shortlisted/non-invited firms in the form of a joint venture or a sub-consultancy, the shortlisted/invited Consultant shall be a lead member. If shortlisted/invited Consultant associates with each other, any of them can be a lead member.

(b) The Procuring Entity may indicate in the Data Sheet the estimated amount or Key Experts' time input (expressed in person-month), or the Procuring Entity's estimated total cost of the

assignment, but not both. This estimate is indicative and the Proposal shall be based on the Consultant's own estimates for the same. This clause shall not apply when using Fixed Budget selection method.

(c) For assignments under the Fixed-Budget selection method, the estimated Key Experts' time input shall not be disclosed. Total available budget, with an indication whether it is inclusive or exclusive of taxes, is given in the Data Sheet, and the Financial Proposal shall not exceed this budget.

(d) Key Experts shall not appear in more than one proposal unless so allowed in the Data Sheet. Invited firms must confirm and ensure their Key experts do not appear in proposal of other invited firms, otherwise proposals with Key experts appearing in other proposals will be rejected.

15 Technical Proposal Format and Content

15.1 The Technical Proposal shall be prepared using the Standard Forms provided in Section 3 of the RFP and shall comprise the documents listed in the Data Sheet under ITC 10.1. The Technical Proposal shall not include any financial information. A Technical Proposal containing material financial information shall be declared non- responsive.

15.2 Consultant shall not propose alternative Key Experts. Only one CV shall be submitted for each Key Expert position. Failure to comply with this requirement will make the Proposal non-responsive.

16 Financial Proposal

16.1 The Financial Proposal shall be prepared using the Standard Forms provided in Section 4 of the RFP. It shall list all costs associated with the assignment, including (a) remuneration for Key Experts and Non-Key Experts, (b) reimbursable expenses indicated in the Data Sheet. Irrespective of the consultant selection method, any Consultant that does not submit itemized and priced financial proposal, or merely refers the Procuring Entity to other legal instruments for the applicable minimum remuneration fees shall be considered non-responsive.

a. Price Adjustment

16.2 For assignments with a duration exceeding 18 months, a price adjustment provision for foreign and/or local inflation for remuneration rates apply if so, stated in the Data Sheet.

b. Taxes

16.3 The Consultant and its Sub-consultants and Experts are responsible for meeting all tax liabilities arising out of the Contract unless stated otherwise in the Data Sheet. Information on taxes in Kenya is provided in the Data Sheet.

c. Currency of Proposal

16.4 The Consultant may express the price for its Services in the currency or currencies as stated in the Data Sheet. If indicated in the Data Sheet, the portion of the price representing local cost shall be stated in Kenya Shillings.

d. Currency of Payment

16.5 Payment under the Contract shall be made in the currency or currencies in which the payment is requested in the Proposal.

C. SUBMISSION, OPENING AND EVALUATION

17 Submission, Sealing, and Marking of Proposals

17.1 The Consultant shall submit a signed and complete Proposal comprising the documents and forms in

accordance with ITC 10 (Documents Comprising Proposal). Consultants shall mark as "CONFIDENTIAL" information in their Proposals which is confidential to their business. This may include proprietary information, trade secrets or commercial or financially sensitive information. The submission can be done by mail or by hand. If specified in the Data Sheet, the Consultant has the option of submitting its Proposals electronically.

17.2 An authorized representative of the Consultant shall sign the original submission letters in the required format for both the Technical Proposal and the Financial Proposals and shall initial all pages of both. The authorization shall be in the form of a written power of attorney attached to the Technical Proposal.

17.3 A Proposal submitted by a Joint Venture shall be signed by all members so as to be legally binding on all members, or by an authorized representative who has a written power of attorney signed by each member's authorized representative.

17.4 Any modifications, revisions, interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Proposal.

17.5 The signed Proposal shall be marked "ORIGINAL", and its copies marked "COPY" as appropriate. The number of copies is indicated in the Data Sheet. All copies shall be made from the signed original. If there are discrepancies between the original and the copies, the original shall prevail.

18 Sealing and Marking of Proposals

18.1 The firm shall deliver the Proposals in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the assignment, addressed to the Procuring Entity and a warning "DO NOT OPEN BEFORE……. (The time and date for proposal opening date". Within the single envelope, package or container, the Firm shall place the following separate, sealed envelopes:

18.2 In the single sealed envelope, or in a single sealed package, or in a single sealed container the following documents shall been closed and shall be addressed as follows:

i) in an envelope or package or container marked "ORIGINAL", all documents comprising the Technical Proposal, as described in ITC11;

ii) in an envelope or package or container marked "COPIES", all required copies of the Technical Proposal;

iii) in an envelope or package or container marked "ORIGINAL", all required copies of the Financial Proposal; and

18.3 The inner envelopes or packages or containers shall:

i) Bear the name and address of the Procuring Entity.

ii) Bear the name and address of the Firm; and

iii) Bear the name and Reference number of the Assignment.

18.4 If an envelope or package or container is not sealed and marked as required, the *Procuring Entity* will assume no responsibility for the misplacement or premature opening of the proposal. Proposals that are misplaced or opened prematurely will not be accepted.

18.5 The Proposal or its modifications must be sent to the address indicated in the Data Sheet and received by the Procuring Entity no later than the deadline indicated in the Data Sheet, or any extension to this deadline. Any Proposal or its modification received by the Procuring Entity after the deadline shall be declared late and rejected, and promptly returned unopened.

19 Confidentiality/Canvassing

19.1 From the time the Proposals are opened to the time the Contract is awarded, the Consultant should not contact the Procuring Entity on any matter related to its Technical and/or Financial Proposal. Information relating to the evaluation of Proposals and award recommendations shall not be disclosed to the Consultants who submitted the Proposals or to any other party not officially concerned with the process, until the publication of the Contract award information.

19.2 Any attempt by Consultants or any one on behalf of the Consultant to influence improperly the Procuring Entity in the evaluation of the Proposals or Contract award decisions may result in the rejection of its Proposal and may be subject to the application of prevailing PPRA's debarment procedures.

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

20 Opening of Technical Proposals

20.1 The Procuring Entity's opening committee shall conduct the opening of the Technical Proposals in the presence of the Consultants' authorized representatives who choose to attend (in person, or online if this option is offered in the Data Sheet). The opening date, time and the address are stated in the Data Sheet. The envelopes with the Financial Proposal shall remain sealed and shall be securely stored by the Procuring Entity or with a reputable public auditor or independent authority until they are opened in accordance with ITC 22.

20.2 At the opening of the Technical Proposals the following shall be read out: (i) the name and the country of the Consultant or, in case of a Joint Venture, the name of the Joint Venture, the name of the lead member and the names and the countries of all members; (ii) the presence or absence of a duly sealed envelope with the Financial Proposal; (iii) any modifications to the Proposal submitted prior to proposal submission deadline; and (iv) any other information deemed appropriate or as indicated in the Data Sheet.

21 Proposals Evaluation

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

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

22 Evaluation of Technical Proposals

22.1 The Procuring Entity's evaluation committee shall evaluate the Technical Proposals that have passed the eligibility and mandatory criteria, on the basis of their responsiveness to the Terms of Reference and the RFP. The eligibility and mandatory criteria shall include the following and any other that may include in the Data sheet.

a) Firm has submitted the required number of copies of the Technical Proposals.

b) Firm has submitted a sealed financial proposal.

c) The Proposal is valid for the required number of days.

d) The Technical Proposal is signed by the person with power of attorney, without

material deviation, reservation, or omission.

e) The Technical Proposal is complete with all the forms and required documentary evidence submitted.

f) A valid tax compliance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 3.14 for Kenyan firms.

g) Key Experts are from eligible countries.

h) Key Experts do not appear in more than one proposal, if so required.

i) A short-listed firm has not participated in more than one proposal, if so required.

j) The Consultant is not insolvent, in receivership, bankrupt or in the process of being wound up.

k) The Consultant, its sub-consultants and experts have not engaged in or been convicted of corrupt or fraudulent practices.

l) The Consultant is neither precluded from entering into a Contract nor debarred by PPRA.

m) The firm has not proposed employing public officials, civil servants and employees of public institutions.

n) The Consultant, its sub-consultants and experts have no conflicts of interest.

22.2 Each responsive Proposal will be given a technical score. A Proposal shall be rejected at this stage if it does not respond to important aspects of the RFP or if it fails to achieve the minimum technical score indicated in the Data Sheet.

23 Public Opening of Financial Proposals

23.1 Unsuccessful Proposals

After the technical evaluation is completed, the Procuring Entity shall notify those Consultants whose Proposals were considered non-responsive to the RFP and TOR or did not meet the minimum qualifying technical score, advising them the following: (i) their Proposal was not responsive to the RFP and TOR or did not meet the minimum qualifying technical score;(ii)provide information relating to the Consultant's overall technical score, as well as scores obtained for each criterion and sub-criterion; (iii) their Financial Proposals will be returned unopened after completing the selection process and Contract signing; and (iv) notify them of the date, time and location of the public opening of the Financial Proposals and invite them to attend.

23.2 Financial Proposals for QBS, CQS and SSS

Following the ranking of the Technical Proposals, when the selection is based on QBS or CQS, the top-ranked Consultant is invited to negotiate the Contract. Only the Financial Proposal of the technically top-ranked Consultant is opened by the opening committee. All other Financial Proposals shall be returned unopened after the Contract negotiations are successfully concluded and the Contract is signed with the successful Consultant.

When the selection is based on the SSS method and if the invited Consultant meets the minimum technical score required passing, the financial proposal shall be opened and the Consultant invited to negotiate the contract.

23.3 Financial Proposals for QCBS, FBS, LCS

Following the ranking of the Technical Proposals, and after internal approvals, the Procuring Entity shall simultaneously notify in writing those Consultants whose Proposals were considered responsive to the RFP and TOR, and that have achieved the minimum qualifying technical score, advising them

the following: (i) their Proposal was responsive to the RFP and TOR and met the minimum qualifying technical score; (ii) provide information relating to the Consultant's overall technical score, as well as scores obtained for each criterion and sub-criterion;(iii) their Financial Proposal will be opened at the public opening of Financial Proposals; and (iv) notify them of the date, time and location of the public opening and invite them for the opening of the Financial Proposals.

23.4 Opening of Financial Proposals

The opening date should allow the Consultants sufficient time to decide for attending the opening and shall be no less than five (5) Business Days from the date of notification of the result s of the technical evaluation, described in ITC 22.1 and 22.2.

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

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

24 Correction of Errors

24.1 Activities and items described in the Technical Proposal but not priced in the Financial Proposal, shall be assumed to be included in the prices of other activities or items, and no corrections are made to the Financial Proposal.

24.2 Time-Based Contracts-If a Time-Based contract form is included in the RFP, in case of discrepancy between (i) a partial amount(sub-total) and the total amount, or (ii)between the amount derived by multiplication of unit price with quantity and the total price, or (iii) between figures and words, the later will prevail. In case of discrepancy between the Technical and Financial Proposals in indicating quantities of input, the Technical Proposal prevails and the Procuring Entity's evaluation committee shall correct the quantification indicated in the Financial Proposal so as to make it consistent with that indicated in the Technical Proposal, apply the relevant unit price included in the Financial Proposal to the corrected quantity, and correct the total Proposal cost.

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

25 Taxes

25.1 Subject to ITC 24.2, all taxes are deemed to be included in the Consultant's financial proposal as separate items, and, therefore, considered in the evaluation.

25.2 All local identifiable taxes levied on the contract in voices (such as sales tax, VAT, excise tax, or any similar taxes or levies) and in come and withholding tax payable to Kenya on the remuneration of non-resident Experts for the services rendered in Kenya are dealt with in accordance with the instructions in the Data Sheet.

26 Conversion to Single Currency

26.1 For the evaluation purposes, prices shall be converted to a single currency using the selling rates of

exchange, source and date indicated in the Data Sheet.

27 Abnormally Low Prices

27.1 An Abnormally Low Price is one where the financial price, in combination with other constituent elements of the proposal, appears unreasonably low to the extent that the price raises material concerns with the Procuring Entity as to the capability of the Consulting firm to perform the Contract for the offered price.

27.2 In the event of identification of a potentially Abnormally Low Price by the evaluation committee, the Procuring Entity shall seek written clarification from the firm, including a detailed price analyses of its price in relation to the subject matter of the contract, scope, delivery schedule, allocation of risks and responsibilities and any other requirements of the RFP document.

27.3 After evaluation of the price analyses, if the Procuring Entity determines that the firm has failed to demonstrate its capability to perform the contract for the offered price, the Procuring Entity shall reject the firm's proposal.

28 Abnormally High Prices

28.1 An abnormally high price is one where the proposal price, in combination with other constituent elements of the proposal, appears unreasonably too high to the extent that the Procuring Entity is concerned that it (the Procuring Entity) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Consultants is compromised.

28.2 In case of an abnormally high tender price, the Procuring Entity shall make a survey of the market prices, check if the estimated cost of the contract is correct, and review the RFP to check if the specifications, TOR, scope of work and conditions of contract are contributory to the abnormally high proposals. The Procuring Entity may also seek written clarification from the Consultants on the reason or the high proposal price. The Procuring Entity shall proceed as follows:

i) If the proposal price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the proposal depending on the Procuring Entity's budget considerations.

ii) If specifications, TOR, scope of work and/or conditions of contract are contributory to the abnormally high proposal prices, the Procuring Entity shall reject all proposals and may re-invite for proposals for the contract based on revised estimates, specifications, TOR, scope of work and conditions of contract.

28.3 If the Procuring Entity determines that the Proposal Price is abnormally too high because genuine competition between Consultants is compromised (*often due to collusion, corruption or other manipulations*), the Procuring Entity shall reject all Proposals and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before re-inviting for proposals.

29 Combined Quality and Cost Evaluation

a. Quality and Cost Based Selection (QCBS) Method

29.1 In the case of Quality and Cost Based Selection (QCBS), the total score is calculated by weighting the technical and financial scores and adding them as per the formula and instructions in the Data Sheet. The Consultant that achieves the highest combined technical and financial score will be notified and invited for negotiations.

b. Fixed Budget Selection (FBS) Method

29.2 In the case of FBS, those Proposals that exceed the budget indicated in ITC 14.1.4 of the Data Sheet

shall be rejected. The Procuring Entity's evaluation committee will select the Consultant with the highest-ranked Technical Proposal that does not exceed the budget indicated in the RFP, notify and invite such Consultant to negotiate the Contract.

c. Least Cost Selection (LCS) Method

29.3 In the case of Least-Cost Selection (LCS), the Procuring Entity's evaluation committee will select the Consultant whose Proposal is the lowest evaluated total price among those Proposals that achieve the minimum technical score required to pass, notify the Consultant and invite the Consultant to negotiate the Contract.

d. Combined Technical and Evaluation Report

29.4 The evaluation committee shall prepare a combined technical and financial evaluation report, with specific recommendations for award or otherwise and subject to the required approvals within the Procuring Entity prior to notifications and invitation of Consultant for negotiations.

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

30.1 The Procuring Entity shall send to each Consultant (that has not already been notified that it has been unsuccessful) the Notification of Intention to Award the Contract to the successful Consultant. The **Notification of Intention to enter into a Contract / Notification of Award** shall contain, at a minimum, the following information:

i) The name and address of the Consultant with whom the Procuring Entity successfully negotiated a contract;
ii) the contract price of the successful Proposal;
iii) a statement of the reasons why the recipient's Proposal was unsuccessful
iv) the expiry date of the Standstill Period, and
v) instructions on how to request a debriefing and/or submit a complaint during the standstill period;

31 Standstill Period

31.1 The Standstill Period shall be the number of days stated in the Data Sheet. The Standstill Period commences the day after the date the Procuring Entity has transmitted to each Consultant (that has not already been notified that it has been unsuccessful) the Notification of Intention to Award the Contract. The Contract shall not be signed earlier than the expiry of the Standstill Period. This period shall be allowed for aggrieved Consultants to lodge an appeal. The procedure for appeal and the authority to determine the appeal or complaint is as indicated in the Data Sheet.

D. NEGOTIATIONS AND AWARD

32 Negotiations

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

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

32.3 Availability of Key Experts

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

32.4 Notwithstanding the above, the substitution Key Experts at the negotiations may be considered if due solely to circumstances outside the reasonable control of and not foreseeable by the Consultant, including but not limited to death or medical in capacity. In such case, the Consultant shall offer a substitute Key Expert within the period of time specified in the letter of invitation to negotiate the Contract, who shall have equivalent or better qualifications and experience than the original candidate.

32.5 Technical Negotiations

The technical negotiations include discussions of the Terms of Reference (TORs), the proposed methodology, the Procuring Entity's inputs, the special conditions of the Contract, and finalizing the "Description of Services" part of the Contract. These discussions shall not substantially alter the original scope of services under the TOR or the terms of the contract, lest the quality of the final product, its price, or the relevance of the initial evaluation be affected.

32.6 32.6 Financial negotiations

The financial negotiations include the clarification of the Consultant's tax liability in Kenya and how it should be reflected in the Contract. All applicable taxes shall be itemized separately and included in the contract price.

32.7 If the selection method included cost as a factor in the evaluation (that is QCBS, FBS, LCS), the unit rates and the total price stated in the Financial Proposal for a Lump-Sum contract shall not be negotiated.

32.8 Where QBS or CQS methods was used for a *Lump-sum Contract* as indicated in the RFP, the unit rates negotiations shall not take place, except when the offered Key Experts and Non-Key Experts' remuneration rates are much higher than the typically charged rates by consultants in similar contracts or the professional practice. In such case, the Procuring Entity may ask for clarifications and, if the fees are very high, ask to change the rates. The format for (i) providing information on remuneration rates in the case of QB Sand CQS; and (ii) clarifying remuneration rates' structure under this Clause, is provided in Appendix A to the Financial Form FIN-3: Financial Negotiations – Breakdown of Remuneration Rates. If after the clarifications, the price is still considered too high, the Procuring Entity may terminate the negotiation and invite the next ranked Consultant to open its financial proposal and negotiate the contract.

32.9 In the case of a *Time- Based contract*, negotiation of unit rates shall not take place, except when the offered Key Experts and Non-Key Experts' remuneration rates are much higher than the typically charged rates by consultants in similar contracts. In such case, the Procuring Entity may ask for clarifications and, if the fees are very high, ask to change the rates. The format for (i) providing information on remuneration rates in the case of QBS and CQS; and (ii) clarifying remuneration rates 'structure under this Clause, is provided in Appendix A to the Financial Form FIN-3: Financial Negotiations-Breakdown of Remuneration Rates. If after the clarifications, the price is still considered too high, the Procuring Entity may terminate the negotiation and invite the next ranked Consultant for negotiations.

32.10 Where SSS method was used as indicated in the RFP, both the unit rates and total price shall be negotiated. If the negotiations fail, the Procuring Entity shall terminate the Consultant selection process. In that event, the Procuring Entity shall review the consultancy requirements and market conditions prior to deciding to use an appropriate selection method to again procure the consulting services.

33 Conclusion of Negotiations

33.1 The negotiations are concluded with a review of the finalized draft Contract, which then shall be initialed by the Accounting Officer and the Consultant's authorized representative and minutes

prepared to record the outcome of the negotiations.

33.2 If the negotiations fail, the Procuring Entity shall inform the Consultant in writing of all pending issues and disagreements and provide a final opportunity to the Consultant to respond. If disagreement persists, the Procuring Entity shall terminate the negotiations informing the Consultant of the reasons for doing so. The Procuring Entity will invite the next-ranked Consultant to negotiate a Contract. Once the Procuring Entity commences negotiations with the next-ranked Consultant, the Procuring Entity shall not reopen the earlier negotiations.

34 Letter of Award

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

35 Signing of Contract

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

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

36 Publication of Procurement Contract

36.1 Within the period specified in the Data Sheet, the Procuring Entity shall publish the awarded Contract which shall contain, at a minimum, the following information: (a) name and address of the Procuring Entity; (b) name and reference number of the contract being awarded, (c) the selection method used; (d) names of the consultants that submitted proposals; (e) names of all Consultants whose Proposals were rejected or were not evaluated; (f) the name of the successful consultant, the final total contract price, the contract duration and a summary of its scope.

36.2 Consider carefully the information on Consultants to be published, particularly evaluation by the Procuring Entity, to avoid disclosing information which can facilitate bid-rigging formation going forward. Suggest amendment as follows:

36.3 The awarded Contract shall be published on the Procuring Entity's website with free access if available and in the official procurement tender portal.

37 Procurement Related Complaint and Administrative Review

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

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

SECTION 2 (B) - DATA SHEET

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
A. General Provisions	
1(j)	Electronic procurement system shall be used: **No (√)**
2.1	Name of the Procuring Entity: Kenya National Highways Authority The consultant selection method is: **Quality and Cost Based Selection Method (QCBS) (√)** Quality Based Selection Method (QBS) ( ) Least Cost Selection Method (LCS) ( ) Consultant Qualification Selection Method (CQS) ( ) Fixed Budget Selection Method (FBS) ( ) Single Source Selection Method (SSS) ( )
2.2	Financial Proposal to be submitted together with Technical Proposal in separate envelopes: **Yes (√)** The name of the assignment is: "): '**CONSULTANCY SERVICES FOR ROAD RESERVE SURVEY AND TITLE SURVEY OF DUNDORI-OLKALOU-NJABINI (B21) ROAD SECTION_98KM'**
2.3	A pre-proposal conference will be held: **Not Applicable (N/A)** Date: **N/A** Venue: **N/A**
2.4	The Procuring Entity will provide the following inputs, project data, reports, etc. to facilitate the preparation of the Proposals **(Yes)**
3.3 (iv)	*[Insert any other conflicting relationships]* _____***(N/A)*** _____
4.1	[If "Unfair Competitive Advantage" applies to the selection, explain how it is mitigated, including listing the reports, information, documents, etc. and indicating the sources where these can be downloaded or obtained by the Consultants] **(N/A)**
6.2	Maximum number of members in the Joint Venture (JV) shall be: **[None]**.
6.6(a)	The list of debarred firms and individuals is available at the PPRA's website. **www.ppra.go.ke**
6.7	The business will be registered with - **(N/A)**
B. Preparation of Proposals	
10.1	The Proposal shall comprise the following: 1st Inner Envelope with the Technical Proposal: Power of Attorney to sign the Proposal. TECH-I: Technical Proposal Submission Form

<table>
<tr><th>Reference to ITC Clause</th><th>PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS</th></tr>
<tr><td></td><td>TECH-2: Consultant 's Organization and Experience
TECH-3: Comments and Suggestions
TECH-4: Description of Approach, Methodology and Work plan
TECH-5: Work Schedule and Planning for Deliverables
TECH-6: Team Composition, Assignment, and Key Experts' Input
TECH-7: Mandatory Documentary Evidence
AND
2nd Inner Envelope with the Financial Proposal:
FIN-1: Financial Proposal Submission Form
FIN-2: Summary of Costs
FIN-3: Breakdown of Remuneration
FIN-4: Breakdown of Reimbursable Expenses</td></tr>
<tr><td>11.1</td><td>Participation of Sub-consultants, and Key Experts in more than one Proposal is permissible: [select one option]
No (√)</td></tr>
<tr><td>12.1</td><td>Proposals must remain valid for 140 days after the proposal submission deadline.</td></tr>
<tr><td>13.1</td><td>Clarifications may be requested no later than [Seven (7)] days prior to the submission deadline.
The contact information for requesting clarifications is: Email; procurement@kenha.co.ke and directorhpd@kenha.co.ke</td></tr>
<tr><td>14.1 (b)
(do not use for Fixed Budget method)</td><td>Notwithstanding the provisions of clause 3.3(ii) and 3.4(vi) of the instructions to consultants. The client has determined that the professional staff required for the assignment shall be as listed below:-

<table>
<tr><th>No.</th><th>Staff Description</th><th>Staff Months</th></tr>
<tr><td>a)</td><td>Project Team Leader</td><td>6</td></tr>
<tr><td>b)</td><td>Senior Land Surveyor</td><td>11</td></tr>
<tr><td>c)</td><td>Land Surveyor 1</td><td>15</td></tr>
<tr><td>d)</td><td>Land Surveyor 2</td><td>15</td></tr>
<tr><td>e)</td><td>GIS Expert</td><td>6</td></tr>
<tr><td>f)</td><td>CAD Expert</td><td>6</td></tr>
</table>
The consultant must provide written commitment from the proposed key personnel on their availabillity for the assignment.

Estimated input of Key Experts' time-input: 15 Months</td></tr>
</table>

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	[Indicate only either time input (in person-month) or total cost, but not both!]
14.1 (c) and 26.2 [use for Fixed Budget method]	[If Fixed Budget Selection Method is not used, state "Not applicable". If Fixed Budget Selection method is used, insert the following: **(Not Applicable)** The total available budget for this Fixed-Budget assignment is: [insert currency} (choose one: inclusive or exclusive of taxes). Proposals exceeding the total available budget will be rejected. [If inclusive, indicate tax estimates separately]
14 (d)	Key Experts shall not appear in more than one proposal: **YES**
16.l(b)	The Financial Proposal will include (but not limited to) the following reimbursable expenses: 1. *A per diem allowance, including hotel, for experts for every day of absence from the home office for the purposes of the Services.* 2. *cost of travel by the most appropriate means of transport and the most direct practicable route.* 3. *cost of office accommodation, including overheads and back-stop support.* 4. *communications costs.* 5. *cost of purchase or rent or freight of any equipment required to be provided by the Consultants.* 6. *cost of reports production (including printing) and delivering to the Procuring Entity.* 7. *other allowances where applicable and provisional or fixed sums (if any)}* 8. *[insert relevant type of expenses, if/as applicable}*
16.2	A price adjustment provision applies to remuneration rates: **No** [price adjustment will only apply to local inflation]
16.3	Information on the Consultant's tax obligations in the Procuring Entity's country can be found on the Kenya Revenue Authority website: ***www.kra.go.ke***
16.4	The Financial Proposal shall be stated in the following currencies: Consultant may express the price for their Services in any fully convertible currency, singly or in combination of up to three foreign currencies. The Financial Proposal should state local costs in Kenya Shillings: **Yes (√)**
C. Submission, Opening and Evaluation	
17.1	The Consultants **SHALL NOT** have the option of submitting their Proposals electronically.
17.5	The Consultant must submit: Technical Proposal: **One (1) original only.** Sealed Financial Proposal: **One (1) original.**
18.5	The Proposals must be submitted not later than: Date: **30th April 2024** Time: **11:00hrs East African Time** The Proposal submission address is:

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	Deputy Director – Supply Chain Management, **Kenya National Highways Authority,** **P. O. Box 49712-00100, Nairobi** **Barabara Plaza, Jomo Kenyatta International Airport,** **Mazao Road, Off Airport North Road, Block C 2nd Floor**
20.1	An online option of the opening of the Technical Proposals is offered: **No (√)** The opening shall take place at: **Kenya National Highways Authority,** **P. O. Box 49712-00100, Nairobi** **Barabara Plaza, Jomo Kenyatta International Airport,** **Mazao Road, Off Airport North Road, Block C, 2nd Floor Boardroom**
22.1	Other eligibility and mandatory criteria shall be as described in theproposal document.
22.2	The Criteria, sub-criteria,and point system for the evaluation of the Technical Proposals: **Points** **A. Specific experience of the Consultant, as a firm, relevant to theAssignment:** i. Firms Technical Capability – 5 Marks ii. Firms Experience - 10 Marks **Sub-Total I: 15 Marks** **B. Adequacy and quality of the proposed methodology, and work plan in responding to the Terms of Reference (TORs):** i. Understanding, Conformity and Comments on the ToR – (5 Marks) ii. Appropriateness of Methodology, Survey Schedule, Completeness of Description in relation to the ToR with respect to the outlined objectives – (30 Marks) **Sub-Total II: 35Marks** **Total points** for criterion (I) & (II) above is: **50 Marks.** [Notes to Consultant: The Procuring Entity will assess whether the proposed methodology is clear, responds to the TORs, work plan is realistic and implementable; overall team composition is balanced and has an appropriate skill mix; and the work plan has right input of Experts] **C.** Key Experts' qualifications and competence for the assignment: {Notes to Consultant: each position number corresponds to the samefor the Key Experts in Form TECH-6 to be prepared by the Consultant} i. Human Resource Capability-Key Experts: 50 Marks **Technical Evluation**

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS

S/No	Category	Item Description	Max. Score
1	**Experience And Technical capability**		
i	Firms Technical Capability	Description of the Consultancy/Organizational Profile indicating suitability to carry out this specific assignment - 1 Mark	1
		Description of technical capabilities and resources to carry out this specific assignment -2 Marks	2
		Experience to carry out this specific assignment – 2 Marks	2
ii	Firms Experience	Engineering Survey- 3 Marks (1 Mark for each successfully completed project)	3
		Cadastral Survey- 7 Marks (1 Mark for each successfully completed project)	7
	Sub-Total A		**15**
2	**Adequacy and quality of the proposed methodology, and work plan in responding to the Terms of Reference (TORs)**		
i	Understanding, Conformity and Comments on the ToR	Understanding, Conformity and Comments on the ToR	5
ii	Appropriateness of Methodology, Survey Schedule, Completeness of Description in relation to the ToR with respect to the outlined objectives	General Understanding	3
		Acquisition of the Relevant Information	2
		Establishment of Controls	2
		Road Reserve and Quarry/Material Sites Survey	3
		Title (Cadastral) Survey and Subdivision of Acquired Properties	6
		Title (Cadastral) Survey of the entire Delineated Road Reserve	7
		Development of a GIS Database	2
		Work Plan Schedule	5
	Sub-Total B		**35**
3	**Human Resource Capability-Key Experts**		
a	Lead Consultant (Principal Surveyor)	Surveyor with a recognized University Degree in Surveying (or equivalent)	5
		Current practising license from the LSB	5
		Minimum of 15 years of post-qualification experience.	4
		Minimum of 12 years' experience in Cadastral and Engineering Surveying	4
b	Senior Land Surveyor	Surveyor with a recognized University Degree in Surveying (or equivalent)	3
		Full Member of Institution of Surveyors of Kenya	3
		Minimum of 12 years of post-qualification experience.	2

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS

		Minimum of 10 years' experience in Cadastral and Engineering Surveying	2
c	Land Surveyor 1- Cadastral Survey	Surveyor with a recognized University Degree in Surveying (or equivalent)	2
		Associate/Graduate Member of Institution of Surveyors of Kenya	1
		Minimum of 10 years of post-qualification experience.	1
		Minimum of 5 years' experience in Cadastral Surveying	1
d	Land Surveyor 2- Engineering Survey	Surveyor with a recognized University Degree in Surveying (or equivalent)	2
		Associate/Graduate Member of Institution of Surveyors of Kenya	1
		Minimum of 10 years of post-qualification experience.	1
		Minimum of 5 years' experience in Engineering Surveying	1
e	*GIS Expert*	Surveyor with a recognized university degree in Surveying, GIS or equivalent (or equivalent)	1.5
		Minimum of 7 years of post-qualification experience.	1
		Minimum of5 years' experience in GIS projects	1
f	*CAD Expert*	Surveyor with a recognized university degree in Surveying, GIS or equivalent (or equivalent)	1.5
		Minimum of 7 years of post-qualification experience.	1
		Minimum of 5 years' experience in Draughting/ CAD application projects	1
4a	**Training - Outline of a training plan for employer's counterpart staff - Attach training plan schedule**		**5**
	Total for all Training and Key expert		**50**
	Total score		**100**

N.B

- **The firm (s)/consultant(s) achieving the minimum pass mark of 80 shall have its financial proposal opened in accordance with the Information to Consultants.**

23.4	An online option of the opening of the Financial Proposals is offered: **No**
25.2	For the evaluation, the Procuring Entity will include separate items of: (a) all local identifiable indirect taxes such as sales tax, excise tax, VAT, or similar taxes levied on the contract's invoices; and (b) all additional local indirect tax on the remuneration of services rendered by experts. If a Contract is awarded, at Contract negotiations, all such taxes will be discussed, finalized using the itemized list and included in the Contract amount as a separate line, also indicating which taxes shall

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	be paid by the Consultant and which taxes are withheld and paid by the Procuring Entity on behalf of the Consultant.
26.1	The single currency for the conversion of all prices expressed in various currencies into a single one is: *Kenya Shillings* The official source of the selling exchange rate is: Central Bank of Kenya The date of the exchange rate is: *five business days prior to the submission deadline.*
29.1	In the case of Quality and Cost Based Selection (QCBS), the total score is calculated by weighting the technical and financial scores and adding them as per the formula and instructions in this Data Sheet. The formulae for determining the Financial Score (Sf) shall, unless an alternative formula is indicated shall be as follows: - Sf = 100 X FM/F where Sf is the financial score; FM 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 weightings below. The combined technical and financial score, S, is calculated as follows: - S = St x T % + Sf x P %. The Consultant that achieves the highest combined technical and financial score will be notified and invited for negotiations. The minimum technical score required to pass is 80**%.** Weightings: **T = 0.8** **P = 0.2**
31	The Standstill Period shall be: 14 days. The procedures for making a procurement related complaint are detailed in the Public Procurement and Asset Disposal Act and Regulations. If a Consultant wishes to make a procurement related complaint or appeal, the Consultant shall submit its complaint to the Public Procurement Administrative Review Board.
D. Negotiations and Award	
35.2	Expected date for the commencement of the Services: **Fourteen (14) calendar days after order to commence or such other time as the parties may agree in writing.**
36.1	The publication of the contract award information following the completion of the contract negotiations and contract signing will be done as following: The publication will be done within 14 days after the contract signing
37.1	The procedures for making a Procurement-related Complaints are detailed in the "Regulations" available from the PPRA Website www.ppra.go.ke or email complaints@ppra.go.ke. If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to: Title/position: **Director General** Procuring Entity: ***Kenya National Highways Authority***

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	Email address: ***dg@kenha.co.ke*** In summary, a Procurement-related Complaint may challenge any of the following: (i) the terms of the Tender Documents; and (ii) the Procuring Entity's decision to award the contract.

SECTION 3. TECHNICAL PROPOSAL – STANDARD FORMS

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

FORM TECH-1: TECHNICAL PROPOSAL SUBMISSION FORM

{Location, Date}

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

Dear Sirs:

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

{If the Consultant is a joint venture, insert the following: We are submitting our Proposal in association/as a consortium/as a joint venture with: {Insert a list with full name and the legal address of each member, and indicate the lead member}. We have attached a copy {insert: "of our letter of intent to form a joint venture" or, if a JV is already formed, "of the JV agreement"} signed by every participating member, which details the likely legal structure of and the confirmation of joint and severable liability of the members of the said joint venture.

OR

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

We hereby declare that:

a) All the information and statements made in this Proposal are true and we accept that any misinterpretation or misrepresentation contained in this Proposal may lead to our disqualification by the Procuring Entity or maybe sanctioned by the PPRA.

b) Our Proposal shall be valid and remain binding upon us for the period of time specified in the Data Sheet, Clause 12.1.

c) We have no conflict of interest in accordance with ITC3.

d) We meet the eligibility requirements as stated in ITC6, and we confirm our understanding of our obligation to abide by the Government's policy in regard to corrupt, fraudulent and prohibited practices as per ITC5.

e) In competing for (and, if the award is made to us, in executing) the Contract, we undertake to observe the laws against fraud and corruption, including bribery, as well as laws against anti-competitive practices, including bid rigging in force in Kenya; we hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption or anti-competitive practices.

f) We confirm that we are not insolvent, in receivership, bankrupt or on the process of being of being wound up.

g) The Consultant shall declare in the Technical Proposal Submission Form, that in competing for and executing a contract, it shall undertake to observe the laws of Kenya against fraud and corruption including bribery, as well as against anti-competitive practices including bid-rigging.

h) We are not guilty of any serious violation of fair employment laws and practices. We undertake to observe the laws of Kenya against fraud and corruption including bribery, as well as against collusive and anti-competitive practices, including bid rigging. To this effect we have signed the "Certificate of Independent Proposal Determination" attached below. We also undertake to adhere by the Code of Ethics for persons participating in Public Procurement and Asset Disposal Activities in Kenya, copy available from **www.ppra.go.ke** during the procurement process and the execution of any resulting contract.

i) We, along with any of our sub-consultants are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the PPRA.

j) Except as stated in the ITC12 and Data Sheet, we undertake to negotiate a Contract on the basis of the proposed Key Experts. We accept that the substitution of Key Experts for reasons other than those stated in ITC Clause12 and ITC Clause29.3 and 29.4 may lead to the termination of Contract negotiations.

k) Our Proposal is binding upon us and subject to any modifications resulting from the Contract negotiations.

l) We understand that the Procuring Entity is not bound to accept any Proposal that it receives.

We undertake, if our Proposal is accepted and the Contract is signed, to initiate the Services related to the assignment no later than the date indicated in Clause 32.2 of the Data Sheet.

We remain,

Yours sincerely,

Authorized Signature *{In full and initials}:* Name and Title of Signatory:

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

Contact information *(phone and e-mail):*

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

CERTIFICATE OF INDEPENDENT PROPOSAL DETERMINATION

I, the undersigned, in submitting the accompanying TECHNICAL PROPOSAL SUBMISSION FORM to the__ _____*[Name of Procuring Entity]* for: _____*[Name and number of tender]* in response to the request for tenders made by:_____*[Name of Tenderer]* do hereby make the following statements that I certify to be true and complete in every respect:

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

1. I have read and I understand the contents of this Certificate;
2. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;
4. For the purposes of this Certificate and the Tender, I understand that the word "competitor" shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:
    - Has been requested to submit a Tender in response to this request for tenders;
    - could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience
5. The Tenderer discloses that [check one of the following, as applicable]:
    - The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
    - The Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements;
6. In particular, without limiting the generality of paragraphs(5)(a) or (5) (b)above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
    - prices.
    - methods, factors, or formulas used to calculate prices.
    - the intention or decision to submit, or not to submit, a proposal; or
    - the submission of a proposal which does not meet the specifications of the request for proposals; except as specifically disclosed pursuant to paragraph(5)(b) above.
7. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this RFP relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph(5)(b) above;
8. The terms of the RFP have not been, and will not be, knowingly disclosed by the Consultant, directly or indirectly, to any competitor, prior to the date and time of the official proposed opening, or of the awarding of the Contract, which ever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph(5)(b) above.

Name_____
Title_____
Date _____

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

CONFIDENTIAL BUSINESS QUESTIONNAIRE

TENDERER'S ELIGIBILITY

a) Instructions to Tenderer

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

Tenderer's details

S/No.	ITEM	DESCRIPTION
1	Name of the Procuring Entity	Kenya National Highways Authority
2	Name of the Tenderer	
3	Full Address and Contact Details of the Tenderer.	1.Country 2. City 3.Location 4. Building 5.Floor 6. Postal Address 7. Name and email of contact person.
4	Reference Number of the Tender	
5	Date and Time of Tender Opening	
6	Current Trade License No and Expiring date	
7	Maximum value of business which the Tenderer handles.	

General and Specific Details

a) Sole Proprietor, provide the following details.

Name in full _____

Age_____

Nationality_____

Country of Origin_____

Citizenship _____

b) Partnership, provide the following details.

S/No.	Names of Partners	Nationality	Citizenship	% Shared owned
1				
2				
3				

c) Registered Company, provide the following details.

i) Private or public Company _____

ii) State the nominal and issued capital of the Company _____

Nominal Kenya Shillings (Equivalent) _____

Issued Kenya Shillings (Equivalent) _____

iii) Give details of Directors as follows

S/No.	Names of Partners	Nationality	Citizenship	% Shared owned
1				
2				
3				

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

i) Are there any person/persons in KeNHA who has an interest or relationship in this firm? Yes/No.....

If yes, provide details as follows.

S/No.	Names of Person	Designation in the Procuring Entity	Interest or Relationship with Tenderer
1			
2			
3			

FORM TECH-3: CONFLICT OF INTEREST DISCLOSURE

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
1	Tenderer is directly or indirectly controls, is controlled by or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Tender has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process.		
5	Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender.		
6.	Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract specifiedin this Tender Document.		
7	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract.		
8	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision of the such Contract.		
9	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.		

Certification

On behalf of the Tenderer, I certify that the information given above is correct.

Full Name: _____

Title or Designation: _____

_____

(Signature) (Date)

APPENDIX TO FORM OF PROPOSAL ON FRAUD AND CORRUPTION CLAUSE

(for information)

(Appendix shall not be modified)

Purpose

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

Requirements

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

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

(1) a person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;

(2) A person referred to under sub section (1) who contravenes the provisions of that sub-section commits an offence;

(3) Without limiting the generality of the subsection (1) and (2), the person shall be: -

   a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or

   b) if a contract has already been entered into with the person, the contract shall be avoidable;

(4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;

(5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement—

   i) Shall not take part in the procurement proceedings;

   ii) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and

   iii) Shall not be a sub-contractor for the tender to whom was awarded contract, or a member of the group of tenderers to whom the contract was awarded, but the sub-contractor appointed shall meet all the requirements of this Act.

(6) An employee, agent or member described in subsection (1) who refrains from doing anything

prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;

(7) If a person contravenes sub section (1) with respect to a conflict of interest described in subsection (5)(a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer.

(8) Incompliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:

a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:

i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

ii) "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or

Recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;

iii) "collusive practice "is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

v) "obstructive practice" is:

- deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
- Acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3e. Below.

b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.

c) Rejects a proposal or award of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-

contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;

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

e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers),Consultants, Contractors, and Suppliers and their Sub-contractors, Sub- consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect2all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and

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

---

[1] *For the avoidance of doubt, a party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in*

A consultancy, and tendering, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and(ii) entering into an addendum or amendment introducing a material modification to any existing contract.

[2] *Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Investigating Authority or persons appointed by the Procuring Entity to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/audit, and making copies there of as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of* information.

FORM TECH-2: CONSULTANT'S ORGANIZATION AND EXPERIENCE

Form TECH-2: a brief description of the Consultant's organization and an outline of the recent experience of the Consultant that is most relevant to the assignment. In the case of a joint venture, information on similar assignments shall be provided for each partner. For each assignment, the outline should indicate the names of the Consultant's Key Experts and Sub-consultants who participated, the duration of the assignment, the contract amount (total and, if it was done in a form of a joint venture or a sub-consultancy, the amount paid to the Consultant), and the Consultant's role/involvement.

A. Consultant's Organization

Provide here a brief description of the background and organization of your company, and-in case of a joint venture-of each member for this assignment.

B. Consultant's Experience

1. List only previous similar assignments successfully completed in the last [.....5.....] years.

   For ongoing projects, the Client shall consider projects of similar magnitude and complexity that are at least 70% completion. In addition, The Consultant shall be required to present a letter of satisfaction/recommendation.

2. List only those assignments for which the Consultant was legally contracted by the Procuring Entity as a company or was one of the joint venture partners. Assignments completed by the Consultant's individual experts working privately or through other consulting firms cannot be claimed as the relevant experience of the Consultant, or that of the Consultant's partners or sub-consultants, but can be claimed by the Experts themselves in their Curriculum Vitae (CV).

3. The Consultant shall substantiate their claimed experience by presenting copies of relevant documents such as the form of contract (not the whole contract), purchase order, service order, performance certificate, etc.; which shall be included in the proposal as part of *Form Tech 7 Mandatory Documentary Evidence*.

Assignment name:	**Approx. value of the contract [KES, US$ etc.]:**
Country:	Duration of assignment (months):
Name of Procuring Entity:	Total No. of staff-months of the assignment:
Contact Address: Email:	Approx. value of the services provided by your firm under the contract:
Start date (month/year): Completion date:	Nº of professional staff-months provided by associated Consultants:

Role on Assignment: *(E.g. Lead Member in ABC JV, or Sole Consultant)*:	Name of senior professional staff of your firm involved and functions performed:
Narrative description of Assignment:	
Description of actual services provided by your staff within the assignment:	
Name of Consulting Firm:	Name and Title of Signatory:

FORM TECH-3: COMMENTS AND SUGGESTIONS

Form TECH-3: The Consultant to provide comments and suggestions on the Terms of Reference, counterpart staff and facilities to be provided by the Procuring Entity that could improve the quality/effectiveness of the assignment; and on requirements for counterpart staff and facilities, which are provided by the Procuring Entity, including: administrative support, office space, local transportation, equipment, data, etc.

A. On the Terms of Reference

{Improvements to the Terms of Reference, if any}

B. On Counterpart Staff and Facilities

{Include comments on counterpart staff and facilities to be provided by the Procuring Entity. For example, administrative support, office space, local transportation, equipment, data, background reports, etc., if any}

FORM TECH-4: DESCRIPTION OF APPROACH, METHODOLOGY, AND WORK PLAN

Form TECH-4: a description of the approach, methodology and work plan in responding to the terms of reference for performing the assignment, including a detailed description of the proposed methodology and staffing for training, if the Terms of Reference specify training as a specific component of the assignment.

{The structure of your Technical Proposal:

a) Technical Approach and Methodology

b) Work Plan

c) Organization and Staffing}

i) *Technical Approach and Methodology. {Please explain your understanding of the objectives of the assignment as outlined in the Terms of Reference (TORs), the technical approach, and the methodology you would adopt for implementing the tasks to deliver the expected output(s), and the degree of detail of such output. Please do not repeat/copy the TORs in here.}*

ii) *Work Plan.* {Please outline the plan for the implementation of the main activities/tasks of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Procuring Entity), and tentative delivery dates of their ports. The proposed work plan should be consistent with the technical approach and methodology, showing your understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents (including reports) to be delivered as final output(s) should be included here. The work plan should be consistent with the Work Schedule Form.}

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

FORM TECH-5: WORK SCHEDULE AND PLANNING FOR DELIVERABLES

No	Deliverables	Months											
		1	2	3	4	5	6	7	8	9	10	n	**Total**
D-1	{E.g Deliverable #1: Report A												
	1) Data Collection												
	2) Drafting												
	3) Inception Report												
	4) Incorporating Comments												
	5)……												
	6) Delivery of final report to procuring entity												
D-2	{E.g. Deliverable # 2 :……..}												
N													

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

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

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

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

NO	Name	Expert's Input (in person/month) per each Deliverable (listed in TECH -5)							Total Time-input (in months)		
		Position		D-1	D-2	D-3	D-4	D-5	Home	Field	Total
KEY EXPERTS											
K-1	(E.G Mr Abbbb)	Team Leader	Home	[Home]	[2 month]						
			Field	[field]	[0.5 m]						
K-2											
K-3											
							Subtotal				
NON-KEY EXPERTS											
N-1			Home								
			Field								
N-2											
							Subtotal				
							Total				

1 For Key Experts, the input should be indicated individually for the same positions as required under the ITC Data Sheet 21.2

2. Months are counted from the start of the assignment/mobilization. One (1) month equals twenty-two (22) working (billable) days. One working (billable) day shall be not less than eight (8) working (billable) hours.

3 "Home" means work in the office in the expert's country of residence. "Field" work means work carried out in Kenya, or outside the normal residence of the Expert in Kenya or any other country outside the expert's country of residence.

Full time input Part time input

FORM TECH-6B: CURRICULUM VITAE (CV)

Position Title and No.	*(e.g K-1, Team leader)*
Name Of Expert	*(insert full name)*
Date Of Birth	*(day/month/year)*
Country of Citizenship	

Education: *{List college/university or other specialized education, giving names of educational institutions, dates attended, degree(s)/diploma(s) obtained}*

_____

_____

Employment record relevant to the assignment: *{Starting with present position, list in reverse order. Please provide dates, name of employing organization, titles of positions held, types of activities performed and location of the assignment, and contact information of previous Procuring Entity's and employing organization(s) who can be contacted for references. Past employment that is not relevant to the assignment does not need to be included.}*

S. No	**Period**	**Employing Organization and your title/position. Contact in form for reference.**	**Country**	**Summary of activities performed relevant to the assignment**
1.	(e.g, May.2011-Present)	Organisation: Reference:		
2.	(e.g, May.2011-Present)	Organisation: Reference:		

Membership in Professional Associations and Publications:

_____

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

_____

_____

Adequacy for the Assignment:

Detailed Task Assigned on Consultant's Team Expert	Reference to prior completed work/assignments that best illustrates capacity to handle the assigned task
[list all deliverables/tasks as in TECH-5 in which the Expert will be involved]	

Expert's contact information

E-mail: …….....……...

Phone: …….....…….

Certification:

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications, and my experience, and I am available to undertake the assignment in case of an award. I understand that any misstatement or misrepresentation described herein may lead to my disqualification or dismissal by the Procuring Entity, and/or sanctions by the PPRA.

Name of Expert_____

Signature_____

Date_____
{Day/ month/year}

Name of authorized _____

Signature._____

Date_____
{Day / month/year}

Representative of the Consultant (the same who signs the Proposal

FORM TECH-7: MANDATORY SUPPORT DOCUMENTS

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

a) Certificate of Incorporation/Certificate of Registration

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

b) Tax Compliance Certificate

{Consultant to insert a copy of the tax compliance certificate from Kenya Revenue Authority or similar body in the case of foreign consulting firms}

c) Practice License or Certificate for the Firm

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

d) Similar Consulting Assignments Experience

{Consultant to insert here copies of the form of contract, purchase order, service order, and performance certificate or similar evidence of similar completed assignments carried out by the firm. The assignments shall be the same as those provided under FORM TECH 2B}

e) Academic Certificates

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

f) Professional Certificates

{Consultant to insert certified copies of professional certificates and relevant short-term trainings to demonstrate professional qualifications for all the key experts}

g) Professional Membership of Key Experts

{If applicable, Consultant to insert certified copies of professional membership certificate for its key experts}

h) Certificate of Independent Proposal Determination

(The Form is available on Tech FORM TECH-1: TECHNICAL PROPOSAL SUBMISSION FORM).

FORM TECH-8: SELF-DECLARATION FORMS

FORM SD1

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

I ……., of Post Office Box …….……. being a resident of…….. In the Republic of ……. do hereby make a statement as follows: -

1. THAT I am the Company Secretary/Chief Executive/Managing Director/Principal Officer/Director of……...…….. (Insert name of the Company) who is a Bidder in respect of **Tender No.……** for……. (Insert tender title/description) for……. *(Insert name of the Procuring entity)* and duly authorized and competent to make this statement.

2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.

3. THAT what is deponed to here in above is true to the best of my knowledge, information and belief.

…… ……. …… (Title)

(Signature) (Date)

Bidder Official Stamp

FORM SD2

SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE.

I.....of P. O. Box.....being a resident of…….. In the Republic of ……. do hereby make a statement as follows: -

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of……..…… *(Insert name of the Company)* who is a Bidder in respect of **Tender No.**…….....….. For ……. *(Insert tender title/description)* for …….....… *(Insert name of the Procuring entity)* and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its servants and/or agents /subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/ or agents of……. *(Insert name of the Procuring entity)* which is the procuring entity.
3. THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of……. *(Name of the procuring entity).*
4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject tender.
5. THAT what is deponed to herein above is true to the best of my knowledge information and belief.

…… …… ……

(Title) (Signature) (Date)

Bidder's Official Stamp

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

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

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

Name of Authorized signatory.....

Sign…….....

Position…….....

Office address……..……

Telephone……....…….…….

Email…….....

Name of the Firm/Company…….....

Date…….....

(Company Seal/ Rubber Stamp where applicable)

Witness

Name ……..……..…….....

Sign…….....

Date……

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

[The Bidder shall complete this Form in accordance with the instructions indicated]

Date: ..... *[Insert date (as day, month and year)* of Tender Submission]

Tender No: ..... *[Insert number of tendering process]*

To: ..... [Insert complete name of Purchaser]

I/We, the undersigned, declare that:

1. I/We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.
2. I/We accept that I/we will automatically be suspended from being eligible for tendering in any contract with the Purchaser or the period of time of[insert number of months or years] starting on[insert date],if we are in breach of our obligation (s)under the bid conditions, because we– (a) have withdrawn our tender during the period of tender validity specified by us in the Tendering Data Sheet; or (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity,(i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the instructions to tenders.
3. I/We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer (s), upon the earlier of:
    a) Our receipt of a copy of your notification of the name of the successful Tenderer; or
    b) Thirty days after the expiration of our Tender.
4. I/We understand that if I am /we are/in a Joint Venture, the Tender Securing Declaration must be in the name of the Joint Venture that submits the bid, and the Joint Venture has not been legally constituted at the time of bidding, the Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed: ……..……. Capacity / title (director or partner or sole proprietor, etc.) …….…… Name: …….

Duly authorized to sign the bid for and on behalf of: ..... *[Insert complete name of Tenderer]* Dated on ……. day of ……..…… *[Insert date of signing]*

(Seal or stamp)

SECTION 4. FINANCIAL PROPOSAL - STANDARD FORMS

{Notes to Consultant shown in brackets {....} provide guidance to the Consultant to prepare the Financial Proposals; they should not appear on the Financial Proposals to be submitted.}

Financial Proposal Standard Forms shall be used for the preparation of the Financial Proposal according to the instructions provided in Section 2.

FIN-1 Financial Proposal Submission Form

FIN-2 Summary of Costs

FIN-3 Breakdown of Remuneration

FIN-4 Reimbursable expenses

FORM FIN-1: FINANCIAL PROPOSAL SUBMISSION FORM

..... {Location, Date}

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

Dear Sirs:

We, the undersigned, offer to provide the consulting services for..... [*Insert title of assignment*] in accordance with your Request for Proposal dated..... *[Insert Date]* and our Technical Proposal.

Our attached Financial Proposal is for the amount of..... {*Indicate the corresponding to the amount currency*} {*Insert amounts in words and figures*}, including of all taxes in accordance with ITC24.2 in the Data Sheet. The estimated amount of local taxes is..... {*Insert currency*} {*Insert amount in words and figures*}.

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

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

Commissions and gratuities paid or to be paid by us to an agent or any third party relating to preparation or submission of this Proposal and Contract execution, paid if we are awarded the Contract, are listed below:

Name and Address, Amount and Purpose of Commission of Agents, Currency or Gratuity

{If no payments are made or promised, add the following statement: "No commissions or gratuities have been or are to be paid by us to agents or any third party relating to this Proposal and Contract execution."}

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

We remain,

Yours sincerely,

Signature..... *(Of Consultant's authorized representative) {In full and initials}*

Full name: ..... *{Insert full name of authorized representative}*

Title: ..... *{Insert title/position of authorized representative}*

Name of Consultant..... *(Company's name or JV's name)*

Capacity: ..... *{Insert the person's capacity to sign for the Consultant}*

Physical Address: ..... *{Insert the authorized representative's address}*

Phone: ..... *{Insert the authorized representative's phone and fax number, if applicable}*

Email: .....*{Insert the authorized representative's email address}*

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

FORM FIN-2: SUMMARY OF COSTS

Item	Cost			
	consultant must state the proposed cost in accordance with ITC16.4 of data sheet: delete columns which are not used)			
	(Insert foreign currency #1)	(Insert foreign currency #2) if used	(Insert foreign currency #3) if used	(Insert Local currency) if used
Cost of the financial proposal				
Including				
(1) Remuneration				
(2) Reimbursable				
Subtotal (Remuneration+ Reimbursable)				
Taxes				
(Insert type of tax)				
(e.g withholding tax on expert's remuneration				
(Insert type of tax)				
Total Taxes				
Total Cost of the financial proposal: [should match the amount in form FIM 1]				

FORM FIN-3A: BREAKDOWN OF REMUNERATION

When used for Lump-Sum contract assignment, information to be provided in this Form shall only be used to demonstrate the basis for the calculation of the Contract's ceiling amount; to calculate applicable taxes at contract negotiations; and, if needed, to establish payments to the Consultant for possible additional services requested by the Procuring Entity. This Form shall not be used as a basis for payments under Lump-Sum contracts.

A. Remuneration:								
No	Name	Position (as in TECH-6	Person-month Remuneration Rate	Time input in Person/Month (From TECH-6)	[currency #1-as in FIN-2]	[currency #2-as in FIN-2]	[currency #3-as in FIN-2]	[Local currency #1-as in FIN-2]
	Key Expert							
			(Home)					
K-1			(Field)					
			(Home)					
K-1			(Field)					
	Non-Key Expert							
			(Home)					
N-1			(Field)					
				Total Costs				

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

{This Form FIN 3B shall be used for Time-Based contracts only. If Lump sum Contract is used, the Procuring Entity shall delete the FORMFIN-3B, FORM FIN-3C and FORM FIN-3D from the RFP before issuance to consultants}

Consultant: .....Country:

Assignment: .....Date:

We hereby confirm that:

a) The basic fees indicated in the attached table are taken from the firm's pay roll records and reflect the current rates of the Experts listed which have not been raised other than within the normal annual pay increase policy as applied to all the Consultant's Experts;

b) attached are true copies of the latest pay slips of the Experts listed;

c) theaway-from-homeofficeallowancesindicatedbelowarethosethattheConsultanthasagreedtopayforthis assignment to the Experts listed;

d) the factors listed in the attached table for social charges and overhead are based on the firm's average cost experiences for the latest three years as represented by the firm's financial statements; and

e) Said factors for overhead and social charges do not include any bonuses or other means of profit-sharing.

..... *[Name of Consultant]*

Signature of Authorized Representative

Name: .....

Title: .....

Date: .....

FORM FIN-3C: FORM FOR CONSULTANT'S REPRESENTATIONS REGARDING COSTS AND CHARGES

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

[if more than one currency is used, use additional table(s), one for each currency]

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

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

1. Review of Remuneration Rates

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

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

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

2. Rate details are discussed below:

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

(ii) *Bonuses* are normally paid out of profits. To avoid double counting, any bonuses shall not normally be included in the "Salary" and should be shown separately. Where the Consultant's accounting system is such that the percentages of social costs and overheads are based on total revenue, including bonuses, those percentages shall be adjusted downward accordingly. Where national policy requires that 13 months' pay be given for 12 months' work, the profit element need not be adjusted downward. Any discussions on bonuses shall be supported by audited documentation, which shall be treated as confidential.

(iii) *Social Charges* are the costs of non-monetary benefits and may include, inter alia, social security (including pension, medical, and life insurance costs) and the cost of a paid sick and/or annual leave. In this regard, a paid leave during public holidays or an annual leave taken during an assignment if no Expert's replacement has been provided is not considered social charges.

(iv) *Cost of Leave* The principles of calculating the cost of total days leave per annum as a percentage of basic salary is normally calculated as follows:

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

Where w = weekends, ph = public holidays, v = vacation, and s = sick leave.

Please note that leave can be considered as a social cost only if the Procuring Entity is not charged for the leave taken.

(v) *Overheads* are the Consultant's business costs that are not directly related to the execution of the assignment and shall not be reimbursed as separate items under the Contract. Typical items are home office costs (non-billable time, time of senior Consultant's staff monitoring the project, rent of headquarters' office, support staff,

research, staff training, marketing, etc.), the cost of Consultant's personnel not currently employed on revenue-earning projects, taxes on business activities, and business promotion costs. During negotiations, audited financial statements, certified as correct by an independent auditor and supporting the last three years' over heads, shall be available for discussion, together with detailed lists of items making up the overheads and the percentage by which each relates to basic salary. The Procuring Entity does not accept an add-on margin for social charges, overhead expenses, etc. for Experts who are not permanent employees of the Consultant. In such case, the Consultant shall be entitled only to administrative costs and a fee on the monthly payments charged for sub-contracted Experts.

(vi) *Profit* is normally based on the sum of the Salary, Social costs, and Overheads. If any bonuses paid on a regular basis are listed, a corresponding reduction shall be made in the profit amount. Profit shall not be allowed on travel or any other reimbursable expenses.

(vii) *Away from Home Office Allowance or Premium or Subsistence Allowances* Some Consultants pay allowances to Experts working away from headquarters or outside of the home office. Such allowances are calculated as a percentage of salary (or a fee) and shall not draw over heads or profit. Sometimes, by law, such allowances may draw social costs. In this case, the amount of this social cost shall still be shown under social costs, with the net allowance shown separately.

FORM FIN-4 BREAKDOWN OF REIMBURSABLE

When used for Lump-Sum contract assignment, information to be provided in this Form shall only be used to demonstrate the basis for calculation of the Contract ceiling amount, to calculate applicable taxes at contract negotiations and, if needed, to establish payments to the Consultant for possible additional services requested by the Procuring Entity. This form shall not be used as a basis for payments under Lump-Sum contracts. This form shall be filled for Time-Based Contracts to form the basis of contract negotiations.

B; Reimbursable Expenses……								
No	**Type of Reimbursable Expenses**	**Unit**	**Unit Cost**	**Quantity**	**Currency # 1-as in FIN-2**	**Currency # 1-as in FIN-2**	**Currency # 3-as in FIN-2**	**Local Currency # 1-as in FIN-2**
	E.g Per diem							
	Transport							
	Training of the procuring Entity Personnel							
	GNSS Survey Equipment	1						
	Public Sensitization							
Total Costs								

Legend*:*

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

SECTION 5. TERMS OF REFERENCE –

CONSULTANCY SERVICES FOR ROAD RESERVE SURVEY AND TITLE SURVEY OF DUNDORI-OLKALOU-NJABINI (B21) ROAD SECTION_98KM

5.1 GENERAL

The Government of Kenya through its agency, the Kenya National Highways Authority (KeNHA), requires the services of a Consultant to render technical Services necessary for Road Reserve Survey, Title Survey for Acquired Properties and Title Survey of the entire Road Reserve for **Dundori-Olkalou-Njabini (B21) Road Section_98km including the old road sections measuring approximately 6km**. The detailed description of the required Services is given in these Terms of Reference

Selection Criteria

The Consultant shall be selected based on Quality and Cost Based Selection Considerations. The selected Lead Consultant should bring together a competent group of firms/professionals with:

a) Extensive experience in Engineering Survey and Cadastral survey
b) Must have the Key Experts with experience and qualifications meeting the requirements for the assignment

5.2 BACKGROUND

Kenya National Highways Authority; (KeNHA) is responsible for the development, rehabilitation, management and maintenance of all National Trunk Roads comprising Classes S, A, and B roads, in the country to enhance socio-economic growth and prosperity.

Most of these roads reserves, including the **Dundori-Olkalou-Njabini (B21) Road Section_98km,** have not been surveyed. Further, in the course of construction of these roads, land was acquired but despite being paid for, most of it has never been registered neither was surveying carried out to excise the part of the road reserve acquired. This has led to road reserves being subjected to various conflicts including encroachment and pressure from a wide range of differing land uses such as agriculture and commercial activities. These conflicts lead to concerns about the future of highway road infrastructure development in Kenya.

As a result of land use conflicts, KeNHA recognizes that road development is not only road construction and maintenance alone but in the broader sense includes the management and protection of road reserves. In order to achieve this, road reserve boundaries need to be determined, and boundaries between the road reserve and abutting land parcels be accurately determined. This will facilitate updating of title deeds to reflect the remaining property areas, and preparation of new deed plans and amendment of Registry Index Maps (RIMs)/Preliminary Index Diagrams (PIDs) to reflect the actual road reserve.

In order to achieve the objective of managing road reserves effectively, the Government requires the services of a consultant to carry out services described in these terms of reference.

The Kenya National Highways Authority therefore seeks to contract an experienced firm to render the following services deemed relevant to achieve the desired objectives:

a) To survey and delineate the road reserve,

b) Survey, place beacons, prepare deed plans/mutation forms and cause Registry Index Maps (RIMs)/Preliminary Index Diagrams (PIDs) amendment (where applicable) for acquired properties, and remainder parcels of land affected by subsequent land acquisition.

c) Carry out title (fixed) survey and prepare **Deed plans** for the delineated road reserve and have the survey works approved by the DoS

d) Develop a GIS database of the surveyed road reserve corridor

The Kenya National Highways Authority will be the Client for the aforementioned consultancy services.

5.3 PROJECT DESCRIPTION

The project comprises approximately 98Km length of class B road (B21). The project road traverses Nakuru and Nyandarua Counties. The project starts at the B21/B108 junction at Dundori to Njabini (B110/B21) junction. Survey works are located along the existing B21 road, between B21/B108 Road junction Dundori to Njabini (B110/B21).

5.4 SCOPE OF WORK

General

The Consultant shall perform all work necessary as defined in these Terms of Reference including investigation and analysis of existing information, computation and compilation of related documents and drawings, and field survey. The methodology used shall employ internationally acceptable survey techniques. In carrying their work, the Consultant shall cooperate fully with the concerned agencies of the Government of Kenya, in particular the Ministry of Roads & Transport; and the State Corporations operating under it, the National Land Commission, the Ministry of Lands, the Ministry of Interior, the County Governments, amongst others. The Consultant shall provide the necessary support services related to and necessary for the completion of the assignment. The work shall cover but not be limited to the aspects outlined in these Terms of Reference.

The purpose of the assignment is to delineate the road reserve of the **Dundori-Olkalou-Njabini (B21) Road Section_98km (**including old road sections measuring approximately 6km). The Consultant shall digitize cadastral and road maps/drawings, establish the road reserve extent, subdivide acquired properties (including quarries), undertake fixed survey of the road reserve, and develop a GIS database of **Dundori-Olkalou-Njabini (B21) Road Section**. The fixed survey shall enable KeNHA to effectively manage the road reserve of the road section to facilitate the Authority's vision of providing a quality, safe and adequate national road network.

The following documents may be necessary for the consultancy and can be obtained from Government Agencies. The documents shall be obtained by the consultant on conditions laid down by the relevant agencies.

i). Relevant Gazette Notices
ii). Relevant Survey/Cadastral Plans
iii). Copies of Design/As Built/Land Acquisition Drawings
iv). Standard Specifications for roads and Bridge construction, 1986
v). Kenya Roads Act 2007
vi). Survey Act Cap 299
vii). The Land Act, 2012
viii). The National Land Commission Act, 2012
ix). The Land Registration Act, 2012

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

a. Access to all sites and locations involved in carrying out the services
b. Necessary Visas and customs clearance for entry and exits

5.4.1 DETAILED PROJECT DESCRIPTION

The project consists of three main activities as follows: -

5.4.1.1 Road Reserve Survey

The road reserve width of the road section is minimum 60m, but increases at some areas. The survey will include topographical survey of boundary features, and utilities located on the road reserve; and delineation of the road reserve.

5.4.1.2 Title Survey

a) The title survey for acquired properties involves survey and/or confirmation of excision of land along the road section whose area was acquired as per the following gazette notices, (including revisions and updates) and any other information that the consultant may find relevant.

1. GN 2029 of 2nd March, 2018
2. GN 549 of 5.3.1982
3. GN 677, 678, 679, 680, 681 of 9th March, 1973

The title survey shall also include any quarries/material sites, camps, acquired and/or set aside for road development. Note that some sites may be located off the project road.

b) The title survey for the road reserve involves cadastral survey of the entire delineated road reserve, including acquired land.

5.4.1.3 Development of GIS Database

The GIS database shall comprise separate shapefiles for all features surveyed i.e. road centreline, land parcels, acquired areas, final road reserve boundary, fences/hedges, utilities etc. The shapefiles shall have the relevant attribute tables.

5.4.1.4 Purchase and Delivery a Computer RIG PC for GIS LAB

The Consultant shall purchase and deliver to the client at inception a complete set a Computer RIG PC to be used by the client to handle/process/manipulate cloud data during the supervision of the project. The Equipment must meet the following specifications:

ITEM	ACCESSORIES	MINIMUM SPECIFICATIONS	QUANTITY
Computer Rig/PC	• CPU • Keyboard + Mouse • Monitor • Cabling	• 13th Gen Motherboard; Liquid CPU cooler; RAM - 128 GB; NVIDIA 12 GB RTX 4090 Graphics Card; at least 6 TB on Solid State Drive; Processor – Intel Core i9, 13900K 24 Cores, 24 Threads. • Monitor – 34-inch ultra-wide 4K resolution, 144 Hz.	1
	• Operating System	• Windows 11 or newer version	

In financial proposal, the bidders are therefore required to include **a lumpsum amount of Kshs. 1,500,000.00** for the purchase and delivery of a complete Computer RIG PC for GIS Lab.

5.5 DETAILED SCOPE OF WORK

5.5.1 GENERAL

The Consultant shall perform road reserve and title survey and related work as described herein to attain the objective of the survey.

The consultant shall carry out the survey work in such a manner as to ensure that the survey accords in all respect with provisions of the Survey Act and any other relevant legislation, and shall be responsible for the correctness and completeness of every survey carried out under the consultancy.

The overall responsibility for administration and coordination of the survey rests with the Kenya National Highways Authority. The execution of the survey will be the direct responsibility of the Project Team of KeNHA.

KeNHA will provide the Consultant with the data and services outlined herein. The Consultant shall be responsible, however for the computation, analysis and interpretation of all data received, and the conclusions and recommendations in his reports.

As the assignment progresses, the Consultant shall maintain close liaison with the relevant Government agencies and shall submit for approval, according to the work programme, field notes, computations, copies of deed plans/ mutation forms, survey reports and any other relevant documents as required in relevant policies and legislation.

5.6 PROJECT OBJECTIVES

The overall objective of the project is to ensure that accurate and quality road reserve survey, title survey for acquired parcels, and title survey of the entire road reserve section is achieved in time, within the budget allocation and that all work is carried out in full compliance with the approved engineering designs, as built drawings and land acquisition plans, cadastral boundaries, survey specifications, agreed work schedule within the terms and conditions of the contract documents and as per sound surveying practices.

Specifically, the consultant shall be required:

a) To acquire the relevant historical information
b) To carry out the necessary investigations and survey computations
c) To establish horizontal survey control points along the project road
d) To analyze design drawings, as built drawings, land acquisition drawings, land acquisition information/gazette notices, and survey plans.
e) To survey the road reserve including picking existing road centreline, fences, marker posts and visible utilities(includes Power Lines, Pipeline, main water pipes, Sewer lines, Fibre optic cable etc.) on the road reserve
f) To survey each parcel listed in the relevant gazette notices listed above, (and any other relevant notices/information that the consultant may find relevant), to excise acquired land
g) To delineate the final road reserve edge of the road section after integration of road design/as built drawings, cadastral plans, road data ground survey and land acquisition information.
h) To carry out title(cadastral) survey of the entire delineated road reserve(including the old road sections) and quarry/material sites/camp site reserved and/or acquired for the project road development
i) To develop a GIS database for the whole road reserve section

5.7 LEGISLATION/ REFERENCES

Work shall be performed and progressed in accordance with the requirements specified in the following documents (including all current updates and Legislation), among others that the consultant might find relevant:-

1. Survey Act Cap 299
2. The Land Act, 2012
3. The National Land Commission Act, 2012
4. The Land Registration Act, 2012
5. The Land Control Act Cap 302
6. Physical and Land Use Planning Act, 2019
7. Standard Specifications for roads and Bridge construction, 1986
8. The Survey Manual published by Survey of Kenya, 1971

5.8 SCOPE AND TECHNICAL SPECIFICATIONS

The project activities are categorized as follows:-

1. Acquisition of the Relevant Information
2. Public sensitization along the project road
3. Establishment of Survey Controls
4. Road Reserve and Quarry/Material Sites Survey, and Delineation of the Road Reserve
5. Title(Cadastral) Survey and Subdivision of Acquired Properties
6. Title(Cadastral) Survey of the entire Delineated Road Reserve including the old road reserves
7. Development of a GIS Database

The Scope, Technical Specifications and Standards for each activity shall be as outlined below:-

5.8.1 Acquisition of the Relevant Information

The consultant should set out by first collecting the available data in form of plans, drawings, reports, tables or charts; interpret them and transform them through measurement and calculation into a form that can be set out on the ground.

Cadastral information may be obtained from the Director of Surveys on terms and conditions laid down by the Director.

Any historical information which will have an impact on survey computation, analysis and or determination (i.e. record plans, geodetic information such as datum, coordinates or other necessary information) should be included.

5.8.2 Public sensitization along the Project Road

As part of the project activities, the consultant shall undertake public sensitization of the affected landowners prior to undertaking the field survey activities, preferably within a month after the submission of the inception report. The client will collaborate with the consultant in this activity, if necessary.

Prior approvals by Statutory Authorities as required by any legislation shall be sought by the consultant during the survey.

5.8.3 Establishment of Survey Controls

The consultant is responsible for establishing horizontal survey controls along the project road, and at least two (2) other control points in the vicinity of the project road to be identified by Authority's Regional Director (South Rift Region). The consultant shall establish, by any acceptable method; (Traverse, or GPS or a combination), primary control points. These control points must be tied to the Survey of Kenya national grid. The standard of primary control points shall be as per the Survey Act and the Survey Act Regulations.

The density of the control points will depend on the prevailing ground situation. However, control points shall be located at such density and locations to ensure durability and ease of use by the consultant, and for other survey works undertaken in future.

Equipment to be used for angular and distance measurement shall be as outlined in the Survey Act and the Survey Act Regulations; or as per guidelines issued by the DoS. The consultant shall have maintained his instruments according to the Survey Act Regulations

The consultant shall carry out traverse adjustment by a suitable method to be specified by the consultant. The design and specification of survey marks shall be as specified in the Survey Manual (Survey of Kenya 1971). **The consultant to present design of survey control points to the client at the time of project inception.**

The controls shall be established to the required standards, and the consultant shall have the Survey Controls approved by the DoS and the approved report submitted to the client. The resultant coordinates shall be based on the Universal Transverse Mercator (UTM) Projection, Arc 1960 datum

5.8.4 Road Reserve and Quarry/Material Sites Survey, and Delineation of the Road Reserve

The extent of the road reserve and quarry/material sites acquired for development of the project road shall be derived from analysis of design drawings, as built drawings, land acquisition drawings, land acquisition information, survey plans and field data. Picking of property boundaries shall be carried out particularly where survey plans of the general boundary type are to be adopted as an Authority on road reserve extents.

Detail picking shall be carried out according to Survey Act Regulations and the Practicing Guidelines for Non-Title Surveys; Institution of Surveyors of Kenya. Detail picking shall be done from control points established by the consultant. The consultant shall delineate the final road reserve upon integration of all the acquired information.

Topographical features to be picked include **boundary features such as fences, edges, boundary lines, road reserve Marker Posts, the road centreline; and utilities. Topographical and Utilities Report**s will be submitted to form part of the project deliverables.

The consultants' attention is drawn to the fact that acquired areas, as per available gazette notices; need to be confirmed upon analysis of as built drawings, land acquisition drawings, survey plans and the situation on the ground. Upon analysis of the data, the consultant shall make amendments to survey plans where land acquired was not properly hived off, and make conclusions and recommendations accordingly to the client.

5.8.5 Title (Cadastral) Survey and Subdivision of Acquired Properties

Title survey for properties acquired for the project road development shall be carried out as per the Survey Act and Survey Act Regulations to excise the acquired land. Boundary beacons for acquired land shall be placed according to Survey Act Regulations. The beacons shall be placed from traverse points and placement checked adequately for correctness by any acceptable method. Proof of placement checks shall be documented for future records. Units of measurement shall be as per Survey Act Regulations. A maximum linear misclosure of ±0.03m is acceptable.

The type of boundary beacons shall be as per the Survey Act and the Survey Act Regulations.

The consultant shall present original/copies of authenticated deed plans, approved mutation forms and copies of amended RIMs/PIDs to the client. In cases where the consultant has concluded that amendments were already made to acquired properties, copies of RIMs/PIDs and deed plans should be presented to the client as evidence, after confirmation that excision of acquired land was properly done. In cases where the amendments were not properly done, the consultant shall undertake to correct the same.

The consultant shall cause title documents for acquired land to reflect the correct status at the relevant Land Registry.

5.8.6 Title (Cadastral) Survey of the Delineated Road Reserve

Title survey for the delineated road (whole road) reserve shall be carried out including the old road reserves. The consultant shall be required to prepare deed plans (where applicable), duly authenticated/certified by the DoS, to be submitted to the client. During this survey, the consultant shall be required to work closely with the Departments responsible for Lands and Survey at the National and County Governments. **The title survey shall be based on a fixed survey and all general boundary surveys indicating the road reserve shall be fixed at the time of survey.**

Title survey shall also be carried out for any quarries/material sites / camp sites acquired for development of the project road.

The survey is to be carried out as per the Survey Act and Survey Act Regulations. Boundary beacons shall be put according to Survey Act Regulations. The beacons shall be placed from traverse points and placement checked adequately for correctness by any acceptable method. Proof of placement checks shall be documented for future records.

Survey computations shall be carried out according to the Survey Act Regulations. The consultant shall send to the Director of Surveys all plans, field notes, computations and related documents of the survey; and all plans, field notes and computations shall be deposited in the survey office in accordance with the survey Act Cap 299. The survey plans shall be authenticated by the Director of Surveys in accordance with the survey Act Cap 299.

The title survey shall be based on the Universal Transverse Mercator (UTM) Projection, Arc 1960 datum.
The consultant shall pay fees to the Director of Surveys in respect of all documents issued or services rendered by the Survey Department in accordance with the charges prescribed in the Survey Act Regulations.
The consultant shall present approved survey plans and **authenticated Deed plans covering the whole/entire road reserve (including the old road sections) to the client**.

5.8.7 Development of a GIS Database

All the digitized data shall be migrated into a GIS database. All features vectorized will be converted to the GIS Shapefile format. Appropriate feature classes will be used for vectorized features, including but not limited to land parcels, acquired land, road centreline and road reserve edge.

Attribute tables shall be created and populated for all the vectorized features. The table schemas shall include appropriate fields including Feature ID, Plot No, Plan Type, Gazette notice no. and date, area

acquired, registered owners as per gazette notice, location of land and any other land acquisition details if any.

5.8.8 Required GIS layers

i. Primary and New survey controls
ii. Topographical features layers.
iii. Utility layers
iv. Road Assets layers(Signages, Culverts, Bridges etc)
v. Land acquisition layer
vi. Delineated road reserve
vii. Road reserve Abuttals (Parcels of land)
viii. Scanned maps and Survey plans used in JPG format.

5.8.9 GIS database schemas.

Details to be populated in the attribute tables (*The Authority will provide the shapefiles).*

a) Survey controls

S.No	Name	Field type	length	Precision
1	Easting	Double	10	3
2	Northing	Double	10	3
3	Height	Double	10	3
4	Beacon name	text	30	
5	Class of beacon	text	10	
6	Remarks	Text	50	

b) Topographical data

Feature	Data type
Building	Polygon
Spot Height	Point
Tree	Point
River	Line
Road Centreline	Line
Road Edge	Line
Road Reserve Extent	Line
Road Reserve Marker Post	Point
Fences	Line
Utilities	

Feature	Data type
Feature	**Data type**
Powerline	Line
Water Pipe	Line
Sewerline	Line
Fibre Cable	Line
Pipeline	Line
Advertisements signage/Bill boards	Point
Manhole	Point
Road Assets	**Data type**
Culvert	Point
Drainage	Line
Road Signage	Point
Kilometer Marker Post	Point
Road Hump	Line

c) Abutting parcels of land

1	**Field Name**	**Name/Alias**	**Field Type**	**Length**	**Precision**
2	Road_Class	RdClass	Text	8	-
3	Road number	RdNum	Text	8	-
4	Road_Section	RdSection	Text	50	-
5	Parcel No	Parcel Number	Text	50	-
6	Map_Reference(RIM or Fr No)	Map-reference	Text	50	-

d) Land Acquisition layer

	Field Name	**Name/Alias**	**Field Type**	**Length**	**Precision**
2	Road_Class	RdClass	Text	8	-
3	Road number	RdNum	Text	8	-
4	Road_Section	RdSection	Text	50	-
5	Parcel No	Parcel Number	Text	50	-
6	Map_Reference(RIM or Fr No)	Map-reference	Text	50	-
7	Registered_Owner	Reg_Owner	Text	200	-

	Field Name	Name/Alias	Field Type	Length	Precision
8	Acquired_Area_Ha	Acq_Area	Double	8	3
9	Project Name	Project	Text	200	
10	Contract_Number	Contract No	Text	50	
11	Gazette No		Text	30	
12	Gazette Description		Text	30	
13	Gazette Date		Date		
14	Amount awarded		Double	15	3
15	Cheque no		Text	30	
16	Payee		Text	50	
23	Remarks	Remarks	Text	50	-

e) Delineated road reserve

SNO	Field Name	Name/Alias	Field Type	Length	Precision
1	Road Number	Rdno	Text	50	
2	Road Class	RdClass	Text	8	-
4	Road Section	RdSection	Text	50	-
5	Parcel No	Parcel Number	Text	50	-
6	Map Reference(RIM or Fr No)	Map-reference	Text	50	-

5.9 REPORTS AND TIME SCHEDULE

5.9.1 Commencement

The Consultant shall commence the services within the period specified in the Special Conditions of Contract.

5.9.2 Time Schedule

The duration of the survey work is a crucial aspect and will form a substantial consideration during technical evaluation. A works program shall be prepared by the consultant. The consultant is expected to give a breakdown of work schedules based on proposed accomplishments per unit time. The entire assignment including preparation, data acquisition/compilation, fieldwork and reporting is to be accomplished within the specified period.
The period of the consultancy shall be as specified in the special conditions of contract.

5.9.3 Reports

The Consultant shall prepare and submit to the client the following reports. All reports shall be in English and prepared on A4 metric size paper. All reports will be submitted in hard copies and two soft copies in CD ROM format. The consultant will discuss and get approval of the software format used to

prepare the soft copies for drawings to ensure compatibility with available software in the Client's establishment.

a) **Inception Report**: This shall summarize initial findings and give proposed methodologies and detailed work plan to undertake the survey. To be submitted within two weeks of commencement of the assignment. 5 hard copies and two softcopies to be submitted to the client.

b) **Progress Reports**: These shall be submitted monthly and shall detail all work performed during the reporting period, including utilization of the survey personnel. This shall contain preliminary conclusions on survey work done within the period based on the analysis of work substantially completed, and shall also identify actual and anticipated difficulties and delays in the work, their causes and the remedies proposed to solve them. 5 hard copies and two softcopies to be submitted to the client. ***The evidence and outcomes of the public sensitization exercise shall be submitted to the client in the second monthly report.***

c) **Preliminary Survey Report**: The report shall summarize the findings, analysis, results and recommendations of the survey work and include an executive summary. The Preliminary Survey report shall include copies of field notes as well as a detailed survey report summarizing the methods, sources of data used, accuracies achieved and a list of survey controls established with adequate locational description. Production of resultant data and maps in both hard copy and soft copy format shall accompany the report. The report shall also clearly outline pending works.

   The Consultant shall prepare reports and accompanying drawings in accordance with the format and title sheets as directed by the client. These documents to be submitted in 5 hard copies and two softcopies to the client. The report shall include a description of:-

   a) Narrative description of the project site surveyed.
   b) Scope of work performed
   c) Programme of works followed to execute the work.
   d) Record information used
   e) Detailed description of the procedures used
   f) Work specifications achieved compared to standard set.
   g) Location Diagrams/ Reference sketches
   h) List of all survey control points established and their Y, X coordinate values
   i) CAD/shapefile drawing of completed Desktop mapping of the entire road corridor incorporating the acquired areas (if any) including the topo data on Road reserve and abutting properties
   j) Point description of all points used for ground control including location diagrams for their identification
   k) Difficulties experienced if any.
   l) Recommendations and suggestions if any.

d) **Draft Final Survey Report:** The report shall incorporate all revisions deemed necessary arising from comments received from the client, following discussions and agreement between the Client and the Consultant arising from presentation of the preliminary report. In addition, the report shall include the following:

   i. All documents and drawings with approvals from relevant offices; (Cadastral plans, Ammended RIMs, Deed plans, mutations forms etc).
   ii. A concise executive summary in which **all** the aspects outlined in c) above shall be shown clearly.
   iii. Notes on completion of activities indicated as pending during presentation of the Preliminary report.

iv. GIS database
v. 5 hard copies and two softcopies of the report to be submitted to the client.

e) **Final Survey Report:** The report shall incorporate all revisions deemed necessary arising from comments received from the client, following discussions and agreement between the Client and the Consultant on the Draft Final Report. It shall include a concise executive summary in which **all** the aspects outlined in d) above shall be shown clearly. The document should be signed by the Principal Surveyor with date insert and rubber-stamped. 5 hard copies and two softcopies to be submitted to the client.

5.10 RECORDS OF DOCUMENTS

The final survey work is very important and need to be forwarded to the client. The survey work for road reserve survey should be plotted at scales of 1:2500 in standard paper sizes of ISO A1 (in both soft and hard copy) whereby hard copy drawings shall be presented in form of translucent bond paper. All drawings and documents resulting from road reserve survey need to be handed to the client for safe custody and for later reference. Work presentation for the road reserve survey is to be in a specified format and is to include the following:

a) Details well plotted, and in different layers.

b) Clear and understandable legend.

c) Scale well indicated.

d) Well-formatted map in a specified layout.

e) Title Block, well designed and filled up with; title, Client's name, date of survey, principal surveyor's name and signature, Draughtsman's name and signature.

f) Different layers of features well defined in standardized colour (digital data).

g) North Direction Indicator well placed for orientation.

h) Notes on the survey if any.

The client should be provided with the copies of survey plans resulting from title survey already approved by the Director of Surveys and the deed/mutation plans. All the information used during investigation should be availed to the client after the completion of the work both in soft and hard copy.

5.11 OBLIGATIONS OF THE CONSULTANT AND THE CLIENT

5.11.1 The Consultant

The consultant shall work within the TOR and contract agreement to deliver quality output in accordance with the objectives of this assignment. The consultant shall carry out the assignment in a manner that is appropriate and suitable according to acceptable survey methods, standards and accuracies while ensuring consideration of existing information and survey data relevant to the assignment.

All information, data and reports obtained from the Client in the execution of the services of the Consultant shall be properly reviewed and analysed by the Consultant. The Consultant shall be responsible for analyses, interpretation, and conclusion made from the information, data, drawings and reports provided by the client, and the responsibility for the correctness of using such data shall rest

with the Consultant. All such information, data, drawings and reports shall be treated as confidential and returned to the Client upon completion of the assignment.

The Consultant shall be responsible for arranging for all necessary office and living accommodation, transportation, equipment and supplies, surveys, investigations, related to the performance of the works.

The Consultant shall be responsible for the printing of all reports, drawings, maps, etc.

The Consultant shall provide a training plan with accompanying costs for any counterpart personnel as approved by the Client.

All reports and documents relevant to the project, maps, field survey notes, computer programs and electronic data, etc. shall become the property of the Client. The Consultant shall provide the originals of maps, plans and all drawings with final survey report both in hard and soft copies in CD ROMs and in acceptable electronic format.

5.12 THE CLIENT

5.12.1 Documents and Reports

The client shall supply all pertinent data and information and give such assistance as shall reasonably be required to enable the consultant carry out his duties under this contract. Such assistance shall not include the provision of any supplies or services. The consultant shall state in the bids any specific required input from the client.

The client shall make available any information relevant to the project. The consultant shall be required to pay for purchase of maps, data and other documents.

5.12.2 Liaison

The client shall facilitate liaison (if required) with other Ministries and State Departments by way of introducing the consultant to them. The consultant shall however be fully responsible for collecting data and information from these agencies, including paying for it where necessary.

It shall be the consultant's responsibility to liaise with relevant authorities to acquire any information related to this project.

The consultant shall at all times liaise very closely with the clients representative in all matters regarding clients requirements and written confirmation must be obtained for any changes to the brief and project contents.

5.13 TAXES AND DUTIES

The consultant shall be liable to pay all duties and taxes in connection with this assignment including VAT and other tax payables under the Laws of Kenya. No tax or duty exemption shall be given to the consultant. The consultant shall be deemed to have taken the above into consideration while preparing his financial proposal.

5.14 PERSONNEL REQUIREMENTS

5.14.1 Staff Requirements

The Consultant shall provide appropriate and qualified staff required for the performance of the duties described above.

The profiles of the key staff to be provided by the Consultant for this assignment are as follows:

Key Staff 1: Project Team Leader

Qualifications and skills

Must possess University Degree BSc (Surveying) or equivalent, be a Full Member of the relevant chapter of the Institution of Surveyors of Kenya and have a valid Practising Certificate from the Land Surveyors Board

General professional experience

A minimum of 15 years practical post-qualification experience

Specific professional experience

Must have 12 years' experience in Cadastral Survey, Engineering surveys, Contract administration and more specifically have recent service as a Team Leader/Project Manager on projects of comparable nature.

Key Staff 2: Senior Land Surveyor

Qualifications and Skills

Must possess University Degree BSc (Surveying) or equivalent and be a Full Member of the relevant chapter of the Institution of Surveyors of Kenya, or equivalent.

General professional experience

A minimum of 12 years practical post-qualification experience

Specific professional experience

At least 10 years of recent experience in Engineering and cadastral surveys.

Key Staff 3: Land Surveyor 1

Qualifications and Skills

Must possess University Degree BSc (Surveying) or equivalent and be an Associate/Graduate Member of the relevant chapter of the Institution of Surveyors of Kenya, or equivalent.

General professional experience

A minimum of 10 years practical post-qualification experience

Specific professional experience

At least 5 years of recent experience in cadastral surveys.

Key Staff 4: Land Surveyor 2

Qualifications and Skills

Must possess University Degree BSc (Surveying) or equivalent and be an Associate/Graduate Member of the relevant chapter of the Institution of Surveyors of Kenya, or equivalent.

General professional experience

A minimum of 10 years practical post-qualification experience

Specific professional experience

At least 5 years of recent experience in engineering surveys

Key Staff 5: GIS Expert

Qualifications and skills

Must possess University Degree BSc (GIS) or equivalent.

General professional experience

A minimum of 7 years practical post-qualification experience

Specific professional experience

At least 5 years of experience in GIS-related projects. Practical experience with ArcGIS and AutoCAD software is a requirement.

Key Staff 6: CAD Expert

Qualifications and skills

Must possess University Degree BSc in Surveying/Cartography or equivalent

General professional experience

A minimum of 7 years practical post-qualification experience

Specific professional experience

At least 5 years of experience in CAD drafting and presentation. Practical CAD based software usage is also a requirement.

5.14.2 Staff Training

The Consultant shall offer training to two (2 No) Surveyors as will be advised by the client during the Contract Period.

5.15 WORK SCHEDULE

The consultant shall propose a schedule of activities and corresponding deployment of manpower, which will ensure that all duties entrusted to him/her, will be adequately performed. This schedule, together with a comprehensive statement justifying the proposed deployment will be incorporated in the methodology statement.

5.16 PAYMENTS

Certification of work done and payments to be done shall be carried out as per the Special conditions of Contract.

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 stipulated under clause 6.2(b) of Special Conditions of Contract.*

2. *The Contract includes four parts: Form of Contract, the General Conditions of Contract, the Special Conditions of Contract and the Appendices.*

SECTION 6. CONDITIONS OF CONTRACT AND CONTRACT FORMS

CONTRACT FOR CONSULTANT'S SERVICES

Lump-Sum Contract Consulting Services for:

Contract No.:_____

Contract Description:_____

Between

_____*[Name of the Procuring Entity]*

and

_____*[Name of the Consultant]*

Date:

FORM OF CONTRACT - LUMP-SUM

(Text in brackets [ ] is optional; all notes should be deleted in the final text)

This CONTRACT (herein after called the "Contract") is made the *[number]* day of the month of *[month], [year],* between, on the one hand, *[name of Procuring Entity]* (herein after called the "Procuring Entity") and, on the other hand, *[name of Consultant]* (herein after called the "Consultant").

[If the Consultant consists of more than one entity, the above should be partially amended to read as follows: "… (hereinafter called the "Procuring Entity") and, on the other hand, a Joint Venture (name of the JV) consisting of the following entities, each member of which will be jointly and severally liable to the Procuring Entity for all the Consultant's obligations under this Contract, namely, *[name of member]*and *[name of member]* (herein after called the "Consultant").]

WHEREAS

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

b) the Consultant, having represented to the Procuring Entity that it has the required professional skills, expertise and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract;

c) the Procuring Entity has set aside a budget and funds toward the cost of the Services and intends to apply a portion of these funds towards payments under this Contract;

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents attached here to shall be deemed to form an integral part of this Contract:

   a) The General Conditions of Contract;

   b) The Special Conditions of Contract;

   c) Appendices:

      - Appendix A: Terms of Reference
      - Appendix B: Key Experts
      - Appendix C: Breakdown of Contract Price
      - Appendix D: Form of Advance Payments Guarantee

   In the event of any inconsistency between the documents, the following order of precedence shall prevail: The Special Conditions of Contract; the General Conditions of Contract; Appendix A; Appendix B; Appendix C; Appendix D. Any reference to this Contract shall include, where the context permits, a reference to its Appendices.

2. The mutual rights and obligations of the Procuring Entity and the Consultant shall be asset for thin the Contract, in particular:

   a) The Consultant shall carryout the Services in accordance with the provisions of the Contract; and

   b) the Procuring Entity shall make payments to the Consultant in accordance with the provisions of the Contract.

IN WITNESS WHERE OF, the Parties here to have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf of..... *[Name of Procuring Entity] [Authorized Representative of the Procuring Entity–name, title and signature]*

For and on behalf of..... *[Name of Consultant or Name of a Joint Venture] [Authorized Representative of the Consultant–name and signature]*

*[**Note:** For a joint venture, either all members shall sign or only the lead member, in which case the power of attorney to sign on behalf of all members shall be attached.]*

For and on behalf of each of the members of the Consultant..... *[Insert the Name of the Joint Venture] [Name of the lead member]*

[Authorized Representative on behalf of a Joint Venture] [Add signature blocks for each member if all are signing]

SECTION 7: GENERAL CONDITIONS OF CONTRACT

A. GENERAL PROVISIONS

1. Definitions

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

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

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

c) "Contract" means the legally binding written agreement signed between the Procuring Entity and the Consultant and which includes all the attached documents listed in its paragraph1of the Form of Contract (the General Conditions (GCC), the Special Conditions (SCC), and the Appendices).

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

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

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

g) "Experts" means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or JV member(s) assigned by the Consultant to perform the Services or any part thereof under the Contract.

h) "Foreign Currency" means any currency other than the currency of Kenya.

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

j) "Government" means the government of Kenya.

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

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

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

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

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

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

q) "Services" means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A hereto.

r) "Sub-consultants" means an entity to whom/which the Consultant subcontracts any part of the Services while remaining solely liable for the execution of the Contract.

s) "Third Party "means any person or entity other than the Government, the Procuring Entity, the Consultant or a Sub-consultant.

2. Relationship between the Parties

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

3. Law Governing Contract

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

4. Language

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

5. Headings

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

6. Communications

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

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

7. Location

7.1 The project comprises approximately 50Km length of class B road (B132). The project road traverses Kericho and Kisumu Counties. The project starts at the Londiani (A12/B132) to Fort Ternan. Survey works are located along the existing B132 road, between Londiani to Fort Ternan.

8. Authority of Member in Charge

8.1 In case the Consultant is a Joint Venture, the members hereby authorize the member specified in the SCC to act on their behalf in exercising all the Consultant's rights and

obligations towards the Procuring Entity under this Contract, including without limitation the receiving of instructions and payments from the Procuring Entity.

9. Authorized Representatives

9.1 Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Procuring Entity or the Consultant may be taken or executed by the officials specified in the SCC.

10. Corrupt and Fraudulent Practices

10.1 The government requires compliance with its policy regarding corrupt and fraudulent/prohibited practices as set forth in its laws and policies.

10.2 **Commissions and Fees**-The Procuring Entity requires the Consultant to disclose any commissions, gratuities or fees that may have been paid or are to be paid to a gents or any other party with respect to the selection process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee. Failure to disclose such commissions, gratuities or fees may result in termination of the Contract by the Procuring Entity and/or sanctions by the PPRA.

B. COMMENCEMENT, COMPLETION, MODFICATION AND TERMINATION OF CONTRACT

11. Effectiveness of Contract

11.1 This Contract shall come into force and effect on the date (the "Effective Date") of the Procuring Entity's notice to the Consultant instructing the Consultant to begin carrying out the Services. This notice shall confirm that the effectiveness conditions, if any, listed in the SCC have been met.

12. Termination of Contract for Failure to Become Effective

12.1 If this Contract has not become effective within such time period after the date of Contract signature as specified in the SCC, either Party may, by not less than twenty-two (22) days written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect there to.

13. Commencement of Services

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

14. Expiration of Contract

14.1 Unless terminated earlier pursuant to Clause GCC19 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the SCC.

15. Entire Agreement

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

16. Modifications or Variations

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

17. Force Majeure

a. Definition

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

17.2 Force Majeure shall not include (i) any event which his caused by the negligence or intentional action of a Party or such Party's Experts, Sub-consultants or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both take into account at the time of the conclusion of this Contract and avoid or over come in the carrying out of its obligations here under.

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

b. No Breach of Contract

17.4 The failure of a Party to fulfill any of its obligations here under shall not be considered to be a breach of, or default under, this Contract in so far as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

c. Measures to be taken

17.5 A party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

17.6 A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) calendar days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.

i. 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.

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

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

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

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

18. Suspension

18.1 The Procuring Entity may, by written notice of suspension to the Consultant, suspend all payments to the Consultant here under if the Consultant fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i)shall specify the nature of the failure, and (ii) Shall request the Consultant to remedy such failure within a period not exceeding thirty (30) calendar days after receipt by the Consultant of such notice of suspension.

19. Termination

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

a) By the Procuring Entity

19.1.1 The Procuring Entity may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause. In such an occurrence, the Procuring Entity shall give at least thirty (30) calendar days' written notice of termination to the Consultant in case of the events referred to in(a)through(d); at least sixty (60) calendar days' written notice in case of the event referred to in (e); and at least five (5) calendar days 'written notice in case of the event referred to in (f):

i. If the Consultant fails to remedy a failure in the performance of its obligations here under, as specified in a notice of suspension pursuant to Clause GCC 18;

ii. If the Consultant becomes (or, if the Consultant consists of more than one entity, if any of its members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go in to liquidation or receivership whether compulsory or voluntary;

iii. If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GCC 45.1;

iv. If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days;

v. If the Procuring Entity, in its sole discretion and for any reason whatsoever, decides to terminate this Contract;

vi. If the Consultant fails to confirm availability of Key Experts as required in Clause GCC13.

19.1.2 Furthermore, if the Procuring Entity determines that the Consultant has engaged in corrupt, fraudulent, collusive, coercive [or obstructive] practices, in competing for or in executing the Contract, then the Procuring Entity may, after giving fourteen (14) calendar days written notice to the Consultant, terminate the Consultant's employment under the Contract.

b) By the Consultant

i. The Consultant may terminate this Contract, by not less than thirty (30) calendar days' written notice to the Procuring Entity, in case of the occurrence of any of the events specified in paragraphs(a)through(d)of this Clause.

ii. If the Procuring Entity fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause

GCC45.1withinforty-five (45) calendar days after receiving written notice from the Consultant that such payment is overdue.

iii. If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days.

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

v. If the Procuring Entity is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Consultant may have subsequently approved in writing) following the receipt by the Procuring Entity of the Consultant's notice specifying such breach.

c) Cessation of Rights and Obligations

19.1.3 Upon termination of this Contract pursuant to Clauses GCC 12 or GCC 19 hereof, or upon expiration of this Contract pursuant to Clause GCC14, all rights and obligations of the Parties here under shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause GCC22, (iii) the Consultant's obligation to permit in section, copying and auditing of their accounts and records set forth in Clause GCC25, and (iv) any right which a Party may have under the Applicable Law.

d) Cessation of Services

19.1.4 Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GCC 19a or GCC 19b, the Consultant shall immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the Procuring Entity, the Consultant shall proceed as provided, respectively, by Clauses GCC27or GCC28.

e) Payment up on Termination

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

i. Payment or Services satisfactorily performed prior to the effective date of termination; and

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

C. OBLIGATIONS OF THE CONSULTANT

20. General

a) Standard of Performance

20.1 The Consultant shall perform the Services and carry out the Services with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ

appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as a faithful adviser to the Procuring Entity, and shall at all times support and safeguard the Procuring Entity's legitimate interests in any dealings with the third parties.

20.2 The Consultant shall employ and provide such qualified and experienced Experts and Sub-consultants as are required to carry out the Services.

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

b) Law Applicable to Services

20.4 The Consultant shall perform the Services in accordance with the Contract and the Applicable Law and shall take all practicable steps to ensure that any of its Experts and Sub-consultants, comply with the Applicable Law.

20.5 Throughout the execution of the Contract, the Consultants hall comply with the import of goods and services prohibitions in Kenya when

i. As a matter of law or official regulations, Kenya prohibits commercial relations with that country; or

ii. by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods from that country or any payments to any country, person, or entity in that country.

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

21. Conflict of Interests

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

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

21.1.1 The payment of the Consultant pursuant to GCC F (Clauses GCC 38 through 42) shall constitute the Consultant's only payment in connection with this Contract and, subject to Clause GCC21.1.3,the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations here under, and the Consultant shall use its best efforts to ensure that any Sub-consultants, as well as the Experts and agents of either of them, similarly shall not receive any such additional payment.

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

b) Consultant and Affiliates Not to Engage in Certain Activities

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

c) Prohibition of Conflicting Activities

21.1.4 The Consultant shall not engage and shall cause its Experts as well as its Sub-consultants not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.

d) Strict Duty to Disclose Conflicting Activities

21.1.5 The Consultant has an obligation and shall ensure that its Experts and Sub-consultants shall have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Procuring Entity, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Consultant or the termination of its Contract.

22. Confidentiality

22.1 Except with the prior written consent of the Procuring Entity, the Consultant and the Experts shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant and the Experts make public the recommendations formulated in the course of, or because of, the Services.

23. Liability of the Consultant

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

24. Insurance to be taken out by the Consultant

24.1 The Consultant (i) shall take out and maintain and shall cause any Sub-consultants to take out and maintain, at its (or the Sub-consultants', as the case may be) own cost but on terms and conditions approved by the Procuring Entity, insurance against the risks, and for the coverage specified in the SCC, and (ii) at the Procuring Entity's request, shall provide evidence to the Procuring Entity showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid. The Consultant shall ensure that such insurance is in place prior to commencing the Services as stated in Clause GCC13.

25. Accounting, Inspection and Auditing

25.1 The Consultant shall keep and shall make all reasonable efforts to cause its Sub-consultants to keep, accurate and systematic accounts and records in respect of the Services and in such form and detail as will clearly identify relevant time changes and costs.

25.2 The Consultant shall permit and shall cause its Sub-consultants to permit, the PPRA and/ or persons appointed by the PPRA to inspect the Site and /or all accounts and records relating to the performance of the Contract and the submission of the Proposal to provide the Services, and to have such accounts and records audited by auditors appointed by the PPRA if requested by the PPRA. The Consultant's attention is drawn

to Clause GCC10 which provides, interlaid, that acts intended to materially impede the exercise of the PPRA's inspection and audit rights provided for under this ClauseGCC25.2 constitute a prohibited practice subject to contract termination (as well as to a determination of in eligibility under the PPRA's prevailing sanctions procedures.)

26. Reporting Obligations

26.1 The Consultant shall submit to the Procuring Entity the reports and documents specified in Appendix A, in the form, in the numbers and within the time periods set forth in the said Appendix.

27. Proprietary Rights of the Procuring Entity in Reports and Records

27.1 Unless otherwise indicated in the SCC, all reports and relevant data and information such as maps, diagrams, plans, databases, other documents and software, supporting records or material compiled or prepared by the Consultant for the Procuring Entity in the course of the Services shall be confidential and become and remain the absolute property of the Procuring Entity. The Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Procuring Entity, together with a detailed inventory thereof. The Consultant may retain a copy of such documents, data and/or software but shall not use the same for purposes unrelated to this Contract without prior written approval of the Procuring Entity.

27.2 If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of the plans, drawings, specifications, designs, databases, other documents and software, the Consultant shall obtain the Procuring Entity's prior written approval to such agreements, and the Procuring Entity shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned. Other restrictions about the future use of these documents and software, if any, shall be specified in the SCC.

28. Equipment, Vehicles and Materials

28.1 Equipment, vehicles and materials made available to the Consultant by the Procuring Entity or purchased by the Consultant wholly or partly with funds provided by the Procuring Entity, shall be the property of the Procuring Entity and shall be marked accordingly. Upon termination or expiration of this Contract, the Consultant shall make available to the Procuring Entity an inventory of such equipment, vehicles and materials and shall dispose of such equipment, vehicles and materials in accordance with the Procuring Entity's instructions. While in possession of such equipment, vehicles and materials, the Consultant, unless otherwise instructed by the Procuring Entity in writing, shall insure them at the expense of the Procuring Entity in an amount equal to their full replacement value.

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

D. CONSULTANT'S EXPERTS AND SUB-CONSULTANTS

29. Description of Key Experts

29.1 The title, agreed job description, minimum qualification and estimated period of engagement to carry out the Services of each of the Consultant's Key Experts are described in Appendix B.

30. Replacement of Key Experts

30.1 Except as the Procuring Entity may otherwise agree in writing, no changes shall be made in the Key Experts.

30.2 Notwithstanding the above, the substitution of Key Experts during Contract execution may be considered only based on the Consultant's written request and due to circumstances outside the reasonable control of the Consultant, including but not limited to death or medical in capacity. In such case, the Consultant shall forth with provide as a replacement, a person of equivalent or better qualifications and experience, and at the same rate of remuneration.

31. Removal of Experts or Sub-consultants

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

31.2 In the event that any of Key Experts, Non-Key Experts or Sub-consultants is found by the Procuring Entity to be in competent or in capable in discharging assigned duties, the Procuring Entity, specifying the grounds therefore, may request the Consultant to provide a replacement.

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

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

E. OBLIGATIONS OF THE PROCURING ENTITY

32. Assistance and Exemptions

32.1 Unless otherwise specified in the SCC, the Procuring Entity shall use its best efforts to:

i. Assist the Consultant with obtaining work permits and such other documents as shall be necessary to enable the Consultant to perform the Services.

ii. Assist the Consultant with promptly obtaining, for the Experts and, if appropriate, their eligible dependents, all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in Kenya while carrying out the Services under the Contract.

iii. Facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Expert sand their eligible dependents.

iv. Issue to officials, agents and representatives of the Government all such instructions and information as may be necessary or appropriate for the prompt and effective implementation of the Services.

v. Assist the Consultant and the Experts and any Sub-consultants employed by the Consultant for the Services with obtaining exemption from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity in Kenya according to the applicable law in Kenya

vi. Assist the Consultant, any Sub-consultants and the Experts of either of them with obtaining the privilege, pursuant to the applicable law in Kenya, of bringing in to Kenya reasonable amounts of foreign currency for the purposes of the Services or for the personal use of the Experts and of withdrawing any such amounts as may be earned therein by the Experts in the execution of the Services.

vii. Provide to the Consultant any such other assistance as may be specified in the SCC.

33. Access to Project Site

33.1 The Procuring Entity warrants that the Consultant shall have, free of charge, unimpeded access to the project site in respect of which access is required for the performance of the Services. The Procuring Entity will be responsible for any damage to the project site or any property thereon resulting from such access and will indemnify the Consultant and each of the experts in respect of liability for any such damage, unless such damage is caused by the willful default or negligence of the Consultant or any Sub-consultants or the Experts of either of them.

34. Change in the Applicable Law Related to Taxes and Duties

34.1 If, after the date of this Contract, there is any change in the applicable law in Kenya with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the Contract price amount specified in Clause GCC 39.1

35. Services, Facilities and Property of the Procuring Entity

35.1 The Procuring Entity shall make available to the Consultant and the Experts, for the purposes of the Services and free of any charge, the services, facilities and property described in the Terms of Reference (Appendix A) at the times and in the manner specified in said Appendix A.

36. Counterpart Personnel

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

36.2 Professional and support counterpart personnel, excluding Procuring Entity's liaison personnel, shall work under the exclusive direction of the Consultant. If any member of the counterpart personnel fails to perform adequately any work as signed to such member by the Consultant that is consistent with the position occupied by such member, the Consultant may request the replacement of such member, and the Procuring Entity shall not unreasonably refuse to act upon such request.

37. Payment Obligation

37.1 In consideration of the Services performed by the Consultant under this Contract, the Procuring Entity shall make such payments to the Consultant for the deliverables specified in Appendix A and in such manner as is provided by GCCF below.

F. PAYMENTS TO THE CONSULTANT

38. Contract Price

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

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

39. Taxes and Duties

39.1 The Consultant, Sub-consultants and Experts are responsible for meeting any and all tax liabilities arising out of the Contract unless it is stated otherwise in the SCC. Currency of Payment

39.2 Any payment under this Contract shall be made in the currency (ies) of the Contract.

40. Mode of Billing and Payment

40.1 The total payments under this Contract shall not exceed the Contract price set forth in Clause GCC 38.1.

40.2 The payments under this Contract shall be made in lump-sum installments against deliverables specified in Appendix A. The payments will be made according to the payment schedule stated in the SCC.

40.2.1 *Advance payment:* Unless otherwise indicated in the SCC, an advance payment shall be made against an advance payment bank guarantee acceptable to the Procuring Entity in an amount (or amounts) and in a currency (or currencies) specified in the SCC. Such guarantee (I) is to remain effective until the advance payment has been fully set off, and (ii) is to be in the form set forth in Appendix D, or in such other form as the Procuring Entity shall have approved in writing. The advance payments will be set off by the Procuring Entity in equal portions against the lump-sum installments specified in the SCC until said advance payments have been fully set off.

40.2.2 *The Lump-Sum Installment Payments.* The Procuring Entity shall pay the Consultant within sixty (60) days after the receipt by the Procuring Entity of the deliverable(s) and the cover invoice for the related lump-sum installment payment. The payment can be withheld if the Procuring Entity does not approve the submitted deliverable(s) as satisfactory in which case the Procuring Entity shall provide comments to the Consultant within the same sixty (60) days period. The Consultant shall thereupon promptly make any necessary corrections, and there after the fore going process shall be repeated.

40.2.3 *The Final Payment:* The final payment under this Clause shall be made only after the final report has been submitted by the Consultant and approved as satisfactory by the Procuring Entity. The Services shall then be deemed completed and finally accepted by the Procuring Entity. The last lump-sum installment shall be deemed approved for payment by the Procuring Entity within ninety (90) calendar days after receipt of the final report by the Procuring Entity unless the Procuring Entity, within such ninety (90) calendar day period, gives written notice to the Consultant specifying in detail deficiencies in the Services, the final report. The Consultant shall thereupon promptly make any necessary corrections, and there after the fore going process shall be repeated.

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

40.2.5 With the exception of the final payment under 40.2.3 above, payments do not constitute acceptance of the whole Services nor relieve the Consultant of any obligations here under.

41. Interest on Delayed Payments

41.1 If the Procuring Entity had delayed payments beyond thirty (30) days after the due date stated in Clause GCC 41.2.2, interest shall be paid to the Consultant on any amount due by, not paid on, such due date for each day of delay at the annual rate stated in the SCC.

G. FAIRNESS AND GOOD FAITH

42. Good Faith

42.1 The Parties undertake to act in good faith with respect to each other's rights under this

Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

H. SETTLEMENT OF DISPUTES

43. Amicable Settlement

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

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

44. Dispute Resolution

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

SECTION 8: SPECIAL CONDITIONS OF CONTRACT

[Notes in brackets are for guidance purposes only and should be deleted in the final text of the signed contract]

Number of GC Clause	**Amendments of, and Supplements to, Clauses in the General Conditions of Contract**
1.1(a)	The Contract shall be construed in accordance with the law of Kenya
4.1	The language is: **English**
6.1 and 6.2	The addresses are: Procuring Entity: Kenya National Highways Authority Attention: The Director – Directorate of Highway Design and Safety (HDS) E-mail: directorhpd@kenha.co.ke Consultant: _____ Attention: _____ Facsimile: _____ E-mail: _____
8.1	*[If the Consultant consists only of one entity, state "N/A";* *OR* *If the Consultant is a Joint Venture consisting of more than one entity, the name of the JV member whose address is specified in Clause SCC6.1 should be inserted here.]* The Lead Member on behalf of the JV is _____*[insert name of the member]*
9.1	The Authorized Representatives are: For the Procuring Entity: *Eng. Ezekiel Fukwo,* ***Director- Directorate of Highway Design & Safety*** For the Consultant: *[name, title]*___

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
11.1	The effectiveness conditions are the following: *Issuance of Order to Commence to the Consultant by the Client.*
12.1	Termination of Contract for Failure to Become Effective: The time period shall be **60 days**.
13.1	Commencement of Services: The number of days shall be **-14 days** Confirmation of Key Experts' availability to start the Assignment shall be submitted to the Procuring Entity in writing as a written statement signed by each Key Expert.
14.1	Expiration of Contract: The time period shall be **Fifteen** (**15)** months: This includes Fourteen **(14)** Months period for delivery of services and One(**1**) Month for post review by client after submission of final reports.
21.1.3.	The Procuring Entity reserves the right to determine on a case-by-case basis whether the Consultant should be disqualified from providing goods, works or non-consulting services due to a conflict of a nature described in Clause GCC 21.1.3 **Yes**
23.1	No additional provisions. *[OR* The following limitation of the Consultant's Liability towards the Procuring Entity can be subject to the Contract's negotiations:

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	"Limitation of the Consultant's Liability towards the Procuring Entity: (a) Except in the case of gross negligence or willful misconduct on the part of the Consultant or on the part of any person or a firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused by the Consultant to the Procuring Entity's property, shall not be liable to the Procuring Entity: (i) for any indirect or consequential loss or damage; and (ii) for any direct loss or damage that exceeds two times the total value of the Contract; (b) This limitation of liability shall not (i) affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services; (ii) be construed as providing the Consultant with any limitation or exclusion from liability which is prohibited by the Applicable Law. *[Notes to the Procuring Entity and the Consultant:* *Any suggestions made by the Consultant in the Proposal to introduce exclusions/limitations of the Consultant's liability under the Contract should be carefully scrutinized by the Procuring Entity prior to accepting any changes to what was included in the issued RFP.* *To be acceptable to the Procuring Entity, any limitation of the Consultant's liability should at the very least be reasonably related to (a) the damage the Consultant might potentially cause to the Procuring Entity, and (b) the Consultant's ability to pay compensation using its own assets and reasonably obtainable insurance coverage. The Consultant's liability shall not be limited to less than a multiplier of the total payments to the Consultant under the Contract for remuneration and reimbursable expenses. A statement to the effect that the Consultant is liable only for the re-performance of faulty Services is not acceptable to the Procuring Entity. Also, the Consultant's liability should never be limited for loss or damage caused by the Consultant's gross negligence or willful misconduct.* *The Procuring Entity does not accept a provision to the effect that the Procuring Entity shall indemnify and hold harmless the Consultant against Third Party claims, except,*

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	of course, if a claim is based on loss or damage caused by a default or wrongful act of the Procuring Entity to the extent permissible by the law applicable in Kenya.]
24.1	The insurance coverage against the risks shall be as follows: *[Delete what is not applicable except (a)]*. (a) Professional liability insurance, with a minimum coverage of **The Contract sum** in Kshs. (b) insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the Consultant's property used in the performance of the Services, and (iii) any documents prepared by the Consultant in the performance of the Services-***Kshs. 1,500,000.00.***
27.1	The additional rights to the use of the documents are: ***N/A***
27.2	The Consultant shall not use these *documents and software* for purposes unrelated to this Contract without the prior written approval of the Procuring Entity.
32.1 (a) through (f)	*N/A*
32.1(g)	*N/A*
38.1	The Contract price is: _____ *[insert amount and currency for each currency as applicable] [indicate:* inclusive *or* exclusive*]* of local taxes. Any local taxes chargeable in respect of this Contract for the Services provided by the Consultant shall *[insert as appropriate: "*be paid*" or "*reimbursed*"]* by the Procuring Entity *[insert as appropriate:* "for *"*or "to*"]* the Consultant. The amount of such taxes is _____ [insert the amount as finalized at the Contract's negotiations on the basis of the tax amounts provided by the Consultant in Form FIN-2 of the Consultant's Financial Proposal.

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
39.1 and 39.2	*[The Procuring Entity, depending on the source of funds and tax exemptions already granted by the Government, shall decide whether the Consultant (i) should be exempted from local tax, or (ii) should be reimbursed by the Procuring Entity for any such tax they might have to pay (or that the Procuring Entity would pay such tax on behalf of the Consultant]* The Procuring Entity warrants that *[choose one applicable option consistent with the ITC 16.3 and the outcome of the Contract's negotiations (Form FIN-2]* *If ITC16.3 indicates a tax exemption status, include the following:* "the Consultant, the Sub-consultants and the Experts shall be exempt from" *OR* *If ITC16.3 does not indicate the exemption and, depending on whether the Procuring Entity shall pay the withholding tax or the Consultant has to pay, include the following:* "the Procuring Entity shall pay on behalf of the Consultant, the Sub-consultants and the Experts,*" OR "*the Procuring Entity shall reimburse the Consultant, the Sub-consultants and the Experts*"]* any taxes, duties, fees, levies and other impositions imposed, under the applicable law in the Procuring Entity's country, on the Consultant, the Sub-consultants and the Experts in respect of: (a) any payments whatsoever made to the Consultant, Sub-consultants and the Experts (other than nationals or permanent residents of Kenya), in connection with the carrying out of the Services; (b) any equipment, materials and supplies brought into Kenya by the Consultant or Sub-consultants for the purpose of carrying out the Services and which, after having been brought into such territories, will be subsequently withdrawn by them; (c) any equipment imported for the purpose of carrying out the Services and paid for out of funds provided by the Procuring Entity and which is treated as property of the Procuring Entity; (d) any property brought into Kenya by the Consultant, any Sub-consultants or the Experts (other than nationals or permanent residents of Kenya), or the eligible dependents of such experts for their personal use and which will subsequently be withdrawn by them upon their respective departure from the Procuring Entity's country, provided that: (i) the Consultant, Sub-consultants and experts shall follow the usual customs procedures of Kenya in importing property into Kenya; and (ii) if the Consultant, Sub-consultants or Experts do not withdraw but dispose of any property in the Procuring Entity's country upon which customs duties and taxes have been exempted, the Consultant, Sub-consultants or Experts, as the case may be, (a)

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	shall bear such customs duties and taxes in conformity with the regulations of Kenya, or (b) shall reimburse them to the Procuring Entity if they were paid by the Procuring Entity at the time the property in question was brought into the Procuring Entity's country.
40.2	The payment schedule: *[Payment of installments shall be linked to the deliverables specified in the Terms of Reference in Appendix A]* Payments shall be based on the completion of the following activities as evidenced by the submission by the consultant and acceptance by KeNHA of the required deliverables for the process at the end of the following phases: **1st Payment: Twenty (20%) percent** of Contract Price upon submission and client approval of inception Report **2nd Payment: Thirty (30%) percent** of Contract price upon submission and client approval of Preliminary Survey Report **3rd Payment: Thirty (30%) percent** of Contract Price upon submission and client approval of Draft Final Survey Report **4th Payment: Twenty (20%) percent** of Contract Price upon submission and client approval of final survey Report and provision of a certificate of satisfaction by an inspection committee that the consultant has fulfilled contract obligation *Note:* 1. *Consultant has to provide a certificate that all the key personnel as envisaged in the Contract Agreement have been actually deployed in the project. They have to furnish the certificate at the time of submission of their invoice to Director (Highway Planning & Design) from time to time.* 2. *After completion of services, the final contract amount shall be worked out on the basis of inputs and services actually carried out and the payment shall be restricted accordingly.* *[Total sum of all installments shall not exceed the Contract price set up in SCC38.1. Every Payment shall be subject to (i) submission to the Procuring Entity of the prerequisite Report and/or payment request documents, and, (ii) approval and acceptance of the said reports and documents by the Procuring Entity]*
40.2.4	The accounts are: for foreign currency: *[insert account]*.

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	for local currency: *[insert account]*.
41.1	The interest rate is: *[insert rate]*.
44.1	Disputes shall be settled by arbitration in accordance with the following provisions: 1. Selection of Arbitrators. Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three (3) arbitrators, in accordance with the following provisions: (a) Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to [name an appropriate international professional body, e.g., the Federation Internationale des Ingenieurs-Conseil (FIDIC) of Lausanne, Switzerland] for a list of not fewer than five (5) nominees and, on receipt of such list, the Parties shall alternately strike names therefrom, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the date of the list, [insert the name of the same professional body as above] shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute. (b) Where the Parties do not agree that the dispute concerns a technical matter, the Procuring Entity and the Consultant shall each appoint one (1) arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two (2) arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by [name an appropriate international appointing authority, e.g., the Secretary General of the Permanent Court of Arbitration, The Hague; the Secretary General of the International Centre for Settlement of Investment Disputes, Washington, D.C.; the International Chamber of Commerce, Paris; etc.].

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	(c) If, in a dispute subject to paragraph (b) above, one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the [name the same appointing authority as in said paragraph (b)] to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute. 2. Rules of Procedure. Except as otherwise stated herein, arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in force on the date of this Contract. 3. Substitute Arbitrators. If for any reason an arbitrator is unable to perform his/her function, a substitute shall be appointed in the same manner as the original arbitrator. 4. Nationality and Qualifications of Arbitrators. The sole arbitrator or the third arbitrator appointed pursuant to paragraphs 1(a) through 1(c) above shall be an internationally recognized legal or technical expert with extensive experience in relation to the matter in dispute and shall not be a national of the Consultant's home country [If the Consultant consists of more than one entity, add: or of the home country of any of their members or Parties] or of the Government's country. For the purposes of this Clause, "home country" means any of: (a) the country of incorporation of the Consultant [If the Consultant consists of more than one entity, add: or of any of their members or Parties]; or (b) the country in which the Consultant's [or any of their members' or Parties'] principal place of business is located; or (c) the country of nationality of a majority of the Consultant's [or of any members' or Parties'] shareholders; or

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	(d) the country of nationality of the Sub-consultants concerned, where the dispute involves a subcontract. 5. Miscellaneous. In any arbitration proceeding hereunder: (a) proceedings shall, unless otherwise agreed by the Parties, be held in *[select a country which is neither the Procuring Entity's country nor the Consultant's country]*; (b) the *English* language shall be the official language for all purposes; and (c) the decision of the sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.

SECTION 9: APPENDICES

APPENDIX A – TERMS OF REFERENCE

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

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

…….....

APPENDIX B – KEY EXPERTS

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

…….....

APPENDIX C – BREAKDOWN OF CONTRACT PRICE

{Insert the table with the unit rates to arrive at the breakdown of the lump-sum price. The table shall be based on [Form FIN-3andFIN-4] of the Consultant's Proposal and reflect any changes agreed at the Contract negotiations, if any. The footnote shall list such changes made to [FormFIN-3andFIN-4] at the negotiations or state that none has been made.}

APPENDIX D – FORM OF ADVANCE PAYMENT GUARANTEE

[*Note:* See Clause GCC 41.2.1 and SCC 41.2.1]

Bank Guarantee for Advance Payment_____*[Bank's Name and Address of Issuing Branch or Office]* Beneficiary:____*[Name and Address of Procuring Entity]*

Date:_____

ADVANCEPAYMENTGUARANTEE No.:_____

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

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of

_____*[amount in figures]* () *[amount in words]* is to be made against an advance payment guarantee.

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

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Consultant on their account number_____at _____*[name and address of bank]*.

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

Full repayment of the amount of the advance payment, or on the day of_____, 2 whichever is earlier.

Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

[Signature]

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

APPENDIX E – FORM OF ADVANCE PAYMENTS GUARANTEE

[*Note:* See Clause GCC 41.2 and SCC41.2] Bank Guarantee for Advance Payment

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

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

ADVANCE PAYMENT GUARANTEE No._____

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

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

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

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Consultant on their account

number_____at _____*[name and address of bank]*.

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

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

[Signature (s)]

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

---

[1] *The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency (ies) of the advance payment as*

Specified in the Contract, or in a freely convertible currency acceptable to the Procuring Entity.

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

SECTION 10. NOTIFICATION FORMS

NOTIFICATION OF INTENTION TO AWARD

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

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

No:_____*[insert RF Preference number]*

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

a) Request a debriefing in relation to the evaluation of your Proposal, and/or

b) Submit a Procurement-related Complaint in relation to the decision to award the contract.

The successful Consultant

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

i) Short listed Consultants

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

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

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

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

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

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

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

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

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

Attention: [*insert full name of person, if applicable*]

Title/position: [*insert title/position*]

Agency: [*insert name of Procuring Entity*]

Email address: [*insert email address*]

Fax number: [*insert fax number*] *delete if not used*

If your request for a debriefing is received within the 5 Business Days deadline, we will provide the debriefing within five (5) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (5) Business Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.

The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.

If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fourteen (14) Business Days from the date of publication of the Contract Award Notice.

iv) How to Make a Complaint

DEADLINE: The deadline for submitting a Procurement-related Complaint challenging the decision to award the contract expires on midnight, [*insert date*] (local time).

Provide the contract name, reference number, name of the Consultant, contact details; and address the Procurement-related Complaint as follows:

Attention: [*insert full name of person, if applicable*]

Title/position: [*insert title/position*]

Agency: [*insert name of Procuring Entity*]

Email address: [*insert email address*]

Fax number: [*insert fax number*] *delete if not used*

[At this point in the procurement process] [Upon receipt of this notification] you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.

In summary, there are four essential requirements:

You must be an 'interested party'. In this case, that means a Consultant who has submitted a Proposal in this selection process and is the recipient of a Notification of Intention to Award.

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

You must submit the complaint within the deadline stated above.

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

v) Standstill Period

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

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

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

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

On behalf of_____

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

Signature:_____

Name:_____

Title/position: _____

Telephone: _____

Email: _____

REQUEST FOR REVIEW

FORM FOR REVIEW (r.203(1))

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO…….OF…….20……...

BETWEEN

……...…….APPLICANT

AND

……RESPONDENT (Procuring Entity)

Request for review of the decision of the…… (Name of the Procuring Entity of ……dated the…day of ……20…….in the matter of Tender No……..…of ……20…. for .....(Tender description).

REQUEST FOR REVIEW

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

1.

2.

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

1.

2.

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

FOR OFFICIAL USE ONLY Lodged with the Secretary Public Procurement Administrative Review Board on……day of ……....20….……

SIGNED

Board Secretary

LETTER OF AWARD

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

the winning Consultant] Subject: *Notification of Award Contract No.....*

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

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

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

Authorized Signature:_____ Name and Title of Signatory:___

Name of Agency:_____

Attachment: *Draft Negotiated Contract*

BENEFICIAL OWNERSHIP DISCLOSURE FORM

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

This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful Consultant. In case of joint venture, the Consultant must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.

For the purposes of this Form, a Beneficial Owner of a Consultant is any natural person who ultimately owns or controls the Consultant by meeting one or more of the following conditions:

- *Directly or indirectly holding 25% or more of the shares.*
- *Directly or in directly holding 25% or more of the voting rights.*
- *Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Consultant.*

Request for Proposal Reference No.:_____[*insert identification no*]
Name of the Assignment:_____*[insert name of the assignment]* to: _____*[insert complete name of Procuring Entity]*

In response to your notification of award dated_____*[insert date of notification of award]* to furnish additional information on beneficial ownership:_*[select one option as applicable and delete the options that are not applicable]*

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

Details of beneficial ownership

Identity of Beneficial Owner	**Directly or indirectly holding 25% or more of the shares** **(Yes / No)**	**Directly or indirectly holding 25 % or more of the Voting Rights** **(Yes / No)**	**Directly or indirectly having the right to appoint a majority of the board of the directors or an equivalent governing body of the Consultant** **(Yes / No)**
[include full name (last, middle, first), nationality, country of residence]			

OR

ii) We declare that there is no Beneficial Owner meeting one or more of the following conditions: directly or indirectly holding 25% or more of the shares. Directly or indirectly holding 25% or more of the voting rights. Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Consultant.

OR

iii) We declare that we are unable to identify any Beneficial Owner meeting one or more of the following conditions. [If this option is selected, the Consultant shall provide explanation on why it is unable to identify any Beneficial Owner]

Directly or indirectly holding 25% or more of the shares. Directly or indirectly holding25% or more of the voting rights.

Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Consultant]"

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

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

Title of the person signing the Proposal: ..... [insert complete title of the person signing the Proposal]

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

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

**In the case of the Proposal submitted by a Joint Venture specify the name of the Joint Venture as Consultant. In the event that the Consultant is a*

Joint venture, each reference to "Consultant" in the Beneficial Ownership Disclosure Form (including this Introduction there to) shall be read to refer to the joint venture member.

***Person signing the Proposal shall have the power of attorney given by the Consultant. The power of attorney shall be attached with the Proposal Schedules.*

NB/

1. Consultant has to provide a certificate that all the key personnel as envisaged in the Contract Agreement have been actually deployed in the project. They have to furnish the certificate at the time of submission of their invoice to Director (Highway Planning and Design) from time to time.

2. After completion of services, the final contract amount shall be worked out on the basis of inputs and services actually carried out and the payment shall be restricted accordingly.

The Consultancy services rendered by the Consultant shall be carried out to the satisfaction of an Inspection and Acceptance committee following which a contract completion certificate shall be issued and final payment made under clause 6.2 (b) of the Special Conditions. An inspection and acceptance committee shall be constituted after the Consultant has submitted Final Project Reports.