

German Financial Cooperation with Kenya

Prequalification Document

for

**Consulting Services for a
Feasibility Study on Floating Solar PV on Kamburu
Hydropower Plant Reservoir, Kenya**

**Employer: Kenya Electricity Generating Company PLC
(KenGen)**

November 2023

**BMZ No.: 209811399
KfW ID-No.: 47040**

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SECTION I – GENERAL PROVISIONS (GP)

1. General

1.1 SCOPE OF APPLICATIONS AND DEFINITIONS

- 1.1.1 In connection with the Invitation for Prequalification indicated in Section II, Specific Provisions (**SP**), the Employer, as defined in the **SP**, issues this Prequalification Document (“Prequalification Document”) to prospective applicants (“Applicants”) interested in submitting applications (“Applications”) for prequalification to bid for the assignment described in SP 1.4.1.
- 1.1.2 The Employer as indicated in the **SP** has applied for or received financing (hereinafter called “funds”) from KfW Development Bank (hereinafter called “KfW”) towards the cost of the project named in the **SP**. The Employer intends to apply a portion of the funds to eligible payments under the Contract(s) resulting from the procurement process.
- 1.1.3 The following definitions apply:
- (a) “Affiliate(s)” means 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 the Employer’s country, or in such other country as may be specified in the **SP**, as they may be issued and in force from time to time.
 - (c) “Applicant(s)” means an entity or an association of entities (JV) that submits a set of documents as specified hereunder for being prequalified to submit a Proposal.
 - (d) “Consultant” means a legally-established professional consulting firm or an entity that may provide or provides the Services to the Employer under a Contract. The term “Consultant” and “Applicant” are used in this document interchangeably.
 - (e) “Contract” means a legally binding written agreement signed between the Employer and the Consultant.
 - (f) “Day” means a calendar day.
 - (g) “Employer” means the contracting party that legally concludes the Contract for the Services with the selected Consultant notwithstanding the representation by KfW in case of an agency Contract¹.
 - (h) “Government” means the government of the Employer’s country.
 - (i) “Guidelines” means Guidelines for the Procurement of Consulting Services, Works, Goods, Plant and Non-Consulting

¹ The term Employer in this document shall have the same meaning as the terms Client and Project Executing Agency in the Guidelines.

Services in Financial Cooperation with Partner Countries available at www.kfw-entwicklungsbank.de.

- (j) “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 Employer for the performance of the Contract.
- (k) “Services” means the work to be performed by the Consultant pursuant to the Contract.
- (l) “Sub-Consultant” means an entity to which the Consultant intends to subcontract any part of the Services while remaining responsible to the Employer as contracting party during the performance of the Contract.
- (m) “Special Provisions (SP)” means an integral part of this Prequalification Document that is used to reflect specific country and project conditions to supplement the General Provisions. In case of conflict between the GP and the SP, the SP shall prevail.

1.2 SELECTION OF THE CONSULTANT AND PREQUALIFICA- TION PROCEDURE

- 1.2.1 To execute the project, the Employer intends to select one or several Consultants in accordance with the Guidelines. The evaluation commission of the Employer may be assisted by a tender agent or in exceptional cases a tender agent may conduct the entire tender procedure on behalf of the Employer. KfW’s monitoring and no-objection is not affected. The details are outlined in the **SP**.
- 1.2.2 This Prequalification Document sets out the prequalification procedure, including but not limited to the minimum requirements towards the experience and capabilities of the Applicants and the evaluation method. The Applicants who demonstrate to the Employer’s satisfaction that they have the experience and the capabilities to execute the project shall be shortlisted in accordance with GP 4.2.5 to participate in the subsequent tendering procedure.
- 1.2.3 The procurement process is the responsibility of the Employer. KfW shall verify that the procurement process is fair, transparent, economical, free of discrimination and according to the provisions in this document. KfW exercises its monitoring function on the basis of the contractual arrangements with the Employer and the Guidelines containing details for KfW’s approval and no objection to individual steps during the procurement process. No contractual relationship between KfW and any third party shall be deemed to exist other than with the Employer.

1.3 SANCTIONABLE PRACTICE

- 1.3.1 KfW requires compliance with its policy in regard to Sanctionable Practice as defined and set forth in Section V.
- 1.3.2 In further pursuance of this policy, Applicants shall permit and shall cause its agents to provide information and permit KfW or an agent appointed by KfW to inspect on site all accounts, records and other documents relating to the procurement process and Contract performance (in the case of award), and to have them audited by auditors or agents appointed by KfW.

**1.4
ELIGIBLE
APPLICANTS**

- 1.4.1 An Applicant may be a firm that is a private entity, a government-owned entity — subject to Section IV – or a combination of such entities in the form of a Joint Venture (“JV”) under an existing JV Agreement or with the intent to enter into such an agreement supported by Declarations of Association. In the case of a JV, all members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms. An Application may include Sub-Consultants, whose relationship with the Applicant is contractual, and who are not held jointly and severally liable for the execution of the Contract. The Applicant shall nominate an authorized representative who shall have the authority to conduct all business for and on behalf of the Applicant and any and all its members, if the Applicant is a JV, during the prequalification process, procurement process (in the event the Applicant submits a Proposal) and during Contract execution (in the event the Applicant is awarded the Contract). Unless specified in the **SP**, there is no limit on the number of members in a JV. The authorization shall be in the form of a written power of attorney attached to the Technical Proposal.
- 1.4.2 Applicants including their Affiliates and, in case of JVs, any of their members, may participate in only one Application. Sub-Consultants whose qualifications are used in the evaluation of at least one Application, pursuant to the Applicant’s request made in accordance with Form 2 (Declaration on Conflict of Interest and of Submitting a Proposal), may only participate in the respective Application. Sub-Consultants, whose qualifications are not used in the evaluation of any Application, may participate in more than one Application. Applications submitted in violation of this procedure will be rejected.
- 1.4.3 It is the Consultant’s responsibility to ensure that its staff, Joint Venture members, Sub-Consultants, agents (declared or not), sub-contractors, service providers, suppliers and/or their employees meet the requirements on eligibility and conflict of interest as established hereunder.
- 1.4.4 KfW’s eligibility criteria for prequalification are described in Section IV, Eligibility Criteria.
- 1.4.5 An Applicant shall provide such evidence of eligibility satisfactory to the Employer, as the Employer shall reasonably request.
- 1.4.6 The materials, equipment and Services to be supplied under the Contract and financed by KfW may have their origin in any country subject to the restrictions specified in Section IV Eligibility Criteria, and all expenditures under the Contract will not contravene such restrictions.

**1.5
CONFLICT OF
INTEREST**

- 1.5.1 The Consultant is required to provide professional, objective, and impartial advice, at all times holding the Employer’s interests paramount, strictly avoiding conflicts with other assignments or its own corporate interests, and acting without any consideration for future work.
- 1.5.2 Applicants shall be disqualified if they:

- (a) are an Affiliate controlled by the Project Executing Agency (PEA) or a shareholder controlling the PEA, unless the stemming conflict of interest has been brought to the attention of KfW and has been fully resolved to the satisfaction of KfW;
- (b) have a business or a family relationship with a PEA's staff involved in the tender process or the supervision of the resulting Contract, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;
- (c) are controlled by or do control another Applicant or are under common control with another Applicant, receive from or grant subsidies directly or indirectly to another Applicant, have the same legal representative as another Applicant, maintain direct or indirect contacts with another Applicant which allow them to have or give access to information contained in the respective Applications, to influence them or influence the decisions of the PEA;
- (d) are engaged in a Services activity which, by its nature, may be in conflict with the assignment that they would carry out for the PEA;
- (e) were directly involved in drawing up the terms of reference or other relevant information for the tender process. This shall not apply to Consultants who have produced preparatory studies for the project or who were involved in a preceding project phase, insofar as the information they prepared, especially feasibility studies, was made available to all Applicants and the preparation of the terms of reference was not part of the activity;
- (f) were during the last 12 months prior to publication of the tender process indirectly or directly linked to the project in question through employment as a staff member or advisor to the PEA, and are or were able in this connection to influence the Award of Contract.

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

1.6 REQUESTED SERVICES

1.6.1 A brief description of the requested consulting Services is presented in the **SP**.

2. Contents and Preparation of the Application

2.1 PREQUALIFICATION DOCUMENT AND COMMUNICATION

2.1.1 These Prequalification Documents consist of the sections indicated below, which should be read in conjunction with any Addendum issued in accordance with clause 2.6.

Section I - General Provisions (GP);

Section II - Special Provisions (SP);

Section III - Application Forms:

Form 1: Declaration of Undertaking;

Form 2: Sample Declaration on Conflict of Interest and of Submitting a Proposal;

Form 3: Sample Declaration of Association;

Form 4: Financial Capacity Statement;

Form 5: Project Experience;

Form 6: List of Available Expertise and Human Resource Capacity;

Section IV - KfW Eligibility Criteria;

Section V - KfW Policy – Sanctionable Practice – Social and Environmental Responsibility.

2.1.2 Unless obtained directly from the Employer, the Employer accepts no responsibility for the completeness of the Prequalification Documents, responses to requests for clarification, or Addenda in accordance with GP 2.6. In case of any discrepancies, documents issued directly by the Employer shall prevail.

2.1.3 The Applicant is expected to examine all instructions, forms, and terms in the Prequalification Documents and to furnish with its Application all information or documentation as is required by the Prequalification Documents.

2.1.4 The Application, as well as all correspondence and documents relating to the Application exchanged between the Applicant and the Employer shall be in the language of this document. Any official documents presented in a different language shall be accompanied by a certified translation into the language of this document. The Employer reserves the right to verify the translation. In case of discrepancies the original document shall prevail.

2.1.5 All communication between the Employer and Applicants shall take place in writing. For the purposes of the Prequalification Document in writing shall mean communicated in written form (for example by post, e-mail or facsimile) and delivered with proof of receipt.

2.2 DOCUMENTS COMPRISING THE APPLICATION

2.2.1 The Application submitted by the Applicant shall comprise the following:

(a) Application Letter, indicating the Applicant's name, address, telephone, fax and email. If the Applicant is a JV, the Application Letter shall also describe the form of association and list the JV members.

- (b) A Power of Attorney authorizing the representative of the Applicant, designated in accordance with GP 1.4.1 to submit the Application on behalf of the Applicant. If the Applicant is a Joint Venture, the Power of Attorney shall be provided by the Lead Consultant nominated in the JV agreement or in the Declarations of Association, submitted in accordance with GP 2.2.1(d)(II). If the representative of the Applicant is the owner, member or director of the Applicant or the Applicant's Lead Consultant, if so nominated in accordance with GP 1.4.1, a Power of Attorney shall not be necessary.
- (c) Presentation of the Applicant (maximum 10 pages, no brochures). If the Applicant is a single entity, the presentation shall describe the Applicant's type of entity, ownership structure and organisation chart, as well as its main business areas as they apply to the project. If the Applicant is a JV, the presentation shall provide this information about each JV member as well as a description of the intended form of collaboration of the members within the JV.
- (d) Statements and Declarations:
- I. Declaration of Undertaking in the format provided in Section III.
 - II. Declaration on Conflict of Interest and of Submitting a Proposal in the format provided in Section III.
 - III. If the Applicant is an existing JV, the Applicant shall submit a proof of the existing JV Agreement, indicating the Lead Consultant. If the Applicant is a JV, which the members intend to form for the purpose of executing the Contract, each member of the JV shall submit a Declaration of Association, indicating the Lead Consultant, in the format provided in Section III.
 - IV. *no longer used.*
 - V. Financial Capacity Statement in the format provided in Section III and supported by the Applicant's balance sheets and profit and loss Statements. If the Applicant is a JV, separate statements, including the supporting Balance Sheets and Profit and Loss Statements, shall be provided by each member of the JV. All balance sheets and profit and loss statements shall be certified by a reputable auditor.
 - VI. List of project references in the format provided in Section III. The number and timing requirements towards the project references shall be specified in the **SP**. The Employer reserves the right to contact the clients indicated in the references to ascertain the information provided by the Applicant.
 - VII. List of Available Expertise and Human Resource Capacity in the format provided in Section III.
- (e) Any other documentation required in the **SP**.

2.2.2 Applicants shall submit concise and clear, but substantial documents and adhere to the above structure. Any interlineations,

erasures or overwriting shall be valid only if initialled by the Applicant's representative designated in accordance with GP 1.4.1.

**2.3
COST OF
APPLICATION**

2.3.1 All cost relating to the preparation of the Application, including but not limited to site visits, obtaining information, preparation and submission of the Application, shall be borne by the Applicant.

**2.4
SIGNING OF THE
APPLICATION AND
THE NUMBER OF
COPIES**

2.4.1 The Applicant shall prepare one original Application as described in GP 2.2 and clearly mark it "ORIGINAL". All documents comprising the original Application shall be typed or written in indelible ink and shall be signed by the Applicant's representative designated in accordance with GP 1.4.1. If the Applicant is a JV, the statements and declarations submitted by the members of the JV in accordance with GP 2.2.1(d)(II) – (VII) shall be signed by duly authorized officials, such as owners or directors of the respective members.

2.4.2 The Applicant shall prepare copies of the signed original Application and clearly mark each of them "COPY". The number and type of copies of the Application shall be in accordance with the **SP**. In the event of any discrepancy between the original and the copies, the original shall prevail.

2.4.3. If electronic copies of the Proposal are required in accordance with GP 2.4.2, they shall be presented as unalterable and printable PDF files on CD or DVD disks, marked accordingly.

**2.5
CLARIFICATION OF
PREQUALIFICA-
TION DOCUMENT**

2.5.1 Applicants may request a clarification of the Prequalification Document until the deadline indicated in the **SP**. Any request for clarification shall be sent in writing or by standard electronic means to the address indicated in the **SP**. Responses shall be in writing or by standard electronic means and shall be sent to all prospective Applicants who have obtained the Prequalification Document directly from the Employer, including a description of the inquiry but without identifying its source, not later than ten (10) Days prior to the deadline for the submission of Applications in accordance with GP 3.2.1.

2.5.2 If necessary, the Employer may send clarifications of the Prequalification Document to all prospective Applicants who have obtained the Prequalification Document directly from the Employer, not later than ten (10) Days prior to the deadline for the submission of Application in accordance with GP 3.2.1.

**2.6
AMENDMENT OF
PREQUALIFICA-
TION DOCUMENT**

2.6.1 At any time prior to the deadline for the submission of Applications but not later than ten (10) Days before the submission date the Employer may amend the Prequalification Document by issuing an Addendum.

2.6.2 Any Amendment issued shall be part of the Prequalification Document and shall be communicated immediately in writing to all prospective Applicants who have obtained the Prequalification Document from the Employer.

2.6.3 To give Applicants reasonable time to take an Amendment into account in preparing their Applications, the Employer may, at its

discretion, extend the deadline for the submission of Applications in accordance with GP 3.2.2.

3. Submission of Applications

3.1 SEALING AND IDENTIFICATION OF APPLICATIONS

- 3.1.1 The Applicant shall enclose the original and the copies of the Application in a sealed envelope that shall:
- (a) bear the name and address of the Applicant;
 - (b) be addressed to the Employer, in accordance with GP 3.2 below;
 - (c) bear the project title and/or tender number;
 - (d) bear the following words clearly visible „Not to be opened by the Postal Service - Prequalification for “ and the name of the assignment.
- 3.1.2 The Employer shall not be responsible for misplacement, losing or premature opening of the Application if the envelope is not sealed or marked in accordance with GP 3.1.1. The disposal of original late Applications shall be obligatorily documented in a late Applications protocol, which shall be provided to KfW as part of the opening protocol prepared in accordance with GP 3.2.7 and to the entity, which has submitted the late Application.

3.2 DEADLINE FOR SUBMISSION OF APPLICATIONS, OPENING

- 3.2.1 Applicants may submit their Applications by mail, by courier or by hand, against confirmation of receipt. Applications shall be submitted by the Applicants at the address and no later than the deadline indicated in the **SP**. Any Application received by the Employer after the deadline shall be declared late and rejected, and promptly disposed of.
- 3.2.2 The Employer may, at its discretion, extend the deadline for the submission of Applications by amending the Prequalification Document in accordance with GP 2.6, in which case all rights and obligations of the Employer and the Applicants subject to the previous deadline shall thereafter be subject to the deadline as extended.
- 3.2.3 The preparation and the submission of the Applications is the responsibility of the Applicant and no relief or consideration can be given for errors and omissions.
- 3.2.4 If copies of the Application shall be sent to multiple addresses in accordance with GP 3.2.1, the timely receipt of the original Application in compliance with GP 3.2.1 shall be decisive for the timely submission of the Application.
- 3.2.5 The Employer's evaluation commission as detailed in **SP** 1.2.1 shall proceed with the opening of the Applications shortly after the submission deadline as indicated in the **SP** and establish and sign an opening protocol as per GP 3.2.7.
- 3.2.6 Unless otherwise agreed the Employer's evaluation commission shall be composed of at least three members. One member of the Evaluation commission shall not be staff from the Employer's administration or organisation.

- 3.2.7 At the opening of the Applications the following shall be recorded in the opening protocol: the name and business address of the Applicant or, in case of a Joint Venture, the name and business address of the Joint Venture, the name and business address of the lead member and the names and business addresses of all members; the presence or absence of the Declaration of Undertaking; whether the Application has been received on time and sealed as per GP 3.1.1 and any other information deemed appropriate or as indicated in the **SP**.

4. Evaluation-Process of the Prequalification Documents

4.1 CONFIDENTIALITY

- 4.1.1 After the opening of the Applications and until the announcement of the prequalification results to the Applicants no communication of any type between the Applicants and the Employer, its staff or any other person involved in the evaluation is permitted except as specified under GP 4.3.
- 4.1.2 Information relating to the Applications, their evaluation and result shall not be disclosed to Applicants or any other persons not officially concerned with the prequalification procedure until the Employer notifies the Applicants of the prequalification results.

4.2 EVALUATION

- 4.2.1 The Employer shall reject an Application that is not substantially responsive to the requirements of this Prequalification Document. In particular, an Application failing to demonstrate that the Applicant fulfils the financial capability requirements set out in the **SP** or lacking the following documents shall be considered not substantially responsive:
- a) Declaration of Undertaking (Form 1)
 - b) Financial Capability Statements and supporting documentation as required (Form 4)
 - c) Declaration on Conflict of Interest and of Submitting an Proposal (Form 2)
 - d) Power(s) of Attorney authorizing the representative of the Applicant
 - e) If the Applicant is a JV, either proof of the existing Association Agreement or a Declaration of Association (Form 3)
- 4.2.2 The Employer shall evaluate the responsive Applications in terms of the prequalification criteria indicated in the **SP** and award each responsive Application a prequalification score of up to 100 points.
- 4.2.3 For the purposes of scoring individual sub-criteria the following qualitative approach may be applied:
- a) 100% of the max. score: Excellent, no errors or omissions at all are noted. Exhaustive, conclusive, comprehensive, precise and offering supplementary ideas / idea / offering with respect to the sub-criterion.
 - b) 75% of the max. score: Good, minimal errors or omissions noted. Exhaustive, conclusive, comprehensive and precise with respect to the sub-criterion.
 - c) 50% of the max. score: Unsatisfactory, major errors or omissions noted not comprising the fulfilment of the sub-criterion, basically meets the requirement of the respective sub-criterion.
 - d) 25% of the max. score: Poor, major errors or omissions are noted comprising the fulfilment of the sub-criterion, substantially deviates from or indicates misunderstanding of the requirement of the respective sub-criterion.

- e) 0 % of the max. score: Insufficient / Fail, does not meet the requirement of the respective sub-criterion at all or does not provide any information regarding the requirement of the sub-criterion.

4.2.4. The Employer shall reject an Application if,

- (a) it has determined that the Application is nonresponsive in accordance with GP 4.2.1;
- (b) it has awarded the Application a prequalification score, which is lower than the minimum prequalification score of 70 points out of 100. Depending on the nature of the assignment a minimum score may be applied not only to the overall score but also to the achievement of a subscore dedicated to environmental, social, health and safety (ESHS) issues, if specified so in the Special Provisions (SP).

4.2.5 The Employer shall establish a shortlist of qualified Applications determined to be responsive and scoring higher than the minimum prequalification score. The number of Applicants to be invited is generally five (5) but could be increased up to eight (8) if required and subject to prior indication in the SP. However, if the number of prequalified Applicants exceeds this predefined number Applicants will be invited as per their ranking.

4.3 EMPLOYER'S RIGHT TO ACCEPT OR REJECT APPLICATIONS

4.3.1 The Employer reserves the right to accept or reject any Application, and to annul the prequalification process and reject all Applications at any time, without thereby incurring any liability to the Applicants.

4.3.2 The Employer is not bound to select any Application.

4.4 NOTIFICATION OF PREQUALIFICA- TION AND PUBLICATION

4.4.1 The Employer shall notify all Applicants in writing on the outcome of evaluation shortly after the finalisation of the evaluation.

4.4.2 In addition, the Employer shall publish the list of prequalified Applicants (including all JV members, if any) who will be invited to submit an Offer (prequalification-result notice), after KfW's No-Objection to the prequalification evaluation report on GTAI's website and in any other media in which the prequalification notice was published.

4.4.3 Applicants that have not been prequalified may write to the Employer to request, in writing, the grounds on which they were not qualified.

4.4.4 Upon such a request the Employer will inform such Applicants on the major shortcomings and weaknesses of their Application.

4.5 REQUEST FOR PROPOSAL

4.5.1 Promptly after the notification of the results of the prequalification, the Employer shall invite the prequalified Applicants to submit their Proposals.

SECTION II – SPECIAL PROVISIONS (SP)

(the references refer to the respective figures in the General Provisions)

1.1.1 EMPLOYER

The Employer is Kenya Electricity Generating Company PLC (KenGen).

Name and number(s): BMZ No.: 209811399, KfW-ID No.: 47040

The prerequisites for disbursements for this assignment are not yet finalised. Any contractual commitment related to this tender procedure is subject to the readiness of disbursement of funds for this assignment.

1.2.1 SELECTION OF THE CONSULTANT

The tender procedure is organized on behalf of the Employer by Mr. Andreas Hahn, ah-Advice International. The Tender Agent seeks approval for final decisions.

1.6.1 REQUESTED SERVICES

The Employer intends to engage the services of a consultant to carry out a feasibility study for development of a 40 MW_p floating solar PV (FPV) plant on Kamburu hydropower plant reservoir.

Global Objective

The global objective of the assignment is to support KenGen to contribute to climate change mitigation, increasing the renewable energy power generation in Kenya and diversifying the energy resources.

Objective of the Assignment

The overall objective of this assignment is to analyse and assess the techno-economic, financial, environmental and social viability of the proposed project.

Project Background:

Kenya Electricity Generating Company PLC (KenGen) is a public liability company, registered under the Companies Act of the Laws of Kenya. KenGen was incorporated in 1954 with its core business being development, management and operation of power generation plants. The Company is the leading electric power producer in Kenya accounting to 62% of the total electric power supplied to the National Grid and is listed at the Nairobi Stock Exchange. The Government of Kenya owns 70% stake in KenGen and 30% by the public as private shareholders. Currently, the Company has a total installed capacity of 1,830 MW comprising of Hydropower 825.69 MW, Geothermal 799 MW, Thermal 180 MW and Wind 25.5 MW.

KenGen is in the process of implementing the development of its pilot utility scale ground-mounted 40 MW_p solar PV within Seven Forks Cascade, adjacent to Kamburu hydropower Station. Solar PV technology is gaining popularity globally mainly due to the declining capital costs and solar PV technology advancement.

In 2020, KenGen engaged a consultant to carry out a pre-feasibility study for floating solar on three hydropower reservoirs: Kamburu, Turkwel and Kiambere. The three project options were then ranked based on their technical, financial, economic and social suitability. The pre-feasibility study recommended a 40 MW_p floating solar PV on Kamburu dam due to the minimal water level variation, less design complication, good infrastructure (road network and grid), lower O&M costs and lower permitting costs due to ownership by KenGen. The characteristics of the three reservoirs is shown in the table below.

Table 1: Reservoirs and power plant characteristics

Parameter	Kamburu	Kiambere	Turkwel
Unit Power (MW)	31.4	84.5	53.7
No of Units	03	02	02
Reservoir Area at FSL (Km ²)	15	15.7	65
Total Capacity (m ³)	1.50 x 10 ⁸	5.85 x 10 ⁸	1.60 x 10 ⁹
Useful capacity (m ³)	1.23 x 10 ⁸	4.32 x 10 ⁸	1.40 x 10 ⁹
Full-Service Level (masl)	1006.5	700	1150
Minimum Operating Level (masl)	990	665	1105
Water level range (m)	16	40	45

Scope of the Study:

The Consultant shall carry out a detailed feasibility study for an FPV system on Kamburu Hydropower reservoir. The findings of the feasibility study should be detailed enough to form a basis for project financing by KfW, Worldbank, AFD or other financiers and initiate PPA negotiations. The feasibility study shall include, but not be limited to, the following:

- Project start with kick-off meeting
- Data collection, review of previous studies and site visits
- Hydrological, sedimentation and bathymetric survey
- Water flow, water quality and waves height analysis
- Computational fluid dynamics for wind flow analysis
- Geotechnical study and preliminary topographical field investigations
- Conceptual design incl. drawings
- Transmission line, battery storage and grid connection study
- Economic and financial analysis
- Risk analysis and mitigation
- Project and construction schedules
- Environmental and Social Impact Scoping Study

Implementation Period

The total implementation period for the services is expected to be 8 months from date of commencement of the assignment.

Staff Requirements

The Applicant must demonstrate that he has suitably qualified and experienced experts among its key personnel, who have the appropriate level of academic and

professional qualifications and expertise gained in similar projects and countries, and with similar hazards and risks.

It is required that the Applicant has proven work experience in the utility-scale solar PV sector (land-based and FPV). In case of an international Consultant, the Applicant shall ensure to involve Kenia based experience (e.g., consulting firm(s) / JV partner(s) / individual experts) to combine local and international expertise to the maximum extent possible.

The Applicant shall include in his team amongst others at least the qualified experts as indicated below:

1. International² Team Leader / Project Manager (TL) with proven work experience in implementing utility-scale solar PV projects > 20 MW_p
2. International / National Solar PV / Electrical Engineer
4. International / National Hydrologist / Aquatic Expert
5. International / National Geotechnical / Meteorological Expert
6. National Civil Engineer
7. International / National Financial / Procurement Specialist
8. Environmental and Social Expert with experience in working with international environmental and social standards (e.g., World Bank ESS, IFC Performance Standards, IFC EHS Guidelines)

The Consultant must convincingly demonstrate his general ability to provide the requisite expertise. During the Prequalification Phase only a general assessment of the proposed **pool of experts** (based on the information provided in Form 6), will be undertaken. The Applicant **shall not present** a potential project team. The focus is on access and availability to project relevant expertise.

2.2.1 DOCUMENTS COMPRISING THE APPLICATION

Application consists of only one file in not editable PDF-format

2.1.1(d)(VI) Project References:

- Maximum number of reference projects to be presented with a consulting contract value of at least EUR 700,000: Maximum 5 reference projects per subcategory (please refer to 4.2.2).
- Time period: during past 6 years. Partially fulfilled reference projects (> 70% fulfilment rate) are accepted.

² An "international expert" has extensive international work experience (at least 50% of work experience outside home country) and is characterized by comprehensive sector knowledge. An international expert is expected to solve tasks and challenges according to internationally valid standards, in a target-oriented, appropriate, methodical and independent manner.

2.5.1 CLARIFICATION OF PREQUALIFICATION DOCUMENT

The address for any clarifications regarding this application is as follows:

Mr Andreas Hahn, Tender Agent, email: ahadvice@outlook.com and a copy to:

Mrs. Florah Kamanja, Capital Planning & Energy Planning Manager, Kenya Electricity Generating Company PLC, email: fkamanja@kengen.co.ke; mogonji@kengen.co.ke; fmakhanu@kengen.co.ke

The deadline for requests for clarification by Applicants is 21 days prior to the submission date as per SP 3.2.1. The response to requests for clarification will be forwarded to Applicants not later than ten (10) days prior to the deadline for the submission of Applications.

3.2.1 DEADLINE FOR SUBMISSION OF APPLICATIONS

Electronic submission of Application Documents via a exficon GmbH e-procurement platform at or before 15 hrs CET on 15 December 2023. No hard copies shall be submitted.

Consultants are asked to nominate one dedicated contact person (name, email address and phone number). The nomination shall be sent to the Tender Agent via email (ahadvice@outlook.com) latest seven (7) days prior to expiry of the deadline. The data shall be used to set up an e-procurement system for this tender submission. The operator of the KfW-approved e-procurement system, exficon GmbH, Frankfurt am Main, will revert to the persons authorized for electronic submission with an invitation email containing the access link to the system. It is recommended to log in after receipt to make sure that there are no technical difficulties.

Detailed information and a step-by-step description of the upload procedure can be downloaded here: <https://exficon.de/tad/e-procurement/>.

4.2 EVALUATION

4.2.1 The Applicant shall demonstrate the following financial capabilities:

Criterion	Requirement	Single Entity	Joint Venture			Submission Requirement
			All Parties Combined	Each Party	One Party	
Turnover annually	Minimum Turnover 2,000,000 EUR (in financial years 2020, 2021, 2022)	Must Meet req.	Must Meet req.	n/a	n/a	GP 2.2.1. d) V / Form 4
Current Ratio	Current Ratio >1 (Calculated as the average of	Must Meet req.	n/a	Must Meet req.	n/a	GP 2.2.1. d) V / Form 4

	financial years 2020, 2021, 2022)					
Statement of Financial capacity	Statement of financial capacity in financial years 2020, 2021, 2022 and certified by independent chartered accountant	Must Meet req.	n/a	Must Meet req.	n/a	Balance sheet and certified statements

The date for the currency conversion to be applied, shall be 30 November 2023.

Responsive Application as per GP 4.2.2 will be evaluated in accordance with the following criteria and scoring system.

	Criteria	Max. Score	
1.	Clarity, completeness and conciseness of application document submitted.	5	
2.	Experience of the Firm: Evidence of relevant experience gained with land-based utility-scale³ and floating solar photovoltaic (PV) systems during the past 6 (six) years (2018-2023).	40	
2.1	Experience in implementing similar projects (feasibility studies)		
2.1.1	Five references of similar projects on land-based utility-scale solar PV (worldwide). Max. 2 points per reference project		10
2.1.2	Five references of similar projects on <u>floating</u> solar PV out of which three shall be of utility-scale floating PV (worldwide). Max. 4 points per reference project		20
2.2	Working experience in the framework of public entities / governments / development banks in developing and emerging countries. Criterion: Five utility-scale PV project references expected. Max. 1 point per reference project		5
2.3	Working experience in the region ⁴ . Criterion: Five utility-scale PV project references expected. Max. 1 point per reference project.		5
3.	Experience of the Human Resource Capacity Sub-criteria are evaluated on the basis of the proposed pool of experts submitted in accordance with GP 2.2.1(d)(VII).	55	
3.1	Assessment of the electrical, solar PV, civil and project management expertise specific to this project.		15
3.1.1	Consultant convincingly shows his general ability to provide the requisite electrical, solar PV, civil and project management expertise.		10

³ Utility-scale: > 20 MW_p

⁴ Region: Kenya, Ethiopia, Uganda, Somalia, Tanzania, Sudan, South Sudan, Zambia

	Criterion: Number of qualified experts: min. = 1 up to max. = 4 per requested position (Form 6.1); 2.5 points per qualified expert		
3.1.2	Consultant has sufficient permanent staff to perform the electrical, solar PV, civil and project management related tasks. Criterion: Relation freelance/permanent staff & total staff appropriate for the specialisation (Form 6.2): <=50% = 5 points; >50% <= 75% = 4 points; >75% <= 100% = 3 points; >100% <= 125% = 2 points; >125% <= 150% = 1 point; >150% and no permanent staff = 0 points		5
3.2	Assessment of environmental and social expertise specific to this project		15
3.2.1	Consultant convincingly shows its general ability to provide the requisite environmental and social expertise. Criterion: Number of qualified experts: min. = 1 up to max. = 4 per requested position (Form 6.1); 2.5 points per qualified expert		10
3.2.2	Consultant has sufficient permanent staff to perform the environmental and social tasks. Criterion: Relation freelance/permanent staff & total staff appropriate for the specialisation (Form 6.2): <=50% = 5 points; >50% <= 75% = 4 points; >75% <= 100% = 3 points; >100% <= 125% = 2 points; >125% <= 150% = 1 point; >150% and no permanent staff = 0 points		5
3.3	Assessment of geotechnical/hydrological/aquatic and meteorological expertise specific to this project		15
3.3.1	Consultant convincingly shows its general ability to provide the requisite geotechnical/hydrological/aquatic and meteorological expertise . Criterion: Number of qualified experts: min. = 1 up to max. = 4 per requested position (Form 6.1); 2.5 points per qualified expert		10
3.3.2	Consultant has sufficient permanent staff to perform the geotechnical/hydrological/aquatic and meteorological tasks. Criterion: Relation freelance/permanent staff & total staff appropriate for the specialisation (Form 6.2): <=50% = 5 points; >50% <= 75% = 4 points; >75% <= 100% = 3 points; >100% <= 125% = 2 points; >125% <= 150% = 1 point; >150% and no permanent staff = 0 points		5
3.4	Assessment of financial/procurement expertise specific to this project		10
3.4.1	Consultant convincingly shows its general ability to provide the requisite financial/procurement expertise. Criterion: Number of qualified experts: min. = 1 up to max. = 4 per requested position (Form 6.1); 1.25 points per qualified expert		5
3.4.2	Consultant has sufficient permanent staff to perform the financial/procurement tasks.		5

	Criterion: Relation freelance/permanent staff & total staff appropriate for the specialisation (Form 6.2): <=50% = 5 points; >50% <= 75% = 4 points; >75% <= 100% = 3 points; >100% <= 125% = 2 points; >125% <= 150% = 1 point; >150% and no permanent staff = 0 points		
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Rejection of proposal in case that less than 10 of the maximum 15 points will be achieved in 3.2.

The number of prequalified Applicants to be invited to submit a Proposal is limited to five (5). Should more than 5 Applicants score above the minimum prequalification score 70 points, than the highest scoring 5 Applicants will be short-listed. The results of the prequalification process, i.e. the names of the short-listed Applicants, will be published on the website of German Trade and Invest (GTAI) and local media (e.g. KenGen’s website), if required.

SECTION III – APPLICATION FORMS

Form 1– Declaration of Undertaking

Declaration of Undertaking

Reference name of the Application/Offer/Contract: ("Contract")⁵

To: ("Project Executing Agency")

1. We recognise and accept that KfW only finances projects of the Project Executing Agency ("PEA")⁶ subject to its own conditions which are set out in the Funding Agreement it has entered into with the PEA. As a matter of consequence, no legal relationship exists between KfW and our company, our Joint Venture or our Subcontractors under the Contract. The PEA retains exclusive responsibility for the preparation and implementation of the Tender Process and the performance of the Contract.
2. We hereby certify that neither we nor any of our board members or legal representatives nor any other member of our Joint Venture including Subcontractors under the Contract are in any of the following situations:
 - 2.1) being bankrupt, wound up or ceasing our activities, having our activities administered by courts, having entered into receivership, reorganisation or being in any analogous situation;
 - 2.2) convicted by a final judgement or a final administrative decision or subject to financial sanctions by the United Nations, the European Union or Germany for involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings; this criterion of exclusion is also applicable to legal Persons, whose majority of shares are held or factually controlled by natural or legal Persons which themselves are subject to such convictions or sanctions;
 - 2.3) having been convicted by a final court decision or a final administrative decision by a court, the European Union, national authorities in the Partner Country or in Germany for Sanctionable Practice in connection with a Tender Process or the performance of a Contract or for an irregularity affecting the EU's financial interests (*in the event of such a conviction, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this conviction is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction*);
 - 2.4) having been subject, within the past five years to a Contract termination fully settled against us for significant or persistent failure to comply with our contractual obligations during such Contract performance, unless this termination was challenged and dispute resolution is still pending or has not confirmed a full settlement against us;
 - 2.5) not having fulfilled the applicable fiscal obligations with regard to the payment of taxes at the respective tax residence and in the country of origin of the PEA (*contractors based in Annex 1 countries (<https://www.consilium.europa.eu/de/policies/eu-list-of-non-cooperative-jurisdictions/>) must submit a fully completed and legally countersigned declaration of tax conformity (Appendix 1 to the Declaration of Undertaking) in addition to the Declaration of Undertaking at the time of award of the contract/contract review. This shall become an integral part of the contract. Failure to submit may result in exclusion from the awarding procedure. For contractors based in countries not listed as Annex I countries, only the Declaration of Undertaking must be submitted, and not the declaration of tax conformity*);

⁵ Capitalised terms used, but not otherwise defined in this Declaration of Undertaking have the meaning given to such term in KfW's "Guidelines for the Procurement of Consulting Services, Works, Plant, Goods and Non-Consulting Services in Financial Cooperation with Partner Countries".

⁶ The PEA means the purchaser, the Employer, the client, as the case may be, for the procurement of Consulting Services, Works, Plant, Goods or Non-Consulting Services.

- 2.6) being subject to an exclusion decision of the World Bank or any other multilateral development bank and being listed on the website <http://www.worldbank.org/debarr> or respectively on the relevant list of any other multilateral development bank (*in the event of such exclusion, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this exclusion is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction*); or
- 2.7) being guilty of misrepresentation in supplying the information required as a condition of participation in the Tender.
3. We hereby certify that neither we, nor any of the members of our Joint Venture or any of our Subcontractors under the Contract are in any of the following situations of conflict of interest:
- 3.1) being an Affiliate controlled by the PEA or a shareholder controlling the PEA, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;
- 3.2) having a business or family relationship with a PEA's staff involved in the Tender Process or the supervision of the resulting Contract, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;
- 3.3) being controlled by or controlling another Applicant or Bidder, or being under common control with another Applicant or Bidder, or receiving from or granting subsidies directly or indirectly to another Applicant or Bidder, having the same legal representative as another Applicant or Bidder, maintaining direct or indirect contacts with another Applicant or Bidder which allows us to have or give access to information contained in the respective Applications or Offers, influencing them or influencing decisions of the PEA;
- 3.4) being engaged in a Consulting Services activity, which, by its nature, may be in conflict with the assignments that we would carry out for the PEA;
- 3.5) in the case of procurement of Works, Plant or Goods:
- i. having prepared or having been associated with a Person who prepared specifications, drawings, calculations and other documentation to be used in the Tender Process of this Contract;
 - ii. having been recruited (or being proposed to be recruited) ourselves or any of our Affiliates, to carry out works supervision or inspection for this Contract;
4. If we are a state-owned entity, and compete in a Tender Process, we certify that we have legal and financial autonomy and that we operate under commercial laws and regulations.
5. We undertake to bring to the attention of the PEA, which will inform KfW, any change in situation with regard to points 2 to 4 here above.
6. In the context of the Tender Process and performance of the corresponding Contract:
- 6.1) neither we nor any of the members of our Joint Venture nor any of our Subcontractors under the Contract have engaged or will engage in any Sanctionable Practice during the Tender Process and in the case of being awarded a Contract will engage in any Sanctionable Practice during the performance of the Contract;
- 6.2) neither we nor any of the members of our Joint Venture or any of our Subcontractors under the Contract shall acquire or supply any equipment nor operate in any sectors under an embargo of the United Nations, the European Union or Germany; and
- 6.3) we commit ourselves to complying with and ensuring that our Subcontractors and major suppliers under the Contract comply with international environmental and labour standards, consistent with laws and regulations applicable in the country of

implementation of the Contract and the fundamental conventions of the International Labour Organisation⁷ (ILO) and international environmental treaties. Moreover, we shall implement environmental and social risks mitigation measures when specified in the relevant environmental and social management plans or other similar documents provided by the PEA and, in any case, implement measures to prevent sexual exploitation and abuse and gender based violence.

7. In the case of being awarded a Contract, we, as well as all members of our Joint Venture partners and Subcontractors under the Contract will, (i) upon request, provide information relating to the Tender Process and the performance of the Contract and (ii) permit the PEA and KfW or an agent appointed by either of them, and in the case of financing by the European Union also to European institutions having competence under European Union law, to inspect the respective accounts, records and documents, to permit on the spot checks and to ensure access to sites and the respective project.
8. In the case of being awarded a Contract, we, as well as all our Joint Venture partners and Subcontractors under the Contract undertake to preserve above mentioned records and documents in accordance with Applicable Law, but in any case for at least six years from the date of fulfillment or termination of the Contract. Our financial transactions and financial statements shall be subject to auditing procedures in accordance with Applicable Law. Furthermore, we accept that our data (including personal data) generated in connection with the preparation and implementation of the Tender Process and the performance of the Contract are stored and processed according to the Applicable Law by the PEA and KfW.

Name: _____ In the capacity of: _____

Duly empowered to sign in the name and on behalf of⁸: _____

Signature:

Dated:

⁷ In case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant/Bidder/Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions with respect to a) workers grievances on working conditions and terms of employment, b) child labour, c) forced labour, d) worker's organisations and e) non-discrimination.

⁸ In the case of a JV, insert the name of the JV. The person who will sign the application, Bid or Proposal on behalf of the Applicant/Bidder shall attach a power of attorney from the Applicant/Bidder.

Appendix 1

Declaration of tax conformity – binding confirmation for legal persons

Name of company

I hereby confirm with my signature that:

- 1. I am authorised to make this declaration on behalf of the above company;
- 2. the company properly pays all taxes in accordance with the tax laws of the country in which the company is domiciled;
- 3. the company is not currently nor has been in the past involved in any legal proceedings concerning the taxation of the company;
- 4. the company will duly pay taxes that may arise from the provision of contracted services;
- 5. all information and statements provided in advance are complete, accurate in terms of content and currently correct.

.....
(Place)

.....
(Date)

.....
(Name of the consultant)

.....
(Signature(s))

Appendix 1

Declaration of tax conformity – binding confirmation for natural persons

I hereby confirm with my signature that:

1. I make this declaration in my name/on my own account;
2. I duly pay taxes that I am obliged to pay under the tax law of my country of residence;
3. I am not currently involved in tax law court proceedings, nor have I been in the past;
4. I will duly pay taxes that may arise from the provision of contracted services;
5. I have filled in all the information and statements of this confirmation in full, accurately in terms of content and that they are up to date at this time.

.....
(Place)

.....
(Date)

.....
(Name of the person)

.....
(Signature)

Form 2 – Sample Declaration on Conflict of Interest and of Submitting a Proposal

Declaration on Conflict of Interest and of Submitting a Proposal

Project (name and country):

Tender Ref./ Project ID:

We *[insert the name of the Applicant]* hereby declare that we are an independent Consultant and we, nor any member of the JV in which we are member, nor any Sub-Consultant listed below have a conflict of interest as per GP 1.5.

We hereby declare that in the event of being prequalified by the Employer, we shall submit a Proposal, subject to the details of the tender documents.

[Insert the following text if the Application includes one or several Sub-Consultants, whose qualifications should be considered by the Employer in the pre-qualification process:

“We request that the qualifications of the following Sub-Consultant(s) shall be considered by the Employer in the pre-qualification process,

[List Sub-Consultants here]

If short-listed, we undertake to submit a Proposal that includes all of the above Sub-Consultants.”]

[Signature of the authorised representative of the Applicant, designated in accordance with GP 1.4.1]

Form 3 – Sample Declaration of Association

Declaration of Association

Project (name and country):

Tender Ref./ Project ID:

We hereby declare our intent to associate with the following firms for the purpose of forming a Joint Venture:

[Insert the names of the other JV members here]

[Insert the name of the Lead Consultant] shall be the Lead Consultant.

We hereby confirm that we have not associated with any other firms for the purposes of this assignment and that we will not submit an application separately from the firms listed above. Further, we understand that if a Consultant appears as an associate in more than one Application, all Applications in which the Consultant appears shall be disqualified.

In the event that this JV is awarded a Contract, we shall perform the Services in the composition and in the form of cooperation described above.

[Signature of the authorised representative of the Applicant, designated in accordance with GP 1.4.1]

Form 4 – Financial Capacity Statement

[This table is provided for illustrative purposes only. Adjust the table to reflect the financial capability requirements set out in accordance with GP 4.2.1]

Financial data	2 years before last year⁹ <2020> EUR	Year before last year <2021> EUR	Last year <2022> EUR	Average¹⁰ EUR
Annual turnover ¹¹				
Current assets ¹²				
Current liabilities ¹³				
Current ratio (current assets/current liabilities)	Not applicable	Not applicable	Not applicable	

If annual accounts are not yet available for the last year, please provide latest estimates or provisional figures. Figures in all columns must be calculated on the same basis to allow a direct, year-on-year comparison to be made (or, if the basis has changed, please provide an explanation of the change as a footnote to the table).

Natural persons without balance sheet shall provide appropriate information.

⁹ Last year = last accounting year for which the entity's accounts have been closed.

¹⁰ Amounts entered in the 'Average' column must be the mathematical average of the amounts entered in the three preceding columns of the same row.

¹¹ The gross inflow of economic benefits (cash, receivables, other assets) generated from the ordinary operating activities of the enterprise (such as sales of goods, sales of Services, interest, royalties, and dividends) during the year.

¹² A balance sheet account, that represents the value of all assets that are reasonably expected to be converted into cash within one year in the normal course of business. Current assets include cash, accounts receivable, inventory, marketable securities, prepaid expenses and other liquid assets that can be readily converted to cash.

¹³ A company's debts or obligations that are due within one year. Current liabilities appear on the company's balance sheet and include short term debt, accounts payable, accrued liabilities and other debts.

Form 5 – Project Experience

Ref no:	Project title							
Name of legal entity (declaring Consultant)	Project Country	Overall project value (EUR)*	Proportion carried out by the legal entity (%)*	Provided staff input (person months)	Name of client	Origin of funding	Dates (start/end)	Name of JV members, if any
...
Detailed description of project (background, objectives and main activities)						Services provided by the legal entity for the project		
...						...		

* If the overall project value refers to overall project cost inclusive of Consulting Services please indicate the consulting fee separately. The portion carried out by the legal entity refers to that figure.

Form 6 – List of Available Expertise and Human Resource Capacity

1. Access to Expertise Required for the Assignment

Complete the list below to demonstrate the extent to which you have access (internally / externally) to expertise required for this assignment / for the project team profiles described in GP / SP 1.6. Include home-office project management / administration and backs-stopping personnel. Include freelance personnel and Sub-Consultant staff, if applicable (see Form 2 in Section III). Do not attach CVs as no detailed evaluation of candidates for the project team shall be carried out at the prequalification stage. The Applicant shall not present a potential project team. The focus is on access and availability to project relevant expertise. It is understood that prequalified Applicants are not required to include staff named below into the Proposal.

Name	Project team profile / areas of required expertise as per GP / SP 1.6 ¹¹	Education/ Degree	Years of Professional Experience	Relationship with / Years within the Applicant ¹²	Country/Regional Experience	Relevant Project References (Description of project-related experience)	Languages

Form 6 continued

2. Human Resource Capacity

Complete the list below to demonstrate the staff available in the areas of expertise required in this assignment as described in GP / SP 1.6. The focus here is on the Applicants human resource capacity and breadth in relation to the required expert Services.

[To avoid misunderstanding insert a separate sheet for each JV members here]

Departments / Divisions in the firm relevant to the project team profile / areas of required expertise as per GP / SP 1.6	Staff		Total staff appropriate for the specialisation
	Permanent staff in the Applicants firm	Freelance staff	

Total staff number of the Applicant			
-------------------------------------	--	--	--

Please substantiate above statements with (an) organizational chart(s) of the firm or the relevant parts of the firm.

SECTION IV – ELIGIBILITY CRITERIA

Eligibility in KfW-Financed Procurement

1. Consulting Services, Works, Goods, Plant and Non-Consulting Services are eligible for KfW financing regardless of the country of origin of the Contractors (including Subcontractors and suppliers for the execution of the Contract), except where an international embargo or sanction by the United Nations, the European Union or the German Government applies.
2. Applicants/Bidders (including all members of a Joint Venture and proposed or engaged Subcontractors) shall not be awarded a KfW-financed Contract if, on the date of submission of their Application/Offer or on the intended date of Award of a Contract, they:
 - 2.1 are bankrupt or being wound up or ceasing their activities, are having their activities administered by courts, have entered into receivership, or are in any analogous situation;
 - 2.2 have been
 - (a) convicted by a final judgement or a final administrative decision or subject to financial sanctions by the United Nations, the European Union and/or the German Government for involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings; this criterion of exclusion is also applicable to legal Persons, whose majority of shares are held or factually controlled by natural or legal Persons which themselves are subject to such convictions or sanctions;
 - (b) convicted by a final court decision or a final administrative decision by a court, the European Union or national authorities in the Partner Country or in Germany for Sanctionable Practice during any Tender Process or the performance of a Contract or for an irregularity affecting the EU's financial interests, unless they provide supporting information together with their Declaration of Undertaking (Form available as Appendix to the Application/Offer which shows that this conviction is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction;
 - 2.3 have been subject within the past five years to a Contract termination fully settled against them for significant or persistent failure to comply with their contractual obligations during Contract performance, unless this termination was challenged and the dispute resolution is still pending or has not confirmed a full settlement against them;
 - 2.4 have not fulfilled applicable fiscal obligations regarding payments of taxes either in the country where they are constituted or the PEA's country;
 - 2.5 are subject to an exclusion decision of the World Bank or any other multilateral development bank and are listed in the respective table with debarred and cross-debarred firms and individual available on the World Bank's website or any other multilateral development bank unless they provide supporting information together with their Declaration of Undertaking which shows that this exclusion is not relevant in the context of this Contract or
 - 2.6 have given misrepresentation in documentation requested by the PEA as part of the Tender Process of the relevant Contract.
3. State-owned entities may compete only if they can establish that they (i) are legally and financially autonomous, and (ii) operate under commercial law. To be eligible, a state-owned

entity shall establish to KfW's satisfaction, through all relevant documents, including its charter and other information KfW may request, that it: (i) is a legal entity separate from their state; (ii) does not currently receive substantial subsidies or budget support; (iii) operates like any commercial enterprise, and, inter alia, is not obliged to pass on its surplus to their state, can acquire rights and liabilities, borrow funds and be liable for repayment of its debts, and can be declared bankrupt.

SECTION V – KfW POLICY – SANCTIONABLE PRACTICE – SOCIAL AND ENVIRONMENTAL RESPONSIBILITY

1) Sanctionable Practice

The PEA and the Contractors (including all members of a Joint Venture and proposed or engaged Subcontractors) must observe the highest standard of ethics during the Tender Process and performance of the Contract.

By signing the Declaration of Undertaking the Contractors declare that (i) they did not and will not engage in any Sanctionable Practice likely to influence the Tender Process and the corresponding Award of Contract to the PEA's detriment, and that (ii) in case of being awarded a Contract they will not engage in any Sanctionable Practice.

Moreover, KfW requires to include in the Contracts a provision pursuant to which Contractors must permit KfW and in case of financing by the European Union also to European institutions having competence under European law to inspect the respective accounts, records and documents relating to the Tender Process and the performance of the Contract and to have them audited by auditors appointed by KfW.

KfW reserves the right to take any action it deems appropriate to check that these ethics rules are observed and reserves, in particular, the rights to:

- (a) reject an Offer for Award of Contract if during the Tender Process the Bidder who is recommended for the Award of Contract has engaged in Sanctionable Practice, directly or by means of an agent in view of being awarded the Contract;
- (b) declare misprocurement and exercise its rights on the ground of the Funding Agreement with the PEA relating to suspension of disbursements, early repayment and termination if, at any time, the PEA, Contractors or their legal representatives or Subcontractors have engaged in Sanctionable Practice during the Tender Process or performance of the Contract without the PEA having taken appropriate action in due time satisfactory to KfW to remedy the situation, including by failing to inform KfW at the time they knew of such practices.

KfW defines, for the purposes of this provision, the terms set forth below as follows:

Coercive Practice	The impairing or harming, or threatening to impair or harm, directly or indirectly, any person or the property of the person with a view to influencing improperly the actions of a person.
Collusive Practice	An arrangement between two or more persons designed to achieve an improper purpose, including influencing improperly the actions of another person.
Corrupt Practice	The promising, offering, giving, making, insisting on, receiving, accepting or soliciting, directly or indirectly, of any illegal payment or undue advantage of any nature, to or by any person, with the intention of influencing the actions of any person or causing any person to refrain from any action.
Fraudulent Practice	Any action or omission, including misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a person to obtain a financial benefit or to avoid an obligation.

Obstructive Practice Means (i) deliberately destroying, falsifying, altering or concealing evidence material to the investigation or the making of false statements to investigators, in order to materially impede an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice, or threatening, harassing or intimidating any Person to prevent them from disclosing their knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) any act intended to materially impede the exercise of KfW's access to contractually required information in connection with an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice.

Sanctionable Practice Any Coercive Practice, Collusive Practice, Corrupt Practice, Fraudulent Practice or Obstructive Practice (as such terms are defined herein) which is unlawful under the Financing Agreement.

2) Social and Environmental Responsibility

Projects financed in whole or partly in the framework of Financial Cooperation have to ensure compliance with international Environmental, Social, Health and Safety (ESHS) standards (including issues of sexual exploitation and abuse and gender based violence). Contractors in KfW-financed projects shall consequently undertake in the respective Contracts to:

- (a) comply with and ensure that all their Subcontractors and major suppliers, i.e. for major supply items comply with international environmental and labour standards, consistent with Applicable Law and regulations in the country of implementation of the respective Contract and the fundamental conventions of the International Labour Organisation (ILO) and international environmental treaties and;
- (b) implement any environmental and social risks mitigation measures, as identified in the environmental and social impact assessment (ESIA) and further detailed in the environmental and social management plan (ESMP) as far as these measures are relevant to the Contract and implement measures for the prevention of sexual exploitation and abuse and gender-based violence.