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CONSULTANCY FOR FEASIBILITY STUDY FOR NUNGUNI WATER SUPPLY

GMC/W/RFP/208/2023/2024

NEGOTIATION NUMBER: 1461898 2023/2024

CLOSING/OPENING: THURSDAY 22nd FEBRUARY, 2024

TIME: 10:00 AM

**BID DOCUMENT FOR REQUEST FOR PROPOSAL
 (GMC/W/RFP/116/2023/2024)**

- INVITATION FOR TENDERS
- INSTRUCTIONS TO BIDDERS
- QUALIFICATION CRITERIA
- CONDITIONS OF CONTRACT
- APPENDIX TO FORM OF AGREEMENT
 - STANDARD FORMS

NOVEMBER, 2023

The Employer’s representative

THE C.O WATER & SANITATION
 GOVERNMENT OF MAKUENI
 COUNTY, P.O. BOX 78–90300,
 MAKUENI.

The Employer

GOVERNMENT OF MAKUENI COUNTY,
 DEPARTMENT OF WATER &
 SANITATION
 P.O. BOX 78–90300, MAKUENI.

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SECTION 1 (A) - REQUEST FOR PROPOSAL (RFP)

Initiation Date: 14th FEBRUARY, 2024.

Reference No.: **GMC/W/RFP/208/2023/2024**

Name of Assignment: CONSULTANCY FOR FEASIBILITY STUDY FOR NUNGUNI WATER SUPPLY

TO: _____

Dear Messrs. _____

The Government of Makueni County has set aside funds in its budget toward the cost of the subject consulting services. The Procuring Entity now invites proposals to provide the following consulting services for **CONSULTANCY FOR FEASIBILITY STUDY FOR NUNGUNI WATER SUPPLY**

1. . More details on the Services are provided in Section 8 Terms of Reference.
2. If a Consultant is a Joint Venture (JV), the full name of the JV shall be used and all members, starting with the name of the lead member. Where sub-consultants have been proposed, they shall be named. The maximum number of JV members shall be specified in the DS.
3. It is not permissible to transfer this RFP to any other firm.
4. A firm will be selected under **LEAST COST SELECTION METHOD** and in a format as described in this RFP, in accordance with the Public Procurement and Asset Disposal Act 2015, a copy of which is found at the following website: www.ppra.go.ke.
5. The: Section 1: Letter of Request for Proposals
Section 2: Instructions to Consultants and Data Sheet
Section 3: Technical Proposal Standard Forms
Section 4: Financial Proposal Standard Forms
Section 5: Terms of Reference
Section 6: Standard Forms of Contract - Lump-Sum
6. For clarifications kindly write to us before **29th NOVEMBER, 2023** in writing at the address below or by E-mail
co.water@makueni.go.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), Data Sheet 14.1.1).
7. Details on the proposal's submission date, time and address are provided in the ITC 17.7 and ITC 17.9 of the Data Sheet.

Yours sincerely,

ENG.DAVID M, MAKAU
CHIEF OFFICER- WATER & SANITATION
MAKUENI COUNTY
COMMISSIONERS BUILDING, 3RD FLOOR
P.O. BOX 78-90300 MAKUENI
0726-473833
co.water@makueni.go.ke

SECTION 2. INSTRUCTIONS TO CONSULTANTS AND DATA SHEET

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

A. GENERAL PROVISIONS

1. Meanings/Definitions

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

- p) “Proposal” means the Technical Proposal and the Financial Proposal of the Consultant.
- q) “Public Procurement Regulatory Authority (PPRA)” means the statutory authority of the Government of Kenya that mandated with the role of regulating and monitoring compliance with the public procurement law and regulations.
- r) “RFP” means the Request for Proposals to be prepared by the Procuring Entity for the selection of Consultants.

- s) “Services” means the work to be performed by the Consultant pursuant to the Contract.
- t) “Sub-consultant” means an entity to whom the Consultant intends to subcontract any part of the Services while the Consultant remains responsible to the Procuring Entity during the whole performance of the Contract.
- v) “Terms of Reference (TORs)” means the Terms of Reference that explains the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of the Procuring Entity and the Consultant, and expected results and deliverables of the assignment.

2. Introduction

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

3. Conflict of Interest

- 3.1 The Consultant is required to provide professional, objective, and impartial advice, always holding the Procuring Entity's interest's paramount, strictly avoiding conflicts with other assignments or its own corporate interests and acting without any consideration for future work.
- 3.2 The Consultant has an obligation to disclose to the Procuring Entity any situation of actual or potential conflict that impacts its capacity to serve the best interest of the Procuring Entity. Failure to disclose such situations may lead to the disqualification of the Consultant or the termination of its Contract.
- 3.3 Without limitation on the generality of the foregoing, and unless stated otherwise in the Data Sheet, the consultants shall not be hired under the circumstances set forth below:
 - i) *Conflicting Activities*

Conflict between consulting activities and procurement of goods, works or non-consulting services: a firm that has been engaged by the Procuring Entity to provide goods, works, or nonconsulting 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 Subconsultants) that has a close business or personal relationship with senior management or professional staff of the Procuring Entity who has the ability to influence the bidding process and: (i) are directly or indirectly involved in the preparation of the Terms of Reference for the assignment,(ii) the selection process for the Contract, or (iii) the supervision of the Contract, may not be awarded a Contract, unless the conflict stemming from such relationship has been resolved in a manner that determines there is no conflict to affect this selection process.

iv) *Others*

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

4. Unfair Competitive Advantage

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

5. Corrupt and Fraudulent Practices

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

5.2 Collusive practices

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

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

6. Eligibility

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

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

6.3 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for submission of proposals, but it shall be a condition of contract award and signature. AJV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website www.cak.go.ke

6.4 Public Officers of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.

6.5 It is the Consultant's responsibility to ensure that its Experts, joint venture members, Sub-consultants, agents (declared or not), sub-contractors, service providers, suppliers and/or their employees meet the eligibility requirements.

6.6 As an exception to the foregoing ITC 6.1 and 6.2 above:

- a) Sanctions-A firm or an individual that has been debarred from participating in public procurement shall be ineligible to be awarded a contract, or to benefit from the contract, financially or otherwise, during the debarment period. The list of debarred firms and individuals is available from the website of PPRA www.ppra.go.ke.
- b) Prohibitions-Firms and individuals of a country or goods in a country maybe ineligible if:
 - i) As a matter of law or official regulations, Kenya prohibits commercial relations with that country; or
 - ii) By an act of compliance with a decision of the United Nations Security Council taken under Chapter

VII of the Charter of the United Nations, Kenya prohibits any import of goods or services from that country or any payments to any country, person, or entity in that country.

- c) Restrictions for Government-owned Enterprises- Government-owned enterprises or institutions in Kenya shall be eligible only if they can establish that they i) Are legally and financially autonomous, ii) Operate under commercial law, and iii) That they are not dependent agencies of the Procuring Entity.
- d) Restrictions for public employees - Government officials and civil servants and employees of public institutions shall not be hired for consulting contracts.

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

7. General Considerations

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

8. Cost of Preparation of Proposal

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

9. Language

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

10. Documents Comprising the Proposal

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

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

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

11. Only One Proposal

11.1 The Consultant (including the individual members of any Joint Venture) shall submit only one Proposal, either in its own name or as part of a Joint Venture in another Proposal. If a Consultant, including any Joint Venture member, submits or participates in more than one proposal, all such proposals shall be disqualified and rejected. This does not, however, preclude Sub-consultant, or the

Consultant's staff from participating as Key Experts and Non-Key Experts in more than one Proposal when circumstances justify and if stated in the Data Sheet.

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

11.3 Should a Joint Venture subsequently win the Contract, it shall consider whether an application for exemption from the Competition Authority of Kenya is merited pursuant to Section 25 of the Competition Act 2010.

12. Proposal Validity

a. Proposal Validity Period

12.1 The Data Sheet indicates the period during which the Consultant's Proposal must remain valid after the Proposal submission deadline.

12.2 During this period, the Consultant shall maintain its original Proposal without any change, including the availability of the Key Experts, the proposed rates and the total price.

12.3 If it is established that any Key Expert nominated in the Consultant's Proposal was not available at the time of Proposal submission or was included in the Proposal without his/her confirmation, such Proposal shall be disqualified and rejected for further evaluation and may be subject to sanctions in accordance with IT C5.

b. Extension of Validity Period

12.4 The Procuring Entity will make its best effort to complete the negotiations within the proposal's validity period. However, should the need arise, the Procuring Entity may request, in writing, all Consultants who submitted Proposals prior to the submission deadline to extend the Proposals' validity.

12.5 If the Consultant agrees to extend the validity of its Proposal, it shall be done without any change in the original Proposal and with the confirmation of the availability of the Key Experts, except as provided in ITC 12.7.

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

b. 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.

c. **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 fall amendments in writing.

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

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

14. Preparation of Proposals–Specific Considerations

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

- (a) If a Consultant considers that it may enhance its expertise for the assignment by associating with other consultants in the form of a Joint Venture or as Sub-consultants, it may do so 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

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

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

c. Currency of Proposal

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

d. Currency of Payment

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

C. SUBMISSION, OPENING AND EVALUATION

17. Submission, Sealing, and Marking of Proposals

- 17.1 The Consultant **SHALL SUBMIT ELECTRONICALLY VIA THE IFMIS PORTAL** a signed and complete Proposal comprising the documents and forms in accordance with ITC 10 (Documents Comprising Proposal

- 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 SHALL be submitted Electronically via the IFMIS system as required.
18. Sealing and Marking of Proposals
- 18.1 The firm **shall Submit Electronically their Proposals** before **14th DECEMBER ,2023 at 10.00 EAT.**
- 18.2 N/A
- 18.3 N/a
- 18.4 N/A.
- 18.5 The Proposal uploaded Shall be Final and no modifications Shall be allowed after the closing time of submission..

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 online on the IFMIS SYSTEM after closing.
- 20.2 At the opening of the proposals shall be electronic but bidders are free to obtain the information of the number of bidders who have submitted from the Chief officer Water & Sanitation office 3rd Floor County Commissioners Building Water

21. Proposals Evaluation

- 21.1 Subject to provision of ITC 15.1, the valuator of the Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded and after the Procuring Entity notifies all the Consultants in accordance with ITC 22.1.
- 21.2 The Consultant is not permitted to alter or modify its Proposal in anyway after the proposal submission deadline except as permitted under ITC12.7. While evaluating the Proposals, the Evaluation

Committee will conduct the evaluation solely on the basis of the submitted Technical and Financial Proposals.

22. Evaluation of Technical Proposals

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

- a) Firm has submitted their Proposals electronically via the IFMIS as required
- b) The Proposal is valid for the required number of days.
- c) The Technical Proposal is signed by the person with power of attorney, without material deviation, reservation, or omission.
- d) The Technical Proposal is complete with all the forms and required documentary evidence submitted.
- e) A valid tax compliance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 3.14 for Kenyan firms.
- f) Key Experts are from eligible countries.
- g) Key Experts do not appear in more than one proposal, if so required.
- h) A short-listed firm has not participated in more than one proposal, if so required.
- i) The Consultant is not insolvent, in receivership, bankrupt or in the process of being wound up.
- j) The Consultant, its sub-consultants and experts have not engaged in or been convicted of corrupt or fraudulent practices.
- k) The Consultant is neither precluded from entering into a Contract nor debarred by PPRA.
- l) The firm has not proposed employing public officials, civil servants and employees of public institutions.

- m) 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 the Request for Proposal(RFP)

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 Evaluation

The proposal SHALL be done using the LEAST COST BASED SELECTION METHOD and thus the Proposal with the Least Cost having Qualified technically SHALL be awarded the Contract

23.3 Financial Proposals for LCS (least cost selection)

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 of the Proposals SHALL only take place at the expiry of the RFP on **14th DECEMBER, 2023** at 10.00am and the bidders Shall be free to write to the accounting officer after the award of the tender as the Intent to enter into a contract indicates clearly who won the RFP and the contract value,

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 **SHALL be inclusive in their grand total of the amount indicated in the FORM of tender**

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 income and withholding tax payable to Kenya on the remuneration of resident Experts **SHALL to be inclusive of the Grand total and the amount in the FORM OF TENDER**

26. Conversion to Single Currency

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

27. Abnormally Low Prices

27.1 An Abnormally Low Price is one where the financial price, in combination with other constituent elements of the proposal, appears unreasonably low to the extent that the price raises material concerns with the Procuring Entity as to the capability of the Consulting firm to perform the Contract for the offered price.

27.2 In the event of identification of a potentially Abnormally Low Price by the evaluation committee, the Procuring Entity shall seek written clarification from the firm, including a detailed price analyses of its price in relation to the subject matter of the contract, scope, delivery schedule, allocation of risk 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 reinstate for proposals for the contract based on revised estimates, specifications, TOR, scope of work and conditions of contract.

28.3 If the Procuring Entity determines that the Proposal Price is abnormally too high because genuine competition between consultants is compromised (*often due to collusion, corruption or other manipulations*), the Procuring Entity shall reject all Proposals and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before re-inviting for proposals.

29. Combined Quality and Cost Evaluation

a. Quality and Cost Based Selection (QCBS) Method

29.1 In the case of Quality and Cost Based Selection (QCBS), the total score is calculated by weighting the technical and financial scores and adding them as per the formula and instructions in the Data

Sheet. The Consultant that achieves the highest combined technical and financial score will be notified and invited for negotiations.

b. Fixed Budget Selection (FBS) Method

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

c. Least Cost Selection (LCS) Method

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

d. Combined Technical and Evaluation Report

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

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

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

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

31. Standstill Period

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

D. NEGOTIATIONS AND AWARD

32. Negotiations

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

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

32.3 Availability of Key Experts

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

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

32.5 Technical negotiations

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

32.6 Financial negotiations

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

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

32.8 Where QBS or CQS methods was used for a *Lump-sum Contract* as indicated in the RFP, the unit rates negotiations shall not take place, except when the offered Key Experts and Non-Key Experts' remuneration rates are much higher than the typically charged rates by consultants in similar contracts or the professional practice. In such case, the Procuring Entity may ask for clarifications and, if the fees are very high, ask to change the rates. The format for (i) providing information on remuneration rates in the case of QB and CQS; and (ii) clarifying remuneration rates' structure under this Clause, is provided in Appendix A to the Financial Form FIN-3: Financial Negotiations – Breakdown of Remuneration Rates. If after the clarifications, the price is still considered too high, the Procuring Entity may terminate the negotiation and invite the next ranked Consultant to open its financial proposal and negotiate the contract.

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

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

33. Conclusion of Negotiations

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

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

34. Letter of Award

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

35. Signing of Contract

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

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

36. Publication of Procurement Contract

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

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

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

37. Procurement Related Complaint and Administrative Review

37.1 The procedures for making Procurement-related Complaints shall be specified in the **TDS**.

37.2 A request for administrative review shall be made in the form provided under contract forms.

SECTION 2 (B). DATA SHEET

Reference to PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS ITC Clause

A. General Provisions

1(j)	Electronic procurement system shall be used: (a) YES
	<p>Electronic – IFMIS VIA NEGOTIATION NO:1461898-2023/2024</p> <p>The Procuring Entity shall use the following electronic-procurement system to manage this Request for Proposal process: IFMIS (WWW.IFMIS.TREASURY.GO.KE)</p> <p>The electronic-procurement system shall be used to manage the following part of the RFP process: ISSUING RFP, SUBMISSIONS OF TECHNICAL AND FINANCIAL PROPOSALS, OPENING OF PROPOSALS, EVALUATION, AWARD AND PAYMENT</p>
2.1	<p>Name of the Procuring Entity: GOVERNMENT OF MAKUENI COUNTY – DEPARTMENT OF WATER & SANITATION.</p> <p>The consultant selection method is:</p> <p>Quality and Cost Based Selection Method (QCBS) []</p> <p>Quality Based Selection Method (QBS) []</p> <p>Least Cost Selection Method (LCS) [X]</p> <p>Consultant Qualification Selection Method (CQS) []</p> <p>Fixed Budget Selection Method (FBS) []</p> <p>Single Source Selection Method (SSS) []</p>
2.2	<p>Financial Proposal to be submitted together with Technical Proposal ONLINE</p> <p>The name of the assignment is: FEASIBILITY STUDY FOR NUNGUNI WATER SUPPLY</p> <p>All local identifiable taxes levied on the contract in voices (such as sales tax, VAT, excise tax, or any similar taxes or levies) and income and withholding tax payable to Kenya on the remuneration of resident Experts SHALL to be part of the Grand total and the amount in the FORM OF TENDER</p>
	<p>All local identifiable taxes levied on the contract in voices (such as sales tax, VAT, excise tax, or any similar taxes or levies) and income and withholding tax payable to Kenya on the remuneration of resident Experts SHALL to be part of the Grand total and the amount in the FORM OF TENDER</p>
2.4	A pre-proposal conference will be held: NO
	There SHALL Not be pre-tender Conference

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
3.3 (iv)	NOT APPLICABLE
4.1	NOT APPLICABLE
6.2	Maximum number of members in the Joint Venture (JV) shall be: NOT APPLICABLE
6.6 (a)	The list of debarred firms and individuals is available at the PPRA's website www.ppra.go.ke
6.7	The business will be registered with NOT APPLICABLE
B. Preparation of Proposals	
10.1	<p>The Proposal shall comprise the following: ONLINE SUBMISSION VIA IFMIS NEGOTIATION NO: 1461898 2023/2024</p> <p>The e- Technical Proposals Power of Attorney to sign the Proposal TECH-1: Technical Proposal Submission Form TECH-2: Consultant's Organization and Experience TECH-3: Comments and Suggestions TECH-4: Description of Approach, Methodology and Work plan TECH-5: Work Schedule and Planning for Deliverables TECH-6: Team Composition, Assignment, and Key Experts' Input TECH-7: Mandatory Documentary Evidence</p> <p>AND</p> <p>2nd The e-financial Proposal with:</p> <ol style="list-style-type: none"> (1) FIN-1: Financial Proposal Submission Form (2) FIN-2: Summary of Costs as per attached Price Schedule (3) FIN-3: Breakdown of Remuneration (4) FIN-4: Breakdown of Reimbursable Expenses
11.1	Participation of Sub-consultants, and Key Experts in more than one Proposal is NOT permissible:
12.1	Proposals must remain valid for 140 days after the proposal submission deadline.
13.1	<p>Clarifications may be requested no later than 19th February, 2024 days prior to the submission deadline.</p> <p>The contact information for requesting clarifications is: CHIEF OFFICER – WATER & SANITATION E-mail: co.water@makueni.go.ke</p>
14 (b) (do not use for Fixed Budget method)	NOT APPLICABLE

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
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14 (c) and 26.2 [use for Fixed Budget method]	The total available budget for this Fixed-Budget assignment is: Ksh. 2,088,000 inclusive of taxes). Proposals exceeding the total available budget will be rejected. <i>[Quoted Prices, MUST be inclusive, indicate taxes should be included before the amount transferred in the Form of tender</i>
14 (d)	Key Experts shall not appear in more than one proposal: YES
16.1(b)	The Financial Proposal SHALL include the following reimbursable expenses

16.2	No price adjustment SHALL apply to the remuneration rates and other rates within the tender validity period
16.3	“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
16.4	The Financial Proposal shall be stated in the following currencies: KENYA SHILLINGS The Financial Proposal should state local costs in Kenya Shillings: YES

C. Submission, Opening and Evaluation

17.1	The Consultants SHALL submit their Proposals electronically via the IFMIS PORTAL NEGOTIATION NO. 1461898- 2023/2024 ONLY
17.5	The Consultant must submit: ALL PROPOSALS VIA IFMIS NEGOTIATION NO. 1461898-2022/2023 Technical and Financial Proposals SHALL be submitted electronically via the IFMIS PORTAL
18.5	The Proposals must be submitted no later than: Date: THURSDAY 22nd February, 2024. Time: 10:00HRS The Proposal submission address is: IFMIS NEGOTIATION NO. 1461898 2023/2024

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
20.1	<p>Only E-opening of the Technical Proposals SHALL take place as the IFMIS SYSTEM Shall automatically close the RFP at 10.00 AM eat on THURSDAY 22nd February,2024 and no other bidder may submit after the closing.</p> <p>The opening shall take place at: Floor Number 5th floor County Commissioners Building Room number 535 City:Wote_ County: Makueni Country: Kenya Date. THURSDAY 22nd February ,2024 Time: 10:00HRS</p>
20.2	<p>The summary of the bidders who have submitted their bids SHALL be printed but is Shall not indicate the Financial or quoted amount as that Shall be done the evaluation team</p>
22.1	<p>Other eligibility and mandatory criteria shall be: AS STATED IN FORMTECH-7: MANDATORY SUPPORT DOCUMENTS AND THE EVALUATION CRITERIA</p>

The Criteria, sub-criteria, and point system for the evaluation of the Technical Proposals:
[Note to Procuring Entity: Allocation of points shall be within the range provided for each criteria and sub-criteria] Points

(I) Specific experience of the Consultant, as a firm, relevant to the Assignment: (Maximum 3 Projects) [0 - 10]

(ii) Adequacy and quality of the proposed methodology, and work plan in responding to the Terms of Reference (TORs):

(a)	Technical approach and methodology	20	MARKS
(b)	Work plan	15	MARKS
(c)	Organization and staffing	15	MARKS
(d)	Total points for criterion (ii):		50 MARKS

[Notes to Consultant: The Procuring Entity will assess whether the proposed methodology is clear, responds to the TORs, work plan is realistic and implementable; overall team composition is balanced and has an appropriate skill mix; and the work plan has right input of Experts]

(iii) Key Experts' qualifications and competence for the Assignment:

{Notes to Consultant: each position number corresponds to the same for the Key Experts in Form TECH-6 to be prepared by the Consultant}

- a) Position K-1: Civil engineer
- b) Position K-2: Water Engineer
- c) Position K-3: Electromechanical engineer
- d) Position K-4; Water resource expert
- e) Position K-5: Environmental and social expert
- f) position K-6: Hydraulics Engineer
- g) Position-K-7 Surveyor
- h) Sociologist/RAP Specialist
- i) Economist/Financial Analyst
- j) Land Economist

Total points for criterion (iii): [30 -60] MARKS

The number of points to be assigned to each of the above Key Experts positions shall be determined considering the following three sub-criteria and relevant percentage weights:

- (1) General qualifications (general education, training, and experience): 10 - 30%
 - (2) Adequacy for the Assignment (relevant education, training, experience in the sector or similar assignments): 60%
 - (3) Relevant experience in Kenya (working level fluency in local language(s)/knowledge of local culture or administrative system, government organization, etc.): 10 %
- Total weight: 100%**

23.4	Only online opening of the Financial Proposals is offered:
25.2	<p>For the evaluation, the Procuring Entity will include separate items of: (a) all local identifiable indirect taxes such as sales tax, excise tax, VAT, or similar taxes levied on the contract's invoices; and (b) all additional local indirect tax on the remuneration of services rendered by experts.</p> <p>If a Contract is awarded, at Contract negotiations, all such taxes will be discussed, finalized using the itemized list and included in the Contract amount as a separate line, also indicating which taxes shall be paid by the Consultant and which taxes are withheld and paid by the Procuring Entity on behalf of the Consultant.</p>
26.1	<p>The single currency for the conversion of all prices expressed in various currencies into a single one is: KENYA SHILLINGS</p> <p>The official source of the selling exchange rate is: CENTRAL BANK OF KENYA</p> <p>The date of the exchange rate 22nd February,2024</p>
29.1 (QCBS only)	<p>The lowest evaluated Financial Proposal (Fm) is given the maximum financial score (Sf) of 100.</p> <p>The formula for determining the financial scores (Sf) of all other Proposals is calculated as following: $Sf = 100 \times Fm / F$, in which "Sf" is the financial score, "Fm" is the lowest price, and "F" the price of the proposal under consideration.</p> <p>The weights given to the Technical (T) and Financial (P) Proposals are: T = 0.7 (70 %) [<i>Insert weight between 0.70 and 0.85</i>], and P = 0.3 (30 %)</p> <p>Proposals are ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) as following: $S = St \times T\% + Sf \times P\%$.</p>
31	<p>The Standstill Period shall be: 14 days</p> <p>The procedures for making a procurement related complaint are detailed in the Public Procurement and Asset Disposal Act and Regulations. If a Consultant wishes to make a procurement related complaint or appeal, the Consultant shall submit its complaint to the Public Procurement Administrative Review Board.</p>
D. Negotiations and Award	
32.1	<p>Expected date and address for contract negotiations: Date 5th MARCH,2024 Address: 78-90300 MAKUENI</p>
35.2	<p>Expected date for the commencement of the Services: Date: 30th MARCH,2024</p>

36.1	<p>The publication of the contract award information following the completion of the contract negotiations and contract signing will be done as following: The publication will be done within 7 DAYS after the contract signing.</p>
37.1	<p>The procedures for making a Procurement-related Complaints are detailed in the “Regulations” available from the PPRA Website www.ppra.go.ke or email complaints@ppra.go.ke. If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to:</p> <p>For the attention: ENG <i>David M.Makau</i></p> <p>Title/position: <i>Chief officer</i></p> <p>Procuring Entity: <i>Government of Makueni County</i></p> <p>Email address: co.water@makueni.co.ke</p> <p>In summary, a Procurement-related Complaint may challenge any of the following:</p> <ul style="list-style-type: none"> (i) the terms of the Tender Documents; and (ii) the Procuring Entity’s decision to award the contract.

PRELIMINARY EVALUATION CRITERIA

No.	Mandatory Support Documents	Compliance
1.	Attach a Copy of Certificate of Incorporation/Certificate of Registration	Must meet Requirement
2.	Attach Legible Copy of Valid KRA Tax Compliance Certificate	Must meet Requirement
3.	The written confirmation of authorization to sign on behalf of the Tenderer – Attach a Letter of Power of Attorney Signed By The Commissioner of Oaths addressed to The Chief Officer, Department of Water & Sanitation P.o Box 78-90300 Makueni	Must meet Requirement
4.	Attach an Advocate (Commissioner of Oaths) Certified copies of national identification cards and CR12 of Company’s Director(s)	Must meet Requirement
5.	Attach fully filled, Signed and Stamped SELF-DECLARATION FORMS: FORM SD1 & FORM SD2	Must meet Requirement
6	Attach a fully filled, signed and Stamped TECHNICAL PROPOSAL SUBMISSION FORM	Must meet Requirement
7.	Attach fully filled, Signed and Stamped DECLARATION AND COMMITMENT TO THE CODE OF ETHICS	Must meet Requirement
8.	FINANCIAL PROPOSAL - STANDARD FORMS a) FIN-1 Financial Proposal Submission Form b) FIN-2 Summary of Costs c) FIN-3 Breakdown of Remuneration	Must meet Requirement
9.	Attach a fully filled, signed and Stamped CERTIFICATE OF INDEPENDENT PROPOSAL DETERMINATION	Must meet Requirement

NOTE: Any bidder who does not meet the above Preliminary criteria SHALL be declared non-responsive

**TECHNICAL EVALUATION CRITERIA
PASS MARK 70/90**

	PARAMETERS	POINT AWARD
Item	Description	
1.	CONSULTANT'S EXPERIENCE	
	<p>Specific experience of the Consultant, as a firm, relevant to the Assignment:</p> <p>a. Attach copies of consultancy services Contracts signed and stamped as prove for Projects of similar nature, complexity and magnitude in the last 4 years of value not less than Ksh. 1,000,000 (One Million Kenya Shillings)</p> <p>(Each Signed Contract is 3 MARKS) Minimum Contracts 2</p> <p>b. Make a table in your organization letter head indicating the Clients name & Postal Address ,value of the Consultancy Services ,period undertaken and Contact person name and mobile number (4 marks)</p>	10 Marks
2.	DESCRIPTION OF TECHNICAL APPROACH, METHODOLOGY, AND WORK PLAN	25Marks
	<p>(a) Attach a signed and stamped Gantt Chart showing the Period to be undertaken to undertake the Consultancy – 90days (15marks) Over 90-120 days (7 marks) Over 120 days (0marks)</p> <p>(b) Attach a clear Method of data collection and analysis (10 marks)</p>	

3.

KEY EXPERTS’ QUALIFICATIONS AND COMPETENCE FOR THE ASSIGNMENT

**40
Marks**

ORGANIZATIONAL STAFFING

- I. General qualifications (general education, training, and experience)
- II. Adequacy for the Assignment (relevant education, training, experience in the sector or similar assignments)
- III. Relevant experience in Kenya (working level fluency in local language(s)/knowledge of local culture or administrative system, government organization, etc.)

Position K-1: Civil engineer- 7 Marks

Position K-2 Water Engineer-6 marks

Position K -3 Electromechanical Engineer-5 marks

Position K-4 Hydrologist-4 marks

Position K-5: Surveyor - 4Marks

Position K-6: Sociologist/Rap Specialist – 4Marks

Position K-7; Environmental and social expert -5Marks

Position K-8: Economist/Financial Analyst-3 marks

Position K-8: Land Economist-2 marks

Profession	Number	Minimum Qualification	Duty
Registered Civil Engineer	1	<p>Minimum 4 months input</p> <p>Must be a Bachelors’ Degree in Civil engineering, a Masters’ Degree in the same field will be of advantage, Registered Professional Engineer with at least 15 years’ experience in the field of civil engineering (with bias in water and sanitation) and not less than 8 years’ experience in a similar position. Should have worked in at least two previous assignments in a similar position.</p> <p>EBK number -Certificate should be attached and SHALL be validated during evaluation</p>	Team leader:

Water Engineer	1	<p>Must be Registered Professional Engineer with at least 10 years' experience in the field of civil engineering (with bias in water and Sanitation) and not less than 5 years' experience in a similar position. Should have worked in at least two previous assignments in a similar position</p> <p>EBK number -Certificate should be attached and SHALL be validated during evaluation</p>	
Electromechanical engineer	1	<p>Must be a holder of a master's degree in electrical, electromechanical engineering or equivalent with 10 years' experience in electrical/electromechanical engineering and 8 years' experience in electrical/electromechanical in water supply and waste water projects. Must be a registered Professional Electrical/Electromechanical Engineer.</p>	
Hydrologist	1	<p>Must be a holder of bachelor's degree in water resources management or related field, with a minimum of 8 years relevant professional experience. Must have specific experience in large dams' hydrological studies and licensed by the Ministry of Water as a Water Sector Professional, Hydrologists Category</p>	
Surveyor	1	<p>The Surveyor shall have a minimum BSC degree qualification in surveying; Shall be a professional and licensed</p>	

		surveyor by a recognized body with proven experience in the engineering surveying; shall have a minimum of 10 years overall experience and 6 years specific experience water infrastructure development work. Must have expertise in GIS for surveying and mapping	
Sociologist/ RAP Specialist	1	Demonstrate understanding of the assignment with at least 8 year relevant experience	
Sociologist/ RAP Specialist	1	Demonstrate understanding of the assignment with at least 8 year relevant experience	
Environmental Expert	1	Must be registered with NEMA or other relevant body as a lead expert and must possess at least 7 years' experience of practice	
Economist/Financial Analyst:	1	Must be registered with a relevant professional body ICPAK and the CPA number clearly indicated and possess at least 8 years' relevant experience	Preparation of budget and cost estimates
Land Economist	1	Must be a holder of a Bachelor's Degree in Land Economics. Must be registered with a relevant professional body and possess at least 5 years' relevant experience.	

Consultant to attach:

- a) **Academic Certificates** {Consultant to insert copies of the required relevant academic certificates relevant to the assignment for all the key experts}
- b) **Professional Certificates** {Consultant to insert copies of professional certificates and relevant short-term trainings to demonstrate professional qualifications for all the key experts}
- c) **Professional Membership of Key Experts** {Consultant to insert copies of professional membership certificate for its key experts}

4.	<p>FINANCIAL EVALUATION</p> <p>a. Attach signed and stamped Legible Audited financial statements for 2022 and the ICPAK number of the Audit firm or Auditors Should clearly be indicated (7marks)</p> <p>b. A letter of credit from the Bank Issued within the Last 12 Months and clearly stating the amount of credit the company may access (2marks)</p> <p>c. Attach a copy of signed and stamped Bank statement from 1st February ,2023-31st January,2024 with a cash flow of above Ksh. 1,000,000 . Each month attached is 0.5 mark (Total 6 marks) Cashflow less than Ksh. 500,000 (0 marks)</p>	15 MARKS
		90

NOTE : Any Bidder who Does not Score 70/90 in the technical analysis shall not be considered for further Evaluation

SECTION 3. TECHNICAL PROPOSAL – STANDARD FORMS

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

1. FORMTECH-1: TECHNICAL PROPOSAL SUBMISSION FORM

{Location, Date}

To: **GOVERNMENT OF MAKUENI COUNTY – DEPARTMENT OF WATER & SANITATION**
P.O. BOX 78 – 90300
MAKENI

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 **electronically via the IFMIS PORTAL.**

{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 anticompetitive 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.
- (e) Except as stated in the ITC12 and Data Sheet, we undertake to negotiate a Contract on the basis of the proposed Key Experts. We accept that the substitution of Key Experts for reasons other than those stated in ITC Clause 12 and ITC Clause 29.3 and 29.4 may lead to the termination of Contract negotiations.
- (j) Our Proposal is binding upon us and subject to any modifications resulting from the Contract negotiations.
- (k) We understand that the Procuring Entity is not bound to accept any Proposal that it receives.

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

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

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

2. CERTIFICATE OF INDEPENDENT PROPOSAL DETERMINATION

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

_____ *[Name of Procuring Entity]*

for: *[Name and number of tenders]* 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, whichever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph(5)(b) above.

Name _____

Title _____

Date _____

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

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

(Appendix shall not be modified) **Purpose**

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

Requirements

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

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

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

direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer.

- (8) Incompliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:
- a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
 - i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - ii) “fraudulent practice” is any act or omission, including misrepresentation, that knowingly or

- recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
- iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - v) “obstructive practice” is:
 - i) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
 - ii) Acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3e. below.
- b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:
- "fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tenders submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.
- c) Rejects a proposal or award¹ 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, subcontractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
 - d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or debar or recommend to appropriate authority (ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;
 - e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect² all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and
 - f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a “Self-Declaration Form” as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

¹ For the avoidance of doubt, a party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in A consultancy, and tendering, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and(ii) entering into an addendum or amendment introducing a material modification to any existing contract.

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 thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.

3. 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 **2 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 [KES, US\$ etc.]:
Country:	Duration of assignment (months):
Name of Procuring Entity:	Total N ^o of staff-months of the assignment:
Contact Address: Email:	Approx. value of the services provided by your firm under the contract:
Start date (month/year): Completion date:	N ^o 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. FORMTECH-3: COMMENTS AND SUGGESTIONS

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

A - On the Terms of Reference

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

K-3																			
N																			
														Subtotal					
NON-KEY EXPERTS																			
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

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

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

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

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

Period	Employing organization and your title/position. Contact Infor for references	Country	Summary of activities performed relevant to the Assignment
[e.g., May 2011-present]	[e.g., Ministry of, advisor/consultant to... For references: Tel...../e-mail.....; Mr., deputy manager]		

Membership in Professional Associations and Publications: _____

Language Skills (indicate only languages in which you can work): _____

Adequacy for the Assignment:

Detailed Tasks Assigned on Consultant's Team of Experts:	Reference to Prior Work/Assignments that Best Illustrates Capability to Handle the Assigned Tasks
{List all deliverables/tasks as in TECH- 5 in which the Expert will be involved}	

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

phone.....) Certification:

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

Name of Expert	Signature _____	Date _____ { day / month/year }
----------------	-----------------	------------------------------------

Name of authorized Representative of the	Signature. _____	Date _____
--	------------------	------------

Consultant (the same who signs the Proposal

8. FORMTECH-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]

- d) Certificate of Incorporation/Certificate of Registration

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

- e) 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}

- f) Practicing 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}*

- g) 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}

- h) Academic Certificates

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

- i) Professional Certificates

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

- j) Professional Membership of Key Experts

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

- k) Certificate of Independent Proposal Determination

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

FORM TECH - 8: SELF-DECLARATIONFORMS

FORM SD1

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

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

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

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

Bidder Official Stamp

FORM SD2

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

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

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

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

Bidder Official Stamp

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.....

Email.....

Name of the Firm/Company.....

Date.....

(Company Seal/ Rubber Stamp where applicable)

Witness

Name

Sign.....

Date.....

Seal or stamp

SECTION 4. FINANCIAL PROPOSAL - STANDARD FORMS

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

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

FIN-1 Financial Proposal Submission

Form FIN-2 Summary of Costs

FIN-3 Breakdown of

Remuneration FIN-4

Reimbursable expenses

FORM FIN-

1: FINANCIAL PROPOSAL SUBMISSION FORM

..... {Location, Date}

To: **GOVERNMENT OF MAKUENI COUNTY –
DEPARTMENT OF WATER & SANITATION
P.O BOX 78 – 90300
MAKUENI**

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*}

FORM FIN-

{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: SUMMARY OF COSTS

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

3A: BREAKDOWN OF REMUNERATION

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

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

BILL OF QUANTITIES FOR FEASIBILITY STUDY FOR NUNGUNI WATER SUPPLY

KILUNGU WARD - KAITI SUB COUNTY

NB: Rates and prices in the BoQ shall include value of the work described under the item and shall cover all over heads charges and profits.. Contract to be paid as per actual works done.

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
	BILL NO 1: CONSULTANCY WORKS				
	Professional Remuneration for both Key and Non-Key experts as enlisted below:				
	<i>Key Experts: Team leader(Civil Engineer),Assistant Team Leader(Water Engineer, Electromechanical Engineer, Water Resource Expert, Environmentalist/Sociologist and Survey/GIS expert</i>	Lump Sum			
	<i>Non-Key Experts: Financial Analyst, Geologist, Land Economics and Assistant project Engineer</i>				
	Mobilisation of staff to and from site (Road Travel)	Lump sum			
	Hydrogeological Survey / Geological Survey (Geotechnical Acquisition)	Lump sum			
	Map purchase and digitizing	Lump Sum			

	County Technical Staff, Community and Social engagements	Lump Sum			
	TOTAL FOR CONSULTANCY WORKS				
	MAIN SUMMARY				
	CONSULTANCY WORKS				-
	SUB TOTAL 1				
	Add 16% VAT				-
	Grand Total carried to form of Tender				-

SECTION 5. TERMS OF REFERENCE

a) *to the Consultant by the Procuring Entity:*

_____ [List / specify]

b) *Professional and support counterpart personnel to be assigned by the Procuring Entity to the Consultant's team: _____ [list/specify]*

[Sample outline:

2. *Background*__

3. *Objective(s) of the Assignment* _____

4. *Scope of Services, Tasks (Components) and Expected Deliverables*

Brief outline [indicate if downstream work is required]

[indicate if training is a specific component of the assignment] Etc.

5. *Team Composition & Qualification Requirements for the Key Experts (and any other requirements which will be used for evaluating the Key Experts under Data Sheet 21.2 of the ITC). Please make sure that the specific key positions are clearly identified and the minimum academic education, professional qualification, training, experience and professional memberships are articulated for each position.*

PositionK-1: Team Leader/Lead

Consultant: *Position K-2: [Insert*

position title] Position K-3: [Insert

position title] PositionK-4: [Insert

position title], Position K – (5 Insert

position title], Position K – (6 Insert

position title], Position K – (7 Insert

6. *Reporting Requirements and Time Schedule for Deliverables*

[At a minimum, list the following: format, frequency, and contents of reports; number of copies, and requirements to electronic submission. Final reports shall be delivered in soft copy in addition to the specified number of hardcopies; dates of submission; persons (indicate names, titles, submission address) to receive them; etc.

7. *Procuring Entity's Input and Counterpart Personnel*

Services, facilities and property to be made available



DEPARTMENT OF WATER & SANITATION

P.O BOX 78 – 90300, MAKUENI

Website: www.makueni.go.ke

Email: water@makueni.go.ke

Section 2-Terms of Reference

Terms of Reference (TOR)

for

Consultancy Services

For

**Carrying Out Feasibility Study, Preliminary Design
and Detailed Designs for the Proposed Nunguni
Town Water Supply**

in

Kaiti Sub County

Makueni County.

Abbreviations

D&B	Design and Build
DMA	District Metering Areas
EMP	Environmental Management Plan
Eoi	Expression of Interest
ESIA	Environmental & Social Impact Assessment
FS	Feasibility Study
GMC	Government of Makueni county
MWI	Ministry of Water and Irrigation (Kenya)
NEMA	National Environmental Management Authority
NG	National Government
NRW	Non-Revenue Water
O&M	Operation and Maintenance
PIT	Project Implementation Team
RAP	Resettlement Action Plan
RFP	Request for Proposals
SCADA	Supervisory Control And Data Acquisition
SPA	Service Provision Agreement
ToR	Terms of Reference
WASREB	Water Services Regulatory Board
WRA	Water Resource Authority
WS	Water Supply
WS&S	Water Supply and Sanitation
WWDA	Water Works Development Agency
WSP	Water Service Provider
WSTP	Water Sector Trust Fund
WTP	Water Treatment Plant
NOLWASCO	Noltureshi Water and Sanitation Company Ltd

Terms of Reference

Consultancy Services

For

Carrying Out

“Feasibility Study, Preliminary Design and Detailed Designs for the Proposed Nunguni Town Water Supply in Kaiti Sub County; Makueni County.

1.1 General Background

The Government of Kenya (GOK) has recognized the need for comprehensive water sector institutional reforms and increased investments in the water supply and sewerage sector in order to remove the bottlenecks to achieving its poverty reduction objectives.

In this regard the GOK has been formulating clear policies and strategies geared towards addressing the fragmented institutional framework and devolved units for service delivery. The Water Act (2016) was aimed at providing for harmonized and streamlined management of water resources, water supply and sewerage services at the National and County Government levels, while appreciating their roles in the water sector. It calls for the country wide implementation of a uniform service delivery institutional framework and clarifies the new mechanisms and roles of the various actors within that framework.

Responsibility for infrastructure development and the provision of services lies with both the County Governments and NG through the Water Works Development Agencies.

A review on the policy has introduced the Public Private Partnership at both levels of Government in development of water projects. Under this law, CGs/WWDA would contract out water delivery services to Water Services Providers that can be public or private entities dedicated to water service provision. Sector regulation is being provided by Water Services Regulatory Board (WASREB).

1.2 The Client’s Background Information

Makueni County is subdivided into 6 sub counties: Kaiti, Mbooni, Makueni, Kilome, Kibwezi East and Kibwezi West.

Government of Makueni County plans to implement a new water project serving the rural and urban areas surrounding Nunguni Market in Kilungu Ward in Kaiti Sub County through development of water sources and distribution. GMC will be the project promoter and will manage the implementation of the project, including signing all the necessary works, services and contracts needed to implement the project. The first step in the project is to carry out a Feasibility Study of the proposed works and the GMC has agreed to finance this Feasibility Study.

2.1 Project Background and Location

Nunguni Town is located in Kaiti Sub Location, Kithembe Location, Kilungu division, Kilungu sub county, Makueni County and falls in the South Eastern Kenya with a Semi-Arid climatic conditions. It is located at the highest point of Kilungu hills. In the dispensation of devolved governance, the town is experiencing significant growth and development. Due to the growing population, Nunguni town and its environs have been faced with persistent water consumption shortages. The growth of the town and lack of water infrastructure development has led to the increased intensity of water shortage.

The area is faced with serious water shortfall in the near future, at which point the existing water sources which are already overstretched may be obsolete. Water vending has become a booming business as the precious commodity gets scarce by the day. This water shortage will continue increasing in respect to the rapid expansion of the town and its populace.

Therefore, the basic goal of the Water Supply Project is to supply clean drinking water demanded by the ever growing towns and to fill the water availability shortfall faced by these towns and their populace.

2.2 Description of Project Area

Nunguni being located at the top of range of Kilungu hills, surface water supply development is of essence. This is because the potential of ground water is limited as the aquifers present are in their youthful stages.

The project area constitutes of two respective Sub Wards; Kithembe and Kikoko with an approximate surface area of 39.0 Km² and has a population of 60,952.

2.2.1 Location and Climate

The climate of the Athi River sub-basin is spatially and seasonally variable. The climate of the project area is heavily influenced by its geographical location and altitude.

Like the rest of Makueni County, the project area receives relief and convectional rainfall, with moderate temperatures of 27°C and high evaporation rates. The temperature ranges between 30°C and 22°C. The county experiences two rainy season: between March and June, and October and December. The driest season is mostly from July to September. The variations in the temperatures and rainfall are mainly determined by the altitude of the place and the sea winds.

2.2.2 Physical and Topographical Features

The geographical expanse ranges from about 1470m above sea level to about 201m at the highest point next to Nunguni Market. It is characterized by hilly topography.

2.2.3 Land Use and Cover

The most dominant land use types within the project region include arable farming and livestock keeping.

2.2.4 Economic Activities

The main economic activity in the area is agriculture, given that these are basically rural economies. People grow food crops (Green grams, Maize, Beans, among others). They also rear indigenous cattle.

There are also market centres in the region. They present a mixed bag of economic activities, bringing an urban economy with small jua-kali industries and commercial activities. The main commercial activities include retail and wholesale shops, restaurants, petroleum products outlets and schools.

2.3 Current Water Supply in the Project Area

2.3.1 Current Water Supply

The region is not served by any Water Service Provider. There also exist small community water projects such as dams, borehole projects and they supply mostly untreated and inadequate water. Therefore, it is for these reasons that the stakeholders would want the project to be implemented.

With increasing population, the current surface flows will soon be overstretched and search for alternative water source will be inevitable. There is hence need to replace such schemes alongside pumped ones since the reliability of water sources is in question. The proposed Nunguni Water Supply Project intends to supply treated water with an aim of both utilizing the existing infrastructure, provision of adequate capacity and potable water as well as expanding the command zone.

2.3.2 Challenges in the Current Water Supply Situation

- **Inadequate water supply to the area.** The current water supply capacity is 70 m³/day and is supplied from Inyonywe BH/Nunguni Water Project. The present 2023 water demand of the town is 500m³/day. The demand is even higher when the satellite markets as well as community in the environs is considered.
- **High Operational and Maintenance Costs.** Parts of the current water supply scheme have served its useful time, say 20years. There has been little input in terms of rehabilitation or water supply augmentation support in the area. As such, the water supply infrastructure has since aged. Water bursts are currently faced when water supply is enhanced and even more will be experienced once additional supply is realized.

3 Current Sector Responsibilities

3.2 The Water Sector

The Water Act 2016 implied a profound change in the sector setup as per earlier Water Act 2002, where the mandate of the Ministry of Water was limited to policy formulation. Water Sector institutions have been set up and given legal mandates. These institutions include:

- Water Services Regulatory Board (WASREB) - regulation of water services.
- Eight Water Works Development Agencies (WWDAs) - asset holding and development.
- Water Sector Trust Fund (WSTF) - pro-poor water sector basket fund.
- Water Resources Authority (WRA) - WRM and development.
- Water Service Providers (WSPs) - provision of Water Services

The regulatory role of the WASREB include: (i) Issuing licenses, (ii) Setting service standards, (iii) Providing guidelines for setting tariffs, (iv) Providing mechanisms for handling complaints.

As per Water Act 2016, the responsibilities devolved to the counties is the water service provision and development of water infrastructure, however the WWDAs are still responsible for asset development of water services with national government input.

Asset ownership and development is to be devolved to the Counties and hence the WSPs. The exception is any project which is designated a “national (water) public works” by the Cabinet Secretary. These “national” projects would be implemented and owned by the Water Works Development Agencies and are ones that: (i) Involve water resource development across Counties, (ii) Include any national funding, and (iii) Are of national relevance or include national functions.

The Ministry of Water and Irrigation (MWI) has an overall sector mandate, and with the change of policy in 2022 to incorporate Public Private Partnership, the county governments in corporation with the Ministry should prioritize water projects to be developed under the PPPs. Under this agreement, the repayment period should be 15 years and hence the need to have sustainable and economically viable projects for investment.

The Government of Kenya’s (GOK) National Water Policy (1999) envisaged 100% access to safe water for the country’s population by 2030.

3. Objective of the Present Consultancy Service

The key objective of the assignment is to develop Detailed Studies for Nunguni Town Water Supply Project. It should include project plan where it clarifies the timing, sequencing and coordination of activities in the implementation plan of all civil works leading to full implementation of the water supply development for the Nunguni Town and its environs. Another objective of the assignment is to assist The County Government and the stakeholders in adjusting the Environmental and Social Management Framework to specify sufficient safeguard policy measures for effective mechanisms to ensure its implementation.

4 Proposed Project

4.2 Project Justification and Objectives

Following devolution, the area is experiencing urban developments as well as attracting development of educational institutions. As a result, the existing water supply is overstretched.

The water system is already suffering from problems maintaining its design flow due to lack of investment in replacement pumps and other mechanical and electrical systems due to tear and wear. High costs of production also pose a major challenge to the community run schemes hence the need of a more reliable and sustainable water systems

The primary objective of the project is to provide potable and adequate water supply to the residents of supply area. The water supply would provide for domestic, livestock, institutional and industrial uses. Provision of irrigation water is to be considered as secondary objective. The proposed project will also contribute to enhanced hygiene and sanitation. This will also reduce the dependence on rain water as well as contribute towards alleviation of poverty within the area through utilization of time used in search of water to other economic activities.

4.3 Nunguni Water Supply Project

The general scope of the project is to construct a Water Scheme harvesting water from River/Streams (dependent on the option to be chosen), undertake full treatment processes, Pump water to raised place (Nunguni hill), implement gravitable water supply system to all targeted areas and supply the surrounding areas through minimal pumping systems. This will also include feasibility study for development of a dam for the water storage as an option for source development. The locality of Nunguni hill favors water supply to the Nunguni market and its environs conveniently through gravity distribution systems.

The specific scope is as follows.

4.4 Construction of Nunguni Water Supply Project

The project will for a reliable and safe water source. The Project work will comprise of:

- Source development (including feasibility for a dam)
- Construction of Treatment Works
- Pumping works required in the entire project
- Construction of clear water rising main
- Construction of Storage/distribution tanks
- Zoning water demands and doing the most suitable gravity distribution lines to all targeted areas

The FS consultants for the Water project will need to ensure that the proposal is viable and prepare outline designs to utilize the gravity supply system.

4.5 Nunguni Water Supply Treatment Plant

The FS consultant will check if the current system is adequate and advise accordingly. This element will be designed to have full production capacity and to improve as much as possible the energy

efficiency of the plant by installation of modern pumping systems. The assumed scope of this work is as follows, but the optimum scope of the WTP is to be evaluated by the FS consultants.

The FS consultants will need to evaluate all civil works involved while taking care of each critical component such as disposal /reuse of backwash water.

4.5.1 Water Storage and Distribution Network

The FS consultant will undertake Topographical survey to establish the best route of the rising mainline coupled with strategic Tee off takes to serve targeted areas. The need for mega storage tank and size of rising and distribution pipelines will be determined by the demand, as well as satellite storage tanks and water kiosks.

The rising mainline is proposed to follow the existing road reserves to reduce way leave compensations.

Based on FS by the consultant, some additional elements that might affect the scope are:

- Installation of bulk meter at the source(s)
- The supply of customer smart meters (in the initial design)
- District meters to allow District Metering Areas (DMAs) to be set up to improve leakage control
- The supply of Non-Revenue Water equipment and training in the use of the equipment
- Rehabilitation of the existing water infrastructure (storage tanks, pipelines and water kiosks).
- Construction of the Project's Data Center, operations and billing office

5 Description of the Consultancy Services

5.2 Main Objective

With the financing from the GMC, the water department intends to engage the services of a competent Consulting Firm to undertake feasibility studies for the development of the proposed project with the objective of preparing a cost effective, sustainable and innovative project.

5.3 Specific Objectives

The objective of the assignment is to undertake all the activities that are required to allow the project to be formally appraised and approved by GMC and to prepare all necessary tender documents for one or more design and build contract to implement the works. The assignment has been divided into 8 tasks which are described in more detail below, but can be summarized as follows:

Task 1 - Data Review & Preliminary Studies. This is the normal inception task but with the added focus of reviewing the current water and sanitation systems. The asset record of the WSP is poor and there has been conflicting reports of the size and type of existing infrastructure as well as its status.

Expected activities under this task

- Mobilize team
- Data collection & analysis
- Planning
- Inception Report & Workshop

Task 2 – Understanding of the Existing Situation and Optioneering Studies. Initial investigation of the range of options for meeting the purposes of the different components at lowest whole life cost, including sample population surveys in the Kilungu ward to better understand the recent population growth and its impact on future water demands.

Expected activities under this task

- Socio-economic & demand estimates
- Evaluation of service area and population that will be served
- Outline¹ design & cost options
- Optioneering workshop

Task 3 – Surveys. All the surveys needed to prepare Concept Designs and any additional level of detail from the surveys that may be advantageous either to GMC for their wider purposes or to the D&B bidders.

Expected activities under this task

- Topographical
- Geotechnical
- Mechanical & electrical surveys of existing works
- Socio-economic

Task 4 - Feasibility Study. This substantial task covers the preparation of Concept Designs and cost estimates.

Expected activities under this task

- Concept design
- Drawings
- Cost estimates
- Feasibility Study Report

Task 5 – Environmental and Social Impact Assessment (ESIA). As required by Kenyan regulations and as need to obtain environmental approvals for the project.

Expected activities under this task

- Baseline surveys
- Social impact consultations
- ESIA Report and NEMA licence

¹ In these ToR “Outline Design” means very high level (not detailed) designs that identify the sizes of the main elements needed for different solutions and allow an initial cost estimate to be made based on unit costs. The term “Concept Design” is used to mean a more detailed design that can be used to specify the scope of works in a design and build (D&B) tender document.

Task 6 – Preparation of Tender Documents. Preparation of a Procurement Plan and the full suite of procurement documents needed for both the Prequalification and Tendering of the contract and the Expression of Interest (EoI) and Request for proposals (RFP) documents for the Construction Supervision Consultants.

Expected activities under this task

- Tender and RFP Docs
- GMC Review the draft documents
- Consultants finalize all documents
 - i. Volume I: Draft Final Design Water Supply Report
 - ii. Volume II: Bill of Quantities with Estimated values; and
 - iii. Volume III: Draft Final Design Water Supply Report - Book of drawings.

Task 7 – Support to GMC during the procurement of the D&B Contractor and the procurement of the Construction Supervision Consultants.

5.4 Innovation Requirement

There is a strong desire from GMC to promote innovative solutions for this project, in particular energy savings. The project will address this in three ways.

a) Innovation from the Feasibility Study Consultants.

Bidders for the Feasibility Study assignment are required to consider innovative ways of arranging and designing the proposed works and in particular to consider how operating costs can be reduced – the bidder’s approach to innovation will form part of the evaluation criteria for the methodology in the Technical Proposals. The feasibility study will look for ways to:

- Reduce net energy requirements, including the potential for renewable energy use at the various sites
- Minimize the whole life cost of the new systems
- Reduce the carbon footprint of the works
- Protect the systems from the impact of climate change.

It is recognized that innovation can be introduced by both the feasibility consultant and the design and build contractor (see below). The role of the feasibility consultant in promoting innovative solutions will be:

- In the overall planning and concept designs for the project, treatment plant and water supply systems
- To ensure that the design and build tender documents allow the contractor scope for innovation in the more detailed aspects of the design.
- To specify minimum efficiency performance specifications in key items of equipment – for example minimum efficiencies for pumping systems

The use of innovative solutions, for example on water treatment processes, needs to be balanced against the risks of introducing untried technologies and the risk of using over complex technologies that WSPs may struggle to maintain.

All Optioneering and concept design decisions are to be based on lowest whole life costs using net present value (NPV) calculated over a 40-year period and including the cost of capital replacements during that period.

b) Ensure Scope for the Contractors to Introduce Innovation.

Traditional design and build contracts use relatively highly developed designs and limit the contractor's design to detailed aspects. In order to promote innovative treatment process solutions but to allow GMC to secure a robust conventional solution if needed and to benchmark potentially widely on varying alternative processes, the Feasibility Study Concept Designs should promote relatively conventional processes.

Bidders will then be able to introduce innovation in two ways: firstly, by providing innovation in the details for the conventional solution designed by the feasibility consultants and secondly they will also be encouraged to put forward alternative designs in addition to a bid for the conventional design.

c) Evaluate Design & Build Tenders on the Basis of Whole Life Costs

Bids will be evaluated on the basis of 80% capital cost and 20% operating costs where the operating costs are the estimated cost of chemicals and power over 10 years' operation at full design capacity. It is assumed that the plant will be operated by respective water service provider both during and after the defects period. Payment to the contractor will include some sort of penalty if the water Treatment Plant does not achieve the tendered operating costs during the first year of operation. The exact nature of this approach will be developed in more detail by the Feasibility Consultants and GMC.

5.5 Scope of Consultancy Services

The scope of the consultancy services is described in detail below.

Two weeks has been allowed for mobilization of the FS Consultants prior to the start of the tasks described below.

5.5.1 Task I - Data Review/ Preliminary Studies and Investigations

The preliminary data review and investigations stage is aimed at collecting information which will form the design basis. This shall entail reviewing all available documents, data, information or studies, including: future development plans for the area; specific studies and current ongoing projects.

The Consultant shall be expected to identify additional data and literature that is pertinent to supporting the undertaking of the assignment. GMC shall make arrangements to help the consultant access such information/data as far as practical.

This task will include an inventory of the entire existing water and sanitation infrastructure in the targeted areas.

The results of this Task, which is expected to last (3) weeks, shall be presented in the Inception Report, forming a basis for further studies and investigations. The services under this Task shall therefore include but not be restricted to critical review of available documentation, data collection

(demographic data, water consumption, rainfall data, and forecast of future developments, among others).

A workshop shall be arranged at this stage, during which the consultant shall present the Inception Report to multiple stakeholders.

5.5.2 Task 2 - Understanding of the Existing Situation and Optioneering

This key task comprises:

- The investigation of populations and demand within the service area, to better understand recent population growth and therefore future water demands
- Estimation of the likely service area and the population that will be served by the project supply network
- Review of GMC capacities for both implementing and operating and maintaining the proposed systems. The output from this task will include proposals for capacity building in implementation, in particular a specification of the staffing, logistics and finance needed in the Project Implementation Team (PIT) and the training needed for O&M.
- Assessment of any supplementary investment that may be needed in the distribution systems over and above the scope of works in this project that may be needed to ensure optimum supply to customers. This activity will include preliminary hydraulic modelling of the water distribution systems
- Whole life costing of options and evaluation of pros and cons of different arrangements
- Possible innovation options such as further waste to energy conversion, energy harvesting from the distribution system, coagulant recovery etc.
- Automation and SCADA, both in the Treatment plants and Water Distribution network
- Organising an Optioneering workshop with GMC and WSPs to discuss and agree the best option(s) to be taken forward to Concept Design stage

5.5.3 Task 3 - Surveys

This important task comprises preliminary surveys and alignments of the project area as required for the preparation of appropriate designs, and suitable location of the facilities, together with recommendations for further investigations, they shall include but not limited to:

- Social studies of the informal settlements and investigation of how best to improve water and sanitation services in these areas. These studies will include willingness and ability to pay (WAP) surveys
- Topographic surveys: The consultant shall undertake topographical surveys focusing on the sites and corridors where civil structures are proposed. Low resolution topographical studies shall be undertaken as part of the options for screening works and shall be presented as part of the report to the value management workshop to be held with the client.
- Mechanical & Electrical Surveys: The consultant shall be expected to carry out detailed M&E surveys of the existing community run schemes to better understand the condition of the existing systems and the performance of the different treatment processes.

- **Geotechnical/Structural Requirements:** The consultant shall carry out preliminary geotechnical and topographical investigations for each of the proposed options. These shall form a basis for further /confirmatory geotechnical investigations based on the proposed designs and the associated structural requirements, during the detailed design stage.

5.5.4 Task 4 - Feasibility Studies: Concept Designs, Cost Estimates and Implementation Plan

The consultant shall thereafter proceed with the more detailed studies and investigations, the results of which shall be presented in the Draft Feasibility Report. The Feasibility Report will include:

- Concept Design drawings and calculations
- Cost estimates, including whole life costs and a breakdown of operating costs into their different elements. Capital costs will be broken down as required and will include a detailed estimate of the taxes and duties that will be payable.
- An implementation plan that includes a programme for implementation and a description of the roles and responsibilities of the different parties involved in implementation. The implementation plan will also include a risk register and risk management plan

The services under this Task shall as such include, but not be restricted to the following;

Design Parameters. The design parameters to be assessed shall include, but not be limited to demographic requirements, future development plans, present and future raw water quantity and quality, design loadings for the water treatment plant, treatment outputs, and engineering designs standards used in the design preparation.

Concept Designs. Preparation of process and hydraulic designs, general layouts, site and system inventories, verification of system schematics and functions, design criteria and formulation of design scenarios/configurations. This activity includes preparing concept level hydraulic models of the proposed water distribution systems in the targeted areas and towns.

Configuration at the Treatment Plant. Agreement with GMC on the layout of the new WTP to take account of (a) phasing (i.e. the land required for future phases) and (b) operational requirements (i.e. number of treatment streams, standby pumps and standby power arrangements).

Monitoring and Control Systems. Proposed flow and pressure metering and other control systems, including water quality testing proposals.

Facilities at the Treatment Plant. Agreement with GMC on the site facilities to be provided at the treatment plant, including offices, laboratories, housing, stores, parking etc.

Commercial Arrangements for reuse or resale of Solar Energy. Analysis of the options for re-use or resale of the solar energy to be generated

Operation & Maintenance Requirements. Details of the O&M requirements for all parts of the works, including: staff numbers and expertise required; operating methodology and proposed level of automation, backwashing arrangements and desludging of tanks; general maintenance approach including anticipated replacement lives of main M&E items; and contingency plans for emergencies.

Preliminary Cost Estimates: The consultant shall prepare robust cost estimates for the major infrastructure and operations for each of the proposed options. The consultant shall in addition carry out life cycle costs, and operational and management requirements, and thereafter undertake an economic and financial analysis to demonstrate the feasibility of the project.

Project Risk Analysis: The consultant shall develop a comprehensive risk analysis for the project. This shall include detailing of risk probabilities, impact assessment matrices, mitigation measures, residual risks and assigning risk owners. The consultant shall financially quantify each risk. The analysis shall include all risks associated with both, construction and operation.

Concept Drawings: The consultant shall be expected to prepare concept drawings for the respective design configurations, which shall be part of the tender documents for the D&B tender.

The results of this Task, which is expected to last 2 and a half (2.5) months, shall be presented in the draft Feasibility Report. A workshop shall be arranged at this stage, during which the consultant shall present the draft Feasibility Report to multiple stakeholders. The consultant shall then be allowed one (1.0) more month to incorporate the comments from the stakeholder review into the Final Feasibility Report.

5.5.5 Task 5 - Environmental and Social Impact Assessment (ESIA)

In order to evaluate and manage the impacts of the project, the consultant shall be expected to carry out a thorough Environmental and Social Impact Assessment (ESIA), undertaken with rigorous scientific analysis and stakeholder engagement, according to GoK regulations. The ESIA shall be expected to incorporate the following;

1) Scoping Phase:

At the scoping phase of the project, the ESIA shall be expected to cover:

- Details of the nature and roles of relevant stakeholders.
- All relevant existing Government Acts and Byelaws
- Existing and potential land uses and forms of land tenure, appropriate governance systems to ensure accountability and social justice, and changes to the infrastructure. This shall include identification of laws, regulations, guidelines, and relevant institutions that govern the conduct of the ESIA.
- Social analysis, including the size and social structure of the local population, their needs, wishes, skills and capacity, and an assessment of the population's health status. This shall involve determination of the geographical extent of project activities, and description of the potentially affected areas.
- Biodiversity resources and cultural heritage assets, especially protected areas and species, and the geology, hydrology, soil quality, water resources, climatology and meteorology of the region. This shall also entail collection of environmental baseline data against which potential impacts are to be assessed.
- Alternative locations for the plant, reservoirs and pipeline routes.

In this phase, the consultant shall be expected to propose a suitable ESIA procedure that entails identification of baseline receptors, identification of key project activities, and impact evaluation and significance ranking, among others.

2) Construction and Post Construction Phase:

For the construction and post construction phase, the ESIA will need to cover:

- Traffic impacts on air, soil and water quality, and health and safety.
- Wastes from construction and overburden, soils and other materials.
- Transitory population increase, especially any potential conflicts.
- Temporary and permanent infrastructure developments.
- Noise, dust and vibration from construction.

For this phase, the consultant shall be expected to determine the positive and negative impacts, direct and indirect impacts, immediate and long-term impacts, unavoidable or irreversible impacts (residual impacts). Wherever possible, the consultant shall describe the impacts quantitatively, in terms of environmental costs and benefits, assign economic values where feasible, characterize the extent and quality of available data, explaining significant information deficiencies and any uncertainties associated with predictions of the impacts. Special attention should be given to public health and sanitation benefits.

For all issues identified, measures for mitigation and reinstatement shall be proposed in the Environmental Management Plan (EMP), on the basis of which the contractor shall be advised on the eventual mitigation measures.

3) Operations Phase:

For the operations phase, the ESIA will need to cover:

- The social impacts, focusing on community well-being, to include public health and safety, the living environment, satisfaction of basic needs (e.g. housing, sanitation, water supply), access to public services (e.g. health, education, training and recreation) and landscape aesthetics.
- Occupational health and safety of workers and contractors, giving special attention to accidents and to the use and storage of explosives and chemicals at the water works.
- Environmental impacts, especially from land use, the use of fossil fuels and raw materials, emissions, noise and vibration, solid wastes, liquid effluents and storm water, and traffic. The ESIA should also describe the environmental management system to be implemented.
- Future land use patterns within the catchment that may have a negative impact on the water quality within the catchment. The consultant shall then be expected to prepare an environmental management plan that details how such shall be addressed.
- The potential impacts of the project during the operational phase shall be expected to include process impacts, waste disposal, operational traffic, land use changes, impact on livelihoods and economic activities, among others. The consultant shall summarize the project process and point out their potential impacts on the environment. Mitigation measures shall then be proposed for all the identified issues, and detailed in the environmental management plan.

Consultation & Environmental Management Plan

As part of the ESIA, the consultant shall undertake detailed stakeholder consultations, inter-agency coordination, and public / NGO participation, among others. The consultant shall as such assist the client in coordinating the ESIA with relevant agencies, consult with groups likely to be affected by the proposed project, and with local NGOs on the environmental and social aspects of the proposed project. Consultations shall be organized for all issues identified as being of material interest to the public. In particular, the consultant shall organize stakeholder consultations concerning the development of this project. Here, the consultant shall identify key stakeholders, provide ample notice and information prior to consultations, identify meeting locations that all stakeholders can reach with reasonable effort, and otherwise reasonably facilitate the public consultations and participation that is free and informed.

The consultant shall develop an environmental management plan (EMP) for project construction, project operation, and catchment protection management, as part of the deliverables. The EMP shall detail the impacts, risk rating, mitigation measures, responsible parties and a monitoring framework during the construction, post construction, and operation phases. Amongst the others, the EMP for the catchment shall entail proposing of the key activities for the catchment protection and associated cost estimates, together with how GMC can influence the implementation of the proposed activities. A stakeholder consultations report shall be expected to be attached as one of the annexes. The consultant shall in the EMP define activities necessary for GMC to meet national environmental, health and safety regulation requirements. The ESIA study shall identify and describe activities appropriate to implement and follow up the mitigation measures defined in the ESIA. Part of these measures or activities shall be recommended for inclusion in the detailed designs and tender documents. Where applicable, the consultant shall recommend suitable clauses to be included in the construction contract to mitigate short-term impacts of construction activities such as noise, smell, dust, etc.

The consultant will be required to nominate/propose an environmentalist/environmental auditor acceptable to the National Environment and Management Authority (NEMA) to participate in the ESIA preparation. The consultant will then be required to prepare all the necessary documentation and have the ESIA report approved by NEMA.

Although this Task has been chronologically listed as Task 5, the consultant is expected to commence on this Task as soon as the consultancy services contract is signed.

As such, the consultant shall be expected to present a preliminary diagnosis of the ESIA (together with the RAP), as part of the Inception Report.

5.5.6 Task 6 - Preparation of Tender Documents

This task covers preparation of a Procurement Plan followed by preparation of prequalification/EoI documents and then tender/RFP documents.

Procurement Plan: It is desirable that the consultant proposes an appropriate procurement and implementation arrangement for the works. The consultant shall evaluate the best way to package the works under one or more build contract, taking into consideration aspects like; works implementation period, technology complexity, and construction costs, among others, on the basis of which the works procurement and subsequent supervision arrangement shall be recommended.

Preparation of Prequalification & Tender Documents: covers all the documentation needed to pre-qualify and tender a contract under a re-measurement payment basis; including the Engineering Specification and Bills of Quantities. The Procurement Plan will propose how the procurement process will be organised, including how evaluations will be done and by who and what the evaluation criteria will be. It will also include the detailed design of the model to be used to evaluate, monitor and manage the joint capital cost - operating cost assessment in the D&B tender.

Preparation of EoI & Request for Proposals (RFP) Documents: covers all documentation needed to procure Construction Supervision Consultants, including requests for Expressions of Interest and for Proposals.

5.5.7 Task 7 - Support to GMC during Tendering

This is a provisional task that would require confirmation by GMC. It covers the provision of procurement support to GMC during the procurement of the D&B Contractor and the Construction Supervision Consultants. GMC will lead and manage the procurement processes, including organising all procurement activities. The role of the FS consultants will be to provide professional advice and support including: advising on bidders queries, attending bidder briefing visits, participating in tender evaluations, and preparing bid evaluation reports. In order to estimate the inputs and costs of this task, bidders should allow for a delay of 1 month from the completion of the Feasibility Study Report to start of the procurement process, during which time no input will be needed from the Feasibility Consultants. After this period, bidders should allow for a 3-month procurement period during which time their support will be required.

5.6 Milestones and Outputs

Task	Milestone (Month end)	Outputs
Mobilization	Month 1 (WK2) 2wks	Consultants on site
1 – Data Review & Preliminary Studies	Month 1 (WK4) 2wks	Inception report including preliminary diagnosis of ESIA and RAP and workshop
2 – Water Quality Monitoring	Month 1 (WK4)	WTP plant gaps clearly Identified
3 – Optioneering	Month 2 (WK5)	Evaluated best option chosen
4 – Surveys	Month 3 (WK 10)	Design data

Task	Milestone (Month end)	Outputs
5 – Feasibility Study	Month 3 (WK10)	Workshops and feasibility study report
6 – ESIA	Month 3 (WK10)	NEMA approval
7 – Tender Documents	Month 4 WK12	Tender documents report
Workshop, comments & finalization	Month 4 WK14	Final documents

6 ORGANIZATION OF THE CONSULTANCY

6.2 Coordination of the Assignment

1. The Chief Officer- Water and Sanitation shall be designated by GMC for this consultancy assignment who will lead the client's Project Implementation Team (PIT). It shall be the Consultant's duty to maintain close contact with the Chief Officer on all aspects of assignment.
2. In order to enhance the local technical skills and experience, it is recommended to integrate the local consultancy/local expertise into project execution.
3. The Consultant is invited to elaborate in his technical offer on envisaged logistical set-up and deployment of the appropriate skills for the execution of study.
4. To familiarize with the services to be provided, a visit to the project area before presentation of proposal is strongly recommended. However, it should be understood that any cost incurred in this regard will not be reimbursed to the Consultant.
5. It has been attempted to outline the Consultant's tasks during execution of his services as detailed as possible. However, the Consultant shall bear in mind that the list of the tasks and activities can by no means be considered as complete and comprehensive description of the Consultant's duties. It is rather the Consultant's responsibility to critically verify the scope of services indicated and to extend, reduce or amend it wherever he deems necessary according to his own professional judgment and the knowledge he will acquire during the preparation of his proposal. It is understood that the Consultant performs all the work as necessary to fulfill the objectives of the Project.
6. The Consultant should therefore identify the team necessary to carry out the assignment and should describe clearly the functions of each team member. A staff organogram for the project should be included as part of submissions. The Consultant is free to propose additional skill as deem as necessary.

6.3 Institutional Framework of the Study

GMC is the official Client. The Consultant is required to collaborate closely with the government staff in the sub county as well as the departmental leadership.

Steering Committee for the study

The steering committee shall be composed of the following stakeholders:

- Government of Makueni County (GMC)
- The Consultant, who will be the Secretariat of the Committee.

The Committee will monitor the progress of works on a participatory basis. It will meet as often as necessary, the suggested pace being on monthly basis.

Documentation and services to be provided by the Client

During the construction period, GMC will provide at no cost except acceptable honoraria for two (2) engineers who will be seconded to the project for hands-on training and to act as immediate contacts.

6.4 Duration of the Consultancy

The duration of the assignment is expected to be in the order of four and half (4½) months, excluding the option for Task 7. The estimated staff months for this phase are 4 staff months for all tasks.

However, it is the responsibility of the Consultant to establish a detailed work program within the above time estimates. The estimated staff-month input should be provided in accordance with his professional judgment and knowledge of the local conditions and need.

6.5 Contribution of the Client (GMC)

GMC will provide free of charge all existing information, data, reports and maps as far as available and will assist the Consultant in obtaining other relevant information and materials from Government institutions and State authorities as far as possible. However, it is the duty of the Consultant to check availability, quality and suitability of this information.

The Consultant has to arrange at his own cost for an adequately furnished office and the necessary office equipment, including communication facilities.

6.6 Manpower Required

The Consultant shall provide a team of well-qualified and experienced professionals as required and appropriate for completion of the Services. The senior professionals shall personally carry out (with any assistance of junior staff deemed appropriate) the Services as described in this TOR.

The Consultant's professional staffing schedule for the project shall be in accordance with his accepted proposal which forms the basis of the Contract – and the proposal shall be substantially responsive to the requirements stipulated in the Request for Proposals (RFP).

The Consultant will propose a team with at least the following professionals:

Key Experts

- i. **Team Leader – Minimum 5 months input:** Must be a Bachelors' Degree in Civil engineering, a Masters' Degree in the same field will be of advantage, Registered Professional Engineer with at least 15 years' experience in the field of civil engineering (with bias in water and sanitation) and not less than 8 years' experience in a similar position. Should have worked in at least two previous assignments in a similar position.
- ii. **Water Engineer – Minimum 5 months input:** Must be Registered Professional Engineer with at least 10 years' experience in the field of civil engineering (with bias in water and Sanitation) and not less than 5 years' experience in a similar position. Should have worked in at least two previous assignments in a similar position.
- iii. **Electromechanical engineer – Minimum 3 months input:** Must be a holder of a master's degree in electrical, electromechanical engineering or equivalent with 10 years' experience in electrical/electromechanical engineering and 8 years' experience in electrical/electromechanical in water supply and waste water projects. Must be a registered Professional Electrical/Electromechanical Engineer.

Non Key Experts

- iv. **Hydraulics Engineer & Water treatment:** Must be Registered Professional Engineer with at least 8 years' relevant experience
- v. **Surveyor:** The Surveyor shall have a minimum BSC degree qualification in surveying; Shall be a professional and licensed surveyor by a recognized body with proven experience in the engineering surveying; shall have a minimum of 10 years' overall experience and 6 years' specific experience water infrastructure development work. Must have expertise in GIS for surveying and mapping
- vi. **Sociologist/ RAP Specialist:** Demonstrate with at least 8 years relevant experience
- vii. **Environmental Expert:** Must be registered with NEMA or other relevant body as a lead expert and must possess at least 7 years' experience of practice
- viii. **Economist/Financial Analyst:** Must be registered with a relevant professional body and possess at least 8 years' relevant experience
- ix. **Land Economist:** Must be a holder of a Bachelor's Degree in Land Economics. Must be registered with a relevant professional body and possess at least 5 years' relevant experience.

6.7 Reporting Requirements

All reports and communications related to this assignment shall be in the English Language and all reports shall conform to a format agreed with Chief Officer-Water and Sanitation or Site Engineer/Client, including an executive summary, a table of contents, standard cover sheet with date and project details, submittal letter showing those copied and actual date of submission.

All reports and communications will be sent directly to the Chief Officer-Water and Sanitation or Engineer/Client in the number and form specified below.

Reports	Submittal Date	Copies	
		Hard Copies	Electronic Copy**
Inception Report	One (1) Month after Contract Effective Date	3	2
Draft Feasibility Study Report	Two (2) Months after Contract Effective Date	3	2
Final Feasibility Study Report	Two and Half (2½) months after contract effective date	3	2
Draft Conceptual Design Report	Two and Half (2½) months after contract effective date	3	2
Final Conceptual Design Report ESIA/RAP reports and Hydraulic Modelling Report	Three (3) months after contract effective date	3	2
Draft tender documents	Four (4) months after contract effective date	3	2
Final tender documents	Four and Half (4½) months after contract effective date	3	2

N.B: ** The soft copies must be delivered in CD-Microsoft word and/or PDF file for text document as the Chief Officer –Water and Sanitation or Engineer decides and in AutoCAD/ Civil3D (DWG or PDF) files for drawings.

Other reporting requirements

This will be detailed as need arises.

In addition to the formal reporting indicated above, the Consultant will provide verbal or written comments in English, in response to project related queries raised by GMC and other stakeholders during the course of the study.

The Consultant will make provision to prepare copies of the reports required above in English and as listed below:

- 5 copies of each Draft Report in English, with Executive Summary in English, of which one of each is original. These reports must also be submitted on electronic format (3 CD ROM). Drawings will be in AutoCAD 2021 format. Text will be in Word format. Tables will be in Excel format.
- 5 copies of each Final Report with Executive Summary in English of which one of each is original. These reports must be also submitted on electronic format (3 CD ROM). Drawings will be in AutoCAD 2021 format. Text will be in Word format. Tables will be in Excel format.

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 out puts and milestones. Never the less, quality control of the Consultant's outputs by the Procuring Entity s 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.

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:

I. FORM OF CONTRACT - LUMP-SUM

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

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

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

WHEREAS

- a) The Procuring Entity has requested the Consultant to provide certain consulting services as defined in this Contract (herein after called the “Services”);
 - b) the Consultant, having represented to the Procuring Entity that it has the required professional skills, expertise and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract;
 - c) the Procuring Entity has set aside a budget and funds toward the cost of the Services and intends to apply a portion of these funds towards payments under this Contract; NOW THEREFORE the parties hereto hereby agree as follows:
1. The following documents attached here to shall be deemed to form an integral part of this Contract:
 - a) The General Conditions of Contract;
 - b) The Special Conditions of Contract;
 - c) Appendices:
 - Appendix A: Terms of Reference
 - Appendix B: Key Experts
 - Appendix C: Breakdown of Contract Price
 - Appendix D: Form of Advance Payments Guarantee

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

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

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

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

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

Venture] [Authorized Representative of the Consultant–name and signature]

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

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

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

SECTION 7: GENERAL CONDITIONS OF CONTRACT

A. General Provisions

1. Definitions

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

- a) “Applicable Law” means the laws and any other instruments having the force of law in Kenya.
- b) “Consultant” means a legally-established professional consulting firm or entity selected by the Procuring Entity to provide the Services under the signed Contract.
- c) “Contract” means the legally binding written agreement signed between the Procuring Entity and the Consultant and which includes all the attached documents listed in its paragraph 1 of the Form of Contract (the General Conditions (GCC), the Special Conditions (SCC), and the Appendices).
- d) “Procuring Entity” means the Procuring Entity that signs the Contract for the Services with the selected Consultant.
- e) “Day” means a working day unless indicated otherwise.
- f) “Effective Date” means the date on which this Contract comes into force and effect pursuant to Clause GCC 11.
- g) “Experts” means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or JV member(s) assigned by the Consultant to perform the Services or any part thereof under the Contract.
- h) “Foreign Currency” means any currency other than the currency of Kenya.
- i) “GCC” mean these General Conditions of Contract.
- j) “Government” means the government of Kenya.
- k) “Joint Venture (JV)” means an association with or without a legal personality distinct from that of its members, of more than one entity where one member has the authority to conduct all businesses for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Procuring Entity for the performance of the Contract.
- l) “Key Expert(s)” means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose Curricula Vitae (CV) was taken into account in the technical evaluation of the Consultant's proposal.
- m) “Local Currency” means the Kenya Shillings, the currency of Kenya.
- n) “Non-Key Expert(s)” means an individual professional provided by the Consultant or its Sub-consultant to perform the Services or any part here of under the Contract.
- o) “Party” means the Procuring Entity or the Consultant, as the case may be, and “Parties” means both of them.

- p) “SCC” means the Special Conditions of Contract by which the GCC may be amended or supplemented but not over-written.
- q) “Services” means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A hereto.
- r) “Sub-consultants” means an entity to whom/which the Consultant subcontracts any part of the Services while remaining solely liable for the execution of the Contract.

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

2. Relationship between the Parties

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

3. Law Governing Contract

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

4. Language

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

5. Headings

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

6. Communications

6.1 Any communication required or permitted to be given or made pursuant to this Contract shall be in writing in the English Language. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the SCC.

6.2 A Party may change its address for notice here under by giving the other Party any communication of such change to the address specified in the SCC.

7. Location

7.1 The Services shall be performed at such locations as are specified in Appendix A hereto and, where the location of a particular task is not so specified, at such locations, whether in Kenya or elsewhere, as the Procuring Entity may approve.

8. Authority of Member in Charge

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

9. Authorized Representatives

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

10 Corrupt and Fraudulent Practices

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

10.2 Commissions and Fees-The Procuring Entity requires the Consultant to disclose any commissions, gratuities or fees that may have been paid or are to be paid to a gent or any other party with respect

to the selection process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee. Failure to disclose such commissions, gratuities or fees may result in termination of the Contract by the Procuring Entity and/or sanctions by the PPRA.

B. Commencement, Completion, Modification and Termination of Contract

11 Effectiveness of Contract

11.1 This Contract shall come into force and effect on the date (the “Effective Date”) of the Procuring Entity's notice to the Consultant instructing the Consultant to begin carrying out the Services. This notice shall confirm that the effectiveness conditions, if any, listed in the SCC have been met.

12 Termination of Contract for Failure to Become Effective

12.1 If this Contract has not become effective within such time period after the date of Contract signature as specified in the SCC, either Party may, by not less than twenty-two (22) days written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect there to.

13 Commencement of Services

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

14 Expiration of Contract

14.1 Unless terminated earlier pursuant to Clause GCC19 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the SCC.

15 Entire Agreement

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

16 Modifications or Variations

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

17 Force Majeure

a. Definition

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

17.2 Force Majeure shall not include (i) any event which 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 here under.

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

b. No Breach of Contract

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

c. Measures to be taken

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

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

- a) Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.
- b) During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the Procuring Entity, shall either:
- c) demobilize, in which case the Consultant shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the Procuring Entity, in reactivating the Services; or
- d) Continue with the Services to the extent reasonably possible, in which case the Consultant shall continue to be paid under the terms of this Contract and be reimbursed or additional costs reasonably and necessarily incurred.

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

18 Suspension

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

19 Termination

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

a. By the Procuring Entity

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

- a If the Consultant fails to remedy a failure in the performance of its obligations here under, as specified in a notice of suspension pursuant to Clause GCC 18;
- b If the Consultant becomes (or, if the Consultant consists of more than one entity, if any of its members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go in to liquidation or receivership whether compulsory or voluntary;

- c If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GCC 45.1;
- d If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days;
- e If the Procuring Entity, in its sole discretion and for any reason whatsoever, decides to terminate this Contract; f If the Consultant fails to confirm availability of Key Experts as required in Clause GCC13.

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

- a) The Consultant may terminate this Contract, by not less than thirty (30) calendar days' written notice to the Procuring Entity, in case of the occurrence of any of the events specified in paragraphs(a)through(d)of this Clause.
- b) If the Procuring Entity fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause GCC45.1 within forty-five (45) calendar days after receiving written notice from the Consultant that such payment is overdue.
- c) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days.
- d) If the Procuring Entity fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC45.1.
- e) If the Procuring Entity is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Consultant may have subsequently approved in writing) following the receipt by the Procuring Entity of the Consultant's notice specifying such breach.

c. Cessation of Rights and Obligations

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

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

e. Payment up on Termination

19.1.6 Upon termination of this Contract, the Procuring Entity shall make the following payments to the Consultant:

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

C. Obligations of the Consultant 16. General

a. Standard of Performance

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

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

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

b. Law Applicable to Services

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

20.5 Throughout the execution of the Contract, the Consultants shall comply with the import of goods and services prohibitions in Kenya when

a As a matter of law or official regulations, Kenya prohibits commercial relations with that country; or b by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods from that country or any payments to any country, person, or entity in that country.

20.6. The Procuring Entity shall notify the Consultant in writing of relevant local customs, and the Consultant shall, after such notification, respect such customs.

21 Conflict of Interests

21.1 The Consultant shall hold the Procuring Entity's interest paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.

a. Consultant Not to Benefit from Commissions, Discounts, etc.

21.1.1 The payment of the Consultant pursuant to GCC F (Clauses GCC 38 through 42) shall constitute the Consultant's only payment in connection with this Contract and, subject to Clause GCC 21.1.3, the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations here under, and the Consultant shall use its best efforts to ensure that any Sub-consultants, as well as the Experts and agents of either of them, similarly shall not receive any such additional payment.

21.1.2 Furthermore, if the Consultant, as part of the Services, has the responsibility of advising the Procuring Entity on the procurement of goods, works or services, the Consultant shall at all times exercise such responsibility in the best interest of the Procuring Entity. Any discounts or commissions obtained by the Consultant in the exercise of such procurement responsibility shall be for the account of the Procuring Entity.

21.1.3 Payment SHALL only be done once the Consultant has undertaken all the services and provided hard copies documents and soft copies as required.

21.1.4 Also a power presentation of the report SHALL be done to the technical and inspection team once the consultant has undertaken the services as per the terms of reference.

21.15 **No advance payment or Part Payment** Shall be done before the completion and submission of the reports to the Accounting Officer Department of Water & Sanitation

b. Consultant and Affiliates Not to Engage in Certain Activities

21.1.3 The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-consultants and any entity affiliated with such Sub-consultants, shall be disqualified from providing goods, works or non-consulting services resulting from or directly related to the Consultant's Services for the preparation or implementation of the project.

c. Prohibition of Conflicting Activities

21.1.4 The Consultant shall not engage and shall cause its Experts as well as its Sub-consultants not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.

d. Strict Duty to Disclose Conflicting Activities

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

22 Confidentiality

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

23 Liability of the Consultant

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

24 Insurance to be taken out by the Consultant

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

25 Accounting, Inspection and Auditing

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

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

26 Reporting Obligations

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

27 Proprietary Rights of the Procuring Entity in Reports and Records

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

27.2 If license agreements are necessary or appropriate between the Consultant and third parties for

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

28 Equipment, Vehicles and Materials

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

D. Consultant's Experts and Sub-consultants 29 Description of Key Experts

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

30 Replacement of Key Experts

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

31 Removal of Experts or Sub-consultants

- 31.1 If the Procuring Entity finds that any of the Experts or Sub-Consultant has committed serious misconduct or has been charged with having committed a criminal action, or shall the Procuring Entity determine that Consultant's Expert of Sub consultant have engaged in corrupt, fraudulent, collusive, coercive [or obstructive] practice while performing the Services, the Consultant shall, at the Procuring Entity's written request, provide a replacement.
- 31.2 In the event that any of Key Experts, Non-Key Experts or Sub-consultants is found by the Procuring Entity to be incompetent or incapable in discharging assigned duties, the Procuring Entity, specifying the grounds therefore, may request the Consultant to provide a replacement.
- 31.3 Any replacement of the removed Experts or Sub consultants shall possess better qualifications and experience and shall be acceptable to the Procuring Entity.
- 31.4 The Consultant shall bear all costs arising out of or incidental to any removal and/or replacement of such Experts.

E. Obligations of the Procuring Entity

32 Assistance and Exemptions

32.1 Unless otherwise specified in the SCC, the Procuring Entity shall use its best efforts to:

- a Assist the Consultant with obtaining work permits and such other documents as shall be necessary to enable the Consultant to perform the Services.
- b Assist the Consultant with promptly obtaining, for the Experts and, if appropriate, their eligible dependents, all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in Kenya while carrying out the Services under the Contract.
- c Facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Expert and their eligible dependents.
- d Issue to officials, agents and representatives of the Government all such instructions and information as may be necessary or appropriate for the prompt and effective implementation of the Services.
- e Assist the Consultant and the Experts and any Sub-consultants employed by the Consultant for the Services with obtaining exemption from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity in Kenya according to the applicable law in Kenya
- f Assist the Consultant, any Sub-consultants and the Experts of either of them with obtaining the privilege, pursuant to the applicable law in Kenya, of bringing in to Kenya reasonable amounts of foreign currency for the purposes of the Services or for the personal use of the Experts and of withdrawing any such amounts as may be earned therein by the Experts in the execution of the Services.
- g Provide to the Consultant any such other assistance as may be specified in the SCC.

33 Access to Project Site

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

34 Change in the Applicable Law Related to Taxes and Duties

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

35 Services, Facilities and Property of the Procuring Entity

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

36 Counterpart Personnel

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

37 Payment Obligation

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

F. Payments to the Consultant

38 Contract Price

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

39 Taxes and Duties

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

40 Mode of Billing and Payment

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

related lump-sum installment payment. The payment can be withheld if the Procuring Entity does not approve the submitted deliverable(s) as satisfactory in which case the Procuring Entity shall provide comments to the Consultant within the same sixty (60) days period. The Consultant shall thereupon promptly make any necessary corrections, and there after the fore going process shall be repeated.

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

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

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

41 Interest on Delayed Payments

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

G. Fairness and Good Faith

42 Good Faith

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

H. Settlement of Disputes

43 Amicable Settlement

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

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

44 Dispute Resolution

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

SECTION 8: SPECIAL CONDITIONS OF CONTRACT

[Notes in brackets are for guidance purposes only and should be deleted in the final text of the signed contract]

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(a)	The Contract shall be construed in accordance with the law of KENYA
4.1	The language is: ENGLISH

6.1 and 6.2	<p>The addresses are <i>[fill in at negotiations with the selected firm]</i>:</p> <p>Procuring Entity: _____ Attention: _____ Facsimile: _____ E-mail: _____</p> <p>Consultant: _____ Attention: _____ Facsimile: _____ E-mail: _____</p>
8.1	<p><i>[If the Consultant consists only of one entity, state "N/A";</i> OR <i>If the Consultant is a Joint Venture consisting of more than one entity, the name of the JV member whose address is specified in Clause SCC6.1 should be inserted here.]</i> The Lead Member on behalf of the JV is N/A</p>
9.1	<p>The Authorized Representatives are:</p> <p>For the Procuring Entity: ENG.DAVID M, MAKAU – CHIEF OFFICER, LANDS, URBAN</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>WATER & SANITATION</p> <p>For the Consultant: <i>[name, title]</i> _____</p>
11.1	<p>The effectiveness conditions are the following: N/A</p>
12.1	<p>Termination of Contract for Failure to Become Effective:</p> <p>The time period shall be 21 DAYS</p>
13.1	<p>Commencement of Services:</p> <p>The number of days shall be 14 DAYS</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	Expiration of Contract: The time period shall be FOUR & HALF MONTHS
21.1.3.	The Procuring Entity reserves the right to determine on a case-by-case basis whether the Consultant should be disqualified from providing goods, works or non-consulting services due to a conflict of a nature described in Clause GCC 21.1.3 YES
23.1	No additional provisions.
24.1	The insurance coverage against the risks shall be as follows: <i>[Delete what is not applicable except (a)].</i> (a) Professional liability insurance, with a minimum coverage of _____ <i>[insert amount and currency which should be not less than the total ceiling amount of the Contract];</i>
27.1	The additional rights to the use of the documents are: NOT APPLICABLE

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
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27.2	<p><i>[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.</i></p> <p><i>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:</i></p> <p><i>[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.]</i></p> <p><i>[OR]</i></p> <p><i>[The Procuring Entity shall not use these [insert what applies..... documents and software.....] for purposes unrelated to this Contract without the prior written approval of the Consultant.]</i></p> <p><i>[OR]</i></p> <p><i>[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.]</i></p>
32.1 (a) through (f)	NOT APPLICABLE
32.1(g)	NOT APPLICABLE
38.1	The Contract price is: INCLUSIVE of local taxes.
39.1 and 39.2	<p><i>[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)]</i></p> <p><i>The Procuring Entity warrants that [choose one applicable option consistent with the ITC 16.3 and the outcome of the Contract’s negotiations (Form FIN-2]</i></p> <p><i>If ITC16.3 indicates a tax exemption status, include the following: “the Consultant, the Sub-consultants and the Experts shall be exempt from”</i></p> <p><i>OR</i></p> <p><i>If ITC16.3 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”]</i> 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</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>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;</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;</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;</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: (i) the Consultant, Sub-consultants and experts shall follow the usual customs procedures of Kenya in importing property into Kenya; and</p> <p>(ii) 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 were paid by the Procuring Entity at the time the property in question was brought into the Procuring Entity's country.</p>
40.2	The payment schedule: lumpsum contract price after completion
40.2.1	<p><i>[The advance payment could be in either the foreign currency, or the local currency, or both; select the correct wording in the Clause here below. The advance bank payment guarantee should be in the same currency(ies)]</i></p> <p>The following provisions shall apply to the advance payment and the advance bank payment guarantee: NOT APPLICABLE</p> <p>(1) An advance payment [of <i>[insert amount]</i> in foreign currency] [and of <i>[insert amount]</i> in Kenya Shillings] shall be made within <i>[insert number]</i> 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].</p> <p>(2) The advance bank payment guarantee shall be in the amount and in the currency of the currency (ies) of the advance payment.</p>

	(3) The bank guarantee will be released when the advance payment has been fully set off.
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Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
40.2.4	The accounts are: for foreign currency: NOT APPLICABLE for local currency: KENYA SHILLINGS
41.1	The interest rate is: NOT APPLICABLE

44.1	<p>Disputes shall be settled by arbitration in accordance with the following provisions:</p> <p>1. <u>Selection of Arbitrators</u>. Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three (3) arbitrators, in accordance with the following provisions:</p> <p>(a) Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to <i>[name an appropriate international professional body, e.g., the Federation International des Ingenious-Conseil (FIDIC) of Lausanne, Switzerland]</i> for a list of not fewer than five (5) nominees and, on receipt of such list, the Parties shall alternately strike names therefrom, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the date of the list, <i>[insert the name of the same professional body as above]</i> shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute.</p> <p>(b) Where the Parties do not agree that the dispute concerns a technical matter, the Procuring Entity and the Consultant shall each appoint one (1) arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two (2) arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by <i>[name an appropriate international appointing authority, e.g., the Secretary General of the Permanent Court of Arbitration, The Hague; the Secretary General of the International Centre for Settlement of Investment Disputes, Washington, D.C.; the International Chamber of Commerce, Paris; etc.]</i>.</p> <p>(c) If, in a dispute subject to paragraph (b) above, one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the <i>[name the same appointing authority as in said paragraph (b)]</i> to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.</p>
	<p>2. <u>Rules of Procedure</u>. Except as otherwise stated herein, arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in force on the date of this Contract.</p> <p>3. <u>Substitute Arbitrators</u>. If for any reason an arbitrator is unable to perform his/her function, a substitute shall be appointed in the same manner as the original arbitrator.</p>
Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract

	<p>4. <u>Nationality and Qualifications of Arbitrators.</u> The sole arbitrator or the third arbitrator appointed pursuant to paragraphs 1(a) through 1(c) above shall be an internationally recognized legal or technical expert with extensive experience in relation to the matter in dispute and shall not be a national of the Consultant's home country [<i>If the Consultant consists of more than one entity, add: or of the home country of any of their members or Parties</i>] or of the Government's country. For the purposes of this Clause, "home country" means any of:</p> <p>(a) the country of incorporation of the Consultant [<i>If the Consultant consists of more than one entity, add: or of any of their members or Parties</i>]; or</p> <p>(b) the country in which the Consultant's [or any of their members' or Parties'] principal place of business is located; or</p> <p>(c) the country of nationality of a majority of the Consultant's [or of any members' or Parties'] shareholders; or</p> <p>(d) the country of nationality of the Sub-consultants concerned, where the dispute involves a subcontract.</p>
	<p>5. <u>Miscellaneous.</u> In any arbitration proceeding hereunder:</p> <p>(a) proceedings shall, unless otherwise agreed by the Parties, be held in [<i>select a country which is neither the Procuring Entity's country nor the Consultant's country</i>]; (b) the ENGLISH language shall be the official language for all purposes; and (c) the decision of the sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.</p>

SECTION 9: APPENDICES

Appendix A – Terms of Reference

[Note: This Appendix shall include the final Terms of Reference (TORs) worked out by the Procuring Entity and the Consultant during the negotiations; dates for completion of various tasks; location of performance for different tasks; detailed reporting requirements and list of deliverables against which the payments to the Consultant will be made;

Procuring Entity's input, including counterpart personnel assigned by the Procuring Entity to work on the Consultant's team; specific tasks or actions that require prior approval by the Procuring Entity.

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

.....

Appendix B - Key Experts

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

.....

..... Appendix C – Breakdown of Contract Price

{Insert the table with the unit rates to arrive at the breakdown of the lump-sum price. The table shall be based on [Form FIN-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.}

Appendix D - Form of Advance Payment Guarantee

[Note: See Clause GCC 41.2.1 and SCC 41.2.1]

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

Date: _____

ADVANCE PAYMENT GUARANTEE No.: _____

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

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of _____ [amount in figures] () [amount in words] is to be made against an advance payment guarantee.

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

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

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

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

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

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

[Signature]

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



SECTION 9: APPENDICES

Appendix A – Terms of Reference

[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; Procuring Entity's input, including counterpart personnel assigned by the Procuring Entity to work on the Consultant's team; specific tasks 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 in the Consultant's Proposal. Highlight the changes to Section 5 of the RFP]

If the Services consist of or include the supervision of civil works, the following action that require prior approval of the Procuring Entity shall be added to the Reporting Requirements” section of the TORs: Taking any action under a civil works contract designating the Consultant as Engineer”, for which action, pursuant to such civil works contract, the written approval of the Procuring Entity is required.

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.]

[Specify Hours of Work for Key Experts: List here the hours of work for Key Experts; travel time to/ from Kenya; entitlement, if any, to leave pay; public holidays in Kenya that may affect Consultant's work; etc. Make sure there is consistency with Form TECH-6. In particular: one month equals twenty-two (22) working (billable) days. One working (billable) day shall be not less than eight (8) working (billable) hours.]

Appendix C – Remuneration Cost Estimates

1. Monthly rates for the Experts:

[Insert the table with the remuneration rates. The table shall be based on [Form FIN-3] 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] at the negotiations or state that none has been made.]

2. *[When the Consultant has been selected under Quality-Based Selection method, or the Procuring Entity has requested the Consultant to clarify the breakdown of very high remuneration rates at the Contract's negotiations also add the following:*

“The agreed remuneration rates shall be stated in the attached Form: Breakdown of Agreed Fixed Rates in Consultant's Contract. This form shall be prepared on the basis of Appendix A to Form FIN-3 of the RFP “Consultants' Representations regarding Costs and Charges” submitted by the Consultant to the Procuring Entity prior to the Contract's negotiations.

Should these representations be found by the Procuring Entity (either through inspections or audits pursuant to Clause GCC 25.2 or through other means) to be materially incomplete or inaccurate, the Procuring Entity shall be entitled to introduce appropriate modifications in the remuneration rates affected by such materially incomplete or inaccurate representations. Any such modification shall have

retroactive effect and, in case remuneration has already been paid by the Procuring Entity before any such modification,(i) the Procuring Entity shall be entitled to offset any excess payment against the next monthly payment to the Consultants, or (ii) if there are no further payments to be made by the Procuring Entity to the Consultants, the Consultants shall reimburse to the Procuring Entity any excess payment within thirty (30) days of receipt of a written claim of the Procuring Entity. Any such claim by the Procuring Entity for reimbursement must be made within twelve (12) calendar months after receipt by the Procuring Entity of a final report and a final statement approved by the Procuring Entity in accordance with Clause GCC45. 1(d) of this Contract.”

Expressed as percentage of 1

1 Expressed as percentage of 4

** If more than one currency, add a table*

Signature _____ Date _____ Name and Title: _____

APPENDIX D: REIMBURSABLE EXPENSES COST ESTIMATES

1. {Insert the table with the Reimbursable Expenses rates. The table shall be based on [Form FIN-4] of the Consultant's Proposal and reflect any changes agreed at the Contract negotiations, if any. The foot note shall list such changes made to [FormFIN-4] at the negotiations or state that none has been made.}
2. All reimbursable expenses shall be reimbursed at actual cost, unless otherwise explicitly provided in this Appendix, and in no event shall reimbursement be made in excess of the Contract amount.

APPENDIX E: FORM OF ADVANCE PAYMENTS GUARANTEE

[Note: See Clause GCC 41.2 and

SCC41.2] Bank Guarantee for

Advance Payment

_____ [Bank's Name and Address of Issuing Branch or Office]

Beneficiary: _____ [Name and Address of Procuring

Entity] Date: _____

ADVANCE PAYMENT GUARANTEE No. _____

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

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of _____ *[Amount in figures] () [amount in words]* is to be made against an advance payment guarantee.

At the request of the Consultant, we *[name of bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[amount in figures] () [amount in words]*¹ upon receipt by us of your first demand in writing accompanied by a written statement stating that the Consultant are in breach of their obligation under the Contract because the Consultant have used the advance payment for purposes other than toward providing the Services under the Contract.

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

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Consultant as indicated in copies of certified monthly statements which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of the monthly payment certificate indicating that the Consultant has made full repayment of the amount of the advance payment, or on the day of , 2 ,2 whichever is earlier.

Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date. This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No.758.

[Signature (s)]

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

¹*The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency (ies) of the advance payment as Specified in the Contract, or in a freely convertible currency acceptable to the Procuring Entity.*

²*Insert the expected expiration dates. In the event of an extension of the time for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the procuring Entity might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months] [one year], in response to the Procuring Entity's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”*

SECTION 10. NOTIFICATION FORMS

1. NOTIFICATION OF INTENTION TO AWARD

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

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

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

The successful Consultant

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

i) Short listed Consultants

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

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

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

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

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

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

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

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

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

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

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

Agency: [*insert name of Procuring Entity*]

Email address: [*insert email address*]

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

If your request for a debriefing is received within the 5 Business Days deadline, we will provide the debriefing within five (5) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (5) Business Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end. The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.

If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fourteen (14) Business Days from the date of publication of the Contract Award Notice.

(iv) How to Make a Complaint

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

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

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

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

Agency: [*insert name of Procuring Entity*]

Email address: [*insert email address*]

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

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

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

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

You must submit the complaint within the deadline stated above.

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

(v) Standstill Period

DEADLINE: The Standstill Period is due to end at midnight on [insert date] (local time).
The Standstill Period lasts ---- (specify the number of business days as per Data Sheet 30.1) Business Days as specified in the Data Sheet after the date of transmission of this Notification of Intention to Award. The Standstill Period may be extended. This may happen where we are unable to provide a debriefing within the five (5) Business Day deadline. If this happens, we will notify you of the extension.

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

On behalf of _____ [insert the name of the Procuring

Entity]: Signature: _____

_____ Name: _____

_____ Title/position: _____

Telephone: _____

Email: _____

2. REQUEST FOR REVIEW

FORM FOR REVIEW (r.203(1))

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

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

BETWEEN

..... APPLICANT

AND

.....RESPONDENT (Procuring Entity)

Request for review of the decision of the..... (Name of the Procuring Entity ofdated the...day of20.....in the matter of Tender No.....of20..... for(Tender description).

REQUEST FOR REVIEW

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

- 1.
- 2.

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

1.

2.

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

FOR OFFICIAL USE ONLY Lodged with the Secretary Public Procurement Administrative Review Board on.....day of20.....

SIGNED

Board Secretary

3. LETTER OF AWARD

[use letterhead paper of the Procuring Entity] [date]_____To: _____ [name and address of the winning Consultant] Subject: Notification of Award Contract No.....

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

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

Authorized Signature:_____

Name and Title of Signatory:_____

Name of Agency:_____

4. BENEFICIAL OWNERSHIP DISCLOSURE FORM

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

This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful Consultant. In case of joint venture, the Consultant must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.

For the purposes of this Form, a Beneficial Owner of a Consultant is any natural person who ultimately owns or controls the Consultant by meeting one or more of the following conditions:

- Directly or indirectly holding 25% or more of the shares.*
- Directly or in directly holding 25% or more of the voting rights.*
- Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Consultant.*

Request for Proposal Reference No.: _____ [insert

identification no] Name of the Assignment: _____ [insert name of the assignment] to:
_____ [insert complete name of Procuring Entity]

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

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

Details of beneficial ownership

Identity of Beneficial Owner	Directly or indirectly holding 25% or more of the shares (Yes / No)	Directly or indirectly holding 25 % or more of the Voting Rights (Yes / No)	Directly or indirectly having the right to appoint a majority of the board of the directors or an equivalent governing body of the Consultant (Yes / No)
<i>[include full name (last, middle, first), nationality, country of residence]</i>			

OR

ii) We declare that there is no Beneficial Owner meeting one or more of the following conditions:

directly or indirectly holding 25% or more of the shares. Directly or indirectly holding 25% or more of the voting rights. Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Consultant.

OR

iii) We declare that we are unable to identify any Beneficial Owner meeting one or more of the following conditions. [If this option is selected, the Consultant shall provide explanation on why it is unable to identify any Beneficial Owner]

Directly or indirectly holding 25% or more of the shares. Directly or indirectly holding 25% or more of the voting rights.

Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Consultant] ”

Name of the Consultant:[insert complete name of the Consultant]___*

*Name of the person duly authorized to sign the Proposal on behalf of the Consultant: ** [insert complete name of person duly authorized to sign the Proposal]*

Title of the person signing the Proposal: [insert complete title of the person signing the Proposal]

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 Proposal submitted by a Joint Venture specify the name of the Joint Venture as Consultant. In the event that the Consultant is a Joint venture, each reference to "Consultant" in the Beneficial Ownership Disclosure Form (including this Introduction there to) shall be read to refer to the joint venture member.*

*** Person signing the Proposal shall have the power of attorney given by the Consultant. The power of attorney shall be attached with the Proposal Schedules*