



**REQUEST FOR PROPOSAL (RFP) FOR ARCHITECTURAL
CONSULTANCY SERVICES FOR REPAIR WORKS AND
MAINTENANCE OF CA BUILDINGS-(FRAMEWORK CONTRACT)-**

***RESERVED TO YOUTH, WOMEN AND PERSONS WITH
DISABILITIES OWNED ORGANIZATIONS***

TENDER NO: CA/PROC/RFP/19/2018-2019

**Head of Procurement
Communications Authority of Kenya
Waiyaki Way
P.O. Box 14448
WESTLANDS, 00800
Nairobi, Kenya
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SECTION I - LETTER OF INVITATION

- 1.1 The Communications Authority of Kenya (CA) is the ICT industry regulator with responsibilities in telecommunications e-commerce, broadcasting, and postal /courier services. CA is also responsible for protecting the rights of ICT consumers and for managing the country's numbering and spectrum resources.
- 1.2 CA wishes to invite interested and eligible firms under *youth, women and persons with disabilities owned organizations* for Request for Proposal (RRFP) for Architectural Consultancy Services to undertake repair works and maintenance of CA buildings. The framework contract will be for a period of 3 years.
- 1.3 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).
- 1.4 The Tender document can also be accessed and downloaded from the Public Procurement Information Portal (PIIP) supplier portal (<https://www.tenders.go.ke/website/tenders/Index>) 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.
- 1.5 Bidders are required to undertake serialization of all bid documents as per requirements of the Public Procurement and Asset Disposal Act (PPADA), 2015 clause 74(1)(i) to enable safeguard loss of documentation during and after evaluation.
- 1.6 Duly completed tender documents should be submitted in a plain, sealed envelope, clearly marked **CA/PROC/RFP/18/2018-2019 - "REQUEST FOR PROPOSAL (RRFP) FOR ARCHITECTURAL CONSULTANCY SERVICES TO UNDERTAKE REPAIR WORKS AND MAINTENANCE OF CA BUILDINGS"** should be deposited in our tender box located on the ground floor of the CA Centre along Waiyaki Way, so as to reach on or before **30th April, 2019 at 10.30 a.m. East Africa time.**

**The Head of Procurement
Communications Authority of Kenya
CA Centre, Waiyaki Way
Nairobi
P. O. Box 14448
Nairobi 00800, Kenya
Website: www.ca.go.ke**

- 1.7 Bids shall be opened soon thereafter in the presence of the bidder's representative(s) who choose to attend at the CA Centre, Ground Floor meeting room 2

SECTION II – INFORMATION TO CONSULTANTS (ITC)

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SECTION II: - INFORMATION TO CONSULTANTS (ITC)

(a) Introduction

- i. The Client named the Appendix to “ITC” will select a firm among those invited to submit a proposal, in accordance with the method of selection detailed in the appendix. The method of selection shall be as indicated by the procuring entity in the Appendix.
- ii. The consultants are invited to submit a Technical Proposal and a Financial Proposal, or a Technical Proposal only, as specified in the Appendix “ITC” for consulting services required for the assignment named in the said Appendix. A Technical Proposal only may be submitted in assignments where the Client intends to apply standard conditions of engagement and scales of fees for professional services which are regulated as is the case with Building and Civil Engineering Consulting services. In such a case the highest ranked firm of the technical proposal shall be invited to negotiate a contract on the basis of scale fees. The proposal will be the basis for Contract negotiations and ultimately for a signed Contract with the selected firm.
- iii. The consultants must familiarize themselves with local conditions and take them into account in preparing their proposals. To obtain first hand information on the assignment and on the local conditions, consultants are encouraged to liaise with the Client regarding any information that they may require before submitting a proposal and to attend a pre-proposal conference where applicable. Consultants should contact the officials named in the Appendix “ITC” to arrange for any visit or to obtain additional information on the pre-proposal conference. Consultants should ensure that these officials are advised of the visit in adequate time to allow them to make appropriate arrangements.
- iv. The Procuring entity will provide the inputs specified in the Appendix “ITC”, assist the firm in obtaining licenses and permits needed to carry out the services and make available relevant project data and reports.
- v. Please note that (i) the costs of preparing the proposal and of negotiating the Contract, including any visit to the Client are not reimbursable as a direct cost of the assignment; and (ii) the Client is not bound to accept any of the proposals submitted.
- vi. The procuring entity’s employees, committee members, board members and their relative (spouse and children) are not eligible to participate.
- vii. The price to be charged for the tender document shall not exceed Kshs.5,000/=
- viii. The procuring entity shall allow the tenderer to review the tender document free of charge before purchase.

Clarification and Amendment of RFP Documents

- ix. Consultants may request a clarification of any of the RFP documents only up to seven [7] days before the proposal submission date. Any request for clarification must be sent in writing by paper mail, cable, telex, facsimile or electronic mail to the Client's address indicated in the Appendix "ITC". The Client will respond by cable, telex, facsimile or electronic mail to such requests and will send written copies of the response (including an explanation of the query but without identifying the source of inquiry) to all invited consultants who intend to submit proposals.

- x. At any time before the submission of proposals, the Client may for any reason, whether at his own initiative or in response to a clarification requested by an invited firm, amend the RFP. Any amendment shall be issued in writing through addenda. Addenda shall be sent by mail, cable, telex or facsimile to all invited consultants and will be binding on them. The Client may at his discretion extend the deadline for the submission of proposals.

2.3 Preparation of Technical Proposal

3.1.1 The Consultants proposal shall be written in English language

3.1.2 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.

3.1.3 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. Consultants shall not associate with the other consultants invited for this assignment. Any firms associating in contravention of this requirement shall automatically be disqualified.
- (ii) For assignments on a staff-time basis, the estimated number of professional staff-time is given in the Appendix. The proposal shall however be based on the number of professional staff-time estimated by the firm.
- (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 Appendix, preferably working under conditions similar to those prevailing in Kenya.
- (v) Alternative professional staff shall not be proposed and only one Curriculum Vitae (CV) may be submitted for each position.

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

3.1.5 The Technical Proposal shall not include any financial information.

2.4 Preparation of Financial Proposal

- 1.1.1 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 lists 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 by activity.

- 1.1.2 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, unless Appendix “A” specifies otherwise.
- 1.1.3 Consultants shall express the price of their services in Kenya Shillings.
- 1.1.4 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.
- 1.1.5 The Proposal must remain valid for 150 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 Client will make his best effort to complete negotiations within this period. If the Client wishes to extend the validity period of the proposals, the consultants shall agree to the extension.

2.5 Submission, Receipt, and Opening of Proposals

- i. The original proposal (Technical Proposal and, if required, Financial Proposal; see para. 1.2) shall be prepared in indelible ink. It shall contain no interlineation or overwriting, except as necessary to correct errors made by the firm itself. Any such corrections must be initialed by the persons or person authorised to sign the proposals.
- ii. 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.
- iii. The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked “**TECHNICAL PROPOSAL,**” and the original and all copies of the Financial Proposal in a sealed envelope clearly marked “**FINANCIAL PROPOSAL**” and warning: “**DO NOT OPEN WITH THE TECHNICAL PROPOSAL**”. Both envelopes shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address and other information indicated in the Appendix “ITC” and be clearly marked, “**DO NOT OPEN, EXCEPT IN PRESENCE OF THE OPENING COMMITTEE.**”
- iv. The completed Technical and Financial Proposals must be delivered at the submission address on or before the time and date stated in the Appendix “ITC”. Any proposal received after the closing time for submission of proposals shall be returned to the respective consultant unopened.
- v. After the deadline for submission of proposals, the Technical Proposal shall be opened immediately by the opening committee. The Financial Proposal shall

remain sealed and deposited with a responsible officer of the client department up to the time for public opening of financial proposals.

2.6 Proposal Evaluation General

- i. From the time the bids are opened to the time the Contract is awarded, if any consultant wishes to contact the Client on any matter related to his proposal, he should do so in writing at the address indicated in the Appendix "ITC". Any effort by the firm to influence the Client in the proposal evaluation, proposal comparison or Contract award decisions may result in the rejection of the consultant's proposal.
- ii. Evaluators of Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded.

2.7 Evaluation of Technical Proposal

The evaluation committee appointed by the Client shall evaluate the proposals on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria as follows

	Points
i. Specific experience of the consultant related to the assignment	(5-10)
ii. Adequacy of the proposed work plan and methodology in responding to the terms of reference	(20-40)
iii. Qualifications and competence of the key staff for the assignment	(30-40)
iv. Suitability to the transfer of Technology Programme (Training)	(0-10)
Total Points	<u>100</u>

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

a. Public Opening and Evaluation of Financial Proposal

2.8.1 After Technical Proposal evaluation, the Client 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 Client 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 opening date shall not be sooner than seven (7) days after the notification date. The notification may be sent by registered letter, cable, telex, facsimile or electronic mail.

- i. 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 Client shall prepare minutes of the public opening.

- ii. 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.
- iii. While comparing proposal prices between local and foreign firms participating in a selection process in financial evaluation of Proposals, firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias in proposal prices. However, there shall be no such preference in the technical evaluation of the tenders. Proof of local incorporation and citizenship shall be required before the provisions of this sub-clause are applied. Details of such proof shall be attached by the Consultant in the financial proposal.
- iv. The formulae for determining the Financial Score (Sf) shall, unless an alternative formulae is indicated in the Appendix "ITC", be as follows:-
$$Sf = 100 \times \frac{Fm}{F}$$
where Sf is the financial score; Fm is the lowest priced financial proposal and F is the price of the proposal under consideration. Proposals will be ranked according to their combined technical (*St*) and financial (*Sf*) scores using the weights (*T*=the weight given to the Technical Proposal; *P* = the weight given to the Financial Proposal; *T + p = 1*) indicated in the Appendix. The combined technical and financial score, S, is calculated as follows:- $S = St \times T \% + Sf \times P \%$. The firm achieving the highest combined technical and financial score will be invited for negotiations.
- v. The tender evaluation committee shall evaluate the tender within 30 days of from the date of opening the tender.
- vi. Contract price variations shall not be allowed for contracts not exceeding one year (12 months).
- vii. Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price
- viii. Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.

b. Negotiations

- (i) Negotiations will be held at the same address as “address to send information to the Client” indicated in the Appendix “ITC”. The aim is to reach agreement on all points and sign a contract.
- (ii) 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 Client and firm will then work out final Terms of Reference, staffing and bar charts indicating activities, staff periods in the field and in the head office, staff-months, logistics and reporting. The agreed work plan and final Terms of Reference will then be incorporated in the “Description of Services” and form part of the Contract. Special attention will be paid to getting the most the firm can offer within the available budget and to clearly defining the inputs required from the Client to ensure satisfactory implementation of the assignment.
- (iii) Unless there are exceptional reasons, the financial negotiations will not involve the remuneration rates for staff (no breakdown of fees).
- (iv) Having selected the firm on the basis of, among other things, an evaluation of proposed key professional staff, the Client expects to negotiate a contract on the basis of the experts named in the proposal. Before contract negotiations, the Client will require assurances that the experts will be actually available. The Client 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.
- (v) The negotiations will conclude with a review of the draft form of the Contract. To complete negotiations the Client and the selected firm will initial the agreed Contract. If negotiations fail, the Client will invite the firm whose proposal received the second highest score to negotiate a contract.
- (vi) The procuring entity shall appoint a team for the purpose of the negotiations.

(vii) Award of Contract

- 2.10.1 The Contract will be awarded following negotiations. After negotiations are completed, the Client 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.
- 2.10.2 The selected firm is expected to commence the assignment on the date and at the location specified in Appendix "A".
- 2.10.3 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.
- 2.10.4 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 2.10.5 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.
- 2.10.6 To qualify for contract awards, the tenderer shall have the following:
- Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.
 - Legal capacity to enter into a contract for procurement
 - Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
 - Shall not be debarred from participating in public procurement.

(viii) Confidentiality

- 2.11.1 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.

(ix) Corrupt or fraudulent practices

- 2.12.1 The procuring entity requires that the consultants observe the highest standards of ethics during the selection and award of the consultancy contract and also during the performance of the assignment. The tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.
- 2.12.2 The procuring entity will reject a proposal for award if it determines that the consultant recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.
- 2.12.3 Further a consultant who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

Appendix to information to consultants

Note on the Appendix to Information to Consultants

- The Appendix to information to consultant is intended to assist the procuring entity in providing specific information in relation to corresponding claims in the information to consultants included in Section II and the appendix has to be prepared for each specific consultancy.
- The Procuring entity should specify in the appendix information and requirements specific to the circumstances of the procuring entity, the assignment of the consultancy and the proposals evaluation criteria that will apply to the RFP Consultancy.
- In preparing the appendix the following aspects should be taken into consideration.
 - The information that specifies or complements provisions of Section II to be incorporated.
 - Amendments of Section II as necessitated by the circumstances of the specific consultancy to be also incorporated
 - Section II should remain unchanged and any changes or amendments should be introduced through the appendix.

Appendix to Information to Consultants

The following information for procurement of consultancy services and selection of Consultants shall complement or amend the provisions of the information to Consultants, wherever there is a conflict between the provisions of the information and to consultants and the provisions of the appendix, the provisions of the Appendix herein shall prevail over those of the information to consultants.

Clause Ref.	Appendix to Information
2.1.1	<p>1 Name of Client: The procuring entity is Communications Authority of Kenya (CA)</p> <p>2.Recipient: The Services shall be delivered to CA</p> <p>3.Method of Selection: Quality Cost Based Selection (QCBC) Method</p>
1.2	<p>The name and reference number of the Invitation to Bid is Tender No: CA/PROC /RFP/18/2018-2019, Request for Proposal (RRFP) for Architectural Consultancy Services to undertake repair works and maintenance of CA buildings</p>
2.1.7	<p>The cost of the hard copy of the tender document will be Kshs. 1,000</p>
2.2	<p>Clarifications</p> <p>1. Requests for clarification quoting the tender number and title must be received by 22nd April 2019 at 10.30 a.m. East African times. Clarification requests received after this date and time shall not be responded to. Responses to queries are expected to have been sent out to all bidders by 23rd April 2019 at 10.30 a.m. East African time.</p> <p>2. Clarifications on any aspect of this RFP including the detailed terms of reference must be addressed and submitted to CA-Procurement Division on official letterhead only by registered mail, scanned and emailed or hand delivered to the address and contacts below.</p> <p>3.The address and contact for submitting proposal and requesting clarifications is as follows:-</p> <p>The Head of Procurement Communications Authority of Kenya CA Centre, Waiyaki Way Nairobi P. O. Box 14448 Nairobi 00800, Kenya Website: www.ca.go.ke</p>
2.4.3	<p>The currency specified for this proposal is Kenya shillings</p>
2.4.5	<p>The proposal(s) must remain valid for 150 days from the date of submission</p>
2.5.2	<p>The bidder shall submit one (1) original and one (1) copy of its proposal for both technical proposal and Financial proposal. In both cases the proposal must be printed. Submission of proposal by electronic mail is not allowed</p>

2.5.4	Proposals must be received deposited in the tender box before 10.30 a.m. East African Time(GMT +3) on Tuesday, 30th April, 2019 at the address indicated in 2.2												
2.5.5	<p>Opening of technical and financial proposals</p> <p>1. Opening of technical proposal shall be undertaken immediately following the proposal submission. Bidders or their authorized representatives are allowed to attend and observe the technical proposal opening if they so choose. The bidders or their representatives shall sign a register of attendance.</p> <p>2. The bidder's names and the presence or absence of Bidder's Declaration integrity pact and other such details as CA, at its discretion, may consider appropriate will be announced at the opening.</p> <p>3 The opening of financial proposals shall be undertaken only for bidders whose technical proposals meet the minimum technical score as detailed in clause 2.6 below.</p> <p>4 Bidders who do not meet the minimum technical score shall not proceed to the financial evaluation stage and shall have their unopened financial proposal returned to them.</p>												
2.6	<p>Proposal evaluation and criteria and process</p> <p>In assessing the proposals submitted, the tender evaluation committee shall use a two stage criteria. Technical proposal shall be evaluated out of 80% and Financial out of 20%. Quality and Cost Based Method shall be used in this tender.</p> <p>1.Mandatory Evaluation</p> <p>Firms must provide all the mandatory requirements. Only firms that meet all mandatory requirements shall proceed to technical capacity evaluation.</p> <p>The following criteria will be used in the evaluation of all bids. The submission of the required documents will be used in the determination of the Completeness and Suitability of the Bid. Bids that do not contain all the information required will be declared non responsive and shall not be evaluated further.</p> <table border="1" data-bbox="347 1361 1461 1897"> <thead> <tr> <th data-bbox="355 1373 459 1429">NO</th> <th data-bbox="467 1373 1453 1429">MANDATORY REQUIREMENTS</th> </tr> </thead> <tbody> <tr> <td data-bbox="355 1440 459 1496">1</td> <td data-bbox="467 1440 1453 1496">Attach a copy of a valid Certificate of Business Incorporation/Registration</td> </tr> <tr> <td data-bbox="355 1507 459 1563">2</td> <td data-bbox="467 1507 1453 1563">Attach a copy of a valid Tax Compliance Certificate</td> </tr> <tr> <td data-bbox="355 1574 459 1686">3</td> <td data-bbox="467 1574 1453 1686">Lead Consultant registration with relevant professional bodies, BORAQs and AAK</td> </tr> <tr> <td data-bbox="355 1697 459 1753">4</td> <td data-bbox="467 1697 1453 1753">Valid AGPO Certificate</td> </tr> <tr> <td data-bbox="355 1765 459 1886">5</td> <td data-bbox="467 1765 1453 1886">The tender is exclusively reserved to firms that Kenyans own one hundred percent (100%) shares. Attach Authentic CR12 detailing Nationality and shareholding.</td> </tr> </tbody> </table>	NO	MANDATORY REQUIREMENTS	1	Attach a copy of a valid Certificate of Business Incorporation/Registration	2	Attach a copy of a valid Tax Compliance Certificate	3	Lead Consultant registration with relevant professional bodies, BORAQs and AAK	4	Valid AGPO Certificate	5	The tender is exclusively reserved to firms that Kenyans own one hundred percent (100%) shares. Attach Authentic CR12 detailing Nationality and shareholding.
NO	MANDATORY REQUIREMENTS												
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4	Valid AGPO Certificate												
5	The tender is exclusively reserved to firms that Kenyans own one hundred percent (100%) shares. Attach Authentic CR12 detailing Nationality and shareholding.												

6	Duly filled, signed and stamped Confidential Business Questionnaire form here in the document
7	Legally accepted memorandum of understanding (MOU) on consortia ship among sub consultants and the Lead Consultant.
8	Demonstration of financial capability in carrying out the required consultancy services by attaching certified copies of the firm's audited accounts for the last three years (2015, 2016 and 2017)
9	Bidders MUST submit an original and one copy of the Technical Bid Documents.
10	Technical Document must be properly serialized in all the pages, including attachments.
Remarks	

2. Technical evaluation

(a) The technical evaluation will be on a scoring system marked out of a maximum of 80 marks. Only proposals that score at least 60 in this technical evaluation will be deemed to be technically responsive and eligible for financial evaluation. Marks will be awarded according to the following matrix:

CRITERIA	MAXIMUM SCORE
1 Human Capital Proposed	30%
<p><i>Professional skills, certificates, experience and signed curriculum vitae for the following proposed personnel: -</i></p> <p>1) Architects-Lead Consultant to have the following qualifications -12 Marks</p> <p><i>Bachelors Degree in Architecture or a similar related field with over five (5) years' experience in relevant fields -12 Marks</i></p> <p><i>Diploma in Architecture or a related field with over five (5) years' experience in relevant fields -6 Marks</i></p> <p>2) Quantity Surveyors- 6 Marks</p> <p><i>Bachelors Degree in Quantity Surveying or a related field with over five (5) years' experience in relevant</i></p>	

fields -6 Marks	
<i>Diploma in Quantity Surveying or a related field with over five (5) years' experience in relevant fields - 3Marks</i>	
3) Service Engineers-6 Marks	
<i>Bachelors Degree in Electrical/ Mechanical or Civil/ Structural Engineering or a related field with over five (5) years' experience in relevant fields -6 Marks</i>	
<i>Diploma in in Electrical/ Mechanical or Civil/ Structural Engineering or a related field with over five (5) years' experience in relevant fields -3 Marks</i>	
4) Affidavits from the professionals confirming availability for the Assignment-6 Marks	
2 Firm /consortium capacity to handle similar assignment	20
<ul style="list-style-type: none"> • <i>List of 3 similar past projects with details on clientele, cost, services offered and time-8 Marks</i> • <i>At least three (3) recommendation letters on the projects from past clients- 12 Marks</i> 	
3 Methodology and Work Plan	20
<ul style="list-style-type: none"> i. <i>Methodology and approach (minimum 1 page) - 8 Marks</i> ii. <i>Work plan and Work schedule (in chart format)-12 Marks</i> <p><i>Explain with charts, the detail programme to execute the assignment indicating time frame, Human Capital, activities as specified in the TOR and other resources allocated</i></p>	
4 Financial Capability	10
<ul style="list-style-type: none"> • <i>Provide Audited Accounts for the Lead Consultant in the consortium for the last three years (2015, 2016 and 2017) with an average Annual Turnover of Kshs 15 million</i> 	
GRAND TOTAL	80

To be eligible for the Financial Evaluation, bidders must score at least sixty (60) out of eighty (80) at the Technical Evaluation stage.

3. Financial Evaluation

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

The following formulae will be applied to derive the financial scores (20%).

$$\text{Financial Score} = \frac{\text{Lowest Bid Amount}}{\text{Bid Amount}} \times 20$$

Bid Amount

The resultant scores will then be added to the technical evaluation scores and the firm with the highest score will be awarded the contract.

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.

No.	Work Description (milestone)	Percentage of Tender Sum	Amount (KES)
	Total	100%	

NB: The financial proposals for 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 service 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.

2.12 Public Opening and Evaluation of Financial Proposal

- (x) After Technical Proposal evaluation, the Client 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 Client 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 opening date shall not be sooner than seven (7) days after the notification date. The notification may be sent by registered letter, cable, telex, facsimile or electronic mail.

- (xi) 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 Client shall prepare minutes of the public opening.
- (xii) 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.
- (xiii) While comparing proposal prices between local and foreign firms participating in a selection process in financial evaluation of Proposals, firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias in proposal prices. However, there shall be no such preference in the technical evaluation of the tenders. Proof of local incorporation and citizenship shall be required before the provisions of this sub-clause are applied. Details of such proof shall be attached by the Consultant in the financial proposal.
- (xiv) The formulae for determining the Financial Score (S_f) shall, unless an alternative formulae is indicated in the Appendix "ITC", be as follows:- $S_f = 100 \times FM/F$ where S_f is the financial score; F_m is the lowest priced financial proposal and F is the price of the proposal under consideration. Proposals will be ranked according to their combined technical (S_t) and financial (S_f) scores using the weights (T =the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; $T + p = 1$) indicated in the Appendix.
- (xv) The combined technical and financial score, S , is calculated as follows:- $S = S_t \times T \% + S_f \times P \%$. The firm achieving the highest combined technical and financial score will be awarded the contract.

2.12.7 The tender evaluation committee shall evaluate the tender within twenty one(21) from the date of opening the tender.

2.12.8 Contract price variations shall not be allowed for contracts not exceeding one year (12 months).

2.12.9 Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price

2.12.10 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.

(xvi) Negotiations

- (xvii) Negotiations will be held at the same address as “address to send information to the Client” indicated in the Appendix to “ITC”. The aim is to reach agreement on all points and sign a contract.
- (xviii) 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 Client and firm will then work out final Terms of Reference, staffing and bar charts indicating activities, staff periods in the field and in the head office, staff-months, logistics and reporting. The agreed work plan and final Terms of Reference will then be incorporated in the “Description of Services” and form part of the Contract. Special attention will be paid to getting the most the firm can offer within the available budget and to clearly defining the inputs required from the Client to ensure satisfactory implementation of the assignment.
- (xix) Unless there are exceptional reasons, the financial negotiations will not involve the remuneration rates for staff (no breakdown of fees).
- (xx) Having selected the firm on the basis of, among other things, an evaluation of proposed key professional staff, the Client expects to negotiate a contract on the basis of the experts named in the proposal. Before contract negotiations, the Client will require assurances that the experts will be available for the exercise.
- (xxi) The negotiations will conclude with a review of the draft form of the Contract. To complete negotiations the Client and the selected firm will initial the agreed Contract. If negotiations fail, the Client will invite the firm whose proposal received the second highest score to negotiate a contract.
- (xxii) The procuring entity shall appoint a team for the purpose of the negotiations.

(xxiii) Award of Contract

(xxiv) The Contract will be awarded following negotiations. After negotiations are completed, the Client 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.

(xxv) The selected firm is expected to commence the assignment on the date and at the location specified in Appendix ITC.

(xxvi) The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

(xxvii) The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

(xxviii) The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

2.14.6 To qualify for contract awards, the tenderer shall have the following:

- a. (a) Necessary qualifications, capability experience, services, equipment and facilities to provide what
- b. is being procured.
- c. (b) Legal capacity to enter into a contract for procurement
- d. (c) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not
- e. the subject of legal proceedings relating to the foregoing.
- f. (d) Shall not be debarred from participating in public procurement.

2.15 Confidentiality

2.15.1 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.

2.16 Corrupt or fraudulent practices

2.16.1 The procuring entity requires that the consultants observe the highest standards of ethics during the selection and award of the consultancy contract and also during the performance of the assignment. The tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.

2.16.2 The procuring entity will reject a proposal for award if it determines that the consultant recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in

question.

2.16.3 The procuring entity will reject a proposal for award if it determines that the consultant recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question. 14

2.17 Performance Security

2.17.1 Within fourteen (14) days of the contract signature date of, the successful Tenderer shall furnish with a Performance Security which shall be an original Bank Guarantee that is strictly in the form and content as prescribed in the Performance Security Form (Bank Guarantee) in the Tender Document.

2.17.2 The Performance Security shall be issued by a commercial bank licensed by the Central Bank of Kenya. The bank must be located in Kenya.

2.17.3 The Performance Security shall be the sum of five percent (5%) of the contract value. It shall be in the currency of the contract price.

2.17.5 Failure of the successful Tenderer to furnish an authentic Performance Security, the award shall be annulled and the Tender Security forfeited, in which event the procuring entity may notify the next lowest evaluated tenderer that its tender has been accepted.

SECTION III: - TECHNICAL PROPOSAL

Notes on the preparation of the Technical Proposals

In preparing the technical proposals the consultant is expected to examine all terms and information included in the RFP. Failure to provide all requested information shall be at the consultants own risk and may result in rejection of the consultant's proposal.

The technical proposal shall provide all required information and any necessary additional information and shall be prepared using the standard forms provided in this Section.

The Technical proposal shall not include any financial information unless it is allowed in the Appendix to information to the consultants or the Special Conditions of contract.

SECTION III- TECHNICAL PROPOSAL

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1. TECHNICAL PROPOSAL SUBMISSION FORM

[_____ Date]

To: _____ [Name and address of Client)

Ladies/Gentlemen:

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

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

We remain,

Yours sincerely,

_____ [Authorized Signature]:

_____ [Name and Title of Signatory]

:

_____ [Name of Firm]

:

_____ [Address:]

2. FIRM'S REFERENCES

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

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

Assignment Name:		Country
Location within Country:		Professional Staff provided by Your Firm/Entity(profiles):
Name of Client:		Clients contact person for the assignment.
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; _____

3. COMMENTS AND SUGGESTIONS OF CONSULTANTS ON THE TERMS OF REFERENCE AND ON DATA, SERVICES AND FACILITIES TO BE PROVIDED BY THE CLIENT.

On the Terms of Reference:

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

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

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

- **DESCRIPTION OF THE METHODOLOGY AND WORK PLAN FOR PERFORMING THE ASSIGNMENT**
-

5. TEAM COMPOSITION AND TASK ASSIGNMENTS

1. Technical/Managerial Staff

Name	Position	Task

2. Support Staff

Name	Position	Task

6. 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 authorised representative of the firm]

Full name of staff member: _____

Full name of authorized representative: _____

7. TIME SCHEDULE FOR PROFESSIONAL PERSONNEL

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

Reports Due: _____

Activities Duration: _____

Signature: _____
(Authorized representative)

Full Name: _____

Title: _____

Address: _____

8. ACTIVITY (WORK) SCHEDULE

(a). Field Investigation and Study Items

[1st, 2nd, etc, are months 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	
2. Interim Progress Report (a) First Status Report (b) Second Status Report	
3. Draft Report	
4. Final Report	

SECTION IV: - FINANCIAL PROPOSAL

Notes on preparation of Financial Proposal

- 2.6 The Financial proposal prepared by the consultant should list the costs associated with the assignment. These costs normally cover remuneration for staff, subsistence, transportation, services and equipment, printing of documents, surveys etc as may be applicable. The costs should be broken down to be clearly understood by the procuring entity.
- 2.7 The financial proposal shall be in Kenya Shillings or any other currency allowed in the request for proposal and shall take into account the tax liability and cost of insurances specified in the request for proposal.
- 2.8 The financial proposal should be prepared using the Standard forms provided in this part

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1. FINANCIAL PROPOSAL SUBMISSION FORM

_____ [Date]

To: _____

[Name and address of Client]

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 Kshs.

(_____) *[Amount in words and figures]* inclusive of the taxes.

We remain,

Yours sincerely,

_____ *[Authorized Signature]*

_____ *[Name and Title of Signatory]:*

_____ *[Name of Firm]*

_____ *[Address]*

2. SUMMARY OF COSTS

Costs	Currency (ies)	Amount(s)
Subtotal		
Taxes		
Total Amount of Financial Proposal		<hr/>

Note: The total amount of Financial Proposal shall constitute among other activities/milestones, the cost of tender evaluation and supervising of the proposed repair works. It should be noted that, this particular assignment would not be done immediately; therefore the Consultant is notified that the expending of this assignment cost will be at the next financial year.

3. BREAKDOWN OF PRICE PER ACTIVITY

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

4. 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			_____	_____

5. REIMBURSABLES 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				

6. MISCELLANEOUS EXPENSES

Activity No. _____ Activity Name: _____

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

SECTION V: - TERMS OF REFERENCE

5.1 Introductions and Background

The Communications Authority of Kenya (CA) is the Regulatory Authority for the ICT Industry in Kenya with responsibilities in Telecommunications, E-Commerce, Broadcasting and Postal Services. The Authority is also responsible for managing the country's Numbering and Frequency Spectrum Resources.

The Authority wishes to execute major repairs to its aging building, which include, roof leakage repairs, open balconies leaking repairs, walk ways and other canopies leaking repairs. The repairs if necessary may necessitate, overhauling the roof and or redesigning some areas perceived to have design shortcomings and general face lift.

The Authority further, wishes to streamline repairs and maintenance of its Assets and Facilities through Framework Contracting Practice.

In this regard, we invite Request for proposals (RFP)s FOR Consultancy Services in furtherance of this intention. The Consultant shall study the requirements of the Authority as detailed in the TOR and properly execute the services under the contract.

In the performance of their work, the Architect is expected to be the Lead Consultant under whom sub consultants (Service Engineers and Quantity Surveyors) will be outsourced by him and reporting to him. The Consultant shall maintain close liaison with CA and shall be deemed to have undertaken analysis and interpretation of all documents and data received from the CA and to have accepted any conclusions and recommendations therein, unless the Consultant has notified the CA in writing to the contrary.

5.2 Terms of reference for the Consultants

The Terms of Reference for the Consultants will be as follows: -

a. Repairs

Carry out detailed survey and assessment of the building and recommend necessary repairs within the building. This should include fittings within the building and surrounding service infrastructures like manholes, electrical and plumbing/drainage fittings, etc.

Look into the roofs, balconies, expansion joints and aluminum claddings, walk ways, etc. and recommend essential repairs to eliminate the leakages.

Propose and re-design the Entrance Lobby and covered walkways in view of eliminating adverse elements, especially wind rain.

Design and prepare working drawings, Bills of quantities and Specifications for the proposed repair works, installations /fittings.

Process and obtain necessary plan approvals, permits, fees (if applicable) from all relevant Authorities like, County Government, NEMA, etc.

Assist and advice the Authority on the evaluation of the Works Tenders

Supervise the construction repair works/installations, deliveries, etc.

Give progress reports on the project as may be agreed between the client and the Consultant
Prepare and issue valuation certificates to facilitate interim payments for the repair works done
Issue interim and completion certificates, facilitate acquisition of as built drawings, electronics and other operational manuals (where necessary), inspect the works during defects liability period and advise the Authority accordingly.

b. Frame Works Contracting (For Nairobi stations and other CA stations in Mombasa, Eldoret, Kisumu, Nyeri, Kitale, Nakuru and Garissa)

Review the existing documentation for framework contracts in view of standardizing and professionalizing them. (These are framework contracts like cleaning services, landscaping maintenance, maintenance of air conditioners, maintenance of lifts, maintenance of fire fighting equipment, borehole pumps, etc., etc.)

- i Invent and prepare standard Tender Documents for framework contracting for services which the Authority does not have maintenance contracts at moment, these are;
 - i. Painting repairs
 - ii. Plumbing and drainage repairs
 - iii. Electrical repairs
 - iv. Carpentry and joinery repairs
 - v. Any other repairs/maintenance

5.3 Deliverables for the assignment

Deliverables for the assignment will be as follows:

a. Repairs

- iii. Four (4) initial copies of the tender document complete with specifications, bills of quantities and working drawings (in soft and hard copies)
- iv. Approval from relevant Authorities to execute the repairs
- v. As built drawings if there are any design alterations

b. Framework contracting for a period of 3 years

Four (4) initial copies of the tender document complete with specifications, bills of quantities and working drawing, if any, detailing every part/fitting to be replaced in case of defects. This is for every trade mentioned above.

In case of painting, description of area and size, for landscaping, the type and number of trees, flowers, ground covers, etc. (expected in both soft and hard copies)

Expected Outputs

Inception reports

The purpose of this report is to present an overview of the recent trends in the building industry and this should be based on the terms of reference provided by the Authority.

Progress reports

The consultant will furnish the Authority with progress reports whenever milestones are achieved. This will be over and above the reports that the Authority can generate.

Interim reports

This will be a draft final report that will be indicating the results of the survey of the building. It is expected that the report will cover all aspects and indicate adherence to the Terms of Reference (TORs) as outlined by the Authority. The Consultant is expected to present this report to the Authority's Management or relevant stakeholders for adoption.

Final report

The final report will developed as per the TORs and will have addressed any comments emanating from the Authority's Management or any relevant stakeholders. All the deliverables shall be the property of the Republic of Kenya under the custody of the Communications Authority of Kenya (CA).

**SECTION VI:
STANDARD FORMS OF CONTRACT**

ANNEX I

**REPUBLIC OF KENYA
STANDARD FORM OF CONTRACT
FOR
CONSULTING SERVICES**

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(ii)

Special Notes

- 2 The Lump-Sum price is arrived at on the basis of inputs – including rates – provided by the Consultant. The Client agrees to pay the Consultant according to a schedule of payments linked to the delivery of certain outputs, usually reports. Lump-sum contracts have the simplicity of administration, the Client having only to be satisfied with the outputs without monitoring the staff inputs and should be used for large Assignments in for example Design; Engineering; Supervision and Management Services; Master plans; Economic and Feasibility studies; and Surveys.

2. The Contract includes four parts: Form of Contract, the General Conditions of Contract, the Special Conditions of Contract and the Appendices. The Client using this standard contract should not alter the General Conditions. Any adjustment to meet any specific project features should be made only in the Special Conditions.

(iii)

CONTRACT FOR CONSULTANT'S SERVICES

**CONTRACT FOR ARCHITECTURAL CONSULTANCY SERVICES
TO UNDERTAKE REPAIR WORKS AND MAINTENANCE OF CA BUILDINGS**

(CONTRACTOR NO: CA/LS/071/...../2019)

BETWEEN

COMMUNICATIONS AUTHORITY OF KENYA

AND

M/S XYZ LIMITED

Dated: _____ *[date]*

(iv)

2 FORM OF CONTRACT

This Agreement (hereinafter called the “Contract”) is made the _____day of the month of _____[month], [year], between **COMMUNICATIONS AUTHORITY OF KENYA(CA)** of [or whose registered office is situated at] **Waiyaki Way, Nairobi and of P.O. Box 14448-00800 Nairobi**(hereinafter called the “Client”) of the one part AND

_____ [name of consultant] of [or whose registered office is situated at] _____ [location of office](hereinafter called the “Consultant”) of the other part.

WHEREAS;

Vide an *Invitation to Tender* No: **CA/PROC/RFP/18/2018-2019** for “**CONTRACT FOR ARCHITECTURAL CONSULTANCY SERVICES TO UNDERTAKE REPAIR WORKS AND MAINTENANCE OF CA BUILDINGS.**”

i A. ” Dated XXX, CA invited tenders for the procurement of consultancy service for **ARCHITECTURAL CONSULTANCY SERVICES TO UNDERTAKE REPAIR WORKS AND MAINTENANCE OF CA BUILDINGS.**

B. CA has accepted the Consultant’s tender dated XXX 2019 for provision of consultancy service for **ARCHITECTURAL CONSULTANCY SERVICES TO UNDERTAKE REPAIR WORKS AND MAINTENANCE OF CA BUILDINGS** for a consideration of the sum of **Kenya Shillings xxxxxx**

C. The consultancy shall be implemented in two phase as follows:

Phase 1: Repairs of buildings

Phase 2: Framework contracting for a period of three (3) years from execution date of contract with a possibility of renewal for another two (2) years based on performance.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS: -

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:

Expressions defined in this Agreement shall, unless the context otherwise requires, have the same meaning as defined in the Invitation to Tender and in the event of discrepancy, the definitions in this Agreement shall prevail.

“**Agreement**” means this document of contract.

“**Act**” means an Act of Parliament and any statutory extension, amendment, modification, re-amendment or replacement of such Act and any rule, regulation or order made thereunder.

“**Commencement Date**” means the xxx 2019

“**Contract Price**” means the price payable to the Consultant under the Contract for the full and proper

performance of the Services, being **Kenya Shillings xxxxx** which amount is inclusive of taxes.
“**Kick – Off Meeting**” means (a) meeting to be held between the representatives of the Consultant and CA to establish protocols of communication that shall be used during the Contract’s implementation, (b) to develop and / or refine a work plan and delivery and (c) to agree on the form and submission of reports that shall be required from the Consultant during the Contract’s implementation.

1.2 Words importing the masculine gender only shall where the context so requires import the feminine gender or (as the case may be) the neutral gender.

1.3 The headings and table of contents are for convenience only and may be ignored in construing this Agreement.

1.4 Except where the context determines otherwise, the singular includes the plural and vice versa.

1.5 References to Clauses, recitals and Schedules are, unless otherwise specified, references to Clauses of, and Schedules and recitals to this Agreement.

1.6 The words “include,” “including,” and “in particular” are used by way of illustration only, and shall not be construed as, nor shall they have the effect of, limiting the generality of the preceding words;

1.7 References to a Party are references to a party to this Agreement, including that Party’s assigns or transferees permitted in accordance with the terms of this Agreement and its successors in title;

1.8 The schedules form part of this Agreement, and capitalized terms and abbreviations used in the schedules which are not defined therein shall have the meanings given to them in this Agreement and in the event of any conflict between this Agreement and Annexures, this Agreement shall prevail.

1.9 Words indicating persons or parties includes corporations and other legal entities, except where the context requires otherwise.

“**Services**” means the provision of consultancy service for Architectural consultancy services to undertake repair works and maintenance of CA buildings.

“**Signature Date**” means the date on which the last of the Parties executes this Agreement which date shall be indicated heretofore and on the cover page of this Agreement.

“**Term**” means the term of the Contract as defined in Clause 2

2. TERM

This Agreement shall come into force and effect on the Signature Date and shall continue in full force and effect for 36 Months unless earlier terminated or extended by Parties’ agreement in writing.

3. THE CONTRACT

The following documents shall comprise the Contract and each shall be read and construed as an integral part of the Contract;

- i a) This Agreement
- ii b) The Invitation to Tender dated XXX 2019

- i c) The Consultant's tender dated XXX 2019
- ii d) The Notification of Award dated XXX 2019
- iii e) The Consultant's acceptance dated XXX 2019

4. ORDER OF PRECEDENCE

In the event of any discrepancy the documents listed in Clause 3 above, the order of precedence shall be the order in which the documents are listed in Clause 3.

5. DELIVERY OF SERVICES

- 5.1 In consideration of the Contract Price being paid by CA to the Consultant, the Consultant hereby covenants to deliver the Services for the duration of the Term.
- 5.2 The Commencement Date shall be xxxx, 2019 where after the Consultant shall commence Delivery of the services provided that on or before the Commencement Date, the Consultant shall have provided CA with a valid Performance Security in the manner and form prescribed in Clause 7.
- 5.3 Services shall be delivered in accordance with Schedule 2 – Agreed Work Plan which Schedule may be amended or varied at the Kick-Off Meeting.
- 5.4 The Services shall be performed as set out in Schedule 2 or as otherwise agreed between the Parties.

6. WARRANTIES

- 6.1 It will provide the Services in a proper and professional manner at all times;
- 6.2 It will exercise the reasonable standards of skill, care and diligence in the performance of the Services;
- 6.3 It will retain a sufficient number of personnel with the expertise required to provide the Services; and
- 6.4 Its personnel possess the required skills and experience required to provide the Services.
- 6.5 It shall demonstrate commitment to implementation of requirements of the standards under the scope of this agreement
- 6.6 It shall provide the requisite resources including availing of staff for purposes of auditing of the systems
- 6.7 It shall adhere to the payment obligations as per clause 8 of this agreement

The Consultant warrants that:

7. PERFORMANCE SECURITY

- 7.1 Prior to and no later than seven (7) days of the Signature Date, the Consultant shall furnish CA with a Performance Security which shall be an irrevocable on-demand

Guarantee in the form contained in Schedule 3, issued by a Bank licensed by the Central Bank of Kenya and acceptable to CA.

- 7.2 The Performance Security shall be for a sum equivalent to five percent (5%) of the Contract Price.
- 7.3 The proceeds of the Performance Security shall be payable to CA as compensation for any loss resulting from the Consultant’s failure to deliver the Services in accordance with the Contract without CA being required to demonstrate the loss it has suffered.
- 7.4 The Performance Security shall be valid for a minimum of thirty (30) days after lapse of the Term.
- 7.5 CA may seek authentication of the Performance Security from the issuing bank. It shall be the responsibility of the Consultant to ensure its issuing bank is aware of the need to respond directly and expeditiously to communication from CA on the security. The Consultant shall ensure that the issuing bank responds to such communication within five (5) days failing which the security may be deemed as invalid and the Contract nullified.
- 7.6 It shall be the responsibility of the Consultant to ensure that its Performance Security is valid at all times during the period of the Contract, and is equivalent to 5% of the Contract Price.
- 7.7 The Performance Security if not hitherto enforced shall be discharged by CA and returned to the Consultant not more than forty five(45) days after lapse of the Term of the Contract.

8. PAYMENT FOR SERVICES

- a. Payments shall be made promptly by CA and shall not be more than thirty (30) days from completion of satisfactory performance evidenced by supporting reports as per agreed milestones detailed in Clause 8.3 and issuance of supporting reports and submission of invoice which shall conform with the following requirements;

An invoice for the Services shall be dated and shall bear:

- i Correct company name, PIN and address of CA
- ii Breakdown of value added tax
- iii The Consultant’s bank account

a) CA shall not later than 15 days after receipt of an invoice either certify the same as accurate and payable, or return it to the Consultant with reasons for rejecting the same.

b) Not more than 30 days after the invoice has been certified as accurate and payable by CA

- b. Payment shall primarily be through CA’s cheque or Real Time Gross Settlement (RTGS) or telegraphic transfer.
- c. Payments shall be made against completion of the agreed milestones detailed below

Timeline	Milestone/Deliverable	% of contract Cum	Contract Sum
Total		100%	

- d. CA will have ten (10) business days after receipt of any Deliverable (or portion of Deliverable, if such Deliverable is to be delivered in milestones as set forth in the Schedule 1 and 2) to review such Deliverable. If a Deliverable does not comply with the specifications for such Deliverable, the Employer may reject such Deliverable, in its sole discretion, by written notice of rejection to the Consultant. The Consultant will correct any material deficiencies and provide the Customer with a revised Deliverable as soon as practicable. CA will have the right to accept or reject the corrected Deliverable in accordance with this Section. If the Consultant does not correct a material deficiency, CA may elect to terminate this Agreement in its entirety. Upon any such termination, CA shall be entitled to a refund of all amounts paid to the Consultant under this Agreement.
- e. Where CA has required the Consultant to remedy a defect in the provision of services, CA shall be entitled to reject an invoice that includes the services until the defect is rectified.

9. PRICES

- 9.1 Subject to Clause 10 herein below, prices charged by the Consultant for services delivered under the contract shall be fixed for the period of the contract with no variations.
- 9.2 The Consultant's total remuneration shall not exceed the Contract Price and shall cover all staff costs, printing, communications, travel and any other costs incurred by the Consultant in carrying out any services described therein.
- 9.3 The agreement price is payable in Kenya Shillings
- 9.4 Unless otherwise specified in the agreement, the Consultant shall pay such other taxes, duties, fees and other impositions as may be levied under the applicable law, the amount of which is deemed to have been included in the Contract Price.

10. VARIATION OF CONTRACT

10.1 In the event circumstances should arise so as to necessitate a variation of this Agreement with respect to the Contract Price, CA and the Consultant may vary the contract only in accordance with the following:

- a) the quantity variation for services shall not exceed 10% of the original contract sum
- b) the variation must be executed within the period of the contract.

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1.

10.2 Any other modification of the terms and conditions of this Agreement including the modification of the scope of services shall only be made by a mutually consented written agreement between the parties.

2.

11. AUTHORISED REPRESENTATIVES

Any action required or permitted to be taken and any document required or permitted to be executed under this Contract by CA or the Consultant may be taken or executed by the officials specified hereunder;

For CA: Director General
P.O Box 14448, 00800, Nairobi.
Tel: 0703-042000

Email: info@ca.go.ke
For the Consultant: xxxxx
P.O Box xxxx
Tel: xxxx
Email: xxxxx

12. PERSONNEL

- 12.1 The Consultant represents that it has, or will secure at its own expense, all personnel required in performing all of the services required under this Agreement. Such personnel shall not be employees or have any contractual relationships with CA.
- 12.2 The Consultant shall assign such person or persons (Project Personnel or Key Personnel), as it deems appropriate to perform the Services required under this Agreement.
- 12.3 CA has the right to approve or reject the Project Personnel proposed by the Consultant at any time. Furthermore, the Consultant shall provide the individuals designated as Key Personnel in Table 1 below. These individuals will be dedicated to perform the services under this Agreement for the duration of this Agreement unless the individual becomes unavailable to perform as a result of death, illness, disability, termination of his or her employment relationship with the Consultant or CA elects to reduce staff levels or change designated Key Personnel.
- 12.4 If an individual designated as Key Personnel becomes unavailable for one of the reasons specified herein, The Consultant shall provide CA with other similar qualified Project Personnel.
- 12.5 CA shall have the right to require removal of any Project Personnel and/or Key Personnel from the Consultant's Project team upon delivery of written notice thereof to the Consultant.
- 12.6 The Consultant agrees that any employee, personnel or agent, having access to CA's premises or to any records or information relating, pertaining to or included in this Agreement shall be required to provide his or her name, and a copy of his or her National Identity number.

13. ASSIGNMENT

The Consultant shall not assign in whole or in part any of its obligations to perform under the Contract, except with CA's prior written consent.

14. CONFIDENTIALITY

- 14.1 The Consultant shall maintain the confidentiality of all Confidential Information disclosed to it and shall take all necessary precautions against unauthorized disclosure of the Confidential Information. The Consultant shall not directly or indirectly disclose, allow access to, transmit or transfer any Confidential Information to any third party without the prior written consent of CA. The Consultant shall not use or copy any Confidential Information except as may be reasonably required to perform the Services.
- 14.2 The Consultant acknowledges that CA has received and in the future may receive from third parties their confidential or proprietary information subject to a duty on the part of CA to maintain the confidentiality of such information and to use it only for certain limited purposes. The Consultant shall hold all such confidential or proprietary information in the strictest confidence and shall not disclose it to any person, firm or corporation or use it except as necessary in providing the Services hereunder in a manner consistent with CA's agreement with such third party.
- 14.3 The Consultant shall ensure that each employee and Consultant who is provided access to CA

Confidential Information executes a confidentiality agreement pursuant to which such employee or Consultant is obligated to protect CA confidential Information to the same extent as the Consultant is required to protect such information hereunder. The Consultant shall provide copies of such executed documents to CA upon request.

- 14.4 Upon the request of CA, and in any event upon the termination or expiration of this Agreement, the Consultant shall immediately return to CA all materials, including all copies in whatever form, containing any Confidential Information which are in the Consultant's possession or under its control.
- 14.5 The Consultant acknowledges and agrees that monetary damages may not be an adequate remedy to compensate CA for any breach of the Consultant's obligations hereunder in respect of Confidential Information. Accordingly, Consultant agrees that, in addition to any and all other remedies available to CA under this Agreement or at law or in equity, CA shall be entitled to obtain relief by way of a temporary or permanent injunction to enforce such obligations.
- 14.6 The Consultant represents and warrants to CA that (i) its performance hereunder shall not breach any agreement or other obligation to keep confidential the proprietary information of any prior employer or client of the Consultant or any other third party, and (ii) it will not bring to CA, and shall not use in the performance of its work with CA, any trade secrets, confidential information and other proprietary information of any prior employer or client of the Consultant or any other third party.

15. INDEMNITY AND LIABILITY

- 15.1 Each Party ("the First Party") shall indemnify and holds the other Party ("the Non-breaching Party"), its affiliates and employees harmless from and against any direct costs or damages that may be incurred by the Non-breaching Party as a result of claims for negligence or breach by the First Party of any of its obligations in terms of this Agreement and such indemnity shall extend to the reasonable cost that may be incurred by the Non-breaching Party in defending any action instituted against it subject to Clause 11.2.
- 15.2 The total liability under this Clause shall not exceed the Contract Price. Liability in any case of fraud, deliberate default or reckless misconduct shall however not be limited.

16. TERMINATION OF CONTRACT 1

16.1 TERMINATION BY CA

CA may terminate this Contract by not less than thirty (30) days' written notice to the Consultant to be given after the occurrence of any of the events specified in this Clause: -

- a) If the Consultant fails to provide a Performance Security, or the issuing bank fails to confirm the Performance Security's authenticity as stipulated in this Agreement.
- b) If the Consultant fails to render the Services within the time frame stipulated in Clause 5 of this Agreement.
- c) If the Consultant does not remedy a failure in the Delivery of the Services within ten (10) days

- after being notified; or any other period as demanded by CA.
- d) If the Consultant becomes bankrupt.
 - e) If CA in its sole discretion decides to terminate this contract.
 - f) If the Consultant, in the judgment of CA has engaged in corrupt or fraudulent practices in competing for or in executing the Agreement. 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 Agreement execution. “**fraudulent practice**” means a misrepresentation of facts in order to influence a selection process or the execution of an Agreement to the detriment of CA, and includes collusive practice among Suppliers (prior to or after submission of the Tender document) designed to establish prices at artificial non-competitive levels and to deprive CA of the benefits of free and open competition.
 - g) If, as a result of Force Majeure, the Consultant is unable to perform the services for a period of more than ten (10) days.

16.2 TERMINATION BY THE CONSULTANT

In the event that CA terminates the contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, the services of another Supplier to render the Services. The Consultant may terminate this Contract by not less than thirty (30) days’ written notice to CA to be given after the occurrence of any of the events specified in this Clause: -

- a) If CA fails to convene a Kick-Off Meeting for more than fourteen (14) days after the Signature Date,
- b) if CA fails to pay any monies due to the Consultant pursuant to this Agreement and not subject to dispute within forty-five (45) days after receiving written notice from the Consultant that such payment is overdue; or
- c) If, as a result of Force Majeure, the Consultant is unable to perform the Services for a period of more than ten (10) days.

If the Consultant fails to provide a Performance Security, or the issuing bank fails to confirm the Performance Security’s authenticity as stipulated in this Agreement.

- b) If the Consultant fails to render the Services within the time frame stipulated in Clause 5 of this Agreement.
- c) If the Consultant does not remedy a failure in the Delivery of the Services within ten (10) days after being notified; or any other period as demanded by CA.
- d) If the Consultant becomes bankrupt.
- e) If CA in its sole discretion decides to terminate this contract.
- f) If the Consultant, in the judgment of CA has engaged in corrupt or fraudulent practices in competing for or in executing the Agreement. 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 Agreement execution. “**fraudulent practice**” means a misrepresentation of facts in order to influence a selection process or the execution of an Agreement to the detriment of CA, and includes collusive practice among Suppliers (prior to or after submission of the Tender document) designed to establish prices at artificial non-competitive levels and to deprive CA of the benefits of free and open competition.

- g) If, as a result of Force Majeure, the Consultant is unable to perform the services for a period of more than ten (10) days.

16.2 TERMINATION BY THE CONSULTANT

In the event that CA terminates the contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, the services of another Supplier to render the Services. The Consultant may terminate this Contract by not less than thirty (30) days' written notice to CA to be given after the occurrence of any of the events specified in this Clause: -

- a) If CA fails to convene a Kick-Off Meeting for more than fourteen (14) days after the Signature Date,
- b) if CA fails to pay any monies due to the Consultant pursuant to this Agreement and not subject to dispute within forty-five (45) days after receiving written notice from the Consultant that such payment is overdue; or
- c) If, as a result of Force Majeure, the Consultant is unable to perform the Services for a period of more than ten (10) days.

16.3 CONSEQUENCES OF TERMINATION

In the event of termination and the Consultant has delivered the Services in accordance with the Contract, then CA shall pay the Consultant the Contract Price for the Services delivered in accordance with the provisions of the Contract prior to the termination.

16.4 LIQUIDATED DAMAGES

In the event of termination and the Consultant has delivered the Services in accordance with the Contract, then CA shall pay the Consultant the Contract Price for the Services delivered in accordance with the provisions of the Contract prior to the termination.

Notwithstanding and without prejudice to any other provisions of the contract, if the Consultant fails to perform any or all of the services within the period specified in the contract, CA shall, without prejudice to its other remedies under the contract, deduct from the Contract Price, liquidated damages sum equivalent to 0.5% of the contract price per week of delay of the delayed due services up to a maximum of ten percent (10%) of the performance price of the delayed due services

17. DELAYS IN THE CONSULTANT'S PERFORMANCE

- 17.1 Performance of services shall be made by the Consultant in accordance with **Schedule – Work Plan**
- 17.2 If at any time during performance of the contract, the Consultant should encounter conditions impeding timely delivery of services, the Consultant shall promptly notify CA in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Consultant's notice, CA shall evaluate the situation and may at its discretion extend the Consultant's time for performance, with or without liquidated damages, in which case the

extension shall be ratified by the parties by amendment of the contract.

- 17.3 Except as provided for in the contract, a delay by the Consultant in the performance of its delivery obligations shall render the Consultant liable to the imposition of liquidated damages, unless an extension of time is agreed upon without the application of liquidated damages

18. RESOLUTION OF DISPUTES

18.1 Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Agreement or its interpretation.

18.2 Neither Party shall have any right to commence or maintain any legal proceeding concerning a Dispute until the Dispute has been resolved in accordance with this Clause 15 and then only to enforce or execute the award or determination under such procedure.

18.3 MEDIATION

- i. Where Parties are unable to settle a dispute amicably by negotiation within ten (10) days after receipt by one party of the other party's request for such negotiation,
- ii. Parties shall appoint a mediator (hereafter the "Mediator") an independent person with relevant experience and willing to act, agreed between the Parties (in the Special Conditions / at the commencement of Dispute)
- iii. Each Party may make such written submissions as it wishes to the Mediator within 10 days of the Mediator's appointment. The submitting Party (hereafter the "Complainant") shall simultaneously provide a copy to the other Party (hereafter the "Respondent"). At the end of such ten (10) day period the Respondent shall have a further ten (10) days to make counter-submissions to the Mediator (with a simultaneous copy to the Complainant) in reply to the Complainant's written submissions provided that where the Respondent raises or refer to, any new matters not raised or referred to in the first submission, the Complainant shall have ten (10) days to make to make a rejoinder to the Mediator (with a simultaneous copy to the Respondent) on the new matters. At the end of the twenty (20) or thirty (30) days; as the case may be and no later than ten (10) days thereafter, either Party may, with the consent of the Mediator and at a time and place decided by the Mediator, make an oral presentation to the Mediator in the presence of the other Party commenting on or explaining matters previously submitted to the Mediator in writing.
- iv. The Mediator shall render his / her determination in writing within ten (10) days of the completion of the oral presentation given in accordance with Clause (ii) above or where no oral presentation is made within ten (10) days of the twenty (20) or thirty (30) days' period referred to in paragraph (i) above and give reasonable details of the reasons for his determination;
- v. The Mediator shall act as a Mediator and not as an Arbitrator; and shall at all times be independent and neutral and exhibit the expertise to assist Parties reach a negotiated settlement.
- vi. The costs of the Mediator shall be borne as determined by the Mediator or, in default of such determination, equally by the Parties.
- vii. Any Party Dissatisfied with the decision of a Mediator may refer the matter to Arbitration; 18.4

8.4 ARBITRATION

- (i) Any dispute or difference of any kind between the Parties in connection with or arising out of this Agreement including the interpretation of this Agreement, its validity and any purported breach or termination shall be finally settled by arbitration under the Rules of Arbitration of the Nairobi Center for International Arbitration (hereafter the “Center”) which Rules are deemed to be incorporated by reference into this Clause 15.
- (ii) It is hereby agreed that:
 - (a) the seat of the arbitration shall be Nairobi, Kenya;
 - (b) there shall be three arbitrators;
 - (c) the language of the arbitration shall be English;
 - (d) the award rendered shall apportion the costs of the arbitration;
 - (e) the award shall be in writing and shall set forth in reasonable detail the facts of the Dispute and the reasons for the tribunal's decision; and
 - (f) Each Party will appoint an arbitrator within ten (10) days of the date of the request to initiate arbitration and two appointed arbitrators shall then jointly appoint a third arbitrator to act as Chairman within ten (10) Days of the date of the appointment of the second arbitrator, and no arbitrator shall have any existing or prior relationship with either Party. Arbitrators not appointed within the time limits set forth in the preceding sentence shall be appointed by the Center.
 - (g) If there is a conflict between this Agreement and the said Rules, this Agreement shall prevail.

19. FORCE MAJEURE

19.1 Force majeure means any circumstances beyond the control of the parties, including but not limited to:

- 19.2 Notwithstanding the provisions of the Agreement, neither party shall be considered to be in default nor in breach of its obligations under the Agreement to the extent that performance of such obligations is prevented by any circumstances of force majeure which arise after the Agreement entered into by the parties.
- 19.3 If either party considers that any circumstances of force majeure are occurring or have occurred which may affect Delivery, it shall promptly notify the other party and provide reasonable proof of such circumstances.
- 19.4 Upon the occurrence of any circumstances of force majeure, the Consultant shall endeavor to continue to perform its obligations under the Agreement so far as is reasonably practicable. The Consultant shall notify CA of the steps it

- (i) war and other hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition or embargo;
- (ii) ionizing radiation or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosives or other hazardous properties of any explosive nuclear assembly or nuclear components thereof;
- (iii) rebellion, revolution, insurrection, military or usurped power & civil war;
- (iv) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster proposes to take including any reasonable alternative means for

Delivery, which is not prevented by force majeure. the Consultant shall not take any such steps unless directed so to do by CA.

19.5 If circumstances of force majeure have occurred and shall continue for a period of 10 days then, notwithstanding that the Consultant may by reason thereof have been granted an extension of time for Delivery, either Party shall be entitled to serve upon the other five (5) days' notice to terminate the Agreement. If at the expiry of the said period the force majeure event shall still continue, the Agreement shall terminate.

20. SEVERABILITY

The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this Agreement shall not affect the validity, legality and enforceability of the remaining part or provisions of this Agreement

21. INTEGRATION/WHOLE AGREEMENT

This Contract and the documents incorporated by Clause 3 constitutes the whole Agreement between the Parties and no additional or different oral representation, promise or agreement shall be binding on any of the parties hereto with respect to the subject matter of this instrument.

22. COUNTERPARTS

This Contract may be executed in three (3) or more counterparts.

IN WITNESS WHEREOFF the Parties hereto have caused this Agreement to be signed in their respective names as of the day and year first above written

FOR: THE CLIENT

FOR: THE CONSULTANT

—

Signed:

Signed:

Title: **Director General**

Title:

WITNESSED BY:

WITNESSED BY:

(v)

SCHEDULES

- iv (i) Schedule 1 – Description of Services
- v (ii) Schedule 2 – Agreed Work Plan and Schedule, Response times
- vi (iii) Schedule 3 – Form of Performance Guarantee
- vii (iv) Schedule 4 – List of Experts
- viii (v) The Invitation to Tender dated xxxx, 2019
- ix (vi) The Consultant’s tender dated xxxx, 2019
- x (vii) The Notification of Award dated xxxxx, 2019
- xi (viii) The Consultant’s acceptance dated xxxx, 2019

(vi)

APPENDICES

APPENDIX A: - THE TERMS OF REFERENCE AND SCOPE OF SERVICE

Give detailed description of the services to be provided, dates, for completion of various tasks, place of performance for different tasks, specific tasks to be approved by Client etc

APPENDIX B: - KEY PERSONNEL AND SUBCONSULTANTS

List under C-1 Titles [and names, if already available], detailed job descriptions and minimum qualifications of Personnel and staff-months for each.

C-2 List of approved sub consultants (if already available); same information with respect to their Personnel as in C-1.

APPENDIX C: - REPORTING OBLIGATIONS

List format, frequency and contents of reports; persons to receive them, dates of submission; etc. if no reports are to be submitted, state here” Not Applicable”.

APPENDIX D: - BREAKDOWN OF CONTRACT PRICE IN LOCAL CURRENCY

List the elements of cost used to arrive at the breakdown of the lump-sum price.

- 1. Monthly rate for Personnel (Key personnel and other personnel)*
- 2. Reimbursable expenditure*

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

APPENDIX E: - SERVICES AND FACILITIES PROVIDED BY THE CLIENT

II. GENERAL CONDITIONS OF CONTRACT

1. GENERAL PROVISIONS

1.1 Definitions

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

- (a) “Applicable Law” means the laws and any other instruments having the force of law in the Republic of Kenya as they may be issued and in force from time to time;
- (b) “Contract” means the Contract signed by the Parties, to which these General Conditions of Contract (GC) are attached together with all the documents listed in Clause 1 of such signed Contract;
- (c) “Contract Price” means the price to be paid for the performance of the Services in accordance with Clause 6 herebelow;
- (d) “Foreign Currency” means any currency other than the Kenya Shilling;
- (e) “GC” means these General Conditions of Contract;
- (f) “Government” means the Government of the Republic of Kenya;
- (g) “Local Currency” means the Kenya Shilling;
- (h) “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 Client under this Contract;
- (i) “Party” means the Client or the Consultant, as the case may be and “Parties” means both of them;

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- (j) “Personnel” means persons hired by the Consultant or by any Subconsultant as employees and assigned to the performance of the Services or any part thereof;

- (k) “SC” means the Special Conditions of Contract by which the GC may be amended or supplemented;
- (l) “Services” means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A; and
- (m) “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 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 Consultant may be taken or executed by the officials specified in the SC.

(viii)

- 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 or 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.

(ix)

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 Client The Client 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 Client 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 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 any thing of value to influence the action of a public official in the selection process or in Contract execution.

(x)

“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 consultants (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 Consultant The Consultant 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 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 Client 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.

(xi)

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 Client and shall at all times support and safeguard the Client's legitimate interests in any dealing with Sub consultants or third parties.

2.4 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 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 Consultant as part of the Services has the responsibility of advising the Client on the procurement of goods, works or services, the Consultant will comply with any applicable

(xii)

procurement guidelines and shall at all times exercise such responsibility in the best interest of the Client. Any discounts or commissions obtained by the Consultant in the exercise of such procurement shall be for the account of the Client.

- 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 Subconsultant 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** Neither the Consultant nor his subconsultant[s] nor their personnel shall engage, either directly or

Conflicting Activities

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 subconsultant[s] and the personnel of either of them shall not, either during the term of this Contract or within two (2) 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 Consultant

The Consultant (a) shall take out and maintain and shall cause any subconsultant[s] to take out and maintain, at his (or the subconsultants', 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.

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3.5 Consultant's Actions Requiring Client's Prior Approval

The Consultant 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 Appendix C ("Key Personnel and Subconsultants").

3.6 Reporting Obligations

The Consultants 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 Consultant to Be

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 Consultant

the Property shall, not later than upon termination or expiration of this **of the Client** Contract, deliver all such documents and software to the Client 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 Appendix C. The Key Personnel and Sub consultants listed by title as well as by name in Appendix 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 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.

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- (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 Consultant 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 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 CLIENT

- 5.1 Assistance and Exemptions** The Client 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 Client shall make available to the Consultant the Services and Facilities listed under Appendix F.

6. PAYMENTS TO THE CONSULTANT

**6.1 Lump-Sum
Remuneration**

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

(xv)

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

6.2 Contract Price

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

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

**6.3 Payment for
Additional
Services**

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

**6.4 Terms and
Conditions of
Payment**

Payments will be made to the account of the Consultant and according to the payment schedule stated in the SC. Unless otherwise stated in the SC, the first payment shall be made against the provision by the Consultant of a bank guarantee for the same amount and shall be valid for the period stated in the SC. Any other payment shall be made after the

conditions listed in the SC for such payment have been met and the Consultant has submitted an invoice to the 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 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.

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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 party.

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III. SPECIAL CONDITIONS OF CONTRACT

Number of GC Clause

Amendments of and Supplements to Clauses in the General Conditions of Contract

1.1(i)

The Member in Charge is: DIRECTOR/HUMAN CAPITAL AND

ADMINISTRATION

1.4 The addresses are:

Client: COMMUNICATIONS AUTHORITY OF KENYA
Attention: DIRECTOR GENERAL
Telephone: 0703-04200
Telex; _____
Facsimile: _____

Consultant: _____
Attention: _____
Telephone; _____
Telex: _____
Facsimile: _____

1.6 The Authorized Representatives are:

For the Client: DIRECTOR/HUMAN CAPITAL AND
For the Consultant: _____

2.1 The date on which this Contract shall come into effect
is(_____) [date].

Note: The date may be specified by reference to conditions of effectiveness of the Contract, such as receipt by Consultants of advance payment and by Client of bank guarantee

2.2 The date for the commencement of Services is _____ [date]

2.3 The period shall be _____ [length of time].

Note: Fill in the period, thirty six (36) months or such other period as the Parties may agree in writing.

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3.4 The risks and coverage shall be:

- (i) Professional Liability _____
- (ii) Loss of or damage to equipment and property _____

6.2(a) The amount in foreign currency or currencies is _____ [Insert amount].

6.2(b) The amount in local Currency is _____ [Insert amount]

6.4 Payments shall be made according to the following schedule:

***Note:** (a) This sample Clause should be specifically drafted for each Contract and the following installments are indicative only; (b) if the payment of foreign currency and of local currency does not follow the same schedule, add a separate schedule for payment in local currency; and (c) if applicable, detail further the nature of the report evidencing performance, as may be required, e.g., submission of study or specific phase of study, survey, drawings, draft bidding documents, etc., as listed in Appendix B, Reporting Requirements. In the example provided, the bank guarantee for the repayment is released when the payments have reached 50 percent of the lump-sum price, because it is assumed that at that point, the advance has been entirely set off against the performance of services.*

- Ten (10) percent of the lump-sum amount shall be paid upon submission of the inception report.
- Twenty-five (25) percent of the lump-sum amount shall be paid upon submission of the interim report.
- Twenty-five (25) percent of the lump-sum amount shall be paid upon submission of the draft final report.
- Forty (40) percent of the lump-sum amount shall be paid upon approval of the final report.
- The bank guarantee shall be released when the total payments reach fifty (50) percent of the lump-sum amount.

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IV. Appendices

APPENDIX A – DESCRIPTION OF THE SERVICES

Give detailed descriptions of the Services to be provided, dates for completion of various tasks, place of performance for different tasks, specific tasks to be approved by Client, etc.

APPENDIX B – REPORTING REQUIREMENTS

List format, frequency, and contents of reports; persons to receive them; dates of submission; etc. If no reports are to be submitted, state here “Not applicable.”

APPENDIX C– KEY PERSONNEL AND SUBCONSULTANTS

- List under:*
- C-1 Titles [and names, if already available], detailed job descriptions and minimum qualifications of Personnel and staff-months for each.*
 - C-2 List of approved Sub consultants (if already available); same information with respect to their Personnel as in C-1.*

APPENDIX D – 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 E – 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.*

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

APPENDIX F – SERVICES AND FACILITIES PROVIDED BY THE CLIENT

CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

You are requested to give the particulars indicated in Part 1 and either Part 2(a), 2(b) or 2 (c) whichever applied to your type of business

You are advised that it is a serious offence to give false information on this form

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

	8. Part 2 (a) – Sole Proprietor
	9. Your name in full Age

	10. Nationality Country of origin

	• Citizenship details

	•																												
11.	Part 2 (b) Partnership																												
	12. Given details of partners as follows:																												
13.	<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 40%;">Name</th> <th style="width: 20%;">Nationality</th> <th style="width: 30%;">Citizenship</th> </tr> <tr> <td></td> <td>Details</td> <td>Shares</td> <td></td> </tr> </thead> <tbody> <tr> <td style="padding-left: 20px;">1.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td style="padding-left: 20px;">2.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td style="padding-left: 20px;">3.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td style="padding-left: 20px;">4.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>		Name	Nationality	Citizenship		Details	Shares		1.	2.	3.	4.				
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20. 1.																										
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25. Date Signature of Candidate

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

LETTER OF NOTIFICATION OF AWARD

Address of Procuring Entity

To: _____

RE: Tender No. _____

Tender Name _____

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

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

(FULL PARTICULARS) _____

SIGNED FOR ACCOUNTING OFFICER

FORM RB 1

**REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

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

BETWEEN

.....APPLICANT

AND

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

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

REQUEST FOR REVIEW

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

- 1.
 - 2.
- etc.

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

- 1.
 - 2.
- etc

SIGNED(Applicant)

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

FOR OFFICIAL USE ONLY

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

SIGNED

Board Secretary