



# **KenGen**

**KENYA ELECTRICITY GENERATING COMPANY PLC**

**RFx 5000016185**

**KGN-COMM-001-2025**

**REQUEST FOR PROPOSALS (RFP) FOR  
CONSULTANCY SERVICES TO UNDERTAKE A  
FEASIBILITY STUDY ON RENEWABLE  
CAPTIVE POWER MARKET OPPORTUNITY  
FOR KENGEN.**

***(Open International Tender)***

**Kenya Electricity Generating Company PLC  
Stima Plaza, Kolobot Road, Parklands  
P.O. Box 47936, 00100  
NAIROBI  
Website: [www.kengen.co.ke](http://www.kengen.co.ke)**

**January, 2025**

## TABLE OF CONTENTS

<b>TABLE OF CONTENTS</b> .....	<b>2</b>
<b>SECTION 1 - REQUEST FOR PROPOSAL (RFP)</b> .....	<b>4</b>
<b>SECTION 2. INSTRUCTIONS TO CONSULTANTS AND DATA SHEET</b> .....	<b>6</b>
<b>SECTION 2(A). INSTRUCTIONS TO CONSULTANTS (ITC)</b> .....	<b>6</b>
<b>SECTION 2B. DATA SHEET</b> .....	<b>21</b>
Mandatory Requirements .....	27
Technical Evaluation.....	29
Financial Evaluation.....	31
<b>SECTION 3. TECHNICAL PROPOSAL – STANDARD FORMS</b> .....	<b>33</b>
1. FORM TECH-1: TECHNICAL PROPOSAL SUBMISSION FORM .....	33
2. CERTIFICATE OF INDEPENDENT PROPOSAL DETERMINATION .....	35
3. APPENDIX TO FORM OF PROPOSAL ON FRAUD AND CORRUPTION CLAUSE (for information).....	37
4. FORM TECH-2: CONSULTANT'S ORGANIZATION AND EXPERIENCE.....	40
5. FORM TECH-3: COMMENTS AND SUGGESTIONS.....	41
6. FORM TECH-4: DESCRIPTION OF APPROACH, METHODOLOGY, AND WORK PLAN .....	41
7. FORM TECH-5: WORK SCHEDULE AND PLANNING FOR DELIVERABLES.....	42
8. FORM TECH-5A: WORK SCHEDULE MILESTONES .....	43
9. FORM TECH- 6A: TEAM COMPOSITION, ASSIGNMENT, & KEY EXPERTS' INPUTS 44	
10. FORM TECH-6B: CURRICULUM VITAE (CV).....	46
11. FORM TECH-7: MANDATORY SUPPORT DOCUMENTS.....	48
12. FORM TECH - 8: SELF-DECLARATION FORMS .....	49
13. SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE. ....	50
14. DECLARATION AND COMMITMENT TO THE CODE OF ETHICS.....	51
15. FORM TECH – 9 : TENDER-SECURING DECLARATION FORM {r 46 and 155(2)} ..	52
<b>SECTION 4. FINANCIAL PROPOSAL - STANDARD FORMS</b> .....	<b>53</b>
FORM FIN-1: FINANCIAL PROPOSAL SUBMISSION FORM.....	54
FORM FIN-2: SUMMARY OF COSTS.....	55
FORM FIN-3: BREAKDOWN OF REMUNERATION .....	56
FORM FIN-4 BREAKDOWN OF REIMBURSABLE .....	57
FORM FIN-5 SUMMARY OF MILESTONE COSTS.....	59
<b>SECTION 5. TERMS OF REFERENCE</b> .....	<b>60</b>
5. Background.....	60
5.1 Introduction.....	60

5.2	Objectives .....	60
5.3	Scope of Work.....	61
5.3.1	Market Research and Analysis .....	61
5.3.2	Available and emerging renewable power generation technologies .....	61
	and possible opportunities.....	61
5.3.3	Business models and approaches .....	61
5.3.4	Technical, financial and economic viability .....	61
5.3.5	Challenges and Risks .....	62
5.3.6	Legal, regulatory and policy framework.....	62
5.3.7	Market entry strategy .....	62
5.4	Deliverables: .....	62
5.5	Timeline: .....	63
5.6	Items to be Provided by KenGen .....	63
5.7	Consultant's Obligations .....	63
5.8	Items that will not be Provided by KenGen.....	64
5.9	Terms of Payment.....	64
5.10	Work Schedule Milestones.....	64
5.11	Cost of the Assignment.....	64
5.12	Inception Report Workshop.....	64
5.13	Presentation of Draft Feasibility Study Report Workshop .....	65
5.14	Reporting Requirements .....	65
	<b>SECTION 6. CONDITIONS OF CONTRACT AND CONTRACT FORMS .....</b>	<b>66</b>
A.	CONTRACT FOR CONSULTANT'S SERVICES.....	66
B.	FORM OF CONTRACT - LUMP-SUM .....	67
	<b>SECTION 7: GENERAL CONDITIONS OF CONTRACT .....</b>	<b>68</b>
	<b>SECTION 8: SPECIAL CONDITIONS OF CONTRACT .....</b>	<b>79</b>
	<b>SECTION 9. NOTIFICATION FORMS .....</b>	<b>84</b>
1.	NOTIFICATION OF INTENTION TO AWARD.....	84
2.	REQUEST FOR REVIEW .....	85
3.	LETTER OF AWARD .....	86
4.	BENEFICIAL OWNERSHIP DISCLOSURE FORM .....	87
5.	FORMAT OF POWER OF ATTORNEY.....	91
6.	TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM...	92

## SECTION I - REQUEST FOR PROPOSAL (RFP)

Date: 21<sup>st</sup> January, 2025  
Reference No.: KGN-COMM-001-2025

Name of Assignment:

### **REQUEST FOR PROPOSALS (RFP) FOR CONSULTANCY SERVICES TO UNDERTAKE FEASIBILITY STUDY ON RENEWABLE CAPTIVE POWER MARKET OPPORTUNITY FOR KENGEN.**

The **KENYA ELECTRICITY GENERATING COMPANY PLC** has set aside funds in its budget towards the cost of the subject consulting services.

1. The Procuring Entity now invites proposals to provide the following consulting services (here in after called “the services”): **CONSULTANCY SERVICES TO UNDERTAKE FEASIBILITY STUDY ON RENEWABLE CAPTIVE POWER MARKET OPPORTUNITY FOR KENGEN.**
2. The Study shall include the following components and shall be suited to the current Electricity Regulations in the country with projections based on future Regulatory trends
  - Carry out market research and analysis on the current status of the Renewable Captive Power market in Kenya and growth trajectory. The analysis to include market segmentation, competitive dynamics, cost structure, business models, product offerings and financing options.
  - Evaluate the potential of available and emerging renewable power generation technologies and resources in the captive power market in Kenya and possible opportunities for KenGen.
  - Develop, analyze and recommend business models and approaches available to KenGen for entry into the captive power market and propose market penetration and sustainability strategies
  - Determine the technical, financial and economic viability and potential returns for KenGen's investment in the renewable captive power market.
  - Undertake a risk assessment on the recommended approach outlining Challenges, and mitigation measures for KenGen's Entry into the Captive power market
  - Appraise the legal, regulatory and policy framework for renewable power generation and its effect on the captive power market.
  - Provide a market entry strategy for KenGen's entry into the captive power market including a methodology and implementation plan

More details on the requirements are provided in Section 5 (Terms of Reference)

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.

3. 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).
4. Section 1: Letter of Request for Proposals  
Section 2: Instructions to Consultants and Data Sheet  
Section 3: Technical Proposal Standard Forms  
Section 4: Financial Proposal Standard Forms  
Section 5: Terms of Reference  
Section 6: Conditions of Contract and Contract Forms  
Section 7: General Conditions of Contract  
Section 8: Special Conditions of Contract  
Section 9: Notification Forms
5. Tender Security shall be required.

Tender Security shall be in the amount of **KES 1,000,000.00** or equivalent in a freely convertible currency valid for 30 days beyond the tender validity period in form of:

- Tender Security from a reputable bank registered by the Central Bank of Kenya
- Guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya.
- A guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Public Procurement Regulatory Authority.

International bidders should have tender security through local corresponding banks registered by the Central Bank of Kenya and MUST be submitted in a plain sealed envelope and clearly marked **“KGN-COMM-001-2025 - REQUEST FOR PROPOSALS (RFP) FOR CONSULTANCY SERVICES TO UNDERTAKE A FEASIBILITY STUDY ON RENEWABLE CAPTIVE POWER MARKET OPPORTUNITY FOR KENGEN”** and addressed to:

**General Manager, Supply Chain,  
Kenya Electricity Generating Company PLC,  
9th Floor, KenGen RBS Building,  
Kolobot Road, Parklands,  
P.O. Box 47936, 00100  
NAIROBI.**

The hard copy of the Original Tender Security clearly labeled should be dropped at the tender box located on Ground Floor at KenGen, RBS building on or before the tender closing date and Time: Electronic tender securities are acceptable and shall be authenticated through the use of the QR scanner

Electronic Tender Securities are an acceptable subject to

- i. Attachment of a scanned copy to the bid document.
- ii. Submission of the e-security to the address indicated below in plain sealed envelope clearly labelled.
  - Such E-Security can be verified by use of a Quick Response (QR) code
  - Such E-Security can be verified via the issuing institution's online portal

Completed RFP Document must be submitted **online** on or before **6<sup>th</sup> February, 2025 at 2.00 p.m.**

Electronic Tenders will be permitted **through our e-procurement platform found at [www.kengen.co.ke](http://www.kengen.co.ke) (<https://eprocurement.kengen.co.ke:50001/irj/portal>)**

**Note;**

- The **Technical proposal** documents shall be uploaded to the **c-folder** of the SRM System through the link '**Technical RFx response**'.
- The **Financial proposal** documents shall be uploaded to the '**notes and attachments**' tab **Only Technical proposal** shall be opened **online** on **6<sup>th</sup> February, 2025 at 2.30 p.m.** in the presence of the candidates' representatives who choose to attend at Tenders' Room on the 6<sup>th</sup> Floor of RBS building.

**KenGen adheres to high standards of integrity in its business operations.**

**Report any unethical behavior immediately to any of the provided anonymous hotline service.**

- 1) Call Toll Free: 0800722626;
- 2) Free-Fax: 00800 007788;
- 3) Email: [kengen@tip-offs.com](mailto:kengen@tip-offs.com)
- 4) Website: [www.tip-offs.com](http://www.tip-offs.com)

**GENERAL MANAGER - SUPPLY CHAIN**

## **SECTION 2. INSTRUCTIONS TO CONSULTANTS AND DATA SHEET**

### **SECTION 2(A). INSTRUCTIONS TO CONSULTANTS (ITC)**

#### **1. GENERAL PROVISIONS**

#### **2. 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.
- v) “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.

### **3. Introduction**

- 3.1 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.
- 3.2 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.
- 3.3 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.
- 3.4 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.

### **4. Conflict of Interest**

- 4.1 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.
- 4.2 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.
- 4.3 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.

## **5. Unfair Competitive Advantage**

5.1 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.

### **5.2 Corrupt and Fraudulent Practices**

5.3 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 shall not be awarded a contract.

### **5.4 Collusive practices**

5.5 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.

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

## **6. Eligibility**

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

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

6.3 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for submission of proposals, but it shall be a condition of contract award and signature. 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 its Experts, joint venture members, Sub-consultants, agents (declared or not), sub-contractors, service providers, suppliers and/or their employees meet the eligibility requirements.
- 6.6 As an exception to the foregoing ITC 6.1 and 6.2 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.

## **7. 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 amendments in writing.
- 13.3 If the amendment is substantial, the Procuring Entity may extend the proposal submission deadline to give the Consultants reasonable time to take an amendment in to account in their Proposals.
- 13.4 The Consultant may submit a modified Proposal or a modification to any part of it at any time prior to the proposal submission deadline. No modifications to the Technical or Financial Proposal shall be accepted after the deadline.

**14. Preparation of Proposals–Specific Considerations**

- 14.1 While preparing the Proposal, the Consultant must give particular attention to the following:
- (a) If a Consultant considers that it may enhance its expertise for the assignment by associating with other consultants in the form of a Joint Venture or as Sub-consultants, it may do so 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.

### **Price Adjustment**

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

#### **b. Taxes**

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

#### **c. Currency of Proposal**

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

#### **d. Currency of Payment**

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

## **C. SUBMISSION, OPENING AND EVALUATION**

### **17. Submission, Sealing, and Marking of Proposals**

- 17.1 The Consultant shall submit a signed and complete Proposal comprising the documents and forms in accordance with ITC 10 (Documents Comprising Proposal). Consultants shall mark as "CONFIDENTIAL" information in their Proposals which is confidential to their business. This may include proprietary information, trade secrets or commercial or financially sensitive information. The submission can be done by mail or by hand. If specified in the Data Sheet, the Consultant has the option of submitting its Proposals electronically.
- 17.2 An authorized representative of the Consultant shall sign the original submission letters in the required format for both the Technical Proposal and the Financial Proposals and shall initial all pages of both. The authorization shall be in the form of a written power of attorney attached

to the Technical Proposal.

- 17.3 A Proposal submitted by a Joint Venture shall be signed by all members so as to be legally binding on all members, or by an authorized representative who has a written power of attorney signed by each member's authorized representative.
- 17.4 Any modifications, revisions, interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Proposal.
- 17.5 The signed Proposal shall be marked "ORIGINAL", and its copies marked "COPY" as appropriate. The number of copies is indicated in the Data Sheet. All copies shall be made from the signed original. If there are discrepancies between the original and the copies, the original shall prevail.

## **18. Sealing and Marking of Proposals**

- 18.1 The firm shall deliver the Proposals in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the assignment, addressed to the Procuring Entity and a warning "DO NOT OPEN BEFORE..... (The time and date for proposal opening date)". Within the single envelope, package or container, the Firm shall place the following separate, sealed envelopes:
- 18.2 In the single sealed envelope, or in a single sealed package, or in a single sealed container the following documents shall 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 ITC II;
  - 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 evaluators of the Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded and after the Procuring Entity notifies all the Consultants in accordance with ITC 22.1.
- 21.2 The Consultant is not permitted to alter or modify its Proposal in anyway after the proposal submission deadline except as permitted under ITC12.7. While evaluating the Proposals, the Evaluation Committee will conduct the evaluation solely on the basis of the submitted Technical and Financial Proposals.

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

- 22.1 The Procuring Entity's evaluation committee shall evaluate the Technical Proposals that have passed the eligibility and mandatory criteria, on the basis of their responsiveness to the Terms of Reference and the RFP. The eligibility and mandatory criteria shall include the following and any other that may include in the Data sheet.
- a) Firm has submitted the required number of copies of the Technical Proposals.
  - b) Firm has submitted a sealed financial proposal.
  - c) The Proposal is valid for the required number of days.
  - d) The Technical Proposal is signed by the person with power of attorney, without material deviation, reservation, or omission.
  - e) The Technical Proposal is complete with all the forms and required documentary evidence submitted.
  - f) A valid tax compliance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 3.14 for Kenyan firms.
  - g) Key Experts are from eligible countries.
  - h) Key Experts do not appear in more than one proposal, if so required.
  - i) A short-listed firm has not participated in more than one proposal, if so required.
  - j) The Consultant is not insolvent, in receivership, bankrupt or in the process of being wound up.
  - k) The Consultant, its sub-consultants and experts have not engaged in or been convicted of corrupt or fraudulent practices.
  - l) The Consultant is neither precluded from entering into a Contract nor debarred by PPRA.
  - m) The firm has not proposed employing public officials, civil servants and employees of public institutions.
  - n) The Consultant, its sub-consultants and experts have no conflicts of interest.

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

## **23. Public Opening of Financial Proposals**

### **23.1 Unsuccessful Proposals**

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

### **23.2 Financial Proposals for QBS, CQS and SSS**

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

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

### **23.3 Financial Proposals for QCBS, FBS, LCS**

Following the ranking of the Technical Proposals, and after internal approvals, the Procuring Entity shall simultaneously notify in writing those Consultants whose Proposals were considered responsive to the RFP and TOR, and that have achieved the minimum qualifying technical score, advising them the following: (i) their Proposal was responsive to the RFP and TOR and met the minimum qualifying technical score; (ii) provide information relating to the Consultant's overall technical score, as well as scores obtained for each criterion and sub-criterion; (iii) their Financial Proposal will be opened at the public opening of Financial Proposals; and (iv) notify them of the date, time and location of the public opening and invite them for the opening of the Financial Proposals.

### **23.4 Opening of Financial Proposals**

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

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

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

## **24. Correction of Errors**

- 24.1 Activities and items described in the Technical Proposal but not priced in the Financial Proposal, shall be assumed to be included in the prices of other activities or items, and no corrections are made to the Financial Proposal.
- 24.2 Time-Based Contracts-If a Time-Based contract form is included in the RFP, in case of discrepancy between (i) a partial amount(sub-total) and the total amount, or (ii)between the amount derived by multiplication of unit price with quantity and the total price, or (iii) between figures and words, the later will prevail. In case of discrepancy between the Technical and Financial Proposals in indicating quantities of input, the Technical Proposal prevails and the Procuring Entity's evaluation committee shall correct the quantification indicated in the Financial Proposal so as to make it consistent with that indicated in the Technical Proposal, apply the relevant unit price included in the Financial Proposal to the corrected quantity, and correct the total Proposal cost.
- 24.3 Lump-Sum Contracts - If a Lump-Sum contract form is included in the RFP, the Consultant is deemed to have included all prices in the Financial Proposal, so neither arithmetical correction nor price adjustments shall be made. The total price, net of taxes understood as per ITC 24 below, specified in the Financial Proposal (Form FIN-I) 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 and CQS; and (ii) clarifying remuneration rates' structure under this Clause, is provided in Appendix A to the Financial Form FIN-3: Financial Negotiations – Breakdown of Remuneration Rates. If after the clarifications, the price is still considered too high, the Procuring Entity may terminate the negotiation and invite the next ranked Consultant to open its financial proposal and negotiate the contract.

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

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

### **33. Conclusion of Negotiations**

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

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

### **34. Letter of Award**

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

### **35. Signing of Contract**

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

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

### **36. Publication of Procurement Contract**



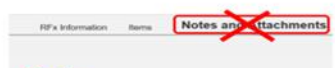



36.1 Within the period specified in the Data Sheet, the Procuring Entity shall publish the awarded Contract which shall contain, at a minimum, the following information: (a) name and address of the Procuring Entity; (b) name and reference number of the contract being awarded, (c) the selection method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

- 36.2 Consider carefully the information on Consultants to be published, particularly evaluation by the Procuring Entity, to avoid disclosing information which can facilitate bid-rigging formation going forward. Suggest amendment as follows:
- 36.3 The awarded Contract shall be published on the Procuring Entity's website with free access if available and in the official procurement tender portal.

**37. Procurement Related Complaint and Administrative Review**

- 37.1 The procedures for making Procurement-related Complaints shall be specified in the **TDS**.  
A request for administrative review shall be made in the form provided under contract forms. SECTION 2 (B).



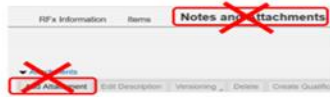



## SECTION 2B. DATA SHEET

Reference ITC Clause	to PARTICULARS OF APPENDIX TO INSTRUCTIONS TO CONSULTANTS
	<b>A. General Provisions</b>
I(j)	<p>Consultant must submit their bid online;</p> <p><b>ONLINE TENDER SUBMISSION;</b></p> <p>The tender <b>MUST</b> be submitted through our e-procurement platform found at <a href="http://www.kengen.co.ke">www.kengen.co.ke</a> (<a href="https://eprocurement.kengen.co.ke:50001/irj/portal">https://eprocurement.kengen.co.ke:50001/irj/portal</a>)</p> <p><b>SUBMISSION OF TENDERS:</b></p> <p>For suppliers registering for the first time using the link <a href="https://supplierregistration.kengen.co.ke:4302/slc_selfreg">https://supplierregistration.kengen.co.ke:4302/slc_selfreg</a> ensure the “Public Tender” checkbox is ticked so that the login details are sent to suppliers automatically.</p>  <p>It is a mandatory requirement that all documents are uploaded to the <b>c-folder</b> of the SRM System through the link <a href="https://eprocurement.kengen.co.ke:50001/irj/portal">https://eprocurement.kengen.co.ke:50001/irj/portal</a> ‘<b>Technical RFX response</b>’. Responses documents attached to the ‘<b>notes and attachments</b>’ tab will not be considered for evaluation.</p>   <p>Prices <b>MUST</b> be entered under item tab of the RFX and <b>MUST</b> be similar to the prices in the price/<del>BoQ</del> Schedule.</p>  <p>Bidders should confirm on the supplier portal that the status of their RFX response shows “Submitted” and not “Saved” to ensure their RFX response is submitted.</p>  <p>Bidders who have submitted their bids should not click on WITHDRAW but click on EDIT to amend their bid response with appropriate changes if they desire to do so.</p> <p>Manuals to guide on the bidding process are accessible via the KenGen Tenders Portal.</p>  <p>Bidders to note that <b>system challenges/support</b> related to bid submission issues shall be <b>addressed 48 hours before</b> tender opening date and time.</p> <p><b>The electronic Tendering submission procedures shall be;</b></p> <ol style="list-style-type: none"> <li>1. Tender documents must be submitted online through KenGen E-Procurement web portal found on the KenGen website (<a href="http://www.kengen.co.ke">www.kengen.co.ke</a>)</li> <li>2. Bidders who are interested in this tender <b>MUST</b> ensure that they are registered in the E-Procurement Portal. Please ensure compliance to the following; <ul style="list-style-type: none"> <li>• For suppliers registering for the first time ensure the “Public Procurement” checkbox is ticked so that the login details are sent to suppliers automatically</li> <li>• The <b>Technical proposal</b> documents <b>shall be</b> uploaded to the <b>c-folder</b> of the SRM System through the link ‘<b>Technical RFX response</b>’.</li> <li>• The <b>Financial proposal</b> documents <b>shall be</b> uploaded to the ‘<b>notes and attachments</b>’ tab</li> </ul> </li> </ol>

Reference ITC Clause	to PARTICULARS OF APPENDIX TO INSTRUCTIONS TO CONSULTANTS
	<ul style="list-style-type: none"> <li>Prices to be entered under item of the RFx shall be similar to be prices in the price schedule.</li> </ul> <p><b>Note;</b> Those Bidder who have submitted their bids should not click on <b>WITHDRAW</b> but click on <b>EDIT</b> to amend their bid response and make appropriate changes if they desire to do so.</p> <p><b>Only Technical proposal</b> shall be opened online on <b>6<sup>th</sup> February, 2025 at 2.00 p.m.</b> in the presence of the candidates' representatives who choose to attend at Tenders' Room on the 6<sup>th</sup> Floor of RBS building.</p>
2.1	Name of the Procuring Entity: <b>Kenya Electricity Generating Company PLC</b> The consultant selection method is: <b>Quality and Cost Based Selection Method (QCBS)</b> The guideline is Public Procurement and Asset Disposal Act, 2015
2.2	Financial Proposal to be submitted together with Technical Proposal in separate envelopes: <b>Yes</b> Separate envelopes for Technical Proposal and Financial Proposal are required.  The name of the assignment is: <b>REQUEST FOR PROPOSALS (RFP) FOR CONSULTANCY SERVICES TO UNDERTAKE A FEASIBILITY STUDY ON RENEWABLE CAPTIVE POWER MARKET OPPORTUNITY FOR KENGEN.</b>
2.3	Mandatory pre-proposal conference will be held: <b>No</b>  E-mail: <b>tenders@kengen.co.ke</b> ; cc: <b>copata@kengen.co.ke</b> ; <b>rkibet@kengen.co.ke</b> ; Name of contact person: Charles Opata Ag. Manager - New Business & Partnerships Telephone No. +254 711036013 E-mail: <b>copata@kengen.co.ke</b>
2.4	Not Applicable
6.2	Maximum number of members in the Joint Venture (JV) shall be: Three [3] <b>No member can participate in more than one JV</b>
6.6 (a)	The list of debarred firms and individuals is available at the PPRA's website <b>www.ppra.go.ke</b> or email <b>complaints@ppra.go.ke</b>
<b>B. Preparation of Proposals</b>	
10.1	The Proposal shall comprise the following:  <b>The c-folder Tab with the Technical Proposal:</b> <b>All Mandatory Requirements</b> <ol style="list-style-type: none"> <li>1. The Power of Attorney to sign the Proposal.</li> <li>2. Certificate of Independent Proposal Determination.</li> <li>3. TECH-1: Technical Proposal Submission Form</li> <li>4. TECH-2: Consultant's Organization and Experience</li> </ol>

Reference ITC Clause	to PARTICULARS OF APPENDIX TO INSTRUCTIONS TO CONSULTANTS
	<p>5. TECH-3: Comments and Suggestions</p> <p>6. TECH-4: Description of Approach, Methodology and Workplan</p> <p>7. TECH-5: Work Schedule and Planning for Deliverables</p> <p>8. TECH-5A: Work Schedule Milestones</p> <p>9. TECH- 6A: Team Composition, Assignment, and Key Experts' Input</p> <p>10. TECH-6B: Curriculum Vitae (CV) for all Key Experts</p> <p>11. TECH-7: Mandatory Documentary Evidence</p> <p>12. TECH - 8: Self-Declaration Forms</p> <p>AND</p> <p><b>The notes and attachments tab with the Financial Proposal:</b></p> <p>1. FIN-1: Financial Proposal Submission Form</p> <p>2. FIN-2: Summary of Costs</p> <p>3. FIN-3: Breakdown of Remuneration</p> <p>4. FIN-4: Breakdown of Reimbursable Expenses</p> <p>5. FIN-5 Summary of Milestone Costs</p>
11.1	Participation of Sub-consultants, and Key Experts in more than one Proposal is <b>NOT</b> permissible:
12.1	Proposals must remain valid for <b>126</b> days after the proposal submission deadline.
13.1	<p>Clarifications may be requested no later than seven (<b>7</b>) days prior to the submission deadline.</p> <p>The contact information for requesting clarifications is:</p> <p>The name(s), address(es) and telephone numbers of the Client's official(s) for purposes of clarifications</p> <p><b>General Manager - Supply Chain</b>  <b>Kenya Electricity Generating Company PLC</b>  <b>KenGen Pension Plaza II, 9<sup>th</sup> Floor.</b>  <b>Kolobot Road, Parklands</b>  <b>P.O. Box 47936-00100</b>  <b>Nairobi, Kenya</b>  <b>Email addresses; <a href="mailto:tenders@kengen.co.ke">tenders@kengen.co.ke</a>;</b>  <b><a href="mailto:cc.copata@kengen.co.ke">cc. copata@kengen.co.ke</a>, <a href="mailto:rkibet@kengen.co.ke">rkibet@kengen.co.ke</a></b></p>
14 (b)	Not applicable

Reference ITC Clause	to PARTICULARS OF APPENDIX TO INSTRUCTIONS TO CONSULTANTS
14 (c) & 26.2	Not applicable
14 (d)	Key Experts shall <b>NOT</b> appear in more than one proposal
16.1 (b)	The Financial Proposal will include (but not limited to) the following reimbursable expenses: (1) a per diem allowance, including hotel, for experts for every day of absence from the home office for the purposes of the Services; (2) cost of travel by the most appropriate means of transport and the most direct practicable route; (3) cost of office accommodation, including overheads and back-stop support; (4) communications costs; (5) cost of purchase or rent or freight of any equipment required to be provided by the Consultants; (6) cost of reports production (including printing) and delivering to the Procuring Entity; (7) other allowances where applicable and provisional or fixed sums (if any)]
16.2	A price adjustment provision applies to remuneration rates: <b>NO</b>
16.3	Tax exemption <b>NOT</b> applicable 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: Consultant may express the price for their Services in any fully convertible currency, singly or in combination of up to three foreign currencies.  Currency for quoting shall be: <b>Kenya shillings or any major international currency freely convertible in commercial banks located in Kenya.</b>  For purposes of financial bid evaluation, all quoted prices shall be converted to Kenya Shilling using the mean exchange rate of the Central Bank of Kenya on the tender closing date.
<b>C. Submission, Opening and Evaluation</b>	
17.1	The Consultants <b>MUST</b> submit their Proposals electronically. <b>Yes</b>  <b>The RFP MUST be submitted through our e-procurement platform found at <a href="http://www.kengen.co.ke">www.kengen.co.ke</a> (<a href="https://eprocurement.kengen.co.ke:50001/irj/portal">https://eprocurement.kengen.co.ke:50001/irj/portal</a>)</b>  <b>SUBMISSION OF TENDERS:</b>

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO CONSULTANTS
	<p>For suppliers registering for the first time using the link <a href="https://supplierregistration.kengen.co.ke:4302/slc_selfreg">https://supplierregistration.kengen.co.ke:4302/slc_selfreg</a> ensure the “Public Tender” checkbox is ticked so that the login details are sent to suppliers automatically.</p>  <p>It is a mandatory requirement that all documents are uploaded to the <b>c-folder</b> of the SRM System through the link <a href="https://eprocurement.kengen.co.ke:50001/irj/portal">https://eprocurement.kengen.co.ke:50001/irj/portal</a> ‘<b>Technical RFX response</b>’. Responses documents attached to the ‘<b>notes and attachments</b>’ tab <b>will not be considered for evaluation</b>.</p>   <p>Prices <b>MUST</b> be entered under item tab of the RFX and <b>MUST</b> be similar to the prices in the price/BoQ Schedule.</p>  <p>Bidders should confirm on the supplier portal that the status of their RFX response shows “Submitted” and not “Saved” to ensure their RFX response is submitted.</p>  <p>Bidders who have submitted their bids should not click on WITHDRAW but click on EDIT to amend their bid response with appropriate changes if they desire to do so.</p> <p>Manuals to guide on the bidding process are accessible via the KenGen Tenders Portal.</p>  <p>Bidders to note that <b>system challenges/support</b> related to bid submission issues shall be <b>addressed 48 hours before</b> tender opening date and time.</p> <p><b>The electronic Tendering submission procedures shall be;</b></p> <ol style="list-style-type: none"> <li>1. Tender documents must be submitted online through KenGen E-Procurement web portal found on the KenGen website (<a href="http://www.kengen.co.ke">www.kengen.co.ke</a> )</li> <li>2. Bidders who are interested in this tender <b>MUST</b> ensure that they are registered in the E-Procurement Portal. Please ensure compliance to the following; <ul style="list-style-type: none"> <li>• For suppliers registering for the first time ensure the “Public Procurement” checkbox is ticked so that the login details are sent to suppliers automatically</li> <li>• The <b>Technical proposal</b> documents <b>shall be</b> uploaded to the <b>c-folder</b> of the SRM System through the link ‘<b>Technical RFX response</b>’.</li> <li>• The <b>Financial proposal</b> documents <b>shall be</b> uploaded to the ‘<b>notes and attachments</b>’ tab</li> </ul> </li> </ol> <p>Prices to be entered under item of the RFX shall be similar to be prices in the price schedule.</p>
17.5	<p>The Consultant must submit:</p> <p>(a) Technical Proposal: <b>MUST</b> be uploaded to the <b>c-folder</b> of the SRM System through the link ‘<b>Technical RFX response</b>’.</p> <p>(b) Financial Proposal: <b>MUST</b> be uploaded to the ‘<b>notes and attachments</b>’ tab</p> <p><b>TENDER SECURITY</b></p> <p>The Original Tender Security of <b>KES 1,000,000.00</b> or equivalent in a freely convertible currency in form of:</p> <ul style="list-style-type: none"> <li>➤ Tender Security from <b>a reputable bank</b> registered by the Central Bank of Kenya</li> <li>➤ Guarantee issued by a <b>financial institution</b> approved and licensed by the Central Bank of Kenya.</li> </ul>

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO CONSULTANTS
	<p>➤ A guarantee by an <b>insurance company</b> registered and licensed by the Insurance Regulatory Authority listed by the Public Procurement Regulatory Authority.</p> <p>Valid for 30 days beyond the tender validity period. All tender securities submitted shall be subject to authentication by KenGen and <b>MUST</b> be submitted in a plain sealed envelope and clearly marked <b>“KGN-COMM-001-2025 - REQUEST FOR PROPOSALS (RFP) FOR CONSULTANCY SERVICES TO UNDERTAKE A FEASIBILITY STUDY ON RENEWABLE CAPTIVE POWER MARKET OPPORTUNITY FOR KENGEN”</b> and addressed to:</p> <p style="text-align: center;"><b>General Manager, Supply Chain, Kenya Electricity Generating Company PLC, Ground Floor, KenGen Pension Plaza I, Kolobot Road, Parklands, P.O. Box 47936, 00100 NAIROBI.</b></p> <p><b>The Original Tender Security</b> clearly labeled should be dropped at the tender box located on Ground Floor at KenGen, RBS building.</p> <p><b>E- Tender securities are acceptable subject to:</b></p> <ol style="list-style-type: none"> <li>i. Attachment of a scanned copy to the bid document.</li> <li>ii. Submission of the e-security to the address indicated above: <ul style="list-style-type: none"> <li>➤ Such E-Security can be verified by use of a Quick Response (QR) code</li> <li>➤ Such E-Security can be verified via the issuing institution’s online portal</li> </ul> </li> </ol>
18.5	<p>The Proposals must be submitted Online no later than:</p> <p><b>6<sup>th</sup> February, 2025 at 2.00 p.m.</b></p> <p>The Proposal submission <b>through our e-procurement platform found at <a href="https://eprocurement.kengen.co.ke:50001/irj/portal">www.kengen.co.ke</a> (<a href="https://eprocurement.kengen.co.ke:50001/irj/portal">https://eprocurement.kengen.co.ke:50001/irj/portal</a>)</b></p>
20.1	<p>Opening date and time Online <b>(6<sup>th</sup> February, 2025 at 2.30 p.m.)</b></p> <p>Note; In an effort to curb the spread of the COVID-19 pandemic the following measures shall apply:</p> <ul style="list-style-type: none"> <li>•Where bidders or their representatives choose to attend the bid opening, KenGen shall limit the persons to a maximum of 5 people, whom shall be nominated by the bidders present for the opening session.</li> <li>•The tender opening shall be conducted in a spacious environment and observing a social distance of at least 1.5 meters away from each other.</li> <li>Screening and registration of all attendees shall take place in all sessions. •Failure to attend the bid opening shall not invalidate the process.</li> </ul> <p><b>Bidders can request for the tender opening minutes of the tender opening session through the following email address <a href="mailto:tenders@kengen.co.ke">tenders@kengen.co.ke</a></b></p>
20.2	<p>In addition, the following information will be read aloud at the opening of the Technical</p>

Reference ITC Clause	to PARTICULARS OF APPENDIX TO INSTRUCTIONS TO CONSULTANTS
	<p>Proposals:</p> <ul style="list-style-type: none"> <li>a) Firm/Firms</li> <li>b) <b>Technical proposal form</b></li> <li>c) Number of pages of bid submitted.</li> </ul> <p>During opening of the Financial Proposal, the following information will be read out aloud:</p> <ul style="list-style-type: none"> <li>a) Firm/Firms</li> <li>b) Quoted price inclusive of taxes.</li> </ul>
22.1	<p style="text-align: center;"><b>PRELIMINARY/MANDATORY EVALUATION CRITERIA</b></p> <hr/> <p style="text-align: center;"><b>Mandatory Requirements</b></p> <p>Bidders will be evaluated on the following mandatory requirements and those who fail to submit any of the applicable documents below will not be considered for evaluation in the subsequent steps.</p> <hr/>

Reference ITC Clause	to	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO CONSULTANTS																																														
		<table><tr><th colspan="2">MANDATORY REQUIREMENTS</th></tr><tr><td>MR 1</td><td>Certificate of registration or incorporation from country of jurisdiction. In cases of Joint Ventures, Certificates shall be required for each of the Joint Venture Partners.</td></tr><tr><td>MR 2</td><td>Attach copy of Valid CR12 / Certificate of confirmation of Directors and Shareholding.</td></tr><tr><td>MR 3</td><td>Copy of Tax compliance or equivalent documents applicable in the bidder's Country of origin</td></tr><tr><td>MR 4</td><td>Valid business permit from country of jurisdiction. For local consultants, proof of registration with relevant registration bodies is required.</td></tr><tr><td>MR 5</td><td>In cases of Joint Ventures, a Joint Venture Agreement to govern the partnership for the whole engagement period.</td></tr><tr><td>MR 6</td><td>A. Notarized Power of Attorney for Authorized Representative complete with designation and contact details B. In the case of a Joint Venture, a) a power of attorney for the authorized representative of each JV member, and b) a power of attorney for the representative of the lead consultant to represent all JV members <b>Joint Venture Must be certified by a law firm / commissioner of oaths</b></td></tr><tr><td>MR 7</td><td>Duly filled and stamped Addendum(s) and Clarification(s) issued must be attached (Where Applicable)</td></tr><tr><td>MR 8</td><td>Confidential Business Questionnaire duly filled, signed and stamped. In case of Joint Venture, all members of the consortium to fill the Confidential Business Questionnaire.</td></tr><tr><td>MR 9</td><td>Submission of valid Tender Security of KShs.1,000,000 as per the instructions in the TDS.</td></tr><tr><td>MR 10</td><td>Duly filled, signed and stamped <b>Technical Proposal Form</b>.</td></tr><tr><td>MR 11</td><td>Submission of <b>Technical Proposal</b> duly signed and uploaded to the <b>c-folder</b> of the SRM System through the link '<b>Technical RFx response</b>'.</td></tr><tr><td>MR 12</td><td>The Tender <b>MUST</b> be submitted in the required format and serialized on each page of the bid submitted.</td></tr><tr><td>MR 13</td><td>The tender has been duly signed by the person lawfully authorized to do so through a Notarized power of Attorney.</td></tr><tr><td>MR 14</td><td>Duly filled signed and stamped Self Declaration form that the tenderer is not debarred in the matter of PPADA 2015.</td></tr><tr><td>MR 15</td><td>Duly filled signed and stamped Self Declaration form that the tenderer will not engage in any corrupt or Fraudulent Practice.</td></tr><tr><td>MR 16</td><td>Duly filled signed and stamped Declaration and Commitment to the Code of Ethics.</td></tr><tr><td>MR 17</td><td>The firms must have at least 3years of carrying out market research and analysis. In case of Joint Venture, the Lead Partner must have at least 3 years' experience.</td></tr><tr><td>MR 18</td><td>The firms must have carried out at least two renewable energy market consultancy projects.</td></tr><tr><td>MR 19</td><td>Audited Financial Statements for the last 3 years (For consortium arrangements, each member must meet the requirements).</td></tr><tr><td>MR 20</td><td>Show proof of engagement of local Consultants either through consortium or joint ventures. This is applicable to foreign consulting firms</td></tr><tr><td>MR 21</td><td>Conflict of interest disclosures including court cases with government institutions, the impact on the engagement and the mitigation methods</td></tr><tr><td>MR 22</td><td>Evidence of a local content plan by all foreign tenderers participating in the tender to ensure transfer of knowledge through training, mentoring and participation of</td></tr></table>	MANDATORY REQUIREMENTS		MR 1	Certificate of registration or incorporation from country of jurisdiction. In cases of Joint Ventures, Certificates shall be required for each of the Joint Venture Partners.	MR 2	Attach copy of Valid CR12 / Certificate of confirmation of Directors and Shareholding.	MR 3	Copy of Tax compliance or equivalent documents applicable in the bidder's Country of origin	MR 4	Valid business permit from country of jurisdiction. For local consultants, proof of registration with relevant registration bodies is required.	MR 5	In cases of Joint Ventures, a Joint Venture Agreement to govern the partnership for the whole engagement period.	MR 6	A. Notarized Power of Attorney for Authorized Representative complete with designation and contact details B. In the case of a Joint Venture, a) a power of attorney for the authorized representative of each JV member, and b) a power of attorney for the representative of the lead consultant to represent all JV members <b>Joint Venture Must be certified by a law firm / commissioner of oaths</b>	MR 7	Duly filled and stamped Addendum(s) and Clarification(s) issued must be attached (Where Applicable)	MR 8	Confidential Business Questionnaire duly filled, signed and stamped. In case of Joint Venture, all members of the consortium to fill the Confidential Business Questionnaire.	MR 9	Submission of valid Tender Security of KShs.1,000,000 as per the instructions in the TDS.	MR 10	Duly filled, signed and stamped <b>Technical Proposal Form</b> .	MR 11	Submission of <b>Technical Proposal</b> duly signed and uploaded to the <b>c-folder</b> of the SRM System through the link ' <b>Technical RFx response</b> '.	MR 12	The Tender <b>MUST</b> be submitted in the required format and serialized on each page of the bid submitted.	MR 13	The tender has been duly signed by the person lawfully authorized to do so through a Notarized power of Attorney.	MR 14	Duly filled signed and stamped Self Declaration form that the tenderer is not debarred in the matter of PPADA 2015.	MR 15	Duly filled signed and stamped Self Declaration form that the tenderer will not engage in any corrupt or Fraudulent Practice.	MR 16	Duly filled signed and stamped Declaration and Commitment to the Code of Ethics.	MR 17	The firms must have at least 3years of carrying out market research and analysis. In case of Joint Venture, the Lead Partner must have at least 3 years' experience.	MR 18	The firms must have carried out at least two renewable energy market consultancy projects.	MR 19	Audited Financial Statements for the last 3 years (For consortium arrangements, each member must meet the requirements).	MR 20	Show proof of engagement of local Consultants either through consortium or joint ventures. This is applicable to foreign consulting firms	MR 21	Conflict of interest disclosures including court cases with government institutions, the impact on the engagement and the mitigation methods	MR 22	Evidence of a local content plan by all foreign tenderers participating in the tender to ensure transfer of knowledge through training, mentoring and participation of
MANDATORY REQUIREMENTS																																																
MR 1	Certificate of registration or incorporation from country of jurisdiction. In cases of Joint Ventures, Certificates shall be required for each of the Joint Venture Partners.																																															
MR 2	Attach copy of Valid CR12 / Certificate of confirmation of Directors and Shareholding.																																															
MR 3	Copy of Tax compliance or equivalent documents applicable in the bidder's Country of origin																																															
MR 4	Valid business permit from country of jurisdiction. For local consultants, proof of registration with relevant registration bodies is required.																																															
MR 5	In cases of Joint Ventures, a Joint Venture Agreement to govern the partnership for the whole engagement period.																																															
MR 6	A. Notarized Power of Attorney for Authorized Representative complete with designation and contact details B. In the case of a Joint Venture, a) a power of attorney for the authorized representative of each JV member, and b) a power of attorney for the representative of the lead consultant to represent all JV members <b>Joint Venture Must be certified by a law firm / commissioner of oaths</b>																																															
MR 7	Duly filled and stamped Addendum(s) and Clarification(s) issued must be attached (Where Applicable)																																															
MR 8	Confidential Business Questionnaire duly filled, signed and stamped. In case of Joint Venture, all members of the consortium to fill the Confidential Business Questionnaire.																																															
MR 9	Submission of valid Tender Security of KShs.1,000,000 as per the instructions in the TDS.																																															
MR 10	Duly filled, signed and stamped <b>Technical Proposal Form</b> .																																															
MR 11	Submission of <b>Technical Proposal</b> duly signed and uploaded to the <b>c-folder</b> of the SRM System through the link ' <b>Technical RFx response</b> '.																																															
MR 12	The Tender <b>MUST</b> be submitted in the required format and serialized on each page of the bid submitted.																																															
MR 13	The tender has been duly signed by the person lawfully authorized to do so through a Notarized power of Attorney.																																															
MR 14	Duly filled signed and stamped Self Declaration form that the tenderer is not debarred in the matter of PPADA 2015.																																															
MR 15	Duly filled signed and stamped Self Declaration form that the tenderer will not engage in any corrupt or Fraudulent Practice.																																															
MR 16	Duly filled signed and stamped Declaration and Commitment to the Code of Ethics.																																															
MR 17	The firms must have at least 3years of carrying out market research and analysis. In case of Joint Venture, the Lead Partner must have at least 3 years' experience.																																															
MR 18	The firms must have carried out at least two renewable energy market consultancy projects.																																															
MR 19	Audited Financial Statements for the last 3 years (For consortium arrangements, each member must meet the requirements).																																															
MR 20	Show proof of engagement of local Consultants either through consortium or joint ventures. This is applicable to foreign consulting firms																																															
MR 21	Conflict of interest disclosures including court cases with government institutions, the impact on the engagement and the mitigation methods																																															
MR 22	Evidence of a local content plan by all foreign tenderers participating in the tender to ensure transfer of knowledge through training, mentoring and participation of																																															

Reference ITC Clause	to	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO CONSULTANTS																			
			Kenyan Citizens, and reserve at least seventy-five percent (75%) employment opportunities for Kenyan Citizens, of which not less than twenty percent (20%) shall be reserved for Kenyan professionals at management level.																		
22.2		<p style="text-align: center;"><b>Technical Evaluation</b></p> <p>Consultants will be evaluated and scored based on the strengths of their experience and technical capacity to carry out the consultancy services. The maximum score for each technical evaluation criteria is as indicated below. Pass mark shall be for those who achieve a minimum aggregate score of 70%. <b>Only those who achieve the pass mark of 70% will qualify for Financial Evaluation.</b></p> <table><tr><th></th><th>Technical Evaluation Criteria</th><th>Maximum Score</th></tr><tr><td><b>A</b></td><td><b>Specific experience of the Firm and profile of the firm relevant to the assignment especially in renewable captive power market feasibility study with emphasis on Solar PV and Geothermal generation. Evidence of the experience is required in form of a reference letter from Clients where these assignments were undertaken. The reference letters should be in the letter heads of the Client and should also state the contact information that could be used for confirmation of the study. The letters should be addressed to the General Manager - Supply Chain, KenGen or To whom it may concern as may be appropriate. The number of points to be assigned to the above position A shall be determined considering the sub-criteria and relevant percentage weights (No. of relevant assignments in the last 10 years): (30 Marks)</b></td><td></td></tr><tr><td>i.</td><td>Experience of the firm in renewable power feasibility consultancy Submit a profile of a minimum of 8 projects giving details, Value in (USD/KES) and specific role of firm.</td><td>16</td></tr><tr><td>ii.</td><td>Experience of the firm in captive power design and consultancy of at least 2 No. consultancy projects, indicating specific roles, value of project (in USD or KES) and scope covered within the last 10 years.</td><td>8</td></tr><tr><td>iii.</td><td>Completed at least 1 No.in Solar PV and 1 No. in Geothermal or other assignments of similar nature, that is feasibility study on power market opportunity and a profile of the projects indicating, Value in (USD/KES), specific role of firm within the last 10 years.</td><td>6</td></tr><tr><td><b>B.</b></td><td><b>Adequacy and quality of the proposed methodology, and work plan in responding to the Terms of Reference (TORs): [Notes to Consultant: The Procuring Entity will assess whether the proposed methodology is clear, responds to the TORs, work plan is realistic and implementable; overall team composition is balanced and has an appropriate skill</b></td><td></td></tr></table>			Technical Evaluation Criteria	Maximum Score	<b>A</b>	<b>Specific experience of the Firm and profile of the firm relevant to the assignment especially in renewable captive power market feasibility study with emphasis on Solar PV and Geothermal generation. Evidence of the experience is required in form of a reference letter from Clients where these assignments were undertaken. The reference letters should be in the letter heads of the Client and should also state the contact information that could be used for confirmation of the study. The letters should be addressed to the General Manager - Supply Chain, KenGen or To whom it may concern as may be appropriate. The number of points to be assigned to the above position A shall be determined considering the sub-criteria and relevant percentage weights (No. of relevant assignments in the last 10 years): (30 Marks)</b>		i.	Experience of the firm in renewable power feasibility consultancy Submit a profile of a minimum of 8 projects giving details, Value in (USD/KES) and specific role of firm.	16	ii.	Experience of the firm in captive power design and consultancy of at least 2 No. consultancy projects, indicating specific roles, value of project (in USD or KES) and scope covered within the last 10 years.	8	iii.	Completed at least 1 No.in Solar PV and 1 No. in Geothermal or other assignments of similar nature, that is feasibility study on power market opportunity and a profile of the projects indicating, Value in (USD/KES), specific role of firm within the last 10 years.	6	<b>B.</b>	<b>Adequacy and quality of the proposed methodology, and work plan in responding to the Terms of Reference (TORs): [Notes to Consultant: The Procuring Entity will assess whether the proposed methodology is clear, responds to the TORs, work plan is realistic and implementable; overall team composition is balanced and has an appropriate skill</b>	
	Technical Evaluation Criteria	Maximum Score																			
<b>A</b>	<b>Specific experience of the Firm and profile of the firm relevant to the assignment especially in renewable captive power market feasibility study with emphasis on Solar PV and Geothermal generation. Evidence of the experience is required in form of a reference letter from Clients where these assignments were undertaken. The reference letters should be in the letter heads of the Client and should also state the contact information that could be used for confirmation of the study. The letters should be addressed to the General Manager - Supply Chain, KenGen or To whom it may concern as may be appropriate. The number of points to be assigned to the above position A shall be determined considering the sub-criteria and relevant percentage weights (No. of relevant assignments in the last 10 years): (30 Marks)</b>																				
i.	Experience of the firm in renewable power feasibility consultancy Submit a profile of a minimum of 8 projects giving details, Value in (USD/KES) and specific role of firm.	16																			
ii.	Experience of the firm in captive power design and consultancy of at least 2 No. consultancy projects, indicating specific roles, value of project (in USD or KES) and scope covered within the last 10 years.	8																			
iii.	Completed at least 1 No.in Solar PV and 1 No. in Geothermal or other assignments of similar nature, that is feasibility study on power market opportunity and a profile of the projects indicating, Value in (USD/KES), specific role of firm within the last 10 years.	6																			
<b>B.</b>	<b>Adequacy and quality of the proposed methodology, and work plan in responding to the Terms of Reference (TORs): [Notes to Consultant: The Procuring Entity will assess whether the proposed methodology is clear, responds to the TORs, work plan is realistic and implementable; overall team composition is balanced and has an appropriate skill</b>																				

Reference ITC Clause	to	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO CONSULTANTS	
		<b>mix; and the work plan has right input of Experts] (20 marks)</b>	
	i.	Technical approach and methodology	10
	ii.	Organizational Structure, roles and interrelationship of Key experts	5
	iii.	Work plan	5
	C.	<b>Key Experts' Qualifications and Competence for the Assignment (45 marks)</b> <b>{Notes to Consultant: each position number corresponds to the same for the Key Experts in Form TECH-6B to be prepared by the Consultant}</b> Instructions: i) The Consultant SHALL provide details of the proposed personnel, certified copies of certificates, signed CVs, and evidence of relevant professional registration. ii) Only 1 CV will be submitted for each proposed key position iii) Email and telephone contacts for personnel who's CVs have been included in the bid shall be provided in the bid document. iv) The relevant experience required must be clearly indicated in the CVs v) The proposed key experts must certify their CVs and confirm availability for the study The Consultants SHALL NOT be allowed to replace personnel whose CV has been submitted without prior approval of KenGen. In the event of such an occurrence, the replacement shall be of same or higher qualifications required	
	K1	<b><u>Team Leader/Project Manager</u></b>	
		Degree in engineering or business-related studies, registered with any recognized body and with at least 10 years experience as a Team Lead or Project Manager in market research on the renewable Energy.	15
	K2	<b><u>Market Research Specialist</u></b>	
		Degree in Economics or any business-related field with at least 10 years' experience in market research and analysis.	10
	K3	<b><u>Renewable Energy Specialist</u></b>	
		Degree in either Mechanical, Electrical or Renewable energy with at least 10 years' experience in renewable power designs 5 years of which in captive power design.	10
	K4	<b><u>Legal and Regulatory Expert</u></b>	
		Degree in Law or any related field at least 10 years' experience in development or legal and regulatory frameworks in power markets	5
	K5	<b><u>Financial Analyst</u></b>	
		Degree in Finance or related field with at least 10 years' experience in Financial modelling for renewable energy projects	5

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO CONSULTANTS		
	<b>D</b>	<b>Transfer of knowledge and training program (relevance of approach and methodology): (3 marks)</b>	
		(a) Relevance of training program	1
		(b) Training approach and methodology	1
		(c) Qualifications of experts and trainers	1
	<b>E</b>	Participation by Kenyan citizens among proposed Key Experts (2 Marks)	2
		<b>OVERALL (PASS/FAIL) Pass Mark: 70 Marks</b> {The minimum technical score (St) required to pass is: <b>Seventy (70) marks</b> }	
25.2	<p>For purposes of evaluation, bids shall be evaluated inclusive of tax.</p> <p>For the evaluation, the Procuring Entity will include separate items of: (a) all local identifiable indirect taxes such as sales tax, excise tax, VAT, or similar taxes levied on the contract's invoices; and (b) all additional local indirect tax on the remuneration of services rendered by experts.</p> <p>If a Contract is awarded, at Contract negotiations, all such taxes will be discussed, finalized using the itemized list and included in the Contract amount as a separate line, also indicating which taxes shall be paid by the Consultant and which taxes are withheld and paid by the Procuring Entity on behalf of the Consultant.</p>		
26.1	<p>The single currency for the conversion of all prices expressed in various currencies into a single one is: <b>Kenya Shillings (KES)</b></p> <p>The official source of the selling exchange rate is: mean exchange rate provided by Central Bank of Kenya (CBK)</p> <p>The date of the exchange rate is: Tender Closing Date</p>		
29.1 (QCBS only)	<p style="text-align: center;"><b>Financial Evaluation</b></p> <p>The lowest evaluated Financial Proposal (Fm) is given the maximum financial score (Sf) of 100. The formula for determining the financial scores (Sf) of all other Proposals is calculated as following:  <math>Sf = 100 \times Fm / F</math>, in which "Sf" is the financial score, "Fm" is the lowest price, and "F" the price of the proposal under consideration.</p> <p>The weights given to the Technical (T) and Financial (P) Proposals are:  T = 0.7, and  P = 0.3</p> <p>Proposals are ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) as following: <math>S = St \times T\% + Sf \times P\%</math>.</p> <p>The formula for determining the financial scores is the following:  <math>Sf = 30 \times Fm / F</math>, in which Sf is the financial score, Fm is the lowest price and F the price of the proposal under consideration.</p> <p>The weights given to the Technical (T) and Financial (P) Proposals are: T= 70% and P=</p>		

Reference ITC Clause	to	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO CONSULTANTS
		<p>30%</p> <p>NOTE: The lowest Financial Proposal (Fm) will be given a financial score (Sf) of 100 points. The financial scores (Sf) of the other Financial Proposals will be computed as indicated in the Data Sheet. Proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) indicated in the Data Sheet: <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>
31		<p>The Standstill Period shall be: 14 days</p> <p>The procedures for making a procurement-related complaint are detailed in the Public Procurement and Asset Disposal Act and Regulations. If a Consultant wishes to make a procurement related complaint or appeal, the Consultant shall submit its complaint to the Public Procurement Administrative Review Board.</p>
<b>D. Negotiations and Award</b>		
32.1		<p>Expected date and address for contract negotiations: There will be no negotiation for this tender</p> <p>Address: Virtual or In Nairobi, Kenya (As per letter of award)</p>
35.2		<p>Expected date for the commencement of the Services: Date: From March 2025 in : Nairobi</p>
36.1		<p>The publication of the contract award information following the completion of the contract negotiations and contract signing will be done as following: The publication will be done within 30 days after the contract signing</p>
37.1		<p>The procedures for making a Procurement-related Complaints are detailed in the “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 in writing.</p>

### SECTION 3. TECHNICAL PROPOSAL – STANDARD FORMS

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

#### I. FORM TECH-I: TECHNICAL PROPOSAL SUBMISSION FORM

To: Kenya Electricity Generating Company PLC,  
9<sup>th</sup> Floor, KenGen Pension Plaza II,  
Kolobot Road, Parklands,  
P.O. Box 47936, 00100  
NAIROBI  
[tenders@kengen.co.ke](mailto:tenders@kengen.co.ke)

Dear Sirs:

We, the undersigned, offer to provide consulting services to *undertake a feasibility study on renewable captive power market opportunity for KenGen* in accordance with your RFP dated *January 2025* and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal and a Financial Proposal sealed in a separate envelope.

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

OR

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

We hereby declare that:

- a) All the information and statements made in this Proposal are true and we accept that any misinterpretation or misrepresentation contained in this Proposal may lead to our disqualification by the Procuring Entity or maybe sanctioned by the PPRA.
- b) Our Proposal shall be valid and remain binding upon us for the period of time specified in the Data Sheet, Clause 12.1.
- c) We have no conflict of interest in accordance with ITC3.
- d) We meet the eligibility requirements as stated in ITC6, and we confirm our understanding of our obligation to abide by the Government's policy in regard to corrupt, fraudulent and prohibited practices as per ITC5.
- e) In competing for (and, if the award is made to us, in executing) the Contract, we undertake to observe the laws against fraud and corruption, including bribery, as well as laws against anti-competitive practices, including bid rigging in force in Kenya; we hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption or anti-competitive practices.
- f) We confirm that we are not insolvent, in receivership, bankrupt or on the process of being wound up.

- g) The Consultant shall declare in the Technical Proposal Submission Form, that in competing for and executing a contract, it shall undertake to observe the laws of Kenya against fraud and corruption including bribery, as well as against anti-competitive practices including bid-rigging.
- h) We are not guilty of any serious violation of fair employment laws and practices. We undertake to observe the laws of Kenya against fraud and corruption including bribery, as well as against collusive and anti-competitive practices, including bid rigging. To this effect we have signed the “Certificate of Independent Proposal Determination” attached below. We also undertake to adhere by the Code of Ethics for persons participating in Public Procurement and Asset Disposal Activities in Kenya, copy available from *(specify website)* during the procurement process and the execution of any resulting contract.
- l) 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.
- e) 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 and 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 32.2 of the Data Sheet.

We remain,

Yours sincerely,

Authorized Signature *{In full and initials}*: Name and Title  
 of Signatory:  
 Name of Consultant *(company's name or JV's name)*:  
 Contact information *(phone and e-mail)*:

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

## 2 CERTIFICATE OF INDEPENDENT PROPOSAL DETERMINATION

I, the undersigned, in submitting the accompanying TECHNICAL PROPOSAL SUBMISSION FORM to the \_\_\_\_\_

\_\_\_\_\_[Name of Procuring Entity]

for: \_\_\_\_\_[Name and number of tender] in response to the request for tenders made by: \_\_\_\_\_[Name of Tenderer] do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of \_\_\_\_\_[Name of Tenderer] that:

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

### 3. APPENDIX TO FORM OF PROPOSAL ON FRAUD AND CORRUPTION CLAUSE (for information)

*(Appendix shall not be modified)*

#### **Purpose**

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

#### **Requirements**

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

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

- (1) a person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
- (2) A person referred to under sub section (1) who contravenes the provisions of that sub-section commits an offence;
- (3) Without limiting the generality of the subsection (1) and (2), the person shall be: -
  - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
  - b) if a contract has already been entered into with the person, the contract shall be avoidable;
- (4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
- (5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement—
  - i) Shall not take part in the procurement proceedings;
  - ii) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
  - iii) Shall not be a sub-contractor for the tender to whom was awarded contract, or a member of the group of tenderers to whom the contract was awarded, but the sub-contractor appointed shall meet all the requirements of this Act.
- (6) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;
- (7) If a person contravenes sub section (1) with respect to a conflict of interest described in subsection (5)(a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer.

- (8) Incompliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:
- a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
    - i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
    - ii) "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
    - iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
    - iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
    - v) "obstructive practice" is:
      - i) 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
      - ii) 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 (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers and their Sub-contractors, Sub- consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to 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.

## 4 FORM TECH-2: CONSULTANT'S ORGANIZATION AND EXPERIENCE

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

### A - Consultant's Organization

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

### B - Consultant's Experience

1. List only previous similar assignments successfully completed in the last [.....] years.
2. List only those assignments for which the Consultant was legally contracted by the Procuring Entity as a company or was one of the joint venture partners. Assignments completed by the Consultant's individual experts working privately or through other consulting firms cannot be claimed as the relevant experience of the Consultant, or that of the Consultant's partners or sub-consultants, but can be claimed by the Experts themselves in their Curriculum Vitae (CV).
3. The Consultant shall substantiate their claimed experience by presenting copies of relevant documents such as the form of contract (not the whole contract), purchase order, service order, performance certificate, etc.; which shall be included in the proposal as part of *Form Tech 7 Mandatory Documentary Evidence*.

<b>Assignment name:</b>	<b>Approx. value of the contract [KES, US\$ etc.]:</b>
Country:	Duration of assignment (months):
Name of Procuring Entity:	Total N° 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:	N° of professional staff-months provided by associated Consultants:
Role on Assignment: (E.g. Lead Member in ABC JV, or Sole Consultant):	Name of senior professional staff of your firm involved and functions performed:
Narrative description of Assignment:	
Description of actual services provided by your staff within the assignment:	
Name of Consulting Firm:	Name and Title of Signatory:

## 5. 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

N/A

### B - On Counterpart Staff and Facilities

No counterpart Staff shall be provided by the Procuring Entity.

The Consultant shall make arrangements for its own administrative support, local transportation, equipment, data, background reports, etc.

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

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

{The structure of your Technical Proposal:

- a) Technical Approach and Methodology
- b) Work Plan
- c) Organization and Staffing}

- i) Technical Approach and Methodology. {Please explain your understanding of the objectives of the assignment as outlined in the Terms of Reference (TORs), the technical approach, and the methodology you would adopt for implementing the tasks to deliver the expected output(s), and the degree of detail of such output. Please do not repeat/copy the TORs in here.}
- ii) Work Plan. {Please outline the plan for the implementation of the main activities/tasks of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Procuring Entity), and tentative delivery dates of their reports. 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.}

## 7. FORM TECH-5: WORK SCHEDULE AND PLANNING FOR DELIVERABLES

N°	Deliverables <sup>1</sup> (D-..)	WEEK											
		1	2	3	4	5	6	7	8	9	.....	n	TOTAL
D-1	{e.g., Deliverable #1: Report A												
	1) data collection												
	2) drafting												
	3) inception report												
	4) incorporating comments												
	5) .....												
	6) delivery of final report to Procuring Entity}												
D-2	{e.g., Deliverable #2:.....}												
N													

- 1 List the deliverables with the breakdown for activities required to produce them and other benchmarks such as the Procuring Entity's approvals. For phased assignments, indicate the activities, delivery of reports, and benchmarks separately for each phase.
- 2 Duration of activities shall be indicated in a form of a bar chart.
3. Include a legend, if necessary, to help read the chart.

## 8 FORM TECH-5A: WORK SCHEDULE MILESTONES

It is proposed that the detailed feasibility study be conducted in accordance with the milestone activities described in the table **FORM TECH-5A** below. The bidding consultant is therefore required to fill the estimated **Man-Months** for each activity being the sum of all person months per milestone activity.

No.	Milestone Activity	Description	Duration of Activity	Estimated Man Months	Remarks
1	Inception Report	Review the inception report and submit for concurrence with the Employer	3 weeks		At Home Offices of the consultant or as desired
2	Presentation of Inception report	Conduct presentations meetings with Employer for comments and concurrence	1 week		In Nakuru or as may be agreed upon
3	Draft feasibility study report	Submission of draft feasibility study report	5 weeks		In accordance with the Inception report
4	Presentation of Draft feasibility study report	Conduct presentations meetings with Employer for comments and concurrence	1 week		In Nakuru or as may be agreed upon
5	Final Feasibility study report	Submission of final feasibility study report	3 weeks		Hard and soft copies to be submitted as described
<b>Total Duration</b> (Calendar weeks)			<b>13 Weeks (3 months)</b>		

### Note:

i). The milestone activities described in the table FORM TECH-5A above shall be for all the categories of Works to be carried out by the consultant.

## 9. FORM TECH- 6A: TEAM COMPOSITION, ASSIGNMENT, & KEY EXPERTS' INPUTS

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

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

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

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



Full time input



Part time input

## 10. FORM TECH-6B: CURRICULUM VITAE (CV)

Position Title and No.	{e.g., K-1, Team Leader}
Name of Expert:	{Insert full name}
Date of Birth:	{day/month/year}
Country of Citizenship	

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

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

Period	Employing organization and your title/position. Contact Infor 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. Bbbbbb, 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
{List all deliverables/tasks as in TECH- 5 in which the Expert will be involved}	

Expert's contact information : (e-mail.....  
phone.....) Certification:

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

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

{day / month/year}

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

---

Representative of the  
Consultant (the same  
who signs the Proposal

## II. FORM TECH-7: MANDATORY SUPPORT DOCUMENTS

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

a) Certificate of Incorporation/Certificate of Registration

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

b) Tax Compliance Certificate

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

c) Practice License or Certificate for the Firm

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

d) Similar Consulting Assignments Experience

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

e) Academic Certificates

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

f) Professional Certificates

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

g) Professional Membership of Key Experts

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

h) Certificate of Independent Proposal Determination

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

## 12 FORM TECH - 8: SELF-DECLARATION FORMS

### FORM SD I

#### 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

### 13. 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 Official Stamp

#### 14 DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

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

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

Name of Authorized signatory.....

Sign.....

Position.....

Office address.....

Telephone..... E-

mail.....

Name of the Firm/Company.....

Date.....

**(Company Seal/ Rubber Stamp where applicable)**

Witness

Name .....

Sign.....

Date.....

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

Signed: .....

Capacity / title (director or partner or sole proprietor, etc.)

..... Name:

.....

Duly authorized to sign the bid for and on behalf of: .....[insert complete name of

Tenderer] Dated on ..... day of ..... [Insert date of signing]

Seal or stamp

## **SECTION 4. FINANCIAL PROPOSAL - STANDARD FORMS**

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

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

FIN-1: Financial Proposal Submission Form

FIN-2: Summary of Costs

FIN-3: Breakdown of Remuneration

FIN-4: Breakdown of Reimbursable Expenses

FIN-5 Summary of Milestone Costs

## FORM FIN-1: FINANCIAL PROPOSAL SUBMISSION FORM

..... {Location, Date}

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

Dear Sirs:

We, the undersigned, offer to provide the consulting services for..... [Insert title of assignment]

in accordance with your Request for Proposal dated..... [Insert Date] and our Technical Proposal.

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

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

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

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

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

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

We understand you are not bound to accept any Proposal  
you receive. We remain,  
Yours sincerely,

---

Signature..... (of Consultant's authorized representative) {In full and initials}: Full name: .....  
{insert full name of authorized representative} Title: ..... {insert title/ position of authorized representative}

Name of Consultant..... (company's name or JV's name): Capacity: ..... {insert the person's capacity to sign for the Consultant} Physical Address: ..... {insert the authorized representative's address}  
Phone: ..... {insert the authorized representative's phone and fax number, if applicable} Email: .....  
{insert the authorized representative's email address}

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

## FORM FIN-2: SUMMARY OF COSTS

Item	Cost			
	{Consultant must state the proposed Costs in accordance with ITC 16.4 of the Data Sheet; delete columns which are not used}			
	{Insert Foreign Currency # 1}	{Insert Foreign Currency # 2, if used}	{Insert Foreign Currency # 3, if used}	{Insert Local Currency, if used and/or required (16.4
Cost of the Financial Proposal				
Including:				
(1) Remuneration				
(2) Reimbursables				
Subtotal [Remuneration + Reimbursables]				
Taxes:				
{insert type of tax e.g., VAT or sales tax}				
{e.g., withholding tax on experts' remuneration}				
{insert type of tax}				
Total Taxes				
Total Cost of the Financial Proposal: {Should match the amount in Form FIN-1}				

## FORM FIN-3: BREAKDOWN OF REMUNERATION

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

A. Remuneration _____								
No	Name	Position (as in TECH- 6)	Person-month Remuneration Rate	Time Input in Person/Month (from TECH- 6)	{Currency # 1- as in FIN-2}	{Currency # 2- as in FIN-2}	{Currency# 3- as in FIN- 2}	{Local Currency- as in FIN- 2}
	Key Experts							
K-1			[Home]					
			[Field]					
K-2								
	Non-Key Experts							
N-1			[Home]					
N-2			[Field]					
	Total Costs							

## FORM FIN-4 BREAKDOWN OF REIMBURSABLE

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

B. Reimbursable Expenses_____								
N°	Type of Reimbursable Expenses	Unit	Unit Cost	Quantity	{Currency # 1- as in FIN-2}	{Currency # 2- as in FIN-2}	{Currency# 3- as in FIN-2}	{Local Currency- as in FIN-2}
	{e.g., Per diem	{Day}						
	{e.g., International flights}	{Ticket}						
	{e.g., In/out airport transportation}	{Trip}						
	{e.g., Communication costs between Insert place and Insert place}							
	{ e.g., reproduction of reports}							
	{e.g., Office rent}							
	.....							
	{Training of the Procuring Entity's personnel – if required in TOR}							
Total Costs								

### Legend:

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



## FORM FIN-5 SUMMARY OF MILESTONE COSTS

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

**NOTE: This table for summary of costs is to be submitted only in the Financial Proposal envelope**

No.	Activity	Duration	Cost of Man-Months (Currency)	Other Associated Costs (Currency)	Total Cost Exclusive of Taxes (Currency)	Applicable Taxes (Currency)	Total Cost inclusive of Taxes (Currency)
1	Inception report	3 weeks					
2	Presentation of Inception Report	1 week					
3	Draft Feasibility study report	6 weeks					
4	Presentation of draft Feasibility study report	1 week					
5	Final feasibility study report submission	3 weeks					
6	Provision sums for use under employers' instruction	N/A	N/A	N/A	250,000	16% VAT	290,000
<b>TOTAL</b>		13 weeks					

**NOTE:**

- a) The Provisional Sums must be included as part of the total sum for this consultancy.
- b) The amount for the Provisional Sum is in Kenya Shillings (KES) 290,000

## **SECTION 5. TERMS OF REFERENCE**

### **4 Background**

Kenya Electricity Generating Company PLC (KenGen) is the leading electricity generating company in Kenya. The company, listed on the Nairobi Securities Exchange (NSE), utilizes various sources of energy to generate electricity which includes geothermal, hydro, wind, and thermal.

In the recent past, Kenya has witnessed increased own-power generation and defection from the central grid system. This has had negative impact on KenGen by delaying the implementation of generation project pipeline due slow demand growth on the grid connect. The growth of own-power generation (captive) and defection from grid could be attributed to various factors including high cost of grid power, need for reliable supply and the dropping global world trends of prices for renewable energy technologies, specifically Solar PV. This has led to the suppression grid power demand reducing the revenue base for KenGen. As part of KenGen's expansion and diversification strategy, the organization intends to venture into the business opportunity that the new market niche of captive has presented. To this end KenGen intends to engage a Consultant to carry out a feasibility study on the opportunities available in this market, as per the deliverables in section 5.2

#### **4.1 Introduction**

Kenya Electricity Generating Company (KenGen) invites proposals from experienced consultants to conduct a comprehensive feasibility study to explore market opportunities in renewable captive power, specifically focusing on Solar Photovoltaic (PV) and Geothermal power generation technologies. The study aims to identify and evaluate growth potential and investment opportunities in these sectors.

#### **4.2 Objectives**

The objectives of the feasibility study are to:

1. Carry out market research and analysis on the current status of the Renewable Captive Power market in Kenya and growth trajectory. The analysis to include market segmentation, competitive dynamics, cost structure, business models, product offerings and financing options.
2. Evaluate the potential of available and emerging renewable power generation technologies and resources in the captive power market in Kenya and possible opportunities for KenGen
3. Prefer and develop market assessment and evaluation tool for KenGen.
4. Analyze alternative business models and develop detailed preferred business model suitable for KenGen's entry into the captive power market.
5. Develop a clear investment plan, projected revenues and propose strategies for market penetration and sustainability.
6. Determine technical, financial and economic viability and potential returns for KenGen's investment in the renewable captive power market.
7. Outline Challenges, conduct a risk assessment and propose mitigation measures for KenGen's Entry into the Captive power market
8. Appraise the legal, regulatory and policy framework for renewable power generation and its effect on the captive power market.
9. Provide a market entry strategy for KenGen's into the captive power market complete with preferred approach and detailed implementation plan.

### **4.3 Scope of Work**

The consultant will undertake the following tasks:

#### **4.3.1 Market Research and Analysis**

- Current market status of renewable captive power including installed capacity and the different modes
- Market trends over the past 5 years and growth trajectory over the next 5 years
- Market segmentation and growth potential for each segment
- competitive dynamics including market players
- cost structure for different technologies and sizes
- business models including costs, strategies and cost benefit analysis
- product offerings for different technologies
- financing options currently in play

#### **4.3.2 Available and emerging renewable power generation technologies and possible opportunities**

- Evaluate the available and potential of emerging renewable power generation technologies and resources
- Identify and evaluate possible opportunities for KenGen's entry into the renewable captive power market

#### **4.3.3 Business models and approaches**

- Carry out an analysis of the different business approaches that KenGen can utilize for entry into the renewable captive power market
- Develop business models for the different approaches giving capital and maintenance cost requirements, financing options and return on investment
- Analyze and propose market penetration and sustainability strategies

#### **4.3.4 Technical, financial and economic viability**

- Carry out an analysis on the availability and suitability of resource sites, expected energy outputs and demand, human resource capability, infrastructure requirements, energy storage solutions, equipment lifespan and obsolescence and other technical viability aspects for KenGen's entry into the Captive Power market
- Carry out a financial and economic viability analysis and potential returns for KenGen's investment in the Captive power market

#### **4.3.5 Challenges and Risks**

- By making reference to the existing and future captive power market, outline all the challenges expected during the entry, development and operation in the market and propose workable solutions
- Conduct a risk assessment and come up with a risk matrix covering the entire life cycle of KenGen's captive power development including mitigation measures and contingency plans.

#### **4.3.6 Legal, regulatory and policy framework**

- Conduct an analysis of the existing legal, regulatory and policy framework in the market and its suitability and adequacy
- Identify the legal and regulatory requirements for KenGen's entry into the market and assess the opportunities that KenGen can leverage under the existing framework
- Assess proposed changes in the legal and regulatory environment and their effects on KenGen's entry into the market

#### **4.3.7 Market entry strategy**

- Conduct a complete analysis of the Captive Power market in Kenya and provide market entry strategies for KenGen's entry into the market
- Based on the identified strategies provide actionable methodologies for successful entry into the market
- Develop a strategic step by step implementation roadmap plans for execution of the methodologies including timelines, resources, and technology adoption

### **4.4 Deliverables:**

The consultant shall submit the following deliverables:

1. Detailed feasibility study report covering all aspects of the
  - Market Research and Analysis,
  - Available and emerging renewable power generation technologies and possible opportunities
  - Detailed Business model
  - Technical, financial and economic viability
  - Challenges and Risks
  - Legal, regulatory and policy framework
  - Detailed Market entry strategy complete with possible customer mapping and contacts.
2. Presentation of findings to KenGen's management team.
3. Strategic roadmap for implementation.

#### **4.5 Timeline:**

The study should be completed within 13 weeks from the contract award date. The timeline should include key milestones and deadlines.

The outcome for the feasibility study shall be.

a. Inception report

The Consultant will be expected to prepare an inception report within three weeks after contract signature in which he will indicate the scope of work, work schedules and a detailed methodology on how he intends to proceed with the study and submit it to the Employer at least two (2) days before presentation to KenGen at a workshop.

b. Draft feasibility study report

The Consultant shall submit a soft copy of the draft feasibility study report within nine weeks after contract signature indicating the major findings of the study, significant recommendations, and other requirements. The Consultant shall submit it to the Employer at least one (1) week before the presentation to KenGen for review at a workshop.

c. Final feasibility study Reports

The consultant shall submit Five (5) original sets of the final reports within three weeks after the presentation and receipt of KenGen's comments and the workshop. The Consultant shall also hand over to KenGen a set of soft copies in editable format of the reports

#### **4.6 Items to be Provided by KenGen**

**a) Liaison**

The Consultant shall be fully responsible for collecting data and information from relevant agencies, including paying for it where necessary. KenGen shall only facilitate where necessary.

**b) Taxes and Duties**

The Consultant shall be liable to pay all duties and taxes in connection with this assignment including VAT and other taxes 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.

**c) Correspondence**

The Client shall ensure that correspondence exchange in respect of the implementation of the study is treated promptly to avoid any delay. Correspondence by e-mail shall be on Microsoft Outlook (for Client). Hard copy correspondence shall be channeled through the Project Implementation office.

#### **4.7 Consultant's Obligations**

All information, data and reports obtained from the Client in the execution of the services of the Consultant shall be properly reviewed and analyzed 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 Client upon completion of the assignment.

The consultant shall be responsible for analysis, interpretation, and conclusion made from the data and information provided by the client.

The Consultant shall provide the originals of maps, plans and all drawings with final feasibility documents both in hard and soft copies in Portable Hard disk.

#### **4.8 Items that will not be Provided by KenGen**

KenGen will not provide amongst others, the following items and therefore it shall be the responsibility of the Consultant to price for them under associated costs:

- a) means of transport such as vehicles,
- b) printing,
- c) communications,
- d) travel and accommodation,
- e) Meeting and conference expenses that will be incurred outside the Employer's facilities.

#### **4.9 Terms of Payment**

The Consultant's total remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all staff costs, Sub consultants' costs, printing, communications, travel, accommodation, withholding tax, Value Added Tax and disbursements incurred by the Consultant in carrying out the Services.

The Contract Price may only be increased above the amounts stated in Clause 1.1 (c) if the Parties have agreed to additional payments in accordance with Clause 4.2 (b) of the General conditions of contract.

#### **4.10 Work Schedule Milestones**

It is proposed that the feasibility study be conducted in accordance with the milestone activities described in the table FORM TECH-5A: WORK SCHEDULE MILESTONES in SECTION 3.

The bidding consultant is therefore required to fill the estimated Man-Months for each activity being the sum of all person months per milestone activity.

#### **4.11 Cost of the Assignment**

##### **a) Cost Breakdown**

For each milestone activity, the consultant is required to provide a list of the experts and their man-months per activity. The unit cost of man-months for each activity shall also be provided and the total cost per person for each activity tabulated. Further, all the associated costs per activity shall be provided. In addition, all the applicable taxes shall be indicated separately and summarized per activity. The financial tables are attached in **SECTION 4** for filling by the consultant to guide in the cost breakdown.

##### **b) Summary of Costs**

The consultant is required to summarize the cost of the assignment based on the activity milestones as shown in table **FORM FIN-5 SUMMARY OF COSTS** in **SECTION 4**.

This is a fixed cost contract and payment per activity will be guided by the ceiling amounts per activity.

#### **4.12 Inception Report Workshop**

The Consultant shall arrange for a workshop for 5 days or less as may be agreed with the Employer, for presentation and review of the Inception Report to the Employer's staff of about

15 KenGen participants. This workshop shall be held in Nakuru or as may be agreed upon with the Employer.

#### **4.13 Presentation of Draft Feasibility Study Report Workshop**

The Consultant shall arrange for a workshop for 5 days or as may be agreed with the Employer, for presentation and review of the Draft Feasibility Study Report to the Employer's staff of about 15 KenGen participants. This workshop shall be held in Nakuru or as may be agreed upon with the Employer.

The consultant shall cater for the costs for the workshops/conferencing. KenGen shall cater for its staff accommodation and transport costs.

After this presentation and review, the consultant shall be required to make a high-level presentation for KenGen's top management in Nairobi at head office for one (1) day. This shall be done before compilation of the final feasibility study reports.

#### **4.14 Reporting Requirements**

The Consultant shall be required to prepare and submit the following reports to KenGen:

- a) Monthly progress reports** by the 5<sup>th</sup> day of every month in a soft copy and two printed copies.
- b) Inception Report**  
The Consultant will be expected to prepare an inception report within three weeks after contract signature in which he will indicate the scope of work, work schedules and a detailed methodology on how he intends to proceed with the study and submit it to the Employer at least two (2) days before presentation to KenGen at a workshop.
- c) Draft feasibility study Report**  
The Consultant shall submit a soft copy of the draft feasibility study report within nine weeks after contract signature indicating the major findings of the study, significant recommendations, and other requirements. The Consultant shall submit it to the Employer at least one (1) week before the presentation to KenGen for review at a workshop.
- d) Final feasibility study Report**  
The consultant shall submit Five (5) original sets of the final reports within three weeks after the presentation and receipt of KenGen's comments and the workshop. The Consultant shall also hand over, to KenGen, a set of soft copies in editable format of the report

**SECTION 6. CONDITIONS OF CONTRACT AND CONTRACT FORMS**

**A. CONTRACT FOR CONSULTANT'S SERVICES**

Lump-Sum Contract

Consulting Services for:

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

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

Between

\_\_\_\_\_ *[Name of the Procuring Entity]*

and

\_\_\_\_\_ *[Name of the  
Consultant]*

Date:

## B. FORM OF CONTRACT - LUMP-SUM

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

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

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

### WHEREAS

- a) The Procuring Entity has requested the Consultant to provide certain consulting services as defined in this Contract (herein after called the “Services”);
  - b) the Consultant, having represented to the Procuring Entity that it has the required professional skills, expertise and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract;
  - c) the Procuring Entity has set aside a budget and funds toward the cost of the Services and intends to apply a portion of these funds towards payments under this Contract;
- NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents attached here to shall be deemed to form an integral part of this Contract:
  - a) The General Conditions of Contract;
  - b) The Special Conditions of Contract;
  - c) Appendices:
    - Appendix A: Terms of Reference
    - Appendix B: Key Experts
    - Appendix C: Breakdown of Contract Price
    - Appendix D: Form of Advance Payments Guarantee

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

2. The mutual rights and obligations of the Procuring Entity and the Consultant shall be asset for thin the Contract, in particular:
  - a) The Consultant shall carryout the Services in accordance with the provisions of the Contract; and
  - b) the Procuring Entity shall make payments to the Consultant in accordance with the provisions of the Contract.

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

For and on behalf of..... [Name of Procuring Entity]

[Authorized Representative of the Procuring Entity–name, title and signature]

For and on behalf of..... [Name of Consultant or Name of a Joint Venture]

[Authorized Representative of the Consultant–name and signature]

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

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

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

## **SECTION 7: GENERAL CONDITIONS OF CONTRACT**

### **A. General Provisions**

#### **1. Definitions**

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

- a) “Applicable Law” means the laws and any other instruments having 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 I of the Form of Contract (the General Conditions (GCC), the Special Conditions (SCC), and the Appendices).
- d) “Procuring Entity” means the Procuring Entity that signs the Contract for the Services with the selected Consultant.
- e) “Day” means a working day unless indicated otherwise.
- f) “Effective Date” means the date on which this Contract comes into force and effect pursuant to Clause GCC 11.
- g) “Experts” means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or JV member(s) assigned by the Consultant to perform the Services or any part thereof under the Contract.
- h) “Foreign Currency” means any currency other than the currency of Kenya.
- i) “GCC” means these General Conditions of Contract.
- j) “Government” means the government of Kenya.
- k) “Joint Venture (JV)” means an association with or without a legal personality distinct from that of its members, of more than one entity where one member has the authority to conduct all businesses for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Procuring Entity for the performance of the Contract.
- l) “Key Expert(s)” means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose Curricula Vitae (CV) was taken into account in the technical evaluation of the Consultant's proposal.
- m) “Local Currency” means the Kenya Shillings, the currency of Kenya.
- n) “Non-Key Expert(s)” means an individual professional provided by the Consultant or its Sub-consultant to perform the Services or any part here of under the Contract.
- o) “Party” means the Procuring Entity or the Consultant, as the case may be, and “Parties” means both of them.
- p) “SCC” means the Special Conditions of Contract by which the GCC may be amended or supplemented but not over-written.
- q) “Services” means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A hereto.
- r) “Sub-consultants” means an entity to whom/which the Consultant subcontracts any part of the

Services while remaining solely liable for the execution of the Contract.

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

## **2. Relationship between the Parties**

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

## **3. Law Governing Contract**

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

## **4. Language**

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

## **5. Headings**

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

## **6. Communications**

- 6.1 Any communication required or permitted to be given or made pursuant to this Contract shall be in writing in the English Language. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the SCC.
- 6.2 A Party may change its address for notice here under by giving the other Party any communication of such change to the address specified in the SCC.

## **7 Location**

- 7.1 The 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 them ember specified in the SCC to act on their behalf in exercising all the Consultant's rights and obligations towards the Procuring Entity under this Contract, including without limitation the receiving of instructions and payments from the Procuring Entity.

## **9 Authorized Representatives**

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

## **10 Corrupt and Fraudulent Practices**

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

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

## **B. Commencement, Completion, 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 there to.

### **13 Commencement of Services**

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

### **14 Expiration of Contract**

14.1 Unless terminated earlier pursuant to Clause GCC19hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the SCC.

### **15 Entire Agreement**

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

### **16 Modifications or Variations**

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

### **17 Force Majeure**

#### **a. Definition**

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

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

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

**b. No Breach of Contract**

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

**c. Measures to be taken**

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

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

- 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 or additional costs reasonably and necessarily incurred.

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

## **18 Suspension**

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

## **19 Termination**

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

**a. By the Procuring Entity**

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

- 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.

**a. By the Consultant**

- a) 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.
- b) 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 GCC45.1withinfifty-five (55) calendar days after receiving written notice from the Consultant that such payment is overdue.
- c) 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.
- d) If the Procuring Entity fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC45.1.
- e) 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.

**b. Cessation of Rights and Obligations**

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

**c. Cessation of Services**

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

**d. Payment up on Termination**

19.1.6 Up on 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**

### **16. General**

#### **a. Standard of Performance**

- 20.1 The Consultant shall perform the Services and carry out the Services with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as a faithful adviser to the Procuring Entity, and shall at all times support and safeguard the Procuring Entity's legitimate interests in any dealings with the third parties.
- 20.2 The Consultant shall employ and provide such qualified and experienced Experts and Sub-consultants as are required to carry out the Services.
- 20.3 The Consultant may subcontract part of the Services to an extent and with such Key Experts and Sub-consultants as may be approved in advance by the Procuring Entity. Notwithstanding such approval, the Consultant shall retain full responsibility for the Services.

#### **b. Law Applicable to Services**

- 20.4. The Consultant shall perform the Services in accordance with the Contract and the Applicable Law and shall take all practicable steps to ensure that any of its Experts and Sub-consultants, comply with the Applicable Law.
- 20.5 Throughout the execution of the Contract, the Consultants 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 for in the SCC, the Consultant's liability under this Contract shall be as determined under the Applicable Law.

**24 Insurance to be taken out by the Consultant**

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

**25 Accounting, Inspection and Auditing**

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

25.2 The Consultant shall permit and shall cause its Sub-consultants to permit, the PPRA and/ or persons appointed by the PPRA to inspect the Site and /or all accounts and records relating to the performance of the Contract and the submission of the Proposal to provide the Services, and to have such accounts and records audited by auditors appointed by the PPRA if requested by the PPRA. The Consultant's attention is drawn to Clause GCC10 which provides, interlaid, that acts intended to materially impede the exercise of the PPRA's inspection and audit rights provided for under this ClauseGCC25.2 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility under the PPRA's prevailing sanctions procedures.)

**26 Reporting Obligations**

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

## **27 Proprietary Rights of the Procuring Entity in Reports and Records**

- 27.1 Unless otherwise indicated in the SCC, all reports and relevant data and information such as maps, diagrams, plans, databases, other documents and software, supporting records or material compiled or prepared by the Consultant for the Procuring Entity in the course of the Services shall be confidential and become and remain the absolute property of the Procuring Entity. The Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Procuring Entity, together with a detailed inventory thereof. The Consultant may retain a copy of such documents, data and/or software but shall not use the same for purposes unrelated to this Contract without prior written approval of the Procuring Entity.
- 27.2 If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of the plans, drawings, specifications, designs, databases, other documents and software, the Consultant shall obtain the Procuring Entity's prior written approval to such agreements, and the Procuring Entity shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned. Other restrictions about the future use of these documents and software, if any, shall be specified in the SCC.

## **28 Equipment, Vehicles and Materials**

- 28.1 Equipment, vehicles and materials made available to the Consultant by the Procuring Entity or purchased by the Consultant wholly or partly with funds provided by the Procuring Entity, shall be the property of the Procuring Entity and shall be marked accordingly. Upon termination or expiration of this Contract, the Consultant shall make available to the Procuring Entity an inventory of such equipment, vehicles and materials and shall dispose of such equipment, vehicles and materials in accordance with the Procuring Entity's instructions. While in possession of such equipment, vehicles and materials, the Consultant, unless otherwise instructed by the Procuring Entity in writing, shall insure them at the expense of the Procuring Entity in an amount equal to their full replacement value.
- 28.2 Any equipment or materials brought by the Consultant or its Experts into Kenya for the use either for the project or personal use shall remain the property of the Consultant or the Experts concerned, as applicable.

## **D. Consultant's Experts and Sub-consultants**

### **29 Description of Key Experts**

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

### **30 Replacement of Key Experts**

- 30.1 Except as the Procuring Entity may otherwise agree in writing, no changes shall be made in the Key Experts.
- 30.2 Notwithstanding the above, the substitution of Key Experts during Contract execution may be considered only based on the Consultant's written request and due to circumstances outside the reasonable control of the Consultant, including but not limited to death or medical incapacity. In such case, the Consultant shall forthwith provide as a replacement, a person of equivalent or better qualifications and experience, and at the same rate of remuneration.

### **31 Removal of Experts or Sub-consultants**

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

written request, provide a replacement.

- 31.2 In the event that any of Key Experts, Non-Key Experts or Sub-consultants is found by the Procuring Entity to be incompetent or incapable 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 Expert 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 in to Kenya reasonable amounts of foreign currency for the purposes of the Services or for the personal use of the Experts and of withdrawing any such amounts as may be earned therein by the Experts in the execution of the Services.
  - g Provide to the Consultant any such other assistance as may be specified in the SCC.

### **33 Access to KenGen Sites**

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

### **34 Change in the Applicable Law Related to Taxes and Duties**

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

### **35 Services, Facilities and Property of the Procuring Entity**

- 35.1 The Procuring Entity shall make available to the Consultant and the Experts, for the purposes of the

Services and free of any charge, the services, facilities and property described in the Terms of Reference (Appendix A) at the times and in the manner specified in said Appendix A.

### **36 Counterpart Personnel**

- 36.1 The Procuring Entity shall make available to the Consultant free of charge such professional and support counterpart personnel, to be nominated by the Procuring Entity with the Consultant's advice, if specified in Appendix A.
- 36.2 Professional and support counterpart personnel, excluding Procuring Entity's liaison personnel, shall work under the exclusive direction of the Consultant. If any member of the counterpart personnel fails to perform adequately any work as signed to such member by the Consultant that is consistent with the position occupied by such member, the Consultant may request the replacement of such member, and the Procuring Entity shall not unreasonably refuse to act upon such request.

### **37 Payment Obligation**

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

## **F. Payments to the Consultant**

### **38 Contract Price**

- 38.1 The Contract price is fixed and is set forth in the SCC. The Contract price breakdown is provided in Appendix C.
- 38.2 Any change to the Contract price specified in Clause 38.1 can be made only if the Parties have agreed to the revised scope of Services pursuant to Clause GCC 16 and have amended in writing the Terms of Reference in Appendix A.

### **39 Taxes and Duties**

- 39.1 The Consultant, Sub-consultants and Experts are responsible for meeting any and all tax liabilities arising out of the Contract unless it is stated otherwise in the SCC. Currency of Payment
- 39.2 Any payment under this Contract shall be made in the currency (ies) of the Contract.

### **40 Mode of Billing and Payment**

- 40.1 The total payments under this Contract shall not exceed the Contract price set forth in Clause GCC 38.1.
- 40.2 The payments under this Contract shall be made in lump-sum installments against deliverables specified in Appendix A. The payments will be made according to the payment schedule stated in the SCC.
- 40.2.1 Advance payment: Unless otherwise indicated in the SCC, an advance payment shall be made against an advance payment bank guarantee acceptable to the Procuring Entity in an amount (or amounts) and in a currency (or currencies) specified in the SCC. Such guarantee (i) is to remain effective until the advance payment has been fully set off, and (ii) is to be in the form set forth in Appendix D, or in such other form as the Procuring Entity shall have approved in writing. The advance payments will be set off by the Procuring Entity in equal portions against the lump-sum installments specified in the SCC until said advance payments have been fully set off.
- 40.2.2 The Lump-Sum Installment Payments. The Procuring Entity shall pay the Consultant within sixty (60) days after the receipt by the Procuring Entity of the deliverable(s) and the cover invoice for the related lump-sum installment payment. The payment can be withheld if the Procuring Entity does not approve the submitted deliverable(s) as satisfactory in which case the Procuring Entity shall provide comments to the Consultant within the same sixty (60) days period. The Consultant shall thereupon promptly make

any necessary corrections, and there after the fore going process shall be repeated.

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

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

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

#### **41 Interest on Delayed Payments**

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

#### **G. Fairness and Good Faith**

##### **42 Good Faith**

42.1 The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

#### **H. Settlement of Disputes**

##### **43 Amicable Settlement**

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

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

##### **44 Dispute Resolution**

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

## SECTION 8: SPECIAL CONDITIONS OF CONTRACT

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(a)	The Contract shall be construed in accordance with the law of Kenya
4.1	The language is: English
6.1 and 6.2	<p>The addresses are <i>[fill in at negotiations with the selected firm]</i>:</p> <p>Procuring Entity: Kenya Electricity Generating Company Plc____  Attention: Company Secretary and General Manager, Legal Affairs____  Facsimile: _____  E-mail: _____</p> <p>Consultant: _____  Attention: _____  Facsimile: _____  E-mail: _____</p>
8.1	<p><i>[If the Consultant consists only of one entity, state "N/A";</i>  OR  <i>If the Consultant is a Joint Venture consisting of more than one entity, the name of the JV member whose address is specified in Clause SCC6.1 should be inserted here.]</i>  The Lead Member on behalf of the JV is _____<i>[insert name of the member]</i></p>
9.1	<p>The Authorized Representatives are:</p> <p>For the Procuring Entity:</p> <p><b>Charles Opata,</b>  <b>Ag. Manager - New Business &amp; Partnerships</b>  <b>Kenya Electricity Generating Company Plc.</b>  <b>5<sup>th</sup> Floor, KenGen Pension Plaza I,</b>  <b>Kolobot Road, Parklands,</b>  <b>P.O. Box 47936 - 00100</b>  <b>NAIROBI, KENYA</b></p> <p>For the Consultant: <i>[name, title]</i>_____</p>
11.1	<p>The effectiveness of Contract:  The Effective Date shall be upon Signature of the Contract by the Parties</p>
13.1	<p>Commencement of Services:</p> <p>The Commencement Date shall be communicated by the Authorized representative of the Procuring Entity within 30 of the Contract Effective Date.</p>
14.1	<p>Expiration of Contract:</p> <p>The time period shall be <b>Three (3) months.</b></p> <p>The Consultant shall perform the services within three months from the commencement date ("the delivery period"). The Contract shall however be valid for six months from the date of</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>contract signature.</p> <p>The implementation period is estimated to be three months from the date of commencement of the consultancy contract/agreement.</p>
21.1.3.	The Procuring Entity reserves the right to determine on a case-by-case basis whether the Consultant should be disqualified from providing goods, works or non-consulting services due to a conflict of a nature described in Clause GCC 21.1.3
23.1	<p>The following limitation of the Consultant's Liability towards the Procuring Entity can be subject to the Contract's negotiations:</p> <p>"Limitation of the Consultant's Liability towards the Procuring Entity:</p> <p>(a) Except in the case of gross negligence or willful misconduct on the part of the Consultant or on the part of any person or a firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused by the Consultant to the Procuring Entity's property, shall not be liable to the Procuring Entity:</p> <p style="padding-left: 40px;">(i) for any indirect or consequential loss or damage; and</p> <p style="padding-left: 40px;">(ii) for any direct loss or damage that exceeds two times the total value of the Contract;</p> <p>(b) This limitation of liability shall not</p> <p style="padding-left: 20px;">(i) affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services;</p> <p style="padding-left: 20px;">(ii) be construed as providing the Consultant with any limitation or exclusion from liability which is prohibited by the Applicable Law.</p>
24.1	<p>The insurance coverage against the risks shall be as follows:</p> <p>(a) Professional liability insurance, with a minimum coverage of 150% of the Contract sum</p> <p>(c) Third Party liability insurance, with a minimum coverage of <b>[insert amount and currency or state "in accordance with the applicable law in Kenya"]</b>;</p> <p>(d) 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; and</p> <p>(e) insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the Consultant's property used in the performance of the Services, and (iii) any documents prepared by the Consultant in the performance of the Services.</p>
27.2	The Consultant shall not use these feasibility reports and its associated documents for purposes unrelated to this Contract without the prior written approval of the Procuring Entity.
32.1 (a) through (f)	Not Applicable
32.1(g)	Not Applicable
36.1	The Procuring Entity shall NOT provide counterpart staff. However, the Contract Implementation team shall work closely with the consultant during the course of the assignment.

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract													
38.1	<p>The Contract price is: _____ [insert amount and currency for each currency as applicable] [indicate: inclusive or exclusive] of local taxes.</p> <p>Any local taxes chargeable in respect of this Contract for the Services provided by the Consultant shall be paid by the Procuring Entity to the Consultant.</p> <p>The amount of such taxes is _____ [insert the amount as finalized at the Contract’s negotiations on the basis of the tax amounts provided by the Consultant in Form FIN-2 of the Consultant’s Financial Proposal.</p>													
39.1 and 39.2	<p>There shall be no tax exemptions for this consultancy.</p> <p>The Consultant is required to separate the quoted prices without tax and indicate tax amount separately.</p> <p>Taxes shall be managed in accordance with the Tax laws of Kenya.</p>													
40.2	<p>The payment schedule:</p> <p>The payments under this Contract shall be made in lump-sum installments against deliverables.</p> <p>Payment shall be made based on the cost breakdown for each milestone activity.</p> <p><b>Remuneration Schedule</b></p> <ul style="list-style-type: none"><li>i) Upon achievement of a milestone activity, the Consultant shall make an application for payment.</li><li>ii) The Client shall evaluate and certify the amount due for payment and request the consultant for invoice and any other supporting documents to facilitate payment.</li><li>iii) The consultant shall invoice for work done based on the milestone breakdown.</li></ul> <p>Payment shall be made within 30 days from receipt by the Client of proper supporting documents which includes the certified invoices.</p> <p>Every Payment shall be subject to (i) submission to the Procuring Entity of the prerequisite Report and/or payment request documents, and (ii) approval and acceptance of the said reports and documents by the Procuring Entity</p> <p>Payment milestones and maximum percentage will be as per below table</p> <table><tr><td></td><td><b>Milestone Activity</b></td><td><b>Maximum percentage</b></td></tr><tr><td>1</td><td>Acceptance of Inception Report</td><td>20</td></tr><tr><td>2</td><td>Acceptance of Draft Feasibility Report</td><td>40</td></tr><tr><td>3</td><td>Acceptance of Final Feasibility Study report</td><td>40</td></tr></table>			<b>Milestone Activity</b>	<b>Maximum percentage</b>	1	Acceptance of Inception Report	20	2	Acceptance of Draft Feasibility Report	40	3	Acceptance of Final Feasibility Study report	40
	<b>Milestone Activity</b>	<b>Maximum percentage</b>												
1	Acceptance of Inception Report	20												
2	Acceptance of Draft Feasibility Report	40												
3	Acceptance of Final Feasibility Study report	40												
40.2.1	No advance payment													
40.2.4	<p>The Consultant’s accounts are:</p> <p>for foreign currency: [insert account].</p> <p>for local currency: [insert account].</p>													

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
41.1	There shall be no interest paid on delayed payments
44.1	<ol style="list-style-type: none"> <li>1. The Client and the Consultant shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.</li> <li>2. Any dispute between the Parties as to matters arising pursuant to this Agreement or its interpretation that will not have been settled by informal negotiations within Thirty (30) Days after receipt by one Party of the other Party's request for such negotiations shall be referred for settlement by a single arbitrator.</li> <li>3. The Arbitrator shall be agreed upon by the Parties within Thirty (30) Days of the notification of a dispute by either party to the other and in default of agreement as to the single arbitrator the same shall be appointed by the Nairobi Centre for International Arbitration (NCIA). Every such dispute, controversy or claim arising out of or in connection to this contract, or breach, termination or invalidity thereof shall be settled by arbitration in accordance with the NCIA Arbitration Rules of 2015.</li> <li>4. Every award made under this Clause shall be expressed to be made under the Nairobi Centre for Arbitration Act of 2013 and its 2015 Rules, the Arbitration Act of 1995 or other Act or Acts for the time being in force in Kenya in relation to arbitration.</li> <li>5. The language of proceedings shall be English and the seat of arbitration in Nairobi.</li> <li>6. The decision of the arbitrator shall be final and shall not, subject to statutory provision, be subject to an appeal.</li> </ol>
<b>Taxes</b>	<p>a) <b>"Taxes"</b> means all present and future taxes, levies, duties, charges, assessments, deductions or withholdings whatsoever, including any interest thereon, and any penalties and fines with respect thereto, wherever imposed, levied, collected, or withheld pursuant to any regulation having the force of law and "Taxation" shall be construed accordingly.</p> <p>b) <b>Local Taxation</b></p> <ol style="list-style-type: none"> <li>i. Nothing in the Contract shall relieve the Consultant and/or his Sub-Consultants from their responsibility to pay any taxes, statutory contributions and levies that may be levied on them in Kenya in respect of the Contract.</li> <li>ii. The Contract Price shall include all applicable taxes and shall not be adjusted for any of these taxes.</li> <li>iii. Tax exemption granted under this Contract shall be for an official aid funded project and shall be as provided under the applicable tax laws in Kenya.</li> <li>iv. The Consultant shall be deemed to be familiar with the tax laws in the Employer's Country and satisfied themselves with the requirements for all taxes, statutory contributions and duties to which they may be subjected during the term of the Contract. This shall include applicable local or foreign withholding tax, excise duty, Value Added Tax (VAT), importation duties, Local government taxes, and any other taxes not mentioned herein.</li> <li>v. In instances where discussions are held between the Employer and the Contractor regarding tax matters, this shall not be deemed to constitute competent advice and hence does not absolve the Contractor of their responsibility in relation to due diligence on the</li> </ol>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>tax issue as per (i).</p> <p>c)      <b>Tax Deduction</b></p> <p>i. If the Employer is required to make a tax deduction by Law, then the deduction shall be made from payments due to the Consultant and paid directly to the Kenya Revenue Authority. The Employer shall upon remitting the tax to Kenya Revenue Authority furnish the Consultant with the relevant tax deduction certificates.</p> <p>ii. Where payments for the Contract Price are made directly by the financiers to the Consultant, the Consultant and the financiers shall make the necessary arrangements with Employer to ensure that withholding income tax is remitted to the Kenya Revenue Authority.</p> <p>d)      <b>Tax Indemnity</b></p> <p>i. The Consultant shall indemnify and hold the Employer harmless from and against any and all tax liabilities, which the Employer may incur for any reason of failure by the Contractor to comply with any tax laws arising from the execution of the Contract whether during the term of the Contract or after its expiry.</p> <p>ii. The Consultant warrants to pay the Employer (within fourteen (14) days of demand by the Employer), an amount equal to the loss, liability or cost which the Employer determines has been (directly or indirectly) suffered by the Employer for or on account of the Consultant's Tax liability arising from the Contract.</p> <p>7. Where the amount in (ii) above remains unpaid after the end of the fourteen (14) days moratorium, the Employer shall be entitled to compensation for financing charges.</p>

# SECTION 9. NOTIFICATION FORMS

## I. NOTIFICATION OF INTENTION TO AWARD

Procuring Entity:\_\_\_\_\_ [insert the name of the Entity]  
Contract title:\_\_\_\_\_ [insert the name of the contract]  
RFP No:\_\_\_\_\_ [insert RF Preference number]

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

- a) Request a debriefing in relation to the evaluation of your Proposal, and/or
- b) Submit a Procurement-related Complaint in relation to the decision to award the contract.

The successful Consultant

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

## 2. REQUEST FOR REVIEW

### FORM FOR REVIEW (r.203(1))

#### PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO.....OF.....20.....

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (Procuring Entity)

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

#### REQUEST FOR REVIEW

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

- 1.
- 2.

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

- 1.
- 2.

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

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

**SIGNED**

**Board Secretary**

### 3. LETTER OF AWARD

[use letterhead paper of the Procuring Entity] [date]\_\_\_\_\_To: \_\_\_\_\_ [name and address of the winning

Consultant] Subject: Notification of Award Contract No.....

This is to notify you that your Proposal dated\_\_\_\_\_ [insert date] for consulting services for [name of the assignment] as negotiated with you on \_\_\_\_\_ for the contract amount of \_\_\_\_\_ [Insert amount in numbers and words and name of currency] is hereby accepted by our agency.

You are requested to: (i) sign and return the draft negotiated Contract attached here with within eight (8) Business Days from the date of receipt of this notification; and (ii) furnish the additional information on beneficial ownership in accordance with the Data Sheet of ITC 32.I within eight (8) days using the Beneficial Ownership Disclosure Form, included in Section 7 of the Request of Proposals.

Authorized Signature: \_\_\_\_\_ Name and Title of Signatory: \_\_\_\_ Name of

Agency: \_\_\_\_\_

**Attachment:** Draft Negotiated Contract

#### 4. BENEFICIAL OWNERSHIP DISCLOSURE FORM

(Amended and issued pursuant to PPRA CIRCULAR No. 02/2022)

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

*This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful tenderer pursuant to Regulation 13 (2A) and 13 (6) of the Companies (Beneficial Ownership Information) Regulations, 2020. In case of joint venture, the tenderer must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.*

*For the purposes of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the legal person (tenderer) or arrangements or a natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person (Tenderer) or arrangement.*

Tender Reference No.: \_\_\_\_\_ [insert  
identification no] Name of the Tender Title/Description: \_\_\_\_\_ [insert name of  
the assignment] to: \_\_\_\_\_ [insert complete name of Procuring Entity]

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

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

##### Details of beneficial ownership

	Details of all Beneficial Owners		% of shares a person holds in the company Directly or indirectly	% of voting rights a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)	Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)
I.	Full Name		Directly--- ----- % of shares	Directly..... .....% of voting rights	I. Having the right to appoint a majority of the board of the directors or an equivalent governing body of the	I. Exercises significant influence or control over the Company body of the Company (tenderer)
	National identity card number or Passport number		Indirectly-- ----- % of shares	Indirectly----- ----% of voting rights		
	Personal Identification					

	Details of all Beneficial Owners		% of shares a person holds in the company Directly or indirectly	% of voting rights a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)	Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)
	Number (where applicable)				Tenderer: Yes -----No----	Yes ----- No----
	Nationality				2.Is this right held directly or indirectly?:	2.Is this influence or control exercised directly or indirectly?
	Date of birth [dd/mm/yyyy]				Direct..... .....	Direct..... .....
	Postal address				Indirect..... .....	Indirect... .....
	Residential address					
	Telephone number					
	Email address					
	Occupation or profession					
2.	Full Name		Directly--- ----- % of shares	Directly..... .....% of voting rights	1.Having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer: Yes -----No----	1.Exercises significant influence or control over the Company body of the Company (tenderer) Yes ----- No----
	National identity card number or Passport number		Indirectly-- ----- % of shares	Indirectly----- -----% of voting rights	2.Is this right held directly or indirectly?:	2.Is this influence or control exercised
	Personal Identification Number (where applicable)				Direct..... .....	
	Nationality(ies)					
	Date of birth [dd/mm/yyyy]					
	Postal address					
	Residential					

	Details of all Beneficial Owners		% of shares a person holds in the company Directly or indirectly	% of voting rights a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)	Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)
	address					directly or indirectly?
	Telephone number				Indirect..... .....	Direct..... .....
	Email address					
	Occupation or profession					Indirect... .....
3.						
e.						
t.						
c						

II) Am fully aware that beneficial ownership information above shall be reported to the Public Procurement Regulatory Authority together with other details in relation to contract awards and shall be maintained in the Government Portal, published and made publicly available pursuant to Regulation 13(5) of the Companies (Beneficial Ownership Information) Regulations, 2020.(Notwithstanding this paragraph Personally Identifiable Information in line with the Data Protection Act shall not be published or made public). *Note that Personally Identifiable Information (PII) is defined as any information that can be used to distinguish one person from another and can be used to deanonymize previously anonymous data. This information includes National identity card number or Passport number, Personal Identification Number, Date of birth, Residential address, email address and Telephone number.*

III) In determining who meets the threshold of who a beneficial owner is, the Tenderer must consider a natural person who in relation to the company:

- (a) holds at least ten percent of the issued shares in the company either directly or indirectly;
- (b) exercises at least ten percent of the voting rights in the company either directly or indirectly;

- (c) holds a right, directly or indirectly, to appoint or remove a director of the company;  
or
- (d) exercises significant influence or control, directly or indirectly, over the company.

IV) What is stated to herein above is true to the best of my knowledge, information and belief.

*Name of the Tenderer: .....\*[insert complete name of the Tenderer]\_\_\_\_\_*

*Name of the person duly authorized to sign the Tender on behalf of the Tenderer: \*\* [insert complete name of person duly authorized to sign the Tender]*

*Designation of the person signing the Tender: ..... [insert complete title of the person signing the Tender]*

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

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

Bidder Official Stamp

## 5. FORMAT OF POWER OF ATTORNEY

We..... (name and address of the registered office) do hereby constitute, appoint and authorize Mr. / Mrs. / Ms ..... (name and residential address) who is presently employed with us and holding the position of ..... as our attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to our proposal for the project/goods/works/services“.....”, including signing and submission of all documents and providing information / responses to the Kenya Electricity Generating Company PLC, ("KenGen"), representing us in all matters before KenGen, and generally dealing with KenGen in all matters in connection with our Proposal for the said project/goods/works/services. We hereby agree to ratify all acts, deeds and things lawfully done by our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney shall and shall always be deemed to have been done by us.

..... (Signature)(Name, Title and Address)

Accepted

..... (Signature)(Name, Title and Address of the Attorney)

## 6. TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

### a) Instruction to Tenderer

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

### A. Tenderer's details

	ITEM	DESCRIPTION
1	Name of the Procuring Entity	
2	Name of the Tenderer	
3	Full Address and Contact Details of the Tenderer.	1. Country 2. City 3. Location 4. Building 5. Floor 6. Postal Address 7. Name and email of contact person.
4	Reference Number of the Tender	
5	Date and Time of Tender Opening	
6	Current Trade License No and Expiring date	
7	Maximum value of business which the Tenderer handles.	
8		

### General and Specific Details

### b) Sole Proprietor, provide the following details.

Name in full \_\_\_\_\_

Age \_\_\_\_\_

Nationality \_\_\_\_\_

Country of Origin \_\_\_\_\_

Citizenship \_\_\_\_\_

- c) Partnership, provide the following details.

	<b>Names of Partners</b>	<b>Nationality</b>	<b>Citizenship</b>	<b>% Shares owned</b>

- (d) Registered Company, provide the following details.

i) Private or public Company \_\_\_\_\_

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

Nominal Kenya Shillings (Equivalent) .....

Issued Kenya Shillings (Equivalent) .....

iii) Give details of Directors as follows.

	<b>Names of Director</b>	<b>Nationality</b>	<b>Citizenship</b>	<b>% Shares owned</b>
1				
2				
3				

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

(i) Are there any person/persons in ..... (Name of Procuring Entity) who has an interest or relationship in this firm? Yes/No.....

If yes, provide details as follows.

	<b>Names of Person</b>	<b>Designation in the Procuring Entity</b>	<b>Interest or Relationship with Tenderer</b>
1			
2			
3			

(ii) Conflict of interest disclosure

	<b>Type of Conflict</b>	<b>Disclosure YES OR NO</b>	<b>If YES provide details of the relationship with Tenderer</b>
1	Tenderer is directly or indirectly controlled by or is under common control with		

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

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
	Entity throughout the tendering process and execution of the Contract?		

(f) Certification

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

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

Title or Designation \_\_\_\_\_

(Signature)

(Date)