



INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION



TENDER DOCUMENT

TENDER NUMBER	IEBC/RFP/21/02/2021-2022
TENDER DESCRIPTION	REQUEST FOR PROPOSAL FOR AUDIT AND ISO CERTIFICATION OF ELECTION TECHNOLOGY.
PROCUREMENT METHOD	REQUEST FOR PROPOSAL
CONTRACT TYPE	FRAMEWORK CONTRACT
CONTRACT PERIOD	THREE (3) YEARS
ISSUANCE DATE	1ST DECEMBER, 2021
SUBMISSION DATE	14TH DECEMBER, 2021 AT 11:00 AM KENYAN TIME

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SECTION 1 - REQUEST FOR PROPOSAL (RFP)

1st December, 2021

TENDER NO: IEBC/RFP/21/02/2020-2021

REQUEST FOR PROPOSAL FOR AUDIT AND ISO CERTIFICATION OF ELECTION TECHNOLOGY

TO: All Eligible Consultant Firms

Dear Messrs.

1. The Independent Electoral and Boundaries Commission (IEBC) has set aside funds in its budget from GOK toward the cost of the subject consulting services.
2. The Procuring Entity now invites proposals to provide the following consulting services (here in after called “the services”) provision of Audit of Election Technology. More details on the services are provided in section 5 terms of reference.
3. This Request for Proposals (RFP) has been addressed to ALL eligible Consulting Firms under the following Phases pursuant provision of Section 118 (1) (a) of the Public Procurement and Disposal Act ,2015:

PHASE 1. Audit of Election Technology

PHASE 2. ISO Certification for The Election Technology.

4. If a Consultant is a Joint Venture (JV), the full name of the JV shall be used and all members, starting with the name of the lead member. Where sub-consultants have been proposed, they shall be named. The maximum number of JV members shall be specified in the Data Sheet (DS).
5. It is not permissible to transfer this RFP to any other firm.
6. A firm will be selected under Quality and Cost Based Selection Method (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.
7. This RFP contains:
 - i. Section 1: Letter of Request for Proposals,
 - ii. Section2: Instructions to Consultants and Data Sheet
 - iii. Section 3: Technical Proposal Standard Forms
 - iv. Section 4: Financial Proposal Standard Forms
 - v. Section 5: Terms of Reference
 - vi. Section 6: Standard Forms of Contract on Lump-Based
8. Please inform us by 5th December,2021 in writing at the address below or by E-mail procurement@iebc.or.ke

- a. That you have received this Request for Proposals; and
 - b. Whether you intend to submit a proposal alone or intend to enhance your experience by requesting permission to associate with other firm(s) (if permissible under Section 2, Instructions to Consultants (ITC 14.1) and Data Sheet 6.2).
9. Details on the proposal's submission date, time and address are provided in the ITC 18.1 and ITC 18.5 of the Data Sheet.
10. Yours sincerely,

The Ag. Chief Executive Officer/Commission Secretary
Independent Electoral and Boundaries Commission (IEBC)
Anniversary Towers, University Way,
Sixth Floor P O Box 45371~ 00100 Nairobi.
Website: www.iebc.or.ke

SECTION 2 (A): INSTRUCTIONS TO CONSULANT'S

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 overwrite, the provisions of the ITC.
- g) "Day" means a calendar day unless otherwise specified as "Business Day". A Business Day is any day that is an official working day in Kenya and excludes official public holidays.
- h) "Experts" means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or Joint Venture member(s).
- i) "Government" means the Government of the Republic of Kenya.
- j) "In writing" means communicated in written form such as by mail, e-mail, fax, including, if specified in the Data Sheet, distributed or received through the electronic-procurement system used by the Procuring Entity with proof of receipt.
- k) "Joint Venture (JV)" means an association with or without a legal personality distinct from that of its members, of more than one Consultant where one member has the authority to conduct all business for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Procuring Entity for the performance of the Contract.
- l) "Key Expert(s)" means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose CV is considered in the technical evaluation of the Consultant's proposal.
- m) "ITC" (this Section 2 of the RFP) means the Instructions to Consultants that provides the Consultants with all information needed to prepare their Proposals.
- n) "Letter of RFP" means the letter of invitation being sent by the Procuring Entity to the Consultants.
- o) "Non-Key Expert(s)" means an individual professional provided by the Consultant or its Sub-

consultant
and who is assigned to perform the Services or any part thereof under the Contract and whose CVs are not evaluated individually.

- p) "Proposal" means the Technical Proposal and the Financial Proposal of the Consultant.
- q) "Public Procurement Regulatory Authority (PPRA)" means the statutory authority of the Government of Kenya that mandated with the role of regulating and monitoring compliance with the public procurement law and regulations.
- r) "RFP" means the Request for Proposals to be prepared by the Procuring Entity for the selection of Consultants.
- s) "Services" means the work to be performed by the Consultant pursuant to the Contract.
- t) "Sub-consultant" means an entity to whom the Consultant intends to subcontract any part of the Services while the Consultant remains responsible to the Procuring Entity during the whole performance of the Contract.
- u) "Terms of Reference (TORs)" means the Terms of Reference that explains the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of the Procuring Entity and the Consultant, and expected results and deliverables of the assignment.

2. Introduction

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

3. Conflict of Interest

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

Sheet, the Consultants shall not be hired under the circumstances set forth below:

i) Conflicting Activities

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

ii) Conflicting Assignments

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

iii) Conflicting Relationships

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

iv) Others

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

4. Unfair Competitive Advantage

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

5. Corrupt and Fraudulent Practices

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

5.2 Collusive practices.

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

- 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.
- b) Prohibitions-Firms and individuals of a country or goods in a country maybe ineligible if:
 - i) As a matter of law or official regulations, Kenya prohibits commercial relations with that country; or
 - ii) By an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or services from that country or any payments to any country, person, or entity in that country.
- c) Restrictions for Government-owned Enterprises - Government-owned enterprises or institutions in Kenya shall be eligible only if they can establish that they
 - i) Are legally and financially autonomous,
 - ii) Operate under commercial law, and
 - iii) That they are not dependent agencies of the Procuring Entity.
- d) Restrictions for public employees - Government officials and civil servants and employees of public institutions shall not be hired for consulting contracts.

6.7 Margin of Preference and Reservations-no margin of preference shall be allowed in the selection of consultants. Reservations may however be allowed to a specific group of businesses (these groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case may be), and who are appropriately registered as such by the authority to be specified in the Data Sheets. A procuring entity shall ensure that the invitation to submit proposals specifically includes only businesses or firms belonging to one group.

7. Preparation of Proposals

7.1 General Considerations

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 improvident ITC12.7.

12.6 The Consultant has the right to refuse to extend the validity of its Proposal in which case such Proposal will not be further evaluated.

c. Substitution of Key Experts at Validity Extension

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

12.8 If the Consultant fails to provide a substitute Key Expert with equal or better qualifications, or if the provided reasons for the replacement or justification are unacceptable to the Procuring Entity, such Proposal will be rejected.

d. Sub-Contracting

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

13. Clarification and Amendment of RFP

13.1 The Consultant may request a clarification of any part of the RFP during the period indicated in the Data Sheet before the Proposals' submission deadline. Any request for clarification must be sent in writing, or by standard electronic means, to the Procuring Entity's address indicated in the Data Sheet. The Procuring Entity will respond in writing, or by standard electronic means, and will send written copies of the response (including an explanation of the query but without identifying its source) to all Consultants. Should the Procuring Entity deem it necessary to amend the RFP as a result of a clarification, it shall do so following the procedure described below:

13.2 At any time before the proposal submission deadline, the Procuring Entity may amend the RFP by issuing an amendment in writing or by standard electronic means. The amendment shall be sent to all invited Consultants and will be binding on them. The Consultants shall acknowledge receipt of all amendments in writing.

13.3 If the amendment is substantial, the Procuring Entity may extend the proposal submission deadline to give the Consultants reasonable time to take an amendment into account in their Proposals.

13.4 The Consultant may submit a modified Proposal or a modification to any part of it at any time prior to the proposal submission deadline. No modifications to the Technical or Financial Proposal shall be accepted after the deadline.

14. Preparation of Proposals–Specific Considerations

While preparing the Proposal, the Consultant must give particular attention to the following:

- a) If a Consultant considers that it may enhance its expertise for the assignment by associating with other consultants in the form of a Joint Venture or as Sub-consultants, it may do so on only one Proposal is submitted, in accordance with ITC 11. Above. A Consultant cannot associate with shortlisted Consultant(s). When associating with non-shortlisted/non-invited firms in the form of a joint venture or a sub-consultancy, the shortlisted/invited Consultant shall be a lead member. If shortlisted/invited Consultant associates with each other, any of them can be a lead member.
- b) The Procuring Entity may indicate in the Data Sheet the estimated amount or Key Experts' time input (expressed in person-month), or the Procuring Entity's estimated total cost of the assignment, but not both. This estimate is indicative and the Proposal shall be based on the Consultant's own estimates for the same. This clause shall not apply when using Fixed Budget selection method.
- c) For assignments under the Fixed-Budget selection method, the estimated Key Experts' time input shall not be disclosed. Total available budget, with an indication whether it is inclusive or exclusive of taxes, is given in the Data Sheet, and the Financial Proposal shall not exceed this budget.
- d) Key Experts shall not appear in more than one proposal unless so allowed in the Data Sheet. Invited firms must confirm and ensure their Key experts do not appear in proposal of other invited firms, otherwise proposals with Key experts appearing in other proposals will be rejected.

15. Technical Proposal Format and Content

15.1 The Technical Proposal shall be prepared using the Standard Forms provided in Section 3 of the RFP and shall comprise the documents listed in the Data Sheet under ITC 10.1. The Technical Proposal shall not include any financial information. A Technical Proposal containing material financial information shall be declared non-responsive.

15.2 Consultant shall not propose alternative Key Experts. Only one CV shall be submitted for each Key Expert position. Failure to comply with this requirement will make the Proposal non-responsive.

16. Financial Proposal

16.1 The Financial Proposal shall be prepared using the Standard Forms provided in Section 4 of the RFP. It shall list all costs associated with the assignment, including (a) remuneration for Key Experts and Non-Key Experts, (b) reimbursable expenses indicated in the Data Sheet. Irrespective of the consultant selection method, any Consultant that does not submit itemized and priced financial proposal, or merely refers the Procuring Entity to other legal instruments for the applicable minimum remuneration fees shall be considered non-responsive.

a. Price Adjustment

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

b. Taxes

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

c. Currency of Proposal

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

d. Currency of Payment

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

B. SUBMISSION, OPENING AND EVALUATION

17. Submission, Sealing, and Marking of Proposals

- 17.1 The Consultant shall submit a signed and complete Proposal comprising the documents and forms in accordance with ITC 10 (Documents Comprising Proposal). Consultants shall mark as "CONFIDENTIAL" information in their Proposals which is confidential to their business. This may include proprietary information, trade secrets or commercial or financially sensitive information. The submission can be done by mail or by hand. If specified in the Data Sheet, the Consultant has the option of submitting its Proposals electronically.
- 17.2 An authorized representative of the Consultant shall sign the original submission letters in the required format for both the Technical Proposal and the Financial Proposals and shall initial all pages of both. The authorization shall be in the form of a written power of attorney attached to the Technical Proposal.
- 17.3 A Proposal submitted by a Joint Venture shall be signed by all members so as to be legally binding on all members, or by an authorized representative who has a written power of attorney signed by each member's authorized representative.
- 17.4 Any modifications, revisions, interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Proposal.
- 17.5 The signed Proposal shall be marked "ORIGINAL", and its copies marked "COPY" as appropriate. The number of copies is indicated in the Data Sheet. All copies shall be made from the signed original. If there are discrepancies between the original and the copies, the original shall prevail.

18. Sealing and Marking of Proposals

- 18.1 The firm shall deliver the Proposals in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the assignment, addressed to

the Procuring Entity and a warning **“DO NOT OPEN BEFORE 17TH September, 2021 11:00 am East African Time**. Within the single envelope, package or container, the Firm shall place the following separate, sealed envelopes:

18.2 In the single sealed envelope, or in a single sealed package, or in a single sealed container the following documents shall be closed and shall be addressed as follows:

- i) in an envelope or package or container marked “ORIGINAL”, all documents comprising the Technical Proposal, as described in ITC11;
- ii) in an envelope or package or container marked “COPIES”, all required copies of the Technical Proposal;
- iii) in an envelope or package or container marked “ORIGINAL”, all required copies of the Financial Proposal; and

18.3 The inner envelopes or packages or containers shall:

- i) Bear the name and address of the Procuring Entity.
- ii) Bear the name and address of the Firm; and
- iii) Bear the name and Reference number of the Assignment.

18.4 If an envelope or package or container is not sealed and marked as required, the Procuring Entity will assume no responsibility for the misplacement or premature opening of the proposal. Proposals that are misplaced or opened prematurely will not be accepted.

18.5 The Proposal or its modifications must be sent to the address indicated in the Data Sheet and received by the Procuring Entity no later than the deadline indicated in the Data Sheet, or any extension to this deadline. Any Proposal or its modification received by the Procuring Entity after the deadline shall be declared late and rejected, and promptly returned unopened.

19. Confidentiality/Canvassing

19.1 From the time the Proposals are opened to the time the Contract is awarded, the Consultant should not contact the Procuring Entity on any matter related to its Technical and/or Financial Proposal. Information relating to the evaluation of Proposals and award recommendations shall not be disclosed to the Consultants who submitted the Proposals or to any other party not officially concerned with the process, until the publication of the Contract award information.

19.2 Any attempt by Consultants or any one on behalf of the Consultant to influence improperly the Procuring Entity in the evaluation of the Proposals or Contract award decisions may result in the rejection of its Proposal and may be subject to the application of prevailing PPRA's debarment procedures.

19.3 Notwithstanding the above provisions, from the time of the Proposals' opening to the time of Contract award publication, if a Consultant wishes to contact the Procuring Entity on any matter related to the selection process, it should do so only in writing.

20. Opening of Technical Proposals

20.1 The Procuring Entity's opening committee shall conduct the opening of the Technical Proposals in

the presence of the Consultants' authorized representatives who choose to attend (in person, or online if this option is offered in the Data Sheet). The opening date, time and the address are stated in the Data Sheet. The envelopes with the Financial Proposal shall remain sealed and shall be securely stored by the Procuring Entity or with a reputable public auditor or independent authority until they are opened in accordance with ITC 22.

20.2 At the opening of the Technical Proposals the following shall be read out:

- (i) the name and the country of the Consultant or, in case of a Joint Venture, the name of the Joint Venture, the name of the lead member and the names and the countries of all members;
- (ii) the presence or absence of a duly sealed envelope with the Financial Proposal;
- (iii) any modifications to the Proposal submitted prior to proposal submission deadline; and
- (iv) any other information deemed appropriate or as indicated in the Data Sheet.

21. Proposals Evaluation

21.1 Subject to provision of ITC 15.1, the valuers of the Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded and after the Procuring Entity notifies all the Consultants in accordance with ITC 22.1.

21.2 The Consultant is not permitted to alter or modify its Proposal in anyway after the proposal submission deadline except as permitted under ITC 12.7. While evaluating the Proposals, the Evaluation Committee will conduct the evaluation solely on the basis of the submitted Technical and Financial Proposals.

22. Evaluation of Technical Proposals

22.1 The Procuring Entity's evaluation committee shall evaluate the Technical Proposals that have passed the eligibility and mandatory criteria, on the basis of their responsiveness to the Terms of Reference and the RFP. The eligibility and mandatory criteria shall include the following and any other that may include in the Data sheet.

- a) Firm has submitted the required number of copies of the Technical Proposals.
- b) Firm has submitted a sealed financial proposal.
- c) The Proposal is valid for the required number of days.
- d) The Technical Proposal is signed by the person with power of attorney, without material deviation, reservation, or omission.
- e) The Technical Proposal is complete with all the forms and required documentary evidence submitted.
- f) A valid tax compliance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 3.14 for Kenyan firms.
- g) Key Experts are from eligible countries.
- h) Key Experts do not appear in more than one proposal, if so required.

- i) A short-listed firm has not participated in more than one proposal, if so required.
- j) The Consultant is not insolvent, in receivership, bankrupt or in the process of being wound up.
- k) The Consultant, its sub-consultants and experts have not engaged in or been convicted of corrupt or fraudulent practices.
- l) The Consultant is neither precluded from entering into a Contract nor debarred by PPRA.
- m) The firm has not proposed employing public officials, civil servants and employees of public institutions.
- n) The Consultant, its sub-consultants and experts have no conflicts of interest.

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

23. Public Opening of Financial Proposals

23.1 Unsuccessful Proposals

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

23.2 Financial Proposals for QBS, CQS and SSS

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

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

23.3 Financial Proposals for QCBS, FBS, LCS

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

date, time and location of the public opening and invite them for the opening of the Financial Proposals.

23.4 Opening of Financial Proposals

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

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

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

24. Correction of Errors

24.1 Activities and items described in the Technical Proposal but not priced in the Financial Proposal, shall be assumed to be included in the prices of other activities or items, and no corrections are made to the Financial Proposal.

24.2 Time-Based Contracts - If a Time-Based contract form is included in the RFP, in case of discrepancy between (i) a partial amount (sub-total) and the total amount, or (ii) between the amount derived by multiplication of unit price with quantity and the total price, or (iii) between figures and words, the later will prevail. In case of discrepancy between the Technical and Financial Proposals in indicating quantities of input, the Technical Proposal prevails and the Procuring Entity's evaluation committee shall correct the quantification indicated in the Financial Proposal so as to make it consistent with that indicated in the Technical Proposal, apply the relevant unit price included in the Financial Proposal to the corrected quantity, and correct the total Proposal cost.

24.3 Lump-Sum Contracts - If a Lump-Sum contract form is included in the RFP, the Consultant is deemed to have included all prices in the Financial Proposal, so neither arithmetical correction nor price adjustments shall be made. The total price, net of taxes understood as per ITC 24 below, specified in the Financial Proposal (Form FIN-1) shall be considered as the offered price.

25. Taxes

25.1 Subject to ITC 24.2, all taxes are deemed to be included in the Consultant's financial proposal as separate items, and, therefore, considered in the evaluation.

25.2 All local identifiable taxes levied on the contract in voices (such as sales tax, VAT, excise tax, or any similar taxes or levies) and in come and withholding tax payable to Kenya on the remuneration of

non-resident Experts for the services rendered in Kenya are dealt with in accordance with the instructions in the Data Sheet.

26. Conversion to Single Currency

For the evaluation purposes, prices shall be converted to a single currency using the selling rates of exchange, source and date indicated in the Data Sheet.

27. Abnormally Low Prices

- 27.1 An Abnormally Low Price is one where the financial price, in combination with other constituent elements of the proposal, appears unreasonably low to the extent that the price raises material concerns with the Procuring Entity as to the capability of the Consulting firm to perform the Contract for the offered price.
- 27.2 In the event of identification of a potentially Abnormally Low Price by the evaluation committee, the Procuring Entity shall seek written clarification from the firm, including a detailed price analyses of its price in relation to the subject matter of the contract, scope, delivery schedule, allocation of risk and responsibilities and any other requirements of the RFP document.
- 27.3 After evaluation of the price analyses, if the Procuring Entity determines that the firm has failed to demonstrate its capability to perform the contract for the offered price, the Procuring Entity shall reject the firm's proposal.

28. Abnormally High Prices

- 28.1 An abnormally high price is one where the proposal price, in combination with other constituent elements of the proposal, appears unreasonably too high to the extent that the Procuring Entity is concerned that it (the Procuring Entity) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Consultants is compromised.
- 28.2 In case of an abnormally high tender price, the Procuring Entity shall make a survey of the market prices, check if the estimated cost of the contract is correct, and review the RFP to check if the specifications, TOR, scope of work and conditions of contract are contributory to the abnormally high proposals. The Procuring Entity may also seek written clarification from the Consultants on the reason or the high proposal price. The Procuring Entity shall proceed as follows:
- i) If the proposal price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the proposal depending on the Procuring Entity's budget considerations.
 - ii) If specifications, TOR, scope of work and/or conditions of contract are contributory to the abnormally high proposal prices, the Procuring Entity shall reject all proposals and may re-invite for proposals for the contract based on revised estimates, specifications, TOR, scope of work and conditions of contract.
- 28.3 If the Procuring Entity determines that the Proposal Price is abnormally too high because genuine competition between Consultants is compromised (often due to collusion, corruption or other manipulations), the Procuring Entity shall reject all Proposals and shall institute or cause competent

Government Agencies to institute an investigation on the cause of the compromise, before re-inviting for proposals.

29. Combined Quality and Cost Evaluation

a. Quality and Cost Based Selection (QCBS) Method

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

b. Fixed Budget Selection (FBS) Method

29.2 In the case of FBS, those Proposals that exceed the budget indicated in ITC 14.1.4 of the Data Sheet shall be rejected. The Procuring Entity's evaluation committee will select the Consultant with the highest-ranked Technical Proposal that does not exceed the budget indicated in the RFP, notify and invite such Consultant to negotiate the Contract.

c. Least Cost Selection (LCS) Method

29.3 In the case of Least-Cost Selection (LCS), the Procuring Entity's evaluation committee will select the Consultant whose Proposal is the lowest evaluated total price among those Proposals that achieve the minimum technical score required to pass, notify the Consultant and invite the Consultant to negotiate the Contract.

d. Combined Technical and Evaluation Report

29.4 The evaluation committee shall prepare a combined technical and financial evaluation report, with specific recommendations for award or otherwise and subject to the required approvals within the Procuring Entity prior to notifications and invitation of Consultant for negotiations.

30. Notification of Intention to enter into a Contract/Notification of Award

30.1 The Procuring Entity shall send to each Consultant (that has not already been notified that it has been unsuccessful) the Notification of Intention to Award the Contract to the successful Consultant. The **Notification of Intention to enter into a Contract / Notification of Award** shall contain, at a minimum, the following information:

- i) The name and address of the Consultant with whom the Procuring Entity successfully negotiated a contract;
- ii) the contract price of the successful Proposal;
- iii) a statement of the reasons why the recipient's Proposal was unsuccessful
- iv) the expiry date of the Standstill Period, and
- v) instructions on how to request a debriefing and/or submit a complaint during the standstill period;

31. Standstill Period

The Standstill Period shall be the number of days stated in the Data Sheet. The Standstill Period commences the day after the date the Procuring Entity has transmitted to each Consultant (that has not already been notified that it has been unsuccessful) the Notification of Intention to Award the Contract. The Contract shall not be signed earlier than the expiry of the Standstill Period. This period shall be allowed for aggrieved Consultants to lodge an appeal. The procedure for appeal and the authority to determine the appeal or complaint is as indicated in the Data Sheet.

C. NEGOTIATIONS AND AWARD

32. Negotiations

32.1 The negotiations will be held at the date and address indicated in the Data Sheet with the Consultant's representative(s) who must have written power of attorney to negotiate and sign a Contract on behalf of the Consultant.

32.2 The evaluation committee shall prepare minutes of negotiations that are signed by the Accounting Officer and the Consultant's authorized representative.

32.3 Availability of Key Experts

The invited Consultant shall confirm the availability of all Key Experts included in the Proposal as a pre-requisite to the negotiations, or, if applicable, a replacement in accordance with ITC 12. Failure to confirm the Key Experts' availability may result in the rejection of the Consultant's Proposal and the Procuring Entity proceeding to negotiate the Contract with the next-ranked Consultant.

32.4 Notwithstanding the above, the substitution Key Experts at the negotiations may be considered if due solely to circumstances outside the reasonable control of and not foreseeable by the Consultant, including but not limited to death or medical incapacity. In such case, the Consultant shall offer a substitute Key Expert within the period of time specified in the letter of invitation to negotiate the Contract, who shall have equivalent or better qualifications and experience than the original candidate.

32.5 Technical negotiations

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

32.6 Financial negotiations

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

32.7 If the selection method included cost as a factor in the evaluation (that is QCBS, FBS, LCS), the unit rates and the total price stated in the Financial Proposal for a Lump-Sum contract shall not be negotiated.

32.8 Where QBS or CQS methods was used for a Lump-sum Contract as indicated in the RFP, the unit rates negotiations shall not take place, except when the offered Key Experts and Non-Key Experts' remuneration rates are much higher than the typically charged rates by consultants in similar contracts or the professional practice. In such case, the Procuring Entity may ask for clarifications and, if the fees are very high, ask to change the rates. The format for

- (i) providing information on remuneration rates in the case of QB and CQS; and
- (ii) clarifying remuneration rates' structure under this Clause, is provided in Appendix A to the Financial Form FIN-3: Financial Negotiations – Breakdown of Remuneration Rates. If after the clarifications, the price is still considered too high, the Procuring Entity may terminate the negotiation and invite the next ranked Consultant to open its financial proposal and negotiate the contract.

32.9 In the case of a Time- Based contract, negotiation of unit rates shall not take place, except when the offered Key Experts and Non-Key Experts' remuneration rates are much higher than the typically charged rates by consultants in similar contracts. In such case, the Procuring Entity may ask for clarifications and, if the fees are very high, ask to change the rates. The format for

- (i) providing information on remuneration rates in the case of QBS and CQS; and
- (ii) clarifying remuneration rates 'structure under this Clause, is provided in Appendix A to the Financial Form FIN-3: Financial Negotiations-Breakdown of Remuneration Rates. If after the clarifications, the price is still considered too high, the Procuring Entity may terminate the negotiation and invite the next ranked Consultant for negotiations.

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

33. Conclusion of Negotiations

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

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

34. Letter of Award

Upon expiry of the Standstill Period, specified in ITC 28.1, after satisfactorily addressing any appeal that has been filed within the Standstill Period, and upon successful negotiations, the Procuring Entity shall send a Letter of Award to the successful Consultant. The letter shall confirm the Procuring Entity's award of Contract to the successful Consultant and requesting the Consultant to

sign and return the draft negotiated Contract within Twenty-One (21) Days from the date of the Letter of Award.

35. Signing of Contract

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

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

36. Publication of Procurement Contract

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

36.2 Consider carefully the information on Consultants to be published, particularly evaluation by the Procuring Entity, to avoid disclosing information which can facilitate bid-rigging formation going forward. Suggest amendment as follows:

36.3 The awarded Contract shall be published on the Procuring Entity's website with free access if available and in the official procurement tender portal.

SECTION 2 (B) – TENDER DATA SHEET (TDS)

The following specific data shall complement, supplement, or amend the provisions in the Instructions to Consultant's (ITC). Whenever there is a conflict, the provisions herein shall prevail over those in ITC.

General Provision	
Reference to ITC Clause	
ITC (J)	<p>Electronic Procurement System shall be used as per the instructions below: -</p> <p>Bidders are encouraged to download the tender documents from the IEBC website www.iebc.or.ke free of charge or from the Public Procurement Information Portal www.tenders.go.ke . The firms that download the document must arrange to forward their particulars/contacts to the Independent Electoral and Boundaries Commission (IEBC), through email address procurement@iebc.or.ke before the closing date for records and for the purposes of receiving clarifications and/or addendums, if any.</p> <p>Tenders will be opened on 14th December, 2021. The tenderers' representatives may access the tender opening proceedings through electronic means via a link that will be provided to bidders hence tenderers' are encouraged to register with the procuring entity once they download the tender document and provide their email address so as to share the link with them.</p>
ITC 2.1	<p>Name of the Procuring Entity: The Independent Electoral and Boundaries Commission (IEBC)</p> <p>The Consultant Selection Method is: Quality and Cost Based Selection Method</p>
ITC 2.2	<p>Financial Proposal shall be submitted together with Technical Proposal in separate envelopes. YES.</p> <p>The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked Tender NO: IEBC/RFP/21/02/2020-2021 - REQUEST FOR PROPOSAL FOR AUDIT AND ISO CERTIFICATION OF ELECTION TECHNOLOGY. The original and all copies of the Financial Proposal shall be placed in a sealed envelope clearly marked Tender NO: IEBC/RFP/21/02/2020-2021 - REQUEST FOR PROPOSAL FOR AUDIT AND ISO CERTIFICATION OF ELECTION TECHNOLOGY clearly marked "FINANCIAL PROPOSAL" and warning: "DO NOT OPEN WITH THE TECHNICAL PROPOSAL". 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,</p>

	“DO NOT OPEN, EXCEPT IN PRESENCE OF THE OPENING COMMITTEE.”
ITC 2.3	A pre-proposal conference will be held: There will be no pre-proposal conference
ITC 2.4	The Commission will provide the following inputs: None
ITC 3.3 (iv)	There is no any other types of conflicting relationships as indicated in the Data Sheet.
ITC 4.1	The Commission will strive to ensure Fairness and transparency in the selection process and there are no unfair Competitive advantages against any consultant.
ITC 6.2	The Maximum number of members in the Joint Ventures (JV) shall be three (1)
ITC 6.6 (a)	Any firm or an individual that has been debarred from participating in public procurement shall be automatically disqualified. The Commission will confirm list of debarred firms and individuals from the website of PPRA www.ppra.go.ke
ITC 6.7	No margin of preference shall be allowed in the selection of consultants
Preparation of Proposals	
ITC 10.1	<p>The proposal shall comprise the following:</p> <p>1st Inner Envelope with the technical proposal:</p> <p>Power of Attorney to sign the Proposal</p> <p>Technical - 1: Mandatory Documentary Evidence</p> <p>Technical - 2: Consultant’s Organization and Experience</p> <p>Technical - 3: Description of Approach, Methodology and work plan</p> <p>Technical - 4: Professional Qualification in relevant field</p> <p>Technical - 5: Financial Capacity to offer the consultancy</p> <p>Technical - 6: Demonstration of the organization’s experience in undertaking either media buying and advertising, strategic Communication firm or Media monitoring Agency</p> <p>2nd Inner Envelope with the Financial Proposal:</p>

	<p>Financial – 1 Financial Proposal Submission Form</p> <p>Financial – 2 Summary of Costs</p>
ITC 11.1	Participation of Sub-consultants, and Key Experts in more than one Proposal is permissible: [NO]
ITC 12.1	Proposals must remain valid for 120 days after the proposal submission deadline.
ITC13.1	<p>Clarifications may be requested no later than [5 days] days prior to the submission deadline.</p> <p>The contact information for requesting clarifications is:</p> <p>E-mail: procurement@iebc.org.ke</p>
ITC 14.1	<p>(c)For assignments under the Fixed-Budget selection method, the estimated Key Experts' time input shall not be disclosed. Total available budget, with an indication whether it is inclusive or exclusive of taxes, is given in the Data Sheet, and the Financial Proposal shall not exceed this budget. N/A</p> <p>(d) Key Experts shall not appear in more than one proposal unless so allowed in the Data Sheet. Invited firms must confirm and ensure their Key experts do not appear in proposal of other invited firms, otherwise proposals with Key experts appearing in other proposals will be rejected.</p>
ITC 14(b) (do not use for Fixed Budget method)	<p>[If not used, slate "Not applicable". If used, insert the following:</p> <p>Estimated input of Key Experts' time-input: _____ person-months.</p> <p>[OR]</p> <p>Estimated total cost of the assignment: _____</p> <p>[Indicate only either time input (in person-month) or total cost, but not both!])</p> <p>N/A</p>
ITC 14(c) and 26.2 [use for Fixed Budget method]	<p>[If Fixed Budget Selection Method is not used, state "Not applicable ". If Fixed Budget Selection method is used, insert the following:</p> <p>The total available budget for this Fixed-Budget assignment is: [insert currency] (choose one: inclusive or exclusive of taxes). Proposals exceeding the total available budget will be rejected.</p>

	[If inclusive, indicate tax estimates separately] N/A
ITC 14(d)	Key Experts shall not appear in more than one proposal: YES
ITC 16.2	<p>A price adjustment provision applies to remuneration rates: No</p> <p>_____</p> <p>[If "Yes ", specify whether it applies to foreign and/or local inflation]</p>
ITC 16.3	<p>“Information on the Consultant’s tax obligations in the Procuring Entity’s country can be found on the Kenya revenue Authority website. www.kra.go.ke</p>
C. Submission, Opening and Evaluation	
ITC 16.4	<p>The Financial Proposal shall be stated in the following currencies:</p> <p>Consultant may express the price for their Services in any fully convertible currency, singly or in combination of up to three foreign currencies.</p> <p>The Financial Proposal should state local costs in Kenya Shillings: Yes</p>
ITC 17.1	The Consultants shall not have the option of submitting their Proposals electronically.
ITC 17.5	<p>The Consultant must submit:</p> <p>a) Technical Proposal: one (1) original and 1 copy;</p> <p>(b) Financial Proposal: one (1) original 1 copy;</p>
ITC 18.5	<p>The Proposals must be submitted no later than:</p> <p>Date: __ Tuesday 14th December, 2021</p> <p>Time: __11:00 am East African Time.</p> <p>The Proposal submission address is:</p> <p>The Ag. Chief Executive Officer/Commission Secretary</p> <p>Independent Electoral and Boundaries Commission</p> <p>Anniversary Towers, University Way, Sixth Floor</p> <p>P O Box 45371-00100 Nairobi.</p>

	Website: www.iebc.or.ke																									
ITC 20.1	<p>Online option of the opening of the Technical Proposals is offered: N/A</p> <p>The firms that download the document must arrange to forward their particulars/contacts to the Independent Electoral and Boundaries Commission (IEBC), through email address procurement@iebc.or.ke before the closing date for records and for the purposes of receiving clarifications and/or addendums, if any.</p> <p>Tenders will be opened on 14th December, 2021. The tenderers' representatives may access the tender opening proceedings through electronic means via a link that will be provided to bidders hence tenderers' are encouraged to register with the procuring entity once they download the tender document and provide their email address so as to share the link with them.</p>																									
ITC 20.2	In addition, the following information will be read aloud at the opening of the Technical Proposals N/A																									
ITC 22.1	Other eligibility and mandatory criteria shall be: as ITC 23.3																									
ITC 23.3	<p>EVALUATION CRITERIA</p> <p>The Technical Proposal submitted shall be subjected to a two (2)-stage evaluation process as shown below:</p> <ol style="list-style-type: none"> 1. Preliminary/Mandatory Evaluation 2. Technical Capacity Evaluation <p>Preliminary Mandatory Evaluation</p> <p>The proposal shall be subjected to the preliminary mandatory evaluation, where firms must submit paper copies the following:</p> <p>EVALUATION AND COMPARISON OF PROPOSAL</p> <p>Consultants are advised that at this stage, the proposal submission will either be Responsive or Non-Responsive. The Non-Responsive submissions will be eliminated from the entire evaluation process and will not be considered further.</p> <p>Preliminary Mandatory Evaluation (Eligibility mandatory requirements) PHASE 1 & 2</p> <table border="1"> <thead> <tr> <th>No.</th><th>Subject</th><th>Criteria</th><th>Mandatory Requirements</th><th>Responsive or Non-Responsive.</th></tr> </thead> <tbody> <tr> <td>1.</td><td>Legal Capacity</td><td>To determine capacity to enter into Contract.</td><td>Must submit a Copy of Certificate of incorporation/Registration</td><td></td></tr> <tr> <td rowspan="2">2.</td><td rowspan="2">Ownership Structure</td><td rowspan="2">Confirmation of details of Directors and shareholders</td><td>Must submit a copy of CR12 accompanied with copies of directors' identification cards. (Issued within the last 6 months to tender closing)</td><td></td></tr> <tr> <td>Must expressly give power of Attorney who shall be the signatory of all documents of all documents and the contract.</td><td></td></tr> <tr> <td>3.</td><td>Tax Compliance</td><td>Proof of the bidder has fulfilled tax obligations.</td><td>Must submit a Copy of a valid tax compliance certificate (Verification will be done through TCC Checker)</td><td></td></tr> </tbody> </table>				No.	Subject	Criteria	Mandatory Requirements	Responsive or Non-Responsive.	1.	Legal Capacity	To determine capacity to enter into Contract.	Must submit a Copy of Certificate of incorporation/Registration		2.	Ownership Structure	Confirmation of details of Directors and shareholders	Must submit a copy of CR12 accompanied with copies of directors' identification cards. (Issued within the last 6 months to tender closing)		Must expressly give power of Attorney who shall be the signatory of all documents of all documents and the contract.		3.	Tax Compliance	Proof of the bidder has fulfilled tax obligations.	Must submit a Copy of a valid tax compliance certificate (Verification will be done through TCC Checker)	
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	4.	Price validity	The form of tender to be duly filled and signed to confirm prices are valid for 120 days from the tender closing date.	Must submit a Duly filled, signed and stamped form of tender	
			Price schedule to be dully filled & signed. Price quoted shall remain to be the absolute and final price.	Must submit a Dully Filled, signed and stamped the Price Schedule in the format provided.	
	5.	Ethical and legal history	Proof that the bidder will commit to the code of ethics and is not debarred	Must submit a Duly filled, signed and stamped declaration and commitment to the code of ethics form, SD1 and SD2	
	6.	Business liquidity/continuity	Proof that the business is a going concern.	Certified Audited accounts for 2018,2019,2020	
	7.	Practice License or Certificate for the Firm	Professional certification.	Attach current professional Practice License or Certificate for the Firm	
	8.	Tender format	The whole Tender document to be downloaded and filled in the format provided.	Must submit an original bid document and a copy of bid document with all forms filled in the format provided	
	9.	Pagination/serialization	To safeguard tender documents from mutilation and manipulation	Tender document MUST be sequentially Paginated /serialized on each page including all the attachments	
	10.	Initialization	To ensure document initialization	Every page must be initialized by an authorized person.	
	11.	Confidential Business Questionnaire	To provide details of business ownership structure	Must submit a Duly filled, signed and stamped Confidential Business Questionnaire	
	12.	Tender Forms under section 3.	To ensure eligibility.	Must submit duly filled, signed and stamped tender forms in section 3.	
	13.	Must be accredited by ICT authority certificate in information/IT Security	Check from ICTA website, list of accredited service providers under information/IT Security	Must attached ICTA Certification on information/IT Security	
	14.	ISO certification	Proof of ISO 27001 (ISMS) Certification.	Attach valid Proof of ISO 27001 (ISMS) Certification	

Technical Capacity Evaluation for PHASE 1 Technical evaluation for firms that qualify at the preliminary/mandatory evaluation stage shall be carried out of 100 marks with a pass mark of 80. The firms shall be evaluated on a scoring matrix as shown below:				
No	Evaluation Criteria	Evaluation Attribute	Weighting Score	Maximum Score
1 a.	Demonstration of the organization's experience in undertaking ICT Consultancy services	Organization needs to have been doing Systems assessment in the region for a minimum of Eight (8) years. Provide Registration certificate and contracts/LSOs or completion certificates for the period	8 years and above = 10 Marks Others prorated at No. of years in Systems assessment in the region x10 Marks/8 years.	10 Marks
1 b.	General experience and understanding in ICT Consultancy services.	Provide details of three (3) case studies of similar scope of assignments done in the past three years (between 2017, 2018 & 2019).The assignments shall be the same as those provided under FORM TECH 2}	3 (three) Similar Consulting Assignments and above = 10 Marks Others prorated at Number of Similar Consulting Assignments x10Marks/3 Similar Consulting Assignments	10 Marks
1 c.	Financial Capability	The audited accounts MUST prove an average turnover of 200 million for years 2018, 2019 & 2020.	An average turnover of Kshs. 200 million for years 2018, 2019 and 2020 years and above =10 Marks Others prorated at Value of Similar Consulting Assignments x10 Marks/200 Million	10 Marks
		Team Leader/ Project Director	Academic Qualifications - Master's degree in IT	2 marks
			Professional qualifications -Quality assurance and/or ICT audit /ICT security certifications	3 marks
			Work experience At least 7 years' experience in systems Assessment	3 marks
		Two technical personnel	Academic Qualifications -Degree in ICT or a related field	2 marks
			Professional qualifications Quality assurance and/ or ICT audit /ICT security certifications	3 marks
			Work experience At least 5 years' experience in systems Assessment	3 marks

			Staff / personnel deployment.	Provide a separate list of technical staff that shall be deployed in the Commission's assignment. In the list, indicate clearly the person(s) designated as the Team leader, and other technical personnel and their roles in the assignment.	2 marks
			The Consultant needs to have at least 1/3 of their staff dedicated to cybersecurity services delivery.	Provide a summary of team composition and staffing through an organizational structure.	2 marks
	3a.	Methodology in ICT Consultancy services. Bidder must submit a plan and a detailed methodology on all the areas under this criteria failure to which bidder shall be deemed non-responsive.	Appropriateness of the methodology and work schedule. Completeness of the description of the same in relation to the scope of work and requirements. Detailed Technical approach & methodology	Consultants to provide clear Consulting plans and methodology on the following areas; (4mks for each area) a. Biometric Voter Registration System (10 marks) b) Biometric Voter Identification System (10 marks) c) Results Transmission System (10 marks) d) Web Portal for publishing the elections results online (IEBC Website) (10 marks) e) Candidate Registration Management System (10 marks)	50 Marks
Total					100 Marks
Technical Capacity Evaluation for PHASE- 2 Technical evaluation for firms that qualify at the preliminary/mandatory evaluation stage shall be carried out of 100 marks with a pass mark of 80. The firms shall be evaluated on a scoring matrix as shown below:					
S/No	Evaluation Criteria	Evaluation Attribute	Weighting Score	Maximum Score	
1 a.	Demonstration of the organization's experience in undertaking ISO certification ICT Consultancy services	The firm responding to this RFP shall demonstrate their capabilities and experience in providing similar services and similar engagements. These services and engagements must be performed by the Firm during the last five (5) years. Furthermore, the Firm shall demonstrate capabilities under areas listed in the weighting score column:	<ul style="list-style-type: none"> • Experience in designing, developing, implementing, and successful certification assistance in ISO 27001:2013. • Experience in conducting full ISO 27001:2013 internal audits. • More than 5 years in the field of information security, governance, risk and compliance in the area of operation. • Documentary evidence for the scope of work already executed by the bidder, more weightages will be given for ISO 27001:2013 executed work. Provide LSO'S, contracts or completion certificate . 	10 Marks	

	1 b.	General experience and understanding in ISO certification ICT Consultancy services	Provide details of three (3) case studies of similar scope of assignments done in the past three years (between 2017, 2018 & 2019).The assignments shall be the same as those provided under FORM TECH 2}	3 (three) Similar Consulting Assignments and above = 10 Marks Others prorated at Number of Similar Consulting Assignments x10Marks/3 Similar Consulting Assignments	10 Marks	
	1 c.	Financial Capability	The audited accounts MUST prove an average turnover of 200 million for years 2018, 2019 & 2020.	An average turnover of Kshs. 200 million for years 2018, 2019 and 2020 years and above =10 Marks Others prorated at Value of Similar Consulting Assignments x10 Marks/200 Million	10 Marks	
	2 a	Human Resource Capacity	Team Leader/ Project Director	Academic Qualifications- Attach Certificates - Master's degree in IT	4 marks	
				Professional qualifications ISO-27001 Lead Auditor (LA)/Lead Implementer (LI). Certifications in either of the following: - (e.g., ISO 27001:2013 CISA, CISSP, CISM and CEH)/ICT security certification as in (c)	4 marks	
			Three (3) technical personnel	Academic Qualifications- Attach Certificate -Degree in ICT or a related field	3 marks	
				Professional qualifications- Attach Certificates •Certified Information Systems Auditor (CISA). •Certified Information Security Manager (CISM). •Certified Information Systems Security Professional (CISSP).	6 marks	
				Work experience-Attach CV'S At least 3 years' experience in in ISO 27001:2013 implementation and internal auditing	3 marks	

	3a.	Methodology in undertaking ISO certification ICT Consultancy services. Bidder must submit a plan and a detailed methodology on all the areas under this criteria failure to which bidder shall be deemed non- responsive.	Appropriateness of the methodology and work schedule. Completeness of the description of the same in relation to the scope of work and requirements. Detailed Technical approach & methodology	<p>Consultants to provide clear Consulting plans and methodology on the following areas; (4mks for each area)</p> <ul style="list-style-type: none"> • Proposal on Scope of Work (requirements) as specified in the RFP. The bidder should indicate if they can provide the services fully with detailed demonstration. (10 marks) • Process approach for ISO 27001:2013 design and Implementation. (5 marks) • Risk Assessment process approach and process methodology. (5 marks) • ISMS development activity details. (5 marks) • Pre-audit assessment process plan and execution. (5 marks) • Statement of Applicability: approach and completion. (5 marks) • Deliverables and expected output. (5 marks) • Project timeline and completion plan (5 marks) • Consultancy Team details including qualifications, experience, and references (5 marks) 	50 Marks
	Total				100 Marks
	The minimum technical score required to pass:80 Marks and above;				

SECTION 3. TECHNICAL PROPOSAL – STANDARD FORMS

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 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 andITCClause29.3 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:
 - Has been requested to submit a Tender in response to this request for tenders;
 - could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;
5. The Tenderer discloses that [check one of the following, as applicable]:
 - The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
 - The Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements;
6. In particular, without limiting the generality of paragraphs (5)(a) or (5)(b) above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - prices;
 - methods, factors or formulas used to calculate prices;
 - the intention or decision to submit, or not to submit, a proposal; or
 - the submission of a proposal which does not meet the specifications of the request for

proposals; except as specifically disclosed pursuant to paragraph(5)(b) above;

7. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this RFP relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph(5)(b) above;
8. The terms of the RFP have not been, and will not be, knowingly disclosed by the Consultant, directly or indirectly, to any competitor, prior to the date and time of the official proposed opening, or of the awarding of the Contract, 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: -
4. disqualified from entering into a contract for a procurement or asset disposal proceeding; or
5. if a contract has already been entered into with the person, the contract shall be avoidable;
6. The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
7. 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.

8. 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;
9. 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.
10. Incompliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:
11. Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
12. "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
13. "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;
14. "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;
15. "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;
16. "obstructive practice" is:
17. 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
18. 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.
19. Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.
20. Rejects a proposal or award 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;

21. 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;
22. 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 inspect²all 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
23. 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.

¹For 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.

² 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*.

Assignment name:	Approx. value of the contract
Country:	Duration of assignment (months):
Name of Procuring Entity:	Total N° of staff-months of the assignment:
Contact Address: Email:	Approx. value of the services provided by your firm under contract:
Start date (month/year): Completion date:	N° of professional staff-months provided by associated Consultants:
Role on Assignment: (E.g. <i>Lead Member in ABC JV, or Sole Consultant</i>):	Name of senior professional staff of your firm involved and functions performed:
Narrative description of Assignment:	
Description of actual services provided by your staff within the assignment:	
Name of Consulting Firm:	Name and Title of Signatory:

5. FORM TECH-3: COMMENT SAND SUGGESTIONS

Form TECH-3: The Consultant to provide comments and suggestions on the Terms of Reference, counterpart staff and facilities to be provided by the Procuring Entity that could improve the quality/effectiveness of the assignment; and on requirements for counterpart staff and facilities, which are provided by the Procuring Entity, including: administrative support, office space, local transportation, equipment, data, etc.

A - On the Terms of Reference

{Improvements to the Terms of Reference, if any}

B - On Counterpart Staff and Facilities

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

6. FORMTECH-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.}

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

N°	Deliverables ¹ (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.

8. 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
KEY EXPERTS															
K-1	{e.g., Mr. Abbbb}	[Team Leader]	[Home]	[2 month]		[1.0]		[1.0]							
			[Field]	[0.5 m]		[2.5]		[0]							
K-2															
K-3															
N															
												Subtotal			
NON-KEY															
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

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

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

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

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

Period	Employing organization and your title/position. Contact 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: 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- in which the Expert will be involved) 5	

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.

{day / month/year}

Name of Expert _____ Signature _____

Date _____

{day / month/year}

Name of authorized _____

Signature. _____ Date _____

Representative of the Consultant (the same who signs the Proposal

10. FORM TECH-7: MANDATORY SUPPORT DOCUMENTS

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

a) Certificate of Incorporation/Certificate of Registration

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

b) Tax Compliance Certificate

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

c) Practice License or Certificate for the Firm

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

d) Similar Consulting Assignments Experience

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

e) Academic Certificates

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

f) Professional Certificates

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

g) Professional Membership of Key Experts

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

h) Certificate of Independent Proposal Determination

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

11. FORM TECH - 8: SELF-DECLARATIONFORM- FORM SDI

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

12. FORM SD2

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

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

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

.....
(Title)

.....
(Signature)

.....
(Date)

Bidder's Official Stamp

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 {r 46 and 155(2)}

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

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

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

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

I/We, the undersigned, declare that:

1. I / We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.
2. I/We accept that I/we will automatically be suspended from being eligible for tendering in any contract with the Purchaser or the period of time of [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

15. FORM OF TENDER

INSTRUCTIONS TO TENDERERS

- i) The Tenderer must prepare this Form of Tender on stationery with its letter head clearly showing the Tenderer's complete name and business address.
- ii) All italicized text is to help Tenderer in preparing this form.
- iii) Tenderer must complete and sign CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELF DECLARATION OF THE TENDERER attached to this Form of Tender.

Date of this Tender submission:*[insert date (as day, month and year) of Tender submission]*

Tender Name and Identification:.....*[insert identification]*

Alternative No.:.....*[insert identification No if this is a Tender for an alternative]*

To:*[insert complete name of Procuring Entity]*

- a) **No reservations:** We have examined and have no reservations to the Tendering document, including Addenda issued in accordance with Instructions to tenderers (ITT 7);
- b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with ITT 3;
- c) **Tender/Proposal-Securing Declaration:** We have not been suspended nor declared ineligible by the Procuring Entity based on execution of a Tender-Securing Declaration.

or

Proposal-Securing Declaration in Kenya in accordance with ITT 3.6;

- d) **Conformity:** We offer to supply in conformity with the Tendering document and in accordance with the Delivery Schedules specified in the Schedule of Requirements the following Goods: *[insert a brief description of the Goods and Related Services]*;
- e) **Tender Price:** The total price of our Tender, excluding any discounts offered in item (f) below is:

Option 1, in case of one lot: Total price is: *[insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies]*;

or

Option 2, in case of multiple lots: (a) Total price of each lot *[insert the total price of each lot in words and figures, indicating the various amounts and the respective currencies]*; and (b) Total price of all lots (sum of all lots) *[insert the total price of all lots in words and figures, indicating the various amounts and the respective currencies]*;

- f) **Discounts:** The discounts offered and the methodology for their application are:
- i) The discounts offered are: [Specify in detail each discount offered.]
 - ii) The exact method of calculations to determine the net price after application of discounts are shown below: *[Specify in detail the method that shall be used to apply the discounts];*
- g) **Tender Validity Period:** Our Tender shall be valid for the period specified in TDS 17.1 (as amended, if applicable) from the date fixed for the Tender submission deadline specified in TDS 21.1 (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (h) **Performance Security:** If our Tender is accepted, we commit to obtain a performance security in accordance with the Tendering document;
- i) **One Tender per tenderer:** We are not submitting any other Tender(s) as an individual tenderer, and we are not participating in any other Tender(s) as a Joint Venture member, or as a subcontractor, and meet the requirements of ITT 3.9, other than alternative Tenders submitted in accordance with ITT 12;
 - j) **Suspension and Debarment:** We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, 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 Procuring Entity. Further, we are not ineligible under the Kenya laws or official regulations or pursuant to a decision of the United Nations Security Council;
 - k) **State-owned enterprise or institution:** [select the appropriate option and delete the other] [We are not a state- owned enterprise or institution] / [We are a state-owned enterprise or institution but meet the requirements of ITT 3.7];
 - l) **Commissions, gratuities, fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the Tendering process or execution of the Contract: *[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity]*

Name of Recipient	Address	Reason	Amount

(If none has been paid or is to be paid, indicate “none.”)

- m) **Binding Contract:** We understand that this Tender, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- n) **Procuring Entity Not Bound to Accept:** We understand that you are not bound to accept the lowest evaluated cost Tender, the Best Evaluated Tender or any other Tender that you may receive; and
- o) **Fraud and Corruption:** 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.

- (p) **Code of Ethical Conduct:** We undertake to adhere by the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal, copy available from _____ (*specify website*) during the procurement process and the execution of any resulting contract.
- (q) **Collusive practices:** We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the “Certificate of Independent tender Determination” attached below.
- (r) We, the Tenderer, have completed fully and signed the following Forms as part of our Tender:
 - a) Tenderer's Eligibility; Confidential Business Questionnaire – to establish we are not in any conflict to interest.
 - b) Certificate of Independent Tender Determination – to declare that we completed the tender without colluding with other tenderers.
 - c) Self-Declaration of the Tenderer – to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.
 - d) Declaration and commitment to the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal.

Further, we confirm that we have read and understood the full content and scope of fraud and corruption as informed in

“Appendix 1- Fraud and Corruption” attached to the Form of Tender.

Name of the tenderer: *[insert complete name of the tenderer]

Name of the person duly authorized to sign the Tender on behalf of the tenderer:

**[insert complete name of person duly authorized to sign the Tender]

Title of the person signing the Tender: [insert complete title of the person signing the Tender] **Signature of the person named above:** [insert signature of person whose name and capacity are shown above] **Date signed** [insert date of signing] **day of** [insert month], [insert year]

*: In the case of the Tender submitted by a Joint Venture specify the name of the Joint Venture as tenderer.

**: Person signing the Tender shall have the power of attorney given by the tenderer. The power of attorney shall be attached with the Tender Schedules.

16. CERTIFICATE O INDEPENDENT TENDER DETERMINATION

I, the undersigned, in submitting the accompanying Letter of Tender to the _____
 _____ [Name
 of Procuring Entity] for: _____ [Name
 and number of tender] in response to the request for tenders made by: _____
 _____ [Name
 of Tenderer] do hereby make the following statements that I certify to be true and complete in
 every respect:

I _____ certify, _____ on _____ behalf _____ of _____

[Name of Tenderer] that:

1. I have read and I understand the contents of this Certificate;
2. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;
4. For the purposes of this Certificate and the Tender, I understand that the word "competitor" shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:
 - a) has been requested to submit a Tender in response to this request for tenders;
 - b) could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;
5. The Tenderer discloses that [check one of the following, as applicable]:
 - a) The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
 - b) the Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements;
6. In particular, without limiting the generality of paragraphs (5)(a) or (5)(b) above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:

7. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this request for tenders relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph (5)(b) above;
8. the terms of the Tender have not been, and will not be, knowingly disclosed by the Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official tender opening, or of the awarding of the Contract, whichever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph (5)(b) above.

[Name, title and signature of authorized agent of Tenderer and Date]

.....

Name

Title

Date

17. TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

a) Instruction to Tenderer

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

A. Tenderer's details

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

General and Specific Details

b) Sole Proprietor, provide the following details.

Name in full_____

Age_____

Nationality_____

Country of Origin_____

Citizenship_____

____ Partnership, provide the following details.

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

(d) Registered Company, provide the following details.

i) Private or public Company_____

ii) State the nominal and issued capital of the Company:- Nominal Kenya Shillings (Equivalent)..... Issued Kenya Shillings (Equivalent).....

iii) Give details of Directors as follows.

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

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

i) Are there any person/persons in.....(*Name of Procuring Entity*) who has an interest or relationship in this firm?

Yes/No..... If yes, provide details as follows.

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

ii) Conflict of interest disclosure

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

f) Certification

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

Full Name _____ Title or Designation _____

(Signature)

(Date)

18. TENDERER'S JV MEMBERS INFORMATION FORM

[The tenderer shall fill in this Form in accordance with the instructions indicated below. The following table shall be filled in for the tenderer and for each member of a Joint Venture]].

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

Tender Name and Identification:.....*[insert identification Alternative No.:.....[insert identification No if this is a Tender for an alternative].*

Page_____of_____pages

1. Tenderer's Name: <i>[insert Tenderer's legal name]</i>
2. Tenderer's JV Member's name: <i>[insert JV's Member legal name]</i>
3. Tenderer's JV Member's country of registration: <i>[insert JV's Member country of registration]</i>
4. Tenderer's JV Member's year of registration: <i>[insert JV's Member year of registration]</i>
5. Tenderer's JV Member's legal address in country of registration: <i>country of registration</i> <i>[insert JV's Member legal address in</i>
6. Tenderer's JV Member's authorized representative information Name: <i>[insert name of JV's Member authorized representative]</i> Address: <i>[insert address of JV's Member authorized representative]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers of JV's Member authorized representative]</i> Email Address: <i>[insert email address of JV's Member authorized representative]</i>
7. Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i> <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), documents of the legal entity named above, in accordance with ITT 4.4. and/or registration <input type="checkbox"/> In case of a state-owned enterprise or institution, documents establishing legal and financial operation in accordance with commercial law, and that they are not under the supervision of the Procur in accordance with ITT4.6.
8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

SECTION 4. FINANCIAL PROPOSAL - STANDARD FORMS

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

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

FIN-1 Financial Proposal Submission

FIN-2 Pricing Schedule for Consultancy Services

FIN-5 Summary of Costs

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. Pricing Schedule for Consultancy Services

No	Tasks	CONSULTANCY COST –KSHS INCLUSIVE OF TAXES (Annually)
1.	PHASE 1. Audit of Election Technology	
2.	PHASE 2. ISO Certification for The Election Technology.	
TOTAL COST		

3. SUMMARY OF COSTS

Item	Cost			
	{Consultant must state the proposed Costs in accordance with ITC 16.4 of the Data Sheet; delete columns which are not used}			
	{Insert Foreign Currency # 1}	{Insert Foreign Currency # 2, if used}	{Insert Foreign Currency # 3, if used}	{Insert Local Currency, if}
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}				

The formulae for determining the Financial Score (Sf) shall, be as follows:-

$S_f = 100 \times FM/F$ where S_f is the financial score; F_m 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 (S_t) and financial (S_f) 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: - $S = S_t \times T \% + S_f \times P \%$. The firm achieving the highest combined technical and financial score will be invited for negotiations

SECTION 5. TERMS OF REFERENCE

1.0 The Independent Electoral and Boundaries Commission (IEBC) is responsible for conducting or supervising referenda and elections to any elective body or office established by the Constitution, and any other elections as prescribed by the Act of Parliament. The Elections (Technology) Regulations, 2017 Part IV, provides that;

The Commission shall conduct annual audits of the election technology, or as may be required, to

- (a) guarantee data integrity;
- (b) ensure that the technology functions effectively as specified; and
- (c) ensure that the internal controls of the technology are effective.

(1) The Commission shall engage a professional reputable firm to conduct a systems audit of the election technology annually.

(2) The Commission shall conduct the systems audit to evaluate the confidentiality, integrity and availability of the election technology by assessing

- (a) security access to the system;
- (b) the vulnerability of the system configurations;
- (c) the accuracy and the completeness of the data; and
- (d) any other mechanisms that may be determined by the Commission.

(3) Where the Commission engages a professional reputable firm under sub regulation (1), the firm shall present its audit findings to the Commission, which findings shall be incorporated into a report as set out in regulation 13

The Commission shall prepare an audit report which shall include—

- (a) a statement on the principles set out in regulation 12 (2); and
- (b) recommendations to reduce or eliminate any risks

In compliance to the legislation, the Commission intends to engage a consultancy firm to carry out the audit of election technology under **PHASE 1** while in **PHASE 2** the firm shall provide professional services leading to certification of ISO 27001:2013 standard for the election technology.

The objective of the audit in **PHASE 1** is to evaluate the confidentiality, integrity and availability of the election technology by assessing —

- a) security access to the system.
- b) the vulnerability of the system configurations;
- c) the accuracy and the completeness of the data; and
- d) any other mechanisms that may be determined by the Commission.

2.0 OVERVIEW OF TECHNOLOGY

2.1 Kenya Integrated Electoral Management system

IEBC implemented an integrated Electoral Management System known as the Kenya Integrated Electoral Management System [KIEMS]; which is transparent, secure, verifiable, reliable, and available during voter registration, candidate registration, voter verification and results transmission exercises.

The System has the following features:

- i. Registers eligible voters using biometrics (fingerprints, facial image, or Iris).
- ii. Identify voters during the voting day and verification day.
- iii. It should be available during Election Day to perform all tasks of the election as may be required.
- iv. It electronically transmits turnout rates during the voting day to ensure transparency and accountability.
- v. It electronically transmits provisional results in an efficient, secure and transparent manner.
- vi. Scans and sends results in a prescribed form to an online web portal.

A total of 53,000 devices are expected to be used as part of the Kenya Integrated Elections Management System that map to the 53,000 polling stations. This is to enable the deployment of the following key functionalities during the Election Day:

2.2 Biometric voter identification and verification system

Some of the features of the Biometric Voter identification are:

- i. It is installed on the tablets for biometric identification and verification of voters
- ii. It has a Front-End Application which:
 1. Authenticates and securely identify voters biometrically on the polling day using either fingerprint, facial or iris recognition.
 2. Allows an alternative search other than fingerprint, facial image, iris or another unique identifier.
 3. It Provides a search option for voter data.
- iii. It has a back-end which is integrated with Biometric voter registration system and have tools to enable IEBC staff to perform the following: -
 1. Extract the register of voters (Biometric and Alphanumeric) from Biometric Voter registration system per elective area such as County, Constituency, county assembly ward, Polling Centre and Polling station onto SD cards or any other solution used to achieve the same.
 2. Extracts Voter's data for purposes of identification for polling day for By-elections, general elections, referendum and external elections.
 3. Ability to remotely configure, update, monitor, disable, wipe the application software or settings.
 4. Generate verifiable read-only logs for the voting day activities.

2.3 Electronic Results Transmission

The Results transmission system has some of the following key features:

It has a front-end does the following:

- i. Capture of results in a prescribed forms image.
- ii. Interface for capturing text results on the tablet at the polling station.
- iii. Interface for capturing and uploading results at tallying centers.

The back end does the following:

- i. Capturing, uploading and tallying and display of results at the tallying center.
- ii. Integration with the candidate Registration System for configuration of candidates.
- iii. Publication of results at a public portal.
- iv. Interface for the returning officer generation of reports (Form B).

The RTS software is installed on the tablet for transmission of the scanned image of the results prescribed forms as well as the keyed in text results in favor of each candidate. The tablets are configured to work over a Virtual Private Network provided by the local telecommunication network operators within the existing mobile network.

2.4 Biometric voter registration

It is used to enrol new voters and maintain the register of voters.

- i. It has front-end tablet that provides an interface for registration of voters.
- ii. It has Interface for capturing Biographic data, ten (10) fingerprints and facial image of a voter.
- iii. It has back-end and a central system for management of civil and voters' data and report generation features.
- iv. It has Regional/County Servers for upload of data from the registration kits.
- v. It has automatic Fingerprint Identification System for deduplication and matching of biometric features to eliminate duplicated voter registration records.

In addition to the above functionalities, the KIEMS System has the following functionalities:

2.5 Candidate Registration System

The Candidate Registration System has some of the following key features:

- i. It is used to register nominated candidates from the respective political parties as well as independent candidates.
- ii. The details of the candidates' biodata, portrait, elective position and electoral area are captured in the CRMS by political parties through an online interface provided by the Commission.
- iii. At the end of the Political Party primaries, the party-sponsored and independent candidates present their nomination documents to the returning officer in their respective electoral areas.
- iv. It enables the returning officer to verify and clear candidates based on the presented documentation.
- v. The system is integrated with the biometric register of voters to verify the voter registration status of the candidates by the returning officer.
- vi. The system also produces the ballot proof that is used to produce the ballot paper for the candidates who have been cleared. The ballot templates are designed and generated in collaboration with relevant ballot printing press.

2.6 Web Portal for publishing the elections results online (IEBC Website).

This is a portal where election results are published. This portal allows members of public to access and view results of elective positions in accordance to their elective area. The web portal display result forms that are transmitted from every polling station.

TERMS OF REFERENCE FOR PHASE 1 OF AUDIT OF ELECTION TECHNOLOGY

3.0 SCOPE OF WORK

The scope will cover audit of election technology described in section **2.0** of the TERMS OF REFERENCE. The components of the election technologies include:

- i. Biometric Voter Registration System
- ii. Biometric Voter Identification System
- iii. Results Transmission System
- iv. Web Portal for publishing the elections results online (IEBC Website)
- v. Candidate Registration Management System

The audit will lead to certification of the election technology by evaluating the confidentiality, integrity and availability of the election technology. It will be required to assess:

- (a) security access to the system,
- (b) the vulnerability of the system configurations,
- (c) the accuracy and the completeness of the data, and
- (d) any other mechanisms that may be determined by the Commission.

The selected bidder's firm shall prepare an audit report which shall include—

- (a) a statement on the principles set out in regulation 12 (2); and
- (b) recommendations to reduce or eliminate any risks

The selected bidder's firm shall also, on successful implementation of the audit and recommendations implementation, issue certification to certify that the election technology meets the objectives of the audit.

Duration

The duration for Audit of technology exercise is 1 month. The selected bidder's Firm will produce a project plan with schedule of activities.

Term of contract

After the initial certification and compliance, the selected bidder's firm will carry out audits and recertification annually for the next 2 years; hence the period of the contract will be 3 years.

4.0 REQUIREMENT SPECIFICATIONS AND DELIVERABLES

When carrying out the audit, the selected bidder's Firm will work with the commission staff. The selected bidder's firm will carry out an audit and give reports with recommendations for the below specified electoral system components:

- i. Biometric Voter Registration System
- ii. Biometric Voter Identification System
- iii. Results Transmission System
- iv. Web Portal for publishing the elections results online (IEBC Website)
- v. Candidate Registration System

If the technology changes/is added during the course of the contract, the selected bidder's firm is required to audit the technology. During the contract, the commission could also request the selected bidder's firm to carry out an audit of any other related technology.

4.1 TECHNICAL REQUIREMENTS

The selected bidder's firm shall carry out the audit with the below technical requirements and deliverables.

S/NO	REQUIREMENT	DELIVERABLES
1.	Identification and definition of audit of election technology requirements, objectives and metrics.	Project plan with schedule of activities and delivery metrics
2.	Sensitization of IEBC staff regarding the entire audit of technology exercise including deliverables and expectations.	Minutes and sensitization documents e.g., presentations
Assess Security Access to the system		
3.	Assess logical and physical security and Access control for: <ul style="list-style-type: none">- Data center and Disaster recovery sites- Database,- Servers,- Systems.	Report.
4.	Assess IT Service Management Process in line with supporting requests for system access and system's issue reporting and tracking.	Report.
Assess the vulnerability of the system configurations		
5.	Assess system weakness: <ul style="list-style-type: none">▪ System configuration▪ Architectural weakness▪ Network control and auditing weaknesses▪ Detection and response weaknesses	Report.
6.	Penetration Test - Assess how electoral technology's security controls and protective measures will withstand a real-world attack on: <ul style="list-style-type: none">Internal Network Penetration TestExternal Network Penetration TestApplication Penetration TestInsider Threat Penetration Test	Test results and report.

S/NO	REQUIREMENT	DELIVERABLES
	ess Penetration Test cal Penetration Test nced Persistent Penetration Testing	
7.	Vulnerability Assessments - Identify exploitable vulnerabilities in electoral technology's environment: <ul style="list-style-type: none"> • External Vulnerability Assessment • Internal Vulnerability Assessment • Network Security Assessment • Web Application Assessment • Operating System Assessment • Firewall Assessment • Activate Directory Assessment 	Test results and report.
8.	<ul style="list-style-type: none"> • Assess electoral system's policies, procedure manuals that guide the use of technology in elections. Assess performance, and compliance of the same. • Assess current electoral technology's Risk Management processes. • Assess current electoral technology's Risk Mitigation processes. • Conduct a comprehensive ICT Risk Assessment. • Review, assess, and identify current or ongoing certification/compliance with ISO 27001 standard. 	Report.
Assess the accuracy and the completeness of the data		
9.	Carry out quality assurance tests to the system and data to ascertain its <ul style="list-style-type: none"> - availability, - usability, - accuracy and - completeness 	Test results and report.
10.	Carry out functionality testing to assess fitness of purpose in line with the systems specifications. As part of functionality test, assess processes and operations, to understand the existing investments and capability.	Test results and report.
11.	Carry out performance Testing to see how the centralized database performs when receiving data from 53,000 devices and from 53,000 Polling stations. This could also involve <ul style="list-style-type: none"> - load and - stress testing. 	Test results and report.
12.	Assess system data storage environments, <ul style="list-style-type: none"> - capacity, - compute, - hosting, - maintenance 	Report.

S/NO	REQUIREMENT	DELIVERABLES
	<ul style="list-style-type: none"> - applications and data management status per the desired requirements and performance - Backups and archival 	
13.	Assess the Disaster Recovery capability <ul style="list-style-type: none"> - disaster recovery availability, - business continuity plans, - recovery point and objectives, - Replication availability 	Report
14.	Assess systems network architecture and connectivity to analyze access to both live and backup Data	Report.
Testing guidelines for areas that require testing		
15.	Where necessary and per the technical requirements, the bidder shall test the technology. The commission does not wish to purchase testing Tools at this point. The selected bidder's firm will lease the testing tools to the commission. Terms and conditions of leasing the testing tools during the testing period should be included in the proposal.	<ul style="list-style-type: none"> - Delivery of appropriate Licenses and software. - Signed Agreements/contracts.
16.	Development of test cases	Test cases
17.	Installation, set up and tuning of Testing Tools.	Correctly installed testing tools.
18.	Execution of tests	Test results and report.
Reporting and Certification		
19.	Prepare audit report and present its audit findings to the Commission, which findings shall be incorporated into a report which will include: <ul style="list-style-type: none"> (a) a statement on the principles set out in regulation 12 (2) on audit of election technology; and (b) recommendations to reduce or eliminate any risks 	Audit reports.
20.	Follow up recommended improvement exercises to ensure gaps are closed and responded to.	Implementable changes report - list of items, status and closed gaps.
21.	Final certification to certify that the commission has complied with the audit activities of the electoral technology.	Certifications and compliance reports.
22.	Post audit meeting with IEBC HQ Senior Management to share status and results of entire audit of technology exercise and issuance of certifications and compliance reports.	Minutes, Certifications and compliance reports.

TERMS OF REFERENCE FOR PHASE 11- ISO 27001:2013 STANDARD CERTIFICATION

1. SCOPE OF WORK

The main objective of the consultation service in **PHASE-2** is to lead to (ISO)27001:2013 standard certification for the election technology.

This scope will cover International Organization for Standardization (ISO)27001:2013 standard certification for election technology described in section **2.0** of the TERMS OF REFERENCE.

These systems include:

- i. Biometric Voter Registration System
- ii. Biometric Voter Identification System
- iii. Results Transmission System
- iv. Web Portal for publishing the elections results online (IEBC Website)
- v. Candidate Registration System

(ISO)27001:2013 standard will also be covered as ISMS (Information Security Management System) for IEBC's election technology.

The selected bidder's firm shall provide onsite advisory and support to the commission throughout the following:

- i. Initial assessment/audit by the selected bidder
- ii. Formal assessment to be conducted by an ISO Certification Body.
- iii. The selected bidder's firm will be responsible for organizing assessment with the Certification body.
- iv. The selected bidder's firm will be responsible for coordinating final certification with the certification body.

Duration

The duration for Audit exercise leading to certification is 6 months. The selected bidder's Firm will produce a project plan with schedule of activities.

Term of contract

After the initial certification and compliance, the selected bidder's firm will carry out audits and re-certification annually for the next 2 years; hence the period of the contract will be 3 years. During the contract term, the certification should be carried out on systems that might have been changed or added.

2. TECHNICAL REQUIREMENTS

The selected bidder firm shall carry out the ISO Certification with the below technical requirements and deliverables.

S/NO	REQUIREMENT	DELIVERABLE
1.	Conduct ISO 27001:2013 awareness sessions to IEBC staff	Minutes, Presentation documents
	PART A – Initial Consultancy Services	
2.	Perform a gap analysis to assess and evaluate the controls to be implemented to achieve ISO 27001:2013 certification and accreditation.	Report
3.	Review existing election systems pertaining to security controls, policies, processes, and any other established procedures on managing risk and improving information security to deliver results in accordance with the organization's overall policies and objectives.	Report
4.	Scoping of certification project and documenting the scope as per ISO 27001:2013 certification, detailing the functional areas and processes to be covered in the certification scope.	Detailed scope document
5.	Identify the information assets of election technology, its ownership, classification of assets and prepare information asset registers.	Report
6.	Define and document the Risk Assessment Methodology for risk identification, mitigation, and treatment.	Report
7.	Conduct a comprehensive Risk Assessment across all election functions and processes covered under the scope of ISMS for IEBC	Report
8.	Prepare and present the Risk Assessment report to the management.	Minutes
9.	Provide recommendations to the commission and commission's internal team and senior management for mitigating risks identified during the Risk Assessment.	Report
10.	Review the current Organizational Structure and advise/modify to create an environment where election policies, procedures, and processes to manage and monitor regulatory, legal, risk, environmental and operational requirements are understood and inform the management of security risks.	Report
11.	Define all ISO 27001:2013 roles and responsibilities and mapping them to existing election departments or positions according to the approved Organizational Structure.	Report

S/NO	REQUIREMENT	DELIVERABLE
12.	Define and develop required information security policies and procedures for commission's election technology.	Report
13.	Define and create an evaluation method and metrics of the ISMS and the implemented controls. The plan should: <ul style="list-style-type: none"> describe the goal of measurement objective. define methods of collecting performance data. define the frequency and method of monitoring. define performance metrics, KPIs and dashboards for implemented security controls 	Report
PART B - Internal Audit Service		
14.	Prior to the official assessment for certification, an onsite internal audit should be performed to determine the readiness of the in-scope services for the formal assessment. Activities during the onsite internal audit should include, but are not limited to the following:	
15.	Assess the ISMS and related activities, processes, procedures, and documentations.	Report
16.	Conduct an internal audit by an independent team that did not participate in the ISMS implementation.	Report
17.	Assist the commission team and provide consultancy on the Risk Treatment status, closure of Internal Audit findings, and other matters prior to the certification.	Report
18.	Benchmark against the ISO 27001:2013 standard and identify any nonconformity.	Report
19.	Aid and support on remediating all non-conformities, including the revision of all necessary documentation.	Report
PART C – Onsite Support during Formal Assessment		
20.	The Firm should provide onsite advisory and support throughout the course of formal assessment of the Certification Body. The Firm will be responsible for coordination and bringing of certification body on site. This should include, but is not limited to the following:	
21.	Attend interviews and site visits with the external assessors.	Interview results
22.	Assist in the identification and collection of audit evidence.	Audit evidence report
23.	Follow-up on queries raised by the Certification Body.	List of queries and responses
24.	Implement an ISMS based on the requirements of ISO 27001:2013.	Compliance report
Certification and Compliance		
25.	Make available certification body and certification requirements	Accreditation body team members on site
26.	Issue on completion of satisfactory assessment, Certify commission on ISO 27001:2013 standard	Certificate of compliance, any accreditation marks, and logos.

S/NO	REQUIREMENT	DELIVERABLE
27.	Conduct post ISO 27001:2013 awareness sessions with IEBC staff	Minutes, Present :Compliance Certificate ,any accreditation marks and logos

SECTION 6. CONDITIONS OF CONTRACT AND CONTRACT FORMS

Preface

1. This Section includes two types of standard contract forms for: A Lump-Sum Contract and a Time-Based Contract. Each type includes General Conditions of Contract ("GCC") that shall not be modified, and Special Conditions of Contract ("SCC"). The SCC includes clauses specific to each contract to supplement, but not over- write or otherwise contradict, the General Conditions of Contract.
2. Lump-Sum Contract. This type of contract is used mainly for assignments in which the scope and the duration of the Services and the required output of the Consultant are clearly defined. Payments are linked to outputs (deliverables) such as draft or final reports, drawings, bill of quantities, bidding documents, or software programs. Lump-sum contracts are easier to administer because they operate on the principle of a fixed price for a fixed scope, and payments are due on clearly specified outputs and milestones. Never the less, quality control of the Consultant's outputs by the Procuring Entity is paramount.
3. Time-Based Contract. This type of contract is appropriate when it is difficult to define or fix the scope and the duration of the services, either because they are related to activities carried out by others for which the completion period may vary, or because the input of the consultants required for attaining the objectives of the assignment is difficult to assess. In time-based contracts the Consultant provides services on a timed basis according to quality specifications, and Consultant's remuneration is determined on the basis of the time actually spent by the Consultant in carrying out the Services and is based on (i) agreed upon unit rates for the Consultant's experts multiplied by the actual time spent by the experts in executing the assignment, and (ii) reimbursable expenses using actual expenses and/or agreed unit prices. This type of contract requires the Procuring Entity to closely supervise the Consultant and to be involved in the daily execution of the assignment.
4. The templates are designed for use in assignments with consulting firms and shall not be used for contracting of individual experts. In some consultancy assignments such as design and construction supervision, both Lump- Sum and Time-Based Contracts are used and signed with the Consultant. In that case, the Lump-Sum Contract would apply for the design part of the Services while the construction supervision part would be based on a Time- Based Contract. In such event, both types of contracts shall be signed at the same time.

1.0 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:

2.0 FORM OF CONTRACT - LUMP-SUM

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

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

WHEREAS

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

NOW THEREFORE the parties hereto hereby agree as follows:

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

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

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

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

For and on behalf of*[Name of Procuring Entity]* *[Authorized Representative of the Procuring Entity–name, title and signature]*

For and on behalf of..... *[Name of Consultant or Name of a Joint Venture]*
[Authorized Representative of the Consultant—name and signature]

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

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

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

SECTION 7: GENERAL CONDITIONS OF CONTRACT

A. GENERAL PROVISIONS

1. Definitions

- a) Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:
- b) “Applicable Law” means the laws and any other instruments having the force of law in Kenya.
- c) “Consultant” means a legally-established professional consulting firm or entity selected by the Procuring Entity to provide the Services under the signed Contract.
- d) “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).
- e) “Procuring Entity” means the Procuring Entity that signs the Contract for the Services with the selected Consultant.
- f) “Day” means a working day unless indicated otherwise.
- g) “Effective Date” means the date on which this Contract comes into force and effect pursuant to Clause GCC 11.
- h) “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.
- i) “Foreign Currency” means any currency other than the currency of Kenya.
- j) “GCC” mean these General Conditions of Contract.
- k) “Government” means the government of Kenya.
- l) “Joint Venture (JV)” means an association with or without a legal personality distinct from that of its members, of more than one entity where one member has the authority to conduct all businesses for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Procuring Entity for the performance of the Contract.
- 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

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

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

4. Language

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

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

6. Communications

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.

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

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

In case the Consultant is a Joint Venture, the members hereby authorize them ember specified in the SCC to act on their behalf in exercising all the Consultant's rights and obligations towards the Procuring Entity under this Contract, including without limitation the receiving of instructions and payments from the Procuring Entity.

9. Authorized Representatives

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

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

Commissions and Fees-

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

B. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

11. Effectiveness of Contract

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

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

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

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

15. Entire Agreement

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

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

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.

Force Majeure shall not include (i) any event which is 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.

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

b. No Breach of Contract

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

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.

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.

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

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

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

a. By the Procuring Entity

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 GCC 13.

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 GCC 45.1 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

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

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

Up on termination of this Contract, the Procuring Entity shall make the following payments to the Consultant:

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

C. OBLIGATION S OF THE CONSULTANT

20. General

a. Standard of Performance

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.

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

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

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.

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.

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

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.

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

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

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

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

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

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

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

A. Insurance to be taken out by the Consultant

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.

B. Accounting, Inspection and Auditing

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.

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, inter alia, that acts intended to materially impede the exercise of the PPRA's inspection and audit rights provided for under this ClauseGCC25.2 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility under the PPRA's prevailing sanctions procedures.)

24. Reporting Obligations

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.

25. Proprietary Rights of the Procuring Entity in Reports and Records

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.

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.

26. Equipment, Vehicles and Materials

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.

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.

27. Consultant's Experts and Sub-consultants

A. Description of Key Experts

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.

B. Replacement of Key Experts

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

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 forth with provide as a replacement, a person of equivalent or better qualifications and experience, and at the same rate of remuneration.

C. Removal of Experts or Sub-consultants

If the Procuring Entity finds that any of the Expert 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.

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.

Any replacement of the removed Experts or Sub consultants shall possess better qualifications and experience and shall be acceptable to the Procuring Entity.

The Consultant shall bear all costs arising out of or incidental to any removal and/or replacement of such Experts.

28. Obligations of the Procuring Entity

A. Assistance and Exemptions

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.

Assist the Consultant, any Sub-consultants and the Experts of either of them with obtaining the privilege, pursuant to the applicable law in Kenya, of bringing in to Kenya reasonable amounts of foreign currency for the purposes of the Services or for the personal use of the Experts and of withdrawing any such amounts as may be earned therein by the Experts in the execution of the Services.

Provide to the Consultant any such other assistance as may be specified in the SCC.

B. Access to Project Site

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.

29. Change in the Applicable Law Related to Taxes and Duties

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

Services, Facilities and Property of the Procuring Entity

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.

30. Counterpart Personnel

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.

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

31. Payment Obligation

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.

32. Payments to the Consultant

A. Contract Price

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

B. Taxes and Duties

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.

33. Currency of Payment

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

A. Mode of Billing and Payment

The total payments under this Contract shall not exceed the Contract price set forth in Clause GCC 38.1.

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.

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.

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.

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 foregoing process shall be repeated.

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

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

B. Interest on Delayed Payments

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.

34. Fairness and Good Faith

Good Faith

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.

35. Settlement of Disputes

A. Amicable Settlement

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

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

B. Dispute Resolution

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 (b)	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 [fill in at negotiations with the selected firm]:</p> <p>Procuring Entity: _____</p> <p>Attention: _____</p> <p>Facsimile: _____</p> <p>E-mail: _____</p> <p>Consultant: _____</p> <p>Attention: _____</p> <p>Facsimile: _____</p> <p>E-mail: _____</p>
8.1	<p>[If the Consultant consists only of one entity, state "N/A ";</p> <p>OR</p> <p>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.I should be inserted here.]</p> <p>The Lead Member on behalf of the JV is _____ [insert name of the member]</p>
9.1	<p>The Authorized Representatives are:</p> <p>For the Procuring Entity: [name, title] _____</p> <p>For the Consultant: [name, title] _____</p>
11.1	<p>The effectiveness conditions are the following:</p> <p>[Note: If there are no effectiveness conditions, state "N/A "]</p> <p>OR</p> <p>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.]</p>
12.1	<p>Termination of Contract for Failure to Become Effective:</p> <p>The time period shall be _____ [insert time period, e.g.: four months].</p>
13.1	<p>Commencement of Services:</p> <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 3 years.</p>
21 b.	<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</p> <p>Yes: _____ No _____</p>

23.1	<p>No additional provisions.</p> <p>[OR</p> <p>The following limitation of the Consultant's Liability towards the Procuring Entity can be subject to the Contract's negotiations:</p> <p>"Limitation of the Consultant's Liability towards the Procuring Entity:</p> <p>a) Except in the case of gross negligence or willful misconduct on the part of the Consultant or on the part of any person or a firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused by the Consultant to the Procuring Entity's property, shall not be liable to the Procuring Entity:</p> <p>for any indirect or consequential loss or damage; and</p> <p>for any direct loss or damage that exceeds two times the total value of the Contract;</p> <p>b) This limitation of liability shall not affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services; be construed as providing the Consultant with any limitation or exclusion from liability which is prohibited by the Applicable Law.</p> <p><u>[Notes to the Procuring Entity and the Consultant:</u></p> <p>Any suggestions made by the Consultant in the Proposal to introduce exclusions/limitations of the Consultant's liability under the Contract should be carefully scrutinized by the Procuring Entity <u>prior to accepting any changes</u> to what was included in the issued RFP.</p> <p>To be acceptable to the Procuring Entity, any limitation of the Consultant's liability should at the very least be reasonably related to (a) the damage the Consultant might potentially cause to the Procuring Entity, and (b) the Consultant's ability to pay compensation using its own assets and reasonably obtainable insurance coverage. The Consultant's liability shall not be limited to less than a multiplier of the total payments to the Consultant under the Contract for remuneration and reimbursable expenses. A statement to the effect that the Consultant is liable only for the re-performance of faulty Services is not acceptable to the Procuring Entity. Also, the Consultant's liability should, never be limited for loss or damage caused by the Consultant's gross negligence or willful misconduct.</p> <p>The Procuring Entity does not accept a provision to the effect, that the Procuring Entity shall indemnify and hold harmless the Consultant against Third Party claims, except, of course, if a claim is based on loss or damage</p>
	<p>Caused by a default or wrongful act of the Procuring Entity to the extent permissible by the law applicable in Kenya.]</p>
24.1	<p>THE INSURANCE COVERAGE AGAINST THE RISKS SHALL BE AS FOLLOWS:</p> <p>[delete what is not applicable except (a)].</p> <p>(A) PROFESSIONAL LIABILITY INSURANCE, WITH A MINIMUM COVERAGE OF [insert amount and currency which should be not less than the total ceiling amount of the Contract];</p> <p>(B) EMPLOYER'S LIABILITY AND WORKERS' COMPENSATION INSURANCE IN RESPECT OF THE EXPERTS AND SUB-CONSULTANTS IN ACCORDANCE WITH THE RELEVANT PROVISIONS OF THE APPLICABLE LAW IN KENYA, AS WELL AS, WITH RESPECT TO SUCH EXPERTS, ANY SUCH LIFE, HEALTH, ACCIDENT, TRAVEL OR OTHER INSURANCE AS MAY BE APPROPRIATE.</p>
27.1	<p>THE ADDITIONAL RIGHTS TO THE USE OF THE DOCUMENTS ARE:</p> <p>[If applicable, insert any exceptions to proprietary rights provisions] N/A</p>
27.2	<p>[If there is to be no restriction on the future use of these documents by either Party, this Clause SCC 27.2 should be indicated as Not Applicable.</p> <p>If the Parties wish to restrict such use, any of the following options, or any other option agreed to by the Parties, could be used:</p>

	<p>[THE CONSULTANT SHALL NOT USE THESE [insert what applies documents and software....] FOR PURPOSES UNRELATED TO THIS CONTRACT WITHOUT THE PRIOR WRITTEN APPROVAL OF THE PROCURING ENTITY.]</p> <p>[OR]</p> <p>[NEITHER PARTY SHALL USE THESE [insert what applies..... documents and software.....] FOR PURPOSES UNRELATED TO THIS CONTRACT WITHOUT THE PRIOR WRITTEN APPROVAL OF THE OTHER PARTY.]</p>
32.1 (a) Through (e)	[List here any changes or additions to Clause GCC 32.1. If there are no such changes or additions, indicate Not Applicable.] N/A
32.1 (f)	[List here any other assistance to be provided by the Procuring Entity. If there is no such other assistance, indicate Not Applicable for this Clause SCC 32.11(f).]
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 FFN-2 of the Consultant's Financial Proposal.</p>
39.1 and 39.2	<p>[The Procuring Entity, depending on the source of funds and tax exemptions already granted by the Government, shall decide whether the Consultant (i) should be exempted from local tax, or (ii) should be reimbursed by the Procuring Entity for any such tax they might have to pay (or that the Procuring Entity would pay such tax on behalf of the Consultant)]</p> <p>The Procuring Entity warrants that [choose one applicable option consistent with the ITC 16.3 and the outcome of the Contracts negotiations (Form FIN-2]</p> <p>I/ITC16.3 indicates a tax exemption status, include the following: "the Consultant, the Sub consultants and the Experts shall be exempt from" N/A</p> <p>OR</p> <p>If ITC J 6.3 does not indicate the exemption and, depending on whether the Procuring Entity shall pay the withholding tax or the Consultant has to pay, include the following: "the Procuring Entity shall pay on behalf of the Consultant, the Sub-consultants and the Experts," OR "the Procuring Entity shall reimburse the Consultant, the Sub-consultants and the Experts] N/A</p> <p>any taxes, duties, fees, levies and other impositions imposed, under the applicable law in the Procuring Entity's country, on the Consultant, the Sub-consultants and the Experts in respect of:</p> <p>(a) any payments whatsoever made to the Consultant, Sub-consultants and the Experts (other than nationals or permanent residents of Kenya), in connection with the carrying out of the Services; N/A</p> <p>(b) any equipment, materials and supplies brought into Kenya by the Consultant or Sub-consultants for the purpose of carrying out the Services and which, after having been brought into such territories, will be subsequently withdrawn by them; N/A</p> <p>(c) any equipment imported for the purpose of carrying out the Services and paid for out of funds provided by the Procuring Entity and which is treated as property of the Procuring Entity; N/A</p> <p>(d) any property brought into Kenya by the Consultant, any Sub-consultants or the Experts (other than nationals or permanent residents of Kenya), or the eligible dependents of such experts for their personal use and which will subsequently be withdrawn by them upon their respective departure from the Procuring Entity's country, provided that: N/A</p> <p>the Consultant, Sub-consultants and experts shall follow the usual customs procedures of Kenya in importing property into Kenya; and N/A</p> <p>if the Consultant, Sub-consultants or Experts do not withdraw but dispose of any property in the Procuring Entity's country upon which customs duties and taxes have been exempted, the Consultant, Sub-consultants or Experts, as the case may be, (a) shall bear such customs duties and taxes in conformity with the regulations of Kenya, or (b) shall reimburse them to the Procuring Entity if they</p>

	were paid by the Procuring Entity at the time the property in question was brought into the Procuring Entity's country N/A
44.1	<p>Disputes shall be settled by arbitration in accordance with the following provisions:</p> <p>1. Selection of Arbitrators. 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 [name an appropriate international professional body, e.g., the Federation Internationale des Ingenieurs - Conseil (FIDIC) of Lausanne, Switzerland] for a list of not fewer than five (5) nominees and, on receipt of such list, the Parties shall alternately strike names there from, 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, [insert the name of the same professional body as above] 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 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 [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.].</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 [name the same appointing authority as in said paragraph</p> <p>(d) 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. Rules of Procedure. 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>Substitute Arbitrators. 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. Nationality and Qualifications of Arbitrators. 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 [If the Consultant consists of more than one entity, add: or of the home country of any of their members or Parties/ 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 [If the Consultant consists of more than one entity, add: or of any of their members or Parties/; 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>
41.2	Payment will be based on lump sum for assignments satisfactory performant and satisfied by the commission to have met the terms and conditions of the contract.
	advance payment could be in either the foreign currency, or the local currency, or both; select the correct

41.2.1	<p>wording in the Clause here below. The advance bank payment guarantee should be in the same currency (ies)</p> <p>The following provisions shall apply to the advance payment and the advance bank payment guarantee:</p> <p>(1) An advance payment [of [insert amount] in foreign currency] [and of [insert amount] in Kenya Shillings] shall be made within [insert number] days after the receipt of an advance bank payment guarantee by the Procuring Entity. The advance payment will be set off by the Procuring Entity in equal portions against [list the payments against which the advance is offset] N/A</p> <p>The advance bank payment guarantee shall be in the amount and in the currency of the currency(ies) of the advance payment.</p> <p>The bank guarantee will be released when the advance payment has been fully set off. N/A</p>
41.2.4	<p>accounts are:-</p> <p>For local currency [Kenya shillings]</p>
42.2.5	<p>Interest rate is [insert rate) – N/A</p>

SECTION 9: APPENDICES

1. 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]

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.....

2. 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-3 and FIN-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 [Form FIN-3 and FIN-4] at the negotiations or state that none has been made.}

SECTION 10. NOTIFICATION FORMS

3. NOTIFICATION OF INTENTION TO AWARD

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

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

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

The successful Consultant

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

4. NOTIFICATION 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



INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

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