



**NATIONAL AIDS CONTROL COUNCIL**

**RFP NO. NACC/RFP/035/2020/2021**

**CONSULTANCY SERVICE TO REVIEW THE HIV AND AIDS  
PREVENTION AND CONTROL ACT, 2006**

**CLOSING DATE: JUNE 10, 2021 at 10.00AM**

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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 JUNE 2, 2021

Dear Sir/Madam,

1.1 The National AIDS Control Council invites proposals for the following consultancy services – **Selection of consultancy service to review the HIV and AIDS Prevention and Control ACT, 2006:RFP No.NACC/035/2020-2021**

1.1 More details of the services are provided in the terms of reference herein.

1.2 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

1.3 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 liase 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 The Technical proposal shall be separate from the Financial proposal and shall not include any Financial information.

## 2.4 **Financial proposal**

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.

2.4.3 The fees shall be expressed 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.

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. 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.
- 2.5.3 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 in a sealed envelope duly marked "FINANCIAL PROPOSAL". Both envelopes shall be placed in an outer envelope and sealed. This outer 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 **June 10, 2021 at 10.00AM**".
- 2.5.4 The completed Technical and Financial proposals 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 financial proposals shall be marked with the individual consultants number allocated at the time of opening the outer envelope and the technical proposals but shall remain sealed and in the custody of a responsible officer of the procuring entity up to the time set for opening them.

## 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, 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

	<u>CRITERIA</u>	<u>POINTS</u>
(i)	CV of the individual consultant	30
(ii)	specific experience of the individual consultant related to the assignment	30
(iii)	adequacy of methodology and work plan in response to the Terms of reference	40
	Total points	100

- 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

- 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.

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

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%

The individual consultant achieving the highest combined technical and financial score will be invited for negotiations.

## **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) FOR A TEAM OF CONSULTANTS TO REVIEW THE HIV AND AIDS PREVENTION AND CONTROL ACT, 2006**

### **1.1 BACKGROUND**

In 1999, the Government of Kenya declared HIV and AIDS a national disaster. As a result, the National AIDS Control Council (NACC) was established through a presidential order under Section 3 of the State Corporations Act Cap 446 and published vide Legal Notice No. 170 of 1999. The NACC is placed under the Ministry of Health and its overall mandate is to coordinate the national and multi-sectoral HIV and AIDS response in Kenya.

Following the declaration of HIV as a national disaster and the establishment of the NACC Council, a Taskforce on Legal Issues relating to HIV & AIDS was established by the Attorney General vide gazette notice No. 4015 of 22<sup>nd</sup> June 2001. It was established on the backdrop of the need to examine the legal and ethical questions that had arisen in the wake of HIV and AIDS. The report of the taskforce was presented to stakeholders and consequently a few members of the taskforce were mandated to draft the HIV and AIDS Prevention and Control Bill, which was undertaken in October 2002. The same was approved by Cabinet on the 23<sup>rd</sup> of September 2003. The Bill was passed into law on 30<sup>th</sup> December 2006 after receiving presidential assent; however it only became operational on the 27<sup>th</sup> of February 2009 after it received a commencement date from the Minister of State for Special Programmes.

This HIV and AIDS Prevention and Control Act (HAPCA) provides the legal framework for addressing HIV in Kenya. HAPCA protects and promotes appropriate treatment, counselling, support and care for persons infected with HIV or at risk of infection.

### **1.2 PURPOSE OF CONSULTANCY**

In 2010, Kenya ushered in a new constitution that brought about far reaching changes to Kenya's legal framework, with an advanced Bill of Rights that reinforces and expands protections relating to HIV. Human rights are specifically but broadly provided for under the Constitution's Bill of Rights (Chapter 4), which is regarded as highly progressive. The Bill of Rights guarantees fundamental rights for all persons, including those living with and at risk of HIV. International human rights treaties, conventions or other formal instruments impose a duty on states to follow and ensure respect for human rights. Prior to the 2010 Constitution, treaties had little significance, they had no binding effect unless an Act of Parliament was passed, incorporating them into domestic law. Today, international laws that have been

signed and ratified by Kenya are binding and must be observed, just as any law that was passed within the country. All existing laws are required to comply with the Constitution therefore there is need to align the HAPCA with both the constitution and international laws.

Since the first cases of HIV were diagnosed in East Africa the three East African Countries have progressively developed their laws, policies and legal jurisprudence to combat HIV. On 7th July 2000 the East African treaty came into force with article 9 establishing the East African Legislative assembly, and Article 8(4) providing that laws passed by the East African legislative assembly will hold precedence over similar national laws. In this regard, in April 2012 the East African Legislative assembly passed the East African HIV Prevention and Management Act. The Act's preamble states that it is an act of the community to provide for the prevention and management of HIV and AIDS and for the protection and promotion of the human rights of persons living with or affected by HIV. Promulgation of this law was a progressive step by the East African Community partner states; it plays the crucial role of addressing gaps, discrepancies and inconsistencies in current national legal and regulatory approaches to HIV. There is need to amend the HAPCA to reflect the spirit of this regional law. Further, since NACC was established, significant changes have taken place in the HIV sector across the Globe. Therefore there is need to align the mandate of the NACC with changes in the Constitution and the HIV sector across the globe.

### 1.3 **OBJECTIVE**

The main objective of this assignment is to —

- (i) Establish the overall legal, regulatory, institutional framework for management of HIV/ AIDs in Kenya through comprehensive literature research, extensive consultations with all relevant stakeholders
- (ii) Identify the legal issues and challenges hindering effective management of HIV/ AIDS in Kenya based on the outcome of the research
- (iii) Recommend best practices management of HIV/AIDS and mandate of the NACC based on a comparative analysis of similar jurisdictions and changes in the HIV sector.
- (iv) Review the HIV/AIDS Prevention and Control Act, 2006 and propose areas for reform

### 1.4 **SPECIFIC TASKS**

The Consultant will contribute to legislative reform of HAPCA by undertaking the following tasks—

- (i) Participate in an inception meeting and prepare an inception report, detailing the general understanding of the assignment, methodology, work plan and deliverables.
- (ii) Finalize a jointly agreed work plan and map out timelines for the assignment;
- (iii) Review international, regional, national and county laws and policies relating to HIV/ AIDS to form a picture of the overall legal framework of HIV/AIDS in Kenya.
- (iv) Analyse international and national decisions by courts and tribunals on HIV/AIDS and identify issues for law reform.
- (v) Conduct consultative meetings with the relevant stakeholders with an aim of obtaining information that will aid in the identification of key areas for reform of HIV related laws
- (vi) Based on the research work, give recommendations on provisions of HAPCA that require reform
- (vii) Prepare preliminary drafting instructions to guide the review of legislation governing HIV/AIDS in kenya

#### 1.5 **METHODOLOGY**

The consultant will conduct the research using methodology and tools adequate for this kind of research according to the international standards, agreed on in consultation with NACC and compile a report, analyzing the data collected during consultation with stakeholders. The consultant is required to use a mix of methodologies to achieve the outcomes expected from this assignment.

The approach will include as a minimum:-

- Desk Review
- Consultations with key stakeholders

#### 1.6 **DELIVERABLES**

The Consultant will complete and submit a draft final report in both hard and soft copy at the end of the assessment period. The key deliverables for the assessment are as follows:

- i. Inception report, prepared after an inception meeting
- ii. Final work plan with timelines as agreed on with NACC
- iii. Report of the analysis on the international, regional, national and county laws policies relating to HIV/AIDS

- iv. Summary of international and national decisions by courts and tribunals on HIV/AIDS related matters.
- v. Key recommendations on the policy, legal, regulatory and institutional framework for effective management of HIV/AIDS in Kenya.
- vi. Analysis of provisions of the HIV/AIDS Prevention and Control Act, 2006 that require amendment
- vii. Drafting instructions to guide legal reforms

#### 1.7 NACC'S ROLE

The NACC shall be responsible for facilitating the required stakeholder forums and shall also review and avail comments to the consultant for the finalization of the report during the presentation of the report by the Consultant. The roles will be further defined at an inception meeting.

#### 1.8 DURATION OF THE CONSULTANCY WORK

Three (3) months from June 2021 and upon signing the Agreement.

#### 1.9 QUALIFICATIONS AND ORGANIZATION OF THE CONSULTANCY

The Consultant should have professionals of various expertise to work under the leadership of the Team Leader who will be providing key leadership and in-cluster management for the consultant teams. The team assembled for this assignment will be highly qualified with extensive relevant experience as follows:

#### **Required Experience and Skills**

1. Advocate of the High Court with experience in Legislative drafting
2. An individual with at least five years' experience in HIV related Human Rights including advocating for rights of persons living with HIV
3. A medical doctor with experience in HIV cases and knowledge in HIV related human rights

#### **Functional Competencies:**

- i. Expert knowledge of human rights, legal framework, health and the law;
- ii. Experience in conducting research studies at a high level and conducting interviews with key informants;
- iii. Significant experience conducting advocacy on HIV, Human Rights and the Law;

- iv. Ability to write well and articulate issues in concise language; and

**Core Competencies:**

Ability to:

- i. Produce high quality outputs in a timely manner while understanding and anticipating the evolving client needs.
- ii. Work independently, produce high quality outputs;
- iii. Assess situations or circumstances, and to draw sound conclusions;
- iv. Think strategically, manage competing priorities and be highly organized;
- v. Promote the vision, mission and strategic goals of the NACC; and
- vi. Display cultural, gender, religion, race, nationality and age sensitivity and adaptability

**Experience:**

Minimum of ten (10) years of relevant experience is required for the team lead.

**SHORT LISTING CRITERIA**

**STATUTORY REQUIREMENTS- MANDATORY CRITERIA**

<b>No</b>	<b>Requirements</b>	<b>PASS/FAIL</b>
1.	Duly Filled Confidential Business Questionnaire	
2.	Valid Tax Compliance Certificate or exemption Certificate	

**ELIGIBILITY CRITERIA- MANDATORY**

<b>No</b>	<b>Requirements</b>	<b>PASS/FAIL</b>
1.	Duly executed Self Declaration on Debarment	
2.	Duly executed Anti-Corruption of Declaration	

## QUALIFICATION CRITERIA

	<b>Item Description</b>	<b>Max Score</b>	<b>Score</b>
<b>1</b>	<b>Adequacy and quality of the proposed methodology (20 Marks)</b>	<b>40</b>	
	<b>Implementation Workplan and Timelines (10 Marks)</b>		
	<b>Adequacy of proposed suggestions on the Terms of Reference (TORs) (10 points)</b>		
<b>2</b>	<b>Key Experts Qualifications, Experience and competence</b>		
	<b>Lead Consultant</b>		
	<ol style="list-style-type: none"> <li>1. An advocate of the High Court (5 Marks)</li> <li>2. At least five-year experience in legislative drafting (15 Marks)</li> <li>3. Evidence of having undertaken at least two assignments related to the assignment (20 Marks)</li> </ol>	<b>60</b>	
	<b>Support Consultants</b> <ol style="list-style-type: none"> <li>1. A Medical doctor (5 Marks)</li> <li>2. An individual with at least five years' experience in HIV related Human Rights including advocating for rights of persons living with HIV (10 Marks)</li> <li>3. Evidence of having conducted at least two research studies at a high level and conducting interviews with key informants (5 Marks)</li> </ol>		
	<b>Pass Mark 70 Points</b>	<b>100</b>	

## 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 lead 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)**

### **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

*(to be prepared by the consultant as appropriate)*

**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:-

**NATIONAL AIDS CONTROL COUNCIL**

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

For the Consultant

Full name \_\_\_\_\_

Full name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

2.

**REQUEST FOR REVIEW FORM**

**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 of .....20.....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. etc.

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

1.

2.etc

SIGNED .....(Applicant)

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

---

**FOR OFFICIAL USE ONLY**

Lodged with the Secretary Public Procurement Administrative Review Board on  
..... day of .....20.....

SIGNED

Board Secretary

3. CONFIDENTIAL BUSINESS QUESTIONNAIRE s.33

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

Email .....

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. ....			

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. ....			

Date..... Signature of Candidate.....

**4. PERFORMANCE SECURITY FORM**

To: ..... [Name of NACC]

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 services](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 figures],

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 aforesaid, without your 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

\_\_\_\_\_  
Signature and seal of the Guarantors

\_\_\_\_\_  
[name of bank or financial institution]

\_\_\_\_\_ [address]

\_\_\_\_\_ [date]

(Amend accordingly if provided by Insurance Company)

5. **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

**6. REPUBLIC OF KENYA**

**PUBLIC PROCUREMENT REGULATORY AUTHORITY (PPRA)**

FORM SD2: Self-Declaration Forms (r 62): 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

7.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  
:.....

PIN Number  
:.....

VAT Number  
:.....

Bank signatory(s) :.....  
.....

Signed/ date.....

**8. FORM OF TENDER**

Date\_\_\_\_\_

Tender No.\_\_\_\_\_

To.....

.....

[Name and address of procuring entity]

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda Nos.. *[insert numbers,* the of which is hereby duly acknowledged, wed, the undersigned, offer to provide. *[description of services]* in conformity with the said tender documents for the sum of . *[total tender amount in words and figures]* or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.
2. We undertake, if our Tender is accepted, to provide the services in accordance with the services schedule specified in the Schedule of Requirements.
3. If our Tender is accepted, we will obtain the tender guarantee in a sum equivalent to \_\_\_\_ percent of the Contract Price for the due performance of the Contract, in the form prescribed by (Procuring entity).
4. We agree to abide by this Tender for a period of *[number]* days from the date fixed for tender opening of the Instructions to tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
5. Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20  
*[signature]* *[In the capacity of]*  
 Duly authorized to sign tender for and on behalf of\_\_\_\_\_