



NATIONAL AIDS CONTROL COUNCIL

**REQUEST FOR PROPOSAL FOR SELECTION OF CONSULTANT FOR DEVELOPMENT OF
PROCUREMENT AND ASSET DISPOSAL MANUAL AND POLICY INSTRUMENTS**

RFP No. NACC/11/2020-2021

CLOSING DATE: MARCH 22, 2021

ISSUED BY:

**National AIDS Control Council (NACC)
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INTRODUCTION

1. This standard Request for Proposals for selection of individual professional consultants has been prepared for use by public entities in Kenya. It has been found necessary for selection of individual consultants who are also regulated by their professional institutions or associations as opposed to selection of consultants who could be either individuals or body corporate.
2. This Request for proposals will be used for open tendering, restricted tendering or request for proposals.
3. The general conditions of contract in the Standard contract Form should not be modified and instead the special conditions of the contract may where necessary be modified by the procuring entity, for use, to reflect the unique circumstances of the particular assignment.

SECTION I - LETTER OF INVITATION

To [name and address of consultant] Date March 8, 2021

Dear Sir/Madam,

1.1 The **National AIDS Control Council** invites proposals for the following consultancy services – **Selection of consultant for development of NACC Procurement and Asset Disposal Manual and Policy Instruments**. More details of the services are provided in the terms of reference herein.

1.1 The request for proposal (RFP) includes the following documents;

- Section I - Letter of invitation
- Section II - Information to Consultants
- Section III - Terms of reference
- Section IV - Technical proposal
- Section V - Financial proposal
- Section VI - Standard Forms

1.2 On receipt of this RFP please inform us

- (a) that you have received the letter of invitation; and
- (b) whether or not you will submit a proposal for the assignment

Yours sincerely.

Chief Executive Officer
National AIDS Control Council

SECTION II - INFORMATION TO CONSULTANTS

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SECTION II - INFORMATION TO CONSULTANTS

2.1 Introduction

- 2.1.1 The National AIDS Control Council will select an individual consultant among those invited to submit proposals or those who respond to the invitation for proposals in accordance with the method of selection detailed under this section and consistent with the regulations.
- 2.1.2 The consultants are invited to submit a technical proposal and a financial proposal for consulting services required for the assignment stated in the letter of invitation (Section I)
- 2.1.3 In the assignment where the procuring entity intends to apply standard conditions of engagement and scales of fees for professional services, which scale of fees will have been approved by a relevant authority, a technical proposal only may be invited and submitted by the consultants. In such a case the highest ranked individual consultant in the technical proposals shall be invited to negotiate a contract on the basis of the set scale of fees. The technical proposals will be the basis for contract negotiations and ultimately for a signed contract with the selected individual consultant.
- 2.1.4 The consultants must familiarize themselves with local conditions as regards the assignment and take them into account in preparing their proposals. To obtain adequate information on the assignment and on the local conditions, consultants are encouraged to liaise with the procuring entity regarding any information that they may require before submitting a proposal.
- 2.1.5 The client will provide the inputs and services specified in the special conditions of contract needed to assist the individual consultant to carry out the assignment.
- 2.1.6 The cost of preparing the proposal and negotiating the contract including any visit to the procuring entity are not reimbursable as a direct cost of the assignment. The procuring entity is not bound to accept any of the proposals submitted.
- 2.1.7 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.

2.2 Clarification and amendment to the RFP documents

- 2.2.1 Individual consultant may request clarification of any of the RFP documents not later than Seven (7) days before the deadline for the submission of the proposals. Any request for clarification must be sent in writing by post, fax or email to the procuring entity's address indicated in the special conditions of contract. The procuring entity will respond by post, fax or email 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 individual consultants invited to submit proposals.
- 2.2.2 At any time before the deadline for submission of the proposals, the procuring entity may for any reason, either at its own initiative or in response to a clarification requested by an intended individual consultant amend the RFP. Any amendment shall be issued in writing, fax or email to all invited individual consultants and will be binding on them. The procuring entity may at its discretion extend the deadline for the submission of the proposals.

2.2.3 Clarification of tenders shall be requested by the tenderer to be received by the procuring entity not later than 7 days prior to the deadline for submission of tenders.

2.2.4 The procuring entity shall reply to and clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.

2.3 Preparation of proposals

2.3.1 The individual consultant's proposal shall be written in English language.

2.3.2 In preparing the Technical proposal, the individual consultants are expected to examine the documents consisting the RFP in detail. Material deficiencies in providing the information requested may result in rejection of a proposal.

2.3.3 While preparing the Technical proposal, the individual consultant must give particulars attention to the following:

- (a) If an individual consultant considers that he/she does not have all the expertise required for the assignment he/she may suggest in the proposals other individual(s) who will assist in the assignment but they will not be party to the contract for the purpose of the performance of the assignment. An individual consultant will not propose other individual consultants invited to submit proposals for the assignment. Any individual consultant in contravention of this requirement shall automatically be disqualified.
- (b) For all the staff who will be involved in the exercise of the proposals to consultant must indicate their responsibility in the assignment and also the staff time as necessary.
- (c) The curriculum vitae (CV) of the staff proposed must be submitted with the proposal.

2.3.4 The Technical proposal shall provide the following information;

- (a) the individual consultants CV and a brief of any recent experience of assignment of a similar nature. For each assignment the brief should indicate the profiles of staff involved, contract amount and the individual consultants involvement.
- (b) Any comments or suggestions on the Terms of Reference and a list of service and facilities requested to be provided by the procuring entity.
- (c) A description of the methodology and work plan for performing the proposed assignment.
- (d) Any additional information requested in the special conditions of contract.

2.3.5 Only Technical proposal to be submitted.

2.4 **Financial proposal (NOT APPLICABLE)**

2.4.1 In preparing the financial proposal, the individual consultants are expected to take into account the time required in completing the assignment as outlined in the RFP documents. The financial proposal will therefore be quoted in fees per day or month. The financial proposal may also include other costs as necessary, which will be considered as reimbursables.

2.4.2 The Financial proposal should include the payable taxes. (**CONSULTANCY FEES TO BE NEGOTIATED WITH THE CONSULTANT WITH THE HIGHEST TECHNICAL SCORE AS PER MARKET SURVEY COST FOR THE ASSIGNMENT AND AVAILABLE NACC BUDGET AS PER REG. 128(10) OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL REGULATIONS, 2020**)

2.4.3 The fees shall be in Kenya Shillings.

2.4.4 The Financial proposal must remain valid for 90 days after the submission date. During this period the individual consultant is expected to keep available at his own cost any staff proposed for the assignment. The procuring entity will make best efforts to complete negotiations within this period. If the procuring entity wishes to extend the validity period of the proposals, the consultants who do not agree, have the right not to extend the validity of their proposals. **VALIDITY OF FINANCIAL PROPOSAL NOT APPLICABLE FOR SELECTION OF INDIVIDUAL PROFESSIONAL CONSULTANT**

2.4.5 The financial proposal must comply with the law governing the profession of the consultant.

2.5 **Submission, Receipt and opening of proposals**

2.5.1 The technical proposal and the financial proposal (if required) shall be prepared in indelible ink. It shall contain no interlineations or overwriting, except as necessary to correct errors made by the individual consultants. Any such corrections must be initialed by the individual consultant.

2.5.2 For each proposal the individual consultants shall prepare the proposals in the number of copies indicated in the special conditions of contract. Technical proposal shall be marked "ORIGINAL" or "COPY" as appropriate. If there are any discrepancies between the original and the copies of the proposal, the original shall govern.

2.5.3 The original and all copies of the Technical proposal shall be placed in a sealed envelope clearly marked "TECHNICAL PROPOSAL", TECHNICAL PROPOSAL envelope shall bear the procuring entities address and other information indicated in the appendix to the instructions to consultants and clearly marked "DO NOT OPEN before (**MARCH 22, 2021 AT 10.00AM**)

2.5.4 The completed Technical must be delivered at the submission address on or before the time and date of the submission of the proposals indicated in the appendix to the instructions to consultants. Any proposals received later than the closing date for submission of proposals shall be rejected and returned to the individual consultant unopened. For this purpose the inner envelope containing the technical and financial proposals will bear the address of the individual consultant submitting the proposals.

2.5.5 After the deadline for submission of proposals the outer envelope and the technical proposals shall be opened immediately by the opening committee. The technical proposals shall be marked with the individual consultants number at the time of opening.

2.6 **Evaluation of the Proposal (General)**

2.6.1 From the time the proposals are opened to the time of the contract award, if any individual consultant wishes to contact the procuring entity on any matter relating to

his/her proposal, he/ she should do so in writing at the address indicated in the appendix to the instructions to consultants. Any effort by an individual consultant to influence the procuring entity's staff in the evaluation of proposals companion proposals or awards of contract may result in the rejection of the individual consultant proposal.

2.6.2 The proposal evaluation committee shall have no access to the Financial Proposal (if applicable), which in any case will remain sealed, until the technical evaluation is concluded or finalized.

2.7 Evaluation of Technical Proposals

2.7.1 The evaluation committee appointed by the procuring entity to evaluate the proposals shall carry out the evaluation of technical proposals following the criteria set out in the terms of reference based on the following points criteria

Evaluation of Proposal

The evaluation committee appointed by the Client shall evaluate the proposals in two (2) stages; Mandatory and Technical .

Stage	Aspect	Score
1	Mandatory	Pass/Fail
2	Technical	Out 100%

(a) Mandatory Requirements:

The tender shall undergo a general pre-qualification process to determine the compliance of a bid with the following requirements:-

NO.	ITEM DESCRIPTION	YES	NO
1.	Pagination/Serialization of Document and CV		
2	Submit a valid tax compliance/ Exemption certificate from Kenya Revenue Authority.		
3	Complete confidential business questionnaire		
4	Self-declaration letter that the consultant is not debarred in the matters of Public Procurement and Asset Disposal Act, 2015.		
5	Self-declaration that the person or tenderer will not engage in any corrupt or fraudulent practice.		

(b) Detailed Technical Evaluation Criteria

1.	Technical Evaluation	Total Marks	Marks Awarded
	<p>Experience of the Consultant related to the assignment</p> <p>a) Evidence of at least two similar assignments in development of Procurement and Asset Disposal, Policy & Manuals (2.5 Marks each)</p> <p>b) Evidence of having participated in development of the public procurement regulatory framework instruments (5 Marks)</p> <p>c) At least ten years' experience in public procurement reforms and practice (1 Mark each year)</p> <p>d) Evidence as a resource person in training of at least four Public Sector organizations in Public Procurement (2.5 Marks each)</p>	30	
2.	<p>Adequacy of the proposed work plan and Methodology in responding to the Terms of Reference.</p> <p>(i) Methodology of implementing the implementing the assignment (10 Marks)</p> <p>(ii) Understanding the scope of work and interpretation of the Terms of Reference (10 Marks)</p> <p>(iii) Work plan to incorporate all the activities to be undertaken as per the terms of reference and time frames (10 Marks)</p>	30	
3.	<p>Qualification and competence of the consultant</p>	40 Marks	
	<p>i. Must have a master's degree in Supply Chain Management or any other related field (5 Marks)</p> <p>ii. Professional qualification in Supply Chain Management from a recognized professional body (5 Marks)</p> <p>iii. Demonstrate evidence of at least 10 years' experience in Public Procurement or Supply Chain Management Consultancy or practice /capacity building (attach CVs recently signed (1.5 Mark each)</p> <p>iv. Evidence of best at least five practices introduced/implemented/proposed in public sector/private sector/consultancy assignment geared for transformational change in Public Sector (10 Marks)</p> <p>v. Evidence of experience with Enterprise Resource Planning (ERP) operations and related risk mitigation strategies (5Marks)</p>		

Minimum Technical Score: 70%

Selection Method: Individual Consultant Selection method

Award Criteria: Highest technical score

NOTE: Preliminary Evaluation Requirements: The consultant shall:

- (a) Attach supporting documents and certificates for academic, professional experience and assignments undertaken related to the consultancy

Technical Proposal sealed in an envelope indicating Request for Proposal

Reference No. and Description of the assignment

RFP No. NACC/11/2020-2021

Selection of Consultant for development of NACC Procurement and Asset Disposal Manual and Policy Instruments

Addressed to:

**The Chief Executive Officer
National AIDS Control Council
And dropped to Tender Box on 9th Floor
National AIDS Control Council (NACC)
Landmark Plaza, 9th Floor
Argwings Kodhek Road
Opp. Nairobi Hospital**

2.7.2 Any proposal which will be examined and found not to comply with all the requirements for submission of the proposals will be declared non responsive. All the proposals found to have complied with all the requirements for submission of proposal shall be declared responsive by the evaluation committee

2.7.3 Each responsive proposal will be given a technical score (ST). any technical proposal which fails to achieve the total minimum score indicated in the appendix to the information to tenderers shall be rejected at this stage and will not proceed to the next stage of evaluation. The respective financial proposal will be returned to the individual consultant unopened.

2.8 Opening and Evaluation of Financial Proposals (NOT APPLICABLE)

2.8.1 After completion of the evaluation of Technical proposals the procuring entity shall notify the individual consultants whose proposal did not meet the minimum technical score or were declared non responsive to the RFP and terms of reference. The notification will indicate that their financial proposals shall not be opened and will be returned to them unopened after the completion of the selection process and contract award. At the same time, the procuring entity shall simultaneously

notify the consultants who have secured the minimum technical score that they have passed the technical qualifications and inform them the date and time set by the procuring entity for opening their financial proposal. They will also be invited to attend the opening ceremony if they wish to do so.

2.8.2 The financial proposals shall be opened by the procuring entity in the presence of the individual consultants who choose to attend the opening. The name of the individual consultant, the technical score and the proposed fees shall be read out aloud and recorded. The evaluation committee shall prepare minutes of the opening of the financial proposals. **NOT APPLICABLE**

2.8.3 The formulae for determining the financial score (SF) unless an alternative formula is indicated in the appendix to the information to tenderers shall be as follows:

$Sf = 100 \times fm/f$ where
Sf is the financial score
Fm is the lowest fees quoted and
F is the fees of the proposal under consideration.

The lowest fees quoted will be allocated the maximum score of 100 **NOT APPLICABLE**

2.8.4 The individual consultants proposals will be ranked according to their combined technical score (st) and financial score (sf) using the weights indicated in the appendix to the instructions to consultants. Unless otherwise stated in the appendix to the instructions to consultants the formule for the combined scores shall be as follows;

$$S = ST \times T\% + SF \times P\%$$

Where

S, is the total combined scores of technical and financial scores

St is the technical score

Sf is the financial score

T is the weight given to the technical proposal and

P is the weight given to the financial proposal

Note P + T will be equal to 100% **NOT APPLICABLE**

The individual consultant achieving the highest technical score under Individual Consultant Selection Method will be invited for negotiations on financial proposal as per NACC Budget.

2.9 Negotiations

- 2.9.1 Negotiations will be held at the same address indicated in the appendix to the information to consultants. The purpose of the negotiations is for the procuring entity and the individual consultant to reach agreements on all points regarding the assignment and sign a contract.
- 2.9.2 The negotiations will include a discussion on the technical proposals, the proposed methodology and work plan, staff and any suggestions made by the individual consultant to improve the Terms of reference. The agreed work plan and Terms of reference will be incorporated in the description of the service or assignment and form part of the contract.
- 2.9.3 The negotiations will be concluded with a review of the draft contract. If negotiations fail, the procuring entity will invite the individual consultant whose proposal achieved the second highest score to negotiate a contract.

2.10 Award of Contract

- 2.10.1 The contract will be awarded before commencement of negotiations. After negotiations are completed the procuring entity will promptly notify the other individual consultants that they were unsuccessful and return the financial proposals of the individual consultants who did not pass technical evaluation.
- 2.10.2 The selected individual consultant is expected to commence the assignment on the date indicated in the appendix to the information to consultants or any other date agreed with the procuring entity.

2.11 Confidentiality

- 2.11.1 Information relating to evaluation of proposals and recommendations of contract award shall not be disclosed to the individual consultants who submitted the proposal or to other persons not officially concerned with the process, until the winning individual consultant has been notified that he/she has been awarded the contract.

SECTION III - TERMS OF REFERENCE (TOR)

SELECTION OF CONSULTANT FOR THE DEVELOPMENT OF THE NACC PROCUREMENT & ASSET DISPOSAL MANUAL AND POLICY INSTRUMENTS

1. Background Information

The National AIDS Control Council (NACC) was established under Section 3 of the State Corporations Act Cap 446 through the National AIDS Control Council Order, 1999 published vide Legal Notice No. 170 of 1999.)

2. Principal Activities

NACC is a non-commercial organization whose mission is to:

“Provide policy and a Strategic framework for mobilizing and coordinating resources for the prevention of HIV transmission and provision of care and support to the infected and affected people in Kenya”.

Our Vision: “To be a responsive authority in the multi-sectoral coordination of the Kenya HIV & AIDS Response.”

3. NACC Mandate includes:

- (i) HIV policy formulation and implementation
- (ii) Coordination of a multi-sectoral HIV and AIDS response in Kenya
- (iii) Implementation of a national information management system for HIV and STIs
- (iv) Undertake advocacy for HIV prevention and control
- (v) Mobilization of technical & financial resources for the HIV response

The NACC is mandated to provide Technical Assistance to Counties for the HIV response.

4. Role of the Consultant

In keeping with the NACC's mandate, the NACC seeks to procure a consultant that will offer the following services:

- i. Develop the NACC Procurement and Asset Disposal Procedure Manual in compliance with the Public Procurement and Asset Disposal Act 2015 & Regulations 2020 and directives by the National Treasury and Public Procurement Regulatory Authority (PPRA)
- ii. Develop the NACC Procurement and Asset Disposal Policy in line with the public procurement regulatory framework that supports the achievement of the NACC Mandate and NACC strategic goals.
- iii. Train NACC Staff and Management to understand and internalize Procurement and Asset Disposal issues to increase efficiency and quality of goods and services procured, mitigate procurement risks and improve procurement compliance.
- iv. Embrace best practices globally namely Market Research, e-procurement and document management system for efficient performance of the procurement function at NACC.

5. Specific Objectives

(a) Develop the following documents:

- (i) NACC Procurement and Asset Disposal Manual and Policy;
- (ii) NACC Asset Management Policy;
- (iii) Align Quality Management Systems Manual with PPADA, 2015 & Regulations and ERP Operations;
- (iv) Realign E-Procurement Manual as per the PPADA, 2015 and Regulations

(b) Conduct workshops to:

- (i) Effectively engage the NACC Board and Management on the proposed policy and manual for review and approval (2No. Workshops) and;
- (ii) Sensitize NACC Middle Level Managers and NACC Bi-annual meeting on procurement laws, procurement processes and mitigation of risks in procurement (2No Workshops)

NB: The dates for the workshops to be communicated after negotiations with the successful consultant.

6. Qualification of the Consultant

The consultant MUST be Procurement Professionals Licensed to practice by KISM (Kenya Institute of Supplies Management) and MUST hold professional qualification in Supply Chain Management from recognized institutions/professional bodies. Provide copies of valid License and Certifications.

7. Experience of the consultant

The consultant MUST demonstrate at least ten years' experience in:

- (i) In Development of Procurement and Asset Disposal, Policy & Manuals or
- (ii) Development of the public procurement regulatory framework instruments or
- (iii) Experience in public procurement reforms or
- (iv) Training/capacity building of Public Sector organizations in Public Procurement.

8. Duration

The development of the NACC Procurement and Asset Disposal Manual and Policy shall be carried out within 50 Days.

9. Services and Facilities to be Provided by the NACC

The National AIDS Control Council shall do the following:

- (a) Provide required documents/records.
- (b) Appoint a liaison/contact person for day to day consultations as necessary.
- (c) Ensure availability of staff for consultation and/or meetings.

SECTION IV - TECHNICAL PROPOSAL (TP)

Notes on the Preparation of Technical Proposal

The technical proposal shall be prepared and submitted by the consultants.

It shall contain the following:-

- (a) Submission letter
- (b) Particulars of the consultant including Curriculum vitae (CV)
- (c) Comments and suggestions of the consultant on the terms of reference, personnel, facility and other requirements to be provided by the procuring entity.
- (d) Description of the methodology and work plan for performing the assignment
- (e) Any proposed staff to assist in the assignment
- (f) Consultancy services activities times schedule.

(to be prepared by the consultant as appropriate)

SECTION V- FINANCIAL PROPOSAL (FP) NOT APPLICABLE

Notes on the Preparation Financial Proposal

The financial proposal shall be prepared and submitted by the consultants. It shall contain the following.

- (a) Submission letter indicating total fees
- (b) Summary of costs
- (c) Breakdown of fees per activity
- (d) Breakdown of reimbursable costs/expenses per activity
- (e) Miscellaneous expenses

SECTION VI - STANDARD CONTRACT FORM

INDIVIDUAL PROFESSIONAL CONSULTANTS (Lump-sum payment)

The contract form shall be completed by the procuring entity after the award of the contract and negotiation of the contract. It will be signed by both parties pursuant to the information to consultants clause 2.10.2

SECTION VI - STANDARD CONTRACT FORM

1. STANDARD CONTRACT FORM

**INDIVIDUAL PROFESSIONAL CONSULTANTS
(lump-sum payments)**

This Agreement, [hereinafter called “the Contract”) is entered into this _____
[insert starting date of assignment], by and between.

_____ [insert Client’s name] of [or whose registered
office is situated at] _____ [insert Client’s address]
(hereinafter called “the Client”) of the one part AND

_____ [insert Consultant’s name] of [or whose
registered office is situated at] _____ [insert
Consultants address] (hereinafter called “the Consultant”) of the other part.

WHEREAS the Client wishes to have the Consultant perform the services [hereinafter
referred to as “the Services”, and

WHEREAS the Consultant is willing to perform the said Services,

NOW THEREFORE THE PARTIES hereby agree as follows:-

1. **Services**
 - (i) The Consultant shall perform the Services specified in Appendix A, “Terms of Reference and Scope of Service, “which is made an integral part Of this Contract.
 - (ii) The Consultant shall provide the personnel listed Appendix B, “Consultant’s Personnel,” to perform the Services.
 - (iii) The Consultant shall submit to the Client the reports in the form and within the time periods specified in Appendix C, “ Consultant’s Reporting Obligations.”

(Appendices A, B, and C to be prepared as appropriate)

2. **Term** The Consultant shall perform the Services during the period commencing on _____ [insert starting date] and

through to _____ [insert completion date],
or any other period(s) as may be subsequently agreed by
the parties in writing.

3. **Payment**

A. **Ceiling**

For Services rendered pursuant to Appendix A, the Client shall pay the Consultant an amount not to Exceed _____ [insert amount]. This amount has been established based on the understanding that it includes all the Consultant's costs and profits as well as any tax obligation that may be imposed on the Consultant.

B. **Schedule of Payments**

The schedule of payments is specified below (Modify in order to reflect the output required as described in Appendix C.)

Kshs. _____ upon the Client's receipt of the Draft report, acceptable to the Client; and

Kshs. _____ upon the Client's receipt of the Final report, acceptable to the Client.

Kshs. _____ Total

C. **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 to the Coordinator designated in Clause 4 here below. If the Client has delayed payments beyond thirty (30) days after the due date hereof, simple interest shall be paid to the Consultant for each day of delay at a rate three Percentage points above the prevailing Central Bank of Kenya's average rate for base lending.

4. **Project Administration**

A. **Coordinator**

The Client designates _____ [insert name] as Client's Coordinator; the Coordinator will be responsible for the Coordination of activities under this Contract,

for acceptance and approval of the reports and of other deliverables, by the Client and for receiving and approving invoices for payment.

- B. Reports
The reports listed in Appendix C, "Consultant's Reporting Obligations," shall be submitted in the Course of the assignment and will constitute the basis for the payments to be made under paragraph 3.

5. **Performance Standards** The Consultant undertakes to perform the Services with the highest standards of professional and ethical competence and integrity. The Consultant shall promptly replace any employees assigned under this Contract that the Client considers unsatisfactory.
6. **Ownership of Material** Any studies, reports or other material, graphic, software or otherwise prepared by the Consultant for the Client under the Contract shall belong to and remain the property of the Client. The Consultant may retain a copy of such documents and software.
7. **Consultant Not to be Engaged in certain Activities** The Consultant agrees that during the term of this Contract and after its termination the Consultant and any entity affiliated with the Consultant 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.
8. **Insurance** The Consultant will be responsible for taking out any appropriate insurance coverage.
9. **Assignment** The Consultant shall not assign this Contract or sub-contract any portion of it without the Client's prior written consent.
10. **Law Governing Contract and Language** The Contract shall be governed by the laws of Kenya and the language of the Contract shall be English language
11. **Patent Rights** **The Tenderer shall** indemnify NACC against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the services or any part thereof in Kenya.

For avoidance of doubt **Tenderer** shall not however, be liable under the foregoing indemnity to the extent that any such losses are determined to have resulted directly from the proven negligence or willful misconduct of **NACC**.

For avoidance of doubt Neither Party excludes or restricts in any way liability for death or personal injury resulting from negligence.

**12. Breach/
Termination**

This Agreement shall take effect from the date of signing and shall continue to be in effect for duration agreed unless and until terminated by either Party by giving no less than 14 days' notice in writing.

Upon expiry or termination of this Agreement the rights of the Parties accrued up to the date of such expiry or termination shall remain unaffected.

Either party shall be entitled, but not obligated to terminate this Agreement upon 14 (fourteen) days prior written notice in the following circumstances:

In the event of breach of the terms of this agreement

In the event of a party committing an act of insolvency;

In the event of a party to the contract taking any steps to reach a compromise with or to make an offer of compromise to any of its creditors;

In the event of their being a legal dispute between the parties, of whatever nature, the **NACC** will be obliged to continue with the punctual payment of the undisputed amounts due in terms of this Agreement.

**13. Consequences of
Termination**

Each Party's further rights and obligations cease immediately on termination except the provisions of this Agreement which are intended to continue and survive, shall continue to and survive accordingly, together with those clauses the survival of which is necessary for the termination or enforcement of this Agreement, or those which are stated to survive shall survive termination of this Agreement. Termination of this Agreement shall not be

deemed a waiver of a breach of any term of this Agreement and shall be without prejudice to a Party's rights, liabilities and obligations that have accrued prior to the date of termination.

Upon termination, the Parties shall co-operate with each other to ensure that such steps are taken as are necessary for recovery of telecommunication equipment (if any) belonging to either party.

14. Liquidated Damages

If **tenderer fails** to render any or all of the services within the period(s) specified in the contract, the **NACC** shall, without prejudice to its other remedies under the contract, deduct from the contract price agreed liquidated damages sum equivalent to 0.5% of the offered price of the delayed services up to a maximum deduction of 10% of the delayed services. Thereafter **NACC** may consider termination of the contract.

15. Confidentiality

The Parties acknowledge that during the course of this Agreement they shall have access to financial, legal, marketing, technical and other knowledge and information pertaining to the Parties' business affairs (hereinafter referred to as "Confidential Information").

The Confidential Information herein described shall be kept confidential and shall not without the prior written consent of its owner, be disclosed by the other Party, its representatives, employees and/or agents, to any person or in any manner whatsoever, in whole or in part and shall not be used by the Parties or such representatives, employees and/or agents other than in connection with this Agreement. Moreover the Parties shall be responsible for any breach of this clause by their representatives, employees and/or agents.

Such Confidential Information shall so remain until such information becomes part of public domain through no fault or breach of this Agreement.

The terms of this Agreement shall also be held confidential by the Parties.

16. Force Majeure

Neither Party shall be liable for the failure to perform any of its obligations under this Agreement as a result of the occurrence of a Force Majeure event or situation which for the purposes of this Agreement means any event or situation which makes it impossible for either party to perform its obligations and includes but is not limited to acts of God, national emergencies, prohibitive decisions of government or local authority, war or civil conflict.

In the event of a Force Majeure situation or event, the performance of the obligations of this Agreement shall be extended by the period of the Force Majeure situation or event provided it does not exceed thirty (30) days.

In the event that the Force Majeure situation or event continues for a period of thirty (30) days or more either party shall be entitled to terminate this Agreement forthwith by written notice to the other Party.

17. Resolution of Disputes

The NACC and tenderer shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the contract.

If, after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute, any such dispute or difference between the Parties relating to the rights or obligations of the Parties under this Agreement shall be referred to and finally determined by arbitration in Nairobi. The Parties shall agree on an arbitrator. If the Parties cannot agree on an arbitrator within 21 (twenty one) days of such notice being served, either Party may apply in writing (with a copy to the other Party) to the Chairman for the time being of the Chartered Institute of Arbitrators, Kenya Branch to appoint an arbitrator. Both parties shall be given the opportunity to make representations to the arbitrator.

In all cases the arbitrator shall be instructed to respond with his/her written decision sent to both parties at the same time, as soon as reasonably practicable and in any event, within thirty(30) days of the referral. The arbitration shall be conducted in English Language. No arbitrator shall be related or employed by or have any material business relationship with either Party. This Clause shall not preclude the making of any application to court for injunctive relief or for the enforcement of such award of the arbitrator.

For the Client

Full name _____

Title _____

Signature _____

Date _____

For the Consultant

Full name _____

Title _____

Signature _____

Date _____

2. CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

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

Part 1 – General:
 Business Name
 Location of business premises.
 Plot No..... Street/Road
 Postal Address Tel No. Fax E mail
 Nature of Business
 Registration Certificate No.
 Maximum value of business which you can handle at any one time – Kshs.
 Name of your bankers Branch

Part 2 (a) – Sole Proprietor
 Your name in full Age
 Nationality Country of origin
 Citizenship details

Part 2 (b) Partnership
 Given details of partners as follows:

Name	Nationality	Citizenship Details	Shares
1.
2.
3.

Part 2 (c) – Registered Company
 Private or Public
 State the nominal and issued capital of company-
 Nominal Kshs.
 Issued Kshs.
 Given details of all directors as follows

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

Date Signature of Candidate

- If a Kenya Citizen, indicate under “Citizenship Details” whether by Birth, Naturalization or Registration.

10. SELF DECLARATION FORMS (r 62) **MANDATORY**
REPUBLIC OF KENYA

PUBLIC PROCUREMENT REGULATORY AUTHORITY (PPRA)

Form SD1

Self-declaration that the person/tenderer is not debarred in the matter of the public procurement and asset disposal act 2015.

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

1. THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Director of
..... (insert name of the Company) who is a Bidder in respect of **Tender No.** for (insert tender title/description) for (insert name of the Procuring entity) and duly authorized and competent to make this statement.

2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.

3. THAT what is deponed to hereinabove is true to the best of my knowledge, information and belief.

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

Bidder Official Stamp

4.FORM SD₂

SELF DECLARATION FORMS (r 62) (MANDATORY)

REPUBLIC OF KENYA

PUBLIC PROCUREMENT REGULATORY AUTHORITY (PPRA)

Self-Declaration That the Person/Tenderer Will Not Engage in Any Corrupt or Fraudulent Practice.

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

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of
.....
..... (insert name of the Company) who is a Bidder in respect of **Tender No.** for (insert tender title/description) for (insert name of the Procuring entity) and duly authorized and competent to make this statement.

2. THAT the aforesaid Bidder, its servants and/or agents /subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/or agents of(insert name of the Procuring entity) which is the procuring entity.

3. THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of (name of the procuring entity)

4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject tender

5. THAT what is deponed to hereinabove is true to the best of my knowledge information and belief.

.....
(Title) (Signature) (Date)
Bidder's Official Stamp

4. BANK DETAILS FORM

Provide the following bank details for electronic transfer purposes

Name of the Bidder.....

Bank Name

Bank Branch Name

Bank Code

Bank Account

Bank Signatory(s)

.....

PIN Number

VAT Number

VALID KRA TCC No.....

Signed/ date.....

5. PERFORMANCE SECURITY FORM

To
[name of Procuring entity]

WHEREAS [name of tenderer] (hereinafter called “the tenderer”) has undertaken, in pursuance of Contract No. _____ [reference number of the contract] dated _____ 20 _____ to supply [Description of goods] (Hereinafter called “the Contract”).

AND WHEREAS it has been stipulated by you in the said Contract that the tenderer shall furnish you with a bank guarantee by a reputable bank for the sum specified therein as security for compliance with the Tenderer’s performance obligations in accordance with the Contract.

AND WHEREAS we have agreed to give the tenderer a guarantee:

THEREFORE, WE hereby affirm that we are Guarantors and responsible to you, on behalf of the tenderer, up to a total of [amount of the guarantee in words and figure] and we undertake to pay you, upon your first written demand declaring the tenderer to be in default under the Contract and without cavil or argument, any sum or sums within the limits of [Amount of guarantee] as previously mentioned, without you needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the _____ day of _____ 20 _____

Signed and seal of the Guarantors

[name of bank or financial institution]

[address]

[date]

6. BANK GUARANTEE FOR ADVANCE PAYMENT FORM

To
[name of Procuring entity]

[name of tender]

Gentlemen and/or Ladies:

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

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

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

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

Yours truly,

Signature and seal of the Guarantors

[name of bank or financial institution]

[address]

[date]

7. LETTER OF NOTIFICATION OF AWARD

Address of Procuring Entity

To: _____

RE: Tender No. _____

Tender Name _____

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

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

(FULL PARTICULARS) _____

SIGNED FOR ACCOUNTING OFFICER

8. FORM RB 1

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

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

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (*Procuring Entity*)

Request for review of the decision of the..... (*Name of the Procuring Entity*) of
.....dated the...day of20.....in the matter of Tender No.....of
.....20...

REQUEST FOR REVIEW

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

- 1.
- 2.

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

- 1.
- 2.

SIGNED(Applicant)

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

FOR OFFICIAL USE ONLY

Lodged with the Secretary Public Procurement Administrative Review Board on day
of20.....

SIGNED
Board Secretary