



**KENYA POWER PENSION FUND
KPPF/PROC/2-E/03/2021**

**REQUEST FOR PROPOSAL FOR PROVISION OF LEGAL & GOVERNANCE AUDIT
CONSULTANCY SERVICES**

JUNE 2021

Stima Plaza Annex, Kolobot Road,
P.O. Box 1548 - 00600
Nairobi, Kenya.

TEL NO: **020 5029600**
EMAIL: tenders@kppf.co.ke

**ALL CANDIDATES ARE ADVISED TO READ CAREFULLY THIS TENDER DOCUMENT IN ITS
ENTIRETY BEFORE MAKING ANY BID**

Table of Contents

1.	<u>SECTION I - LETTER OF INVITATION</u>	4
	<u>SECTION II –INSTRUCTIONS TO CONSULTANTS AND DATA SHEET</u>	7
	<u>SECTION 3. TECHNICAL PROPOSAL – STANDARD FORMS</u>	30
2	<u>CERTIFICATE OF INDEPENDENT PROPOSAL DETERMINATION</u>	32
3.	<u>FORM TECH-2: CONSULTANT'S ORGANIZATION AND EXPERIENCE</u>	37
3.	<u>FORM TECH-5: WORK SCHEDULE AND PLANNING FOR DELIVERABLES</u>	41
6.	<u>FORM TECH- 6A: TEAM COMPOSITION, ASSIGNMENT, AND KEY EXPERTS' INPUTS</u>	42
7.	<u>FORM TECH-6B: CURRICULUM VITAE (CV)</u>	44
8.	<u>FORMTECH-7: MANDATORY SUPPORT DOCUMENTS</u>	47
	<u>FORM TECH - 8: SELF-DECLARATION FORMS</u>	48
	<u>SELF DECLARATION THAT THE PERSON/TENDERER IS NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015.</u>	48
	<u>FORM SD2</u>	49
	<u>DECLARATION AND COMMITMENT TO THE CODE OF ETHICS</u>	50
	<u>(Company Seal/ Rubber Stamp where applicable)</u>	50
	<u>FORM TECH - 9: TENDER-SECURING DECLARATION FORM {r 46 and 155(2)}</u>	51
	<u>SECTION 4. FINANCIAL PROPOSAL - STANDARD FORMS</u>	53
	<u>FORM FIN-1: FINANCIAL PROPOSAL SUBMISSION FORM</u>	54
	<u>FORM FIN-2: SUMMARY OF COSTS</u>	55
	<u>FORM FIN-3A: BREAKDOWN OF REMUNERATION</u>	56
	<u>FORM FIN-4 BREAKDOWN OF REIMBURSABLE – NOT APPLICABLE</u>	57
	<u>Legend:</u>	57
	<u>SECTION 5. TERMS OF REFERENCE</u>	58
	<u>SECTION 6. CONDITIONS OF CONTRACT AND CONTRACT FORMS</u>	66
	<u>CONTRACT FOR CONSULTANT'S SERVICES</u>	Error! Bookmark not defined.
	<u>SECTION 7: GENERAL CONDITIONS OF CONTRACT</u>	70
1.	<u>Definitions</u>	70
2.	<u>Relationship between the Parties</u>	71
3.	<u>Law Governing Contract</u>	71
4.	<u>Language</u>	72
5.	<u>Headings</u>	72
6.	<u>Communications</u>	72
7	<u>Location</u>	72
8	<u>Authority of Member in Charge</u>	72

9	Authorized Representatives	72
10	Corrupt and Fraudulent Practices	73
B.	Commencement, Completion, Modification and Termination of Contract	73
12	Termination of Contract for Failure to Become Effective	73
13	Commencement of Services	73
14	Expiration of Contract	73
15	Entire Agreement	74
16	Modifications or Variations	74
17	Force Majeure	74
18	Suspension	76
19	Termination	76
A.	By the Procuring Entity	76
B.	By the Consultant	77
C.	Cessation of Rights and Obligations	77
D.	Cessation of Services	78
E.	Payment up on Termination	78
D.	Obligations of the Consultant General	78
b.	Law Applicable to Services	79
21	Conflict of Interests	79
a.	Consultant Not to Benefit from Commissions, Discounts, etc.	79
b.	Consultant and Affiliates Not to Engage in Certain Activities	80
22	Confidentiality	80
23	Liability of the Consultant	81
24	Insurance to be taken out by the Consultant	81
25	Accounting, Inspection and Auditing	81
26	Reporting Obligations	82
27	Proprietary Rights of the Procuring Entity in Reports and Records	82
28	Equipment, Vehicles and Materials	82
D.	Consultant's Experts and Sub-consultants	83
30	Replacement of Key Experts	83
31	Removal of Experts or Sub-consultants	83
E.	Obligations of the Procuring Entity	84
33	Access to Project Site	84
34	Change in the Applicable Law Related to Taxes and Duties	85
35	Services, Facilities and Property of the Procuring Entity	85
36	Counterpart Personnel	85
37	Payment Obligation	86

<u>F.</u>	<u>Payments to the Consultant</u>	<u>86</u>
<u>39</u>	<u>Taxes and Duties</u>	<u>86</u>
<u>41</u>	<u>Mode of Billing and Payment</u>	<u>86</u>
<u>41</u>	<u>Interest on Delayed Payments</u>	<u>87</u>
<u>G.</u>	<u>Fairness and Good Faith</u>	<u>87</u>
<u>H.</u>	<u>Settlement of Disputes</u>	<u>88</u>
<u>44</u>	<u>Dispute Resolution</u>	<u>88</u>
	<u>SECTION 8: SPECIAL CONDITIONS OF CONTRACT</u>	<u>88</u>
	<u>SECTION 9: APPENDICES</u>	<u>90</u>
	<u>Appendix B - Key Experts</u>	<u>91</u>
	<u>Appendix C – Breakdown of Contract Price</u>	<u>91</u>
	<u>SECTION 10. NOTIFICATION FORMS</u>	<u>92</u>
	<u>SECTION XIIIIV DRAFT LETTER OF NOTIFICATION OF REGRET</u>	<u>94</u>
	<u>SECTION XV TENDER SECURITY FORM – (BANK GUARANTEE)</u>	<u>95</u>
	<u>SECTION VI : TENDER SECURITY FORM (SACCO SOCIETY, DEPOSIT TAKING MICRO FINANCE INSTITUTIONS, WOMEN ENTERPRISE FUND & YOUTH ENTERPRISE FUND)</u>	<u>98</u>
	<u>SECTION XI - CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM</u>	<u>101</u>

1. SECTION I - LETTER OF INVITATION

Procuring entity: **KENYA POWER PENSION FUND**

Reference No.: **KPPF/PROC/2-E/03/2021**

Name of Assignment: **REQUEST FOR PROPOSAL FOR PROVISION OF LEGAL & GOVERNANCE AUDIT CONSULTANCY SERVICES**

Dear Sir/Madam,

Kenya Power Pension Fund invites sealed tenders for the Provision of legal & governance audit consultancy services.

1. Tendering will be conducted under open competitive method (National) using a standardized tender document. Tendering is open to all qualified and interested Tenderers
2. Qualified and interested tenderers may obtain further information and inspect the Tender Documents during office hours [0800 to 1700 hours] at the address given below
3. Tender documents may be viewed and downloaded for free from the website www.kppf.co.ke. Tenderers who download the tender document must forward their particulars immediately to tenders@kppf.co.ke to facilitate any further clarification or addendum.
4. Each copy of technical and financial proposal shall be paginated serially, prior to submission.
5. Completed tender documents **MUST** be enclosed in plain sealed envelopes, marked with the Tender Number and Name and be deposited in the Tender Box next to the lift lobby located at Stima Annex Plaza, Ground Floor, Kolobot Road, Nairobi, Kenya addressed to:

CEO & TRUST SECRETARY

**Kenya Power Pension Fund,
Stima Plaza Annex 3rd Floor, Kolobot Road,
P.O Box 1548 – 00600
Nairobi, Kenya.**

So as to be received on or before **Tuesday, 20th July 2021 at 11.30 AM.**

6. Proposals will be opened promptly thereafter in their presence or their representatives who choose to attend at Stima Annex Plaza, Ground Floor, Kolobot Road, Parklands, Nairobi.

7. You are informed that it is not permissible to transfer this invitation to any other Consultant. A consultant will be selected under Quality Cost Based Selection (QCBS) described in this RFP, in accordance with the policies established in the Public Procurement and Asset Disposal Act [PPDA] 2015 and Regulations 2020.
8. Prices quoted should be net inclusive of all taxes, must be expressed in Kenya shillings and shall remain valid for a period of **180 days** from the closing date of the Proposal.
9. KPPF reserves the right to accept or reject any tender and may annul the tendering process and reject all tenders at any time prior to contract award without thereby incurring any liability to the affected tenderer or tenderers.

CEO & TRUST SECRETARY

22nd June 2021.

OUR PURPOSE

To deliver value and quality of life in retirement for our members

OUR VISION

To be the best-in-class occupational pension scheme in Sub-Saharan Africa

CORE VALUES

Integrity

Accountability

Courteous

Stewardship

SECTION II –INSTRUCTIONS TO CONSULTANTS AND DATA SHEET

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

General Provisions - Definitions

1. Meanings/Definitions

- i. "Affiliate(s)" means an individual or an entity that directly or indirectly controls, is controlled by, or is under common control with the Consultant.
- ii. "Applicable Law" means the laws and any other instruments having the force of law in Kenya.
- iii. "Procuring Entity" means the entity that is carrying out the consultant selection process and signs the Contract for the Services with the selected Consultant.
- iv. "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.
- v. "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).
- vi. "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.
- vii. "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.
- viii. "Experts" means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or Joint Venture member(s).
- ix. "Government" means the Government of the Republic of Kenya.
- x. "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.
- xi. "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.
- xii. "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.
- xiii. "ITC" (this Section 2 of the RFP) means the Instructions to Consultants that provides the Consultants with all information needed to prepare their Proposals.

- xiv. "Letter of RFP" means the letter of invitation being sent by the Procuring Entity to the Consultants.
- xv. "Non-Key Expert(s)" means an individual professional provided by the Consultant or its Sub-consultant and who is assigned to perform the Services or any part thereof under the Contract and whose CVs are not evaluated individually.
- xvi. "Proposal" means the Technical Proposal and the Financial Proposal of the Consultant.
- xvii. "Public Procurement Regulatory Authority (PPRA)" means the statutory authority of the Government of Kenya that is mandated with the role of regulating and monitoring compliance with the public procurement law and regulations.
- xviii. "RFP" means the Request for Proposals to be prepared by the Procuring Entity for the selection of Consultants.
- xix. "Services" means the work to be performed by the Consultant pursuant to the Contract.
- xx. "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.
- xxi. "Terms of Reference (TORs)" means the Terms of Reference that explains the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of the Procuring Entity and the Consultant, and expected results and deliverables of the assignment.

2. Introduction

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

3. Conflict of Interest

- 3.1** The Consultant is required to provide professional, objective, and impartial

advice, always holding the Procuring Entity's interest's paramount, strictly avoiding conflicts with other assignments or its own corporate interests and acting without any consideration for future work.

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

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

i) *Conflicting Activities*

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

ii) *Conflicting Assignments*

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

(iii) *Conflicting Relationships*

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

iv) *Others*

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

4. Unfair Competitive Advantage

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

information that would in that respect give such Consultant any unfair competitive advantage over competing Consultants.

5. Corrupt and Fraudulent Practices

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

5.2 Collusive practices

- a. 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.
- b. 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 ITC6.1 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 may be 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 Consultant's Proposal must remain valid for One Hundred and Eighty (**180**) Days after the Proposal submission deadline.
- 12.2 During this period, the Consultant shall maintain its original Proposal without any change, including the availability of the Key Experts, the proposed rates and the total price.
- 12.3 If it is established that any Key Expert nominated in the Consultant's Proposal was not available at the time of Proposal submission or was included in the Proposal without his/her confirmation, such Proposal shall be disqualified and rejected for further evaluation and may be subject to sanctions in accordance with IT C5.

b. Extension of Validity Period

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

c. Substitution of Key Experts at Validity Extension

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

d. Sub-Contracting

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

13. Clarification and Amendment of RFP

- 13.1 The Consultant may request a clarification of any part of the RFP during the period indicated in the Data Sheet before the Proposals' submission deadline. Any request for clarification must be sent in writing, or by standard electronic means, to the Procuring Entity's address indicated in the Data Sheet. The Procuring Entity will respond in writing, or by standard electronic means, and will send written copies of the response (including an explanation of the query but without identifying its source) 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 for all amendments in writing.
- 13.3 If the amendment is substantial, the Procuring Entity may extend the proposal submission deadline to give the Consultants reasonable time to take an amendment into account in their Proposals.
- 13.4 The Consultant may submit a modified Proposal or a modification to any part of it at any time prior to the proposal submission deadline. No modifications to the Technical or Financial Proposal shall be accepted after the deadline.

14. Preparation of Proposals—Specific Considerations

- 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 long as 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 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 a signed and complete Proposal comprising the documents and forms in accordance with ITC 10 (Documents Comprising Proposal). Consultants shall mark as "CONFIDENTIAL" information in their Proposals which is confidential to their business. This may include proprietary information, trade secrets or commercial or financially sensitive information. The submission can be done by mail or by hand. If specified in the Data Sheet, the Consultant has the option of submitting its Proposals electronically.

17.2 An authorized representative of the Consultant shall sign the original submission letters in the required format for both the Technical Proposal and the Financial Proposals and shall initial all pages of both. The authorization shall be in the form of a written power of attorney attached to the Technical Proposal.

17.3 A Proposal submitted by a Joint Venture shall be signed by all members so as to be legally binding on all members, or by an authorized representative who has a written power of attorney signed by each member's authorized representative.

17.4 Any modifications, revisions, interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Proposal.

17.5 The signed Proposal shall be marked "ORIGINAL", and its copies marked "COPY" as appropriate. The number of copies is indicated in the Data Sheet. All copies shall be made from the signed original. If there are discrepancies between the original and the copies, the original shall prevail.

18. Sealing and Marking of Proposals

18.1 The firm shall deliver the Proposals in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the assignment, addressed to the Procuring Entity and a warning "DO NOT OPEN BEFORE..... (The time and date for proposal opening date)". Within the single envelope, package or container, the Firm shall

place the following separate, sealed envelopes:

- 18.2 In the single sealed envelope, or in a single sealed package, or in a single sealed container the following documents shall be closed and shall be addressed as follows:
- i. in an envelope or package or container marked "ORIGINAL", all documents comprising the Technical Proposal, as described in ITC11;
 - ii. in an envelope or package or container marked "COPIES", all required copies of the Technical Proposal;
 - iii. in an envelope or package or container marked "ORIGINAL", all required copies of the Financial Proposal; and
- 18.3 The inner envelopes or packages or containers shall:
- i) Bear the name and address of the Procuring Entity.
 - ii) Bear the name and address of the Firm; and
 - iii) Bear the name and Reference number of the Assignment.
- 18.4 If an envelope or package or container is not sealed and marked as required, the Procuring Entity will assume no responsibility for the misplacement or premature opening of the proposal. Proposals that are misplaced or opened prematurely will not be accepted.
- 18.5 The Proposal or its modifications must be sent to the address indicated in the Data Sheet and received by the Procuring Entity no later than the deadline indicated in the Data Sheet, or any extension to this deadline. Any Proposal or its modification received by the Procuring Entity after the deadline shall be declared late and rejected, and promptly returned unopened.

19. Confidentiality/Canvassing

- 19.1 From the time the Proposals are opened to the time the Contract is awarded, the Consultant should not contact the Procuring Entity on any matter related to its Technical and/or Financial Proposal. Information relating to the evaluation of Proposals and award recommendations shall not be disclosed to the Consultants who submitted the Proposals or to any other party not officially concerned with the process, until the publication of the Contract award information.
- 19.2 Any attempt by Consultants or any one on behalf of the Consultant to influence improperly the Procuring Entity in the evaluation of the Proposals or Contract award decisions may result in the rejection of its Proposal and may be subject to the application of prevailing PPRA's debarment procedures.
- 19.3 Notwithstanding the above provisions, from the time of the Proposals' opening to the time of Contract award publication, if a Consultant wishes to contact the Procuring Entity on any matter related to the selection process, it should do so only in writing.

20. Opening of Technical Proposals

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

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

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

21. Proposals Evaluation

21.1 Subject to provision of ITC 15.1, the evaluators 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 the required number of copies of the Technical Proposals.
- b) Firm has submitted a sealed financial proposal.
- c) The Proposal is valid for the required number of days.

- d) The Technical Proposal is signed by the person with power of attorney, without material deviation, reservation, or omission.
- e) The Technical Proposal is complete with all the forms and required documentary evidence submitted.
- f) A valid tax compliance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 3.14 for Kenyan firms.
- g) Key Experts are from eligible countries.
- h) Key Experts do not appear in more than one proposal, if so required.
- i) A short-listed firm has not participated in more than one proposal, if so required.
- j) The Consultant is not insolvent, in receivership, bankrupt or in the process of being wound up.
- k) The Consultant, its sub-consultants and experts have not engaged in or been convicted of corrupt or fraudulent practices.
- l) The Consultant is neither precluded from entering into a Contract nor debarred by PPRA.
- m) The firm has not proposed employing public officials, civil servants and employees of public institutions.
- n) The Consultant, its sub-consultants and experts have no conflicts of interest.

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

23. Public Opening of Financial Proposals

23.1 Unsuccessful Proposals

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

23.2 Financial Proposals for QBS, CQS and SSS

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

Contract is signed with the successful Consultant.

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

23.3 Financial Proposals for QCBS, FBS, LCS

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

23.4 Opening of Financial Proposals

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

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

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

24. Correction of Errors

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

24.2 Time-Based Contracts-If a Time-Based contract form is included in the RFP, in
KENYA POWER PENSION FUND TENDER DOCUMENT FOR CONSULTANCY JUNE 2021

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

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

25. Taxes

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

25.2 All local identifiable taxes levied on the contract in voices (such as sales tax, VAT, excise tax, or any similar taxes or levies) and income and withholding tax payable to Kenya on the remuneration of non-resident Experts for the services rendered in Kenya are dealt with in accordance with the instructions in the Data Sheet.

26. Conversion to Single Currency

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 sand responsibilities and any other requirements of the RFP document.

27.3 After evaluation of the price analysis, if the Procuring Entity determines that the firm has failed to demonstrate its capability to perform the contract for the offered price, the Procuring Entity shall reject the firm's proposal.

28. Abnormally High Prices

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

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 14 days. 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 Single Source Selection 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.

SECTION 2 (B). DATA SHEET

A. General Provisions	
Reference to ITC Clause	
1(k)	Electronic procurement system shall be used: NO
2.1	Name of the Procuring Entity: Kenya Power Pension Fund The consultant selection method is: Quality and Cost Based Selection Method (QCBS), Time Based contract
2.2	Financial Proposal to be submitted together with Technical Proposal in separate envelopes: YES (√) The name of the assignment is: Provision of Legal & Governance Audit Consultancy Services.
2.3	A pre-proposal conference will be held: NO (√)
2.4	The Procuring Entity will provide the following inputs, project data, reports, etc. to facilitate the preparation of the Proposals – NOT APPLICABLE
6.6(a)	The list of debarred firms and individuals is available at the PPRA's website www.ppra.go.ke or email complaints@ppra.go.ke
B. Preparation of Proposals	
10.1	The Proposal shall comprise the following: 1st Inner Envelope with the Technical Proposal: 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 AND 2nd Inner Envelope with the Financial Proposal:

	FIN-1: Financial Proposal Submission Form FIN-2: Summary of Costs FIN-3: Breakdown of Remuneration FIN-4: Breakdown of Reimbursable Expenses
11.1	Participation of Sub-consultants, and Key Experts in more than one Proposal is permissible: NO
12.1	Proposals must remain valid for [180] days after the proposal submission deadline.
13.1	<p>Clarifications may be requested no later than [7] days prior to the submission deadline.</p> <p>The contact information for requesting clarifications is:</p> <p style="text-align: center;">CEO & TRUST SECRETARY Kenya Power Pension Fund, Stima Plaza Annex 3rd Floor, Kolobot Road, P.O Box 1548 – 00600 Nairobi, Kenya.</p> <p>Email address: tenders@kppf.co.ke</p>
16.2	A price adjustment provision applies to remuneration rates: NO
16.4	<p>The Financial Proposal shall be stated in the following currencies: Consultant may express the price for their Services in any fully convertible currency, singly or in combination of up to three foreign currencies.</p> <p>The Financial Proposal should state local costs in Kenya Shillings: Yes (✓)</p>
c. Submission, Opening and Evaluation	
17.1	The Consultants SHALL NOT have the option of submitting their Proposals electronically.
17.5	The Consultant must submit: Technical Proposal: one (1) original Financial Proposal: one (1) original.

<p>18.5</p>	<p>The Proposals must be submitted no later than:</p> <p>Date: Tuesday 20th July, 2021 at 11.30 A.M East African Time CEO & TRUST SECRETARY Kenya Power Pension Fund, Stima Plaza Annex, 3rd Floor, Kolobot Road, P.O Box 1548 – 00600 Nairobi, Kenya.</p>
<p>20.1</p>	<p>An online option of the opening of the Technical Proposals is offered: NO</p> <p>The opening shall take place at Date: 20th July, 2021 at 11.30 East African Time Kenya Power Pension Fund, Stima Plaza Annex, Ground Floor, Kolobot Road, P.O Box 1548 – 00600 Nairobi, Kenya.</p>
<p>20.2</p>	<p>In addition, the following information will be read aloud at the opening of the Technical Proposals;</p> <ul style="list-style-type: none"> • Name of the bidder • Number of documents submitted • Number of pages in the document.
<p>22.1</p>	<p>Other eligibility and mandatory criteria shall be: As indicated in the TOR</p>

SECTION 3. TECHNICAL PROPOSAL – STANDARD FORMS

1. FORM TECH-1: TECHNICAL PROPOSAL SUBMISSION FORM

Dated

To:

CEO & TRUST SECRETARY
Kenya Power Pension Fund,
Stima Plaza Annex 3rd Floor, Kolobot Road,
P.O Box 1548 – 00600
Nairobi, Kenya.

Dear Sir,

REF: TECHNICAL PROPOSAL REQUEST FOR PROPOSAL FOR PROVISION OF LEGAL & GOVERNANCE AUDIT CONSULTANCY SERVICES TENDER NO. KPPF/PROC/2-E/03/2021

We, the undersigned, offer to provide the consulting services for the above mentioned in accordance with your request for proposals dated [insert date]. We are hereby submitting our Technical Proposal, in response to your invitation to us to submit a technical proposal and a financial proposal.

We hereby declare that:

- (a) All the information and statements made in this Technical Proposal are true and we accept that any misinterpretation or misrepresentation contained in this Proposal may lead to our disqualification by KPPF.
- (b) Our Proposal shall be valid and remain binding upon us for the period of 180 days from the date of tender/proposal opening.
- (c) We have no conflict of interest of the Information to Consultants.
- (d) 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, in force in the country of Kenya
- (e) We undertake to negotiate a Contract on the basis of the technical proposal to carry out the assignment. We accept that there will be no substitution of key personnel for reasons, other than those stated in Section II of the Information to Consultants which may lead to the termination of Contract negotiations and even the contract itself.

(f) Our Proposal is binding upon us and it is subject to any modifications resulting from the Contract negotiations.

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 the negotiated contract. We understand that KPPF is not bound to accept any Proposal that it receives.

We remain,

Yours

Sincerely,

Authorized Signature

Name of Consultant

2 CERTIFICATE OF INDEPENDENT PROPOSAL DETERMINATION

I, the undersigned, in submitting the accompanying TECHNICAL PROPOSAL SUBMISSION FORM to the *[Name of Procuring Entity]*

for: *[Name and number of tender]* in response to the request for tenders made by: *[Name of Tenderer]* do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of *[Name of Tenderer]* that;

1. I have read and I understand the contents of this Certificate;
2. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;
4. For the purposes of this Certificate and the Tender, I understand that the word "competitor" shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:
 - Has been requested to submit a Tender in response to this request for tenders;
 - could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;
5. The Tenderer discloses that [check one of the following, as applicable]:
 - The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
 - The Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements;
6. In particular, without limiting the generality of paragraphs(5)(a) or (5) (b) above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - prices;
 - methods, factors or formulas used to calculate prices;
 - the intention or decision to submit, or not to submit, a proposal; or
 - the submission of a proposal which does not meet the specifications of the request for proposals; except as specifically disclosed pursuant to paragraph(5)(b) above;
7. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this RFP relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph(5)(b) above;
8. The terms of the RFP have not been, and will not be, knowingly disclosed by the Consultant,

directly or indirectly, to any competitor, prior to the date and time of the official proposed opening, or of the awarding of the Contract, which ever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph(5)(b) above.

Name.....

Title.....

Date

Stamp:

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;
 - "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;
 - ii) "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;
 - iii) "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;
 - iv) "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 process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, or disposal
- 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, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or debar or recommend to appropriate authority (ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;
- e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers and their Sub-contractors, Sub- consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to 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.

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 [.....] 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: <i>(E.g. 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:

3 FORM TECH-3: COMMENT SAND SUGGESTIONS

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

A - On the Terms of Reference

{Improvements to the Terms of Reference, if any}

B - On Counterpart Staff and Facilities

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

4 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 seen 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 parts. 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.}

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

No	Deliverables	Months												
		1	2	3	4	5	6	7	8	9	10	n	Total	
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													

- 1 List the deliverables with the breakdown for activities required to produce them and other benchmarks such as the Procuring Entity's approvals. For phased assignments, indicate the activities, delivery of reports, and benchmarks separately for each phase.
- 2 Duration of activities shall be indicated in a form of a bar chart.
3. Include a legend, if necessary, to help read the chart.

6. FORM TECH- 6A: TEAM COMPOSITION, ASSIGNMENT, AND KEY EXPERTS' INPUTS

NO	Name	Expert's Input (in person/month) per each Deliverable (listed in TECH -5)							Total Time-input (in months)		
		Position		D-1	D-2	D-3	D-4	D-5	Home	Field	Total
KEY EXPERTS											
K-1	(E.G Mr Abbbb)	Team Leader	Home	[Home]	[2 month]						
			Field	[field]	[0.5 m]						
K-2											
K-3											
							Subtotal				
NON-KEY EXPERTS											
N-1			Home								
			Field								
N-2											
							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.}*

S. No	Period	Employing Organization and your title/position. Contact inform for reference.	Country	Summary of activities performed relevant to the assignment
1.	(e.g, May.2011- Present)	Organisation: Reference:		
2.	(e.g, May.2011- Present)	Organisation:		

		Reference:		
--	--	------------	--	--

Membership in Professional Associations and Publications:

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

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]

- a) Attach Certificate of Incorporation/Certificate of Registration
- b) Attach valid Tax Compliance Certificate
- c) Submit the required number of copies of both **the technical and financial proposals** and **must be** separated as instructed.
- d) Submit a dully filled, signed and stamped Technical Proposal Submission Form
- e) Duly completed and stamped Confidential Business Questionnaire Form (attach **CR12 for Companies**)
- f) Duly Completed signed and stamped Declaration Form.
- g) A governance auditor accredited by, and a member in good standing of, the Institute of Certified Secretaries.
- h) An Advocate of the High Court of Kenya in good standing.

FORM TECH - 8: SELF-DECLARATION FORMS

FORM SD1

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

Date _____

To:

The Kenya Power Pension Fund,
P.O Box 1548 – 00600,
Stima Plaza, Kolobot Road, Parklands,
Nairobi,
KENYA.

Ladies and Gentlemen,

The Tenderer i.e. (full name and complete physical and postal address) _____

_____ declare the following: -

- a) That I/ We have not been debarred from participating in public procurement by anybody, institution or person.
- b) That I/ We have not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement anywhere.
- c) That I/We or any director of the firm or company is not a person within the meaning of paragraph 3.2 of ITT (Eligible Tenderers) of the Instruction to Tenderers.
- d) That I/ We are not insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
- e) That I/We do hereby confirm that all the information given in this tender is accurate, factual and true to the best of our knowledge.

Yours sincerely,

Name of Tenderer

Signature of duly authorised person signing the Tender

Name and Designation of duly authorised person signing the Tender

Stamp or Seal of Tenderer

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 tendertitle/description) for (Insert name of the Procuring entity) and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its servants and/or agents /subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/ or agents of..... (Insert name of the Procuring entity) which is the procuring entity.
3. THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of... (Name of the procuring entity).
4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject tender.
5. THAT what is deponed to herein above is true to the best of my knowledge information and belief.

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

Bidder's Official Stamp

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 DisposalActivities 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 PublicProcurement 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.....

FORM TECH - 9: TENDER-SECURING DECLARATION FORM {r 46 and 155(2)}

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

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

Tender No:..... *[Insert number of tendering process]*

To: *[Insert complete name of Purchaser]*

I/We, the undersigned, declare that:

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

Signed:

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

Name:.....

Duly authorized to sign the bid for and on behalf of: *[Insert complete name of Tenderer]*

Dated on day of *[Insert date of signing]*

Seal or stamp

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

Date

To:

CEO & TRUST SECRETARY
Kenya Power Pension Fund,
Stima Plaza Annex 3rd Floor, Kolobot Road,
P.O Box 1548 – 00600
Nairobi, Kenya.

Dear Sir,

REF: FINANCIAL PROPOSAL FOR REQUEST FOR PROPOSAL FOR PROVISION OF LEGAL & GOVERNANCE AUDIT CONSULTANCY SERVICES TENDER NO. KPPF/PROC/2-E/03/2021

- a. We, the undersigned, offer to provide the consulting services for REQUEST FOR PROPOSAL FOR PROVISION OF LEGAL & GOVERNANCE AUDIT CONSULTANCY SERVICES TENDER NO. KPPF/PROC/2-E/03/2021 in accordance with your request for proposals dated [insert date] and our Technical Proposal. We are hereby submitting our Financial Proposal, in response to your invitation to us to submit a technical proposal and a financial proposal. Our attached Financial Proposal is for the sum of (In words) Shillings (In figures) Shillings This amount is inclusive of all taxes levied and reimbursements in Kenya or in other countries, which shall be identified during negotiations and shall be added to the contract price.
- b. Our Financial Proposal shall be binding upon us subject to the modifications resulting from Contract negotiations, up to expiration of the validity period of the Proposal, i.e. Proposals must remain valid for 180 days after the submission date as indicated in the instructions to Consultants.
- c. No commissions and gratuities paid or to be paid by us to agents relating to this Proposal and Contract execution, if we are awarded the Contract, are allowed in our price proposal
- d. We understand you are not bound to accept any Proposal you receive.

Yours Sincerely,

Authorized Signature and Stamp

Name of Consultant

{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}

FORM FIN-2: SUMMARY OF COSTS

Item	Cost
	consultant must state the proposed cost in accordance with ITC16.4 of data sheet: delete columns which are not used)
	(Insert Localcurrency) if used
Cost of the financial proposal	
Including	
(1) Remuneration	
(2) Reimbursable	
Subtotal (Remuneration+ Reimbursable)	
Taxes	
(Insert type of tax)	
(e.g withholding tax on expert's remuneration	
(insert type of tax)	
Total Taxes	
Total Cost of the financial proposal:[should match the amount in form FIM 1]	

FORM FIN-3A: BREAKDOWN OF REMUNERATION

(All costs in Kenya Shillings inclusive of all taxes, reimbursements insurances, overheads and profit).

	KEY PERSONNEL	ROLE	Rates (Man hours)	Time input in hours	Total time input (hours)	Total cost
1		Team Leader				
2		Assistant consultant				
3		Assistant consultant				
	NON-KEY PERSONNEL (SUPPORT STAFF)					
1						
2						
3						
4						
5						
GRAND TOTAL						

FORM FIN-4 BREAKDOWN OF REIMBURSABLE – NOT APPLICABLE

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

B; Reimbursable Expenses.....								
No	Type of Reimbursable Expenses	Unit	Unit Cost	Quantity	Currency #1-as in FIN-2	Currency #1-as in FIN-2	Currency #3-as in FIN-2	Local Currency #1-as in FIN-2
	E.g Per diem							
	Transport							
	Training of the procuring Entity Personnel							
Total Costs								

Legend:

“Per diem allowance” is paid for each night the expert is required by the Contract to be away from his/her usual place of residence. Procuring Entity can set up a ceiling.

SECTION 4 : EVALUATION

CRITERIA

A. PRELIMINARY REQUIREMENTS (MANDATORY)

No.	Documents to be submitted
1.	Copy of Certificate of Incorporation/Registration
2.	Valid Tax Compliance Certificate
3.	Submit the required number of copies of both the technical and financial proposals and must be separated as instructed.
4.	Submit a dully filled, signed and stamped Technical Proposal Submission Form
6.	Duly completed and stamped Confidential Business Questionnaire Form (attach CR12 for Companies)
7.	Duly Completed signed and stamped Declaration Form.
8	Letters of availability for the assignment duly signed by the proposed key staff
9	All pages of the tender document MUST be serialised.
10	All Advocates of the High Court of Kenya in good standing (attach valid practicing certificate for 2021)
11	Governance auditor accredited by, and a member in good standing of, the Institute of Certified Secretaries. (attach proof of accreditation and good standing)

- **Certificates/Licenses may be verified from or with the Issuing Authorities or Agencies.**

NB: Only bidders who pass the preliminary stage will proceed to technical evaluation stage.

B. TECHNICAL EVALUATION

The proposals shall be evaluated using the following criteria and score points with total of 100 marks:

1. Team Qualification and experience; (30 marks)

Qualifications of the team to handle the assignment. Provide detailed CVs and attach academic and professional certificates indicating relevant experience.

Team	Qualification	Marks
Lead consultant (Advocate of the High Court of Kenya)	Master's degree in Law (LL.M) – 2 marks A Master's degree in any field other than law - 1 mark	2
	Relevant Experience a) Experience in legal practice >15 years - 10 marks 10 to 15 years - 5 marks Below 10 years will score zero b) Accredited Governance Auditor - 8 marks Attach copies of relevant Certificates and Curriculum Vitae.	18
Four Assistant consultants (marks shall be distributed equally)	Undergraduate Degree	4
	A combination of qualified staff in Law, Corporate Governance, Legal Research or other related field. Years of experience in undertaking legal and governance audit >10 years - 6 marks 10 to 5 years - 4 marks Below 5 years - 2 marks Attach copies of relevant Certificates and Curriculum Vitae.	6

2. Firm's experience; (10 marks) in Governance Audit

Experience of the firm in the provision of governance audit assignments to other entities of similar characteristics; (Pension sector / Financial services sector/ Insurance services with more than **10 billion assets base**). Attach LPO / LSO/ Contracts as evidence.

Experience	Marks
More than 15 years	10
More than 10 years but below 15 years	5
More than 5 years but below 10 years	3

Below 5 years	0
---------------	---

3. Firm's experience; (10 marks) in Legal Audit

Experience of the firm in the provision of legal audit assignments to other entities of similar characteristics; (Pension sector / Financial services sector/ Insurance services with more than 10 billion assets base). Attach LPO / LSO/ Contracts as evidence.

Experience	Marks
More than 15 years	10
More than 10 years but below 15 years	5
More than 5 years but below 10 years	3
Below 5 years	0

4. Methodology (15 marks)

Proposed approach and methodology to be adopted for the assignment including tools to be used, estimated time and report architecture in accordance with terms of reference

Description	Marks
Demonstration of understanding of the terms of reference in successfully delivering the assignment.	2.5
<p>Technical approach and methodology.</p> <p>In drafting their Technical Approach and Methodology bidders are expected to demonstrate their understanding of the assignment, approach to the services, methodology for carrying out the activities and obtaining the expected output, and the degree of detail of such output.</p> <p>The Consultant should also explain the methodologies proposed to be adopted and highlight the compatibility of those methodologies with the proposed approach.</p>	8
<p>Project schedule/work plan, allocation of proposed staff and final report outline</p> <p>The Consultant should propose the main activities of the assignment, their content and duration, phasing and interrelations, milestones, and delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents, including reports and tables to be delivered as final output, should be included here.</p>	2.5
<p>Detail your Disaster Recovery/Back-Up policies and indicate how often they are tested. Attach disaster recovery policies you have in place.</p>	2

5. Financial capability (10 marks)

The average turnover of the entity for the last three financial years (2017,2018,2019). To submit audited financial statements for the last three years. Unaudited financial statements will score zero.

Item	Amounts (Kshs)	Marks
Average turnover	Above 80 million	10
	Above 50 million but Below 80 million	5
	Above 20 million but Below 50 million	2
	Below 20 million	1

6. Referees (10 marks)

The bidder to provide **five** recommendation letters from previous clients within the last 7 years for similar assignment (2 marks for each)

7. Value Addition (5 marks)

Value addition to our terms of reference provided.

8. Professional Indemnity Cover (10 marks)

Provide valid professional indemnity cover above Kshs. 20 million

Note: Tenderers will only proceed to the financial evaluation stage if they score a minimum of 80 marks and above in the criteria. Technical will carry a weighting of 80%.

Financial Evaluation Criteria

The opening date of the financial proposal shall be the date indicated in the notification letter. Financial evaluation will have a weighting of 20 %.

The formula in determining the financial score is as follows: (the currency for price conversion is Kenya Shillings)

$$SF = FM \div F \times 100$$

SF = Financial Score

FM = Lowest evaluated bidder

F = Financial price under consideration

- a. The lowest priced bid will be given maximum score of 20 marks.

Combined Technical and Financial Scores

The evaluation results will be ranked on combined financial and technical scores which is given as follows:

$$S = S_t \times T\% + S_f \times P\%$$

Where

S_t = Technical Score

T = Technical Weighting

S_f = Financial score

P = Financial Weighting

S = Combined financial and Technical Score

The Successful Tenderer shall be the one with the highest combined score. The Successful Bidder May Be Invited by KPPF for Negotiations.

The assignment is expected to commence at Nairobi, Kenya when due for execution or as shall be informed.

***NOTES: -**

- For purposes of evaluation, the currency of quote shall be **Kenya Shillings**
- Total tender value means the Tenderer's total tender price inclusive of Value Added Tax and reimbursements (V.A.T) for the services it offers to provide.

SECTION 5. TERMS OF REFERENCE

a. **Background,**

The KPLC - Retirement Benefits Scheme is a registered Pension Fund responsible for providing benefits to Kenya Power employees upon their retirement or to their dependants in the event of death in service.

The Fund operates in a heavily regulated environment. Apart from the RBA Act and the regulations thereunder, the Fund is also subject to various other laws that relate generally to the operating aspects of its business (such as those related to income tax, investments, property, ICT, procurement, labour and occupational safety & health).

The Fund wishes to engage services of an independent Consultant to review and establish the extent of compliance with the relevant Laws, Regulations, Policies, Rules, Codes, Procedures and Manuals under which the Fund operates.

The output of the exercise should enable the Fund to identify, and conduct its operations in accordance with, all relevant laws, regulations and best practices anchored in acceptable principles of good governance.

b. **Objectives of the assignment,**

The objectives of the audit will include the following;

1. Document the framework of laws, regulations and policies under which the Fund operates.
2. Evaluate the Fund's existing structure, policies, systems and procedures against legal and generally accepted governance standards to establish the level of compliance and effectiveness in complying with legal requirements.
3. Identify and review the existing governance and legal instruments including the Fund Policies, Manuals and Contracts (supplier contracts, employment contracts etc) to ensure compliance with legal requirements and best practice.
4. Develop a compliance policy, a compliance checklist, compliance strategy and implementation framework that will ensure all regulatory and reporting requirements are met and are in line with best practices and in agreement with the Fund's strategic plan and overall mandate.
5. Assist in designing and developing additional policies and procedures as may be necessary to enhance compliance.
6. Develop a compliance framework that will enable the Fund to continuously monitor and audit compliance.

7. Share the best practices of Compliance Management with the Management and the Board of Trustees.
8. Submit and present reports of the audit findings and recommendations the Management and the Board of Trustees.

c. **Deliverables/Output,**

At the end of the consultancy period, the consultant is expected to deliver the following:

1. Legal and Governance Audit Report of findings and recommendations.
2. Legal and Governance Audit compliance matrix and checklist
3. Compliance strategy and implementation framework
4. Reviewed Policies and Manuals.
5. Presentations to the Management and the Board of Trustees.

8.0 THE FIRM, KEY PERSONNEL

The minimum qualification for the key staff shall be as per the evaluation criteria indicated above.

Please note:-

- Specific role of each of the staff members as regards to this assignment must be stated in the Curriculum Vitae or attached before or after the Curriculum Vitae. Each staff proposed for the assignment must have signed the C.V. and the same be countersigned by the firm's representative.
- Working knowledge of English is required.

9.0 RESPONSIBILITIES OF THE CONSULTANT

The Consultant shall be responsible for all his office and living accommodation, transportation, equipment, secretarial services, investigation, telephones, postage and everything else necessary for the satisfactory execution and completion of the services.

The Consultant will carry out the assignment within the premises of KPPF at **Stima Plaza Annex Nairobi Kenya**.

11.0 DURATION

The Assignment shall be for a period of three (3) Months from the date of the signing of the Consultancy Agreement until the submission of the final reports.

All the information generated shall remain the property of Kenya Power Pension Fund and cannot be used for any other purpose unless with authority from KPPF.

12.0 COPYRIGHT OF THE REPORT

The copyright (ownership) of the reports/documents at the end of the consultancy contract will be vested in the CEO, Kenya Power Pension Fund.

SECTION 6. CONDITIONS OF CONTRACT AND CONTRACT FORMS

CONTRACT AGREEMENT FORM

THIS AGREEMENT made this.....day of.....**20....** **BETWEEN THE KENYA POWER & LIGHTING COMPANY LIMITED STAFF RETIREMENT BENEFITS SCHEME**, a retirement benefits fund licensed by Retirement Benefits Authority situated at Stima Plaza, Kolobot Road, Parklands, Nairobi in the Republic of **Kenya** and of Post Office Box Number *1548-00600*, Nairobi in the Republic aforesaid (*hereinafter referred to as the "KPPF"*) of the one part,

AND

.....a duly registered entity according to the laws ofand of Post Office Box Number..... in the Republic aforesaid, (*hereinafter referred to as the "Consultant"*) of the other part;

WHEREAS KPPF invited tenders for certain services, that is to say, for **Consultancy Services** under Tender Number.....

AND WHEREAS KPPF has accepted the Tender by the Consultant for the services in the sum of **Kshs.****VAT Inclusive say**.....(*hereinafter called "the Contract Price"*) **as outlined in the notification of award letter referred to in clause 5(f).**

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS: -

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract and the Tender Document.
2. Unless the context or express provision otherwise requires: -
 - a) reference to "this Agreement" includes its recitals, any schedules and documents mentioned hereunder and any reference to this Agreement or to any other document includes a reference to the other document as varied supplemented and or replaced in any manner from time to time.
 - b) any reference to any Act shall include any statutory extension, amendment, modification, re-amendment or replacement of such Act and any rule, regulation or order made thereunder.
 - c) words importing the masculine gender only, include the feminine gender or (as the case may be) the neutral gender.
 - d) words importing the singular number only include the plural number and vice-versa and where there are two or more persons included in the expression the "*Consultant*" the covenants, agreements obligations expressed to be made or performed by the Consultant shall

be deemed to be made or performed by such persons jointly and severally.

- e) where there are two or more persons included in the expression the "*Consultant*" any act default or omission by the Consultant shall be deemed to be an act default or omission by any one or more of such persons.
3. In consideration of the payment to be made by KPPF to the Consultant as hereinbefore mentioned, the Consultant hereby covenants with KPPF to perform and provide the services and remedy any defects thereon in conformity in all respects with the provisions of the Contract.
4. KPPF hereby covenants to pay the Consultant in consideration of the proper performance and provision of the services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.
5. The following documents shall constitute the Contract between KPPF and the Consultant and each shall be read and construed as an integral part of the Contract: -
- a. this Contract Agreement
 - b. the Special Conditions of Contract as per the Tender Document
 - c. the General Conditions of Contract as per the Tender Document
 - d. the Price Schedules submitted by the Consultant and agreed upon with KPPF.
 - e. the Terms of Reference as per KPPF's Tender Document
 - f. KPPF's Notification of Award dated
 - g. the technical submission form
 - h. Proposed workplan and schedule of activities
6. In the event of any ambiguity or conflict between the contract documents listed above, the order of precedence shall be the order in which the contract documents are listed in 5 above except where otherwise mutually agreed in writing.
7. The Commencement Date shall be the working day immediately following the fulfillment of all the following: -
- a) Execution of this Contract Agreement by KPPF and the Consultant.
 - b) Issuance of the Performance Bond by the Consultant and confirmation of its authenticity by KPPF.
 - c) Issuance of the Official Order by KPPF to the Consultant.
8. The period of contract validity shall begin from the Commencement date and end sixty (60) days after the last date of the agreed performance schedule.
Provided that the expiry period of the Warranty shall be as prescribed and further provided that the Warranty shall survive the expiry of the contract.

9. It shall be the responsibility of the Consultant to ensure that its Performance Security is valid at all times during the period of contract validity and further is in the full amount as contracted.
10. Any amendment, change, addition, deletion or variation howsoever to this Contract shall only be valid and effective where expressed in writing and signed by both parties.
11. No failure or delay to exercise any power, right or remedy by KPPF shall operate as a waiver of that right, power or remedy and no single or partial exercise of any other right, power or remedy.
12. Notwithstanding proper completion of performance or parts thereof, all the provisions of this Contract shall continue in full force and effect to the extent that any of them remain to be implemented or performed unless otherwise expressly agreed upon by both parties.
13. Any notice required to be given in writing to any Party herein shall be deemed to have been sufficiently served, if where delivered personally, one day after such delivery; notices by electronic mail and facsimile shall be deemed to be served one day after the date of such transmission and delivery respectively, notices sent by post shall be deemed served seven (7) days after posting by registered post (*and proof of posting shall be proof of service*), notices sent by courier shall be deemed served two (2) days after such receipt by the courier service for Local Suppliers and five (5) days for Foreign Suppliers.
14. For the purposes of Notices, the address of KPPF shall be CEO & Trust Secretary, Kenya Power Pension Fund, Ground Floor, Stima Plaza, Kolobot Road, Post Office Box Number 1548–00600, Nairobi, Kenya. The address for the Consultant shall be the Consultant’s address as stated by it in the Confidential Business Questionnaire provided in the Tender Document.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Kenya the day and year first above written.

SIGNED for and on behalf
of KPPF

CEO & TRUST SECRETARY

SEALED with the **COMMON SEAL**
of the **CONSULTANT**
in the presence of:-

DIRECTOR

Affix Consultant's Seal here

DIRECTOR'S FULL NAMES

and in the presence of:-

DIRECTOR/ COMPANY SECRETARY

DIRECTOR/ COMPANY SECRETARY'S FULL NAMES

SECTION 7: GENERAL CONDITIONS OF CONTRACT

A. General Provisions

1. Definitions

- a) Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:
- b) "Applicable Law" means the laws and any other instruments having the force of law in Kenya.
- c) "Consultant" means a legally-established professional consulting firm or entity selected by the Procuring Entity to provide the Services under the signed Contract.
- d) "Contract" means the legally binding written agreement signed between the Procuring Entity and the Consultant and which includes all the attached documents listed in its paragraph 1 of the Form of Contract (the General Conditions (GCC), the Special Conditions (SCC), and the Appendices).
- e) "Procuring Entity" means the Procuring Entity that signs the Contract for the Services with the selected Consultant.
- f) "Day" means a working day unless indicated otherwise.
- g) "Effective Date" means the date on which this Contract comes into force and effect pursuant to Clause GCC 11.
- h) "Experts" means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or JV member(s) assigned by the Consultant to perform the Services or any part thereof under the Contract.
- i) "Foreign Currency" means any currency other than the currency of Kenya.
- j) "GCC" mean these General Conditions of Contract.
- k) "Government" means the government of Kenya.
- l) "Joint Venture (JV)" means an association with or without a legal personality distinct from that of its members, of more than one entity where one member has the authority to conduct all

businesses for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Procuring Entity for the performance of the Contract.

- m) "Key Expert(s)" means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose Curricula Vitae (CV) was taken into account in the technical evaluation of the Consultant's proposal.
- n) "Local Currency" means the Kenya Shillings, the currency of Kenya.
- o) "Non-Key Expert(s)" means an individual professional provided by the Consultant or its Sub-consultant to perform the Services or any part here of under the Contract.
- p) "Party" means the Procuring Entity or the Consultant, as the case may be, and "Parties" means both of them.
- q) "SCC" means the Special Conditions of Contract by which the GCC may be amended or supplemented but not over-written.
- r) "Services" means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A hereto.
- s) "Sub-consultants" means an entity to whom/which the Consultant subcontracts any part of the Services while remaining solely liable for the execution of the Contract.
- (t) "Third Party " means any person or entity other than the Government, the Procuring Entity, the Consultant or a Sub-consultant.

2. Relationship between the Parties

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

3. Law Governing Contract

3.1 This Contract, its meaning and interpretation, and the relation between the Parties shall be governed

by the Laws of Kenya.

4. Language

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

5. Headings

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

6. Communications

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

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

7 Location

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

8 Authority of Member in Charge

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

9 Authorized Representatives

9.1 Any action required or permitted to be taken, and any document required or permitted to be

executed under this Contract by the Procuring Entity or the Consultant may be taken or executed by the officials specified in the SCC.

10 Corrupt and Fraudulent Practices

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

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

B. Commencement, Completion, Modification and Termination of Contract

11 Effectiveness of Contract

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 hereunder.

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

b. No Breach of Contract

17.4 The failure of a Party to fulfill any of its obligations 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 GCC45.1withinforty-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 theServices 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

19.1.3 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 GCC27 or GCC28.

E. Payment up on Termination

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

- a) Payment of 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.

D. Obligations of the Consultant

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.

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.

22.2 Further to Clause 22.1 the Consultant shall be required to sign a Non-Disclosure Agreement prior to contract commencement.

23 Liability of the Consultant

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

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, inter alia, that acts intended to materially impede the exercise of the PPRA's inspection and audit rights provided for under this Clause GCC25.2 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility 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 or Sub consultant have engaged in corrupt, fraudulent, collusive, coercive [or obstructive] practice while performing the Services, the Consultant shall, at the Procuring Entity's written request, provide a replacement.

31.2 In the event that any of Key Experts, Non-Key Experts or Sub-consultants is found by the Procuring Entity to be incompetent or incapable in discharging assigned duties, the Procuring Entity, specifying the grounds therefore, may request the Consultant to provide a replacement.

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

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

E. Obligations of the Procuring Entity

32 Assistance and Exemptions

31.1 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.

32.2 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.

32.3 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 GCC39.1.

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

40 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

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

41 Mode of Billing and Payment

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

41.2 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.

41.2.1 *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.

41.1.2 *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.

41.1.3 *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 lump-sum installment shall be deemed approved for payment by the Procuring Entity within ninety (90) calendar days after receipt of the final report by the Procuring Entity unless the Procuring Entity, within such ninety (90) calendar day period, gives written notice to the Consultant specifying in detail deficiencies in the Services, the final report. The Consultant shall thereupon promptly make any necessary corrections, and there after the fore going process shall be repeated.

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

41.1.5 With the exception of the final payment under 41.2.3 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.l(a)	The Contract shall be construed in accordance with the law of Kenya
4.1	The language is: English

41.2	<p>The payment schedule: [Payment of installments shall be linked to the deliverables specified in the Terms of Reference]</p> <p>Kshs.(10% of the contract price) upon signature of this contract, submission of an Inception Report,</p> <p>(b) Kshs.(20% of the contract price) upon submission and acceptance of the Draft Report and presentation to Management and submission of an invoice; and –</p> <p>(c) Kshs.(60% of the contract price) upon submission and acceptance of the Final Report, presentation to the Board of Trustees and submission of an invoice.</p>
------	---

SECTION 9: APPENDICES

Appendix A – Terms of Reference – see attached

Appendix B - Key Experts

Refer to Form TECH-6.

Appendix C – Breakdown of Contract Price

Refer to Form FIN-3 and FIN-4

SECTION 10. NOTIFICATION FORMS

1. DRAFT LETTER OF NOTIFICATION OF INTENTION TO AWARD

To:
(Name and full address of the Successful Tenderer).....

Dear Sirs/ Madams,

RE: NOTIFICATION OF INTENT OF AWARD OF TENDER NO.

Pursuant to the provision under section 87 of the public procurement and asset disposal Act 2015 we refer to your tender dated we are pleased to inform you that following evaluation, we intend to award you a contract for the above mentioned subject to provision herein.

This notification of intent does not constitute a contract. The formal Contract Agreement and notification of award, shall be entered into pursuant to the provisions of the Public Procurement and Asset Disposal Act, 2015 *(or as may be amended from time to time, or replaced)*.

You are required to accept or reject this offer within a period of 14 days.

We take this opportunity to remind you to again note and strictly comply with the provisions as stated in the tender document.

Kenya Power Pension Fund is committed to best practices in quality management systems and supply chain management, attached please read carefully our Suppliers' Charter. We look forward to a cordial and mutually beneficial business relationship.

Yours faithfully,

FOR: THE KENYA POWER PENSION FUND

CEO & TRUST SECRETARY.

2 DRAFT LETTER OF NOTIFICATION OF AWARD

To:
(Name and full address of the Successful Tenderer)

Dear Sirs/ Madams,

RE: NOTIFICATION OF AWARD OF TENDER NO.

We refer to your Tender dated..... and are pleased to inform you that following evaluation, your Tender has been accepted as follows: -

.....
.....

This notification does not constitute a contract. The formal Contract Agreement, which is enclosed herewith shall be entered into upon expiry of fourteen (14) days from the date hereof pursuant to the provisions of the Public Procurement and Asset Disposal Act, 2015 *(or as may be amended from time to time or replaced)*.

Kindly sign, and seal the Contract Agreement. Further, initial and stamp on all pages of the documents forming the Contract that are forwarded to you with this letter. Thereafter return the signed and sealed Contract together with the documents to us within fourteen (14) days of the date hereof for our further action.

We take this opportunity to remind you to again note and strictly comply with the provisions as regards the Tender Security, Signing of Contract and Performance Security as stated in the Instructions to Tenderers.

We look forward to a cordial and mutually beneficial business relationship.

Yours faithfully,

FOR: THE KENYA POWER PENSION FUND

CEO & TRUST SECRETARY

Enclosures

SECTION XIIIIV DRAFT LETTER OF NOTIFICATION OF REGRET

To: (Name and full address of the Unsuccessful Tenderer)

Date:

Dear Sirs/ Madams,

RE: NOTIFICATION OF REGRET IN RESPECT OF TENDER NO.

Pursuant to the provision under section 87(3) of the public procurement and asset disposal Act 2015 to notify you that following evaluation, your Tender is unsuccessful. It is therefore not accepted. The brief reasons are as follows: -

1.
2.
3. etc

The successful bidder was _____.

However, this notification does not reduce the validity period of your Tender Security. In this regard, we request you to relook at the provisions regarding the Tender Security, Signing of Contract and Performance Security as stated in the Instructions to Tenderers.

You may collect the tender security from our offices only after expiry of twenty-five (25) days from the date hereof. It is expected that by that time KPPF and the successful bidder will have entered into a contract pursuant to the Public Procurement and Asset Disposal Act, 2015 (*or as may be amended from time to time or replaced*). When collecting the Security, you will be required to produce the original or certified copy of this letter.

We thank you for the interest shown in participating in this tender and wish you well in all your future endeavours.

Yours faithfully,

FOR: THE KENYA POWER PENSION FUND

CEO & TRUST SECRETARY

SECTION XV TENDER SECURITY FORM – (BANK GUARANTEE)

(To Be Submitted on Bank’s Letterhead)

Date:

To:

The Kenya Power Pension Fund,
Stima Plaza,
Kolobot Road, Parklands,
P.O Box 1548 – 00600,
Nairobi, Kenya.

WHEREAS (*name of the Tenderer*) (*hereinafter called “the Tenderer”*) has submitted its Tender dated for the supply, installation and commissioning of..... (*please insert KPPF tender no. and name*) (*hereinafter called “the Tender”*);

KNOW ALL PEOPLE by these presents that **WE**..... of having our registered office at..... (*hereinafter called “the Bank”*), are bound unto The Kenya Power and Lighting Company Limited (*hereinafter called “KPPF” which expression shall where the context so admits include its successors-in-title and assigns*) in the sum of for which payment, well and truly to be made to the said KPPF, the Bank binds itself, its successors, and assignees by these presents.

We undertake to pay you, upon your first written demand declaring the Tenderer to be in breach of the tender requirements and without cavil or argument, the entire sum of this guarantee being (*amount of guarantee*) as aforesaid, without you needing to prove or to show grounds or reasons for your demand or the sum specified therein.

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

This guarantee is valid until theday of.....20.....

EITHER

SEALED with the)
COMMON SEAL)

of the said **BANK**) _____

thisday) BANK SEAL
of20....)
))
in the presence of :-)
))
_____)
))
and in the presence of:-)
))
_____)

OR

SIGNED by the **DULY AUTHORISED**
REPRESENTATIVE(S)/ ATTORNEY(S) of
the **BANK**

Name(s) and Designation of duly authorised representative(s)/ attorney(s) of the Bank

Signature(s) of the duly authorised person(s)

NOTES TO TENDERERS AND BANKS

1. *Please note that no material additions, deletions or alterations regarding the contents of this Form shall be made to the Tender Security to be furnished by the Tenderer. If any are made, the Tender Security shall not be accepted and shall be rejected by KPPF. For the avoidance of doubt, such rejection will be treated as non-submission of the Tender Security where such Security is required in the tender.*

2. *It is the responsibility of the Tenderer to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPPF. The period for response shall not exceed three (3) days from the date of KPPF's query. Should there be no conclusive response by the Bank within this period, such Tenderer's Tender Security*

shall be deemed as invalid and the bid rejected.

3. The issuing bank should address its response or communication regarding the bond to KPPF at the following e-mail address – “cmbuiya@kppf.co.ke”

The Tender validity period is One hundred and eighty (180) days as set out in the Invitation to Tender (at Section I of the Tender document) or as otherwise may be extended by KPPF. Therefore the Tender Security must at all times be valid for at least 30 days beyond the tender validity period.

SECTION VI : TENDER SECURITY FORM (SACCO SOCIETY, DEPOSIT TAKING MICRO FINANCE INSTITUTIONS, WOMEN ENTERPRISE FUND & YOUTH ENTERPRISE FUND)

(To Be Submitted On Institutions Letterhead)

Date:

To:

The Kenya Power Pension Fund,
Stima Plaza,
Kolobot Road, Parklands,
P.O Box 1548 – 00600,
Nairobi, Kenya.

WHEREAS.....(hereinafter called “the **Consultant**”) has undertaken, in pursuance of your Tender Number.....(*reference number of the Tender*) and its Tender dated(*insert **Consultant’s** date of Tender taken from the Tender Form*) to supply(*description of the Works*) (hereinafter called “the Contract);

AND WHEREAS it has been stipulated by you in the said Contract that the Consultant shall furnish you with an Institution’s guarantee by an acceptable Institution for the sum specified therein as security for compliance of the Consultant’s performance obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Consultant a Guarantee;

THEREFORE WE HEREBY AFFIRM that we are Guarantors and responsible to you, on behalf of the **Consultant**, up to a total of..... (*amount of the guarantee in words and figures*) and we undertake to pay you, upon your first written demand declaring the **Consultant** to be in default under the Contract and without cavil or argument, any sum or sums within the limits of (*amount of guarantee*) as aforesaid, without you needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until theday of.....20....

EITHER

SEALED with the)

COMMON SEAL)

of the said INSTITUTION)

)

thisday)

)

INSTITUTION SEAL

of20....)

)

in the presence of :-)

)

and in the presence of:-)

)

OR

SIGNED by the **DULY AUTHORISED REPRESENTATIVE(S)/ ATTORNEY(S)** of the **INSTITUTION**

Name(s) and Designation of duly authorised representative(s)/ attorney(s) of the **Institution**.

Signature(s) of the duly authorised person(s)

NOTES TO SUPPLIERS AND INSTITUTIONS

1. Please note that no material additions, deletions or alterations regarding the contents of this Form shall be made to the Tender Security to be furnished by the Tenderer. If any are made, the Tender Security shall not be accepted and shall be rejected by KPPF. For the avoidance of doubt, such rejection will be treated as non-submission of the Tender Security where such Security is required in the tender.

2. *It is the responsibility of the Tenderer to sensitize its issuing institution on the need to respond directly and expeditiously to queries from KPPF. The period for response shall not exceed three (3) days from the date of KPPF's query. Should there be no conclusive response by the institution within this period, such Tenderer's Tender Security shall be deemed as invalid and the bid rejected.*

3. **The issuing institution should address its response or communication regarding the Tender Security to KPPF at the following e-mail address – “cmbuiya@kppf.co.ke”**

4. The Tender validity period is One hundred and eighty (180) days as set out in the Invitation to Tender (at Section I of the Tender document) or as otherwise may be extended by KPPF. Therefore the Tender Security must at all times be valid for at least 30 days beyond the tender validity period.

SECTION XI - CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

All Tenderers are requested to give the particulars indicated in Part 1 and either Part 2 (a), 2 (b) or 2 (c), whichever applies to your type of business. You are advised that it is a serious offence to give false information on this form.

<p>Part 1 – General</p> <p>Business Name.....</p> <p>Location of business premises.....</p> <p>Plot No.Street/ Road</p> <p>Postal Address Postal Code</p> <p>Tel No.....</p> <p>Facsimile.....</p> <p>Mobile and/ or CDMA No.....</p> <p>E-mail:.....</p> <p>Nature of your business</p> <p>Registration Certificate No.....</p> <p>Maximum value of business which you can handle at any time KSh.....</p> <p>Name of your BankersBranch.....</p> <p>*Names of Tenderer’s contact person(s)</p> <p>Designation of the Tenderer’s contact person(s)</p> <p>Address, Tel, Fax and E-mail of the Tenderer’s contact person(s)</p>
<p>Part 2 (a) Sole Proprietor</p> <p>Your name in full</p> <p>NationalityCountry of origin</p> <p>*Citizenship details.....</p>
<p>Part 2 (b) Partnership</p>

Give details of partners as follows: -

Names	Nationality	*Citizenship Details	Shares
1.....			
2.....			
3.....			
4.....			

Part 2 (c) Registered Company

Private or Public

State the nominal and issued capital of company-

Nominal Kshs.....

Issued Kshs.....

Give details of all directors as follows

Name	Nationality	*Citizenship Details	Shares
1.....			
2.....			
3.....			
4.....			

Name of duly authorized person to sign for and on behalf of the Tenderer
.....

Designation of the duly authorized person.....

Signature of the duly authorized person.....

***ATTACH CR12**

***NOTES TO THE TENDERERS ON THE QUESTIONNAIRE**

- 1. The address and contact person of the Tenderer provided above shall at all times be used for purposes of this tender.*
- 2. If a Kenyan citizen, please indicate under "Citizenship Details" whether by birth, naturalization or registration.*
- 3. The details on this Form are essential and compulsory for all Tenderers. The CR12 must be attached. Failure to provide all the information requested shall lead to the Tenderer's disqualification.*
- 4. For foreign Tenderers please give the details of nominal and issued share capital in the currency of the country of origin of the Tenderer.*