



**TENDER FOR CONSULTANCY TO FACILITATE
THE DEVELOPMENT AND IMPLEMENTATION OF
A BUSINESS CONTINUITY MANAGEMENT AND
DISASTER RECOVERY PLAN**

TENDER NO: CA/PROC/RFP/06/2018-2019

Director-General

Communications Authority of Kenya

P.O. Box 14448 – 00800

Nairobi, Kenya Tel: +254 20 4242000

SECTION A:
INVITATION TO TENDER
TENDER FOR CONSULTANCY TO FACILITATE THE DEVELOPMENT AND IMPLEMENTATION OF A BUSINESS CONTINUITY MANAGEMENT AND DISASTER RECOVERY PLAN-: CA/PROC/RFP/06/2018-2019.

The Communications Authority of Kenya (hereinafter referred to as the Authority) is the regulator for the ICT industry with responsibilities in Telecommunications, E-commerce, Broadcasting and Postal and Courier services. The Authority is also responsible for managing the Country's Numbering and Frequency Spectrum resources.

The Authority invites sealed proposals for consultancy services to facilitate the development and implementation of a Business Continuity Management and Disaster Recovery Plan.

You are invited to collect the tender documents from the Procurement Division, Communications Authority of Kenya – CA Centre 3rd floor Wing A, along Waiyaki Way, Nairobi, during normal working hours upon payment of a non-refundable fee of **Kshs.1, 000.00** (hard copy of the tender document).

The Tender documents can also be accessed and downloaded from the IFMIS Supplier Portal: <http://supplier.treasury.go.ke> and the Authority's website: www.ca.go.ke. The firms that download the document must arrange to forward their particulars/contacts to the Head of Procurement, Communications Authority of Kenya, through email address tenders@ca.go.ke before the closing date for records and for the purposes of receiving clarifications and/or addendums, if any.

Duly completed RFP documents, in a plain sealed envelope marked; **“TENDER FOR CONSULTANCY TO FACILITATE THE DEVELOPMENT AND IMPLEMENTATION OF A BUSINESS CONTINUITY MANAGEMENT AND DISASTER RECOVERY PLAN-CA/PROC/RFP/06/2018-2019**, should be mailed to the address below or deposited in the CA tender box on the ground floor of the CA Centre along Waiyaki Way on or before **28th November, 2018 at 10.30 a.m.**

**The Head of Procurement,
Communications Authority of Kenya,
P.O. Box 14448,
Nairobi 00800.
Tel: 4242000/0703-042000
Website: www.ca.go.ke**

The Technical and Financial proposals should be enclosed in separate envelopes and each envelope clearly marked as shown below before enclosure in an outer envelope.

- (i) **Technical proposal** for Consultancy services to facilitate the development and implementation of a Business Continuity Management and Disaster Recovery Plan.
- (ii) **Financial proposal** for Consultancy services to facilitate the development and implementation of a Business Continuity Management and Disaster Recovery Plan.

Tenders will be opened immediately thereafter in the presence of bidders or representatives who choose to attend at the CA Centre meeting room 2 on the ground Floor

SECTION B: - INFORMATION TO BIDDERS

1.1. General Information

The language for this tender is English and any attached document by a Bidder which is not in English must be accompanied by its English translation.

NO.	Heading	Notes
1.	Introduction	<p>The proposal must remain valid for 150 days after the submission date. The Authority may require this period to be extended where necessary.</p>
		<p>The bid proposal shall be written in English in indelible ink.</p>
		<p>The proposals shall contain no interlineations or overwriting except as necessary to correct errors made by the Bidder. Any such corrections must be initialed by the persons or person authorized to sign the proposals.</p>
		<p>Bidders are required to provide a company profile and organization structure, company history, physical and postal address, telephone, email and other contacts. Services offered by the firm and affiliations with other firms.</p>
		<p>Bidders shall submit separate Technical Proposal and Financial Proposal. These submissions should be accompanied by respective cover letters in the format shown in <i>appendix B</i>.</p>
		<p>Bidders shall prepare two (2) copies of each proposal. Each copy of the Technical Proposal or Financial Proposal shall be marked “ORIGINAL” or “COPY” as appropriate. If there are any discrepancies between the original proposal and its copy, the original shall govern.</p>
		<p>The original and copy of the Technical Proposal shall be placed in a sealed envelope clearly marked “TECHNICAL PROPOSAL,” while the original and copy of the Financial Proposal shall be placed in a another envelope and sealed and clearly marked “FINANCIAL PROPOSAL” with a warning: “DO NOT OPEN WITH THE TECHNICAL PROPOSAL”. Both the Technical Proposal and Financial Proposal envelopes shall then be placed into an outer</p>

NO.	Heading	Notes
		<p>envelope and sealed. This outer envelope shall bear the Authority's submission address, namely:</p> <p style="text-align: center;">The Head of Procurement Communications Authority of Kenya (CA) P. O. Box 14448 - 00800 Nairobi</p> <p>And clearly marked, “DO NOT OPEN, EXCEPT IN THE PRESENCE OF AUTHORIZED OFFICERS OF THE AUTHORITY.”</p> <p>The completed Technical and Financial Proposals must be delivered at the Authority's submission address on or before the closing date which is on 28th November, 2018 at 2.30 p.m. East African time (EAT). Any proposal received after the closing date shall be returned unopened to the firm, which submitted it.</p>
2.	Clarification and Amendments of RFP Tender Document	<p>Bidders may request clarifications on the tender document seven (7) days before the closing date. Requests for clarification must be sent in writing by letter or electronic mail to the Authority's submission address above. The Authority will respond to such requests by written letter or electronic mail to not only the requesting Bidder but to all other Bidders. The response will include a recast of the query without identifying the source of inquiry.</p> <p>At any time before the submission of proposals, the Authority may, whether at its own initiative or in response to a clarification requested by a Bidder, amend the RFP. Any amendment shall be issued in writing through addendum and circulated to all Bidders. Addendum shall be by written letter or electronic mail to all Bidders and will be binding to them. The Authority may at its discretion extend the deadline for the submission of proposals.</p>

1.2. Preparation of Technical Proposal

Bidders are required to prepare the Technical Proposal to include the items listed on the table below. The Technical Proposal shall not include any financial information.

NO.	Heading	Notes
i.	Company Details	Company profile and organization structure, company history, physical and postal address, telephone, email and other contacts. Services offered by the firm and affiliations with other firms.
ii.	Company Experience	A description of at least three (3) assignments in the consultancy services for development and implementation of a Business Continuity Management and Disaster Recovery Plan or similar projects undertaken in the last five(5) years. Use the format shown in <i>Section C: ii - Firms References</i> to list the assignments done.
iii.	Company Proposal	A proposed methodology by the Bidder on how it intends to undertake this project including the evaluation of the detailed ToR's which are detailed in <i>Section E</i> .
iv.	Staff Qualifications	Bidders shall provide CVs and testimonials of the Lead Consultant and at least two (2) other Consultants who shall be directly involved in the Project. Use the format in <i>Section C: vi - Format of curriculum vitae (CV) for proposed professional staff</i> to structure this part.

1.3. Preparation of Financial Proposal

Bidders are required to prepare the Financial Proposal including the cost of achieving the milestones in their Technical Proposals. Bidders are also expected to indicate their proposed payment schedule in line with their proposed work schedule. The table below summarizes the requirements of the Financials Proposal.

NO.	Heading	Notes
i.	Financial Proposal	Bidders shall express the price of their services to the Authority for this project in Kenya Shillings (KES). In case foreign

NO.	Heading	Notes
		<p>currency is used, the exchange rate on the closing date shall be used for the conversion to Kenya shillings. The exchange rate will be as per the Central Bank of Kenya rates during the closing date of the proposal.</p>
		<p>The Financial Proposal should list all the activities to be performed plus their associated costs and all summed up in one figure inclusive of any taxes (where applicable). Use the format of <i>SECTION D</i> to structure the financial proposal and further provide a summary of costs.</p>
		<p>The evaluation committee will determine whether the Financial Proposals are complete (i.e. whether the Bidder 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 any case, the total price of the Financial Proposal as submitted by the Bidder shall prevail.</p>

1.4. Evaluation of Technical Proposals

NO.	Heading	Notes
1.	<p>Evaluation of Technical Proposals</p>	<p>After the proposals have been submitted by the closing date, the Tender Opening Committee shall open the Technical Proposal. The Financial Proposal shall remain sealed and only Financial Proposal of qualified Technical Proposals shall be opened in accordance with the timelines of this tender.</p>
		<p>From the closing date to the time the contract is awarded, if any Bidder wishes to contact the Authority on any matter related to this tender, they should do so in writing at the official address provided. Any effort by the firm to influence the Authority on the outcome of the evaluation may result in the rejection of the Bidder's proposal.</p>
		<p>Evaluators of Technical Proposals shall have no access to</p>

NO.	Heading	Notes
		<p>the Financial Proposals until the technical evaluation is concluded. Only the Financial Proposals of the Bidders that qualify at the technical evaluation stage shall be opened.</p> <p>The minimum technical score required to qualify to proceed to the financial evaluation stage is 60/80.</p> <p>After the evaluation of the Technical Proposal, the Authority shall notify the Bidders whose proposals did not meet the minimum qualification indicating that their Financial Proposals shall be returned unopened at the end of the tendering process. The firms that will score 60 and above will be invited to witness the opening of the financial proposals.</p>

1.5. Evaluation of Financial Proposals

NO.	Heading	Notes
1.	Evaluation of Financial Proposals	<p>Only Financial Proposals of Technically qualified bids shall be opened.</p> <p>The Authority shall then undertake the evaluation of the Financial Proposals and determine the winner of the tender in accordance with the Evaluation Criteria.</p>

1.6. Other activities Related to the Tender

NO.	Heading	Notes
1.	Award of Contract	<p>The Contract will be awarded to the winner of the tender following negotiations based on the general conditions of the contract as in <i>Appendix B</i>:</p> <p>After negotiations are completed, the Authority will notify other Bidders who qualified at the Technical Proposal stage that they were unsuccessful. The Authority shall also return unopened the Financial Proposals of those Bidders who did not pass the technical evaluation stages.</p>

NO.	Heading	Notes
		The Consultant awarded shall be expected to commence the assignment within fourteen (14) calendar days after signing of the contract.
2.	Performance Bond	<p>The Consultant awarded shall prior to execution of the contract Agreement furnish the Authority with a Performance Bond in form of bank guarantee that will remain valid for Thirty (30) days beyond the validity of the contract and the value of the Performance Bond shall be equivalent to 5% of the Contract Value.</p> <p>The proceeds of the performance Bond shall be payable to the Communications Authority of Kenya as compensation for any loss or damage resulting from failure by the contractor awarded to fulfill its obligations under this tender.</p> <p>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 Authority.</p> <p>The Performance Bond will be discharged by the Communications Authority of Kenya and returned to the firm not later than Ninety (90) days following the expiry of this Agreement or earlier termination.</p> <p>Use the format of <i>Appendix ii: performance bank guarantee</i> to structure the Performance Bond.</p>

Confidentiality - Information relating to the evaluation of proposals and recommendations concerning awards shall not be disclosed to bidders or other persons except in accordance with the law.

SECTION C: EVALUATION OF THE BIDS

The proposals accepted by the closing date shall be subjected to three (3) stages of the evaluation process, namely:

- i. Mandatory Evaluation Stage- Pass/ Fail Basis
- ii. Technical Evaluation Stage - 80%
- iii. Financial Evaluation Stage - 20 %

i. Mandatory Evaluation Stage:

Bidders shall be required to provide the following and the evaluation will be on pass/fail basis:

NO	MANDATORY REQUIREMENTS
1.	Company profile (Company history, contacts and services)
2.	Certificate of business incorporation/registration of the firm in the domicile country. Provide a list of shareholders and the Directors with their contact details
3.	A copy of a valid tax compliance certificate from the firm's domicile country
4.	Audited accounts for the last 3 years (2015, 2016 and 2017) stamped and signed by certified accountants
5.	Bidders are required to serialize the bid document(s) in a format of 0001.....up to the last page as provided for in the PPDA Act 2015 section 74 (i)
6.	Two (2) copies of the Request For Proposal (RFP) (Original and copy)

Failure to submit any one of the above requirements will lead to disqualification or fail. Only those firms who pass at the mandatory stage will proceed to the technical evaluation stage.

ii. Technical Evaluation Criteria and Scores

The bidders that will qualify at the mandatory evaluation stage shall be subjected to the technical evaluation criteria. The maximum scores attainable at the technical evaluation stage shall be eighty (80) out of eighty (80). Bidders who attain sixty (60) marks and above out of eighty (80) will qualify to proceed to the Financial Evaluation stage.

Criteria	Weight
1. Corporate Information:	
<p>Bidding firms must submit a brief description of the organization and an outline of recent experience on assignments of similar nature. They should provide the following:</p> <ul style="list-style-type: none"> i. Evidence of having undertaken similar assignments in the last 5 years by submitting at least three (3) reference letters or recommendations for the outlined assignments - 15 Marks (5 for each) ii. Brief description of the organization and an outline of recent experience on assignments of similar nature (5 Marks) 	20
2. Methodology and Work plan	
<p>Firms are expected to demonstrate an understanding of the terms of reference by providing the following: -</p> <ul style="list-style-type: none"> a) Description of Technical Approach and Methodology (11 Marks) b) Description of Work Plan. This should highlight the breakdown of activities needed to carry out the assignment and the time. It should be supported by a Gantt Chart (10 Marks) c) Organization and Staffing <p>Bidding firms must submit at least three (3) proposed staff team including the Team Leader by specialty, the tasks that would be assigned to each staff team member and the timings. List of Proposed staff, their Specialty and the tasks they will handle: 9 Marks (3 Marks for each)</p>	30
3. Human Resource Capacity	
<p>Qualifications and competence of the key staff for the assignment:</p> <ul style="list-style-type: none"> • Lead consultant/Key expert should provide the assignments they have undertaken with their reference contacts. • Additionally, CVs of other proposed professional staff should also be attached. <p>(i) Qualifications of the Team Leader (Business Process Review expert): -</p> <ul style="list-style-type: none"> ✓ Degree in Business Management or related field (copy of degree certificate must be attached) - (2 Marks) ✓ Relevant professional certification such as CISA, CRISK GGEIT (5 Marks) ✓ 8 years of experience in Business Continuity Planning assignments (attach CV detailing experience) - 8 Marks (1 mark for each year of experience) <p>(ii) Qualifications of the Business Continuity Plan expert: -</p> <ul style="list-style-type: none"> ✓ Degree in Business Management or related field (copy of degree 	25

<p>certificate must be attached) – (2 Marks)</p> <p>✓ Relevant professional certification such as CISA, CRISK GGEIT (3 Marks)</p> <p>✓ 5 years of experience in business continuity planning assignments (attach CV detailing experience) - 5 Marks (1 mark for each year of experience)</p>	
4. Financial Capacity	
Average turnover of KES. 20 million and above for past three financial years (Provide audited account for the last three years 2015, 2016 and 2017) - 5 Marks.	5
Total	80

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

Notes to the Technical Evaluation Criteria:

- a) **Technical Approach and Methodology:** In this section you should explain your understanding of the objectives of the assignment, approach to the services, methodology for carrying out the activities and obtaining the expected output, and the degree of detail of such output. You should highlight the problems being addressed and their importance, and explain the technical approach you would adopt to address them. You should also explain the methodologies you propose to adopt and highlight the compatibility of those methodologies with the proposed approach.
- b) **Work Plan:** The bidding firms should propose the main activities of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Client), and delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents, including reports, drawings, and tables to be delivered as final output, should be included here.
- c) **Organization and Staffing:** In this section you should propose the structure and composition of your team. You should list the main disciplines of the assignment, the key expert responsible, and proposed technical and support staff.
- d) **Technical Qualification Threshold:** Only bids that score equal to or above 60 out of 80 marks in the Technical evaluation stage shall proceed to financial evaluation stage. Bids that score less than 60 marks will not be evaluated further.

iii. Financial Evaluation and Scores

The financial proposals of the bidders that qualify at the technical evaluation stage shall be opened and evaluated.

The evaluation committee will determine whether the financial proposals are complete (i.e. whether the Bidder 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 any case, the total price of the Financial Proposal as submitted by the Bidder shall prevail.

Bidders are also expected to indicate their proposed payment schedule in line with their proposed work schedule in the format below. The Authority is not bound by a Bidder's proposed payment schedule but the proposal will form part of the contract negotiations with the winning Bidder.

However, where a Bidder has not proposed a payment schedule, the Authority will ensure the bidder is paid at the conclusion of the contract and the same shall not be negotiable.

The payment schedule shall be provided in the following format:-

No	Milestone/ Work Description	Percentage of Tender Sum	Amount (KES)
1.			
2.			
3.			
4.			
Sub Total			
Taxes			
Total Amount of Financial Proposal		100%	

At the Financial Evaluation stage, the following formulae shall be applied to derive the financial. 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.

NB: The financial proposals for both local and international firms must include all applicable taxes. The taxes currently applicable to consultancies are:

- Withholding Taxes- There is an applicable tax rate for local and international firms. For international firms the withholding taxes vary from country to country depending on the double taxation agreement with Kenya. The applicable percentage must therefore be included and shown in the financial proposal submitted.
- Value Added Tax (VAT) – The VAT is loaded up to the consultancy cost and the applicable rate currently is 16% of the project cost. This is applicable to all the firms and must be included and shown in the financial proposal.

iv. Total Bid Score

A Bidder's final scores will be the addition of a Bidder's technical evaluation scores and the Bidder's financial evaluation scores.

- Bidder's Total Scores = Bidder's Technical Scores + Bidder's Financial Scores

The Bidder with the highest total scores will be declared the winner.

1.7. Negotiations

1.7.1. Negotiations will be held at the CA Centre, along Waiyaki Way, with the aim of reaching an agreement on all points and sign a contract.

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

1.7.3. Having selected the firm on the basis of, among other things, an Evaluation of proposed key professional staff, the Authority expects to negotiate a contract on the basis of the experts named in the proposal. Before contract negotiations, the Authority will require assurances that the experts will be actually available. The Authority 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.

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

1.8. Award of Contract

1.8.1 The Contract will be awarded following negotiations. After negotiations are completed, the Authority 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.

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

1.9. Performance Bond

The selected firm shall prior to executing the Contract Agreement furnish Communications Authority 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** and to be provided before execution of contract.

The proceeds of the performance Bond shall be payable to Communications Authority of Kenya as compensation for any delay or damage resulting from failure by the firm to fulfill 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 Authority.

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

2.0. Confidentiality

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:
Communications Authority of Kenya
- The method of selection is: **Quality and Cost Based selection method**
- 1.2 Technical and Financial Proposals are requested: **Yes**
- 1.3 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 conferences 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;**
- 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*]
- Lead Consultant- 8 years.
- Other Consultants -5 years
- 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 (1) 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 Tender Description addressed to:**

Head of Procurement
Communications Authority of Kenya
P.O Box 14448
Nairobi 00800

- 4.3 Proposals must be submitted no later than **28th November, 2018 at 2.30 p.m.**
- 4.4 The address to send information to the Client is: **P.O Box 14448-00800, NAIROBI.**
- 4.5 The minimum technical score required to pass is ***60/80***

The assignment is expected to commence after submission of performance bond and signing the contract 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 Authority.
- 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 Authority*]

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for _____
_____ [*Provision of consultancy 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 with others was legally contracted.

Assignment Name:	Country:
Location within Country:	Professional Staff provided by Your Firm/Entity (profiles):
Name of the firm	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 ON SERVICES AND FACILITIES TO BE PROVIDED BY THE AUTHORITY.

On the Terms of Reference:

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

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

- 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	1	2	3	4	5	6	7	8	9	10	11	12	Number of weeks

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

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 Authority]

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for (_____) [Provision of consultancy 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 months, 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 Equipment: computers etc.				
3.	Software				
4.	Grand Total				_____

SECTION E: TERMS OF REFERENCE (TOR) FOR THE CONSULTANCY SERVICES FOR BUSINESS CONTINUITY MANAGEMENT (BCM) & DISASTER RECOVERY PLAN (DRP) CONSULTANCY

1. INTRODUCTION

The Communications Authority of Kenya is the regulatory authority for the communications sector in Kenya. Established in 1999 by the Kenya Information and Communications Act, 1998, the Authority is responsible for facilitating the development of the Information and Communications sector including; Broadcasting, Multimedia, Telecommunications, Electronic commerce, Postal and Courier services. The Authority is also responsible for managing the Country's numbering and Frequency spectrum resources.

2. BACKGROUND

The Authority is committed to modernize its internal systems and processes through reviewing and developing internal policies and procedures as well as automating its internal processes.

In this regard, the Authority embarked on a Business Process Re-engineering and Automation exercise that critically analyzed the current operations of the Authority with a view to facilitating the development, documentation of appropriate processes, procedures and implementation of structures, systems and infrastructure. Central to this exercise was the development of Business Continuity Management Framework.

3. OBJECTIVES OF THE ASSIGNMENT

The Authority is seeking to hire the services of a Consultant or Consulting Firm to assist in the development and implementation of Business Continuity Management (BCM) and Disaster Recovery Plan (DRP). The specific objectives of the assignment include the following: -

- (i) To improve service delivery through efficient business processes that are technologically enabled.
- (ii) To minimize disruption to business operations in the event of a disaster or other disruptive events.
- (iii) To minimize/mitigate negative effects that may occur to humans and other resources in the event of a disaster or other disruptive events.
- (iv) To minimize financial loss to the Authority in the event of a disaster or other possible disruptive events.
- (v) To identify and profile the Authority's business processes, services/products and other assets based on their criticality.
- (vi) To maintain a high level of confidence that the business continuity arrangements are effective through regular testing of BCP arrangements.
- (vii) To ensure safety and security of the staff in the event of a disaster/crisis,

- (viii) To minimize/mitigate negative effects that may occur in the strategic business plans and to maintain the reputation and image of the Authority.
- (ix) To come up with comprehensive and implementable Business Continuity Plan (BCP) and Disaster Recovery Plan (DRP).

4. SCOPE OF THE CONSULTANCY

The scope of the consultancy will include, but are not limited to:

- (i) Review of the current Business Continuity Management Framework in place and development of the relevant policies.
- (ii) Review and document the Authority's current situation clearly highlighting the existing gaps.
- (iii) Identify and profile the Authority's business processes, services/products and other assets based on their criticality.
- (iv) Identify and assess key operational functions that the Authority cannot operate without in consultation with senior management.
- (v) Identify business continuity requirements of the identified functions and critical business information systems that need to be considered for disaster recovery
- (vi) Engage Senior Management, Risk Management team, and other stakeholders in the discussions around the development of the BCP performance of the business impact analysis processes.
- (vii) Develop a BCP that will enable the Authority respond to an event in such manner that will enable the Authority critical business functions to continue operating within the business impact analysis processes. The BCP should include the following components; among others:
 - (i) ICT disaster recovery plan - refer to item (ix) below;
 - (ii) Occupants' evacuation and emergency response procedures;
 - (iii) Crisis communication plan;
 - (iv) Emergency relocation plan;
 - (v) Communications strategies;
 - (vi) Media liaison strategies;
 - (vii) Plan testing strategies; and
 - (viii) Plan Maintenance strategies.
- (viii) Develop Disaster Recovery Plan (DRP), modernize it into ICT service continuity plan, and incorporate it into the developed BCP to enable recovery and protection of the

Authority's Information and Communication Technology (ICT) infrastructure during service disruptions and in the event of a disaster.

- (ix) Develop a comprehensive implementation plan with guidelines.
- (x) Test the developed BCP and DRP to ensure that the plans are fit for the purpose and are effective in the event of a crisis.
- (xi) The BCM program will be implemented at all levels in the Authority and will encompass the Head Office and regional depots.
- (xii) It will be aligned to global BCM good practices and BCM standards like ISO 22301.
- (xiii) It will cover the components of people, process and infrastructure.

5. TORs FOR BUSINESS CONTINUITY MANAGEMENT CONSULTANCY

The consultant will be required to adhere to the Terms of Reference stated below but not limited to the following:

- (i) Review the Authority's BCM Framework highlighting the existing gaps.
- (ii) Guide in the development of the relevant BCM policies and review the existing policies for adequacy on BCM.
- (iii) Propose a BCM Governance structure to ensure that the Continuity Plans are effectively monitored, reviewed and kept up to date.
- (iv) In consultation with CA Management, perform a risk assessment on business interruption threats.
- (v) Identify and profile the Authority's business processes, services and other assets based on their criticality.
- (vi) Identification of business continuity requirements and critical business information systems that need to be considered for disaster recovery.
- (vii) Development of Business Continuity Recovery Plans and Disaster Recovery Plans. This will include but not limited to: Crisis management plan, Evacuation plan, IT recovery plan, Crisis communication plan, Critical infrastructure plan, Cyber incident response plan among others.
- (viii) In consultation with CA management, carry out tests on the Business Continuity and Disaster Recovery Plans developed.
- (ix) Train Management on how to conduct tests on the Business Continuity Plans
- (x) Develop a maintenance plan for the Business Continuity Management Plans developed.
- (xi) Conduct training and awareness on Business Continuity Management to CA staff. The contents of the training and awareness creation programmes shall include, but not limited to: -

- a) The whole Plan testing;
 - b) Understanding the Plan specifications;
 - c) The whole process Test Execution;
 - d) Documentation of results;
 - e) Results analysis;
 - f) Plan maintenance; and
 - g) Business Continuity Management Good Practices.
- (xii) Recommend necessary infrastructure, resources and Organization Structures for Managing BCP.

6. DELIVERABLES, TIMELINES AND REPORTING

a. Project Milestones and Deliverables

The consultant will be required to submit the following deliverables to the Authority:

- (i) Inception report detailing scope of work and work breakdown schedule that outlines the timelines, milestones and deliverables.
- (ii) The Authority's current Situation Analysis Report.
- (iii) Risk Assessment management plan
- (iv) Business Impact Analysis Report
- (v) Business Continuity Strategy and Policy
- (vi) BCP Testing report.
- (vii) BCP maintenance plan
- (viii) Report on the awareness/training of Authority's team.
- (ix) Signed off BCP that incorporates the reviewed DRP
- (x) Signed off BCP implementation plan with guidelines
- (xi) Specific Incident Management and Emergency Response plans
- (xii) Communication and recovery methodologies for the overall BCM

b. Reporting

Inception report: - The Consultant will submit an inception report within 3 weeks after commencement and after consultations with key stakeholders.

Reporting on the deliverables: - The consultants shall submit a report after each stage of the consultancy.

Draft report: - To be submitted within 11 months after commencement of the consultancy. The draft final report should include a report of the activities undertaken and deliverables for the consultancy. The report shall be presented to the Management and the Board Audit and Risk Committee.

Final detailed report: - In form of 3 printed copies and in CD ROM format to be submitted **2 week** after input from the Authority on the draft report.

c. Duration of the Consultancy

The consultancy will last at most 12 months from the date of signing the contract.

d. Administrative Framework and Provision of Inputs

The Consultant will be responsible to the Director General of the Authority, through the Director, Risk Management and Internal Audit on all matters of the assignment. The Consultant will work closely with the CA team. CA will provide the following inputs:

- (i) Relevant reference material
- (ii) Facilitate access to the CA Internal Systems' and other necessary documents for the assignment.
- (iii) Facilitate access to appropriate CA officers.
- (iv) Working area for project consultants.

II. General Conditions of the 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) “Bidder” means any person who has requested and has been supplied with the Tender Document for this contract in accordance with the request procedures set out herein;
- (c) “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;
- (d) “Contract Price” means the price to be paid for the performance of the Services in accordance with Clause 6 here
- (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 Bidder 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 Bidder’s rights and obligations towards the Client under this Contract;
- (j) “Party” means the Client or the Bidder, as the case may be and “Parties” means both of them;
- (k) “Personnel” means persons hired by the Bidder or by any Sub Bidder 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 Bidder pursuant to this Contract,

as described in Appendix A; and

- (n) “Sub Bidder” means any entity to which the Bidder 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 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 Client 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 Client or the Bidder may be taken or executed by the officials specified in the SC.

1.7 Taxes and Duties The Bidder, Sub-Bidder [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 Bidder 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 Bidder 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 Client The Client may terminate this Contract by not less than thirty (30) days' written notice of termination to the Bidder, to be given after the occurrence of any of the events specified in this Clause;

- (a) If the Bidder 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 Client may have subsequently approved in writing;
- (b) If the Bidder becomes insolvent or bankrupt;
- (c) If, as a result of Force Majeure, the Bidder is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or

- (d) If the Bidder, in the judgment of the Client, 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.

(xi)

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

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

2.6.2 By the Bidder

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

- (a) if the Client fails to pay any monies due to the Bidder pursuant to this Contract and not subject to dispute pursuant to Clause 7 within sixty (60) days after receiving written notice from the Bidder that such payment is overdue; or

- (b) if, as a result of Force Majeure, the Bidder 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 of this Contract pursuant to Clauses
Upon 2.6.1 or 2.6.2, the Client shall make the following
Termination payments to the Bidder:

- (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 Bidder

3.1 General The Bidder 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 Bidder shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the Client and shall at all times support and safeguard the Client's legitimate interests in any dealing with Sub Bidders or third parties.

1.2 Conflict of Interests

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

- (i) The remuneration of the Bidder pursuant to Clause 6 shall constitute the Bidder's sole remuneration in connection with this Contract or the Services and the Bidder 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 Bidder shall use his best efforts to ensure that his personnel, any sub Bidder[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 Bidder shall not engage and shall cause his personnel as well as his sub Bidder[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 Client 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 Bidder as part of the Services has the responsibility of advising the Client on the procurement of goods, works or services, the Bidder will comply with any applicable
- (iv) Procurement guidelines and shall at all times exercise such responsibility in the best interest of the Client. Any discounts or commissions obtained by the Bidder in the exercise of such procurement shall be for the account of the Client.

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

The Bidder agrees that, during the term of this Contract and after its termination, the Bidder and his affiliates, as well as any Sub-Bidder 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 Bidder nor his sub-Bidder[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 Bidder, his sub-Bidder[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 Client's business or operations without the prior written consent of the Client.

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

The Bidder (a) shall take out and maintain and shall cause any sub-Bidder[s] to take out and maintain, at his (or the sub-Bidders', as the case may be) own cost but on terms and conditions approved by the

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

3.5 Bidder's

**Actions requiring
Client's Prior
Approval**

The Bidder shall obtain the Client'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-Bidders").

3.6 Reporting

Obligations

The Bidders shall submit to the Client 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 Consult-
ant to Be
the Property
of the Client**

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 Client and the Bidder shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Client together with a detailed inventory thereof. The Bidder 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. Bidder'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 Bidder's Key Personnel are described in Section C. The Key Personnel and Sub Bidders listed by title as well as by name in Section C are hereby approved by the Client.

4.2 Removal and/ or Replacement Of Personnel

(a) Except as the Client may otherwise agree, no changes shall be made in the Key Personnel. If for any reason beyond the reasonable control of the Bidder, it becomes necessary to replace any of the Key Personnel, the Bidder shall provide as a replacement a person of equivalent or better qualifications.

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

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

5. Obligations of the Client

5.1 Assistance and Exemptions

The Client shall use his best efforts to ensure that he provides the Bidder 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 Bidder, then the remuneration and reimbursable expenses otherwise payable to the Bidder 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 Client shall make available to the Bidder the Services and Facilities listed under Appendix F.

6. Payments to the Bidder

6.1 Lump-Sum Remuneration

The Bidder's total remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all staff costs, Sub-Bidders' costs, printing, communications, travel, accommodation and the like and all other costs incurred by the Bidder in carrying out the Services. 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 Bidder 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 Bidder 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 Bidder has submitted an invoice to the Client 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 Client has delayed payments beyond thirty (30) days after the due date hereof, simple interest shall be paid to the Bidder 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- *SUBMITTED WITH FINANCIAL PROPOSAL*

FROM-----

DATE -----

To: -----

RE: REQUEST FOR PROPOSAL (RFP) FOR PROVISION OF CONSULTANCY SERVICES FOR BUSINESS CONTINUITY MANAGEMENT (BCM) & DISASTER RECOVERY PLAN (DRP) CONSULTANCY

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

I/We-----

Tender an amount of Kshs.-----

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 Authority 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 withdrawn 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-----

Address-----

Signature of Witness-----

Date-----

Tenderer's Name-----

Tenderer's Signature-----

Tenderer's designation-----

Full address-----

Telephone No-----

Telegraphic Address-----

Date-----

4. PERFORMANCE BANK GUARANTEE

(To be on the letterhead of the Bank)

To: Communications Authority 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 _____ 2018 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 _____ 2018.

Signature and seal of the Guarantors

[name of bank]

[address]

[date]

CONTRACT FORM

THIS AGREEMENT made the _____ day of _____ 2018 between **Communications Authority of Kenya** (hereinafter called “the Employer”) of the one part and _____ (hereinafter called “the Bidder”) of the other part:

WHEREAS the Employer invited tenders for certain goods and ancillary services, viz., Provision of consultancy Services and has accepted a tender by the Bidder 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 Bidders’ letter of Acceptance.
3. In consideration of the payments to be made by the Employer to the Bidder, the Bidder 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 Bidder 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 Bidder 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 AUTHORITY OF KENYA

DIRECTOR-GENERAL)
)
 In the presence of:)
)
 _____)
DIRECTOR/LEGAL SERVICES)

SIGNED FOR AND ON BEHALF OF

 _____)
DIRECTOR)
)
 In the presence of:)
)
 _____)
SECRETARY