



# **KENYA RURAL ROADS AUTHORITY**

## **REQUEST FOR PROPOSALS**

**FOR**

**CONSULTANCY SERVICES FOR ENVIRONMENTAL AND SOCIAL  
IMPACT ASSESSMENT (ESIA) STUDY FOR REHABILITATION AND  
PERIODIC MAINTENANCE OF KAPSOWAR – CHESOI – TIRAP (D340/  
E352) ROAD**

**TENDER NUMBER: KeRRA/08/40/19/2021/2022**

**OCTOBER, 2021**

DIRECTOR (PLANNING, DESIGN &  
ENVIRONMENT)  
KENYA RURAL ROADS AUTHORITY  
P. O. BOX 48151-00100  
**NAIROBI**

DIRECTOR GENERAL  
KENYA RURAL ROADS AUTHORITY  
P. O. BOX 48151-00100  
**NAIROBI**

## **TABLE OF CONTENTS**

<b>SECTION 1: INVITATION TO REQUEST FOR PROPOSALS (RFP)</b> .....	1
<b>SECTION 2: INSTRUCTIONS TO CONSULTANTS AND DATA SHEET</b> .....	3
<b>Section 2(a): Instructions to Consultants (ITC)</b> .....	3
<b>Section 2 (b): Data Sheet</b> .....	21
<b>FORM TECH-1: TECHNICAL PROPOSAL SUBMISSION FORM</b> .....	29
<b>FORM TECH-2: CONSULTANT'S ORGANIZATION AND EXPERIENCE</b> .....	35
<b>FORM TECH-3: COMMENTS AND SUGGESTIONS</b> .....	36
<b>FORM TECH-4: DESCRIPTION OF APPROACH, METHODOLOGY AND WORKPLAN</b> .....	37
<b>FORM TECH-5: WORK SCHEDULE AND PLANNING FOR DELIVERABLES</b> .....	38
<b>FORM TECH-6A: TEAM COMPOSITION, ASSIGNMENT, AND KEY EXPERTS' INPUTS</b> .....	39
<b>FORM TECH-6B: CURRICULUM VITAE (CV)</b> .....	40
<b>FORM TECH-7: MANDATORY SUPPORT DOCUMENTS</b> .....	41
<b>FORM TECH-8: SELF-DECLARATION FORMS</b> .....	42
<b>FORM TECH-9: TENDER-SECURING DECLARATION FORM {r 46 and 155(2)}</b> .....	45
<b>FORM TECH-10: CERTIFICATE OF BIDDER'S VISIT TO SITE</b> .....	46
<b>SECTION 4: FINANCIAL PROPOSAL STANDARD FORMS</b> .....	47
<b>FORM FIN-1: FINANCIAL PROPOSAL SUBMISSION FORM</b> .....	48
<b>FORM FIN-2: SUMMARY PRICE PROPOSAL</b> .....	49
<b>FORM FIN-3: SUMMARY OF COSTS</b> .....	50
<b>FORM FIN-3A: BREAKDOWN OF REMUNERATION</b> .....	51
<b>FORM FIN-3B: BREAKDOWN OF REIMBURSABLE EXPENSES</b> .....	52
<b>FORM FIN-4: ADMINISTRATIVE COSTS</b> .....	53
<b>SECTION 5: TERMS OF REFERENCE</b> .....	54
<b>SECTION 6: CONDITIONS OF CONTRACT AND CONTRACT FORMS</b> .....	63
<b>FORM OF CONTRACT</b> .....	65
<b>GENERAL CONDITIONS OF CONTRACT</b> .....	67
<b>SPECIAL CONDITIONS OF CONTRACT</b> .....	81
<b>APPENDICES TO THE CONTRACT</b> .....	84

## **SECTION 1: INVITATION TO REQUEST FOR PROPOSALS (RFP)**

Dear Sirs,

### **REQUEST FOR TECHNICAL AND FINANCIAL PROPOSALS FOR CONSULTANCY SERVICES FOR ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT (ESIA) STUDY FOR REHABILITATION AND PERIODIC MAINTENANCE OF KAPSOWAR – CHESOI – TIRAP (D340/ E352) ROAD**

#### **TENDER NUMBER: KeRRA/08/40/19/2021/2022**

1. Kenya Rural Roads Authority (KeRRA) is a State Corporation established under the Kenya Roads Act, 2007 with the responsibility for management, development, rehabilitation and maintenance of rural roads. The Authority has set aside funds in its budget towards the cost of the subject consulting services.
2. The Authority hereby invites Proposals from eligible Consulting Firms to provide the following consulting services (here in after called “the services”): Provision of Consultancy Services for Environmental and Social Impact Assessment (ESIA) Study for Rehabilitation and Periodic Maintenance of Kapsowar – Chesoi – Tirap (D340/ E352) Road. More details on the Services are provided in Section 5 [Terms of Reference].
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. A firm will be selected under Quality and Cost Based Selection Method and, in a format, as described in this RFP, in accordance with the Public Procurement and Asset Disposal Act 2015, a copy of which is found at the following website: [www.ppra.go.ke](http://www.ppra.go.ke).
5. This Request for Proposal document is packaged as follows:

Section 1: Invitation to Request for Proposals (RFP)

Section2: Instructions to Consultants and Data Sheet

Section 3: Technical Proposal Standard Forms

Section 4: Financial Proposal Standard Forms

Section 5: Terms of Reference

Section 6: Standard Forms of Contract

Section 7: Appendices

6. Details on the Proposals' submission date, time and address are provided in the ITC 18.5 and ITC 20.1 of the Data Sheet
7. Bids not received at the submission venue by the closing date and time indicated above will not be accepted for opening and will be rejected and returned unopened.

**Eng. Philemon K. Kandie (Ag. Director General)**

**Kenya Rural Roads Authority**

**Barabara Plaza Block B, Airport South Road**

**P.O. Box 48151-00100, NAIROBI, KENYA**

**Tel: 020-7807600/01-05; 0711-851103**

**Email: [kerra@kerra.go.ke](mailto:kerra@kerra.go.ke); [dg@kerra.go.ke](mailto:dg@kerra.go.ke)**

## **SECTION 2: 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) Section 2 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.

## **5.2 Collusive practices**

- 5.2 The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any Consultant found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Consultants shall be required to complete and sign the “Certificate of Independent Proposal Determination” annexed to the Proposal Form.
- 5.3 In further pursuance of this policy, Consultants shall permit and shall cause their agents (where declared or not), subcontractors, sub-consultants, service providers, suppliers, and their personnel, to permit the Government and its agencies to inspect all accounts, records and other documents relating to any short-listing process, Proposal submission, and contract performance (in the case of award), and to have them audited by auditors, investigators or compliance officers.

## **6. Eligibility**

- 6.1 In selection of Consultants, short-listing shall be composed of firms or individuals who belong to the same line of professional business and who are almost of the same capability.
- 6.2 Unless otherwise specified in the Data Sheet, the Procuring Entity permits Consultants including proposed experts, joint ventures and individual members from all countries and categories to offer consulting services. The maximum number of members so far JV shall be specified in the DS.
- 6.3 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for submission of proposals, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website [www.cak.go.ke](http://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 ITC6.1 and 6.2 above:



- a) Sanctions - A firm or an individual that has been debarred from participating in public procurement shall be ineligible to be awarded a contract, or to benefit from the contract, financially or otherwise, during the debarment period. The list of debarred firms and individuals is available from the website of PPRA [www.ppra.go.ke](http://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 into 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 so 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 initialled 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 be 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 valuers of the Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded and after the Procuring Entity notifies all the Consultants in accordance with ITC 23.1.
- 21.2 The Consultant is not permitted to alter or modify its Proposal in anyway after the proposal submission deadline except as permitted under ITC12.7. While evaluating the Proposals, the Evaluation Committee will conduct the evaluation solely on the basis of the submitted Technical and Financial Proposals.

## **22. Evaluation of Technical Proposals**

- 22.1 The 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 be included 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 results of the technical evaluation, described in ITC 23.1 and 23.3.

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

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

#### **24. Correction of Errors**

- 24.1 Activities and items described in the Technical Proposal but not priced in the Financial Proposal, shall be assumed to be included in the prices of other activities or items, and no corrections are made to the Financial Proposal.
- 24.2 Time-Based Contracts: If a Time-Based contract form is included in the RFP, in case of discrepancy between (i) a partial amount(sub-total) and the total amount, or (ii)between the amount derived by multiplication of unit price with quantity and the total price, or (iii) between figures and words, the later will prevail. In case of discrepancy between the Technical and Financial Proposals in indicating quantities of input, the Technical Proposal prevails and the Procuring Entity's evaluation committee shall correct the quantification indicated in the Financial Proposal so as to make it consistent with that indicated in the Technical Proposal, apply the relevant unit price included in the Financial Proposal to the corrected quantity, and correct the total Proposal cost.
- 24.3 Lump-Sum Contracts - If a Lump-Sum contract form is included in the RFP, the Consultant is deemed to have included all prices in the Financial Proposal, so neither arithmetical correction nor price adjustments shall be made. The total price, net of taxes understood as per ITC 25 below, specified in the Financial Proposal (Form FIN-1) shall be considered as the offered price.

#### **25. Taxes**

- 25.1 Subject to ITC 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 risk sand responsibilities and any other requirements of the RFP document.

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

## **28. Abnormally High Prices**

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

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

- i) If the proposal price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the proposal depending on the Procuring Entity's budget considerations.
- ii) If specifications, TOR, scope of work and/or conditions of contract are contributory to the abnormally high proposal prices, the Procuring Entity shall reject all proposals and may re-invite for proposals for the contract based on revised estimates, specifications, TOR, scope of work and conditions of contract.

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

## **29. Combined Quality and Cost Evaluation**

### **a. Quality and Cost Based Selection (QCBS) Method**

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

### **b. Fixed Budget Selection (FBS) Method**

29.2 In the case of FBS, those Proposals that exceed the budget indicated in ITC 14.1.4 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 incapacity. In such case, the Consultant shall offer a substitute Key Expert within the period of time specified in the letter of invitation to negotiate the Contract, who shall have equivalent or better qualifications and experience than the original candidate.

### **32.5 Technical negotiations**

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

### **32.6 Financial negotiations**

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

- 32.7 If the selection method included cost as a factor in the evaluation (that is QCBS, FBS, LCS), the unit rates and the total price stated in the Financial Proposal for a Lump-Sum contract shall not be negotiated.
- 32.8 Where QBS or CQS methods was used for a *Lump-sum Contract* as indicated in the RFP, the unit rates negotiations shall not take place, except when the offered Key Experts and Non-Key Experts' remuneration rates 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-3A: 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-3A: 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 initialized 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.

## Section 2 (b): Data Sheet

<b>A. General Provisions</b>	
Reference to ITC Clause	
1 (j)	<p>Electronic procurement system shall be used: <b>No.</b></p> <p>The Procuring Entity shall use the following electronic procurement system to manage this Request for Proposal process: <b>N/A</b></p> <p>The electronic procurement system shall be used to manage the following part of the RFP process: <b>N/A</b></p>
2.1	<p>Name of the Procuring Entity: <b>Kenya Rural Roads Authority.</b></p> <p>The consultant selection method is: <b>Quality and Cost Based Selection Method.</b></p>
2.2	<p>Financial Proposal to be submitted together with Technical Proposal in separate envelopes: <b>Yes.</b></p> <p>The name of the assignment is: <b>Provision of Consultancy Services for Environmental and Social Impact Assessment (ESIA) Study for Rehabilitation and Periodic Maintenance of Kapsowar – Chesoi – Tirap (D340/ E352) Road.</b></p>
2.3	<p>In order to adhere to Government guidelines on the management of COVID-19, the Authority will not conduct a Pre-Tender Site Meeting. However, Pre-bid Site visits shall be open BUT NOT MANDATORY and Bidders are encouraged to make personal arrangements and visit the project sites so as to obtain for themselves all information that may be necessary for preparing the bid and entering into a contract for the Consultancy Services. This shall be done with prior arrangements with the respective KeRRA Regional Directors. Contact details for the Regional Directors are available on the Authority's Website.</p> <p>The costs of visiting the sites shall be borne entirely by the Consultants. The Consultants and any of their Staff or Agents will be granted permission by the Procuring Entity to enter its premises and lands for the purpose of such inspection, but only on the express condition that the Consultants, their Staff and Agents, will release and indemnify the Procuring Entity and its Staff and Agents from and against all liability in respect thereof, and will be responsible for personal injury (whether fatal or otherwise), loss of or damage to property and any other loss, damage, costs and expenses however caused, which but for the exercise of such permission would not have arisen.</p>
2.4	<p>The Procuring Entity will provide the following inputs, project data, reports, etc. if required, subject to availability: <b>Any relevant document as may be required to facilitate the preparation of the Proposals. The Employer shall also give assistance to facilitate the timely granting of the Consultant and his Staff of</b></p>

	<b>unobstructed access to all sites and locations involved in the preparation of the Proposals.</b>
3.3 (iv)	Other Conflicting Relationships: N/A
6.2	Maximum number of members in the Joint Venture (JV) shall be: <b>Two (2)</b>
6.6 (a)	The list of debarred firms and individuals is available at the PPRA’s website <a href="http://www.ppra.go.ke">www.ppra.go.ke</a> or email <a href="mailto:complaints@ppra.go.ke">complaints@ppra.go.ke</a> .
6.7	Margin of Preference and Reservations: <b>Not Applicable</b>
<b>B. Preparation of Proposals</b>	
10.1	<p>The Proposal shall comprise the following:</p> <p><b>1<sup>st</sup> Inner Envelop with the Technical Proposal:</b>  <i>Duly executed Power of Attorney</i>  <b>TECH-1: Technical Proposal Submission Form</b>  <b>TECH-2: Consultant’s Organization and Experience</b>  <b>TECH-3: Comments and Suggestions on terms of reference</b>  <b>TECH-4: Description of Approach, Methodology and Workplan</b>  <b>TECH-5: Work Schedule and Planning of Deliverables</b>  <b>TECH-6A: Team Composition, Assignment, and Key Experts’ Input</b>  <b>TECH 6B: Curriculum Vitae (CV) For Key Experts</b>  <b>TECH-7: Mandatory Documentary Evidence</b>  <b>TECH-8: Self-Declaration forms</b></p> <p><b>And</b></p> <p><b>2<sup>nd</sup> Inner Envelop with the Financial Proposal:</b>  <b>FIN-1: Financial Proposal Submission Form</b>  <b>FIN-2: Summary Price Proposal</b>  <b>FIN-3: Summary of Costs</b>  <b>FIN-3A: Breakdown of Remuneration</b>  <b>FIN-3B: Breakdown of Reimbursable Expenses</b>  <b>FIN-4: Administrative Costs</b></p>
11.1	Participation of Sub-consultants, and Key Experts in more than one Proposal is permissible: <b>Yes</b>
12.1	Proposals must remain valid for <b>210 Calendar Days</b> after the proposal submission deadline.
13.1	<p>Clarifications may be requested in writing so as to reach the Procuring Entity not later than <b>7 Days</b> prior to the submission deadline.</p> <p>The contact information for requesting clarifications is at the same address as “proposal submission address” indicated in Clause 18.5 of this Data Sheet, or via Email Address: <a href="mailto:procurement@kerra.go.ke">procurement@kerra.go.ke</a> and <a href="mailto:environment@kerra.go.ke">environment@kerra.go.ke</a>.</p> <p>The Procuring Entity will publish its responses at the website: <a href="http://www.kerra.go.ke">www.kerra.go.ke</a>.</p>
14 (b)	<p>(i) The Consultant will be responsible for determining the Key Experts’ time-input (to be expressed in Person-Weeks).</p> <p>(ii) The duration required to complete the assignment is <b>Eleven (11) Consecutive Weeks</b>.</p>



14 (c) & 26.2	Not Applicable
14 (d)	Key Experts shall not appear in more than one Proposal: <b>NO</b>
16.1 (b)	The Financial Proposal will include (but not limited to) the following reimbursable expenses: <i>(1) A per diem allowance, including hotel, for experts for every day of absence from the home office for the purposes of the Services</i> <i>(2) Cost of travel by the most appropriate means of transport and the most direct practicable route</i> <i>(3) Cost of office accommodation, including overheads and back-stop support</i> <i>(4) Communication costs</i> <i>(5) Cost of purchase or rent or freight of any equipment required by the Consultant in the execution of the assignment, including computer software costs</i> <i>(6) Cost of reports production (including printing) and delivering to the Procuring Entity</i> <i>(7) Other allowances where applicable and provisional or fixed sums (if any)</i>
16.2	A price adjustment provision applies to remuneration rates: <b>NO</b>
16.3 & 25	(i) The Consultant shall be liable to pay all duties and taxes (including VAT) in connection with this assignment payable 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.  (ii) The Contract shall be concluded on the basis of the agreement provided under Section 6. The Consultant will have to prepare their offer on the assumption that their expatriate staff, the importation of vehicles, equipment and material will not be exempted from taxes, duties, levies, and other charges required by the Laws of Kenya.  (iii) Information on the Consultant's tax obligations in the Procuring Entity's country can be found on the Kenya Revenue Authority website: <a href="http://www.kra.go.ke">www.kra.go.ke</a> .
16.4	The Financial Proposal shall be stated in the following currencies: <b>Kenya Shillings.</b>
<b>C. Submission, Opening and Evaluation</b>	
17.1	The Consultants <b>shall not</b> have the option of submitting their Proposals electronically.
17.5	The Consultant must submit: <b>(a) Technical Proposal: One (1) Original and One (1) Copy</b> <b>(b) Financial Proposal: One (1) Original and One (1) Copy</b>
18.5	The Proposals must be submitted not later than: Date: <b>4<sup>th</sup> November, 2021</b> Time: <b>11:00am.</b> Proposals must be submitted not later than the date specified above or on any subsequent addenda.

	<p>The proposal submission address is: -</p> <p><b>Director General Kenya Rural Roads Authority Barabara Plaza Block B, Airport South Road Opposite KCAA Building P.O. Box 48151-00100 <u>NAIROBI</u></b></p> <p>Completed Proposals shall be enclosed in plain sealed envelopes. The outer envelope shall also be clearly marked: -</p> <p><b>“Request for Technical and Financial Proposals for Consultancy Services for Environmental and Social Impact Assessment (ESIA) Study for Rehabilitation and Periodic Maintenance of Kapsowar – Chesoi – Tirap (D340/ E352) Road, Tender Number: KeRRA/08/40/19/2021/2022”.</b></p> <p>The Proposals shall be deposited in the Tender Box on Ground Floor, Barabara Plaza, Block B, or be addressed and posted to the proposal submission address above on or before the date and time indicated above. Bulky tenders which do not fit in the Tender Box shall be delivered to the reception office located on the Ground Floor, Barabara Plaza, Block B.</p> <p>Bids not received at the submission venue by the closing date and time indicated above will not be accepted for opening and will be rejected and returned unopened.</p>
20.1	<p>An online option of the opening of the Technical Proposals is offered: <b>NO</b></p> <p>The opening shall take place at: Street Address: <b>Barabara Plaza, Block B, Airport South Road</b> Floor Number: <b>Ground Floor</b> City/County: <b>Nairobi</b> Country: <b>Kenya</b> Date: <b>4<sup>th</sup> November, 2021</b> Time: <b>11:00am</b></p>
20.2	<p>In addition, the following information will be read aloud at the opening of the Technical Proposals: <b>Bidder Number, Bidder Name, Number of Copies of Technical Proposal, Whether Financial Proposal is Enclosed, Number of Pages of Technical Proposal.</b></p>
22.1	<p>Other eligibility and mandatory criteria shall be:</p> <ol style="list-style-type: none"> <li>a) The Proposal is Sequentially Serialised from the first page to the last (in the format of 1,2,3,4,5.....).</li> <li>b) Firm has submitted a written Power of Attorney authorizing the signatory of the bid to commit the Bidder <i>Executed</i> by a Commissioner for Oaths.</li> <li>c) Firm has submitted a <b>certified</b> copy of Certificate of Incorporation by the Registrar of Companies.</li> <li>d) Firm has submitted a <b>certified</b> copy of valid Single Business Permit.</li> <li>e) Firm has submitted a copy of Valid Tax Compliance Certificate from</li> </ol>

	<p>Kenya Revenue Authority.</p> <p>f) Firm has submitted copy of Taxpayer Registration Certificate (PIN and VAT).</p> <p>g) Firm has submitted <b>certified</b> copy of Registration Certificate with the National Environment Management Authority (NEMA) together with a Valid NEMA Practicing Licence.</p> <p>h) Firm has submitted proof of similar previous experience by attaching copies of Forms of Contracts or Award Letters together with the accompanying Performance Certificates, or similar evidence of similar assignments carried out by the firm.</p> <p>i) Firm has submitted Curriculum Vitae (CV) of the proposed Key Experts, signed by the respective Expert not earlier than the date of this invitation.</p> <p>j) Firm has submitted current Certified CR12 Certificate (dated within 12 Months before date of opening) from the Registrar of Companies. This should be provided with Identification Documents of Directors <i>and all individuals listed on the CR12</i> (ID or Passport).</p> <p>k) Firm has submitted Pre-Bid Site Visit Certificate duly endorsed by the Authorized KeRRA Staff (Not Applicable).</p> <p>l) Firm has submitted details on current work load and status. For eligibility, the total Number of ongoing contracts with the Authority (KeRRA) must not exceed <b>Four (4)</b>.</p> <p>m) Firm has demonstrated capacity to have a Working Capital amount minimum or equivalent to <b>Kshs 500,000</b> based on the Latest (2020) Audited Accounts. Audited Accounts may be supported by a Line of Credit Specific for this tender.</p> <p>n) Firm has submitted a Technical Proposal complete with duly Filled, Signed and Stamped (<i>With Company Seal/ Rubber Stamp</i>) ALL Tendering Forms and Schedules given under Section 3 of the Request for Proposals document. Alteration of the formats of the Forms shall lead to disqualification.</p> <p><b>All Certification of documents shall be executed by a Commissioner of Oaths or Notaries Public.</b></p> <p><b>Failure by the bidder to attach any of the above information shall constitute grounds for disqualification for being non-responsive.</b></p>																		
22.2	<p>The Criteria, sub-criteria, and point system for the evaluation of the Technical Proposals:</p> <table border="1" data-bbox="407 1583 1451 1923"> <thead> <tr> <th>S/NO.</th> <th>DESCRIPTION</th> <th>POINTS</th> </tr> </thead> <tbody> <tr> <td>(i)</td> <td>Specific experience of the Consultant, as a firm, relevant to the assignment</td> <td>15</td> </tr> <tr> <td rowspan="4">(ii)</td> <td>Adequacy and quality of the proposed methodology and workplan in responding to the Terms of Reference (TOR):</td> <td></td> </tr> <tr> <td>Comments on Terms of Reference (TOR)</td> <td>2</td> </tr> <tr> <td>Technical approach and methodology</td> <td>18</td> </tr> <tr> <td>Workplan</td> <td>3</td> </tr> <tr> <td></td> <td>Organization and Staffing</td> <td>2</td> </tr> </tbody> </table>	S/NO.	DESCRIPTION	POINTS	(i)	Specific experience of the Consultant, as a firm, relevant to the assignment	15	(ii)	Adequacy and quality of the proposed methodology and workplan in responding to the Terms of Reference (TOR):		Comments on Terms of Reference (TOR)	2	Technical approach and methodology	18	Workplan	3		Organization and Staffing	2
S/NO.	DESCRIPTION	POINTS																	
(i)	Specific experience of the Consultant, as a firm, relevant to the assignment	15																	
(ii)	Adequacy and quality of the proposed methodology and workplan in responding to the Terms of Reference (TOR):																		
	Comments on Terms of Reference (TOR)	2																	
	Technical approach and methodology	18																	
	Workplan	3																	
	Organization and Staffing	2																	

	<b>Total points for criteria (i) and (ii)</b>	<b>40</b>
<i>Notes to Consultant: The Procuring Entity will assess whether the proposed methodology is clear, responds to the TOR, Workplan is realistic and implementable; overall team composition is balanced and has an appropriate skills mix; and the Workplan has right input of Experts.</i>		
(iii)	Key Experts' qualifications and competence for the assignment: <i>(Notes to Consultant: Each position number corresponds to the same for the Key Experts in Forms TECH-6A and TECH-6B to be prepared by the Consultant)</i>	
	Position K-1: Team Leader	30
	Position K-2: Sociologist	15
	Position K-3: Civil Engineer	15
	<b>Total points for criterion (iii)</b>	<b>60</b>
	<b>GRAND TOTAL</b>	<b><u>100</u></b>

The number of points to be assigned to each of the above Key Experts positions shall be determined considering the following three sub-criteria and relevant percentage weights:

<b>S/NO.</b>	<b>STAFF</b>	<b>YEARS</b>	<b>POINTS</b>
<b>1.</b>	<b>Position K-1: Team Leader</b>	10	<b>30.0</b>
	Qualification and Skills		8.0
	General professional experience		5.0
	Specific professional experience		17.0
<b>2.</b>	<b>Position K-2: Sociologist</b>	6	<b>15.0</b>
	Qualification and Skills		4.0
	General professional experience		2.0
	Specific professional experience		9.0
<b>3.</b>	<b>Position K-3: Civil Engineer</b>	6	<b>15.0</b>
	Qualification and Skills		4.0
	General professional experience		2.0
	Specific professional experience		9.0

The minimum technical score required to pass is **70%**.

24	<p>Add to Clause 24.3 “The evaluation committee will determine whether the financial proposals are complete (i.e. whether the Consultant has costed all the items of the corresponding Technical Proposal). The Evaluation Committee will ensure that the Financial Proposals satisfy the requirements of the Request for Proposals and in particular the conformity to the format provided in the Financial Proposal Forms. Failure to include all the inputs e.g. Administrative Costs, P.C. Sums, Lump sums etc. shall lead to the disqualification of the proposals. The cost of any unpriced items shall be assumed to be included in other costs in the proposal.”</p> <p>Add Sub-Clause 24.4 to read “a) Any error detected if considered a major deviation that affects the substance of the tender, shall lead to disqualification of the tender as non-responsive. b) Any errors in the submitted tender arising from a</p>
----	---

	<p>miscalculation of unit price, quantity, sub-total and total bid price shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of the tender as non-responsive. and c) If there is a discrepancy between words and figures, the amount in words shall prevail.”</p>
29.1	<p>Add the following:</p> <p>Financial Proposals will be checked for completeness and any Financial Proposals with Computational errors shall be rejected.</p> <p>The formulae for determining the Financial Score (Sf) shall be as follows: -</p> <p><math>Sf = 100 \times \frac{FM}{F}</math> where Sf is the financial score; FM is the lowest priced financial proposal and F is the price of the proposal under consideration.</p> <p>Proposals will be ranked according to their combined technical (<i>St</i>) and financial (<i>Sf</i>) scores using the weights (<i>T</i>=the weight given to the Technical Proposal; <i>P</i> = the weight given to the Financial Proposal; <i>T</i> + <i>P</i> = 1) indicated in the Annex.</p> <p>The combined technical and financial score, S, is calculated as follows: - <math>S = St \times T \% + Sf \times P \%</math>. The firm achieving the highest combined technical and financial score will be invited for negotiations.</p> <p>The Weights are as follows: -</p> <p><b>Technical Proposal, T = 90%</b>  <b>Financial Proposal, P= 10%</b></p>
31	The Standstill Period shall be Fourteen (14) Calendar Days.
<b>D. Negotiations and Award</b>	
32.1	Negotiations will be held on a date agreed upon by both parties but before Notification of Intent of Award and at the same address as “proposal submission address” indicated in Clause 18.5 of this Data Sheet. The aim is to reach agreement on all points of the assignment before signing a contract.
35.2	The Consultant shall commence the assignment within <b>Seven (7) Calendar Days</b> after order to commence is issued.
37.1	The procedures for making a Procurement-related Complaints are detailed in the “Procurement Regulations” available from the PPRA Website <a href="http://www.ppra.go.ke">www.ppra.go.ke</a> or email <a href="mailto:complaints@ppra.go.ke">complaints@ppra.go.ke</a> . 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 detailed above.

### **SECTION 3: TECHNICAL PROPOSAL STANDARD FORMS**

*Notes to Consultants* 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

[\_\_\_\_\_ 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. 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](http://www.ppra.go.ke) during the procurement process and the execution of any resulting contract.

- F) We are not guilty of any serious violation of fair employment laws and practices.
- G) We confirm that we are not insolvent, in receivership, bankrupt or on the process of being of being wound up.
- H) 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.
- I) 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 Clause 12, ITC Clause 29.3 and 29.4 may lead to the termination of Contract negotiations.
- J) Our Proposal is binding upon us and subject to any modifications resulting from the Contract negotiations.
- K) We understand that the Procuring Entity is not bound to accept any Proposal that it receives.

We undertake, if our Proposal is accepted and the Contract is signed, to initiate the Services related to the assignment no later than the date indicated in Clause 35.2 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 &*

*Stamp}*

\_\_\_\_\_ 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:

- A) I have read and I understand the contents of this Certificate;
- B) I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;
- C) I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;
- D) 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;
- E) 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;
- F) 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;
- G) 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;
- H) 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]

## **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—
  - (a) Shall not take part in the procurement proceedings;
  - (b) Shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
  - (c) 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) In compliance 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<sup>1</sup> 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 Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect<sup>2</sup> all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and
- (f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a “Self-Declaration Form” as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

---

<sup>1</sup>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.

<sup>2</sup> 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 thereof 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

List only previous similar assignments successfully completed in the last Three (3) years.

- (1) List only those assignments for which the Consultant was legally contracted by a 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).
- (2) The Consultant shall substantiate their claimed experience by presenting copies of either of the following relevant documents; Signed Form of Contract (not the whole contract) or Award letter. This shall be accompanied with a Performance certificate, Completion certificate or Letter of reference to show completion of assignment; which shall be included in the proposal as part of *Form Tech-7 Mandatory Documentary Evidence*.

Assignment Name:	Approx. value of the contract (KES):
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 of 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 WORKPLAN

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 <sup>1</sup> (D-..)	Months											TOTAL	
		1	2	3	4	5	6	7	8	9	.....	n		
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														

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

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


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




**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-....		Home	Field	Total
<b>KEY EXPERTS</b>											
K-1	{e.g., Mr. Abbbb}	[Team Leader]	[Home]	[2 Months]	[1.0m]	[1.0m]					
			[Field]	[0.5m]	[2.5m]	[0m]					
K-2											
K-3											
....											
n											
							<b>Subtotal</b>				
<b>NON-KEY STAFF</b>											
N-1			[Home]								
			[Field]								
N-2											
....											
n											
							<b>Subtotal</b>				
							<b>TOTAL</b>				

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" 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.	<i>{e.g., K-1, Team Leader}</i>
Name of Expert	<i>{Insert full name}</i>
Date of Birth	<i>{day/month/year}</i>
Country of Citizenship	

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

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

Period	Employing organization and your title/position. Contact information for references	Country	Summary of activities performed relevant to the assignment
[e.g., May 2011 – Present]	[e.g., Ministry of ....., advisor/consultant to..... For references: Tel ...../e-mail .....; Mr. Bbbbbbb, Deputy Manager]		

Membership in Professional Associations and Publications: \_\_\_\_\_

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

Adequacy for the Assignment:

Detailed tasks Assigned on Consultant’s Team of Experts	Reference to prior Work/Assignments that best illustrates capability to handle the assigned tasks
<i>{List all deliverables/tasks as in TECH-5 in which the Expert will be involved}</i>	

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 PPR.A.

{day / month/year}

Name of Expert \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

{day / month/year}

Name of authorized \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

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 22.1]*

- (a) Certificate of Incorporation

*{Insert here a certified copy of Certificate of Incorporation by the Registrar of Companies}*

- (b) Single Business Permit

*{Insert here a certified copy of valid Single Business Permit}*

- (c) Tax Compliance Certificate

*{Insert a copy of Valid Tax Compliance Certificate from Kenya Revenue Authority}*

- (d) Practice License and Certificate for the Firm

*{Insert a copy of the Firm's Practice License and Registration Certificate issued by the Professional Body specified under Data Sheet ITC 22.1}*

- (e) Similar Consulting Assignments Experience

*{Insert here proof of similar previous experience by attaching copies of Forms of Contracts or Award Letters together with the accompanying Performance Certificates, or similar evidence of similar assignments carried out by the firm. The assignments shall be the same as those provided under FORM TECH-2}*

- (f) Academic and Professional Certificates

*{Insert copies of the required certificates to demonstrate both academic and professional qualifications relevant to the assignment for all the Key Experts, including their Professional Membership Certificates and Practicing Licences, and in accordance with the requirements of Clause 5 of the Terms of Reference}*

- (g) Certificate of Independent Proposal Determination

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

- (h) .....

**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 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 hereby commit to abide by the provisions of the Code of Ethics for persons participating in Public Procurement and Asset Disposal.

Name of Authorized signatory.....

Sign.....

Position.....

Office address.....

Telephone..... E-mail.....

Name of the Firm/Company.....

Date.....

(Company Seal/ Rubber Stamp where applicable)

**Witness**

Name .....

Sign.....

Date.....

**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 [24 months] starting on [date of tender opening], 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

**FORM TECH-10: CERTIFICATE OF BIDDER’S VISIT TO SITE**

This is to certify that

[Name/s].....

Being the authorized representative/Agent of [Name of Bidder]

.....

Participated in the organised inspection visit of the site of the works for **Consultancy Services for Environmental and Social Impact Assessment (ESIA) Study of Rehabilitation and Periodic Maintenance of Kapsowar – Chesoi – Tirap (D340/ E352) Road**

HELD ON

.....day of.....20.....

Signed.....

(Consultant’s Representative)

.....

(Name of Procuring Entity’s Representative)

.....

(Signature of Procuring Entity’s Representative)

.....

(Designation)



## **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

FIN-2: Summary Price Proposal

FIN-3: Summary of Costs

FIN-3A: Breakdown of Remuneration

FIN-3B: Breakdown of 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 PRICE PROPOSAL**

Name of Activities	Currency	Amount (Kshs)
<b>Sub-total 1: (a) + (b)</b>		-
Add 10% Contingency of Sub-total 1		-
Add Administrative Costs [ <i>as per FORM FIN-4</i> ]		-
<b>Sub-total 2</b>		-
Add 16% VAT of Sub-total 2		-
<b>Grand Total: (In Words)</b>	<b>(In Figures)</b>	

**FORM FIN-3: SUMMARY OF COSTS**

<b>Item</b>	<b>Currency(ies)</b>	<b>Amount</b>
Remuneration		
Reimbursable Expenses		
<b>Sub-total 1: (a) + (b)</b>		

**FORM FIN-3A: BREAKDOWN OF REMUNERATION**

Name	Position (as in TECH-6A and TECH-6B)	Person-Month Remuneration Rate	Time Input in Person/Month (from TECH-6)	Total Amount Expected to be Paid
a) Key Experts				
i)				
ii)				
iii)				
iv)				
b) Non-Key Experts				
i)				
ii)				
iii)				
<b>Sub-total: (a)</b>				

**FORM FIN-3B: BREAKDOWN OF REIMBURSABLE EXPENSES**

S/N°	Type of Reimbursable Expenses	Unit	Unit Cost	Quantity	Total Amount (Kshs)
1.	{e.g., Per Diem}	{Day}			
2.	{e.g., Return Flight between ___ and ___}	{Ticket}			
3.	{e.g., Communication costs between ___ and ___}	{Trip}			
4.	{e.g., reproduction of ___}				
	{e.g., Office Rent}				
	.....				
<b>Sub-total: (b)</b>					

**FORM FIN-4: ADMINISTRATIVE COSTS**

DESCRIPTION		UNIT	QTY	RATE (KSHS)	AMOUNT (KSHS)
1.	Allow a Prime Cost Sum of Kshs 300,000 for the Engineer's Miscellaneous Account to be spent in whole or Part as directed by the Authorized Representative of the Procuring Entity.	Lump Sum	1	300,000	300,000
2.	Extra Over Item No. 1 above for Consultant's Overheads and Profits.	%	1		
<b>TOTAL</b> <i>[To be carried forward to Form FIN-2 of Standard Financial Proposal Submission Forms.]</i>					

## **SECTION 5: TERMS OF REFERENCE**

### **TERMS OF REFERENCE FOR CONSULTANCY SERVICES FOR ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT (ESIA) STUDY FOR REHABILITATION AND PERIODIC MAINTENANCE OF KAPSOWAR – CHESOI – TIRAP (D340/ E352) ROAD**

---

#### **1. INTRODUCTION**

Kenya Rural Roads Authority desires to engage a Consultant to undertake Environmental and Social Impact Assessment for the Rehabilitation and Periodic Maintenance of Kapsowar – Chesoi – Tirap (D340/ E352) Road.

The detailed description of the Consulting services to be performed is described in these Terms of Reference (TOR).

#### **1.1 The Project**

##### **1.1.1 Location and Description**

The project is located in both Marakwet East and West Constituencies of Elgeiyo Marakwet County. The road starts at Kapsowar Town and traverses through Chesoi, Centre 1, Centre 2 and the Maina Market Centers before terminating at Tirap Market Centre. The length of the road is approximately 34 Km.

The major works to be executed under the Contract comprise mainly of but are not limited to the following:

- a) Site clearance and top soil removal.
- b) Benching and widening of existing road to achieve a carriageway width of 6.0 m and shoulders of 1.0 m on either side of the carriageway.
- c) Drainage works including pipe culverts.
- d) Provision of 150mm neat gravel subbase of 30% CBR on benched and widened road sections.
- e) Provision of 150mm thick cement/lime improved natural gravel Base of CBR 160% (CIG160) extended to shoulders.
- f) Provision of 35mm Asphalt Concrete (AC) Type II on carriageway and shoulders.
- g) Application of single seal surface dressing of 14/20mm Class 3 chippings for the carriageway, shoulders, junctions and bus bays.
- h) Installation of two RC Box Culverts.
- i) Installation of road furniture including road marking, reflectors and guard rails.

#### **1.2 Consultancy Description**

The proposed Consultancy involves carrying out Environmental and Social Impact Assessment with a view to establishing the impact on the environment and social effects of the proposed works as described above.



## 2. OBJECTIVES OF THE ASSIGNMENT

The overall objectives of the Consultancy are to: -

- i) Take into account environmental, social, economic, cultural and legal considerations in regards to the proposed roadworks as described above;
- ii) Identify the anticipated environmental impacts of the proposed roadworks and the scale of the impacts;
- iii) Analyse and evaluate the anticipated impacts of the proposed roadworks on the physical, biological, social-cultural and social- economic environment;
- iv) Identify and analyse alternatives to the proposed roadworks;
- v) Evaluate the road design proposed in the engineering report and consider its effects on safety, comfort and convenience of the road users;
- vi) Propose mitigation measures to be taken during and after the implementation of the roadworks;
- vii) Develop an environmental management plan with mechanisms for monitoring and evaluating the compliance and environmental performance which shall include the cost of mitigation measures and the time frame of implementing the measures.

## 3. SCOPE OF THE CONSULTING SERVICES

### 3.1 General

The Consultant shall perform all work necessary as called for in these Terms of Reference. In carrying their work, the Consultant shall co-operate fully with the concerned agencies of the Government of Kenya, in particular the Kenya Rural Roads Authority, Roads Department of the Ministry of Transport & Infrastructure, National Environment Management Authority (NEMA), Ministry of Lands, Housing & Urban Development, Kenya Forest Service, Kenya Wildlife Service, Water Resources Management Authority (WARMA), Relevant 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.

### 3.2 Description

Broadly, the assignment consists of: -

- a) Identification and analysis of the anticipated impacts of the proposed roadworks on the physical, biological, social-cultural and socio-economic environment.
- b) Review of the existing data on the proposed roadworks including social and economic activities within the project areas.
- c) Production an Environmental and Social Impact Assessment (ESIA) Report for the proposed roadworks and seeking the necessary approval for the issuance of a Licence by NEMA. This shall be in accordance with the general environmental impact assessment guidelines outlined in the Environmental (Impact Assessment and Audit) Regulations, 2003, and administrative procedures issued by NEMA. **Consultants should also note that they will be responsible for submission of the final report to**

**NEMA in consultation with the Client.** Where any issues are raised by NEMA after submission of the final report, the Consultant will be required to address them expeditiously. Further, where NEMA recommends that a full study be undertaken, the Consultant will be required to carry out the same within the provisions of the existing contract.

### **3.3 Detailed Scope of the Consulting Services**

The Consultant shall conduct analysis which shall detail the positive and negative effects of the development of the project on the environment, and prepare an EIA report recommending appropriate solutions to minimize any undesirable effects resulting from improvements of the road. The analyses shall include, but not limited to the following: -

#### **3.3.1 Description of the Baseline Environment**

The Consultant is required to identify, obtain/collect, collate and present baseline information/data on the Environmental and socio-economic characteristics of the existing situation along the proposed roads. This data will then be used to describe the status of the project sites before commencement of project implementation. This description involves: -

- a) Physical Environment (topography, geology, climate and meteorology, social-economic activities, air quality, hydrology etc.).
- b) Biological environment (Flora types and diversity, endangered species, sensitive habitats etc.).
- c) Social and cultural environment including present and projected, where appropriate (i.e. population, land use, planned development activities, community structure, employment and labour market, sources and distribution of income, cultural properties).

**NOTE:**

The Consultant will be expected to take relevant measurements and carryout analysis where applicable to support the findings in (a), (b) & (c) above.

The baseline data will further be used to assess potential impacts on health, safety, the environment and the community.

#### **3.3.2 Data Analysis and Evaluation of Alternatives**

The Consultant shall analyse the data using checklist, matrix, threshold limit, overlay or any other appropriate method. The analytical process will involve use of physical, socio-cultural, mathematical, and economic models including an evaluation of costs and benefits. The models will require expert judgment for accurate predictions. In evaluating alternatives, emphasis shall be on the project location, design, technology, scale, or any other aspect that may be deemed significant.

#### **3.3.3 Legislative and Regulatory Framework**

The Consultant shall identify and describe the pertinent regulations and standards governing the environmental quality, health and safety, protection of sensitive areas, land use control at the national and local levels and ecological and social – economic issues. In identifying these regulations, the Consultant will be expected to clearly show the relationship/relevance of these regulations & standards to the proposed works.

#### **3.3.4 Determination of impacts of the road project**

The Consultant will analyse and describe all significant changes brought about by the projects. This should encompass environmental, ecological and social impacts as a result of project. The Consultant will analyse effects on human and natural environments such as land tenure system, population, settlements, land use, cultural practices, forestry, agriculture, water, soils, fragile habitats, air/climate, hydrological conditions, roadside development, and disturbance on vegetation among others. The Consultant will make prioritization of all the concerns identified and differentiate between short-term, medium-term and long-term impacts.

#### **3.3.5 Occupational Health and Safety Concerns**

The Consultant will analyse and describe all occupational Health and Safety Concerns brought about by the construction, site/work installations, operations and decommissioning of the roads. The Consultant will also make recommendations on the corrective and remedial measures implemented under the environmental management plan.

#### **3.3.6 Identification and Development of Management Plan to Mitigate Negative Impacts**

The Consultant will identify negative/positive impacts and develop comprehensive Environmental and Social Management Plans. The plans should recommend a set of *practical* and *project-specific* mitigation and institutional measures to eliminate, minimize or reduce to acceptable levels adverse environmental impacts and/or maximize social benefits. The Consultant should provide cost outlays for the proposed measures as well as their institutional and financial support. The Consultant shall consider varying environmental conditions that may affect the road works during construction, maintenance and use of the road project while proposing measures in mitigating the negative impacts.

#### **3.3.7 Development of Monitoring Plan**

Based on the baseline data of the ESIA's, the Consultant will be required to design comprehensive monitoring and evaluation plans which will act as measures of compliance during implementation and operation stages of the projects.

The Consultant is required to give specific descriptions and technical details of monitoring measures including the parameters to be measured, methods to be used, sampling locations, frequency of measurements, and definition of thresholds that will signal the need for

corrective actions as well as deliver monitoring and reporting procedures. The Consultant should provide a time frame and implementation mechanism, staffing requirements and cost outlays.

### **3.3.8 Identification of Procedures for Winding up of the Project**

The Consultant will identify appropriate procedures for disposal of waste/spoil materials, rehabilitation of borrow pits/quarries and any other activity that will be undertaken during the winding up phase of the project.

### **3.3.9 Identification of Benefits**

The Consultant will be required to identify any benefits that may accrue from the proposed projects. In view of the fact that some indirect economic and social benefits arising from the improvements in road conditions are intangible or difficult to quantify accurately, the Consultant shall undertake detailed qualitative analysis of these benefits. Only those benefits that can be firmly demonstrated in quantitative terms shall be included in the evaluation of the projects. The remaining qualitative benefits that have not been quantified may be used as secondary justification for project implementation.

### **3.3.10 Consultation and Public Participation**

The Consultant shall undertake a stakeholder analysis to identify persons/groups that may be affected by the projects. The Consultant shall work closely with identified stakeholders at different stages of the Assignment.

In seeking the views of the public, the Consultant shall in *liaison with KeRRA* hold public meetings with the affected parties and communities to explain the project and its effects, and to receive their oral or written comments. The Consultant shall also ensure that appropriate notices are sent out at least one week prior to the meetings and that the venue and times of the meetings are convenient and suitable for the affected communities and the other concerned parties. The Consultant will be required to furnish for the Client's approval, a detailed public participation plan clearly identifying the stakeholders as well as the proposed methodology of carrying out consultations.

## **4. REPORTS AND TIME SCHEDULE**

### **4.1 Commencement**

The Consultant shall commence the assignment within **Seven (7) Calendar Days** after order to commence is issued. The effective date shall be the date on which the consultancy agreement shall be signed.

### **4.2 Reports**

All reports shall be in the English language and prepared on A4 metric size paper. The following Reports shall be prepared and submitted for comments/ approval by the Client: -

- (a) **Inception Report:** This report shall comprise of a brief of the project, description of baseline information and project overview including summary of the initial perception or findings. The Consultant shall further give defined proposals covering the methodologies of the Environmental and Social Impact Assessment and the detailed work program of all major activities of the assignment – Original, 4 copies and a digital copy to Client.
- (b) **Preliminary ESIA Report:** This report shall summarize the preliminary findings, analysis, results and recommendations - Original, 4 copies and a digital copy to Client.
- (c) **Draft Final ESIA Report:** This report shall summarize the findings, analysis, results and recommendations of the assessment including consultative public participation and shall contain all supporting material. The Report shall be presented to the stakeholders for review, inputs and contributions - Original, 4 copies and a digital copy to Client.
- (d) **Final ESIA Report:** This report shall incorporate all revisions and comments proposed by the Client following discussions and agreement between the Client and the Consultant. Comments of stakeholders shall be taken into account in the Final Report - Original, 6 copies and a digital copy to Client.

#### **NOTE**

In addition, and immediately after submission of Preliminary and Draft Final Environmental & Social Impact Assessment Reports, the Consultant will be required to initiate and organize presentation meetings with the Proponent in order to present his findings and take into account any observations/comments/suggestions from the Client/Client's representatives.

### **4.3 Submission of Reports**

The above reports shall be submitted to: -

**Director (Planning, Design & Environment)**  
**Kenya Rural Roads Authority**  
**P. O. Box 48151-00100**  
**NAIROBI, KENYA**

### **4.4 Time Schedule**

- 4.4.1 The effective date shall be the date on which the Consultancy agreement shall be signed by the Client. The Consultant shall commence the study within **Seven (7) Calendar Days** of the Order to Commence.

4.4.2 The following time schedule shall be observed in carrying out the Assignment:

<u>Activity</u>	<u>Weeks</u>	<u>Responsibility</u>
(i) Effective Date of Contract	W + 0	KeRRA
(ii) Inception Report to KeRRA	W + 2	Consultant
(iii) Preliminary Report to KeRRA	W + 5	Consultant
(iv) Draft Final Report to KeRRA	W + 9	Consultant
(v) Final Report to KeRRA and NEMA	W + 11	Consultant

N/B: - W=date of commencement

## 5. KEY STAFF

The Consultants must as a minimum, but not limited to, provide the expertise described below, and submit a curriculum vitae for each individual. No dual roles shall be accepted and the Consultant Must provide a different staff member for each role.

### (i) Position K-1: Team Leader

#### *Qualifications and Skills*

A minimum of a Bachelor's Degree in Environmental, Physical or Biological Sciences from a recognized University. In addition, the Team Leader **must** provide a certificate of registration with the National Environmental Management Authority as a Lead Expert and **must** possess a valid & current Practicing Licence.

#### *General Experience*

At least 10 years post qualification experience.

#### *Specific Professional Experience*

At least 8 years post registration as a Lead Expert and practical Experience in undertaking Environmental and Social Impact Assessment Studies in the Infrastructure sector.

### (ii) Position K-2: Sociologist

#### *Qualification and Skills*

A minimum of a Bachelor's Degree in Sociology/Social Studies/Social Sciences from a recognized University.

#### *General Experience*

At least 6 years post-qualification experience.

### ***Specific Professional Experience***

At least 4 years professional and practical experience in social studies for infrastructural projects.

### **(iii) Position K-3: Civil Engineer**

#### ***Qualification and Skills***

A minimum of Bachelor's Degree in Civil Engineering and registered by the Engineer's Board of Kenya (EBK) as a Professional Engineer or have equivalent status.

#### ***General Experience***

At least 6 years post-qualification experience.

#### ***Specific Professional Experience***

At least 4 years post registration as a professional and practical experience in design and supervision of road construction or related projects.

### **NOTE**

Proof of the above requirements is **MANDATORY**. Certified copies of certificates and testimonials for the Key Experts **MUST** be attached. Testimonials in other languages other than English shall only be acceptable where translation is provided. The CV's **MUST** be dated on or after the date of tender advert. In addition, the CV's shall bear the **CURRENT** telephone and postal addresses and **MUST** be signed by the respective Key Expert.

Failure to adhere to the above requirement will result in disqualification of the Consultant.

## **6. TERMS OF PAYMENT**

Payment of the Consultancy services to be provided will be made in accordance with the agreed schedule of person-months of Consultant's Experts' time input at the agreed rates, the itemized schedule of reimbursable expenses, and in accordance with the payment schedule outlined under Clause 41.2 & 44.1(b) of the Special Conditions of Contract.

## **6. PROCURING ENTITY'S INPUT AND COUNTERPART PERSONNEL**

### **Consultant's Obligations**

6.1 The Authority shall supply all pertinent data and information and give such assistance as shall reasonably be required for the conduct by the Consultant of their duties under this Contract save that, such assistance shall not be extended to the provision of any supplies or services. The Consultant will be required to pay for purchase fee of maps, manuals and other documents.

6.2 The Authority will: -

- (i) ensure free access to all sites and locations connected with the execution of the assignment;
- (ii) provide the Consultant with any assistance as may be necessary and in accordance with the Terms of Reference;
- (iii) provide the Consultant with all documents, data, any existing photographs and other information pertaining to the assignment that are available at the Authority; and
- (iv) provide, at their option and in consultation with the Consultant, counterpart Staff for on-the-job training.

### **Liaison**

- 6.3 The Authority shall provide liaison with other Ministries, Departments and Agencies in order to introduce the Consultant to them. The Consultant shall be fully responsible for collecting data and information from these Ministries, Departments and Agencies, including paying for it where necessary.

### **Correspondence**

- 6.4 The Authority shall ensure that correspondence exchange in respect of the implementation of the assignment is treated promptly by the Ministries, Departments and Agencies in order to avoid any delay.

### **Consultant's Obligations**

- 6.5 All information, Data and Reports obtained from the Government Ministries, Departments and Agencies in the execution of the services shall be properly reviewed and analysed by the Consultant. The responsibility for the correctness of using such data shall rest with the Consultant. All such information, data, and reports shall be treated as confidential and returned to the Government upon completion of the assignment.
- 6.6 The Consultant shall be responsible for arranging all necessary office and living accommodation, transportation, equipment and supplies, surveys, investigations, materials testing and secretarial services related to the performance of the assignment.
- 6.7 The Consultant shall be responsible for the printing of all reports, drawings, maps, etc.
- 6.8 The Consultant shall provide a training plan for any counterpart Staff as approved by the Employer.
- 6.9 All reports and documents relevant to the project, maps, field survey notes, and electronic data, etc. shall become the property of the Authority. The Consultant shall provide the originals of maps, plans and all drawings in soft and hard copies.



## **SECTION 6: CONDITIONS OF CONTRACT AND CONTRACT FORMS**

### **PREFACE**

1. The Lump-Sum price is arrived at on the basis of inputs including rates provided by the Consultant. The Procuring Entity agrees to pay the Consultant according to a schedule of payments stipulated under Clause 41.4 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.
3. The Special Conditions of Contract includes clauses specific to this Contract to supplement, but not over-write or otherwise contradict, the General Conditions of Contract.

CONTRACT FOR CONSULTANCY SERVICES FOR:

Contract No.: \_\_\_\_\_

Contract Description: \_\_\_\_\_

between

*[Name of the Procuring Entity]*

and

*[Name of the Consultant]*

Date: \_\_\_\_\_

## FORM OF CONTRACT

This CONTRACT (hereinafter 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]* (hereinafter 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 (hereinafter 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 towards the cost of the services and intends to apply a portion of the funds to eligible payments under the 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: Letter of Award, Letter of Acceptance & Communication from Head of Procurement
    - Appendix B: Professional Indemnity Cover and Consultant’s Power of Attorney
    - Appendix C: Terms of Reference
    - Appendix D: Description of Approach, Methodology and Workplan
    - Appendix E: Key Experts
    - Appendix F: Breakdown of Contract Price
    - Appendix G: Service Level Agreement

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 Appendix E; Appendix F; Appendix G. 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]*  
*[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]*

## GENERAL CONDITIONS OF CONTRACT

### A. General Provisions

#### 1. Definitions

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

- a) “Applicable Law” means the laws and any other instruments having the force of law in Kenya.
- b) “Consultant” means a legally - established professional consulting firm or entity selected by the Procuring Entity to provide the Services under the signed Contract.
- c) “Contract” means the legally binding written agreement signed between the Procuring Entity and the Consultant and which includes all the attached documents listed in its paragraph 1 of the Form of Contract (the General Conditions (GCC), the Special Conditions (SCC), and the Appendices).
- d) “Day” means a working day unless indicated otherwise.
- e) “Effective Date” means the date on which this Contract comes into force and effect pursuant to Clause GCC11.
- f) “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.
- g) “Foreign Currency” means any currency other than the currency of Kenya.
- h) “GCC” means these General Conditions of Contract.
- i) “Government” means the government of Kenya.
- j) “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.
- k) “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 in to account in the technical evaluation of the Consultant's proposal.
- l) “Local Currency” means the Kenya Shilling.
- m) “Non-Key Expert(s)” means an individual professional provided by the Consultant or its Sub-consultant to perform the Services or any part thereof under the Contract.
- n) “Party” means the Procuring Entity or the Consultant, as the case may be, and “Parties” means both.
- o) “Procuring Entity” means the Procuring Entity that signs the Contract for the Services with the Selected Consultant.
- 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 here in 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 Applicable Law.

## **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 hereunder by giving the other Party any communication of such change to the address specified in the SCC.

## **7. Location**

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

## **8. Authority of Member in Charge**

- 8.1 In case the Consultant is a Joint Venture, the members hereby authorize 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 and laws in regard to corrupt and fraudulent or prohibited practices as set forth in its laws and policies.
- 10.2 **Commissions and Fees**-The Procuring Entity requires the Consultant to disclose any commissions, gratuities or fees that may have been paid or are to be paid to agents or any other party with respect to the selection process or execution of the Contract. The information disclosed must include at least the name and address of the agent or the other party, the amount and currency, and the purpose of the commission, gratuity or fee. Failure to disclose such commissions, gratuities or fees may result in termination of the Contract by the Procuring Entity and/or sanctions by the PPRA.

**B. Commencement, Completion, Modification and Termination of Contract**

**11. Effectiveness of Contract**

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

**12. Termination of Contract for Failure to Become Effective**

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

**13. Commencement of Services**

- 13.1 The Consultant shall confirm availability of Key Experts and begin 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 GCC 19 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 an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and makes a Party's performance of its obligations here under 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 is caused by then 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 overcome in the carrying out of its obligations hereunder.

17.3 Force Majeure shall not include in sufficiency of funds or failure to make any payment required hereunder.

### **b. No Breach of Contract**

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

### **c. Measures to be taken**

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

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



similarly give written notice of the restoration of normal conditions as soon as possible.

- a) Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.
- b) 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:
- c) 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
- d) 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 for 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 43 & 44.

## **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 for many of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Consultant to remedy such failure within a period not exceeding thirty (30) calendar days after receipt by the Consultant of such notice of suspension.

## **19. Termination**

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

### **a. By the Procuring Entity**

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

- a If the Consultant fails to remedy a failure in the performance of its obligations here under, as specified in a notice of suspension pursuant to Clause GCC 18;
- b If the Consultant becomes (or, if the Consultant consists of more than one entity, if any of its members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go in to liquidation or receivership whether compulsory or voluntary;
- c If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GCC 45.1;
- d If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days;

- e If the Procuring Entity, in its sole discretion and for any reason whatsoever, decides to terminate this Contract;
- f If the Consultant fails to confirm availability of Key Experts as required in Clause GCC13.

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**

19.1.3 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:

- a 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 GCC45.1 within forty-five (45) calendar days after receiving written notice from the Consultant that such payment is overdue;
- b 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;
- c If the Procuring Entity fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC45.1;
- d If the Procuring Entity is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Consultant may have subsequently approved in writing) following the receipt by the Procuring Entity of the Consultant's notice specifying such breach.

**c. Cessation of Rights and Obligations**

19.1.4 Upon termination of this Contract pursuant to Clauses GCC12 or GCC19 hereof, or upon expiration of this Contract pursuant to Clause GCC14, all rights and obligations of the Parties here under shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause GCC22, (iii) the Consultant's obligation to permit in section, copying and auditing of their accounts and records set forth in Clause GCC25, and (iv) any right which a Party may have under the Applicable Law.

**d. Cessation of Services**

19.1.5 Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GCC19a or GCC19b, 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 GCC27 or GCC28.

**e. Payment upon Termination**

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

- a Payment or Services satisfactorily performed prior to the effective date of termination; and
- b In the case of termination pursuant to paragraphs (d) and (e) of Clause GCC 19.1.1, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract, including the cost of the return travel of the Experts.

**C. 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 Consultant shall comply with the import of goods and services prohibitions in Kenya when;

- a As a matter of law or official regulations, Kenya prohibits commercial relations with that country; or
- b By an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods from that country or any payments to any country, person, or entity in that country.

20.6 The Procuring Entity shall notify the Consultant in writing of relevant local customs, and the

Consultant shall, after such notification, respect such customs.

## **21. Conflict of Interests**

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

### **a. Consultant Not to Benefit from Commissions, Discounts, etc.**

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

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

### **b. Consultant and Affiliates Not to Engage in Certain Activities**

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

### **c. Prohibition of Conflicting Activities**

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

### **d. Strict Duty to Disclose Conflicting Activities**

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

## **22. Confidentiality**

22.1 Except with the prior written consent of the Procuring Entity, the Consultant and the

Experts shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant and the Experts make public the recommendations formulated in the course of, or because of, the Services.

### **23. Liability of the Consultant**

23.1 Subject to additional provisions, if any, set forth 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 takeout and maintain and shall cause any Sub-consultants to takeout 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 Clause GCC25.2 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**

27.1 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 the mat 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 E.

### **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 incapacity. In such case, the Consultant shall forthwith provide as are placement, 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 or Sub-consultant has engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice while performing the Services, the Consultant shall, at the Procuring Entity's written request, provide a replacement.
- 31.2 In the event that any of Key Experts, Non-Key Experts or Sub-consultants is found by the Procuring Entity to be in competent or in capable in discharging assigned duties, the Procuring Entity, specifying the grounds therefore, may request the Consultant to provide a replacement.
- 31.3 Any replacement of the removed Experts or Sub-consultants shall possess better qualifications and experience and shall be acceptable to the Procuring Entity.
- 31.4 The Consultant shall bear all costs arising out of or incidental to any removal and/or replacement of such Experts.

### **E. Obligations of the Procuring Entity**

### **32. Assistance and Exemptions**

- 32.1 Unless otherwise specified in the SCC, the Procuring Entity shall use its best efforts to:
  - a Assist the Consultant with obtaining work permits and such other documents as shall be necessary to enable the Consultant to perform the Services;
  - b Assist the Consultant with promptly obtaining, for the Experts and, if appropriate, their eligible dependents, all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in Kenya while carrying out the Services under the Contract;
  - c Facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Experts and their eligible dependents;
  - d Issue to officials, agents and representatives of the Government all such instructions and information as may be necessary or appropriate for the prompt and effective implementation of the Services;
  - e Assist the Consultant and the Experts and any Sub-consultants employed by the Consultant for the Services with obtaining exemption from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity in Kenya according to the applicable law in Kenya;
  - f Assist the Consultant, any Sub-consultants and the Experts of either of them with obtaining the privilege, pursuant to the applicable law in Kenya, of bringing into 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 there in by the Experts in the execution of the Services;
  - g Provide to the Consultant any such other assistance as may be specified in the SCC.

### **33. Access to Project Site**

33.1 The Procuring Entity warrants that the Consultant shall have, free of charge, unimpeded access to the project site in respect of which access is required for the performance of the Services. The Procuring Entity will be responsible for any damage to the project site or any property thereon resulting from such access and will indemnify the Consultant and each of the experts in respect of liability for any such damage, unless such damage is caused by the wilful 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 GCC39.1

### **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 C) at the times and in the manner specified in said Appendix C.

### **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 C.

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 assigned 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 F.
- 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 GCC16 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.

### **40. Currency of Payment**

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

### **41. Mode of Billing and Payment**

- 41.1 The total payments under this Contract shall not exceed the Contract price set forth in Clause GCC 38.1.
- 41.2 The payments under this Contract shall be made in lump-sum instalments against deliverables specified in Appendix C. The payments will be made according to the payment schedule stated in the SCC.
- 41.2.1 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 instalments specified in the SCC until said advance payments have been fully set off.
- 41.2.2 The Lump-Sum Instalment 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 instalment 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.
- 41.2.3 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 instalment 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.

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

41.4 With the exception of the final payment under 41.2.3 above, payments do not constitute acceptance of the whole Services nor relieve the Consultant of any obligations hereunder.

#### **42. Interest on Delayed Payments**

42.1 If the Procuring Entity has 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**

#### **43. Good Faith**

43.1 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**

#### **44. Amicable Settlement**

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

44.2 If either Party objects to any action or inaction 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.

#### **45. Dispute Resolution**

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

## SPECIAL CONDITIONS OF CONTRACT

*[Notes in brackets are for guidance purposes only and shall 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.
1.1 (t)	“Administrative Costs” means funds set aside for utilization in administering the Consultancy Contract. Under this provision, the Consultant may be instructed by the Employer’s Representative to make payments for certain items deemed necessary for the proper administration of the Consultancy Contract and may include office furniture, office equipment, computers, laptops and related accessories among others. When instructed by the Employer’s Representative the Consultant shall purchase or pay for the provision of such items and the costs shall be reimbursed at their quoted rates under Form FIN-4. The Employer’s Representative may also instruct the Consultant to make payment for miscellaneous expenditures which may include refreshments for review meetings, transport and night outs for Client’s Staff attending Public Consultative Meetings among others. The Costs on such expenditures shall be reimbursed on a Prime Cost basis with an extra over to cover the Consultant’s overheads and profits as per the rates provided under Form FIN-4.
2.1	The Consultant shall sign a Service Level Agreement with the Procuring Entity which shall quantify the minimum acceptable service to the Procuring Entity and the Consultant’s performance will be assessed every quarterly during the implementation of the Contract. The format of the Service Level Agreement is attached in Appendix F of this RFP.
2.2	Amend as 3.1
4.1	The language is: English
6.1 & 6.2	<p>The addresses are:</p> <p><u>For the Procuring Entity:</u></p> <p>Kenya Rural Roads Authority            Attention: Director General            Barabara Plaza Block B, Airport South Road, Opp KCAA Building            P.O. Box 48151 - 00100  <b><u>NAIROBI</u></b>            Tel: 020-7807600/01-05; 0711-851103            E-mail: <a href="mailto:kerra@kerra.go.ke">kerra@kerra.go.ke</a>; <a href="mailto:environment@kerra.go.ke">environment@kerra.go.ke</a></p> <p><u>For the Consultant:</u></p> <p>Name of Consultant: _____            Attention: _____            Address: _____            Tel: _____            E-mail: _____</p>

8.1	The Lead Member on behalf of the Joint Venture (JV) is _____ <i>[Note: If the Consultant consists only of one entity, state “Not Applicable”]</i>
9.1	The Authorized Representatives are:  For the Procuring Entity: <i>Director (Planning, Design &amp; Environment)</i>  For the Consultant: _____ <i>[Name and Title of the one appointed in writing by Power of Attorney.]</i>
11.1	The Contract shall come into effect as soon as it is signed by all parties.
12.1	Termination of Contract for Failure to Become Effective: <b>The time period shall be Thirty (30) Days.</b>
13.1	The date for the commencement of Services shall be within <b>Seven (7) Calendar Days</b> after order to Commence. <i>[Note: Within this period, 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.]</i>
14.1	The time period shall be <b>Eleven (11) Consecutive Weeks</b> after commencement or such other period as the parties may agree in writing.
21(b)	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.
23.1	Notwithstanding Clause 23.1 of the GCC, the Consultant shall be held responsible for the verification of all the data existing before the Contract and for the accuracy of the data up to the time of implementation e.g. survey data, traffic data, etc.
24.1	The insurance coverage against the risks shall be as follows:  (a) Professional Liability Insurance, covering <b>Full amount of this Contract.</b> <i>[The Consultant shall be required to provide authentic documents prior to signing the contract within 14 (fourteen) days after notification of award.]</i>  (b) Employer’s liability and workers’ compensation insurance in respect of the Experts and Sub-consultants in accordance with the relevant provisions of the Applicable Law in Kenya, as well as, with respect to such Experts, any such life, health, accident, travel or other insurance as may be appropriate.
27.1 & 27.2	The Consultant shall not use all reports, relevant data, information, software, supporting records or material compiled or prepared by the Consultant for the Procuring Entity in the course of the Services for purposes unrelated to this Contract without the prior written approval of the Procuring Entity.”
29.1	All the approved Key Experts must be present during presentation of the Environmental and Social Impact Assessment reports to the Procuring Entity.
32.1(a) through (e)	Not Applicable
32.1(f)	Not Applicable
38.1	The Contract Price is: _____ <i>[inclusive of local taxes.]</i>

39.1	Delete “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” and Replace with “The Consultant, Sub-consultants and Experts are responsible for meeting any and all tax liabilities arising out of the Contract”.
39.2	Any payment under this Contract shall be made in Kenya Shillings.
40.2	<p>Payments shall be made according to the following schedule: -</p> <p>1<sup>st</sup> payment: Fifteen (15) percent of the Lumpsum Contract Price shall be paid upon submission and acceptance by the Procuring Entity of an Inception Report.</p> <p>2<sup>nd</sup> payment: Twenty-Five (25) percent of the lumpsum contract price shall be paid upon submission and acceptance by the Procuring Entity of a Preliminary ESIA Report.</p> <p>3<sup>rd</sup> payment: Forty (40) percent of the lumpsum contract price shall be paid upon submission and acceptance by the Procuring Entity of a Draft Final ESIA Report.</p> <p>4<sup>th</sup> payment: Twenty (20) percent of the lumpsum contract price shall be paid upon submission of the Final ESIA Report, acceptance by the Procuring Entity and <b>Approval by NEMA</b> which will lead to the issuance of an EIA Licence subject to the fulfilment of any necessary conditions by all concerned parties.</p>
40.2.1	Advance Payment shall not apply for this tender.
40.2.4	<p>The accounts are:</p> <p>Bank _____</p> <p>Account Name _____</p> <p>Account Number _____</p> <p>Branch _____</p> <p>Bank Code/Swift Code _____</p>
41.1	The interest rate is the prevailing Central Bank of Kenya average lending rate plus two percentage points, 28 days prior to date of submission of invoice.
44	Any dispute, controversy, or claim arising out of or relating to this contract, or the breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the Arbitration Rules in Kenya as at present in force.

## **APPENDICES TO THE CONTRACT**

**Appendix A** - Letter of Award, Letter of Acceptance & Communication from Head of Procurement

**Appendix B** – Professional Indemnity Cover and Consultant’s Power of Attorney

**Appendix C** – Terms of Reference

*[This Appendix shall include the final Terms of Reference (TORs) worked out by the Procuring Entity and the Consultant during the negotiations]*

**Appendix D** – Description of Approach, Methodology and Workplan

**Appendix E** – Key Experts

*[This Appendix shall include a table based on TECH-6 of the Consultant’s’ Technical Proposal and finalized at the Contract’s negotiations. Attach CVs (updated and signed by the respective Key Experts).]*

**Appendix F** – Breakdown of Contract Price in Kshs

*[This Appendix shall be based on the Consultant’s Financial Proposal and reflect any change agreed at the Contract negotiations, if any. The footnote shall list such changes made at the negotiations or state that none has been made.]*

**Appendix G** – Service Level Agreement

*[To be inserted as an Annex in the Contract Agreement.]*