



COMMUNICATIONS COMMISSION OF KENYA

TENDER NO: CCK/RFP/06/ 2009-2010

**Request For Proposals For Provision Of Consultancy Services For A Study On Ict Access
Gaps In Kenya.**

INVITATION TO TENDER

The Communications Commission of Kenya is the independent regulatory authority for the communications sector with responsibilities in telecommunications, radiocommunications, e-commerce, broadcasting and postal services in Kenya.

As part of its mandate, the Commission is required to ensure universal access to communications services in all parts of the country including rural and remote areas. In order to carry out this mandate effectively and efficiently, the Commission is inviting qualified consultancy firms to undertake a study meant to identify and document access gaps in the information and communications technologies sector, specifically gaps relating to voice, data/internet, broadband, postal and courier services in Kenya.

The key objective of the study is to establish the market efficiency and true access gaps with respect to the aforementioned ICT services. The identified gaps will form the basis on which estimates for the incentives required to stimulate investment in the high cost areas shall be derived. The Study is expected to assist the Commission in developing and implementing effective and sustainable universal access programmes in rural and low income areas with a view to bridging the digital divide in the country.

CCK, therefore, invites interested firms to collect tender documents from the Procurement Unit at the Commission's offices, CCK Centre, Waiyaki Way, Nairobi, between 9.00 a.m and 4.00 p.m. Firms may also download the documents from CCK website at the address, <http://www.cck.go.ke/tenders>. Enquiries on issues pertaining to the tender may be channeled via accessgaps@cck.go.ke

Duly completed RFP documents, in a plain sealed envelope marked **CCK/RFP/06/ 2009 – 2010 “Request for proposals for consultancy to undertake a Study on ICT Access Gaps in Kenya”**, should be mailed to the address below or deposited in the CCK tender box on the ground floor of the CCK Centre on or before **19th October, 2009 2.30 p.m.**

Secretary
Tender committee
Communications Commission of Kenya
P.O Box 14448
Nairobi 00800
Tel: [+254 20 4242000](tel:+254204242000)
Fax: +254 20 4242335
Website: www.cck.go.ke
Email:

Tenders should be submitted in two separate envelopes with completed technical and financial proposals clearly marked:

- Technical proposal for consultancy to undertake a study on ICT Access Gaps in Kenya
- Financial proposal for consultancy to undertake a study on ICT Access Gaps in Kenya

Tenders will be opened immediately thereafter in the presence of bidders or representatives who choose to attend at the CCK 1st floor meeting room.

SECTION B: - INFORMATION TO CONSULTANTS

1. Introduction

- 1.1 The Communications Commission of Kenya will select a firm among those invited to submit a proposal, in accordance with the method of selection detailed under this section.
- 1.2 The consultants are invited to submit **Technical and Financial Proposals** separately, as specified in Appendix “A” for consulting services required for the assignment named in the said Appendix.
- 1.3 The Commission will provide the inputs specified in Appendix “A”, to assist the firm in obtaining appropriate licenses and permits needed to carry out the services and make available relevant project data and reports.
- 1.4 Please note that (i) the costs of preparing the proposal and of negotiating the Contract, including any visit to the Commission are not reimbursable as a direct cost of the assignment; and (ii) the Commission is not bound to accept any of the proposals submitted.

- 2. Clarification and Amendment of RFP Documents**
- 2.1 Consultants may request for a clarification of any of the documents only up to seven [7] days before the tender closing dates. Any request for clarification must be sent in writing by paper mail, cable, telex, facsimile or electronic mail to the Commission’s address indicated in Appendix “A”. The Commission will respond by cable, telex, facsimile or electronic mail to such requests and will send written copies of the response (including an explanation of the query but without identifying the source of inquiry) to all invited consultants who intend to submit proposals.
- 2.2 At any time before the submission of proposals, the Commission may for any reason, whether at his own initiative or in response to a clarification requested by an invited firm, amend the RFP. Any amendment shall be issued in writing through addendum. Addendum shall be sent by mail, cable, telex or facsimile to all invited consultants and will be binding on them. The Commission may at his discretion extend the deadline for the submission of proposals.
- 3. Preparation of Proposal**
- 3.1 The Consultants proposal shall be written in English language.
- Technical Proposal**
- 3.2 In preparing the Technical Proposal, consultants are expected to examine the documents constituting this RFP in detail. Material deficiencies in providing the information requested may result in rejection of a proposal.
- 3.3 While preparing the Technical Proposal, consultants must give particular attention to the following:

- (i) If a firm considers that it does not have all the expertise for the assignment, it may obtain a full range of expertise by associating with individual consultant(s) and/or other firms or entities in a joint venture or sub consultancy as appropriate. **But consultants shall not associate with the other consultants invited for this assignment.** Any firms associating in contravention of this requirement shall automatically be disqualified.
- (ii) All consultant firms must give the estimated number of professionals to be used in this assignment.
- (iii) It is desirable that the majority of the key professional staff proposed be permanent employees of the firm or have an extended and stable working relationship with it.
- (iv) Proposed professional staff must as a minimum, have the experience indicated in undertaking such a project.

3.4 The Technical Proposal shall provide the following information using the attached Standard Forms;

- (i) A brief description of the firm's organization and an outline of recent experience on assignments of a similar nature. For each assignment the outline should indicate *inter alia*, the profiles of the staff proposed, duration of the assignment, contract amount and firm's involvement.
- (ii) Any comments or suggestions on the Terms of Reference, a list of services and facilities to be provided by the Commission.

- (iii) A description of the methodology and work plan for performing the assignment.
- (iv) The list of the proposed staff team by speciality, the tasks that would be assigned to each staff team member and their timing.
- (v) CVs recently signed by the proposed professional staff and the authorized representative submitting the proposal. Key information should include number of years working for the firm/entity and degree of responsibility held in various assignments during the last ten (10) years.
- (vi) Estimates of the total staff input (professional and support staff staff-time) needed to carry out the assignment supported by bar chart diagrams showing the time proposed for each professional staff team member.
- (vii) A detailed description of the proposed methodology, staffing and monitoring of training, as specified in Appendix "A".
- (viii) Any additional information requested in Appendix "A".

3.5 The Technical Proposal shall not include any financial information.

**Financial
Proposal**

3.6 In preparing the Financial Proposal, consultants are expected to take into account the requirements and conditions outlined in the *RFP* documents. The Financial Proposal should follow Standard Forms (Section D). It should include all costs associated with the assignment including; (a) remuneration for staff (in the field and at headquarters), and; (b) reimbursable expenses such as subsistence (per diem, housing), transportation

(international and local, for mobilization and demobilization), services and equipment (vehicles, office equipment, furniture, and supplies), office rent, insurance, printing of documents, surveys, and training, if it is a major component of the assignment. If appropriate these costs should be broken down per activity.

- 3.7 The Financial Proposal should clearly identify as a separate amount, the local taxes, duties, fees, levies and other charges imposed under the law on the consultants, the sub consultants and their personnel.
- 3.8 Consultants shall express the price of their services in Kenya Shillings.
- 3.9 Commissions and gratuities, if any, paid or to be paid by consultants and related to the assignment will be listed in the Financial Proposal submission Form.
- 3.10 The Proposal must remain valid for 90 days after the submission date. During this period, the consultant is expected to keep available, at his own cost, the professional staff proposed for the assignment. The Commission will make his best effort to complete negotiations within this period. If the Commission 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 proposal.

4 Submission, Receipt, and Opening of Proposals

- 4.1 The original proposal (Technical Proposal and Financial Proposal; see Para. 1.2) shall be prepared in indelible ink. It shall contain no interlineations or overwriting except as necessary to correct errors made by the firm itself. Any such corrections must be initialed by the persons or person authorized to sign the proposals.
- 4.2 For each proposal, the consultants shall prepare the number of copies indicated in Appendix “A”. Each Technical Proposal and Financial Proposal shall be marked “**ORIGINAL**” or “**COPY**” as appropriate. If there are any discrepancies between the original and the copies of the proposal, the original shall govern.
- 4.3 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 clearly marked “**FINANCIAL PROPOSAL**” and warning: “**DO NOT OPEN WITH THE TECHNICAL PROPOSAL**”. Both envelopes shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address and other information indicated in Appendix “A” and be clearly marked, “**DO NOT OPEN, EXCEPT IN PRESENCE OF THE EVALUATION COMMITTEE.**”
- 4.4 The completed Technical and Financial Proposals must be delivered at the submission address on or before the time and date stated in Appendix “A”. Any proposal received after the closing time for submission of proposals shall be returned to the respective consultant unopened.

4.5 After the deadline for submission of proposals, the Technical Proposal shall be opened immediately by the evaluation committee. The Financial Proposal shall remain sealed and deposited with a responsible officer of the Commission department until all submitted proposals are opened publicly.

5. Proposal Evaluation

General

5.1 From the time the bids are opened to the time the contract is awarded, if any consultant wishes to contact the Commission on any matters related to his proposal, he should do so in writing at the address indicated in Appendix “A”. Any effort by the firm to influence the Commission in the proposal evaluation, proposal comparison or Contract award decisions may result in the rejection of the consultant’s proposal.

5.2 Evaluators of Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded.

Evaluation

5.3 The evaluation committee appointed by the Commission shall evaluate the proposals on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria below:

of Technical

Proposals

EVALUATION CRITERIA

The RFP for the provision of consultancy service for a Study of ICT Access Gaps in Kenya shall be evaluated in three stages namely:-

- Mandatory Evaluation- Pass/Fail
- Technical evaluation - 80%

- Financial evaluation. - 20%

Mandatory Evaluation

1. Company profile (company history, contacts, services, affiliations etc)
2. Official documents (Certificate of incorporation/registration, and valid tax compliance)
3. Evidence of financial capability by submitting audited financial reports for the last three(3) years.

Technical evaluation

The proposals shall be subjected to the technical evaluation set out in the table below. The maximum scores shall be 80/80 with a pass-mark of 60 out of 80.

NO	CRITERIA	WEIGHT
Relevant Experience for the Assignment (Corporate)		
1	Practical experience in empirical research and quantitative analysis in communications (telecommunications, postal and broadcasting) (Provide evidence for the last five years).	10
2	Practical experience in financial modeling especially for ICT Investment (provide evidence for the last 10 years)	10
3	Experience in Universal Access / service research in developing countries (Provide evidence for the last 10 years)	10
Methodology and Approach		
4	Understanding of the Terms of Reference and consultants initiatives and comments on the TORs	8
5	Effectiveness of the proposed data collection method(s) and the proposed working relationship with the Kenya National Bureau of Statistics (KNBS) and other relevant sources of information.	5
6	Apropriateness of the proposed framework for assessing the ICT access gaps in the country	10
7	Draft Final Report Outline, project schedule, manning and allocation of proposed staff.	5

NO	CRITERIA	WEIGHT
	Human Resource Capacity	
8	Team Leader: General education background, professional qualifications, training, length of experience, positions held and duration with the firm and experience in the region/country.	6
9	Other key staff: adequacy and capability of other key staff in carrying out the assignment: education training and experience in the sector (postal/courier and telecommunications) and relevant to the project	6
10	Relevance of the consultancy team's experience (postal/courier, telecommunications, financial modeling, research, etc) in performing the tasks of the projects.	10
	GRAND TOTAL	80

To be eligible for the Financial Evaluation, tenders must score at least seventy (60) out of eighty (80) at the Technical Evaluation stage. Financial proposal will account for remaining the twenty (20%) percentage points.

Financial Evaluation

The firms that qualify at the technical evaluation stage shall have their financial proposals opened in publicly in the presence of the consultants' representatives who choose to attend. The evaluation committee shall determine whether the financial proposals are complete and correct any computational errors.

The committee shall thereafter compute the financial scores out of 20 points using the following formulae:-

$$\frac{\text{Lowest evaluated bid}}{\text{Bid Price}} \times 20 = \text{Financial Scores}$$

The technical and financial scores will be combined and the firm achieving the highest combined scores will be considered for award of the tender.

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

- Public Opening and Evaluation of Financial Proposals**
- 5.4 After Technical Proposal evaluation, the Commission shall notify those consultants whose proposals did not meet the minimum qualifying mark or were considered non-responsive to the RFP and Terms of Reference, indicating that their Financial Proposals will be returned after completing the selection process. The Commission shall simultaneously notify the consultants who have secured the minimum qualifying mark, indicating the date and time set for opening the Financial Proposals and stating that the opening ceremony is open to those consultants who choose to attend. The notification may be sent by registered letter, cable, telex, facsimile or electronic mail.
- 5.5 The Financial Proposals shall be opened publicly in the presence of the consultants’ representatives who choose to attend. The name of the consultant, the technical scores and the proposed prices shall be read aloud and recorded when the Financial Proposals are opened. The Commission shall prepare minutes of the public opening. Financial proposals will carry a maximum of **20 points**.
- 5.6 The evaluation committee will determine whether the financial proposals are complete (i.e. whether the consultant has costed all the items of the corresponding Technical Proposal and correct any computational errors. The cost of any unpriced items shall be assumed to be included in other costs in the proposal. In all cases, the total price of the Financial Proposal as submitted shall prevail.

5.7 Both technical and financial scores will be combined and the firm achieving the highest combined technical and financial score will be awarded the tender and invited for negotiations.

6. Negotiations 6.1 Negotiations will be held at the CCK Centre, along Waiyaki Way, with the aim to reach agreement on all points and sign a contract.

6.2 Negotiations will include a discussion of the Technical Proposal, the proposed methodology (work plan), staffing and any suggestions made by the firm to improve the Terms of Reference. The Commission and firm will then work out final Terms of Reference, staffing and bar charts indicating activities, staff periods in the field and in the head office, staff-months, logistics and reporting. The agreed work plan and final Terms of Reference will then be incorporated in the “Description of Services” and form part of the Contract. Special attention will be paid to getting the most the firm can offer within the available budget and to clearly defining the inputs required from the Commission to ensure satisfactory implementation of the assignment.

6.3 Unless there are exceptional reasons, the financial negotiations will not involve the remuneration rates for staff (no breakdown of fees)

6.4 Having selected the firm on the basis of, among other things, an evaluation of proposed key professional staff, the Commission expects to negotiate a contract on the basis of the experts named in the proposal. Before contract negotiations, the Commission will require assurances that the experts will be actually available. The Commission will not consider substitutions during contract negotiations unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were offered in

the proposal without confirming their availability, the firm may be disqualified.

6.5 The negotiations will conclude with a review of the draft form of the Contract. To complete negotiations the Commission and the selected firm will initial the agreed Contract. If negotiations fail, the Commission will invite the firm whose proposal received the second highest score to negotiate a contract.

7. Award of Contract

7.1 The Contract will be awarded following negotiations.

After negotiations are completed, the Commission will promptly notify other consultants on the shortlist that they were unsuccessful and return the Financial Proposals of those consultants who did not pass the technical evaluation.

7.2 The selected firm is expected to commence the assignment on the date and at the location as specified by the Commission.

8. Performance Bond

The selected firm shall within Seven (7) days from the date of executing the Contract Agreement furnish Communications Commission of Kenya with a Performance Bond that will remain valid for Thirty (30) days beyond the duration of this Agreement or any termination thereof and whose value shall be equivalent to **5% of the Contract Value.**

The proceeds of the performance Bond shall be payable to Communications Commission of Kenya as compensation for any delay or damage resulting from failure by the firm to fulfil its obligations hereunder.

The Performance Bond shall be in the form of an On-Demand-Bank-Guarantee issued by a reputable Bank carrying on business within Kenya and acceptable to the Commission.

The Performance Bond will be discharged by Communications Commission of Kenya and returned to the firm not later than Ninety (90) days following the expiry of this Agreement or earlier termination.

9. Confidentiality

- 9.1 Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals or to other persons not officially concerned with the process, until the winning firm has been notified that it has been awarded the Contract.

APPENDIX “A”

Clause Reference

- 1.1 & 2.1 The name of the Client is: **Communication Commission of Kenya**
- The method of selection is: **Quality Cost Based method**
- 1.2 Technical and Financial Proposals are requested: **Yes**
A Technical Proposal only is requested: **No**
- The name, objectives, and description of the assignment are: **As per the Terms of Reference.**
- 1.3 Pre-proposal conference will be held: Yes _____ No ____ [*if Yes, indicate date, time and venue*] **No**
- The name(s), address (es) and telephone numbers of the Client’s official(s) are: **_P.O BOX 14448 NAIROBI 00800; Tel: +254-20-4242000; Fax: +254-20- 4242335**

1.4 The Client will provide the following inputs: **Any information required on the assignment**

3.3 (i) The minimum required experience of proposed professional staff is:[*Insert title, number of years of professional experience, specific expertise*]
Five years and above.

3.4 (ii) Training is a specific component of this assignment:
Yes

(viii) Additional information in the Technical Proposal includes:
N/A

3.7 Taxes: All taxes to be included in the financial proposal.

Consultants must submit an original and **ONE** additional copy of each proposal

4.2 The proposal submission address is as shown below. Information on the outer envelope should also include: **Tender number and consultancy description.**

**Secretary
Tender committee
Communications Commission of Kenya
P.O Box 14448
Nairobi 00800
Tel: +254 20 4242000
Fax: +254 20 4242335
Website: www.cck.go.ke
Email:**

4.3 Proposals must be submitted no later than **19th October,2009 at 2.30 p.m.**

4.4 The address to send information to the Client is: **P.O Box 14448-00800, NAIROBI; Fax: 4242335**

4.5 The minimum technical score required to pass is *60/80*.

The assignment is expected to commence after signing the contract and within an agreed time frame between the two parties.

SECTION C: - TECHNICAL PROPOSAL – STANDARD FORMS

The following sample formats have been attached:

- i) Technical Proposal submission form.
- ii) Firm's references.
- iii) Comments and suggestions of consultants on the Terms of Reference and on data, services and facilities to be provided by the Commission.
- iv) Description of the methodology and work plan for performing the assignment.
- v) Team composition and task assignments.

- vi) Format of curriculum vitae (CV) for proposed professional staff.
- vii) Time schedule for professional personnel.
- viii) Activity (work) schedule.

All firms must submit the above forms.

(i). TECHNICAL PROPOSAL SUBMISSION FORM

[_____ *Date*]

To: _____ [*Name and address of Commission*]

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for _____
_____ [*Title of consulting services*] in accordance with your
Request for Proposal dated _____ [*Date*] and our Proposal. We are hereby
submitting our Proposal, which includes this Technical Proposal, [and a Financial Proposal
sealed under a separate envelope-*where applicable*].

We understand you are not bound to accept any Proposal you receive.

We remain,

Yours sincerely,

_____ [*Authorized Signature*]:

_____ [*Name and Title of Signatory*]

:

_____ [*Name of Firm*]

:

_____ [*Address:*]

(ii). FIRM'S REFERENCES

**Relevant Services Carried Out in the Last Five Years
That Best Illustrate Qualifications**

Using the format below, provide information on each assignment for which your firm either individually as a corporate entity or in association was legally contracted.

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

Firm's Name: _____

Name and title of signatory; _____

(iii) COMMENTS AND SUGGESTIONS OF CONSULTANTS ON THE TERMS OF REFERENCE AND ON DATA, SERVICES AND FACILITIES TO BE PROVIDED BY THE COMMISSION.

On the Terms of Reference:

- 1.
- 2.
- 3.
- 4.
- 5.

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

1.

2.

3.

4.

5.

**(IV) DESCRIPTION OF THE METHODOLOGY AND WORK PLAN FOR
PERFORMING THE ASSIGNMENT**

(v). TEAM COMPOSITION AND TASK ASSIGNMENTS

1. Technical/Managerial Staff

Name	Position	Task

2. Support Staff

Name	Position	Task

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

Proposed

Position: _____

Name of

Firm: _____

Name of

Staff: _____

Profession:

Date of

Birth: _____

Years with Firm: _____

Nationality: _____

Membership in Professional

Societies: _____

Detailed Tasks

Assigned: _____

Key Qualifications:

[Give an outline of staff member’s experience and training most pertinent to tasks on assignment. Describe degree of responsibility held by staff member on relevant previous assignments and give dates and locations].

Education:

[Summarize college/university and other specialized education of staff member, giving names of schools, dates attended and degree[s] obtained.]

Employment Record:

[Starting with present position, list in reverse order every employment held. List all positions held by staff member since graduation, giving dates, names of employing organizations, titles of positions held, and locations of assignments.]

Certification:

I, the undersigned, certify that these data correctly describe me, my qualifications, and my experience.

_____ Date:

[Signature of staff member]

Date; _____

[Signature of authorized representative of the firm]

Full name of staff member: _____

Full name of authorized representative: _____

(vii). TIME SCHEDULE FOR PROFESSIONAL PERSONNEL

Weeks (in the Form of a Bar Chart)

Name	Position	Reports Due/ Activities	Weeks (in the Form of a Bar Chart)												Number of weeks	
			1	2	3	4	5	6	7	8	9	10	11	12		

Reports Due: _____

Activities Duration: _____

Signature: _____

(Authorized representative)

Full Name: _____

Title: _____

Address: _____

(viii). ACTIVITY (WORK) SCHEDULE

(a). Field Investigation and Study Items

[1st, 2nd, etc, are weeks from the start of assignment)

	1 st	2 nd	3 rd	4 th	5 th	6 th	7 th	8 th	9 th	10 th	11 th	12 th	
Activity (Work)													
<hr/>													
<hr/>													
<hr/>													

(b). Completion and Submission of Reports

Reports	Date
1. Inception Report	
1. Interim Progress Report (a) First Status Report (b) Second Status Report	
3. Draft Report	
4. Final Report	

SECTION D: - FINANCIAL PROPOSAL – STANDARD FORMS

The following sample formats for the Financial Proposal have been attached:

- i) Financial Proposal submission form.
- ii) Summary of costs.
- iii) Breakdown of price per activity.
- iv) Breakdown of remuneration per activity.
- v) Reimbursable per activity.
- vi) Miscellaneous expenses.

(i). FINANCIAL PROPOSAL SUBMISSION FORM

_____ [Date]

To: _____

[Name and address of Commission]

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for (_____) *[Title of consulting services]* in accordance with your Request for Proposal dated (_____) *[Date]* and our Proposal. Our attached Financial Proposal is for the sum of (_____) *[Amount in words and figures]* inclusive of the taxes.

We understand you are not bound to accept any Proposal you receive.

We remain,

Yours sincerely,

_____ [Authorized Signature]

_____ [Name and Title of Signatory]:

_____ [Name of Firm]

_____ [Address]

(ii). SUMMARY OF COSTS

Costs	Currency(ies)	Amount(s)	
Subtotal			
Taxes			
Total Amount of Financial Proposal		_____	

iii). BREAKDOWN OF PRICE PER ACTIVITY

Activity NO.: _____	Description: _____
Price Component	Amount(s)
Remuneration	
Reimbursable	
Miscellaneous Expenses	
Subtotal	_____

(iv). BREAKDOWN OF REMUNERATION PER ACTIVITY

Activity No. _____			Name: _____	
Names	Position	Input(Staff weeks, days or hours as appropriate.)	Remuneration Rate	Amount
Regular staff				
(i)				
(ii)				
Consultants				
Grand Total				

(v). REIMBURSABLE PER ACTIVITY

Activity No: _____ Name: _____

No.	Description	Unit	Quantity	Unit Price	Total Amount
1.	Air travel	Trip			
2	Road travel	Kms			
3.	Rail travel	Kms			
4.	Subsistence Allowance	Day			
	Grand Total				

(Vi). MISCELLANEOUS EXPENSES

Activity No _____ Activity Name: _____

No.	Description	Unit	Quantity	Unit Price	Total Amount
1.	Communication costs____ _____ (telephone, telegram, telex)				
2.	Drafting, reproduction of reports				
3.	Equipment: computers etc.				
4.	Software				
	Grand Total				_____

SECTION E: - TERMS OF REFERENCE FOR ICT ACCESS GAPS STUDY IN KENYA”

1.0 Background

The Communications Commission of Kenya was established in February 1999 through the Kenya Communications Act of 1998 to facilitate the provision of communication services throughout the Country through licensing and regulation of telecommunication, radio communication, broadcasting and postal services.

As enshrined in its Mission, the Commission is mandated to facilitate access to Communication services. To realize this objective the Kenya Communication Amendment Act 2009, envisions the creation of a Universal Service Fund to leverage provision of the communication services in the country including rural and high cost areas.

In the last one decade, the Information and Communication sector has experienced an exponential growth which is mainly attributable to market liberalization combined with regulatory initiatives. As a result Kenya has realized about 80 percent and 34 percent of population and geographic mobile coverage. However this impressive performance by the mobile industry comes with some underlining inequalities in the sector. For instance, Internet access is only available to about 3 percent of the population of which 80 percent of the users are in Nairobi and even with the mobile services, not every person within the coverage can afford the services. In the postal sector, the incumbent has over the years been closing up postal outlets in high cost.

The Universal Service Fund as envisaged in the Kenya Communications (Amendment) Act 2009 seeks to address the challenges the sector faces including, network roll-out, affordability, capacity building and innovation within a proper framework. To ensure the USF is successful, the Commission therefore seeks to develop and implement effective, targeted and sustainable universal access programs aimed specifically at increasing private sector investment in ICT infrastructure in rural and low-income areas in Kenya.

2.0 The Objectives

The main objective of this consultancy is to assist the Commission in developing the most appropriate framework, based on international best practice, that ensures provision of affordable ICT services to all parts of the country including rural and high cost areas. This framework should support and not substitute the effective operation of market forces. Specific objectives of the study includes;

- 2.1 Review and assessment of the current and planned universal access programs by the Government, operators and other stakeholders in the Information and Communication Technologies (ICTs) sector in terms of their impact, satisfaction of demand for services being provided and the costs and sustainability of the related investment.
- 2.2 Analyze the demand and supply for ICT services in unserved areas, with specific emphasis on services that are in greatest demand
- 2.3 Evaluation of International best practices of universal access programs focusing on those which are most applicable to the Kenyan environment;
- 2.4 Development of a spreadsheet model to estimate ICT access gaps (market efficiency and universal access gaps) while making recommendation of suitable universal access programs with an aim of achieving more impact, meeting the demand for service and obtaining higher cost/benefit ratios. This model shall also include (but not limited to) subsidies calculation for identified areas and programs.

3.0 Terms of Reference

In the current financial year, the Commission intends to carry out a National ICT survey to assess the level of access and usage of ICT survey in the country. The survey shall be conducted in collaboration with the Kenya National Bureau of Statistics (KNBS). It is expected that this survey shall provide the data for the Universal Access Gaps study. The consultant for the Universal Access gaps study shall therefore be expected to work with the KNBS in planning the

study and reviewing the survey instruments to ensure that the data collected is useful for the Universal Access Gaps Study.

In carrying out this study, the consultant shall be required to adhere to the Terms of Reference stated below and where necessary expand the scope;

3.1 Work with the KNBS in preparing survey instruments to ensure that the data collected will be relevant to the Access Gap Study.

3.2 Undertake a study on the appropriate framework to achieve universally available and affordable ICT services, required by Kenyans. The Study shall as a minimum cover:

3.2.1 Analysis of the existing and future ICT situation in Kenya, which shall include (but not necessarily be limited to), evaluation of:

- a) Current needs for ICT services by the Kenyan society as well as likely future evolution of these needs as envisaged in the Vision 2030 and other policy documents. This should be based on commercial social and public needs.
- b) Interplay between the ICT and other sectors, (including education, health, finance and commerce, government services, etc) for socio-economic development of the country.
- c) Current access gaps (market efficiency and universal access) for telephony, Internet, postal services and broadband.
- d) Current situation in Kenya with regard to affordability and availability of ICT services, (taking into account future evolution of such needs), together with analysis of the likely future trends. This shall include gap-analysis of existing affordability and availability of the required ICT services;

- e) Extent to which existing and/or planned pro-competitive regulatory instruments may or may not be sufficient to address affordability and availability gaps, if such gaps are identified;

3.3 Identification of high cost areas that may require support via a universal access/ services fund. The study should provide a detailed investment and operating costs for these areas. This identification should also provide analysis on where and on what conditions such additional support would be considered.

3.4 Identification and assessment of options/methods to provide the additional support for the selected high cost areas. Description of the options/methods should be based on the real situation in the country and be clear, precise and detailed providing specific actions to be undertaken and the required resources/subsidies to induce private sector investment. These proposals should in particular evaluate (but not necessarily be limited to):

3.4.1 Feasibility, appropriateness and effectiveness of demand side subsidies (such as vouchers and specific demand based reimbursement to operators, provision of ICT services to people with special needs, etc).

3.4.2 Feasibility, appropriateness and effectiveness of the supply side support methods (including subsidies, public-private partnership arrangements, concession-like arrangements, direct public intervention and/or deployment/operation of infrastructure etc.). This should include a clear description of the means to achieve that supply side subsidy that would not distort the establishment and operation of fair and effective competition.

3.5 Assessment of the institutional and legal framework in Kenya with regard to the feasibility of the implementation of the proposed strategy for universal access and services, identification of the gaps thereof and proposals with regard to the ways to

3.6 Proposal for implementation/action plan to achieve the goals of the proposed strategy for universal access and services. The action plans should recommend universal access programs that focus on Internet, postal, mobile coverage, broadband coverage, etc. The actions included may be categorized as short-term, medium-term and long-term. In addition, the consultant shall be expected to set measurable goals for the universal access programs.

3.7 Estimate of the magnitude of investment subsidy required to induce a private sector operation in high cost areas;

3.8 Design bidding, selection and award process including the specification of qualifying criteria for bidders in order to ensure transparent, timely and successful outcomes; and

3.9 Prepare framework for operating licenses and contracts that would govern the operations of services in high cost areas.

In this regard, the Commission is inviting interested and qualified consultancy and research firms to bid for this project.

4.0 Expected Outputs

The Consultant shall be expected to provide the following deliverables

4.1 Inception Report

Summary of the methodological approach for conducting the assignment including preliminary assessment of current developments in the sector while at the same time make a comparative analysis of Kenya and other countries with similar economies.

4.2 **Progress Report**

The consultant will furnish the Commission on the progress of the project through regular reports after every milestone.

4.3 **Interim Report**

This will be a draft final report on the Universal Access Gaps study in the country and the proposed mechanisms of bridging the digital divide. It will present an analysis of the current and planned universal access initiatives by operators in the sector while at the same time providing relevant benchmark and international best practices that are suitable for the Kenyan environment. In addition, the report should include a descriptive and annotated catalog of existing and planned universal access programs in country. The consultant(s) will be expected to present this report in the final workshop to be attended by stakeholders.

4.4. **Access Gaps Model**

As part of the deliverables the consultant shall be expected to develop a spreadsheet template for universal access gaps in the country. The purpose of the model is to provide a basis for evaluating the economic structure of actual and potential ICT markets in the country, in relation to Universal Access and Universal Service goals. The model should measure the relative costs and potential revenues associated with bringing service access to such unserved populations, and thereby determine the relative economic attractiveness, or constraints, to investment in expanding services into those areas and assist in formulating implementation plans and resources/subsidies allocation.

The model should be able to quantify the access gaps for a number of services in the sector to enable the Commission to design effective and targeted universal access programs. **In the end, the consultant is expected to conduct in house end user training to build capacity within Commission.**

4.5 **Contracts and licenses Templates**

The consultant shall be expected to provide templates for licensees and contracts for governing the operations and the provision of the various ICT services in high cost areas.

4.6 Bidding Process

To standardize the Universal Access process, using flow charts, the consultant shall be required to design, bidding and award for process for universal access programs consistent with the Kenya Public Procurement Act.

4.6 Final Report

The final report will be developed as per the objectives of the study and the Terms of Reference. The final version of the main report taking into consideration the feedback received from stakeholders during the final workshop, and including a detailed implementation plan with timetable for proposed universal Access strategy.

All the deliverables shall be properties of the Republic of Kenya under the custody of the Commission.

5.0 Competence and Experience

The consultant is expected to be a firm or joint venture of firms or persons and will be selected based on its experience and capacity in carrying out project. The consultant team is expected to have demonstrable experience working in **developing countries**, explicitly on the design, implementation and assessment universal access schemes.

The consultant is expected to be an interdisciplinary team with knowledge and experience in the ICT (postal/courier and telecommunications) sector, and a track record of developing implementable recommendations.

Key staff should include: team leader/manager with relevant work experience in the sector; telecommunications engineers, postal/courier services expert, economists/finance experts

relevant work experience in ICT regulations, licensing, interconnection and tariff policy issues and/ telecommunications demand analysis and/or econometric analysis.

Members of the consultant team should be proficient in written and spoken English.

6.0 Project Duration

The project is expected to take a maximum of twenty six (26) working weeks.

II. GENERAL CONDITIONS OF CONTRACT

1. GENERAL PROVISIONS

1.1 Definitions

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

- (a) “Applicable Law” means the laws and any other instruments having the force of law in the Republic of Kenya as they may be issued and in force from time to time;
- (b) “Contract” means the Contract signed by the Parties, to which these General Conditions of Contract (GC) are attached together with all the documents listed in Clause 1 of such signed Contract;
- (c) “Contract Price” means the price to be paid for the performance of the Services in accordance with Clause 6 here
- (d) below;
- (e) “Foreign Currency” means any currency other than the Kenya Shilling;

- (f) “GC” means these General Conditions of Contract;
- (g) “Government” means the Government of the Republic of Kenya;
- (h) “Local Currency” means the Kenya Shilling;
- (i) “Member”, in case the Consultant consists of a joint venture of more than one entity, means any of these entities; “Members” means all these entities, and “Member in Charge” means the entity specified in the SC to act on their behalf in exercising all the Consultant’s rights and obligations towards the Commission under this Contract;
- (j) “Party” means the Commission or the Consultant, as the case may be and “Parties” means both of them;
- (k) “Personnel” means persons hired by the Consultant or by any Sub consultant as employees and assigned to the performance of the Services or any part thereof;
- (l) “SC” means the Special Conditions of Contract by which the GC may be amended or supplemented;
- (m) “Services” means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A; and

(n) “Sub consultant” means any entity to which the Consultant subcontracts any part of the Services in accordance with the provisions of Clauses 3 and 4.

**1.2 Law Governing
the Contract**

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

1.3 Language

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

1.4 Notices

Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed or when sent by registered mail, telex, telegram or facsimile to such Party at the address specified in the SC.

1.5 Location

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

**1.6 Authorized
Representatives’**

Any action required or permitted to be taken and any document required or permitted to be executed under this Contract by the Commission or the Consultant may be taken or executed by the officials specified in the SC.

1.7 Taxes and

The Consultant, Sub-consultant [s] and their personnel

Duties shall pay such taxes, duties, fees and other impositions as may be levied under the Laws of Kenya, the amount of which is deemed to have been included in the Contract Price.

2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

2.1 Effectiveness of Contract This Contract shall come into effect on the date the Contract is signed by both Parties and such other later date as may be stated in the SC.

2.2 Commencement of Services The Consultant shall begin carrying out the Services thirty (30) days after the date the Contract becomes effective or at such other date as may be specified in the SC.

2.3 Expiration of Contract Unless terminated earlier pursuant to Clause 2.6, this Contract shall terminate at the end of such time period, after the Effective Date, as is specified in the SC.

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

2.5 Force Majeure

2.5.1 Definition For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party and which makes a Party’s performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

2.5.2 No Breach of Contract The failure of a Party to fulfill any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

2.5.3 Extension Of Time Any period within which a Party shall, pursuant to this Contract complete any action or task shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

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

2.6 Termination

2.6.1 By the The Commission may terminate this Contract by not less than

Commission thirty (30) days' written notice of termination to the Consultant, to be given after the occurrence of any of the events specified in this Clause;

- (a) If the Consultant does not remedy a failure in the performance of his obligations under the Contract within thirty (30) days after being notified or within any further period as the Commission may have subsequently approved in writing;
- (b) If the Consultant becomes insolvent or bankrupt;
- (c) If, as a result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (d) If the Consultant, in the judgement of the Commission, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this clause;

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

“fraudulent practice” means a misrepresentation of facts in order to influence a selection process or the execution of Contract to the detriment of the Commission, and includes collusive practice among consultants (prior to or after

submission of proposals) designed to establish prices at artificial non-competitive levels and to deprive the Commission of the benefits of free and open competition.

- (e) If the Commission in his sole discretion decides to terminate this Contract.

2.6.2 By the

Consultant

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

- (a) if the Commission fails to pay any monies due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause 7 within sixty (60) days after receiving written notice from the Consultant that such payment is overdue; or
- (b) if, as a result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

2.6.3 Payment

Upon

Termination

Upon termination of this Contract pursuant to Clauses 2.6.1 or 2.6.2, the Commission shall make the following payments to the Consultant:

- (a) remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination;

- (b) Except in the case of termination pursuant to paragraphs (a) and (b) of Clause 2.6.1, reimbursement of any reasonable costs incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel and their eligible dependents.

3. OBLIGATIONS OF THE CONSULTANT

3.1 General

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

3.2 Conflict of Interests

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

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

them similarly shall not receive any such additional remuneration.

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

**3.2.2 Consultant
and
Affiliates
Not to be
Otherwise
Interested in
Project**

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

3.2.3 Prohibition

Neither the Consultant nor his sub-consultant[s]

**of
Conflicting
Activities**

nor their personnel shall engage, either directly or indirectly in any of the following activities:

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

3.3 Confidentiality

The Consultant, his sub-consultant[s] and the personnel of either of them shall not, either during the term of this Contract or within five (5) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract or the Commission's business or operations without the prior written consent of the Commission.

**3.4 Insurance to be
Taken Out by the
Consultant**

The Consultant (a) shall take out and maintain and shall cause any sub-consultant[s] to take out and maintain, at his (or the sub-consultants', as the case may be) own cost but on terms and conditions approved by the Commission, insurance against the risks and for the coverage, as shall be specified in the SC; and (b) at the Commission's request, shall provide evidence to the Commission showing that such insurance has been taken out and maintained and that the current premiums have been paid.

3.5 Consultant's

The Consultant shall obtain the Commission's prior

Actions Requiring Commission’s Prior Approval approval in writing before taking any of the following actions;

- (a) entering into a subcontract for the performance of any part of the Services,
- (b) Appointing such members of the personnel not listed by name in Section C (“Key Personnel and Sub-consultants”).

3.6 Reporting Obligations The Consultants shall submit to the Commission the reports and documents specified in Appendix A in the form, in the numbers, and within the periods set forth in the said Appendix.

3.7 Documents prepared by the Consultant to Be the Property of the Commission All plans, drawings, specifications, designs, reports and other documents and software submitted by the Consultant in accordance with Clause 3.6 shall become and remain the property of the Commission and the Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Commission together with a detailed inventory thereof. The Consultant may retain a copy of such documents and software. Neither Party shall use these documents for purposes unrelated to this Contract without the prior approval of the other Party.

4. CONSULTANT’S PERSONNEL

4.1 Description of Personnel The titles, agreed job descriptions, minimum qualifications and estimated periods of engagement in the carrying out of the Services of the Consultant’s Key Personnel are described in

Section C. The Key Personnel and Sub consultants listed by title as well as by name in Section C are hereby approved by the Commission.

4.2 Removal and/ or Replacement Of Personnel (a) Except as the Commission may otherwise agree, no changes shall be made in the Key Personnel. If for any reason beyond the reasonable control of the Consultant, it becomes necessary to replace any of the Key Personnel, the Consultant shall provide as a replacement a person of equivalent or better qualifications.

(b) If the Commission finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) the Commission has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultant shall, at the Commission's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Commission.

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

5. OBLIGATIONS OF THE COMMISSION

5.1 Assistance and Exemptions

The Commission shall use his best efforts to ensure that he provides the Consultant such assistance and exemptions as may be necessary for due performance of this Contract.

5.2 Change in the Applicable Law

If after the date of this Contract, there is any change in the Laws of Kenya with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Consultant, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties and corresponding adjustments shall be made to the amounts referred to in Clause 6.2 (a) or (b), as the case may be.

5.3 Services and Facilities

The Commission shall make available to the Consultant the Services and Facilities listed under Appendix F.

6. PAYMENTS TO THE CONSULTANT

6.1 Lump-Sum Remuneration

The Consultant's total remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all staff costs, Sub-consultants' costs, printing, communications, travel, accommodation and the like and all other costs incurred by the Consultant in carrying out the

Services described in Appendix A. Except as provided in Clause 5.2, the Contract Price may only be increased above the amounts stated in Clause 6.2 if the Parties have agreed to additional payments in accordance with Clause 2.4.

6.2 Contract Price (a) The price payable in foreign currency is set forth in the SC.

(b) The price payable in local currency is set forth in the SC.

6.3 Payment for Additional For the purposes of determining the remuneration due for additional services as may be agreed under Services Clause 2.4, a breakdown of the lump-sum price is provided in Appendices D and E.

6.4 Terms and Conditions of Payment Payments will be made to the account of the Consultant and according to the payment schedule stated in the SC. Unless otherwise stated in the SC, the first payment shall be made against the provision by the Consultant of a bank guarantee for the same amount and shall be valid for the period stated in the SC. Any other payment shall be made after the conditions listed in the SC for such payment have been met and the Consultant has submitted an invoice to the Commission specifying the amount due.

6.5 Interest on Delayed Payment Payment shall be made within thirty (30) days of receipt of invoice and the relevant documents specified in Clause 6.4. If the Commission 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 .

7. SETTLEMENT OF DISPUTES

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

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

FORM OF TENDER

FROM-----

DATE -----

To: -----

RE: PROPOSAL FOR A STUDY ON ICT ACCESS GAPS IN KENYA.

In accordance with Tender Number ----- Date-----

I/We-----

Tender an amount of Ksh.-----

In accordance with the attached tender forms / conditions of tender / schedule of requirements and in conformity with the scheduled delivery arrangements stated.

I/We understand that the Commission reserves the right to accept or reject this tender for any reason it considers justifiable.

I/We agree that the terms of this tender will remain valid for and will not be withdraw for a period of----- days from the final date of submission of tender.

In the event of this tender being accepted within the stipulated -----days;
I/We agree to provide consultancy services as indicated in this tender to be quoted delivery dates
and failure on my/ our part to meet these requirements constitutes a breach on contract.

Witnessed by-----	Tenderer's Name-----
Address-----	Tenderer's Signature-----
Signature of Witness-----	Tenderer's designation-----
Date-----	Full address-----
	Telephone No-----
	Telegraphic Address-----
	Date-----

Appendix II

4. PERFORMANCE BANK GUARANTEE

(To be on the letterhead of the Bank)

To: Communications Commission of Kenya
Waiyaki Way
P.O. Box 14448, 00800
NAIROBI. Kenya.

WHEREAS _____ [name of
Contractor]

(hereinafter called "the Contractor") has undertaken, in pursuance of Contract
No. _____

dated _____ 2008 to
provide _____

_____ (hereinafter called “the Contract”).

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

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

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the Contractor, up to a total of **(5% of BID PRICE)**.

_____ (words) _____ (figures), and we undertake to pay you, upon your first written demand declaring the Contractor to be in default under the Contract and without cavil or argument, any sum or sums within the limits of _____

_____ as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

The guarantee is valid until the _____ day of _____ 2008.

Signature and seal of the Guarantors

[name of bank]

[address]

[date]

Appendix IV

3. CONTRACT FORM

THIS AGREEMENT made the _____ day of _____ 2008 between **Communications Commission of Kenya** (hereinafter called “the Employer”) of the one part and

_____ (hereinafter called “the Contractor”) of the other part:

WHEREAS the Employer invited tenders for certain goods and ancillary services, viz., Provision of consultancy Services for a study on ICT Access Gaps in Kenya and has accepted a tender by the Contractor for the provision of the services in the sum of

_____ (words) _____ [figures] (hereinafter called “the Contract Price”).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz:
 - (a) The Tender Form and the Price Schedule submitted by the Tenderer;
 - (b) The schedule of Requirements;
 - (c) The General Conditions of Contract;

- (d) The Special Conditions of Contract; and
 - (e) The Employer’s Notification of Award and Consultants’ letter of Acceptance.
3. In consideration of the payments to be made by the Employer to the Contractor, the Contractor hereby covenants with the Employer to provide the services in conformity in all respects with the provisions of the Contract.
 4. The Employer hereby covenants to pay the Consultant in consideration of the provision of the services, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the contract.
 5. The consultant undertakes to perform the services with the highest standards of proficiency and ethical competence and integrity.

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

SIGNED FOR AND ON BEHALF OF THE COMMUNICATIONS COMMISSION OF KENYA

_____)
DIRECTOR-GENERAL)
)
 In the presence of:)
)
)
)
)
)
 _____)

COMMISSION SECRETARY)

SIGNED FOR AND ON BEHALF OF

DIRECTOR)

)

In the presence of:)

)

)

SECRETARY