



**KENYA POWER PENSION FUND
KPPF/PROC/2-E/03/19**

**REQUEST FOR PROPOSAL FOR LEGAL DUE DILLIGENCE FOR THE PRIVATE EQUITY (PE) &
UNQUOTED INVESTMENTS – THREE YEAR FRAMEWORK CONTRACT SERVICES.**

OCTOBER 2019

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

TEL NO: 254-20-3201020
EMAIL: tenders@kppf.co.ke, AKimani@kplc.co.ke

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

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1. SECTION I - LETTER OF INVITATION

Date

To:(Name and Address of Consultants)

Dear Sir/Madam,

RE: REQUEST FOR PROPOSAL FOR LEGAL DUE DILLIGENCE FOR THE PRIVATE EQUITY (PE) & UNQUOTED INVESTMENTS - FRAMEWORK CONTRACT SERVICES TENDER NO. KPPF/PROC/2-E/03/19

KPPF invites Proposals from interested eligible firms to provide Consultancy Services to **REQUEST FOR PROPOSAL FOR LEGAL DUE DILLIGENCE FOR THE PRIVATE EQUITY (PE) & UNQUOTED INVESTMENTS - FRAMEWORK CONTRACT SERVICES TENDER NO. KPPF/PROC/2-E/03/19**

Prices quoted should be net inclusive of all taxes, must be expressed in Kenya shillings and shall remain valid for a period of **120 days** from the closing date of the Proposal (**NOT APPLICABLE**).

Each copy of technical and financial proposal shall be paginated serially, prior to submission.

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 Plaza Annex, Kolobot Road, Nairobi, Kenya addressed to:

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

So as to be received on or before **7th November, 2019 at 11.30 am.**

Proposals will be opened promptly thereafter in their presence or their representatives who choose to attend in Kenya Power Pension Fund Ndovu meeting room at Stima Plaza Annex, 3rd Floor, Kolobot Road, Parklands, Nairobi.

You are informed that it is not permissible to transfer this invitation to any other Consultant. A consultant(s) will be selected under **Quality Based Selection (QBS)** described in this RFP, in accordance with the policies established in the Public Procurement and Asset Disposal Act [PPDA] 2015

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

SECTION II – INFORMATION TO CONSULTANTS (ITC)

General Provisions - Definitions

- (i) "Client" means the Kenya Power Pension Fund (KPPF).
- (ii) "Consultant" means the firm that has signed the contract with KPPF.
- (iii) "Contract" means a legally binding written agreement signed between KPPF and the Consultant and includes all the attached documents listed in Conditions of Contract.
- (iv) "Personnel" 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 taken into account in the shortlisting the Consultant's invited to submit proposals.
- (v) "Non-Key Personnel" means an individual professional provided by the Consultant who is assigned to perform the Services or any part thereof under the Contract and whose CVs are not evaluated individually.
- (vi) "Proposal" means the Technical and Financial Proposal of the Consultant.
- (vii) "Services" means the work to be performed by the Consultant pursuant to the Contract.
- (viii) "TORs" means the "Terms of Reference" that explain the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of KPPF and the Consultant, and expected results and deliverables of the assignment.

2. Introduction

- 2.1.1. The Client named in the Appendix to "ITC" will select a firm among those invited to submit a proposal, in accordance with the method of selection detailed in the appendix.
- 2.1.2. The Consultants are invited to submit a Technical Proposal and a Financial Proposal, or a Technical Proposal only, as specified in the Appendix "ITC" for consulting services required for the assignment named in the said Appendix. A Technical Proposal only may be submitted in assignments where KPPF intends to apply standard conditions of engagement and scales of fees for professional services which are regulated as is the case with Building and Civil Engineering Consulting services. In such a case the highest ranked firm of the technical proposal shall be invited to negotiate a contract on the basis of scale fees. The proposal will be the basis for Contract negotiations and ultimately for a signed Contract with the selected firm.

- 2.1.3. The Consultants must familiarize themselves with local conditions and take them into account in preparing their proposals. To obtain firsthand information on the assignment and on the local conditions, Consultants are encouraged to liaise with KPPF regarding any information that they may require before submitting a proposal and to attend a pre-proposal conference where applicable. Consultants should contact the officials named in the Appendix "ITC" to arrange for any visit or to obtain additional information on the pre-proposal conference. Consultants should ensure that these officials are advised of the visit in adequate time to allow them to make appropriate arrangements.
- 2.1.4. KPPF will provide the inputs specified in the Appendix "ITC", assist the firm in obtaining licenses and permits needed to carry out the services and make available relevant project data and reports.
- 2.1.5. Please note that (i) the costs of preparing the proposal and of negotiating the Contract, including any visit to KPPF are not reimbursable as a direct cost of the assignment; and (ii) KPPF is not bound to accept any of the proposals submitted.
- 2.1.6. KPPF's employees, committee members, board members and their relative (spouse and children) are not eligible to participate.
- 2.1.7. The RFP document shall be free of charge

Clarification and Amendment of RFP Documents

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

Preparation of Technical Proposal

- 2.1.10. The Consultants proposal shall be written in English language
- 2.1.11. In preparing the Technical Proposal, Consultants are expected to examine the documents constituting this RFP in detail. Material deficiencies in providing the information requested may result in rejection of a proposal.

2.1.12. While preparing the Technical Proposal, Consultants must give particular attention to the following:

- (i) If a firm considers that it does not have all the expertise for the assignment, it may obtain a full range of expertise by associating with individual consultant(s) and/or other firms or entities in a joint venture or sub-consultancy as appropriate. Consultants shall not associate with the other Consultants invited for this assignment. Firms associating in contravention of this requirement shall automatically be disqualified.
- (ii) In all cases the shortlisted firm must ensure that proposed key staffs are not appearing on the proposal of any other shortlisted firm. Firms with proposed key staff in contravention of this requirement shall automatically be disqualified.
- (iii) For assignments on a staff-time basis, the estimated number of professional staff-time is given in the Appendix. The proposal shall however be based on the number of professional staff-time estimated by the firm.
- (iv) It is desirable that the majority of the key professional staff proposed be permanent employees of the firm or has an extended and stable working relationship with it.
- (v) Proposed professional staff must as a minimum, have the experience indicated in the Appendix to Information to Consultants, preferably working under conditions similar to those prevailing in Kenya.
- (vi) Alternative professional staff shall not be proposed and only one Curriculum Vitae (CV) may be submitted for each position.

2.1.13. The Technical Proposal shall provide the following information using the Attached Standard Forms;

- (i) A brief description of the firm's organization and an outline of recent experience on assignments of a similar nature. For each assignment the outline should indicate *inter alia*, the profiles of the staff proposed, duration of the assignment, contract amount and firm's involvement.
- (ii) Any comments or suggestions on the Terms of Reference, a list of services and facilities to be provided by KPPF.
- (iii) A description of the methodology and work plan for performing the assignment.
- (iv) The list of the proposed staff team by specialty, the tasks that would be assigned to each staff team member and their timing.
- (v) CVs recently signed by the proposed professional staff and the authorized representative submitting the proposal. Key information should include number of years working for the firm/entity and degree of responsibility held in various assignments for the required number of years.

- (vi) Estimates of the total staff input (professional and support staff staff-time) needed to carry out the assignment supported by bar chart diagrams showing the time proposed for each professional staff team member.
- (vii) A detailed description of the proposed methodology, staffing and monitoring of Training, if ITC specifies training as a major component of the assignment.
- (viii) Any additional information requested in ITC.

2.3.5 The Technical Proposal **shall not** include any financial information.

Preparation of Financial Proposal

- 2.1.14. In preparing the Financial Proposal, Consultants are expected to take into account the requirements and conditions outlined in the RFP documents. The Financial Proposal should follow Standard Forms (Section D). It lists all costs associated with the assignment including; (a) remuneration for staff (in the field and at headquarters), and; (b) reimbursable expenses such as subsistence (per diem, housing), transportation (international and local, for mobilization and demobilization), services and equipment (vehicles, office equipment, furniture, and supplies), office rent, insurance, printing of documents, surveys, and training, if it is a major component of the assignment. If appropriate these costs should be broken down by activity.
- 2.1.15. The Financial Proposal should clearly identify as a separate amount, the local taxes, duties, fees, levies and other charges imposed under the law on the Consultants, the sub-Consultants and their personnel, unless Appendix "A" specifies otherwise.
- 2.1.16. Consultants shall express the price of their services **in Kenya Shillings**.
- 2.1.17. Commissions and gratuities, if any, paid or to be paid by Consultants and related to the assignment will be listed in the Financial Proposal Submission Form.
- 2.1.18. The Proposal must remain valid for **120 days** after the submission date. During this period, the consultant is expected to keep available, at his own cost, the professional staff proposed for the assignment. KPPF will make his best effort to complete negotiations within this period. If KPPF wishes to extend the validity period of the proposals, the Consultants shall agree to the extension.

Submission, Receipt, and Opening of Proposals

- 2.1.19. The original proposal Technical Proposal and, if required, Financial Proposal; shall be prepared in indelible ink. It shall contain no interlineations or overwriting, except as necessary to correct errors made by the firm itself. Any such corrections must be initialed by the persons or person authorized to sign the proposals.

- 2.1.20. For each proposal, the Consultants shall prepare the number of copies indicated in Appendix "A". Each Technical Proposal and Financial Proposal shall be marked "**ORIGINAL**" or "**COPY**" as appropriate. If there are any discrepancies between the original and the copies of the proposal, the original shall govern.
- 2.1.21. The Tenderer is required to serialize all pages for each bid submitted
- 2.1.22. The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked "**TECHNICAL PROPOSAL**," and the original and all copies of the Financial Proposal (**NOT APPLICABLE**) in a sealed envelope clearly marked "**FINANCIAL PROPOSAL**" and warning: "**DO NOT OPEN WITH THE TECHNICAL PROPOSAL**". Both envelopes shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address and other information indicated in the Appendix "ITC" and is clearly marked, "**DO NOT OPEN, EXCEPT IN PRESENCE OF THE OPENING COMMITTEE.**"
- 2.1.23. The completed Technical and Financial Proposals must be delivered at the Submission address on or before the time and date stated in the Appendix "ITC". Any proposal received after the closing time for submission of proposals shall be returned to the respective consultant unopened.
- 2.1.24. After the deadline for submission of proposals, the Technical Proposal shall be opened immediately by the opening committee. The Financial Proposal shall remain sealed and deposited with a responsible officer of KPPF department up to the time for public opening of financial proposals.

Proposal Evaluation General

- 2.1.25. From the time the bids are opened to the time the Contract is awarded, if any consultant wishes to contact KPPF on any matter related to his proposal, he should do so in writing at the address indicated in the Appendix "ITC". Any effort by the firm to influence KPPF in the proposal evaluation, proposal comparison or Contract award decisions may result in the rejection of the consultant's proposal.
- 2.1.26. Evaluators of Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded.

Evaluation of Technical Proposal

- 2.1.27. The evaluation committee appointed by the Client shall evaluate the proposals on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria as indicated in the Appendix to information to consultants.

Each responsive proposal will be given a technical score (St). Actual score points are provided in the Appendix "ITC". A proposal shall be rejected at this stage if it does not respond to important aspects of the Terms of Reference or if it fails to achieve the minimum technical score indicated in the Appendix "ITC".

Opening and Evaluation of Financial Proposal

- 2.1.28. After Technical Proposal evaluation, KPPF shall notify those Consultants whose proposals did not meet the minimum qualifying mark or were considered non-responsive to the RFP and Terms of Reference, indicating that their Financial Proposals will be returned after completing the selection process. KPPF shall simultaneously notify the Consultants who have secured the minimum qualifying mark, **indicating the date and time set for opening the Financial Proposals** and stating that the opening ceremony is open to those Consultants who choose to attend. The opening date **shall not be sooner than seven (7) days** after the notification date. The notification may be sent by registered letter, cable, telex, facsimile or electronic mail.
- 2.1.29. The Financial Proposals shall be opened in the presence of the Consultants' representatives who choose to attend. The name of the consultant, the technical scores and the proposed prices shall be read aloud and recorded when the Financial Proposals are opened.
- 2.1.30. The evaluation committee will determine whether the financial proposals are complete (i.e. whether the consultant has costed all the items of the corresponding Technical Proposal and correct any computational errors. The cost of any unpriced items shall be assumed to be included in other costs in the proposal. In all cases, the total price of the Financial Proposal as submitted shall prevail.

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

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

$100 \times \frac{FM}{F}$ where Sf is the financial score; FM is the lowest priced financial proposal and F is the price of the proposal under consideration. Proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weights (T=the weight given to the Technical Proposal; P= the weight given to the Financial Proposal; $T + p$

= 1) indicated in the Appendix. The combined technical and financial score, S, is calculated as follows:- $S = St \times T \% + Sf \times P \%$. The firm achieving the highest combined technical and financial score will be invited for negotiations.

- 2.1.32. The tender evaluation committee shall evaluate the tender within 30 days from the date of opening the tender.
- 2.1.33. Contract price variations shall not be allowed for contracts not exceeding one year (12 months).

- 2.1.34. Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price
- 2.1.35. Price variation requests shall be processed by KPPF within 30 days of receiving the request.

Negotiations

- 2.1.36. Negotiations will be held at the same address as “address to send information to KPPF” indicated in the Appendix “ITC”. The aim is to reach agreement on all points and sign a contract.
- 2.1.37. Negotiations will include a discussion of the Technical Proposal, the proposed methodology (work plan), staffing and any suggestions made by the firm to improve the Terms of Reference. KPPF and firm will then work out final Terms of Reference, staffing and bar charts indicating activities, staff periods in the field and in the head office, staff-months, logistics and reporting. The agreed work plan and final Terms of Reference will then be incorporated

in the “Description of Services” and form part of the Contract. Special attention will be paid to getting the most the firm can offer within the available budget and to clearly defining the inputs required from KPPF to ensure satisfactory implementation of the assignment.
- 2.1.38. Unless there are exceptional reasons, the financial negotiations will not involve the remuneration rates for staff (no breakdown of fees).
- 2.1.39. Having selected the firm on the basis of, among other things, an evaluation of proposed key professional staff, KPPF expects to negotiate a contract on the basis of the experts named in the proposal. Before contract negotiations, KPPF will require assurances that the experts will be actually available. KPPF will not consider substitutions during contract negotiations unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the firm may be disqualified.
- 2.1.40. The negotiations will conclude with a review of the draft form of the Contract. To complete negotiations KPPF and the selected firm will initial the agreed Contract. If negotiations fail, KPPF will invite the firm whose proposal received the second highest score to negotiate a contract.
- 2.1.41. KPPF shall appoint a team for the purpose of the negotiations.

Award of Contract

- 2.1.42. The Contract will be awarded following negotiations. After negotiations are completed, KPPF will promptly notify other Consultants on the shortlist that they were unsuccessful and return the Financial Proposals of those Consultants who did not pass the technical evaluation.
- 2.1.43. The selected firm is expected to commence the assignment on the date and at the location specified.
- 2.1.44. The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

- 2.1.45. KPPF may at any time terminate procurement proceedings prior to notification of tender award and shall not be liable to any person for the termination.
- 2.1.46. KPPF shall give notice of the termination to all persons who submitted tenders of the termination within fourteen days of termination and such notice shall contain the reason for termination.
- 2.1.47. To qualify for contract awards, the tenderer shall have the following:
- (a) Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.
 - (b) Legal capacity to enter into a contract for procurement
 - (c) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
 - (d) Shall not be debarred from participating in public procurement.

Confidentiality

- 2.1.48. Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the Consultants who submitted the proposals or to other persons not officially concerned with the process, until the winning firm has been notified that it has been awarded the Contract.
- 2.1.49. Within fourteen (14) days of the date of notification of award from KPPF, the successful Tenderer shall furnish KPPF with a Performance Security which shall be an original Bank Guarantee that is strictly in the form and content as prescribed in the Performance Security Form (Bank Guarantee) in the Tender Document.

Performance Security

- 2.1.50. The Performance Security shall be issued by a commercial bank licensed by the Central Bank of Kenya. The bank must be located in Kenya.
- 2.1.51. The Performance Security shall be the sum of ten percent (10%) of the contract value. It shall be in the currency of the contract price.
- 2.1.52. KPPF shall seek authentication of the Performance Security from the issuing bank. It is the responsibility of the successful 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 successful Tenderer's Performance Security may be deemed as invalid.
- 2.1.53. Failure of the successful Tenderer to furnish an authentic Performance Security, the award shall be annulled and the Tender Security forfeited, in which event KPPF may notify the next lowest evaluated Tenderer that its Tender has been accepted.

Corrupt or fraudulent practices

- 2.1.54. KPPF requires that the Consultants observe the highest standards of ethics during the selection and award of the consultancy contract and also during the performance of the assignment. The tenderer shall sign a declaration that he/she has not and will not be involved in corrupt or fraudulent practices.
- 2.1.55. KPPF will reject a proposal for award if it determines that the consultant recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.
- 2.1.56. Further a consultant who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

APPENDIX TO INFORMATION TO CONSULTANTS

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

Clause Reference

1.1.1 The name of client is: **KENYA POWER PENSION FUND**

2.1.1 Eligibility: **LEGAL FIRMS WHO MEET THE CRITERIA**

2.1.1 The method of selection is: **QUALITY BASED SELECTION (QBS)**

2.1.2 Technical and Financial Proposals are requested: **TECHNICAL PROPOSAL ONLY**

The name, objectives, and description of the assignment are: **REQUEST FOR PROPOSAL FOR LEGAL DUE DILLIGENCE FOR THE PRIVATE EQUITY (PE) & UNQUOTED INVESTMENTS - FRAMEWORK CONTRACT SERVICES TENDER NO. KPPF/PROC/2-E/03/19**

2.1.3 A pre-proposal conference will be held: **SHALL NOT APPLY**

All enquiries regarding the RFP and the assignment can be made to: tenders@kppf.co.ke

2.1.7 Price Charged for RFP Document: **FREE OF CHARGE**

2.2.1 Consultants may request a clarification of any of the RFP documents only up to seven [7] days before the proposal submission date.

2.3.3 The estimated number of professional staff months required for the assignment is; **AS PER THE PROPOSAL FROM THE CONSULTANT**

2.4.2 Reimbursable expenses costs **NOT ALLOWED**

2.4.2 Taxes: **NOT APPLICABLE**

2.5.2 Consultants must submit an original and additional **one (1)** copy of the **technical proposal**. Consultants must submit an original and additional **one (1)** copy of the **Technical Proposal**.

2.5.4 The proposal submission address is:

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

PROPOSALS TO BE DEPOSITED IN THE TENDER BOX 'MARKED KENYA POWER PENSION FUND' LOCATED ON GROUND FLOOR, STIMA PLAZA ANNEX, KOLOBOT ROAD, PARKLANDS.

Information on the outer envelope should also include:

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

and the information; **REQUEST FOR PROPOSAL FOR LEGAL DUE DILLIGENCE FOR THE PRIVATE EQUITY (PE) & UNQUOTED INVESTMENTS - FRAMEWORK CONTRACT SERVICES TENDER NO. KPPF/PROC/2-E/03/19**

2.5.5 The proposals must be submitted no later than **7th November, 2019 at 11.30AM.**

2.6.1 The address to seek any information to KPPF is:

**Head of Procurement,
Kenya Power Pension Fund ,
Stima plaza Annex 3rd Floor, Kolobot Road,
P.O Box 1548 – 00600
Nairobi, Kenya.
TEL NO: 254-20-3201020
EMAIL: tenders@kppf.co.ke, AKimani@kplc.co.ke**

2.7.1 The Evaluation Committee shall evaluate the proposals on the basis of their responsiveness to the **Mandatory Requirements of the RFP and Terms of Reference, applying the evaluation criteria** as follows:

Preliminary Evaluation Criteria (Mandatory Requirements) The tenderer must:

- (i) Submit the required number of 2 copies of the technical proposal as instructed.
- (ii) Copy of Valid Tax Compliance Certificate from the tender opening date
- (iii) Valid practicing certificate for the lead consultant and assistant.
- (iv) Copy of Certificate of Registration, either as business name, Company or LLP
- (v) Duly completed and stamped Technical Submission form
- (vi) Duly completed and stamped Confidential Business Questionnaire Form

- (vii) Provide a self-declaration that firm and the consultants will not engage in any corrupt practices.

NB: Only Bidders who pass the preliminary stage will proceed to Technical Evaluation.

Technical Evaluation Criteria

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. Attach CVs and certified certificates

Team	Qualification	Marks
Lead consultant	Post graduate Degree in Law	3
	Undergraduate Degree in Law	2
	Relevant experience (Carrying our PE due legal due diligence & Unquoted Investments)	15
	> 4 projects - 15 marks	
2 – 3 projects - 10 marks		
Assistant consultant/Team	1 project - 3 marks	
Assistant consultant/Team	Undergraduate Degree in Law	2
	Relevant experience	8
	>4 projects - 8 marks	
	2 – 3 projects - 5 marks	
	1 project - 2 mark	

2. Firm's Experience; (15 marks)

Experience of the firm in the provision of Legal due diligence of a **PE Fund/Unquoted Investments** to other entities of similar characteristics.

Qualification	Marks
More than 15 years	15
10 to 15 years	10
5 to 10 years	5

Below 5 years will score zero

3. Methodology (30 marks)

Proposed approach and methodology to be adopted for the assignment including tools to be used, estimated time and report architecture

Item	Marks
Adequacy of the proposed methodology	15
Comments on understanding of the TOR	5
Planning and information gathering	5

Finalization and reporting	3
Neatness of the document	2

4. Value of past related work (10 marks)

The value of PE/unquoted investment projects evaluated by the entity for the last five years. To submit recommendation letters (Bidders to provide a schedule of the Fund value).

Item	Amounts (Kshs)	Marks
Average value of the project	Above 10 billion	10
	5 – 10 billion	5
	1 - 5 billion	2
	Below 1 billion	1

5. Referees (10 marks)

The bidder to provide five recommendation letters from previous clients where PE or Unquoted investment due diligence has been provided within the last five years (2 mark for each)

6. Value addition (5 marks)

Value addition to the assignment – 1 mark each

- a) International linkage & exposure
- b) Knowledge transfer to the secretariat
- c) Training development
- d) Post assignment support
- e) Any other relevant suggestion/proposal which regard to this assignment.

Tenderers will be awarded a framework contract if they score a minimum of 80 marks and above in the criteria. Technical will carry a weighting of 100% marks.

3. SECTION III: - TECHNICAL PROPOSAL

Notes on the preparation of the Technical Proposals

3.1. TECHNICAL PROPOSAL FORMS

The Consultant shall complete this form and submit it as part of the Consultant's proposal, attaching all technical submissions as required herein and the technical proposal forms provided.

In preparing the technical proposals the consultant is expected to examine all terms and information included in the RFP. Failure to provide all requested information shall be at the consultant's own risk and may result in rejection of the consultant's proposal.

The technical proposal shall provide all required information and any necessary additional information and shall be prepared using the standard forms provided in this Section. The Technical proposal shall not include any financial information unless it is allowed in the Appendix to information to the consultants or the Special Conditions of contract.

3.1.1. **TECHNICAL PROPOSAL SUBMISSION FORM TENDER NO KPPF/PROC/2-E/03/19**

Dated _____

To:

CEO & TRUST SECRETARY

Kenya Power Pension Fund,

Stima Plaza Annex, Kolobot Road,

P.O Box 1548 – 00600

Nairobi, Kenya.

Dear Sir,

REF: TECHNICAL PROPOSAL: REQUEST FOR PROPOSAL FOR LEGAL DUE DILLIGENCE FOR THE PRIVATE EQUITY (PE) & UNQUOTED INVESTMENTS - FRAMEWORK CONTRACT SERVICES TENDER NO. KPPF/PROC/2-E/03/19

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 120 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 7-9 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,

Sincerely Yours,

Authorized Signature

Name of Consultant

Address

Contact phone

Contact e-mail address):

Stamp or Seal

3.1.2. FIRM'S REFERENCES

Relevant Services Carried Out That Best Illustrate Qualifications

Provide a section on the profile of the firm, including relevant experience on services carried out, indicating the actual contracts carried out, the estimated costs, and their references (person who can be contacted, telephone number and email address). Using the format below, provide information on each assignment (not less than three assignments) for which your firm either individually, as a corporate entity or in association, was legally contracted and provide supporting documentary evidence.

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

Firm's Name:

Name and title of signatory;

3.1.3. COMMENTS AND SUGGESTIONS OF CONSULTANTS ON THE TERMS OF REFERENCE AND ON DATA, SERVICES AND FACILITIES TO BE PROVIDED BY KPPF.

Provide and justify here any modifications or improvement to the Terms of Reference to improve performance in carrying out the assignment, such as deleting some activity you consider unnecessary, or adding another, or proposing a different phasing of the activities. Such suggestions should be concise and to the point, and incorporated in your Proposal. Also provide comments on counterpart staff and facilities to be provided by KPPF to improve performance in carrying out the assignment.

On the Terms of reference:

- 1.
- 2.
- 3.

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

- 1.
- 2.

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

Provide a section on Approach, Methodology and Work plan for performing the assignment that should include:

- a) Technical Approach and Methodology,
- b) Work Plan, and

Organization and Staffing,

Technical Approach and Methodology. In this section the Consultant should explain their understanding of the objectives 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. The Consultant should highlight the problems being addressed and their importance, and explain the technical approach the Consultant would adopt to address them. The Consultant should also explain the methodologies proposed to adopt and highlight the compatibility of those methodologies with the proposed approach.

Work Plan. In this section the Consultant should propose the main activities of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by KPPF), 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. The plan should include orderliness and flow of the workplan, flexibility, achievability, soundness of methodology and comprehensive A list of the final documents, including reports and tables to be delivered as final output, should be included here.

Organization and Staffing. In this section, the Consultant should propose the structure and composition of the Consultant's team. The Consultant should list the main disciplines of the assignment, the key personnel responsible, and proposed technical and support staff. In addition to describing the structure and composition of the Consultant's team, the Consultants shall summarize.

**3.1.5. TEAM COMPOSITION AND TASK ASSIGNMENTS
STAFFING FORM**

	Name of Key Personnel	Position	Tasks	Time required for assignment
1		Team Consultant		
2		Assistant 1		
3		Assistant 2		
	Name of Non-Key Personnel			
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

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

The Consultant shall provide a signed CV of each of the Key Personnel on the Format of Curriculum Vitae for individual Consultants.

Full name of Team Member: _____ Position in firm _____

Years and or months with Tenderer: _____ Membership (and status) in Professional Bodies:

Key Qualifications:

[Give an outline of team member's key experience most pertinent to the Services going not more than seven years (confirm) prior to the Date of the Tender Document. Indicate degree of responsibility held by the team member on relevant previous assignments and give dates and locations. For experience in last seven years, also give types of activities performed and client references, where appropriate].

Education:

[Summarize University, other training and specialized education of team member, giving names of Universities, dates attended, Degrees, Diplomas other certifications or accolades obtained)

Employment Record:

[Starting with present position, list in reverse order every employment held in the last seven years (Confirm). List all positions held by the team member in that period giving dates, names of employing organizations, titles of positions held, and station of work].

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes me, my qualifications, and my experience. I understand that any wilful misstatement described herein may lead to my disqualification or dismissal, if engaged.

Date:

[Signature of staff member or authorized representative of the staff]

Day/Month/Year

Full name of authorized representative:

General /Guidelines

Curriculum Vitae (CV)

Some Consultants or their staff may have long chequered careers and experience. However, all Consultants and team members are strongly advised to furnish their CV's in the format provided and which should not be more than two (2) single sided A4 size pages. Any information in the CV that is beyond the 2 pages may stand disregarded for purposes of evaluation.

Any CV that is not signed by both the owner of the CV and the person authorized to sign the tender may be disregarded. Where the owner and authorized person are the same, the signature by such same person will suffice.

Staff's Nature of Engagement with the Consultancy Firm

It is recommended that the staff *including the Lead Consultant* be permanent employees or at least have an extended and stable relationship with the firm.

ACTIVITY TIME SCHEDULE FOR THE ASSIGNMENT

The Consultant will prepare an activity schedule that will take care of all phases of the assignment, i.e. document review, field work and assembling of information and writing the reports.

The Consultant will organize work Teams and time table to complete this field work, including all associated travel/field costs. To this end, the Consultant will prepare an activity that would closely follow (but not necessarily be same as) the “Activity (Work) Schedule Format” below. The Consultant should derive these activities from the TOR, e.g. sampled contracts, Inception Report, field work, monthly reports, draft report, final report, etc. in sufficient detail.

FINANCIAL PROPOSAL SUBMISSION FORM (NOT APPLICABLE)

Date

To:

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

Dear Sir,

REF: FINANCIAL PROPOSAL:

We, the undersigned, offer to provide the consulting services forin 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 in Kenya or in other countries, which shall be identified during negotiations and shall be added to the contract price.

- a. 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 **120 days after the submission date** as indicated in the instructions to Consultants.
- b. 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
- c. We understand you are not bound to accept any Proposal you receive.

Yours Sincerely,

Authorized Signature and Stamp

Name of Consultant

1. BREAKDOWN OF CONTRACT PRICE

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

(a) **Fee Remuneration**

	KEY PERSONNEL	POSITION	Rate Per Day	Time input in days for	Time input in days for	Total time input	total cost
1		Team Leader					
2		Assistant consultant					
3		Assistant consultant					
	NON-KEY PERSONNEL						
1							
2							
3							
4							
5							

Signed●●●(Consultant) Date

4. SECTION V: - TERMS OF REFERENCE

TERMS OF REFERENCE FOR REQUEST FOR PROPOSAL FOR LEGAL DUE DILLIGENCE FOR THE PRIVATE EQUITY (PE) & UNQUOTED INVESTMENTS - FRAMEWORK CONTRACT SERVICES TENDER NO. KPPF/PROC/2-E/03/19

BACKGROUND

The Kenya Power Pension Fund (“KPPF” or “the Fund”) is one of the leading Kenyan occupational pension funds managing two pension funds – Defined Benefit (DB) and Defined Contribution (DC).

The DB and DC Funds were established with the main purpose of providing pension and cash benefits for members, who are employees of the Kenya Power & Lighting Company Limited, upon their retirement and where applicable, relief for the dependents of deceased members.

The Funds managed by a Board of Trustees that is responsible for establishing and maintaining policies and objectives for all aspects of the Funds’ operations. To ensure efficiency in the delivery of services to members, Trustees have established a Secretariat to carry out the day-to-day management of the two Funds. The Secretariat has adopted a management structure that comprises different departments that include Pensions Administration, Finance & Investments, Property, Human Resources & Administration, Procurement and ICT.

The Vision of KPPF is to be “the best-in-class occupational pension fund in the whole of Africa.”

In an endeavor to realize its vision and mission, KPPF abides to core values namely:

1. Integrity
2. Accountability
3. Courtesy
4. Efficiency
5. Stewardship

KPPF is looking for Consultancy Services as indicated in the scope of work.

LEGAL DUE DILIGENCE FOR THE PRIVATE EQUITY (PE) & UNQUOTED INVESTMENTS

Introduction

KENYA POWER PENSION FUND TENDER DOCUMENT FOR HR CONSULTANCY SERVICE 2019

The Fund is currently on course in implementing the Strategic Plan for the period 2016 to 2020 and one of the Strategy pillars is to execute investments in PE and Unquoted investments asset classes. The Fund sources and receives investment opportunities from Private Equities Funds, Venture capital Firms and unquoted investment companies from time to time. Prior to committing to any investment opportunity, the Fund carries out a financial and legal due diligence on potential investment opportunities to establish the viability of the investment.

Objective

To carry out a legal due diligence on PE & Unquoted investment opportunities as and when need arises by a competent legal professional.

Time Frame

This is a framework contract with successful legal firm(s) for a period of three years. The Fund may enter into agreement for specific assignment, as and when they occur.

The scope of works includes;

1. To review Corporate Structure & General Matters relating to the PE Fund and its partners and alternative investment opportunities. a review of the proposed shareholders' agreement, Partnership agreements and all incorporation/governance documents and identify conflict of interest (if any).
2. Carry out due diligence on compliance with laws on taxation in the domiciled jurisdiction; verify that taxes are current in all jurisdictions of operation and that there are no outstanding tax compliance issues.
3. To review all material contracts, agreements and commitments of the PE Fund.
4. Check for all potential legal liabilities. Review any pending, threatened or settled litigation, arbitration or regulatory proceedings involving the Partners and the Fund and provide a legal opinion on its impact to the investment decision.
5. Review all regulatory and compliance issues with the relevant laws within both the domiciled jurisdiction and jurisdiction(s) of operation.
6. Advising KPPF on any other legal issues relating to the proposed Investment
7. Liaising with consultants appointed by KPPF as necessary to ensure successful implementation of the Proposed Investment. This will include preparation of draft resolutions for adoption by Trustees as may be necessary.
8. Draft correspondences where necessary.
9. Assist with the negotiations of the documents contemplated above;
10. Advice on any other matter incidental to assignment at hand.

Deliverable

A legal due diligence report that addresses the objective of the proposed investment opportunity, as and when it arises

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

MONITORING PROGRESS OF ASSIGNMENT

The KPPF shall monitor and evaluate the progress of the Consultancy through the reports on the deliverables on a regular basis to be agreed upon by the parties.

PRICING

- a. A detailed cost breakdown structure for each of the item i.e recruitment unit cost for each position, organizational culture change, change management strategy and Training, must be included;
- b. All pricing must be shown inclusive of any applicable taxes; and
- c. All pricing must be completed on the standard template as prescribed in the tender document

Note: Reimbursable expenses are not allowed

ESSENTIAL DUTIES AND RESPONSIBILITIES OF KPPF

KPPF shall furnish the Consultant with design brief/wish list for the project.

In addition, KPPF will:

- (i) shall be responsible for; liaison between the Consultant and monitoring of the consultancy service;
- (ii) review reports/documents submitted by the consultant and give feedback to the consultant accordingly as provided for in the TORs; and
- (iii) provide the consultants with any other relevant assistance that may be required during the execution of the contract.

ETHICAL CODE AND PROFESSIONALISM

The Consultant shall carry out the above assignment in accordance with the highest standard of ethical competence, integrity and professionalism, having due regard to the nature and purpose of the assignment. The Consultant will at all-times and purpose, regard as strictly confidential all knowledge and information not within the public domain which may be acquired in the course of carrying out this assignment and the information shall not be directly or indirectly disclosed to any person whatsoever, except with the written permission of the Client.

The Consultants will waive all copyrights of documents, data and information prepared as part of this assignment in favour of the KPPF.

SECTION VI: GENERAL CONDITIONS OF CONTRACT

5. GENERAL PROVISIONS

5.1.1. **Definitions:** Unless the context otherwise requires, the following terms whenever used in this Contract shall have the following meanings:

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

- 5.1.2. Law Governing the Contract This Contract, its meaning and interpretation and relationship between the Parties shall be governed by the Laws of Kenya.
- 5.1.3. Language This Contract has been executed in English language which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.
- 5.1.4. Notices Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed or when sent by registered mail, telex, telegram or facsimile to such Party at the address specified in the SC.
- 5.1.5. Location The Services shall be performed at such locations as are specified in Appendix A and, where the location of a particular task is not so specified, at such locations, whether in the Republic of Kenya or elsewhere, as KPPF may approve.
- 5.1.6. Authorized Representatives Any action required or permitted to be taken and any document required or permitted to be executed under this Contract by KPPF or the Consultant may be taken or executed by the officials specified in the SC.
- 5.1.7. Taxes and Duties. The Consultant, Sub consultant[s] and their personnel shall pay such taxes, duties, fees and other impositions as may be levied under the Laws of Kenya, the amount of which is deemed to have been included in the Contract Price.

COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

- 5.1.8. Effectiveness of the Contract. This Contract shall come into effect on the date Contract is signed by both Parties and such other later date as may be stated in the SC.
- 5.1.9. Commencement of Services. The Consultant shall begin carrying out the Services thirty (30) days after the date the Contract becomes effective or at such other date as may be specified in the SC.
- 5.1.10. Expiration of Contract. Unless terminated earlier, this Contract shall terminate at the end of such time period, after the Effective Date, as is specified in the SC.

Modification.

- 5.1.11. Modification of the terms and Conditions of this Contract, including any modification of the scope of the Services or the Contract Price, may only be made by written agreement between the Parties.

Force Majeure

- 5.1.12. For the purposes of this Contract, "Force Majeure" means and event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.
- 5.1.13. No Breach of Contract The failure of a Party to fulfill any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable

alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

Extension of Time

- 5.1.14. 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.

Payments

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

Termination

- 5.1.16. KPPF may terminate this Contract by not less than thirty (30) days' written notice of termination to the Consultant, to be given after the occurrence of any of the events specified in this Clause;
- (a) if the Consultant does not remedy a failure in the performance of his obligations under the Contract within thirty (30) days after being notified or within any further period as KPPF may have subsequently approved in writing;
 - (b) if the Consultant becomes insolvent or bankrupt;
 - (c) if, as a result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
 - (d) if the Consultant, in the judgment of KPPF, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this clause;

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

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

(e) if KPPF in his sole discretion decides to terminate this Contract.

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

- (a) if KPPF fails to pay any monies due to the Consultant pursuant to this Contract and not subject to dispute within sixty (60) days after receiving written notice from the Consultant that such payment is overdue; or
- (b) if, as a result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

Payment upon Termination

Upon termination of this Contract, KPPF shall make the following payments to the Consultant:

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

OBLIGATIONS OF THE CONSULTANT

5.1.18. General

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

5.1.19. Conflict of Interests

5.1.19.1. Consultant Not to Benefit from Commissions, Discounts, Etc.

- (i) The remuneration of the Consultant pursuant to Clause 6 shall constitute the Consultant's sole remuneration in connection with this Contract or the Services and the Consultant shall not accept for his own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of his obligations under the Contract and the Consultant shall use his best efforts to ensure that his personnel, any sub consultant[s] and agents of either of them similarly shall not receive any such additional remuneration.

- (ii) For a period of two years after the expiration of this Contract, the Consultant shall not engage and shall cause his personnel as well as his sub consultant[s] and his/their personnel not to engage in the activity of a purchaser (directly or indirectly) of the assets on which he advised KPPF on this Contract nor shall he engage in the activity of an adviser (directly or indirectly) of potential purchasers of such assets.
- (iii) Where the Consultant as part of the Services has the responsibility of advising KPPF on the procurement of goods, works or services, the Consultant will comply with any applicable procurement guidelines and shall at all times exercise such responsibility in the best interest of KPPF. Any discounts or commissions obtained by the Consultant in the exercise of such procurement shall be for the account of KPPF.

5.1.19.2. **Consultant and Affiliates Not to be Otherwise Interested in Project**

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

5.1.19.3. **Prohibition of Conflicting Activities**

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

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

Confidentiality

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

Insurance to be Taken Out by the Consultant

The Consultant (a) shall take out and maintain and shall cause any sub consultant[s] to take out and maintain, at his (or the sub Consultants', as the case may be) own cost but on terms and conditions approved by KPPF, insurance against the risks and for the

coverage, as shall be specified in the SC; and (b) at KPPF's request, shall provide evidence to KPPF showing that such insurance has been taken out and maintained and that the current premiums have been paid.

Consultant's Actions Requiring Client's Prior Approval

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

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

Reporting Obligations

The Consultants shall submit to KPPF the reports and documents specified in Appendix A in the form, in the numbers, and within the periods agreed upon.

Documents prepared by the Consultant to Be the Property of PPR

All plans, drawings, specifications, designs, reports and other documents and software submitted by the Consultant and shall become and remain the property of KPPF and the Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to KPPF together with a detailed inventory thereof. The Consultant may retain a copy of such documents and software. Neither Party shall use these documents for purposes unrelated to this Contract without the prior approval of the other Party.

CONSULTANT'S PERSONNEL

5.1.20. Description of Personnel The titles, agreed job descriptions, minimum qualifications and estimated periods of engagement in the carrying out of the Services of the Consultant's Key Personnel provided on tender. The Key Personnel and Sub Consultants listed by title as well as by name provided on tender are hereby approved by KPPF.

5.1.21. Removal and/or Replacement of Personnel

- (a) Except as KPPF may otherwise agree, no changes shall be made in the Key Personnel. If for any reason beyond the reasonable control of the Consultant, it becomes necessary to replace any of the Key Personnel, the Consultant shall provide as a replacement a person of equivalent or better qualifications.
- (b) If KPPF finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) KPPF has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the

Consultant shall, at KPPF's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to KPPF.

- (c) The Consultant shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

OBLIGATIONS OF KPPF

- 5.1.22. **Assistance and Exemptions** KPPF shall use his best efforts to ensure that it provides the Consultant such assistance and exemptions as may be necessary for due performance of this Contract.
- 5.1.23. **Change in the Applicable Law** If after the date of this Contract, there is any change in the Laws of Kenya with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Consultant, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties
- 5.1.24. **Services and Facilities**
- 5.1.25. KPPF shall make available to the Consultant the Services and Facilities listed.

PAYMENTS TO THE CONSULTANT

- 5.1.26. **Lump-Sum Remuneration** The Consultant's total remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all staff costs, Sub Consultants' costs, printing, communications, travel, accommodation and the like and all other costs incurred by the Consultant in carrying out the Services described. Except as provided, the Contract Price may only be increased above the amounts stated in if the Parties have agreed to additional payments
- 5.1.27. **Contract Price**
The price payable in local currency is set forth in the SC.
- 5.1.28. **Payment for Additional Services.** For the purposes of determining the remuneration due for additional services as may be agreed, a breakdown of the lump-sum price is provided.
- 5.1.29. **Terms and Conditions of Payment** Payments will be made to the account of the Consultant and according to the payment schedule stated in the SC. Unless otherwise stated in the SC, the first payment shall be made against the provision by the Consultant of a bank guarantee for the same amount and shall be valid for the period stated in the SC. Any other payment shall be made after the conditions listed in the SC for such payment have been met and the Consultant has submitted an invoice to KPPF specifying the amount due.
- 5.1.30. **Interest on Delayed Payment** shall be made within thirty (30) days of receipt of invoice and the relevant documents. If KPPF has delayed payments beyond thirty (30) days after the due date hereof, simple interest shall be paid to the Consultant for each day of delay at a rate three percentage points above the prevailing Central Bank of Kenya's average rate for base lending.

SETTLEMENT OF DISPUTES

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

5.1.32. Dispute Settlement

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

SECTION VI: FORM OF CONTRACT

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 Annex, 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, Stima Plaza Annex, 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 VII: SPECIAL CONDITIONS OF CONTRACT

Schedule of Payments

The schedule of payments is specified below;

- (a) Kshs.(20% of the contract price) upon signature of this contract, submission of an Inception Report, and a Performance Bank Guarantee of 10% of contract price in the format provided issued by a local bank licensed by the central bank of Kenya;
- (b) Kshs.(40% of the contract price) upon submission and acceptance of the Draft Report and submission of an invoice; and
- (c) Kshs.(40% of the contract price) upon submission and acceptance of the Final Report and submission of an invoice.

Payment Conditions

Payment shall be made in Kenya Shillings unless otherwise specified not later than thirty [30] days following submission by the Consultant of invoices in duplicate and payments will be made within thirty (30) days after the due date hereof.

PERFORMANCE BANK GUARANTEE FORMAT

(To Be Submitted on Bank’s Letterhead)

Date:

To:

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

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

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

AND WHEREAS we have agreed to give the Supplier a guarantee;

THEREFORE, WE HEREBY AFFIRM that we are Guarantors and responsible to you, on behalf of the Supplier, up to a total sum of..... (*amount of the guarantee in words and figures*) and we undertake to pay you, upon your first written demand declaring the Supplier 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 **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 SUPPLIERS AND BANKS

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

2. KPPF shall seek authentication of the Performance Security from the issuing bank. It is the responsibility of the Supplier to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPPF. The period for response shall not exceed five (5) days from the date of KPPF's query. Should there be no conclusive response by the Bank within this period, such Supplier's Performance Security may be deemed as invalid and the Contract nullified.

3. The issuing Bank should address its response or communication regarding the bond to KPPF at the following e-mail address – "tenders@kppf.co.ke"