



**TENDER NO. KPA/114/2025-26/HSE**

**CONSULTANCY SERVICES FOR PROVISION OF  
AIR AND WATER QUALITY MONITORING AND  
ANALYSIS**

**TENDER DOCUMENT**

**APRIL 2026**

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## SECTION 1 –REQUEST FOR PROPOSAL (RFP)

Date: APRIL 2026

**Reference No.: KPA/114/2025-26/HSE**

**Name of Assignment: CONSULTANCY SERVICES FOR PROVISION OF AIR AND WATER QUALITY MONITORING AND ANALYSIS**

1. The Kenya Ports Authority has set aside funds in its budget towards the cost of the subject consulting services.
2. The *Kenya Ports Authority* now invites your proposal to provide the following consulting services (here in after called "the services"): **CONSULTANCY SERVICES FOR PROVISION OF AIR AND WATER QUALITY MONITORING AND ANALYSIS**. More details on the Services are provided in Section 5 Terms of Reference.
3. If a Consultant is a Joint Venture (JV), the full name of the JV shall be used and all members, starting with the name of the lead member. Where sub-consultants have been proposed, they shall be named. The maximum number of JV members shall be specified in the DS.
4. It is not permissible to transfer this RFP to any other firm.
5. A firm will be selected under Quality and Cost Based Selection (QCBS) 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).
6. The request for proposals (RFP) includes the following documents:
  - 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 Standard Forms of Contract (Lump Sum)
  - Section 7: General Conditions of Contract
  - Section 8: Special Conditions of Contract
  - Section 9: Appendices
7. All Tenders in **one original** plus **one copy of original and a PDF soft copy of the original in a flash disk**, properly filled in, and enclosed in plain envelopes must be marked as follows:-

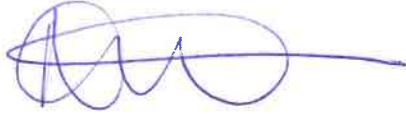
**TENDER NO. KPA/114/2025-26/HSE**

**CONSULTANCY SERVICES FOR PROVISION OF AIR AND WATER QUALITY MONITORING AND ANALYSIS**

**"DO NOT OPEN BEFORE 1000 HOURS ON TUESDAY 12TH MAY 2026"**.

8. Completed tenders must be delivered to the **Office of the Head of Procurement and Supplies** located in Finance Block III, Fourth Floor on or before **1000 HOURS ON TUESDAY 12TH MAY 2026**. Electronic Tenders *will not* be permitted.
9. Tenders will be opened promptly after **1030HOURS ON TUESDAY 12TH MAY 2026**. Tenders will be publicly opened in the presence of the Tenderers' designated representatives who choose to attend at the address below.

10. KPA is committed to the fight against corruption and adheres to high standards of integrity in its business operations. Bidders and the general public are encouraged to report any unethical behavior immediately to any of the following anonymous hotline service:-
- Hotline number: **0794272376**
  - Email: [stopcorruption@kpa.co.ke](mailto:stopcorruption@kpa.co.ke)
  - KPA website [www.kpa.co.ke](http://www.kpa.co.ke) under the Report corruption tab



Eveline I. Shigoli  
GENERAL MANAGER SUPPLY CHAIN MANAGEMENT  
**FOR: MANAGING DIRECTOR**



## **VISION, MISSION, & CORE VALUES**

### **Vision**

World class ports of choice.

### **Mission**

To provide efficient and competitive port services to facilitate global trade

### **Core Values**

**Customer Focus:** Service excellence is key to our operations and we endeavor to exceed customer expectations.

**Integrity:** We uphold fairness, honesty, professionalism and transparency in all our undertakings.

**Teamwork:** We embrace team spirit in all that we do.

**Care:** We care for our staff, the communities around us and are sensitive to the environment

**Innovation:** The Authority will invest and leverage on research, development and innovation to ensure that the Kenya Ports stay ahead of the curve in improving efficiency in their processes.

# Kenya Ports Authority

## Environment, Health & Safety Policy

Kenya Ports Authority recognizes the impacts caused by our activities and services and therefore undertakes to employ environmentally friendly practices and to provide safe and healthy working and operating environment for all employees, contractors, customers, port users and visitors. KPA demonstrates this commitment through the implementation of an Integrated Management System based on ISO 14001:2015 and ISO 45001:2018.

To accomplish this commitment KPA shall:

1. Implement sound and environmentally friendly practices aimed at preventing pollution, efficient waste containment and management and protection of the environment from negative environmental impacts arising from all aspects of our operations.
2. Engage our stakeholders including but not limited to contractors, suppliers and business partners in a manner that will ensure compliance with EMS/OSH standards, designed procedures and other relevant legal requirements whilst encouraging them to protect the environment.
3. Comply with all applicable environmental and occupational health and safety legal and other requirements.
4. Eliminate hazards and reduce occupational health and safety risks in order to prevent work-related injuries and ill health.
5. Enhance consultation and participation of workers and/or their representatives in development and roll-out of health and safety policies.
6. Educate and train employees and the community on safe working and environmentally friendly practices in order to create a culture of safety and sustainable environmental improvement and stewardship.
7. Regularly review and continually improve the EMS/OSH management system to enhance performance and to conform to changing trends.
8. Provide adequate funds and resources to accomplish the established EMS/OSH objectives and targets and for the maintenance and improvement of the Integrated Management System based on ISO 14001:2015 and ISO 45001:2018.

The Managing Director and Top Management of the Port are responsible and accountable for effective implementation of this Policy.



Capt. William K. Ruto, MBS, AFNI  
**MANAGING DIRECTOR**

1<sup>st</sup> July 2024



KEBS ISO 9001:2015 Certified Org. No. 087

# KENYA PORTS AUTHORITY

## QUALITY AND INFORMATION SECURITY POLICY

### Our Vision

"World-class ports of choice"

### Our Quality And Information Security Policy Statement

We are committed to complying with the requirements of ISO 9001:2015 Quality Management System (QMS) and ISO 27001:2022 Information Security Management System (ISMS) Standards, applicable statutory regulations and aligning our management system policies and processes with Risk Management.

### Our Strategic Objectives

1. Attain a customer satisfaction index of 75%
2. Improve port efficiency by 41%
3. Promote a safe and healthy working environment with zero accidents
4. Increase common transit market share by 7%
5. Increase profitability to KES 20 billion by 2027/2028
6. Increase employee productivity index to 2
7. Promote 100% compliance to legal and regulatory requirements and good governance principles

### We shall;

- provide efficient and competitive port services to facilitate global trade through enhanced customer service, operational excellence, governance and the preservation of confidentiality, integrity, and availability of information
- ensure that this policy and Management System objectives are aligned to the Authority's Strategic Objectives
- effectively implement and continually improve our Management System policies, processes and capabilities
- review these objectives for suitability on an annual basis in accordance with the Authority's Performance Management Framework

Kenya Ports Authority shall ensure that the Quality & Information Security Objectives are established at relevant functions and processes with the organisation.

  
Capt. William K. Ruto, AFNI  
MANAGING DIRECTOR

Date: 29<sup>th</sup> August, 2023



KEBS ISO 9001:2015 Certified Org. No. 087

## SECTION 2. INSTRUCTIONS TO CONSULTANTS AND DATA SHEET

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

#### A. GENERAL PROVISIONS

##### 1. Meanings/Definitions

- a) "Affiliate(s)" means an individual or an entity that directly or indirectly controls, is controlled by, or is under common control with the Consultant.
- b) "Applicable Law" means the laws and any other instruments having the force of law in Kenya.
- c) "Procuring Entity" means the entity that is carrying out the consultant selection process and signs the Contract for the Services with the selected Consultant.
- d) "Consultant" means a legally-established professional consulting firm or an entity that may provide or provides the Services to the Procuring Entity under the Contract.
- e) "Contract" means a legally binding written agreement signed between the Procuring Entity and the Consultant and includes all the attached documents listed in its Clause 1 (the General Conditions of Contract (GCC), the Special Conditions of Contract (SCC), and the Appendices).
- f) "Data Sheet" means an integral part of the Instructions to Consultants (ITC) Section 2 that is used to reflect specific assignment conditions to supplement, but not to over-write, the provisions of the ITC.
- g) "Day" means a calendar day unless otherwise specified as "Business Day". A Business Day is any day that is an official working day in Kenya and excludes official public holidays.
- h) "Experts" means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or Joint Venture member(s).
- i) "Government" means the Government of the Republic of Kenya.
- j) "In writing" means communicated in written form such as by mail, e-mail, fax, including, if specified in the Data Sheet, distributed or received through the electronic-procurement system used by the Procuring Entity with proof of receipt.
- k) "Joint Venture (JV)" means an association with or without a legal personality distinct from that of its members, of more than one Consultant where one member has the authority to conduct all business for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Procuring Entity for the performance of the Contract.
- l) "Key Expert(s)" means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose CV is considered in the technical evaluation of the Consultant's proposal.
- m) "ITC" (this Section 2 of the RFP) means the Instructions to Consultants that provides the Consultants with all information needed to prepare their Proposals.
- n) "Letter of RFP" means the letter of invitation being sent by the Procuring Entity to the Consultants.

- o) "Non-Key Expert(s)" means an individual professional provided by the Consultant or its Sub-consultant and who is assigned to perform the Services or any part thereof under the Contract and whose CVs are not evaluated individually.
- p) "Proposal" means the Technical Proposal and the Financial Proposal of the Consultant.
- q) "Public Procurement Regulatory Authority (PPRA)" means the statutory authority of the Government of Kenya that is mandated with the role of regulating and monitoring compliance with the public procurement law and regulations.
- r) "RFP" means the Request for Proposals to be prepared by the Procuring Entity for the selection of Consultants.
- s) "Services" means the work to be performed by the Consultant pursuant to the Contract.
- t) "Sub-consultant" means an entity to whom the Consultant intends to subcontract any part of the Services while the Consultant remains responsible to the Procuring Entity during the whole performance of the Contract.
- u) "Terms of Reference (TORs)" means the Terms of Reference that explains the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of the Procuring Entity and the Consultant, and expected results and deliverables of the assignment.

## **2. Introduction**

- 2.1 The Procuring Entity named in the Data Sheet intends to select a Consultant from those listed in the Request for Proposals (RFP), in accordance with the method of selection specified in the Data Sheet.
- 2.2 The Consultants are invited to submit a Technical Proposal and a Financial Proposal, for consulting services required for the assignment named in the Data Sheet. The Proposal will be the basis for negotiating and ultimately signing the Contract with the selected Consultant.
- 2.3 The Consultants should familiarize themselves with the local conditions and take them into account in preparing their Proposals, including attending a pre-proposal conference if one is specified in the Data Sheet. Attending any such pre-proposal conference is optional and is at the Consultants' expense.
- 2.4 The Procuring Entity will timely provide, at no cost to the Consultants, the inputs, relevant project data, and reports required for the preparation of the Consultant's Proposal as specified in the Data Sheet.

## **3. Conflict of Interest**

- 3.1 The Consultant is required to provide professional, objective, and impartial advice, always holding the Procuring Entity's interest's paramount, strictly avoiding conflicts with other assignments or its own corporate interests and acting without any consideration for future work.
- 3.2 The Consultant has an obligation to disclose to the Procuring Entity any situation of actual or potential conflict that impacts its capacity to serve the best interest of the Procuring Entity. Failure to disclose such situations may lead to the disqualification of the Consultant or the termination of its Contract.

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

*i) Conflicting Activities*

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

*ii) Conflicting Assignments*

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

*iii) Conflicting Relationships*

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

*iv) Others*

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

#### **4. Unfair Competitive Advantage**

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

#### **5. Corrupt and Fraudulent Practices**

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

#### **5.2 Collusive practices**

5.2 The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any Consultant found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Consultants shall be required to complete and sign the "Certificate of Independent Proposal Determination" annexed to the Proposal Form.

5.3 In further pursuance of this policy, Consultants shall permit and shall cause their agents (where declared or not), subcontractors, sub-consultants, service providers,

suppliers, and their personnel, to permit the Government and its agencies to inspect all accounts, records and other documents relating to any short-listing process, Proposal submission, and contract performance (in the case of award), and to have them audited by auditors, investigators or compliance officers.

## **6. Eligibility**

- 6.1 In selection of Consultants, short-listing shall be composed of firms or individuals who belong to the same line of professional business and who are almost of the same capability.
- 6.2 Unless otherwise specified in the Data Sheet, the Procuring Entity permits Consultants including proposed experts, joint ventures and individual members from all countries and categories to offer consulting services. The maximum number of members so far JV shall be specified in the TDS.
- 6.3 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for submission of proposals, but it shall be a condition of contract award and signature. AJV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website [www.cak.go.ke](http://www.cak.go.ke)
- 6.4 Public Officers of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.
- 6.5 It is the Consultant's responsibility to ensure that it's Experts, joint venture members, Sub-consultants, agents (declared or not), sub-contractors, service providers, suppliers and/or their employees meet the eligibility requirements.
- 6.6 As an exception to the foregoing 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.

## **B. Preparation of Proposals**

### **7. General Considerations**

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

### **8. Cost of Preparation of Proposal**

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

### **9. Language**

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

### **10. Documents Comprising the Proposal**

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

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

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

### **11. Only One Proposal**

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

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

11.3 Should a Joint Venture subsequently win the Contract, it shall consider whether an

application for exemption from the Competition Authority of Kenya is merited pursuant to Section 25 of the Competition Act 2010.

## **12. Proposal Validity**

### **a. Proposal Validity Period**

- 12.1 The Data Sheet indicates the period during which the Consultant's Proposal must remain valid after the Proposal submission deadline.
- 12.2 During this period, the Consultant shall maintain its original Proposal without any change, including the availability of the Key Experts, the proposed rates and the total price.
- 12.3 If it is established that any Key Expert nominated in the Consultant's Proposal was not available at the time of Proposal submission or was included in the Proposal without his/her confirmation, such Proposal shall be disqualified and rejected for further evaluation and may be subject to sanctions in accordance with IT C5.

### **b. Extension of Validity Period**

- 12.4 The Procuring Entity will make its best effort to complete the negotiations within the proposal's validity period. However, should the need arise, the Procuring Entity may request, in writing, all Consultants who submitted Proposals prior to the submission deadline to extend the Proposals' validity.
- 12.5 If the Consultant agrees to extend the validity of its Proposal, it shall be done without any change in the original Proposal and with the confirmation of the availability of the Key Experts, except as provided in ITC 12.7.
- 12.6 The Consultant has the right to refuse to extend the validity of its Proposal in which case such Proposal will not be further evaluated.

### **c. Substitution of Key Experts at Validity Extension**

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

### **d. Sub-Contracting**

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

## **13. Clarification and Amendment of RFP**

- 13.1 The Consultant may request a clarification of any part of the RFP during the period indicated in the Data Sheet before the Proposals' submission deadline. Any request for clarification must be sent in writing, or by standard electronic means, to the Procuring Entity's address indicated in the Data Sheet. The Procuring Entity will respond in writing, or by standard electronic means, and will send written copies of the response (including an explanation of the query but without identifying its source)

### 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.}

#### CHECKLIST OF REQUIRED FORMS

Required for FTP or STP <input type="checkbox"/>		FORM	DESCRIPTION	Page Limit
FTP	STP			
✓	✓	TECH-1	Technical Proposal Submission Form.	
✓	If applicable	TECH-1 Attachment	If the Proposal is submitted by a joint venture, attach a letter of intent or a copy of an existing agreement.	
✓	If applicable	Power of Attorney	No pre-set format/form. In the case of a Joint Venture, several are required: a power of attorney for the authorized representative of each JV member, and a power of attorney for the representative of the lead member to represent all JV members	
✓			Certificate of independent application for qualification determination	
✓			Appendix to form of proposal on fraud and corruption clause	
✓		TECH-2	Consultant's Organization and Experience.	
✓		TECH-2A	A. Consultant's Organization	
✓		TECH-2B	B. Consultant's Experience	
✓		TECH-3	Comments or Suggestions on the Terms of Reference and on Counterpart Staff and Facilities to be provided by the Client.	
✓		TECH-3A	A. On the Terms of Reference	
✓		TECH-3B	B. On the Counterpart Staff and Facilities	
✓	✓	TECH-4	Description of the Approach, Methodology, and Work Plan for Performing the Assignment	
✓	✓	TECH-5	Work Schedule and Planning for Deliverables	
✓	✓	TECH-6	Team Composition, Key Experts Inputs, and attached Curriculum Vitae (CV)	
✓	✓	TECH-7	Mandatory Documentary Evidence	
✓	✓	TECH-8	Self-Declaration Forms ✓ FORM SD1 ✓ FORM SD2 ✓ Declaration And Commitment To The Code Of Ethics	
✓	✓	TECH-9	Tender-Securing Declaration Form	

## 1. FORM TECH-1: TECHNICAL PROPOSAL SUBMISSION FORM

{Location, Date}

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

Dear Sirs:

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

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

OR

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

We hereby declare that:

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

- h) We are not guilty of any serious violation of fair employment laws and practices. We undertake to observe the laws of Kenya against fraud and corruption including bribery, as well as against collusive and anti-competitive practices, including bid rigging. To this effect we have signed the "Certificate of Independent Proposal Determination" attached below. We also undertake to adhere by the Code of Ethics for persons participating in Public Procurement and Asset Disposal Activities in Kenya, copy available from *(specify website)* during the procurement process and the execution of any resulting contract.
- i) We, along with any of our sub-consultants are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the PPRA.
- j) Except as stated in the ITC12 and Data Sheet, we undertake to negotiate a Contract on the basis of the proposed Key Experts. We accept that the substitution of Key Experts for reasons other than those stated in ITC Clause12 and ITC Clause 29.3 and 29.4 may lead to the termination of Contract negotiations.
- k) Our Proposal is binding upon us and subject to any modifications resulting from the Contract negotiations.
- l) We understand that the Procuring Entity is not bound to accept any Proposal that it receives.

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

We remain, Yours sincerely,

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

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

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

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

## 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:
5. Has been requested to submit a Tender in response to this request for tenders;
6. could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;
7. The Tenderer discloses that [check one of the following, as applicable]:
8. The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
9. 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;
10. 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:
11. prices;
12. methods, factors or formulas used to calculate prices;
13. the intention or decision to submit, or not to submit, a proposal; or
14. 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;
15. 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;

16. The terms of the RFP have not been, and will not be, knowingly disclosed by the Consultant, directly or indirectly, to any competitor, prior to the date and time of the official proposed opening, or of the awarding of the Contract, which ever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph(5)(b) above.

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

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

### **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 tenders 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.

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<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 there of 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 <sup>o</sup> 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 <sup>o</sup> 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: Signatory:	Name and Title of

## 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

1.

2.

3.

4.

*{Improvements to the Terms of Reference, if any}*

### B - On Counterpart data, services and facilities to be provided by the Client:

1.

2.

3.

4.

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

## 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 TOR sin here.}

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

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



**8. FORM TECH-5: WORK SCHEDULE AND PLANNING FOR DELIVERABLES**

N°	Deliverables <sup>1</sup> (D-..)	Months														
		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.

**9. FORM TECH- 6A: TEAM COMPOSITION, ASSIGNMENT, AND 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	Total	
<b>KEY EXPERTS</b>											
K-1	{e.g., Abbbb}	Mr. [Team Leader]	[Home] [Field]	[2 month] [0.5 m]	[1.0] [2.5]	[1.0] [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***

## **11. FORM TECH-7: 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 SD1**

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

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

1. THAT I am the Company Secretary/Chief Executive/Managing Director/Principal Officer/Director of ..... (Insert name of the Company) who is a Bidder in respect of **Tender No.** ..... for..... (Insert tender title/description) for..... (*Insert name of the Procuring entity*) and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.
3. THAT what is deponed to here in above is true to the best of my knowledge, information and belief.

.....  
(Title)

.....  
(Signature)

.....  
(Date)

Bidder Official Stamp

**FORM SD2**

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

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

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

..... (Title)  
..... (Signature) ..... (Date)

Bidder Official Stamp

**13. 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.....

**14. FORM TECH - 9: TENDER-SECURING DECLARATION FORM**

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

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

Tender No.: .....[insert number of tendering process]

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

I/We, the undersigned, declare that:

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

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

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

Seal or stamp

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

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

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

FIN-1 Financial Proposal Submission Form

FIN-2 Summary of Costs

FIN-3 Breakdown of Remuneration

FIN-4 Reimbursable expenses

**1. 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}

## 2. 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}			
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}				

### 3. FORM FIN-3A: BREAKDOWN OF REMUNERATION

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

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

#### 4. FORM FIN 3B: BREAKDOWN OF REIMBURSABLE

No.	Description	Unit	Quantity	Unit Price	Total Amount
1.	Air travel	Trip			
2	Road travel	Kms			
3.	Rail travel	Kms			
4.	Subsistence Allowance	Day			
	Grand Total				<hr/>

**5. FORM FIN 3C: BREAKDOWN OF MISCELLANEOUS EXPENSES**

No.	Description	Unit	Quantity	Unit Price	Total Amount
1.	Communication costs (telephone, telegram, telex)				
2.	Drafting, reproduction of reports				
3.	Equipment: computers etc.				
4.	Software				
	-----				
	<b>Grand Total</b>				

## SECTION 5. TERMS OF REFERENCE

### CONSULTANCY SERVICES FOR PROVISION OF AIR AND WATER QUALITY MONITORING AND ANALYSIS.

#### Introduction.

The Authority wishes to engage the services of suitably qualified and experienced firms approved by the National Environment Management Authority (NEMA) to undertake Environmental monitoring in compliance with the Environment Management and Co-ordination Act 1999 and its subsidiary regulations. This is part of the Authority's environmental monitoring programs and efforts to protect human health and the environment.

#### Tender Evaluation Criteria

#### Preliminary examination for Determination of Responsiveness.

The bid submission shall contain the following **MANDATORY** requirements; clearly marked and arranged in the following order: -

No.	Requirement	Compliance
1.	Shall have a table of contents page clearly indicating Sections and Page Numbers.	Must meet
2.	Shall have pages in the whole document from the table of contents page numbered in the correct sequence (i.e 1,2,3...) including all appendixes and attachments.	Must meet
3.	Shall be firmly bound and should not have any loose pages. Spiral binding and files (spring and box) are not acceptable.	Must meet
4.	Shall be submitted in one original, one copy of original and a PDF soft copy of the original in a flash disk.	Must meet
5.	Original Tender Security of Kenya Shillings Two Hundred thousand ( <b>Kshs. 200,000.00</b> ) in form of a Bank Guarantee or an Insurance Company Guarantee issued by an insurance firm approved by the Public Procurement Regulatory Authority (PPRA), letter of credit or guarantee by a deposit taking microfinance institution, Sacco society, the Youth Enterprise Development Fund or the Women Enterprise Fund valid for <b>240</b> days from the date of tender opening in the format provided in the Tender Document	Must meet
6.	A written power of Attorney authorizing the signatory of the tender document where applicable.	Must meet
7.	Shall be signed (where signatures are required) by a duly authorized representative or any other officer appointed and evidenced by a Power of Attorney.	Must meet
8.	A copy of a valid Tax Compliance Certificate.	Must meet
9.	A copy of CR12 from Registrar of Companies or equivalent for limited companies, Name of Proprietor for Sole Proprietor and Names of Partners for Partnerships generated not less than 6 months ago.	Must meet
10.	A copy of a valid Business Registration Certificate for 2025.	Must meet

11.	A duly signed Health, Safety and Environment policy	Must meet
12.	Copy(ies) of National Identification document for the director (s) of the bidding firms.	Must meet
13.	Valid Certificate of Good Conduct for the director(s) of the bidding firms.	Must meet
14.	All duly filled, signed and stamped Tendering Forms under Section IV.	Must meet
15.	Provide list and proof of ownership of necessary equipment to be used for the contract.	Must meet
16.	Commitment letter addressed to Kenya Ports Authority to observe Port Safety.	Must meet
17.	A valid copy of Professional Indemnity Insurance for the firm.	Must meet
18.	A copy of a valid annual Practicing License from the National Environmental Management Authority as an environmental consultancy firm for the period 2024/2025.	Must meet
19.	Letters of availability for the assignment duly signed by the proposed key staff.	Must meet
20.	Current/valid practicing license from NEMA for each of the key experts for the assignment.	Must meet
21.	Proof of ownership or a certified MoU with an accredited laboratory and facility licensed by NEMA and KENAS (Kenya Accreditation Services) for air and water quality testing and analysis. Firms with no laboratories must demonstrate their association with a licensed laboratory.	Must meet
22.	Evidence of the existence of the firm including the Company background, location, postal address, email address, building and floor.	Must meet
23.	A self-declaration that the consultant will not engage in any corrupt or fraudulent practices.	Must meet
24.	A certified Litigation History for the last three years (2023,2024,2025)	Must meet
25.	Provide valid and certified data controller and data processor certificates as evidence of compliance with data privacy and confidentiality.	Must meet
26.	A commitment letter allowing the Authority to carry out a due diligence to the firm verify availability of tools, equipment, key staff and a registered laboratory.	Must meet
27.	Declaration that the consultant has not been debarred by the Public Procurement Regulatory Authority.	Must meet
28.	Comments and suggestions on the Provided ToRs in the same format	Must meet

**NOTE: Failure to meet any of the above requirements will lead to automatic disqualification and the bidder shall not be eligible for technical evaluation.**

**Part II: Technical Evaluation Criteria (Mandatory Requirements)**

No.	Requirement	Compliance
1.	Provide Four (4) proofs of work done in providing environmental monitoring and analysis to public or private entities of similar complexity and scope especially in the transport sector. (Proof can be LSOs or signed contracts) for the last four years (2022, 2023,2024, 2025)	Must meet

2.	Provide four (4) reference letters for each service from public or private institutions signed by CEOs or Procurement Managers with contact details addressed to the Managing Director, Kenya Ports Authority confirming that the consultant has offered similar services to them, stating the duration of service and experience.	Must meet
3.	<p>Key Personnel Capability – Qualifications of key personnel:</p> <p><b>Team Lead</b></p> <ul style="list-style-type: none"> <li>➤ Minimum master’s degree holder in Environmental Science, Engineering or any other relevant field from a recognized University/ Higher Education Institution.</li> <li>➤ Valid copy of practicing license as an Environmental Lead Expert.</li> <li>➤ A signed Curriculum vitae highlighting qualifications and experience.</li> <li>➤ Certified copies of academic certificates (to be certified by commissioner of oaths).</li> <li>➤ At least 8 years’ experience in conducting environmental consultancy with emphasis on air or water quality monitoring (Provide at least 4 references/recommendations letters on Clients’ letterhead).</li> <li>➤ Evidence of certification or accreditation by recognized professional bodies.</li> <li>➤ Commitment Letter of availability for the assignment duly signed by the proposed key staff.</li> </ul> <p><b>Air quality expert</b></p> <ul style="list-style-type: none"> <li>➤ Name of a qualified professional staff with a bachelor’s degree or above in Environmental science/Management, Natural Resource Management or Engineering fields from a recognized University. (attach their CV’s and academic certificates)</li> <li>➤ At least 5 years of work experience of the professional with experience in providing consultancy services for air quality monitoring (attach list and contact details of firms where the tasks were conducted).</li> <li>➤ Valid Membership registration certificates from professional bodies.</li> <li>➤ Commitment Letter of availability for the assignment duly signed by the proposed staff.</li> </ul> <p><b>Water Quality specialist.</b></p> <ul style="list-style-type: none"> <li>➤ Names of at least 2 qualified professional staff with a bachelor’s degree or above in Environmental science/management, Natural Resource Management or Engineering fields from a recognized University. (attach their CV’s and academic certificates)</li> <li>➤ At least 5 years of work experience of the professionals with experience in providing consultancy services for water quality monitoring (attach list and contact details of firms where the tasks were conducted).</li> <li>➤ Valid Membership registration certificates from professional bodies.</li> <li>➤ Commitment Letter of availability for the assignment duly signed by the proposed staff.</li> </ul> <p><b>Field monitoring/Sampling Technicians.</b></p>	Must meet

	<ul style="list-style-type: none"> <li>➤ Names of at least 4 qualified professional staff with a diploma or above in environmental science/management, Laboratory technology, Chemistry or Engineering fields from a recognized University. (attach their CV's and academic certificates)</li> <li>➤ At least 3 years of work experience of the professionals in environmental field work including use of portable monitoring instruments.</li> <li>➤ Training in field sampling techniques and safety.</li> <li>➤ Commitment Letter of availability for the assignment duly signed by the proposed staff.</li> </ul> <p><b>Laboratory analyst/Chemist.</b></p> <ul style="list-style-type: none"> <li>➤ Name of a qualified professional staff with a bachelor's degree or above in Analytical Chemistry, Environmental Chemistry or microbiology from a recognized University. (attach their CV's and academic certificates)</li> <li>➤ At least 5 years of work experience of the professional in performing analyses for water minerals and microbial parameters using approved techniques (attach list and contact details of firms where the tasks were conducted).</li> <li>➤ Training and experience in ISO 17025</li> <li>➤ Commitment Letter of availability for the assignment duly signed by the proposed staff.</li> </ul> <p><b>GHG expert</b></p> <ul style="list-style-type: none"> <li>➤ Name of qualified professional staff with at least a bachelor's degree in environmental science, Climate Change, Engineering or Sustainability from a recognized University. (attach their CV's and academic certificates)</li> <li>➤ At least 5 years of work experience of the professional in GHG data collection, reporting or climate change mitigation projects (attach list and contact details of firms where the tasks were conducted).</li> <li>➤ Specialized course work in carbon accounting, climate policy and environmental management.</li> <li>➤ Experience in auditing emission reduction projects and ensuring compliance with international frameworks.</li> <li>➤ Proficiency in tools and methodologies for calculating organizational or project-level emissions.</li> <li>➤ Training in MRV (Measurement, Reporting and Verification) systems for emissions reductions.</li> <li>➤ Training in GHG inventory compilation, IPCC guidelines and INFCC transparency frameworks.</li> <li>➤ Valid Membership registration certificates from professional bodies.</li> <li>➤ Commitment Letter of availability for the assignment duly signed by the proposed key staff.</li> </ul>	
4.	<p><b>Methodology and workplan in responding to the Terms of Reference (TORs)</b></p> <ul style="list-style-type: none"> <li>➤ Provide a proposed detailed technical approach and Methodology for outdoor Air quality monitoring</li> </ul>	Must meet

	<ul style="list-style-type: none"> <li>➤ Methodology for potable water quality monitoring</li> <li>➤ Methodology for Waste/effluent water monitoring</li> <li>➤ Methodology for GHG gases monitoring</li> </ul>	
5.	Provide audited financial accounts for the last three years (2023,2024,2025). The accounts must be audited by a current practicing financial Auditor with attached evidence of Practicing license.	Must meet

**Note: The contract will be awarded the lowest responsive evaluated bidder for the total annual cost in air quality monitoring, water quality analysis and GHG emissions analysis. Only one consultant will be awarded.**

## TERMS OF REFERENCE

### **Terms of Reference (ToR) for Consultancy Services: Provision of Air and Water Quality Monitoring and Analysis.**

#### **Introduction**

The Kenya Ports Authority is committed to safeguarding environmental health and ensuring compliance with national and international standards for air and water quality. In line with Kenya's Environmental Management and Coordination Act (EMCA) of 1999 (as amended), the National Environment Management Authority (NEMA) guidelines and global frameworks such as the World Health Organization (WHO) standards, there is a pressing need to monitor and analyse air and water quality in the Authority's facilities. This consultancy is solicited to engage qualified experts or firms to conduct comprehensive monitoring and analysis of air and water quality parameters including GHG emissions. The services will support evidence-based decision-making for pollution control, public health protection and sustainable development. The consultancy will cover a 3-year period, focusing on key pollutants that pose risks to ecosystems, human health and economic activities. The awarded consultant will work closely with the procuring entity, relevant stakeholders and adhere to ethical standards, data confidentiality and safety protocols during fieldwork.

#### **Objectives**

The primary objective of this consultancy is to provide accurate, reliable, and actionable data on air and water quality to inform policy, regulatory enforcement and mitigation strategies. Specific objectives include:

- To assess current levels of air pollutants and water contaminants in designated monitoring sites.
- To identify sources of pollution, trends over time and potential health and environmental impacts.
- To evaluate compliance with statutory limits set by NEMA, WHO and other relevant bodies.
- To recommend practical interventions for improving air and water quality, including pollution prevention measures.
- To build capacity among local stakeholders through knowledge transfer and training on monitoring techniques.
- To contribute to baseline data for future environmental impact assessments (EIAs) and climate resilience planning.

#### **Scope of Work**

The consultant shall undertake a comprehensive scope covering planning, fieldwork, laboratory analysis, reporting and stakeholder engagement. The work will be divided into phases, with clear milestones. Key elements include:

##### **a) Water Quality Monitoring.**

- i) Monthly POTABLE water sampling, monitoring and analysis at six (6) sampling points (6 samples per month) within the Port of Mombasa, three (3) sampling points in Nairobi ICD, two (2) sampling points in Lamu Port and one (1) point in Naivasha ICD. These include physical, chemical and bacteriological tests as per compliance requirements of KEB(KS459-1:2007) and WHO standards. The table below indicates water potability parameters that MUST be analyzed: -

No.	Parameter
1.	Physical Tests
	Appearance
	Odour
	Color
	Suspended Matter
2.	Chemical tests
	pH@ 25°C
	Total dissolved solids
	Conductivity @ 25°C
	Total Hardness
	Chlorides as Cl
	Residual Chlorine
	Sulphates as SO <sub>4</sub>
	Nitrates as NO <sub>3</sub>
	Fluorides as F
	Iron as Fe
	Manganese as Mn
	Aluminum as Al
	Copper as Cu
	Sodium as Na
Calcium as Ca	
Magnesium as Mg	
3.	Bacteriological Tests
	Total Plate Count
	Total coliform Count
	Faecal Coliform Count
	Streptococcus faecalis
	Pseudomonas Aeruginosa

- iii) Monthly WASTEWATER (effluent)/Biodigesters analysis- Six (6) sampling points (6 samples per month) within the Port of Mombasa, one (1) sample point at Nairobi ICD, two (2) samples in Lamu, Two (2) samples in Kisumu Pier and one (1) point in Naivasha ICD as per NEMA water quality regulations 2006. (Revised 2024).

The following parameters for wastewater MUST be monitored

No	Parameters
1	Temperature
	PH
	Conductivity
	BODS days at 20°C
	COD
	Total Alkalinity
	Total Suspended Solids
	Sulfides as S <sup>2-</sup>
	Ammonia
	4 Hr permanganate Value
	Salinity
	Nitrate
	Turbidity
	Dissolved Oxygen
	Detergents (MBAS)
	Heavy Metals-Chromium, Cr
	Lead, Pb
	Mercury, Hg
	Copper, Cu
	Cadmium, Cd
Zinc, Zn	
Arsenic, As	
Oil and grease	

### b) Air Quality Monitoring

i) Annual ambient AIR QUALITY analysis at Six (6) sampling sites within the Port of Mombasa, two (2) sampling points in Nairobi ICD, two (2) sampling points in Kisumu Pier, two (2) sampling points in Lamu Port and one (1) point in Naivasha ICD. For each sampling site, the data will be collected every minute for at least 24 hours. Consultant will be expected to provide own source of power for the equipment in sites where electricity power points are not available.

The following parameters will be recorded and analysed.

PM<sub>2.5</sub> (µg/m<sup>3</sup>) PM<sub>10</sub> (µg/m<sup>3</sup>) BC (ng/ m<sup>3</sup>) O<sub>3</sub> (ppb) SO<sub>2</sub> (ppb) CO (ppm) CO<sub>2</sub> (ppm) NO<sub>2</sub> (ppb) and NO (ppb).

The following 24-Hour mean-weather parameters will also be recorded for each site:

Wind Speed
Temperature
Radiation

Humidity
Wind Direction

*World Health Organization (WHO) 2005 Air quality guideline will be the reference document for this assignment.*

- iv) Annual data collection and analysis of Green House Gases (GHG) emissions from the Mombasa port operations., Nairobi ICD, Lamu port, Naivasha ICD and Kisumu Port. Area of focus will include but not limited to; use of electricity, fuel consumption and refrigerants/cooling. This will entail data collection from various KPA departments and therefore requires at least 15 (20) working days for data collection. Results provided should show KPA carbon footprint for every 20-foot container handled.

**Note:** Data on annual fuel consumption and GHG emissions should consider the following.

- a) KPA marine crafts
- b) KPA cargo handling equipment
- c) KPA vehicle fleet
- d) Generators
- e) Buses
- f) Staff vehicles
- g) Other private vehicles that visit the port
- h) Trucks (both Local and transit)
- i) Rail (Both SGR and MGR)
- j) Ferry services

NOTE: The sampling points/sites will be determined by the Principal Environment Officer and may change from time to time. The sites will, however, be within the boundaries of under the jurisdictions of Kenya Ports Authority.

## Methodology

The consultant shall employ a rigorous, scientifically sound methodology that integrates field, laboratory and analytical approaches. The methodology should be detailed in the consultant's proposal and approved by the Manager Health, Safety and Environment.

- ✓ Use calibrated and certified equipment for sampling and analysis.
- ✓ Adhere to internationally recognized standards (e.g., US EPA, WHO, ISO).
- ✓ Provide chain-of-custody documentation and ensure data integrity.
- ✓ Incorporate GIS-based mapping and data visualization tools for reporting.

## Deliverables

The Consultant shall submit the following:

1. Inception Report: To be done within two (2) weeks of contract signing, detailing understanding, methodology, sampling plan and timelines.
2. Baseline Report: Providing initial air and water quality status.
3. Real-Time Data Dashboard – integration of online dashboard for continuous air monitoring data.
4. Monthly water quality reports: Detailed monthly analysis and report of water quality including monitoring activities, raw and analysed data, maps and interpretation.
5. Quarterly air quality report: Detailed quarterly analysis and report of air quality including monitoring activities, raw and analysed data, maps and interpretation.
6. Annual GHG report: Submit a detailed annual GHG emission report outlining activity data in scope 1,2 and 3 to calculate total emissions in CO<sub>2</sub>-equivalent, assess contributions to local climate impacts, compare against national baselines, identify major sources and propose emission reduction strategies aligned with the Climate Change Act 2016 (Updated) and National Climate Change Action Plan. The report will include uncertainty analysis, data validation and recommendations for integration into national GHG inventories.
7. Annual Comprehensive Report: Consolidating all monitoring data, identifying trends, environmental risks and offering recommendations for mitigation for water, air quality and GHG emissions presented in a firmly bound hard copy and PDF soft copy.
8. Annual summary Report – summarizing all findings, challenges, lessons learned and recommendations for future monitoring for analyzed Water, air quality and GHG emissions results presented in a firmly bound hard copy and PDF soft copy.

### **Reporting and Supervision**

The Consultant will report to the Manager Health, Safety and Environment, Kenya Ports Authority, and work closely with the Environment, Safety and Compliance Divisions.

### **Confidentiality and Data Ownership**

All data collected and reports prepared shall remain the property of KPA. The Consultant shall not disclose any information to third parties without prior written consent from KPA.

### **Technical proposal submission.**

The Consultant shall submit a detail technical proposal consisting of the following key elements.

- a) Technical proposal submission letter.
- b) Consultant's organizational structure and experience.
- c) Comments and suggestions on the ToR
- d) Description of methodology, approach and work plan.
- e) Team composition and task assignments.
- f) CVs and licenses for proposed key professional staff.
- g) Staffing schedule.

h) Work schedule.

### **Financial proposal submission**

The Consultant shall submit a detail financial proposal consisting of the following key elements.

- a) Financial proposal submission letter.
- b) Summary of costs.
- c) Breakdown of costs by activity.
- d) Breakdown of remuneration.
- e) Breakdown of reimbursables.
- f) Consultant's representations regarding costs and expenses.

### **Payment schedule.**

Payments shall be made upon submission of the final report.

## PRICE SCHEDULE

### CONSULTANCY SERVICES FOR PROVISION OF AIR AND WATER QUALITY MONITORING AND ANALYSIS.

#### Potable and Effluent Water Quality (Schedule A)

Service description	Frequency	Location	No. of Sampling points	Rate per sampling point per month VAT Inc (KES)	Monthly Total (Ksh)
Water Quality Sampling and analysis (potable)	Monthly	Mombasa Port	6		
		Nairobi ICD	3		
		Lamu Port	2		
		Naivasha ICD	1		
Wastewater Quality Sampling and analysis (Effluent)	Monthly	Mombasa Port	6		
		Nairobi ICD	1		
		Lamu Port	2		
		Naivasha ICD	1		
		Kisumu Port	2		
<b>Monthly sub-total</b>					
<b>Levy Order, 2023' (0.03%)</b>					
<b>16% VAT</b>					
<b>Total Amount per Month inclusive VAT</b>					

#### Air Quality Monitoring (Schedule B)

Item	Frequency	Location	No. of Sampling points	Rate per sampling point per quarter VAT Inc (KES)	Quarterly Total (Ksh)
Outdoor Air Quality Sampling and reporting.	Quarterly	Mombasa Port	6		
		Nairobi ICD	2		
		Lamu Port	2		
		Naivasha ICD	1		
		Kisumu Port	2		

<b>Quarterly sub-total</b>		
<b>Levy Order, 2023' (0.03%)</b>		
<b>16% VAT</b>		
<b>Total Amount per Quarter inclusive VAT</b>		

**GHG emission (Schedule C)**

<b>Item</b>	<b>Frequency</b>	<b>Location</b>	<b>Annual rate per location Incl. VAT (Ksh)</b>
GHG data analysis and reporting	Annual	Mombasa Port	
		Nairobi ICD	
		Lamu Port	
		Naivasha ICD	
		Kisumu Port	
<b>Annual sub-total</b>			
<b>Levy Order, 2023' (0.03%)</b>			
<b>16% VAT</b>			
<b>Total Amount per Annum inclusive VAT</b>			

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

**CONTRACT FOR CONSULTANT'S SERVICES**

Lump-Sum Contract Consulting Services for:

Contract No.:\_\_

Contract Description:\_\_

Between

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

and

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

Date:

## FORM OF CONTRACT - LUMP-SUM

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

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

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

### WHEREAS

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

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents attached here to shall be deemed to form an integral part of this Contract:
  - a) The General Conditions of Contract;
  - b) The Special Conditions of Contract;
  - c) Appendices:
    - Appendix A: Terms of Reference
    - Appendix B: Key Experts
    - Appendix C: Breakdown of Contract Price
    - Appendix D: Form of Advance Payments Guarantee
2. 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.
3. 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 1 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" mean these General Conditions of Contract.
- j) "Government" means the government of Kenya.
- k) "Joint Venture (JV)" means an association with or without a legal personality
- l) 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.
- m) "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.
- n) "Local Currency" means the Kenya Shillings, the currency of Kenya.
- o) "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.
- p) "Party" means the Procuring Entity or the Consultant, as the case may be, and

"Parties" means both of them.

- q) "SCC" means the Special Conditions of Contract by which the GCC may be amended or supplemented but not over-written.
- r) "Services" means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A hereto.
- s) "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 member specified in the SCC to act on their behalf in exercising all the Consultant's rights and

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

## **9. Authorized Representatives**

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

## **10. Corrupt and Fraudulent Practices**

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

10.2 **Commissions and Fees**-The Procuring Entity requires the Consultant to disclose any commissions, gratuities or fees that may have been paid or are to be paid to a agents or any other party with respect to the selection process or execution of the Contract. The information disclosed must include at least the name and address of the agent or 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 GCC19 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the SCC.

### **15. Entire Agreement**

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

## **16. Modifications or Variations**

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

## **17. Force Majeure**

### **a. Definition**

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

17.2 Force Majeure shall not include (i) any event which has been 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 overcome in the carrying out of its obligations hereunder.

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

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

17.4 The failure of a Party to fulfill any of its obligations hereunder 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**

19.2 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.

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

### **b. By the Consultant**

- 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 GCC45.1 within forty-five (45) 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.

### **c. Cessation of Rights and Obligations**

19.4 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.

### **d. Cessation of Services**

19.5 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 GCC27 or GCC28.

### **e. Payment up on Termination**

- 19.6 Upon termination of this Contract, the Procuring Entity shall make the following payments to the Consultant:
- a) Payment for Services satisfactorily performed prior to the effective date of termination; and
  - b) In the case of termination pursuant to paragraphs (d) and (e) of Clause GCC 19.1.1, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract, including the cost of the return travel of the Experts.

## **C. Obligations of the Consultant**

### **20. General**

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

20.1 The Consultant shall perform the Services and carry out the Services with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as a faithful adviser to the Procuring Entity, and shall at all times support and safeguard the Procuring Entity's legitimate interests in any dealings with the third parties.

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

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

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

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

20.5 Throughout the execution of the Contract, the 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.**

21.2 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 GCC 21.1.3, 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.

21.3 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**

21.4 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**

21.5 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**

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

## **22. Confidentiality**

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

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

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

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

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

## **25. Accounting, Inspection and Auditing**

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

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

## **26. Reporting Obligations**

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

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

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

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

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

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

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

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

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

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

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

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

30.2 Notwithstanding the above, the substitution of Key Experts during Contract execution may be considered only based on the Consultant's written request and due to

circumstances outside the reasonable control of the Consultant, including but not limited to death or medical 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 or 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 Project Site**

- 33.1 The Procuring Entity warrants that the Consultant shall have, free of charge, unimpeded access to the project site in respect of which access is required for the

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

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

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

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

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

#### **36. Counterpart Personnel**

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

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

#### **37. Payment Obligation**

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

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

#### **38. Contract Price**

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

40.3 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.

40.4 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.

40.5 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.

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

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

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

### **44. Dispute Resolution**

44.1 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:</p> <p style="padding-left: 40px;">i) THE GENERAL MANAGER, SUPPLY CHAIN MANAGEMENT KENYA PORTS AUTHORITY KIPEVU HEADQUARTERS 4<sup>TH</sup> FLOOR FINANCE BLOCK III, DOOR BLK-3.4.3 <b><u>KILINDINI MOMBASA</u></b> Phone: +254 (41) 2113600/ 2113999 E-mail: <b>tenders@kpaco.ke</b></p> <p>Consultant: _____ Attention: _____ Facsimile: _____ E-mail: _____</p>
8.1	<p><i>[If the Consultant consists only of one entity, state "N/A";</i> <i>OR</i> <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></p> <p>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: The Manager, Health Safety &amp; Environment</p> <p>For the Consultant: <i>[name, title]</i>.</p>
11.1	<p>The effectiveness conditions are the following: <i>[Note: If there are no effectiveness conditions, state "N/A"]</i></p> <p><i>OR</i></p> <p><i>List here any conditions of effectiveness of the Contract, e.g., receipt by the Consultant of an advance payment, and by the Procuring Entity of an advance payment guarantee (see Clause SCC45.1(a)), etc.]</i></p>
12.1	<p>Termination of Contract for Failure to Become Effective:</p> <p>The time period shall be _____ <i>[insert time period, e.g.: four months]</i>.</p>
13.1	Commencement of Services:

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>The number of days shall be _____ [e.g.: ten].</p> <p>Confirmation of Key Experts' availability to start the Assignment shall be submitted to the Procuring Entity in writing as a written statement signed by each Key Expert.</p>
14.1	<p>Expiration of Contract:</p> <p>The time period shall be 36 months.</p>
21.1.3.	<p>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: <b>Yes</b></p>
23.1	No additional provisions.
24.1	<i>Not Applicable</i>
27.1	The additional rights to the use of the documents are: <i>Not Applicable</i>
27.2	<i>Not Applicable</i>
32.1 (a) through (f)	<i>Not Applicable</i>
32.1(g)	<i>Not Applicable</i>
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 [insert as appropriate: "be paid" or "reimbursed"] by the Procuring Entity [insert as appropriate: "for "or "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	<i>Not Applicable</i>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
40.2	<p>The payment schedule:</p> <p><i>[Payment of installments shall be linked to the deliverables specified in the Terms of Reference in Appendix A]</i></p> <p>1<sup>st</sup> payment: <i>[insert the amount of the installment, percentage of the total Contract price, and the currency. If the first payment is an advance payment, it shall be made against the bank guarantee for the same amount as per GCC 41.2.1]. E.g. "Twenty (20) percent of the lumpsum contract price shall be paid upon submission and approval of the Inception Report</i></p> <p>2<sup>nd</sup> payment: Example: Sixty (60) percent of the lumpsum Contract Price shall be paid upon submission of an acceptable Draft Report.</p> <p>3<sup>rd</sup> and Final Payment: Example: Twenty (20) percent of the lumpsum Contract Price shall be paid upon submission and approval of the Final Report.</p> <p><i>[Total sum of all installments shall not exceed the Contract price set up in SCC38.1. Every Payment shall be subject to (i) submission to the Procuring Entity of the prerequisite Report and/or payment request documents, and, (ii) approval and acceptance of the said reports and documents by the Procuring Entity]</i></p>
40.2.1	<i>Not Applicable</i>
40.2.4	<i>Not Applicable</i>
41.1	<i>Not Applicable</i>
44.1	<p>Disputes shall be settled by arbitration in accordance with the following provisions:</p> <p>1. <u>Selection of Arbitrators</u>. Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three (3) arbitrators, in accordance with the following provisions:</p> <p>(a) Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to <i>[name an appropriate international professional body, e.g., the Federation Internationale des Ingenieurs-Conseil (FIDIC) of Lausanne, Switzerland]</i> for a list of not fewer than five (5) nominees and, on receipt of such list, the Parties shall alternately strike names therefrom, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the date of the list, <i>[insert the name of the same professional body as above]</i> shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute.</p> <p>(b) Where the Parties do not agree that the dispute concerns a technical</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>matter, the Procuring Entity and the Consultant shall each appoint one (1) arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two (2) arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by <i>[name an appropriate international appointing authority, e.g., the Secretary General of the Permanent Court of Arbitration, The Hague; the Secretary General of the International Centre for Settlement of Investment Disputes, Washington, D.C.; the International Chamber of Commerce, Paris; etc.]</i>.</p> <p>(c) If, in a dispute subject to paragraph (b) above, one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the <i>[name the same appointing authority as in said paragraph (b)]</i> to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.</p>
	<p>2. <u>Rules of Procedure.</u> Except as otherwise stated herein, arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in force on the date of this Contract.</p> <p>3. <u>Substitute Arbitrators.</u> If for any reason an arbitrator is unable to perform his/her function, a substitute shall be appointed in the same manner as the original arbitrator.</p> <p>4. <u>Nationality and Qualifications of Arbitrators.</u> The sole arbitrator or the third arbitrator appointed pursuant to paragraphs 1(a) through 1(c) above shall be an internationally recognized legal or technical expert with extensive experience in relation to the matter in dispute and shall not be a national of the Consultant's home country <i>[If the Consultant consists of more than one entity, add: or of the home country of any of their members or Parties]</i> or of the Government's country. For the purposes of this Clause, "home country" means any of:</p> <p>(a) the country of incorporation of the Consultant <i>[If the Consultant consists of more than one entity, add: or of any of their members or Parties];</i> or</p> <p>(b) the country in which the Consultant's [or any of their members' or Parties'] principal place of business is located; or</p> <p>(c) the country of nationality of a majority of the Consultant's [or of any members' or Parties'] shareholders; or</p> <p>(d) the country of nationality of the Sub-consultants concerned, where the dispute involves a subcontract.</p>

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

## SECTION 9: APPENDICES

### Appendix A – Terms of Reference

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

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

.....

### Appendix B - Key Experts

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

.....

### Appendix C – Breakdown of Contract Price

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

### Appendix D - Form of Advance Payment Guarantee

[Note: See Clause GCC 41.2.1 and SCC 41.2.1]

Bank Guarantee for Advance Payment\_\_\_\_\_ [Bank's Name and Address of Issuing Branch or Office] Beneficiary:\_\_\_\_\_ [Name and Address of Procuring Entity]

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

ADVANCEPAYMENTGUARANTEE No.:\_\_\_\_\_

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

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

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

At the request of the Consultant, we [name of bank] here by irrevocably undertake to pay you any sum or sums not exceeding in total an amount of \_\_\_\_\_ [amount in figures] ()

*[amount in words]*<sup>1</sup> upon receipt by us of your first demand in writing accompanied by a written statement stating that the Consultant are in breach of their obligation under the Contract because the Consultant have used the advance payment for purposes other than toward providing the Services under the Contract.

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

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

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

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

*[Signature]*

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

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**SECTION 10. NOTIFICATION FORMS**

**1. 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:	<i>[insert name of successful Consultant]</i>
Address:	<i>[insert address of the successful Consultant]</i>
Contract price:	<i>[insert contract price of the successful Consultant]</i>

**i) Short listed Consultants**

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

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

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

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

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

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

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

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

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

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

Title/position: [insert title/position]

Agency: [insert name of Procuring Entity]

Email address: [insert email address]

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

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

The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time. If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fourteen (14) Business Days from the date of publication of the Contract Award Notice.

**(iv) How to Make a Complaint**

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

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

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

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

Agency: *[insert name of Procuring Entity]*

Email address: *[insert email address]*

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

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

*In summary, there are four essential requirements:*

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

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

*You must submit the complaint within the deadline stated above.*

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

**(v) Standstill Period**

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

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

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

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

On behalf

of \_\_\_\_\_ *[insert the name of the*

*Procuring Entity]*: Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title/position: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

**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/order 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 here by accepted by our agency.

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

Authorized Signature:\_\_\_\_\_

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

Name of Agency:\_\_\_\_\_

**Attachment:** *Draft Negotiated Contract*

**FORM NO. 4 BENEFICIAL OWNERSHIP DISCLOSURE FORM**

Tender Reference No.: \_\_\_\_\_

Name of the Tender Title/Description: \_\_\_\_\_

Name of Procuring Entity \_\_\_\_\_

In response to the requirement in your notification of award dated \_\_\_\_ to furnish additional information on beneficial ownership: 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)
<b>1.</b>	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-- -- 2. Is this right held directly or indirectly?:  Direct..... .....	1. Exercise s significant influence or control over the Company body of the Company (tenderer)  Yes -----No--- - 2. Is this influence or control exercised directly or indirectly?  Direct.....  Indirect.....
	National identity card number or Passport number				
	Personal Identification Number (where applicable)				
	Nationality				
	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)																
<table border="1"> <tr><td>address</td><td></td></tr> <tr><td>Telephone number</td><td></td></tr> <tr><td>Email address</td><td></td></tr> <tr><td>Occupation or profession</td><td></td></tr> </table>		address		Telephone number		Email address		Occupation or profession				Indirect..... .....									
address																					
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<b>2.</b>	<table border="1"> <tr><td>Full Name</td><td></td></tr> <tr><td>National identity card number or Passport number</td><td></td></tr> <tr><td>Personal Identification Number (where applicable)</td><td></td></tr> <tr><td>Nationality(ies)</td><td></td></tr> <tr><td>Date of birth [dd/mm/yyyy]</td><td></td></tr> <tr><td>Postal address</td><td></td></tr> <tr><td>Residential address</td><td></td></tr> <tr><td>Telephone</td><td></td></tr> </table>	Full Name		National identity card number or Passport number		Personal Identification Number (where applicable)		Nationality(ies)		Date of birth [dd/mm/yyyy]		Postal address		Residential address		Telephone		<p>Directly---- -----% of shares</p> <p>Indirectly-- ----- % of shares</p>	<p>Directly... .....% of voting rights</p> <p>Indirectly- -----% of voting rights</p>	<p>1. Having the right to appoint a majority of the board of directors or an equivalent governing body of the Tenderer: Yes -----No-- --</p> <p>2. Is this right held directly or indirectly?:</p> <p>Direct..... .....</p> <p>Indirect..... .....</p>	<p>1. Exercises significant influence or control over the Company body of the Company (tenderer) Yes -----No-- --</p> <p>2. Is this influence or control exercised directly or indirectly?</p> <p>Direct.....</p> <p>Indirect.....</p>
Full Name																					
National identity card number or Passport number																					
Personal Identification Number (where applicable)																					
Nationality(ies)																					
Date of birth [dd/mm/yyyy]																					
Postal address																					
Residential address																					
Telephone																					

	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					
	Email address					
	Occupation or profession					
<b>3.</b>						
<b>e.t.c</b>						

- I) 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.*
- II) 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.

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

*Name of the Tenderer:*

.....  
*Name of the person duly authorized to sign the Tender on behalf of the Tenderer:*

.....  
*Designation of the person signing the Tender:*

.....  
*Signature of the person named above: .....*

.....  
*Date:.....*

.....

*Bidder Official Stamp*

