



Communications
Commission
of Kenya

COMMUNICATIONS COMMISSION OF KENYA

TENDER NO: CCK/PROC/RFP/07/2010-2011

**REQUEST FOR PROPOSALS FOR PROVISION OF
CONSULTANCY SERVICES TO UNDERTAKE
COMPETITION STUDY IN BROADCASTING
INDUSTRY IN KENYA**

INVITATION TO TENDER

REQUEST FOR PROPOSALS FOR PROVISION OF CONSULTANCY SERVICES TO UNDERTAKE COMPETITION STUDY IN BROADCASTING INDUSTRY IN KENYA

The Communications Commission of Kenya (the Commission) was established under the Kenya Information and Communications Act, 1998, No. 2 of 1998 (as amended) to license and regulate telecommunications, radio communications, postal, electronic transactions and broadcasting services in Kenya.

It is the responsibility of the Commission, as the ICT sector regulator, to identify and address challenges facing industries in the sector under its jurisdiction in order to maximize the growth potential of the specific industries and sector in general in Kenya. In its 2nd Strategic Plan (2008 – 2013), the Commission undertook to continuously carry out multi-disciplinary research on emerging issues that affect competition in the market. The main goal of the activity is to assess the sector's responsiveness to technological advancement and market needs, while at the same time fostering of a competitive environment.

Broadcasting industry is one of the new areas that the Commission has been mandated to regulate and ensure that competition is thriving. Broadcasting is distinct from other forms of media in that it makes use of telecommunications services. These telecommunications services may involve either radio waves or a fixed-wire connection, may be one-directional or two-directional, digital or analogue and high or low bandwidth. Traditionally, broadcasting was predominantly radio based, one way and with a relatively limited bandwidth. Both globally and locally, there is a strong trend in broadcasting towards digital, high bandwidth and two-way telecommunications.

There exist a number of markets within Broadcasting and Sections 46B (2), 46E, 46F and 46N of the Kenya Communications (Amendment) Act, 2009, envisage a market structure consisting of the following license categories:

- a) Public Broadcasting Services;
- b) Community Broadcasting Services;
- c) Private/Commercial Broadcasting Service;
- d) Subscription broadcasting Services;
- e) Signal Distribution Services; and
- f) Any other class of license as may be determined in accordance with Regulations made under the Act.

For effective regulation of broadcasting industry, there is need for the Commission to have a clear understanding of the various competition issues that are facing the various categories of markets within the industry.

The document may also be downloaded from the CCK website at <http://www.cck.go.ke/tenders/>. Firms submitting proposals must send a notification to CCK immediately upon downloading the RFP document via broadcastingstudy@cck.go.ke. The notifications will enable CCK to compile a database of interested bidders for future communication if need arises.

You are therefore invited to submit sealed proposals for provision of consultancy services in undertaking a competition study in broadcasting industry in Kenya. The request for proposal (RFP) documents may be obtained from the Procurement Unit, Communications Commission of Kenya, CCK Centre, along Waiyaki Way, Nairobi during normal working hours.

Duly completed RFP documents, in a plain sealed envelope marked **CCK/PROC/RFP/07/ 2010 – 2011 “Request for Proposals for Provision of Consultancy Services to Undertake Competition Study in Broadcasting Industry in Kenya,”** should be mailed to the address below or deposited in the CCK Tender Box on the Ground Floor of the CCK Centre along Waiyaki Way on or before **23rd March, 2011 at 2.30 p.m.**

**The Secretary,
Tender Committee,
Communications Commission of Kenya,
P.O. Box 14448,
Nairobi 00800
Tel: +254 20 4242000
Fax: +254 20 4348335**

Tenders should be submitted in one big envelope containing technical and financial proposals, sealed separately and clearly marked:

- **Technical Proposal for Provision of Consultancy Services to Undertake Competition Study in Broadcasting Industry in Kenya.**
- **Financial Proposal for Provision of Consultancy Services to Undertake Competition Study in Broadcasting Industry in Kenya.**

Tenders will be opened immediately thereafter in the presence of bidders or representatives of the bidders who choose to attend at the CCK Centre 1st Floor Meeting Room.

SECTION B: - INFORMATION TO CONSULTANTS

- 1. Introduction**
 - 1.1 The Communications Commission of Kenya will select a firm from those who shall 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 required, 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 the invitation to Tender. The Commission will respond by cable, telex, facsimile or electronic mail to such requests and will upload on its website, copies of the response (including an explanation of the query but without identifying the source of inquiry).
 - 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 communicated to all interested firms through a public notice and/or upload it in the website and this 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 firm 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-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 staffing and monitoring of training.
- (viii) Any additional information deemed necessary.

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 US Dollar or Euros .

During evaluation, the bids shall be converted to a common evaluation currency. The conversion rate will be the Kenya Central Bank rates on the date of tender opening.

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 120 days after the submission date. During this period, the consultant is expected to keep available, at his own cost, the professional staff proposed for the assignment. 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. The 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 Invitation to Tender. 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 within the Commission, until the technical evaluation is concluded. The financial proposal for the successful firms shall be opened publicly.

5. Proposal Evaluation

General

- 5.1 From the time the bids are opened to the time the contract is awarded, if any firm wishes to contact the Commission on any matters related to its proposal, it should do so in writing at the address indicated in the Invitation to Tender. 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 of Technical Proposals

- 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:

EVALUATION CRITERIA

The RFP for the provision of consultancy service for competition study on broadcasting in Kenya shall be evaluated in three stages namely:-

- Mandatory Evaluation -Pass/Fail
- Technical evaluation - 80%
- Financial evaluation. - 20%

(i) Mandatory Evaluation

The proposal shall be subjected to the mandatory evaluation, where firms must submit the following:

1. A write up on the company profile
2. Certified Copies of official documents (Certificate of incorporation/registration, and a valid tax Compliance certificate)
3. Evidence of financial capability by submitting audited financial reports for the last three (3) years.
- 4.

Failure to submit any one of the above requirements will lead to disqualification or fail.

Only those firms who pass in the mandatory stage will proceed to the technical evaluation stage.

(ii) 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.

STUDY ON COMPETITION IN BROADCASTING		
	EVALUATION CRITERIA	Max. Score
i.	<p>Specific experience of the company/ consortium for the provision of related services:</p> <p>(a) Assessing competition in ICT sector - at least three studies (5) ;</p> <p>(b) Evaluating competition in broadcasting sector and designing appropriate regulatory remedies to increase competition in broadcasting At least 5 similar experiences in developing Countries (5)</p> <p>(c) Understanding the Kenyan market – at (3)</p> <p>(d) Participation of local firms conversant with the broadcasting sector in Kenya (2)</p>	15
ii.	<p>Adequacy of the proposed work plan and methodology in responding to the Terms of Reference (TOR)</p> <p>a) Adequacy of the proposed work plan and methodology (10)</p> <p>b) Understanding the TORs and Consultant’s initiatives and comments on the TORs (10)</p> <p>c) Adequacy of the data collection approach and methodology (5)</p> <p>d) Appropriateness of the data analytical methodology and tools for evaluating the competitive landscape in broadcasting (10)</p>	35
iii.	<p>Qualifications and competence of staff on the Assignment:</p> <p>i. Team leader [12]:</p> <p>Professional Qualifications:</p> <p>a) At least a Masters Degree in Economics, Finance, Regulation, Engineering, and Telecommunication, Law or other related field. (3)</p> <p>Relevant Experience:</p> <p>a) At least 10 years experience in ICT and Broadcasting (4)</p> <p>b) Demonstrable experience in evaluating competitive landscape in broadcasting and designing appropriate regulatory remedies (5)</p> <p>ii. Other Staff: [18]</p> <p>Profession Qualifications:</p> <p>a) Qualified staff in economics, broadcasting, regulation, engineering, telecommunication, statistics, law, finance, or other related field. A minimum 4 professionals holders at least masters degree (8)</p> <p>b)</p> <p>Relevant Experience:</p> <p>a) At least 5 years practical relevant experience in ICT and Broadcasting Regulation (5)</p> <p>b) Demonstrable experiences in assessing competition in</p>	30

STUDY ON COMPETITION IN BROADCASTING		
	EVALUATION CRITERIA	Max. Score
	broadcasting and designing appropriate regulatory remedies (5)	
	Total points	80

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

(iii) Financial Evaluation

The firms that qualify at the technical evaluation stage shall have their financial proposals opened 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.

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 Preference and Reservation:

5.7.1 Exclusive Preference will be given to local firms if the total quoted sum is equivalent to Ksh fifty (50) million and below.

5.7.2 The margin of preference of 15% shall be applied on the quoted price, for wholly owned local firms if the quoted total sum is above Ksh 50 million.

5.7.3 The margin of preference of 6% will shall be applied on the quoted price where the percentage of share holding for the locals is less than 20 percent if the quoted total sum is above Ksh 50 million.

5.7.4 The margin of preference of 8% will shall be applied on the quoted price where the percentage of share holding for the locals is above 20 percent if the quoted total sum is above Ksh 50 million.

- 5.8 The firm with the highest combined technical and financial scores after the application of preferences and reservation 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.

- 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.

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 to undertake competition study on Broadcasting 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

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:	Professional Staff provided by Your
Firm/Entity(profiles):	
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)													

(b). Completion and Submission of Reports/Deliverables

	Reports	Date
1	Inception Report	
2	Progress Reports: a) First status report b) Second status report	
3	Interim Report	
4	Draft Final Report	
5	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)	
1	Subtotal			
2	Taxes			
3	Total Amount of Financial Proposal			

iii). BREAKDOWN OF PRICE PER ACTIVITY

Activity No: _____ Description: _____

	Price Component	Amount(s)
1	Remuneration	
2	Reimbursement	
3	Miscellaneous Expense	
4	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: _____

	Description	Unit	Quantity	Unit Price	Total Amount
1	Communication Cost (telephone, fax, telegram, etc				
2	Drafting, reproduction of reports				
3	Equipment, computers, etc				
4	Software				
5	Grand Total				

TERMS OF REFERENCE FOR MARKET STUDY ON “COMPETITION STUDY ON BROADCASTING”

1.0 Background

It is the responsibility of the Commission, as the ICT sector regulator, to identify and address challenges facing industries in the sector under its jurisdiction in order to maximize the growth potential of the specific industries and the sector in general in Kenya. In 2nd Strategic Plan (2008 – 2013), the Commission undertook to continuously carry out multi-disciplinary research on emerging issues that affect competition in the ICT sector with a view to assessing the sector’s responsiveness to technological advancement and market needs and ensuring that a competitive environment thrives.

Broadcasting industry is one of the new areas that has been brought under the regulatory purview of the commission as stipulated in Section 46 of the Kenya Communications (Amendment) Act [KC(A)A], 2009. Broadcasting is distinct from other forms of media in that it makes use of telecommunications services. These telecommunications services may involve either radio waves or a fixed-wire connection, may be one-directional or two-directional, digital or analogue and high or low bandwidth. Traditionally, broadcasting was predominantly radio based, one way and with a relatively limited bandwidth. There is a strong trend in broadcasting towards digital, high bandwidth and two-way telecommunications.

2.0 Justification

There exist a number of markets within Broadcasting. Sections 46B (1) of the KCA(A), 2009 envisage a classification of broadcasting licenses as public broadcasting services, community broadcasting services and private broadcasting services. In addition, Sections 46B (2) of the KCA(A), 2009 categorizes broadcasting service licenses as free to air radio and television, subscription radio and television and subscription management.

In order to execute a robust competition regulatory policy for the broadcasting industry in Kenya, there is need for the Commission to have a clear understanding of the various competition issues facing the above markets in the industry.

3.0 The Objectives

The broadcasting industry is divided into a number of separate “stages of production,” from content development, programme production, programme packaging, wholesale distribution, retail distribution, advertisement, and customer terminal equipment. Many of the regulatory and competition issues that arise in broadcasting relate creation of dominance or abuse of a dominant position in one of these stages of production. To clearly get insight into the market status and facilitate decision making in prescribing better regulatory actions, the Commission aims to undertake an assessment of levels and status of competition in the broadcasting industry in general and in the specific markets in the industry. This will assist the Commission in identifying the key initiatives to be undertaken through formulation of new strategies to ensure continued

growth of the industry both in terms of access and affordability of services in a converging regime.

The broad objectives of this study are therefore to:

- a) Identify the various markets within Broadcasting industry, and the number and demographic of players in these markets;
- b) Establish the levels and extent of competition in the various broadcasting markets identified;
- c) Identify the market barriers, if any, that prevent competition and the growth of the players;
- d) Evaluate the effectiveness of the broadcast spectrum allocation to and use by broadcasters and suggest appropriate remedial interventions;
- e) Evaluate the extent of dominance and establish any anticompetitive behaviour in the broadcasting market in general and specific market segments in Kenya;
- f) Provide a proposal on the best ways by which the identified barriers and factors hindrance to growth can be eliminated;
- g) Review the effectiveness of the existing legal and regulatory framework in supporting a robust competition policy for broadcasting sector; and
- h) Recommend possible regulatory areas of concern and how they can be addressed.

4.0 Specific Terms of Reference

In order to accomplish this task, the consultant will also be required to address the following specific Terms of Reference:

- a) Evaluate the existing market structure in the broadcasting sector in Kenya with respect to growth demographics relative to comparator countries;
- b) Identify and evaluate different market segments in the broadcasting sector in Kenya by broadcasting entities and/or licensees;
- c) Analyze the market share profiles for various broadcasting licensees by viewership, advertising revenues and such other characteristics;
- d) Evaluate the broadcasting frequency allocation and usage framework and its impact on the competition in the sector;
- e) Evaluate the impact of cross ownership of broadcasting interests on competition in broadcasting services;
- f) Identify and analyze the competition challenges facing the broadcasting industry in Kenya, including instances of market failures and recommend appropriate and proportionate policy and regulatory remedial measures;
- g) Identify the growth prospect for development of vibrant local content development, the factors that inhibit this growth and recommend appropriate remedial measures to unlock this potential;
- h) Evaluate the adequacy of the existing legal and regulatory framework for regulating broadcasting services in Kenya and make any recommendations in line with international best practices; and

- i) Provide a clear and workable definition of competition policy especially as it applies in the broadcasting industry

5.0 Expected Output

- a) **Inception Report:** The purpose of this report is to present an overview of the recent trends in the broadcasting market in the country highlighting the regulatory framework and the level of competition in the industry. Further, the report will outline the methodology to be used in carrying out the study, including the data requirements, sources and instruments to be used in data collection.
- b) **Progress Reports:** The consultant will furnish the Commission with periodic progress reports of the study enumerating key milestones covered. The number of progress reports shall be agreed upon during contract negotiations as part of the project work flow.
- c) **Interim Report:** The interim report shall respond to all the terms of reference. The consultant will be expected to present this report in a Stakeholders Workshop to elicit comments.
- d) **Draft Final Report:** The draft final report will be developed as per the TORs addressing all objectives of the study and any comments emanating from the Stakeholders Workshop and the Commission.
- e) **Final Report:** The final report submitted to the Commission addressing all the TORs, all objectives of the study and the comments from the Commission on the Draft Final Report.

6.0 Competence and Experience

The consultant team shall have demonstrable relevant practical experience in empirical research, quantitative analysis and economic modelling in competition in broadcasting industry. The consultant team shall also have expertise and experience in regulation of telecommunications, telecommunications engineering and broadcasting.

7.0 Project Duration

The project is expected to take a maximum of 12 working weeks.

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 Duties

The Consultant, Sub-consultant [s] and their personnel shall pay such taxes, duties, fees and other impositions as may be levied under the Laws of Kenya, the amount of which is deemed to have been included in the Contract Price.

2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

2.1 Effectiveness of This Contract shall come into effect on the date the

- Contract** 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 Commission The Commission may terminate this Contract by not less than thirty (30) days' written notice of termination to the Consultant, to be given after the occurrence of any of the events specified in this Clause;

- (a) If the Consultant does not remedy a failure in the performance of his obligations under the Contract within thirty (30) days after being notified or within any further period as 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 anything of value to influence the action of a public official in the selection process or in Contract execution

“fraudulent practice” means a misrepresentation of facts in order to influence a selection process or the execution of Contract to the detriment of 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 of Conflicting Activities

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

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

- 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 Actions Requiring Commission's Prior Approval** The Consultant shall obtain the Commission's prior approval in writing before taking any of the following actions;
- (a) entering into a subcontract for the performance of any part of the Services,
 - (b) Appointing such members of the personnel not listed 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 Remova 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 D.

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 will be as set forth in the Special Conditions(SC).

(b) The price payable in local currency will be as 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 B and C.

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

APPENDICES

Appendix I

FORM OF TENDER

FROM-----

DATE -----
To: -----

RE: PROPOSAL FOR COMPETITION STUDY ON BROADCASTING 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-----
Full address-----

Telephone No-----
Telegraphic Address-----

Date-----Date-----

Appendix II

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 _____ 2011 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 (carrying on business within Kenya), 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 _____ 2011.

Signature and seal of the Guarantors

[name of bank]

[address]

[date]

Appendix III

CONTRACT FORM

THIS AGREEMENT made the _____ day of _____ 2011 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 the services, viz., Provision of Consultancy Services to Undertake Competition Study in Broadcasting Industry 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)

APPENDIX “A”

DESCRIPTION OF THE SERVICES

Clause Reference

- 1.1 & 2.1 The name of the Client is: **Communication Commission of Kenya**
- The method of selection is: **Quality and Cost Based selection 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**

4.3 Proposals must be submitted no later than **23rd March 2011 at 2.30 p.m.**

4.4 The address to send information to the Client is: **P.O Box 14448-00800, NAIROBI; Fax: +254 -20-4242335**

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.

Appendix “B”

BREAKDOWN OF CONTRACT PRICE IN FOREIGN CURRENCY

List here the elements of cost used to arrive at the breakdown of the lump-sum price – foreign currency portion:

1. Monthly rates for Personnel (Key Personnel and other Personnel).
2. Reimbursable expenditures.

This appendix will exclusively be used for determining remuneration for additional services.

Appendix “C”

BREAKDOWN OF CONTRACT PRICE IN LOCAL CURRENCY

List here the elements of cost used to arrive at the breakdown of the lump-sum price – local currency portion.

1. Monthly rates for Personnel (Key Personnel and other Personnel).
2. Reimbursable expenditures.

This appendix will exclusively be used for determining remuneration for additional services.

Appendix “D”

SERVICES AND FACILITIES PROVIDED BY THE CLIENT

1. Office Space
2. Local telephone services
3. Internet Services
4. Printer

These will be availed to the client when they are working in CCK Premises.