



**KENYA FILM COMMISSION**

**REQUEST FOR PROPOSAL (RFP)**

**FOR**

**PROVISION OF CONSULTANCY SERVICES ON THE DEVELOPMENT OF AN  
ENTERPRISE RISK MANAGEMENT (ERM) FRAMEWORK.**

**TENDER NO. KFC/48/2018-2019**

**CLOSING DATE: WEDNESDAY 17<sup>TH</sup> APRIL, 2019 AT 12.00 NOON (KENYA TIME)**

**Kenya Film Commission**

P.O. Box 76417 – 00508, Nairobi, Kenya **Tel:** (020) 2714073/4

**Website:** [www.kenyafilmcommission.com](http://www.kenyafilmcommission.com)

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**SECTION I. LETTER OF INVITATION**

**TENDER REF NO. KFC/48/2018-2019**

**TENDER NAME: REQUEST FOR PROPOSALS - PROVISION OF CONSULTANCY SERVICES ON THE DEVELOPMENT OF AN ENTERPRISE RISK MANAGEMENT (ERM) FRAMEWORK.**

1. The Kenya Film Commission invites sealed Tenders from eligible consultants to submit proposals for **PROVISION OF CONSULTANCY SERVICES ON THE DEVELOPMENT OF AN ENTERPRISE RISK MANAGEMENT (ERM) FRAMEWORK** as per requirements detailed herein in the terms of reference.
2. Tendering will be conducted through the National Competitive Bidding procedures specified in the Public Procurement and Asset Disposal Act, 2015.
3. The tender document can be viewed and downloaded at no fee from the Kenya Film Commission website [www.kenyafilmcommission.com](http://www.kenyafilmcommission.com)
4. Alternatively, the tenders can also be downloaded from the government tenders portal <http://supplier.treasury.go.ke>
5. The request for proposals (RFP) includes the following documents:
  - Section I - Letter of invitation
  - Section II - Information to consultants  
Appendix to Consultants information
  - Section III - Terms of Reference
  - Section IV - Technical proposals
  - Section V - Financial proposal
  - Section VI - Standard Contract Form
6. All Tenders in **one original** plus [**One-1 copy**], properly filled in, and enclosed in plain sealed envelopes must be delivered to the address below and marked:

**TENDER NO. KFC/48/2018-2019**

**REQUEST FOR PROPOSALS - PROVISION OF CONSULTANCY SERVICES ON THE DEVELOPMENT OF AN ENTERPRISE RISK MANAGEMENT (ERM) FRAMEWORK.**

**“DO NOT OPEN BEFORE 12:00NOON ON WEDNESDAY 17<sup>TH</sup> APRIL, 2019”**

Addressed:

**THE CHIEF EXECUTIVE OFFICER  
KENYA FILM COMMISSION  
JUMUIA PLACE II, 2<sup>ND</sup> FLOOR  
LENANA ROAD, KILIMANI IN NAIROBI**

7. Tenders shall be submitted at the tender box situated at the reception of the Kenya Film Commission office **located on the 2<sup>nd</sup> floor of Jumuia Place II on Lenana Road, Kilimani in Nairobi, BEFORE 12:00NOON ON WEDNESDAY 17<sup>TH</sup> APRIL, 2019.**

8. Prices quoted shall be in Kenya Shillings (Kshs.), should be net inclusive of all taxes and delivery and shall remain valid for **120 days** from the opening date of the tender.
9. Tenders will be opened promptly after **12:00NOON ON WEDNESDAY 17<sup>TH</sup> APRIL, 2019** in the presence of Tenderers' representatives who choose to attend. The tender opening will take place at the Commissions main Boardroom located **located on the 2<sup>nd</sup> floor of Jumuia Place II on Lenana Road, Kilimani in Nairobi.**
10. Late or incomplete Tenders shall not be accepted.
11. Canvassing or lobbying for the tender shall lead to automatic disqualification.

**CHIEF EXECUTIVE OFFICER**

## **SECTION II – INFORMATION TO CONSULTANTS (ITC)**

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## **SECTION II: - INFORMATION TO CONSULTANTS (ITC)**

### **2.1 Introduction**

- 2.1.1 The Client named in the Appendix to “ITC” will select a firm among those invited to submit a proposal, in accordance with the method of selection detailed in the appendix. The method of selection shall be as indicated by the procuring entity in the Appendix to ITC.
- 2.1.2 The consultants are invited to submit a Technical Proposal and a Financial Proposal, or a Technical Proposal only, as specified in the Appendix “ITC” for consulting services required for the assignment named in the said Appendix. A Technical Proposal only may be submitted in assignments where the Client intends to apply standard conditions of engagement and scales of fees for professional services which are regulated as is the case with Building and Civil Engineering Consulting services. In such a case the highest ranked firm of the technical proposal shall be invited to negotiate a contract on the basis of scale fees. The proposal will be the basis for Contract negotiations and ultimately for a signed Contract with the selected firm.
- 2.1.3 The consultants must familiarize themselves with local conditions and take them into account in preparing their proposals. To obtain first-hand information on the assignment and on the local conditions, consultants are encouraged to liaise with the Client regarding any information that they may require before submitting a proposal and to attend a pre-proposal conference where applicable. Consultants should contact the officials named in the Appendix “ITC” to arrange for any visit or to obtain additional information on the pre-proposal conference. Consultants should ensure that these officials are advised of the visit in adequate time to allow them to make appropriate arrangements.
- 2.1.4 The Procuring entity will provide the inputs specified in the Appendix “ITC”, assist the firm in obtaining licenses and permits needed to carry out the services and make available relevant project data and reports.
- 2.1.5 Please note that (i) the costs of preparing the proposal and of negotiating the Contract, including any visit to the Client are not reimbursable as a direct cost of the assignment; and (ii) the Client is not bound to accept any of the proposals submitted.
- 2.1.6 The procuring entity’s employees, committee members, board members and their relative (spouse and children) are not eligible to participate.

### **2.2 Clarification and Amendment of RFP Documents**

- 2.2.1 Consultants may request a clarification of any of the RFP documents only up to seven [7] days before the proposal submission date. Any request for clarification must be sent in writing by paper mail, cable, telex, facsimile or electronic mail to the Client’s address indicated in the Appendix “ITC”. The Client will respond by cable, telex, facsimile or electronic mail to such requests and will send written copies of the response (including an explanation of the query but without identifying the source of inquiry) to all invited consultants who intend to submit proposals.
- 2.2.2 At any time before the submission of proposals, the Client may for any reason, whether at his own initiative or in response to a clarification requested by an invited firm, amend the RFP. Any amendment shall be issued in writing through addenda. Addenda shall be sent by mail, cable, telex or facsimile to all invited consultants and will be binding on them. The Client may at his discretion extend the deadline for the submission of proposals.

## **2.3 Preparation of Technical Proposal**

- 2.3.1 The Consultants proposal shall be written in English language
- 2.3.2 In preparing the Technical Proposal, consultants are expected to examine the documents constituting this RFP in detail. Material deficiencies in providing the information requested may result in rejection of a proposal.
- 2.3.3 While preparing the Technical Proposal, consultants must give particular attention to the following:
- (i) If a firm considers that it does not have all the expertise for the assignment, it may obtain a full range of expertise by associating with individual consultant(s) and/or other firms or entities in a joint venture or sub-consultancy as appropriate. Consultants shall not associate with the other consultants invited for this assignment. Any firms associating in contravention of this requirement shall automatically be disqualified.
  - (ii) For assignments on a staff-time basis, the estimated number of professional staff-time is given in the Appendix. The proposal shall however be based on the number of professional staff-time estimated by the firm.
  - (iii) It is desirable that the majority of the key professional staff proposed be permanent employees of the firm or have an extended and stable working relationship with it.
  - (iv) Proposed professional staff must as a minimum, have the experience indicated in Appendix, preferably working under conditions similar to those prevailing in Kenya.
  - (v) Alternative professional staff shall not be proposed and only one Curriculum Vitae (CV) may be submitted for each position.
- 2.3.4 The Technical Proposal shall provide the following information using the attached Standard Forms;
- (i) A brief description of the firm's organization and an outline of recent experience on assignments of a similar nature. For each assignment the outline should indicate *inter alia*, the profiles of the staff proposed, duration of the assignment, contract amount and firm's involvement.
  - (ii) Any comments or suggestions on the Terms of Reference, a list of services and facilities to be provided by the Client.
  - (iii) A description of the methodology and work plan for performing the assignment.
  - (iv) The list of the proposed staff team by specialty, the tasks that would be assigned to each staff team member and their timing.
  - (v) CVs recently signed by the proposed professional staff and the authorized representative submitting the proposal. Key information should include number of years working for the firm/entity and degree of responsibility held in various assignments.
  - (vi) Estimates of the total staff input (professional and support staff staff-time) needed to carry out the assignment supported by bar chart diagrams showing the time proposed for each professional staff team member.

(vii) A detailed description of the proposed methodology, staffing and monitoring of training, if Appendix “A” specifies training as a major component of the assignment.

(viii) Any additional information requested in Appendix “A”.

2.3.5 The Technical Proposal shall not include any financial information.

## **2.4 Preparation of Financial Proposal**

2.4.1 In preparing the Financial Proposal, consultants are expected to take into account the requirements and conditions outlined in the RFP documents. The Financial Proposal should follow Standard Forms Section IV. If appropriate these costs should be broken down by activity.

2.4.2 The Financial Proposal should clearly identify as a separate amount, the local taxes (**where applicable**), duties, fees, levies and other charges imposed under the law on the consultants, the sub-consultants and their personnel, unless Appendix “A” specifies otherwise.

2.4.3 Consultants shall express the price of their services in Kenya Shillings.

2.4.4 Commissions and gratuities, if any, paid or to be paid by consultants and related to the assignment will be listed in the Financial Proposal submission Form.

2.4.5 The Proposal must remain valid for **120 days** after the submission date. During this period, the consultant is expected to keep available, at his own cost, the professional staff proposed for the assignment. The Client will make his best effort to complete negotiations within this period. If the Client wishes to extend the validity period of the proposals, the consultants shall agree to the extension.

## **2.5 Submission, Receipt, and Opening of Proposals**

2.5.1 The original proposal (Technical Proposal and, if required, Financial Proposal; see para. 1.2) shall be prepared in indelible ink. It shall contain no interlineation or overwriting, except as necessary to correct errors made by the firm itself. Any such corrections must be initialed by the persons or person authorised to sign the proposals.

2.5.2 For each proposal, the consultants shall prepare the number of copies indicated in Appendix ITC. Each Technical Proposal and Financial Proposal shall be marked “**ORIGINAL**” or “**COPY**” as appropriate. If there are any discrepancies between the original and the copies of the proposal, the original shall govern.

2.5.3 The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked “**TECHNICAL PROPOSAL,**” and the original and all copies of the Financial Proposal in a sealed envelope clearly marked “**FINANCIAL PROPOSAL**” and marked: “**DO NOT OPEN BEFORE 12:00NOON ON WEDNESDAY 17<sup>TH</sup> APRIL, 2019**”. Both envelopes shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address and other information indicated in the Appendix “ITC” and be clearly marked, “**DO NOT OPEN BEFORE 12:00NOON ON WEDNESDAY 17<sup>TH</sup> APRIL, 2019.**”

2.5.4 The completed Technical and Financial Proposals must be delivered at the submission address on or before the time and date stated in the Appendix “ITC”. Any proposal received after the closing time for submission of proposals shall be returned to the respective consultant unopened.



2.5.5 After the deadline for submission of proposals, the Technical Proposal shall be opened immediately by the opening committee. The Financial Proposal shall remain sealed and deposited with a responsible officer of the client department up to the time for public opening of financial proposals.

## **2.6 Proposal Evaluation General**

2.6.1 From the time the bids are opened to the time the Contract is awarded, if any consultant wishes to contact the Client on any matter related to his proposal, he should do so in writing at the address indicated in the Appendix "ITC". Any effort by the firm to influence the Client in the proposal evaluation, proposal comparison or Contract award decisions may result in the rejection of the consultant's proposal.

2.6.2 Evaluators of Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded.

## **2.7 Evaluation of Proposal**

2.7.1 The evaluation committee appointed by the Client shall evaluate the proposals on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria as follows:

a) The minimum total number of professional/technical staff (minimum qualifying being a University Degree from reputable institution and appropriate team experience) required on this assignment is as follows:

(i) The following qualifications are essential for the Lead consultant;

- Bachelors or Master's degree in business or other related field from a recognized University.
- Relevant Professional qualifications such as; Certified Internal Auditor (CIA) or
- Certification in Control Self-Assessment (CCSA) or Certified Public Accountant (CPA (K)) or Certified Information Systems Auditor (CISA)
- Membership in a Professional organization such as ICPAK, ISACA and IIA.
- Diploma or certificate in Risk Management from a recognized institution will be an added advantage.
- At least five years of relevant professional experience in Risk Management practice and other related work.
- Strong knowledge and experience in designing internal controls.
- Practical experience in implementation of ERM frameworks and automated ERM systems (**state where implemented and scope of work done**).
- Strong experience in delivering consultancies and training for clients.

### **ICT Expert Qualifications:**

The following qualifications are essential for the Lead consultant;

- Bachelor's degree in Computer Science, or in a related field from a recognized University.
- Relevant ICT Certification from a recognized institution.

- At least five years of relevant professional experience working with ERM or Audit systems.
- Must have practical experience in implementation of automated ERM systems (**state where implemented and scope of work done**).
- Strong knowledge and experience in designing internal controls.

**Other Technical Staff Qualifications**

- The consultant Firm is required to provide other Technical Officers following qualifications are essential for the Lead consultant;
- Bachelor’s degree in business or other related field from a recognized University.
- Relevant Professional qualifications such as; Certified Internal Auditor (CIA) or Certification in Control Self-Assessment (CCSA) or Certified Public Accountant (CPA(K)) or Certified Information Systems Auditor (CISA)
- Diploma or certificate in Risk Management or ICT will be an added advantage.
- At least three years of relevant experience in Risk Management and other related work.
- Strong knowledge and experience in designing internal controls or system implementation.

(i) **Specific experience** of the consultant related to the assignment

(ii) The firm must have undertaken similar tasks successfully in the last three years.

b) Adequacy of the proposed work plan and methodology in responding to the terms of reference

c) Suitability to the transfer of Technology Programme (Training Programme)

Each responsive proposal will be given a technical score (St). A proposal shall be rejected at this stage if it does not respond to important aspects of the Terms of Reference or if it fails to achieve the minimum technical score indicated in the Appendix “ITC”. **Note:** *Proposals that does not comply to the mandatory requirements listed under the terms of reference shall not proceed to the technical evaluation stage.*

	<b>Points</b>
i. Specific experience of the consultant related to the assignment	20
ii. Adequacy of the proposed work plan and methodology in responding to the terms of reference	50
iii. Qualifications and competence of the key staff for the assignment	20
iv. Suitability of Training Program	10
<b>Total Points</b>	<b><u>100</u></b>

**Only Tenderers who meet a minimum score of 70% of the Technical Evaluation Criteria shall be pre-qualified for the next stage of evaluation.**

## **2.8 Public Opening and Evaluation of Financial Proposal**

2.8.1 After Technical Proposal evaluation, the Client shall notify those consultants whose proposals did not meet the minimum qualifying mark or were considered

Non-responsive to the RFP and Terms of Reference, indicating that their Financial Proposals will be returned after completing the selection process. The Client shall simultaneously notify the consultants who have secured the minimum qualifying mark, indicating the date and time set for opening the Financial Proposals and stating that the opening ceremony is open to those consultants who choose to attend. The opening date shall not be sooner than seven (7) days after the notification date. The notification may be sent by registered letter, cable, telex, facsimile or electronic mail.

2.8.2 The Financial Proposals shall be opened publicly in the presence of the consultants' representatives who choose to attend. The name of the consultant, the technical Scores and the proposed prices shall be read aloud and recorded when the Financial Proposals are opened. The Client shall prepare minutes of the public opening.

2.8.3 The evaluation committee will determine whether the financial proposals are complete (i.e. whether the consultant has costed all the items of the corresponding Technical Proposal and correct any computational errors. The cost of any unpriced items shall be assumed to be included in other costs in the proposal. In all cases, the total price of the Financial Proposal as submitted shall prevail.

2.8.4 While comparing proposal prices between local and foreign firms participating in a selection process in financial evaluation of Proposals, firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias in proposal prices. However, there shall be no such preference in the technical evaluation of the tenders. Proof of local incorporation and citizenship shall be required before the provisions of this sub-clause are applied. Details of such proof shall be attached by the Consultant in the financial proposal.

2.8.5 The formulae for determining the Financial Score (Sf) shall, unless an alternative formulae is indicated in the Appendix "ITC", be as follows:-

$Sf = 100 \times \frac{Fm}{F}$  where Sf is the financial score; Fm is the lowest priced financial proposal and F is the price of the proposal under consideration. Proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weights (T=the weight given to the Technical Proposal; P = the weight given to the Financial Proposal;  $T + P = 1$ ) indicated in the Appendix. The combined technical and financial score, S, is calculated as follows:-  $S = St \times T \% + Sf \times P \%$ . The firm achieving the highest combined technical and financial score will be invited for negotiations.

2.8.6 The tender evaluation committee shall evaluate the tender within 30 days from the date of opening the tender.

2.8.7 Contract price variations shall not be allowed for contracts not exceeding one year (12 months).

2.8.8 Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price

2.8.9 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.

## **2.9 Negotiations**

2.9.1 Negotiations will be held at the same address as “address to send information to the Client” indicated in the Appendix “ITC”. The aim is to reach agreement on all points and sign a contract.

2.9.2 Negotiations will include a discussion of the Technical Proposal, the proposed methodology (work plan), staffing and any suggestions made by the firm to improve the Terms of Reference. The Client and firm will then work out final Terms of Reference, staffing and bar charts indicating activities, staff periods in the field and in the head office, staff-months, logistics and reporting. The agreed work plan and final Terms of Reference will then be incorporated in the “Description of Services” and form part of the Contract. Special attention will be paid to getting the most the firm can offer within the available budget and to clearly defining the inputs required from the Client to ensure satisfactory implementation of the assignment.

2.9.3 Unless there are exceptional reasons, the financial negotiations will not involve the remuneration rates for staff (no breakdown of fees).

2.9.4 Having selected the firm on the basis of, among other things, an evaluation of proposed key professional staff, the Client expects to negotiate a contract on the basis of the experts named in the proposal. Before contract negotiations, the Client will require assurances that the experts will be actually available. The Client will not consider substitutions during contract negotiations unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the firm may be disqualified.

2.9.5 The negotiations will conclude with a review of the draft form of the Contract. To complete negotiations the Client and the selected firm will initial the agreed Contract. If negotiations fail, the Client will invite the firm whose proposal received the second highest score to negotiate a contract.

2.9.6 The procuring entity shall appoint a team for the purpose of the negotiations.

## **2.10 Award of Contract**

2.10.1 The Contract will be awarded following negotiations. After negotiations are completed, the Client will promptly notify other consultants on the shortlist that they were unsuccessful and return the Financial Proposals of those consultants who did not pass the technical evaluation

2.10.2 The selected firm is expected to commence the assignment on the date and at the location specified in Appendix “A”.

2.10.3 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

2.10.4 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

2.10.5 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

2.10.6 To qualify for contract awards, the tenderer shall have the following:

- (a) Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.
- (b) Legal capacity to enter into a contract for procurement
- (c) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
- (d) Shall not be debarred from participating in public procurement.

## **2.11 Confidentiality**

2.12.3 Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals or to other persons not officially concerned with the process, until the winning firm has been notified that it has been awarded the Contract.

## **2.12 Corrupt or fraudulent practices**

2.12.1 The procuring entity requires that the consultants observe the highest standards of ethics during the selection and award of the consultancy contract and also during the performance of the assignment. The tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.

2.12.2 The procuring entity will reject a proposal for award if it determines that the consultant recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.

2.12.3 Further a consultant who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

## APPENDIX TO INFORMATION TO CONSULTANTS

*The following information for procurement of consultancy services and selection of consultants shall complement or amend the provisions of the information to consultants, wherever there is a conflict between the provisions of the information to consultants and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the information to consultants.*

<b>INSTRUCTIONS TO TENDERERS CLAUSE REFERENCE</b>	<b>PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS</b>
2.1 The name of the Client is	The name of the Client is: <b>KENYA FILM COMMISSION</b>
2.1.1 The method of selection is:	<b>QUALITY AND COST BASED SELECTION</b>
2.1.2 Technical and Financial Proposals are requested:	Yes
The name, objectives, and description of the assignment are:	<b>REQUEST FOR PROPOSALS – CONSULTANCY SERVICES ON THE DEVELOPMENT OF ENTERPRISE RISK MANAGEMENT (ERM) FRAMEWORK</b>
2.1.3 A pre-proposal conference will be held	No.
The name(s), address(es) and telephone numbers of the Client's official(s) are:	<b>THE CHIEF EXECUTIVE OFFICER KENYA FILM COMMISSION, JUMUIA PLACE II 2<sup>ND</sup> FLOOR ON LENANA ROAD, KILIMANI IN NAIROBI</b>  <b>Tel +254 020 2714073</b>
2.1.4 The Client will provide the following inputs:	<ul style="list-style-type: none"> <li>• Data and other reports</li> <li>• Limited access to internet where requested</li> <li>• Lead Client contact person for duration of the contract</li> </ul>
2.1.5 (ii) The estimated number of professional staff months Required for the assignment is:	<b>2 Months.</b>
(iv) The minimum required experience of proposed professional staff is	<b>As provided in the requirements under 2.7 of ITC</b>
2.1.6 (vii) Training is a specific component of this assignment:	<b>YES</b>
(viii) Additional information in the Technical Proposal includes:	N/A
2.1.7 Taxes:	<b>Proposal should be inclusive of all taxes e.g. withholding and VAT where applicable</b>
2.5.2	The number of copies to be submitted is: <b>One (1)</b>

	<b>Original and One (1) Copy.</b>
2.3.5 2.5.3 2.5.5  2.5.4 The proposal submission address is:	<p>The envelope shall contain the address and name of the bidder to enable it to be returned unopened in case it is received/declared late. The envelope shall be placed in an outer sealed envelope or package.</p> <p>The tender shall comprise both technical and financial submission and will be opened on the date of tender opening.</p> <p>The tenderer shall submit one original and one copy.</p> <p>The outer envelope/package shall be bear the tender number and description and shall be addressed :</p> <p><b>THE CHIEF EXECUTIVE OFFICER KENYA FILM COMMISSION, JUMUIA PLACE II 2<sup>ND</sup> FLOOR ON LENANA ROAD, KILIMANI - NAIROBI</b></p> <p>Completed tenders shall be deposited at the tender box situated at the reception of Kenya Film commission office <b>located on the 2<sup>nd</sup> floor Jumuia Place II on Lenana Road, Kilimani in Nairobi BEFORE 12:00NOON ON WEDNESDAY 17<sup>TH</sup> APRIL, 2019.</b></p>
2.5.2 Proposals must be submitted no later than the following date and time:	<p><b>BEFORE 1200NOON ON WEDNESDAY 17<sup>TH</sup> APRIL, 2019.</b></p> <p>Bidders or their representative may attend the opening to be conducted immediately after the opening at <b>12:00NOON ON WEDNESDAY, 17<sup>TH</sup> APRIL, 2019</b> at the Commission's Boardroom.</p>
2.6.3 The minimum technical score required to <b>pass</b>	<b>70%</b>
2.7.1	Evaluation shall be on compliance to the requirements in clause 2.7.1.
2.8	Clause deleted
2.9.2 The assignment is expected to commence on	<b>Immediately after award and signing of contract</b>
2.10 Award of Contract	The Contract shall be awarded to the lowest evaluated bidder and may be subject to negotiations. The recommended bidder will be invited for presentations prior to award of contract.

### **SECTION III: - TECHNICAL PROPOSAL**

#### ***Notes on the preparation of the Technical Proposals***

- 3.1 *In preparing the technical proposals the consultant is expected to examine all terms and information included in the RFP. Failure to provide all requested information shall be at the consultants own risk and may result in rejection of the consultant's proposal.*
  
- 3.2 *The technical proposal shall provide all required information and any necessary additional information and shall be prepared using the standard forms provided in this Section.*
  
- 3.3 *The Technical proposal shall not include any financial information unless it is allowed in the Appendix to information to the consultants or the Special Conditions of contract.*



## **SECTION III - TECHNICAL PROPOSAL**

### **Table of Contents**

1. Technical proposal submission form
2. Firms references
3. Comments and suggestions of consultants on the Terms of reference and on data, services and facilities to be provided by the procuring entity
4. Description of the methodology and work plan for performing the assignment
5. Team composition and Task assignments
6. Format of curriculum vitae (CV) for proposed Professional staff
7. Time schedule for professional personnel
8. Activity (work schedule)

**1. TECHNICAL PROPOSAL SUBMISSION FORM**

[\_\_\_\_\_ Date]

To: \_\_\_\_\_ [Name and address of Client]

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for \_\_\_\_\_  
\_\_\_\_\_ [Title of consulting services] in accordance with your  
Request for Proposal dated \_\_\_\_\_ [Date] and our Proposal. We are  
hereby submitting our Proposal, which includes this Technical Proposal, [and a  
Financial Proposal sealed under a separate envelope-where applicable].

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

We remain,

Yours sincerely,

\_\_\_\_\_ [Authorized Signature]:

\_\_\_\_\_ [Name and Title of Signatory]

:

\_\_\_\_\_ [Name of Firm]

:

\_\_\_\_\_ [Address:]

## 2. FIRM'S REFERENCES

### Relevant Services Carried Out in the Last Five Years That Best Illustrate Qualifications

Using the format below, provide information on each assignment for which your firm either individually, as a corporate entity or in association, was legally contracted.

Assignment Name:		Country
Location within Country:		Professional Staff provided by Your  Firm/Entity(profiles):
Name of Client: assignment.		Clients contact person for the
Address:		No of Staff-Months; Duration of Assignment:
Start Date (Month/Year):	Completion Date (Month/Year):	Approx. Value of Services (Kshs)
Name of Associated Consultants. If any:  Consultants:		No of Months of Professional Staff provided by Associated
Name of Senior Staff (Project Director/Coordinator, Team Leader) Involved and Functions Performed:		
Narrative Description of project:		
Description of Actual Services Provided by Your Staff:		

Firm's Name: \_\_\_\_\_

Name and title of signatory; \_\_\_\_\_

*(May be amended as necessary)*

**3. COMMENTS AND SUGGESTIONS OF CONSULTANTS ON THE TERMS OF REFERENCE AND ON DATA, SERVICES AND FACILITIES TO BE PROVIDED BY THE CLIENT.**

---

On the Terms of Reference:

- 1.
- 2.
- 3.
- 4.
- 5.

On the data, services and facilities to be provided by the Client:

- 1.
- 2.
- 3.
- 4.
- 5.

**4. DESCRIPTION OF THE METHODOLOGY AND WORK PLAN FOR PERFORMING  
THE ASSIGNMENT**

---

**5. KEY PERSONNEL DETAILS**

<b>No</b>	<b>Designation</b>	<b>Name</b>	<b>Nationality</b>	<b>Summary of qualifications and experience</b>
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				

I certify that the above information is correct.

.....

*(Title)*

.....

*(Signature)*

.....

*(Date)*

**6. FORMAT OF CURRICULUM VITAE (CV) FOR PROPOSED PROFESSIONAL STAFF**

**1. Proposed Position** [*only one candidate shall be nominated for each position*]: \_\_\_\_\_

**2. Name of Expert** [*insert full name*]: \_\_\_\_\_

**3. Date of Birth:** \_\_\_\_\_ **Nationality:** \_\_\_\_\_

**4. Education** [*indicate college/university and other specialized education of expert, giving names of institutions, degrees obtained, and dates of obtainment*]: \_\_\_\_\_

\_\_\_\_\_

**5. Current Membership to Professional Associations with evidence:** \_\_\_\_\_

\_\_\_\_\_

**6. Other Trainings** [*indicate significant training since degrees under 5 - Education were obtained*]:

\_\_\_\_\_

\_\_\_\_\_

**7. Countries of Work Experience:** [*list countries where expert has worked in the last ten years*]:

\_\_\_\_\_

\_\_\_\_\_

**8. Languages** [*For each language indicate proficiency: good, fair, or poor in speaking, reading, and writing*]: \_\_\_\_\_

\_\_\_\_\_

**9. Employment Record** [*Starting with present position, list in reverse order every employment held by expert since graduation, giving for each employment (see format here below): dates of employment, name of employing organization, positions held.*]:

**From [Year]:** \_\_ **To [Year]:** \_\_\_\_\_

**Employer:** \_\_\_\_\_

**Positions held:** \_\_\_\_\_

<p style="text-align: center;"><b>10. Detailed Tasks Assigned</b></p> <p style="text-align: center;"><b>[List all tasks to be performed under this assignment]</b></p>	<p><b>11. Work Undertaken that Best Illustrates Capability to Handle the Tasks Assigned</b></p> <p><i>[Among the assignments in which the expert has been involved, indicate the following information for those assignments that best illustrate the expert's capability to handle the tasks listed in line 11.]</i></p> <p>Name of assignment or project: _____</p> <p>Year: _____</p> <p>Location: _____</p> <p>Client: _____</p> <p>Main project features: _____</p> <p>Positions held: _____</p> <p>Activities performed: _____</p>
--	--

**12. Certification:**

I, the undersigned, certify to the best of my knowledge and belief that

- (i) This CV correctly describes my qualifications and my experience;
- (ii) In the absence of medical incapacity, I will undertake this assignment for the duration and in terms of the inputs specified for me in the Personnel Schedule in Form provided team mobilization takes place within the validity of this proposal or any agreed extension thereof;
- (iii) I am committed to undertake the assignment within the validity of Proposal;
- (iv) I am not part of the team who wrote the terms of reference for this consulting services assignment;

I understand that any willful misstatement described herein may lead to my disqualification or dismissal, if engaged.

\_\_\_\_\_ Date: \_\_\_\_\_  
*[Signature of expert or authorized representative of the firm]*<sup>1</sup> *Day/Month/Year*

Full name of authorized representative: \_\_\_\_\_

This CV can be signed by an authorized representative of the Consultant provided that if the Consultant's proposal is ranked first, a copy of the CV signed by the expert and/or specialist must be submitted to the Client prior to the commencement of contract negotiations



**7. TIME SCHEDULE FOR PROFESSIONAL PERSONNEL**

Months (in the Form of a Bar Chart)

Name	Position	Reports Due/ Activities	Months (in the Form of a Bar Chart)												Number of months		
			1	2	3	4	5	6	7	8	9	10	11	12			

Reports Due: \_\_\_\_\_

Activities Duration: \_\_\_\_\_

Signature: \_\_\_\_\_  
(Authorized representative)

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

Title: \_\_\_\_\_

Address: \_\_\_\_\_

## 8. ACTIVITY (WORK) SCHEDULE

### (a). Work Schedule.

	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	5 <sup>th</sup>	6 <sup>th</sup>	7 <sup>th</sup>	8 <sup>th</sup>	9 <sup>th</sup>	10 <sup>th</sup>	11 <sup>th</sup>	12 <sup>th</sup>
Activity (Work)												
_____												
_____												
_____												
_____												

*[1<sup>st</sup>, 2<sup>nd</sup>, etc, are weeks from the start of assignment)*

### (b). Completion and Submission of Reports

REPORT	Date
Draft Report	
Final Report	

## **SECTION IV: - FINANCIAL PROPOSAL**

### Notes on preparation of Financial Proposal

- 4.1 The Financial quotations prepared by the consultant should list the fee for professional service to be offered per each person. The financial quotations shall be in Kenya Shillings.
- 4.2 The financial quotation should be prepared using the Standard forms provided in this part.

## **FINANCIAL QUOTATION STANDARD FORMS**

1. Financial quotation submission Form
2. Summary of costs
3. Breakdown of price/per activity
4. Miscellaneous expenses

**1. FINANCIAL QUOTATION SUBMISSION FORM**

\_\_\_\_\_ [ Date]

To: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*[Name and address of Client]*

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for (\_\_\_\_\_) *[Title of consulting services]* in accordance with your Request for Proposal dated (\_\_\_\_\_) *[Date]* and our Proposal. Our attached Financial Proposal is for the sum of (\_\_\_\_\_) *[Amount in words and figures]* inclusive of the taxes.

We remain,

Yours sincerely,

\_\_\_\_\_ *[Authorized Signature]*

:

\_\_\_\_\_ *[Name and Title of Signatory]:*

\_\_\_\_\_ *[Name of Firm]*

\_\_\_\_\_ *[Address]*

**2. SUMMARY OF COSTS**

Costs	Currency(ies)	Amount(s)
Total Amount of Financial Proposal		

**3. DETAILED BREAKDOWN OF PRICE PER ACTIVITY**

Activity NO.: _____	Description: _____
Price Component	Amount(s)

**4. MISCELLANEOUS EXPENSES**

Activity No. \_\_\_\_\_ Activity Name: \_\_\_\_\_

No.	Description	Unit	Quantity	Unit Price	Total Amount

## **SECTION V: - TERMS OF REFERENCE**

### **PROVISION OF CONSULTANCY SERVICES ON THE DEVELOPMENT OF AN ENTERPRISE RISK MANAGEMENT (ERM) FRAMEWORK.**

---

#### **SCOPE OF CONSULTANCY:**

**The Consultant will be expected to;-**

#### **Enterprise Risk Management Framework:**

1. To Review and identify of any gaps in the current risk framework and matrices that define and manage the full spectra of risks across the Commission and provide guidance on their application.
2. Update the current Corporate Risk Management tools, techniques, practices and processes.
3. Develop a revised and up to date Enterprise Risk Management (ERM) policy.
4. Carry out sensitization for Commission staff on ERM as well as emerging trends through training and knowledge transfer.
5. Carry out a Board sensitization on the benefits of ERM.
6. Facilitate implementation of ERM in all departments of the Commission based on a risk management methodology consistent with ISO 9001:2015 International standard and ISO 31000 Risk Management Standard.
7. Advice and assist on possible automation options of risk management process based on the methodology adopted.
8. Create an understanding of relationship roles between;-
  - ERM and the Strategic Planning Process.
  - ERM and Performance Contracting.
  - ERM and Business Continuity planning.

#### **Business Continuity Planning (BCP):**

1. Review and document the Commission's current situation clearly highlighting the existing gaps.
2. Identify and profile the Commission's business processes, services/products and other assets based on their criticality.
3. Identification and assessment of key operational functions that the Commission cannot operate without consultation with senior management.
4. Identification of business continuity requirements of the identified functions and critical business information systems that need to be considered for disaster recovery.
5. Engagement of senior management, risk management team, and other stakeholders in the discussions around the development of the BCP and performance of the business impact analysis processes.

6. Facilitation of a senior management workshop to resolve issues emanating from the discussions held.
7. Development of a BCP that will enable the Commission respond to an event in such manner that will enable the Commission critical business functions to continue operating within the business impact analysis processes.
8. Develop a Disaster recovery plan (DRP) and modernize it into ICT service continuity plan and incorporate it into the developed BCP to enable recovery and protection of the Commission's IT infrastructure during ICT service disruptions and in the event of a disaster.
9. Development of a comprehensive implementation plan with guidelines.
10. Testing of the developed BCP (only on critical functions as may be agreed with senior management in a minimalist approach). The report on functioning of the developed BCP will have to be tabled to senior management and the Risk management team of the Commission.
11. Training and awareness created on implementation of the approved BCP developed.

### **KEY DELIVERABLES/EXEPECTED OUTPUTS:**

#### **(a) Enterprise Risk Management (ERM)**

A revised ERM framework will take into consideration the objectives listed above and expected outputs include:

- Revised ERM Policy.
- Revised ERM Procedure Manual.
- Revised functional risk registers, risk tolerance levels & risk heat maps; Revised Business Continuity Plans; and
- Revised Risk Management Charters (Board and Management).
- Training reports highlighting areas of future improvements on the ERM process and other relevant feedback.

#### **(b) Business Continuity Planning (BCP)**

- Inception report.
- BCP-Current situation Analysis Report.
- Signed off BCP that incorporates the DRP into ICT service continuity plan. Signed off BCP implementation plan with guidelines.
- Report on functioning of the BCP to senior Management and the Risk Management team.
- Awareness/Training to key stakeholders report.

### **DURATION OF THE CONSULTANCY**

- The Consultant shall commence work immediately after signing of contract. The effective date shall be the date on which the Consultancy agreement shall be signed by the Client.
- The work will be carried out strictly within two **(2) months** from the effective date of the contract. The consultants should clearly express the willingness and ability



to work within that period. The Consultant(s) will be required to prepare and submit a work plan, with cost estimates, indicating deliverables.

### **COMPETENCE AND EXPERTISE REQUIREMENTS:**

- The consultant firm should have been in operation for the last five (5) years, proven experience in offering similar services is essential.
- A detailed profile of the firm along with the curriculum vitae of the Lead Risk Management Consultant, the ICT expert and other technical staff to be involved in the assignment should be provided. The firm will be required to provide details of at least **5 similar engagements it has undertaken in Kenya (Recommendation letters)**. The Consultant(s) should provide adequate information indicating that he/she is/are qualified to undertake the assignment successfully by providing the following information:
  - (i) Description and experience in similar assignments; and
  - (ii) Availability of appropriate skills, competence and qualifications of professional staff among others

### **Staff Requirements:**

The Consultant shall provide the following staff required for the performance of the duties described above:

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

### **Key Staff:**

#### **Lead Risk Management Consultant Qualifications**

The following qualifications are essential for the Lead consultant;

- Bachelors or Master's degree in business or other related field from a recognized University.
- Relevant Professional qualifications such as; Certified Internal Auditor (CIA) or
- Certification in Control Self-Assessment (CCSA) or Certified Public Accountant (CPA (K)) or Certified Information Systems Auditor (CISA)
- Membership in a Professional organization such as ICPAK, ISACA and IIA.
- Diploma or certificate in Risk Management from a recognized institution will be an added advantage.
- At least five years of relevant professional experience in Risk Management practice and other related work.
- Strong knowledge and experience in designing internal controls.
- Practical experience in implementation of ERM frameworks and automated ERM systems (**state where implemented and scope of work done**).
- Strong experience in delivering consultancies and training for clients.

#### **ICT Expert Qualifications**

The following qualifications are essential for the Lead consultant;

- Bachelor's degree in Computer Science, or in a related field from a recognized University.
- Relevant ICT Certification from a recognized institution.
- At least five years of relevant professional experience working with ERM or Audit systems.
- Must have practical experience in implementation of automated ERM systems (**state where implemented and scope of work done**).
- Strong knowledge and experience in designing internal controls.

### **Other Technical Staff Qualifications**

The consultant Firm is required to provide other Technical Officers following qualifications are essential for the Lead consultant;

- Bachelor's degree in business or other related field from a recognized University.
- Relevant Professional qualifications such as; Certified Internal Auditor (CIA) or Certification in Control Self-Assessment (CCSA) or Certified Public Accountant (CPA (K)) or Certified Information Systems Auditor (CISA)
- Diploma or certificate in Risk Management or ICT will be an added advantage.
- At least three years of relevant experience in Risk Management and other related work.
- Strong knowledge and experience in designing internal controls or system implementation.

### **MANDATORY REQUIREMENTS AS PRELIMINARY EVALUATION:**

#### **Preliminary/Mandatory Evaluation**

Proposals will be evaluated on the basis of their responsiveness to mandatory requirements as listed here-below:-

<b>NO.</b>	<b>ITEM DESCRIPTION</b>	<b>YES</b>	<b>NO</b>
1.	Copy of Certificate of Registration		
2.	Valid Tax Compliance Certificate.		
3.	Company Profile		
4.	Company financial statements for the last two years 2016/2017 and 2017/2018		
5.	Current Client List and three signed reference letters from clients where similar assignment has been undertaken		

**SECTION VI: STANDARD FORMS OF CONTRACT**

**ANNEX I**

**STANDARD FORM OF CONTRACT  
FOR**

**CONSULTING SERVICES**

*(FOR INFORMATION ONLY)*

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## FORM OF CONTRACT

This Agreement (hereinafter called the "Contract") is made the \_\_\_\_\_) day of the month of \_\_\_\_\_ [month], [year], between \_\_\_\_\_, [name of client] of [or whose registered office is situated at] \_\_\_\_\_ [location of office] (hereinafter called the "Client") of the one part AND

\_\_\_\_\_ [name of consultant] of [or whose registered office is situated at] \_\_\_\_\_ [location of office] (hereinafter called the "Consultant") of the other part.

### WHEREAS

- (a) the Client has requested the Consultant to provide certain consulting services as defined in the General Conditions of Contract attached to this Contract (hereinafter called the "Services");
- (b) the Consultant, having represented to the Client that he has the required professional skills and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract;

NOW THEREFORE the Parties hereto hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:
  - (a) The General Conditions of Contract;
  - (b) The Special Conditions of Contract;
  - (c) The following Appendices: [**Note:** *If any of these Appendices are not used, they should be deleted from the list*]
    - Appendix A: Description of the Services
    - Appendix B: Reporting Requirements
    - Appendix C: Key Personnel and Sub consultants
    - Appendix D: Breakdown of Contract Price in Foreign Currency
    - Appendix E: Breakdown of Contract Price in Local Currency
    - Appendix F: Services and Facilities Provided by the Client
2. The mutual rights and obligations of the Client and the Consultants shall be as set forth in the Contract; in particular:
  - (a) The Consultant shall carry out the Services in accordance with the provisions of the Contract; and
  - (b) The Client shall make payments to the Consultant in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto 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 client*]

[*full name of Client's authorized representative* \_\_\_\_\_]

[*title* \_\_\_\_\_]

[*signature* \_\_\_\_\_]

[*date* \_\_\_\_\_]

For and on behalf of \_\_\_\_\_ [*name of consultant*]

[*full name of Consultant's authorized representative* \_\_\_\_\_]

[*title* \_\_\_\_\_]

[*signature* \_\_\_\_\_]

[*date* \_\_\_\_\_]



## II. GENERAL CONDITIONS OF CONTRACT

### 1. GENERAL PROVISIONS

#### 1.1 Definitions

- (a) Unless the context otherwise requires, the following terms whenever used in this Contract shall have the following meanings
- (b) “Applicable Law” means the laws and any other instruments having the force of law in the Republic of Kenya as they may be issued and in force from time to time;
- (c) “Contract” means the Contract signed by the Parties, to which these General Conditions of Contract (GC) are attached together with all the documents listed in Clause 1 of such signed Contract;
- (d) “Contract Price” means the price to be paid for the performance of the Services in accordance with Clause 6 here below;
- (e) “Foreign Currency” means any currency other than the Kenya Shilling;
- (f) “GC” means these General Conditions of Contract;
- (g) “Government” means the Government of the Republic of Kenya;
- (h) “Local Currency” means the Kenya Shilling;
- (i) “Member”, in case the Consultant consists of a joint venture of more than one entity, means any of these entities; “Members” means all these entities, and “Member in Charge” means the entity specified in the SC to act on their behalf in exercising all the Consultant’s rights and obligations towards the Client under this Contract;
- (j) “Party” means the Client or the Consultant, as the case may be and “Parties” means both of them;
- (k) “Personnel” means persons hired by the Consultant or by any Sub consultant as employees and assigned to the performance of the Services or any part thereof;
- (l) “SC” means the Special Conditions of Contract by which the GC may be amended or supplemented;
- (m) “Services” means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A; and
- (n) “Sub consultant” means any entity to which the Consultant subcontracts any part of the Services in accordance with the provisions of Clauses 3 and 4.

#### **1.2 Law Governing the Contract**

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

#### **1.3 Language**

This Contract has been executed in English language which shall be the binding and controlling language for all matters relating to

the meaning or interpretation of this Contract

- 1.4 Notices** Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed or when sent by registered mail, telex, telegram or facsimile to such Party at the address specified in the SC.
- 1.5 Location** The Services shall be performed at such locations as are specified in Appendix A and, where the location of a particular task is not so specified, at such locations, whether in the Republic of Kenya or elsewhere, as the Client may approve.
- 1.6 Authorized Representatives** Any action required or permitted to be taken and any document required or permitted to be executed under this Contract by the Client or the Consultant may be taken or executed by the officials specified in the SC.
- 1.7 Taxes and Duties** The Consultant, Sub consultant[s] and their personnel shall pay such taxes, duties, fees and other impositions as may be levied under the Laws of Kenya, the amount of which is deemed to have been included in the Contract Price.

## **2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT**

- 2.1 Effectiveness of Contract** This Contract shall come into effect on the date the Contract is signed by both parties or such other later date as may be stated in the SC.
- 2.2 Commencement of Services** The Consultant shall begin carrying out the Services Thirty (30) days after the date the Contract becomes effective or at such other date as may be specified in the SC.
- 2.3 Expiration of Contract** Unless terminated earlier pursuant to Clause 2.6, this Contract shall terminate at the end of such time period, after the Effective Date, as is specified in the SC.
- 2.4 Modification** Modification of the terms and Conditions of this Contract, including any modification of the scope of the Services or the Contract Price, may only be made by written agreement between the Parties.
- 2.5 Force Majeure**
- 2.5.1 Definition** For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.
- 2.5.2 No Breach of Contract** The failure of a Party to fulfill any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms

and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

### **2.5.3 Extension Of Time**

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.

### **2.5.4 Payments**

During the period of his inability to perform the Services as a result of an event of Force Majeure, the Consultant shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by him during such period for the purposes of the Services and in reactivating the Service after the end of such period.

## **2.6 Termination**

### **2.6.1 By the Client**

The Client may terminate this Contract by not less than thirty (30) days' written notice of termination to the Consultant, to be given after the occurrence of any of the events specified in this Clause;

- (a) if the Consultant does not remedy a failure in the performance of his obligations under the Contract within thirty (30) days after being notified or within any further period as the Client may have subsequently approved in writing;
- (b) if the Consultant becomes insolvent or bankrupt;
- (c) if, as a 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) days; or
- (d) if the Consultant, in the judgment of the Client, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this clause;

“corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the selection process or in Contract execution.

“fraudulent practice” means a misrepresentation of facts in order to influence a selection process or the execution of Contract to the detriment of the Client, and includes collusive practice among consultants (prior to or after submission of proposals) designed to establish prices at artificial non-competitive levels and to deprive the Client of the benefits of free and open competition. If the Client in his sole discretion decides to terminate this Contract.

### **2.6.2 By the Consultant**

The Consultant may terminate this Contract by not less than thirty (30) days' written notice to the Client, such notice to be given after the occurrence of any of the following events;

- (a) if the Client fails to pay any monies due to the Consultant pursuant to this Contract and not subject to dispute

pursuant to Clause 7 within sixty (60) days after receiving written notice from the Consultant that such payment is overdue; or

- (b) if, as a 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) days.

### **2.6.3 Payment upon Termination**

Upon termination of this Contract pursuant to Clauses or 2.6.2, the Client shall make the following payments to the Consultant:

- (a) remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination;
- (b) except in the case of termination pursuant to paragraphs (a) and (b) of Clause 2.6.1, reimbursement of any reasonable costs incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel and their eligible dependents.

## **3. OBLIGATIONS OF THE CONSULTANT**

### **3.1 General**

The Consultant shall perform the Services and carry out his obligations with all due diligence, efficiency and economy in accordance with generally accepted professional techniques and practices and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the Client and shall at all times support and safeguard the Client's legitimate interests in any dealing with Sub consultants or third parties.

### **3.2 Conflict of Interests**

#### **3.2.1 Consultant Not to Benefit from Commissions, Discounts, Etc.**

- (i) The remuneration of the Consultant pursuant to Clause 6 shall constitute the Consultant's sole remuneration in connection with this Contract or the Services and the Consultant shall not accept for his own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of his obligations under the Contract and the Consultant shall use his best efforts to ensure that his personnel, any sub consultant[s] and agents of either of them similarly shall not receive any such additional remuneration.
- (ii) For a period of two years after the expiration of this Contract, the Consultant shall not engage and shall cause his personnel as well as his sub consultant[s] and his/their personnel not to engage in the activity of a purchaser (directly or indirectly) of the assets on which he advised the Client on this Contract nor shall he engage in the activity of an adviser (directly or indirectly) of potential purchasers of such assets.
- (iii) Where the Consultant as part of the Services has the responsibility of advising the Client on the procurement of goods, works or services, the Consultant will comply with

any applicable procurement guidelines and shall at all times exercise such responsibility in the best interest of the Client. Any discounts or commissions obtained by the Consultant in the exercise of such procurement shall be for the account of the Client.

**3.2.2 Consultant and Affiliates Not to be Otherwise Interested in Project**

The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and his affiliates, as well as any Sub consultant and any of his affiliates, shall be disqualified from providing goods, works or services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.

**3.2.3 Prohibition of Conflicting Activities**

Neither the Consultant nor his sub consultant[s] nor their personnel shall engage, either directly or indirectly in any of the following activities:

- (a) during the term of this Contract, any business or professional activities in the Republic of Kenya which would conflict with the activities assigned to them under this Contract; or
- (b) after the termination of this Contract, such other activities as may be specified in the SC.

**3.3 Confidentiality**

The Consultant, his sub consultant[s] and the personnel of either of them shall not, either during the term of this Contract or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract or the Client's business or operations without the prior written consent of the Client.

**3.4 Insurance to be Taken Out by the Consultant**

The Consultant (a) shall take out and maintain and shall cause any sub consultant[s] to take out and maintain, at his (or the sub consultants', as the case may be) own cost but on terms and conditions approved by the Client, insurance against the risks and for the coverage, as shall be specified in the SC; and (b) at the Client's request, shall provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums have been paid.

**3.5 Consultant's Actions Requiring Client's Prior Approval**

The Consultant shall obtain the Client's prior approval in writing before taking any of the following actions;

- (a) entering into a subcontract for the performance of any part of the Services,
- (b) appointing such members of the personnel not listed by name in Appendix C ("Key Personnel and Sub consultants").

**3.6 Reporting Obligations**

The Consultants shall submit to the Client the reports and documents specified in Appendix A in the form, in the numbers, and within the periods set forth in the said Appendix.

**3.7 Documents prepared by the Consultant to Be the Property of the Client**

All plans, drawings, specifications, designs, reports and other documents and software submitted by the Consult- in accordance with Clause 3.6 shall become and remain the property of the Client and the Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Client together with a detailed inventory thereof.

The Consultant may retain a copy of such documents and software. Neither Party shall use these documents for purposes unrelated to this Contract without the prior approval of the other Party.

#### **4. CONSULTANT'S PERSONNEL**

##### **4.1 Description of Personnel**

The titles, agreed job descriptions, minimum qualifications and estimated periods of engagement in the carrying out of the Services of the Consultant's Key Personnel are described in Appendix C. The Key Personnel and Sub consultants listed by title as well as by name in Appendix C are hereby approved by the Client.

##### **4.2 Removal and/or Replacement Of Personnel**

- (a) Except as the Client may otherwise agree, no changes shall be made in the Key Personnel. If for any reason beyond the reasonable control of the Consultant, it becomes necessary to replace any of the Key Personnel, the Consultant shall provide as a replacement a person of equivalent or better qualifications.
- (b) If the Client finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) the Client has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultant shall, at the Client's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Client.
- (c) The Consultant shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

#### **5. OBLIGATIONS OF THE CLIENT**

##### **5.1 Assistance and Exemptions**

The Client shall use his best efforts to ensure that he provides the Consultant such assistance and exemptions as may be necessary for due performance of this Contract

##### **5.2 Change in the Applicable Law**

If after the date of this Contract, there is any change in the Laws of Kenya with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Consultant, 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 and corresponding adjustments shall be made to the amounts referred to in Clause 6.2 (a) or (b), as the case may be

##### **5.3 Services and Facilities**

The Client shall make available to the Consultant the Services and Facilities listed under Appendix F.

#### **6. PAYMENTS TO THE CONSULTANT**

##### **6.1 Lump-Sum Remuneration**

The Consultant's total remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all staff costs, Sub consultants' costs, printing, communications, travel, accommodation and the like and all other costs incurred by the Consultant in carrying out the Services described in Appendix A. Except as provided in Clause 5.2, the Contract Price may only be

increased above the amounts stated in Clause 6.2 if the Parties have agreed to additional payments in accordance with Clause 2.4.

**6.2 Contract Price**

- (a) The price payable in foreign currency is set forth in the SC.
- (b) The price payable in local currency is set forth in the SC.

**6.3 Payment for Additional Services**

For the purposes of determining the remuneration due for additional services as may be agreed under Clause 2.4, a breakdown of the lump-sum price is provided in Appendices D and E.

**4.4 Terms and Conditions of Payment**

Payments will be made to the account of the Consultant and according to the payment schedule stated in the SC. Unless otherwise stated in the SC, the first payment shall be made against the provision by the Consultant of a bank guarantee for the same amount and shall be valid for the period stated in the SC. Any other payment shall be made after the conditions listed in the SC for such payment have been met and the Consultant has submitted an invoice to the Client specifying the amount due.

**6.5 Interest on Delayed Payment**

Payment shall be made within thirty (30) days of receipt of invoice and the relevant documents specified in Clause 6.4. If the Client has delayed payments beyond thirty (30) days after the due date hereof, simple interest shall be paid to the Consultant for each day of delay at a rate three percentage points above the prevailing Central Bank of Kenya's average rate for base lending .

**7. SETTLEMENT OF DISPUTES**

**7.1 Amicable Settlement**

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

**7.2 Dispute Settlement**

Any dispute between the Parties as to matters arising pursuant to this Contract that cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be referred by either Party to the arbitration and final decision of a person to be agreed between the Parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the Chairman of the Chartered Institute of Arbitrators, Kenya Branch, on the request of the applying party

### III. SPECIAL CONDITIONS OF CONTRACT

Number of GC Clause	Amendments of and Supplements to Clauses in the General Conditions of Contract
---------------------	--

1.1(i)	The Member in Charge is _____ [ <i>name of Member</i> ]
1.4 The addresses are	Client: _____ Attention: _____ Telephone: _____ Facsimile: _____  Consultant: _____ Attention: _____ Telephone: _____ Facsimile: _____
1.6 The Authorized Representatives are:	For the Client: _____  For the Consultant: _____
1.7 Taxes and Duties	The contract price shall be inclusive of all taxes e.g. withholding and VAT where applicable
2.1 the effective date	The date on which this Contract shall come into effect is(_____) [ <i>date</i> ].
2.2	The date for the commencement of Services is _____ [ <i>date</i> ]
2.3	The period shall be _____ [ <i>length of time</i> ].
3.4 The risks and coverage shall be:	(i) Professional Liability: <i>sum assured exceeding the contract price</i>  (ii) Loss of or damage to equipment and property: <i>replacement value</i>
6.2(a)	The amount in foreign currency shall be priced in US Dollars [ <i>Insert amount</i> ]. <i>Exchange rate shall be the Central Bank of Kenya rate on the date of tender opening.</i>
6.2(b)	The amount in local Currency is shall be priced in Kenya Shillings [ <i>Insert amount</i> ]



6.4 payment	<p>Payments shall be made according to the following schedule:</p> <p>Payment shall be made as negotiated and agreed upon. The Commission proposes the following milestone based payment :</p> <ul style="list-style-type: none"><li>• 25% of the contract Amount upon delivery of the inception report;</li><li>• 50% of the contract Amount upon delivery of the draft report ;</li><li>• 25% of the contract Amount upon delivery of the final report and presentation of the findings and recommendations and acceptance of the final report by the Commission</li></ul>
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**IV. Appendices (for information, to be included at time of contract)**

**APPENDIX A – DESCRIPTION OF THE SERVICES**

**APPENDIX B – REPORTING REQUIREMENTS**

**APPENDIX C– KEY PERSONNEL AND SUBCONSULTANTS**

**APPENDIX D – BREAKDOWN OF CONTRACT PRICE IN FOREIGN CURRENCY**

**APPENDIX E – BREAKDOWN OF CONTRACT PRICE IN LOCAL CURRENCY**

**APPENDIX F – SERVICES AND FACILITIES PROVIDED BY THE CLIENT**

## APPENDICES

### Appendix C

Cost Estimate of Services, List of Personnel and Schedule of Rates.

(1) Remuneration of Staff

	Name	Rate (per month/day/hour in currency)	Time spent(number of month/day/ hour)	Total (currency)
(a)	Team Leader			
(b)				
(c)				
				Sub-Total (1)

(2) Reimbursables

	Rate	Days	Total
			Sub-Total (2)

TOTAL COST \_\_\_\_\_

Physical Contingency \_\_\_\_\_

CONTRACT CEILING \_\_\_\_\_

**SECTION VI: STANDARD FORMS**

**LETTER OF NOTIFICATION OF AWARD**

Address of Procuring Entity

\_\_\_\_\_  
\_\_\_\_\_

To: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RE: Tender No. \_\_\_\_\_

Tender Name \_\_\_\_\_

This is to notify that the contract/s stated below under the above mentioned tender have been awarded to you.

\_\_\_\_\_  
\_\_\_\_\_

1. Please acknowledge receipt of this letter of notification signifying your acceptance.
2. The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.
3. You may contact the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.

*(FULL PARTICULARS)* \_\_\_\_\_

\_\_\_\_\_

SIGNED FOR ACCOUNTING OFFICER

**CONFIDENTIAL BUSINESS QUESTIONNAIRE**

**FIRMS REGISTRATION AND OWNERSHIP DETAILS**

**PART I - PROFILE OF OWNERSHIP**

- (i) Name of firm: .....
- (ii) Date of incorporation/registration: .....
- (iii) Location of business premises:**
  - Country/Town: .....
  - Plot No. ....Street/Road:.....
  - Postal address:.....
  - Tel. No. ....
  - Nature of Business: .....
  - Current Practicing Certificate No.....
  - Expiry Date: .....

**PART II - TYPE OF BUSINESS**

**You are requested to give the particulars indicated:**

**Partnership**

Give details of Partners as follows:

<b>No.</b>	<b>Name in full</b>	<b>Nationality</b>	<b>Citizenship details</b>	<b>Shares</b>
1.				
2.				
3.				
4.				

**N.B.** If Kenyan citizen, indicate under “citizenship details” whether by Birth, Naturalization or Registration.

**PART III - PROFESSIONAL STAFF**

<b>No.</b>	<b>Name</b>	<b>Position</b>	<b>Function</b>
1.			
2.			
3.			
4.			

Dated at Mombasa this .....day of .....20

Bidder’s Signature:.....

**KEY PERSONNEL DETAILS**

<b>No</b>	<b>Designation</b>	<b>Name</b>	<b>Nationality</b>	<b>Summary of qualifications and experience</b>
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				

I certify that the above information is correct.

.....  
(Title)

.....  
(Signature)

.....  
(Date)



**ANTI-CORRUPTION DECLARATION COMMITMENT/ PLEDGE**

**(Sections 39, 40, 41, 42, 43 & of the PPD Act, 2005)**

I/We/Messrs.....

of Street, Building, P O Box.....

.....

Contact/Phone/E mail.....

declare that Public Procurement is based on a free and fair competitive Tendering process which should not be open to abuse.

I/We .....

declare that I/We will not offer or facilitate, directly or indirectly, any inducement or reward to any public officer, their relations or business associates, in connection with

Tender name.....

Tender No .....

for or in the subsequent performance of the contract if I/We am/are successful.

Authorized Signature.....

Name and Title of Signatory.....

**TENDER SECURITY FORM**

Whereas .....[name of the tenderer](hereinafter called “the tenderer”)has submitted its tender dated.....[date of submission of tender ] for the provision of .....[name and/or description of the services] (hereinafter called “the Tenderer”).....

KNOW ALL PEOPLE by these presents that WE.....

Of.....having registered office at [name of procuring entity](hereinafter called “the Bank”)are bound unto.....

[name of procuring entity](hereinafter called “the procuring entity”) in the sum of .....for which payment well and truly to be made to the said Procuring entity, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this\_\_\_\_\_ day of 20\_\_\_\_\_.

THE CONDITIONS of this obligation are:

- 1. If the tenderer withdraws its Tender during the period of tender validity specified by the tenderer on the Tender Form; or
- 2. If the tenderer, having been notified of the acceptance of its Tender by the Procuring entity during the period of tender validity:

- (a) fails or refuses to execute the Contract Form, if required; or
- (b) fails or refuses to furnish the performance security, in accordance with the instructions to tenderers;

We undertake to pay to the Procuring entity up to the above amount upon receipt of its first written demand, without the Procuring entity having to substantiate its demand, provided that in its demand the Procuring entity will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

This guarantee will remain in force up to and including thirty (30) days after the period of tender validity, and any demand in respect thereof should reach the Bank not later than the above date.

\_\_\_\_\_  
[signature of the bank]

*(Amend accordingly if provided by Insurance Company)*

**Bank Guarantee for Advance Payment (for information)**

To .....  
[name of Procuring entity]

[name of tender] .....

Gentlemen and/or Ladies:

In accordance with the payment provision included in the Contract Data Sheet, which amends the General Conditions of Contract to provide for advance payment, ..... [name and address of tenderer](hereinafter called "the tenderer") shall deposit with the Procuring entity a Bank guarantee to guarantee its proper and faithful performance under the said Clause of the Contract in an amount of ..... [amount of guarantee in figures and words].

We, the ..... [Bank ], as instructed by the tenderer, agree unconditionally and irrevocably to guarantee as primary obligator and not as surety merely, the payment to the Procuring entity on its first demand without whatsoever right of objection on our part and without its first claim to the tenderer, in the amount not exceeding ..... [amount of guarantee in figures and words]

We further agree that no change or addition to or other modification of the terms of the Contract to be performed there-under or of any of the Contract documents which may be made between the Procuring entity and the tenderer, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition, or modification.

This guarantee shall remain valid in full effect from the date of the advance payment received by the tenderer under the Contract until ..... [date].

Yours truly,

Signature and seal of the Guarantors

[name of Bank]

[address]

[date]

**FORM RB 1**  
**REPUBLIC OF KENYA**  
**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...

**REQUEST FOR REVIEW**

I/We.....,the above named Applicant(s), of address: Physical  
address.....Fax 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.
- etc.

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

- 1.
  - 2.
- etc

SIGNED ..... (Applicant)

Dated on.....day of ...../ ...20...

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**FOR OFFICIAL USE ONLY**

Lodged with the Secretary Public Procurement Administrative Review Board on .....  
day of .....20.....

SIGNED  
**Board Secretary**