



NATIONAL OIL CORPORATION OF KENYA

REQUEST FOR PROPOSALS (RFP)

**PROVISION OF CONSULTANCY SERVICES FOR DESIGN,
REHABILITATION, CONSTRUCTION AND SUPERVISION OF
NATIONAL OIL SERVICE STATIONS**

TENDER NO.NOCK/PRC/03 (1321)2017-2018

**NATIONAL OIL CORPORATION OF KENYA
KAWI HOUSE, SOUTH C
RED CROSS ROAD, OFF POPO ROAD
P.O. BOX 58567 – 00200
NAIROBI**

Email: tenders@nockenya.co.ke

November, 2017

Tender Closing Date & Time: 7th December 2017 at 1000hrs (East African Time)

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SECTION I - LETTER OF INVITATION

TO: (Name and Address of Consultants)

Date SEPT 2017

Dear Sir/Madam,

RE: PROVISION OF CONSULTANCY SERVICES FOR DESIGN, REHABILITATION, CONSTRUCTION AND SUPERVISION OF NATIONAL OIL SERVICE STATIONS

- 1.1** National Oil Corporation of Kenya (**National Oil**) invites sealed tenders from interested and eligible candidates for **Provision of Consultancy Services for Design, Rehabilitation, Construction and Supervision of National Oil Service Stations.**
- 1.2** The request for proposals (RFP) includes the following documents:
- Section I - Letter of invitation
 - Section II - Information to consultants
Appendix to Consultants information
 - Section III - Terms of Reference
 - Section IV - Technical proposals
 - Section V - Financial proposal
 - Section VI - Standard Contract Form
- 1.3** Upon receipt, please inform us
- (a) that you have received the letter of invitation
 - (b) whether or not you will submit a proposal for the assignment
- 1.4** The complete Request for Proposal (RFP) document is downloaded from the National Oil Corporation website www.nationaloil.co.ke free of charge. Bidders who download the tender document from the website MUST register the names and contact details of their firms on the email tenders@nockenya.co.ke for record and any further clarifications and addenda. Printed tender documents collected in hard copy attracts a non-refundable fee of Kenya Shillings one thousand only (KShs 1,000) which is payable before the tender closing date and time, in form of cash deposits at the National Oil Bank Accounts as given below.

(a)	Account Name:	NATIONAL OIL CORPORATION OF KENYA
	Account Number:	1107169380
	Bank:	KENYA COMMERCIAL BANK LTD
	Branch:	MOI AVENUE
(b)	Account Name:	NATIONAL OIL CORPORATION OF KENYA
	Account Number:	0560292466991
	Bank:	EQUITY BANK LIMITED
	Branch:	KENPIPE INDUSTRIAL AREA
	Swift Code:	EQBLKENA NAIROBI, KENYA

An official National Oil's receipt of payment of the Kshs 1,000 will be issued at the National Oil's Cashier's Office (upon verification of the deposit slip with the bank) on 1st Floor Kawi House, South C, Red Cross Road off Popo Road, Nairobi. The deposit slip must bear the name of the bidding firm/company.

1.5 Prices quoted shall be inclusive of any applicable taxes and shall remain valid for 120 days from the closing date of the tender.

Interested bidders shall be required to submit their tender documents in two (2) sealed envelopes enclosed in a larger outer envelope clearly labeled

“REQUEST FOR PROPOSALS (RFP) FOR PROVISION OF CONSULTANCY SERVICES FOR DESIGN, REHABILITATION, CONSTRUCTION AND SUPERVISION OF NATIONAL OIL SERVICE STATIONS”– Tender Reference No. NOCK/PRC/03(1321)2017-2018” with the instructions “Do not open before 7th December 2017 at 1000hrs (East Africa Time)” as below:

a) *Envelope 1 – Preliminary and Technical Proposal*

Labeled: **“Preliminary and Technical Proposal for PROVISION OF CONSULTANCY SERVICES FOR DESIGN, REHABILITATION, CONSTRUCTION AND SUPERVISION OF NATIONAL OIL SERVICE STATIONS – Tender Reference No. NOCK/PRC/03(1321)2017-2018”**

This shall contain the tenderer’s Preliminary and technical proposal in response to the tender that will be evaluated as per the technical evaluation criteria summarized in Section 2 – Instructions to Tenderers.

The documents clearly labeled **“Preliminary and Technical Proposal for “PROVISION OF CONSULTANCY SERVICES FOR DESIGN, REHABILITATION, CONSTRUCTION AND SUPERVISION OF NATIONAL OIL SERVICE STATIONS” – Tender Reference No. NOCK/PRC/03(1275)2017-2018”** shall be submitted as one (1) ORIGINAL which shall be clearly marked “ORIGINAL” as appropriate and one (1) “COPY” which shall be clearly marked as such.

NOTE: The Preliminary and technical proposal shall not contain any financial proposal (envelope 2). Where it contains documentation meant for envelope 2 (financial proposal), this shall lead to the tenderer being disqualified from the tendering process.

b) *Envelope 2 – Financial Proposal*

Labeled: **“Financial Proposal for PROVISION OF CONSULTANCY SERVICES FOR DESIGN, REHABILITATION, CONSTRUCTION AND SUPERVISION OF NATIONAL OIL SERVICE STATIONS – Tender Reference No. NOCK/PRC/03(1321)2017-2018”**

This shall contain the tenderer’s financial proposal and duly filled Form of Tender. The Financial proposal, signed, stamped, properly bound and clearly labeled **“Financial Proposal - PROVISION OF CONSULTANCY SERVICES FOR DESIGN, REHABILITATION, CONSTRUCTION AND SUPERVISION OF NATIONAL OIL SERVICE STATIONS – Tender Reference No. NOCK/PRC/03(1321)2017-2018”** shall be submitted as one (1) ORIGINAL which shall be clearly marked “ORIGINAL” as appropriate and one (1) “COPY” which shall be clearly marked as such.

- 1.6** Completed RFP documents are to be enclosed in plain sealed envelopes marked with the tender reference number and addressed to

**Chief Executive Officer
National Oil Corporation – Kawi House, South C,
Red Cross Road off Popo Road
P.O Box 58567 – 00200, NAIROBI**

and deposited in the Tender Box provided at:

**National Oil Corporation – 1st Floor Kawi House Complex, South C,
Red Cross Road, off Popo Road
P.O Box 58567 – 00200, NAIROBI**

So as to be received on or before **7th December 2017 at 1000hrs (East Africa Time)**.

- 1.7** Bulky tenders that do not fit into the tender box should be deposited at the Reception Desk located on 2nd Floor, Kawi House Complex **on or before 7th December 2017 1000hrs (East African Time)**

- 1.8** Tenders will be opened immediately thereafter in the presence of the Candidates or their representatives who choose to attend at:

**National Oil Corporation of Kenya:
The Meeting Room
Red Cross Road off Popo Road
NAIROBI**

CHIEF EXECUTIVE OFFICER

SECTION II – INFORMATION TO CONSULTANTS (ITC)

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SECTION II: - INFORMATION TO CONSULTANTS (ITC)

2.1 Introduction

- 2.1.1 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.
- 2.1.2 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.
- 2.1.3 The consultants must familiarize themselves with local conditions and take them into account in preparing their proposals. To obtain firsthand 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.
- 2.1.4 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.
- 2.1.5 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.
- 2.1.6 The procuring entity’s employees, committee members, board members and their relative (spouse and children) are not eligible to participate.
- 2.1.7 The price to be charged for the tender document shall not exceed Kshs.1,000.00
- 2.1.8 The procuring entity shall allow the tenderer to review the tender document free of charge before purchase.

2.2 Clarification and Amendment of RFP Documents

- 2.2.1 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.

2.2.2 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

2.3.1 The Consultants proposal shall be written in English language

2.3.2 In preparing the Technical Proposal, consultants are expected to examine the documents constituting this RFP in detail. Material deficiencies in providing the information requested may result in rejection of a proposal.

2.3.3 While preparing the Technical Proposal, consultants must give particular attention to the following:

- (i) If a firm considers that it does not have all the expertise for the assignment, it may obtain a full range of expertise by associating with individual consultant(s) and/or other firms or entities in a joint venture or sub-consultancy as appropriate. 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.

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

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

2.3.5 The Technical Proposal shall not include any financial information.

2.4 Preparation of Financial Proposal

- 2.4.1 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.
- 2.4.2 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.
- 2.4.3 Consultants shall express the price of their services in Kenya Shillings.
- 2.4.4 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.
- 2.4.5 The Proposal must remain valid for 60 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

- 2.5.1 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 authorized to sign the proposals.
- 2.5.2 For each proposal, the consultants shall prepare the number of copies indicated in Appendix "A". Each Technical Proposal and Financial Proposal shall be marked "**ORIGINAL**" or "**COPY**" as appropriate. If there are any discrepancies between the original and the copies of the proposal, the original shall govern.
- 2.5.3 The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked "**TECHNICAL PROPOSAL**" and the original and all copies of the Financial Proposal in a sealed envelope 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.**"
- 2.5.4 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. Bidders are advised that there will be a mandatory Pre proposal conference on 30th November 2017 (Thursday) at 12:00 noon (**East Africa Time**). **The Venue for the Pre Proposal Conference will be at the Meeting Room, 2nd Floor, National Oil Corporation of Kenya Kawi House Complex, South C.**
- 2.5.5 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**
- 2.6.1 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.
- 2.6.2 Evaluators of Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded.
- 2.7 **Evaluation of Technical Proposal**
- 2.7.1 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. 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".

2.8 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.
- 2.8.2 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.
- 2.8.3 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.
- 2.8.4 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.
- 2.8.5 The formulae for determining the Financial Score (S_f) shall, unless an alternative formulae is indicated in the Appendix "ITC", be as follows:-
 $S_f = 100 \times \frac{F_m}{F}$ 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. 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 invited for negotiations.
- 2.8.6 The tender evaluation committee shall evaluate the tender within 30 days of from the date of opening the tender.
- 2.8.7 Contract price variations shall not be allowed for contracts not exceeding one year (12 months).
- 2.8.8 Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price
- 2.8.9 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.

2.9 Negotiations

- 2.9.1 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.
- 2.9.2 Negotiations will include a discussion of the Technical Proposal, the proposed methodology (work plan), staffing and any suggestions made by the firm to improve the Terms of Reference. The 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.
- 2.9.3 Unless there are exceptional reasons, the financial negotiations will not involve the remuneration rates for staff (no breakdown of fees).
- 2.9.4 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.
- 2.9.5 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.
- 2.9.6 The procuring entity shall appoint a team for the purpose of the negotiations.

2.10 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:
- (a) Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.
 - (b) Legal capacity to enter into a contract for procurement
 - (c) 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.
 - (d) Shall not be debarred from participating in public procurement.

2.11 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.

2.12 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

1. 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.
2. 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.
3. In preparing the appendix the following aspects should be taken into consideration.
 - (a) The information that specifies or complements provisions of Section II to be incorporated.
 - (b) Amendments of Section II as necessitated by the circumstances of the specific consultancy to be also incorporated
 - (c) 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.

Reference	Appendix Information
2.1	The name of the Client is: National Oil Corporation of Kenya
2.1.1	The method of selection is Quality and Cost Based Selection (QCBS)
2.1.2	Technical and Financial Proposals are requested: Yes The name, objectives, and description of the assignment are as given in the Terms of Reference
2.1.3	The name(s), address(es) and telephone numbers of the Client's official(s) are: Chief Executive Officer National Oil Corporation of Kenya Kawi House, South C Behind Boma Hotel P.O Box 58567 – 00200 NAIROBI

2.1.4	The Client will provide the following inputs: NOC will provide the following to support seamless provision of the services to successful bidder: <ul style="list-style-type: none"> • Access to necessary facilities • Any material necessary for the performance of the assignment
2.1.5 (ii)	The estimated number of professional staff months required for the assignment is (TBA)
2.1.5 (iv)	The minimum required experience of proposed professional staff is: see evaluation criteria
2.1.6	Training is a specific component of this assignment: No
2.1.6 (vii)	Additional information in the Technical Proposal includes: Non
2.1.7	Taxes: Bidders must quote inclusive of all applicable taxes
2.5.2	Consultants must submit an original and one additional copies of each proposal.
2.5.3	The proposal submission address is: Chief Executive Officer National Oil Corporation of Kenya Kawi House, South C Behind Boma Hotel P.O Box 58567 – 00200 NAIROBI Information on the outer envelope should also include: “PROVISION OF CONSULTANCY SERVICES FOR DESIGN, REHABILITATION, CONSTRUCTION AND SUPERVISION OF NATIONAL OIL SERVICE STATIONS: TENDER NO. NOCK/PRC/03/ (1321)2017-2018”
2.5.4	There will be a mandatory Pre proposal conference on 30 th November 2017 (Thursday) at 12:00 noon (East Africa Time) The Venue for the Pre Proposal Conference will be at the Meeting Room , 2nd Floor, National Oil Corporation of Kenya Kawi House Complex, South C .
2.5.5	Proposals must be submitted no later than the following date and time: 7th December 2017 at 1000hrs East Africa Time
2.6.1	The address to send information to the Client is tenders@nockkenya.co.ke
2.6.3	The minimum technical score required to pass is 80points
2.7.1	The formulae for determining the financial scores is the following $S_f = 100 \times \frac{F_m}{F}$ 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

	<p>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.</p> <p>The weights given to the Technical and Financial Proposals are:</p> <p style="text-align: center;">T=80 P=20</p>			
2.9.2	The assignment is expected to commence on: Date and location to be advised to the successful bidder			
2.12	<p>Corrupt and fraudulent practices</p> <p>It is a requirement that both National Oil and prospective suppliers of goods, services and works observe the highest standards of ethics during the procurement and execution of contracts.</p> <p>In pursuance of this policy, National Oil requires that all bidders concerned take measures to ensure that no transfer of gifts, payments or other benefits to officials of National Oil and/or procurement/management staff with decision making responsibility or influence occurs. In this regard, National Oil will require all tenderers to sign, as part of the tender documents, an Integrity Pact (Section VI – Standard forms). Non-delivery of the Bidders Declaration and Integrity Pact (Section VI – Standard forms) duly undersigned by the chief executive or legal representative of the tendering party will result in exclusion of the bid/ quotation from the procurement process.</p> <p>National Oil reserves the right to suspend or cancel a tender/quotation if corrupt practices of any kind are discovered at any stage of the award process.</p>			
2.7	<p>EVALUATION CRITERIA.</p> <p>Particulars of interested eligible tenderers</p> <p><i>The tenderer shall provide the following mandatory requirements which shall be used for the preliminary evaluation (failure to submit the mandatory requirements will lead to disqualification from the tender process).</i></p> <p>The Lead Consultant Firm only must provide the following documents:</p> <table border="1" data-bbox="727 1823 1513 1944"> <tr> <td data-bbox="727 1823 820 1944">MR1</td> <td data-bbox="820 1823 1417 1944">Provide a copy of the firms' Certificate of registration or Incorporation by the Registrar of Companies</td> <td data-bbox="1417 1823 1513 1944"></td> </tr> </table>	MR1	Provide a copy of the firms' Certificate of registration or Incorporation by the Registrar of Companies	
MR1	Provide a copy of the firms' Certificate of registration or Incorporation by the Registrar of Companies			

MR2	Provide copy of current practicing license from a recognized professional body for the company or the principals	
MR3	Provide copy of the current Certificate of Tax Compliance issued by Kenya Revenue Authority (KRA).	
MR4	Provide a valid copy of professional indemnity cover of at least KShs.0.5m	
MR5	Submit a completed company's profile	
MR6	Submit a list of names, CVs and professional certificates of the following consultants: a) Architect- as lead consultant, project manager and architect b) Quantity surveyor c) Services engineers- Electrical and Mechanical Engineers d) Civil and Structural Engineers	
MR7	Provide a complete financial proposal as per section	
MR8	Duly filled Confidential Business Questionnaire.	
MR8	Duly filled Bidder's Declaration and Integrity Pact (Page 67-69 of tender document)	

TECHNICAL EVALUATION CRITERIA

No.	Evaluation Attribute	Max Score %	Weight
1.	Age of the Company since it was registered evidenced by certificate of registration. Scoring: Each year to score 3 marks, 4 years and above to get full score	5	
2.	Technical Capability to undertake the project: (a) Partners/Directors: Give details of names, qualifications, experience, registration and certificate number of the principal partners and	5	

	<p>other academic certificates (at least 2 partners for full marks)</p> <p>(b) Personnel: Give details of names, qualifications, experience and registration certificates and other academic certificates of key professional and technical personnel in the organization (full score for each required skills set provided -Architect, Structural Engineer, Building services, Quantity Surveyor)</p> <p>(c) Other support personnel: Give details of names, qualifications, experience and relevant information of the other employed personnel and sub-professionals who will be involved in the project (administrator, secretary, driver -3 marks, one mark each, additional others 2 marks)</p>	<p>10</p> <p>5</p>	
	<p>3. Equipment and tools</p> <p>Bidding firm to demonstrate their tools and equipment as part of technical capacity (design , analysis, drawing software, computers and related, pen plotters, full score)</p>	<p>5</p>	
	<p>4. Firms Experience</p> <p>Firms Experience in any projects and Clients indicating Past performance each worth Kshs.10million and above in the last 3 years. (Each project over 10m- 2 marks)</p>	<p>10</p>	
	<p>5. Audited Accounts:</p> <p>Attach copies of audited accounts for your organization /firm for the past one year to date duly certified by a CPA Auditor.</p> <p>Scoring based on evaluation of the above accounts:</p> <p>Annual turnover for the year</p> <ul style="list-style-type: none"> • KShs.50 Million and above get 5 marks • Below Kshs. 50 million get 2 Marks 	<p>5</p>	

	SUBTOTAL for Technical Evaluation Part 1:	45	
Stage 2: Methodology and Design Criteria (55 Marks)			
	Aspect	Max. Score	
A	GENERAL METHODOLOGY General methodology	15	
B	EVIDENCE OF UNDERSTANDING THE GENERAL SCOPE OF WORK I. Comments on the Proposed works II. Specific methodology by the consultant (To include statement of critical success factors for this kind of project and areas of concern. Give examples and illustrations to demonstrate.)	10 10	
C	QUALITY ASSURANCE AND CRITICAL PATH ANALYSIS Marks to be awarded on evidence presented.	10	
D	RISK ANALYSIS Step by step Risk Identification and Analysis	10	
Total Score (Part 2)		55	
(Total Score for Stage 1 and Stage 2) above = 100%			
Summary of evaluation stage			
Stage	Description	Max score	
Stage 1	Adequacy of Resource Outlay	45	
Stage 2	Methodology and Design Criteria	55	
	Total score (Technical Evaluation)	100	

SECTION III: - TECHNICAL PROPOSAL

Notes on the preparation of the Technical Proposals

- 3.1 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.
- 3.2 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.
- 3.3 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

Table of Contents

1. Technical proposal submission form
2. Firms references
3. Comments and suggestions of consultants on the Terms of reference and on data, services and facilities to be provided by the procuring entity
4. Description of the methodology and work plan for performing the assignment
5. Team composition and Task assignments
6. Format of curriculum vitae (CV) for proposed Professional staff
7. Time schedule for professional personnel
8. Activity (work schedule)

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; _____

(May be amended as necessary)

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.

14. 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	
4. 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

- 4.1 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.
- 4.2 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.
- 4.3 The financial proposal should be prepared using the Standard forms provided in this part

SECTION IV - FINANCIAL PROPOSAL STANDARD FORMS

Table of Contents

1. Financial proposal submission Form
2. Summary of costs
3. Breakdown of price/per activity
4. Breakdown of remuneration per activity
5. Reimbursable per activity
6. Miscellaneous expenses

A. GENERAL REMARKS

- i. **The Financial Proposal prepared and submitted by the firm shall contain the following:**
 - (a) Submission letter indicating the preferred fee structure and the basis or legal framework upon which the fee structure is derived;
 - (b) Detailed rates or percentage of Reimbursable Expenses payable to the firm;
 - (c) Any miscellaneous expenses for the firm;
 - (d) Any discount to be offered in the provision of the services (Please state).
- ii. The option selected will be the basis for the fees and consultancy contract that will be entered into by the parties;
- iii. There will be no scores awarded on the Financial Proposals.

B. OPTIONS FOR SUBMISSION OF FINANCIAL PROPOSAL

1. OPTION 1: FIXED CONTRACT OR LUMPSUM COST

	KShs
Stage 1	
Stage 2	
TOTAL	

2. OPTION 2: FEE BASED ON STANDARD SCALE

The firms are required to submit together with their technical proposals the structure of consultancy fees chargeable for the entire consultancy services indicating the basis or legal framework applied (such as the Architects and Quantity Surveyors Act; CAP 525 or Ministry of Public Works Conditions of Engagement and Scales of Fees for Professional Services for Building and Civil Works or Engineers Board of Kenya EBK Scale of Fees and Conditions of Engagement, or any other please state).

3. OPTION 3: TIME CHARGES

Fees based on time charges for the staff actually employed on the project and includes all related expenses such as overheads, travelling expenses and time, accommodation and subsistence costs, lithography/documentation costs, profit and all other indirect costs.

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 (_____) *[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		_____

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 Terms of Reference are the initial statement to the consultant of the services to be performed and should therefore be clear and precise and should contain the following sections:

- (a) Background,
- (b) Objectives of the assignment,
- (c) Scope of the Services,
- (d) Training (where appropriate),
- (e) Reports and Time Schedule,
- (f) Data Services, Personnel and Facilities to be provided by the Client, and
- (g) Terms of Payment.

5.2 This Section should be prepared very carefully by the procuring entity to ensure that the consultancy assignment is well understood by the consultants.

TERMS OF REFERENCE

BACKGROUND

National Oil Corporation of Kenya (National Oil) is a company wholly owned by the Government of Kenya and charged with the mandate to participate in all aspects of the petroleum business value chain. National Oil currently operates an exploration block, vibrant downstream petroleum retailing and a midstream storage and petroleum distribution business.

1. INTRODUCTION

National Oil Corporation is seeking to procure an Architect who will be the Lead Consultant and Project Manager for rehabilitation, renovations, construction of new retail centers, branding and civil maintenance of Retail Stations across its nationwide network. The professional services shall be for a duration to be agreed with the Client.

The following consultants must be presented by the Architect as part of his team during this tender stage:

- a) Architect- as lead consultant, project manager and architect
- b) Quantity Surveyor
- c) Services Engineers- Electrical and Mechanical Engineers
- d) Civil and Structural Engineers

It will be the responsibility of the Lead Consultant to coordinate, supervise and remunerate his consultants. The Lead Consultant must ensure that the fee proposal presented in this tender is adequate to cater for all the consultants.

2. SCOPE OF WORK & GENERAL REQUIREMENTS

Specific Roles for the team

a) Site Survey, Design and Documentation

- i. Review of the proposed works as will be provided in readiness to discuss further with the Client where necessary, so as to ensure proper understanding of the requirements.
- ii. Study and verify on site the survey plans, existing site drawings and undertake a full reconnaissance of the site.
- iii. Check with the relevant authorities (fire department, roads, water, electricity, solid waste, if applicable sewer) on position and capacity and on planned near-future developments.
- iv. Ensure, throughout the implementation of project works comprising rehabilitation and construction of new buildings, that all stages comply fully with prevailing laws and regulations pertaining to buildings, construction, fire, safety, health, urban and environmental planning matters. Facilitate obtaining of the required permits or assist the School in this respect.
- v. Review the existing facilities and prepare a comprehensive “as- is condition” report of the facilities as may be required by the Client.
- vi. Undertake and prepare an updated master plan of the stations as may be required by the Client. Prepare architectural drawings covering floor plans, sections and elevations, as well as detailed working drawings and schedules (doors, windows and finishes schedules).
- vii. Undertake the structural analysis and design so as to prepare structural drawings comprising general arrangement layouts, sections, elevations, details and bar bending schedules.
- viii. Undertake design of the electrical, mechanical and solar installations and prepare drawings to suit i.e. site plans, facility specific drawings, details and schedules with capacity calculations as required. These should cover solar installations.
- ix. Undertake design of the wastewater and storm water disposal system within and prepare sewer/drainage site plans and drawings.
- x. Prepare external work layout plans and details for walkways and related ancillary features;
- xi. Prepare the Bills of Quantities for the full scope of works;

- xii. Prepare confidential cost estimates for new buildings construction as well as the rehabilitation works, based on a priced Bills of Quantities.
- xiii. Prepare draft bidding documents for the proposed works.
- xiv. Assisting the corporation in the bidding process and in particular with the pre-bid conference, the evaluation of bids, and the award of contracts for new buildings, renovation and rehabilitation works and furniture and equipment(goods) supply where applicable
- xv. Upon identification of the contractor(s), the consultant would assist in contract management and site supervision. These would include giving possession of sites to contractors, coordinating, performing site meetings, compiling monthly progress reports on the basis of weekly summary supervision reports, issuing (after approval by the Client) Architects instructions for remedial/condemning works, or additional/less works, or extension of time.
- xvi. Undertaking valuations and preparing payment certificates.
- xvii. Facilitating provisional handover (in the presence of the Client representatives), preparing snag lists, making good defects and performing final handing over. This would also involve preparing final accounts, as-built drawings and compiling operation and maintenance manuals for facilities and installations.
- xviii. Prepare draft bidding documents for the proposed work.
- xix. Prepare and review contracts and related documentation for smooth execution of the work.

(b) Supervision of works

- xx. Ensure throughout the implementation of project works, that all stages comply with prevailing laws and regulations pertaining to buildings, construction, fire, safety, health, urban and environmental planning matters. Facilitate obtaining of the required permits.
- xxi. Co-ordinate all contractors/service providers involved in the works for smooth implementation and supervise the implementation of work to ensure high standards are achieved, from start to completion and handing over.
- xxii. Advise on various stages of completion and payments properly due for settlement by the client as work progresses.

SECTION VI: STANDARD FORMS OF CONTRACT

- a. ANNEX I – LARGE ASSIGNMENTS (LUMP-SUM PAYMENTS)
- b. ANNEX II – LARGE AND SMALL ASSIGNMENTS (TIME -BASED PAYMENTS)
- c. ANNEX III – SMALL ASSIGNMENTS (LUMP-SUM PAYMENTS)

NOTES

- 1. LARGE ASSIGNMENT _____ Exceeding Ksh 5,000,000
- 2. SMALL ASSIGNMENT _____ Not exceeding Ksh. 5,000,000
- 3. TIME BASED PAYMENT ___ Time based fixed fee Exact duration of contract not fixed
- 4. LUMP-SUM PAYMENT _____ Stated fixed contract sum.

**ANNEX I
STANDARD FORM OF CONTRACT**

FOR

CONSULTING SERVICES

**Large Assignments
(Lump- Sum payment)**

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Special Notes

1. 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

Large Assignments (Lump-Sum Payments)

between

[name of the Client]

AND

[name of the Consultant]

Dated: _____ *[date]*

(iv)

I. FORM OF CONTRACT

Large Assignments (Lump-Sum Payments)

This Agreement (hereinafter called the "Contract") is made the _____ day of the month of _____ [month], [year], between _____, [name of client] of [or whose registered office is situated at] _____ [location of office] (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

- (a) the Client has requested the Consultant to provide certain consulting services as defined in the General Conditions of Contract attached to this Contract (hereinafter called the "Services");
- (b) the Consultant, having presented to the Client that he has the required professional skills and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract;

NOW THEREFORE the Parties hereto hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:
 - (a) The General Conditions of Contract;
 - (b) The Special Conditions of Contract;
 - (c) The following Appendices: [*Note: If any of these Appendices are not used, they should be deleted from the list*]
 - Appendix A: Description of the Services
 - Appendix B: Reporting Requirements
 - Appendix C: Key Personnel and Sub consultants
 - Appendix D: Breakdown of Contract Price in Foreign Currency
 - Appendix E: Breakdown of Contract Price in Local Currency
 - Appendix F: Services and Facilities Provided by the Client

(v)

2. The mutual rights and obligations of the Client and the Consultants shall be as set forth in the Contract; in particular:
- (a) The Consultant shall carry out the Services in accordance with the provisions of the Contract; and
 - (b) the Client shall make payments to the Consultant in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf of _____ *[name of client]*

[full name of Client's authorised representative] _____ *of* _____ *Client's*

[title] _____

[signature] _____

[date] _____

For and on behalf of _____ *[name of consultant]*

[full name of Consultant's authorized representative] _____

[title] _____

[signature] _____

[date] _____

(vi)

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;
- (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;

(vii)

- (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.

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

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

2.3 Expiration of Unless terminated earlier pursuant to Clause 2.6, this

Contract	Contract shall terminate at the end of such time period, after the Effective Date, as is specified in the SC.
2.4 Modification	Modification of the terms and Conditions of this Contract, including any modification of the scope of the Services or the Contract Price, may only be made by written agreement between the Parties.
2.5 Force Majeure	
2.5.1 Definition	For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party and which makes a Party’s performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.
2.5.2 No Breach of Contract	The failure of a Party to fulfill any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.
2.5.3 Extension Of Time	Any period within which a Party shall, pursuant to this Contract complete any action or task shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.
2.5.4 Payments	During the period of his inability to perform the Services as a result of an event of Force Majeure, the Consultant shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by him during such period for the purposes of the Services and in reactivating the Service after the end of such period.
2.6 Termination	
2.6.1 By the 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; <ul style="list-style-type: none"> (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.

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.

1.2 Conflict of Interests

- 3.2.1 Consultant** (i) The remuneration of the Consultant pursuant to **Not to Benefit from Commissions, Discounts, Etc.** 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 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 Conflicting Activities** Neither the Consultant nor his subconsultant[s] nor their personnel shall engage, either directly or indirectly in any of the following activities:
- (a) during the term of this Contract, any business or professional activities in the Republic of Kenya which would conflict with the activities assigned to them under this Contract; or
 - (b) after the termination of this Contract, such other activities as may be specified in the SC.
- 3.3 Confidentiality** The Consultant, his 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 sub consultant[s] to take out and maintain, at his (or the sub consultants', as the case may be) own cost but on terms and conditions approved by the Client, insurance against the risks and for the coverage, as shall be specified in the SC; and (b) at the Client's request, shall provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums have been paid.
- 3.5 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 Sub consultants").
- 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 the Property of the Client

All plans, drawings, specifications, designs, reports and other documents and software submitted by the Consultant in accordance with Clause 3.6 shall become and remain the property of the Client and the Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Client together with a detailed inventory thereof. The 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
- (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, Sub consultants' costs, printing, communications, travel, accommodation and the like and all other costs incurred by the Consultant in carrying out the

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

6.2 Contract Price

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

**6.3 Payment for
Additional
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 shall be made within thirty (30) days of receipt of invoice and the relevant documents

Payment

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.

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.

III. SPECIAL CONDITIONS OF CONTRACT

Number of GC Clause	Amendments of and Supplements to Clauses in the General Conditions of Contract
---------------------	--

1.1(i) <i>Member]</i>	The Member in Charge is _____ <i>[name of</i>
--------------------------	---

1.4	The addresses are: Client: _____ Attention: _____ Telephone: _____ Telex; _____ Facsimile: _____ Consultant: _____ Attention: _____ Telephone; _____ Telex: _____ Facsimile: _____
-----	--

1.6	The Authorized Representatives are: For the Client: _____ For the Consultant: _____
-----	---

2.1	The date on which this Contract shall come into effect is (_____) <i>[date]</i> . <i>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</i>
-----	--

2.2	The date for the commencement of Services is _____ <i>[date]</i>
-----	--

2.3	The period shall be _____ <i>[length of time]</i> . <i>Note: Fill in the period, eg, twenty-four (24) months or such other period as the Parties may agree in writing.</i>
-----	---

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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:

The payments will be done promptly, within 30 days after receipt of invoice at National Oil and confirmation of satisfactory receipt of services

- Ten (10) percent of the Contract Price shall be paid on the commencement date against the submission of a bank guarantee for the same.
- 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.
- Thirty (30) percent of the lump-sum amount shall be paid upon Management approval of the final report.
- The bank guarantee shall be released when the total payments reach fifty (50) percent of the lump-sum amount.

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

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ANNEX II

**SAMPLE CONTRACT FOR CONSULTING
SERVICES**

**LARGE ASSIGNMENTS
AND
Small Assignments**

Time-Based Payments

**SAMPLE CONTRACT FOR CONSULTING SEVICES
SMALL ASSIGNMENTS
TIME-BASED PAYMENTS**

CONTRACT

This Agreement [hereinafter called “the Contract”) is entered into this _____ [Insert starting date of assignment], by _____ and _____ between

_____ [Insert Client’s name] of [or whose registered office is situated at] _____ [insert Client’s address] (hereinafter called “the Client”) of the one part AND

_____ [Insert Consultant’s name] of [or whose registered office is situated at] _____ [insert Consultant’s address] (hereinafter called “the Consultant”) of the other part.

WHEREAS, the Client wishes to have the Consultant perform the Services [hereinafter referred to as “the Services”, and

WHEREAS, the Consultant is willing to perform the said Services,

NOW THEREFORE THE PARTIES hereby agree as follows:

- 1. Services**
- (i) The Consultant shall perform the Services specified in Appendix A, “Terms of Reference and Scope of Services,” which is made an integral part of this Contract.
 - (ii) The Consultant shall provide the reports listed in Appendix B, “Consultant’s Reporting Obligations,” within the time periods listed in such Appendix and the personnel listed in Appendix C, “Cost Estimate of Services, List of Personnel and Schedule of Rates” to perform the Services.

2. Term The Consultant shall perform the Services during the period commencing _____ [Insert start date] and continuing through to _____ [Insert completion date] or any other period(s) as may be subsequently agreed by the parties in writing.

3. Payment A. Ceiling

For Services rendered pursuant to Appendix A, the Client shall pay the Consultant an amount not to exceed a ceiling of _____ [Insert ceiling amount]. This amount has been established based on the understanding that it includes all of the Consultant’s costs and profits as

(i)

well as any tax obligation that may be imposed on the Consultant. The payments made under the Contract

consist of the Consultant's remuneration as defined in sub-paragraph (B) below and of the reimbursable expenditures as defined in sub-paragraph (C) below.

B. Remuneration

The Client shall pay the Consultant for Services rendered at the rate(s) per man/month spent (or per day spent or per hour spent, subject to a maximum of eight hours per day) in accordance with the rates agreed and specified in Appendix C, "Cost Estimate of Services, List of Personnel and Schedule of Rates".

C. Reimbursable

The Client shall pay the Consultant for reimbursable expenses which shall consist of and be limited to:

- (i) normal and customary expenditures for official road and air travel, accommodation, printing and telephone charges; air travel will be reimbursed at the cost of less than first class travel and will need to be authorized by the Client's coordinator;
- (ii) such other expenses as approved in advance by the Client's coordinator.

D. Payment Conditions.

Payment shall be made in Kenya shillings unless otherwise specified not later than thirty {30} days following submission of invoices in duplicate to the Coordinator designated in Clause 4 here below. If the Client has delayed payments beyond thirty (30) days after the 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.

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

4. Project Administration

A. Coordinator

The Client designates _____
[Insert name] as Client's Coordinator; the Coordinator shall be responsible for the coordination of activities under the Contract, for receiving and approving invoices for payment and for acceptance of the deliverables by the Client.

B. Timesheets.

During the course of their work under this Contract, including field work, the Consultant's employees

providing services under this Contract may be required to complete timesheets or any other document used to identify time spent as well as expenses incurred, as instructed by the Project Coordinator.

C. Records and Accounts

The Consultant shall keep accurate and systematic records and accounts in respect of the Services which will clearly identify all charges and expenses. The Client reserves the right to audit or to nominate a reputable accounting firm to audit the Consultant's records relating to amounts claimed under this Contract during its term and any extension and for a period of three months thereafter.

5. Performance Standard

The Consultant undertakes to perform the Services with the highest standards of professional and ethical competence and integrity. The Consultant shall promptly replace any employees assigned under this Contract that the Client considers unsatisfactory.

6. Confidentiality

The Consultant shall not, during the term of this Contract and within two years after its expiration, disclose any proprietary or confidential information relating to the Services, this Contract or the Client's business or operations without the prior written consent of the Client.

7. Ownership of Material

Any studies, reports or other material, graphic, software or otherwise prepared by the Consultant for the Client under the Contract shall belong to and remain the property of the Client. The Consultant may retain a copy of such documents and software.

8. Consultant Not to be Engaged in certain Activities

The Consultant agrees that during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant shall be disqualified from providing goods, works or services (other than the Services or any continuation thereof) for any project resulting from or closely related to the Services.

9. Insurance

The Consultant will be responsible for taking out any appropriate insurance coverage.

10. Assignment

The Consultant shall not assign this Contract or Subcontract any portion thereof without the Client's prior written consent.

11. Law Governing Contract and Language

The Contract shall be governed by the Laws of Kenya and the language of the Contract shall be English Language.

12. Dispute Resolution

Any dispute arising out of this Contract which cannot be amicably settled between the parties, shall 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.

FOR THE CLIENT FOR THE CONSULTANT

Full name; _____	Fullname

Title: _____	Title:

Signature; _____	Signature; _____
Date; _____	Date; _____

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LIST OF APPENDICES

Appendix A: Terms of Reference and Scope of Services

Appendix B: Consultant's Reporting Obligation

Appendix C: Cost Estimate of Services, List of Personnel and Schedule of Rates

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APPENDIX C

Cost Estimate of Services, List of Personnel and Schedule of Rates.

(1) Remuneration of Staff

	Name	Rate (per month/day/hour in currency)	Time spent(numberof month/day/ hour)	Total (currency)
(a)	Team Leader			
(b)				
(c)				
				Sub-Total (1)

(2) Reimbursables

	Rate	Days	Total
(a)	Air Travel		
(b)	Road Transportation		
(c)	Per Diem		
			Sub-Total (2)

TOTAL COST _____

Physical Contingency _____

CONTRACT CEILING _____

(vi)

ANNEX III

SAMPLE CONTRACT FOR CONSULTING SERVICES

Small Assignments

Lump-sum payments

SAMPLE CONTRACT FOR CONSULTING SERVICES

SMALL ASSIGNMENTS

LUMP-SUM PAYMENTS

CONTRACT

This Agreement, [hereinafter called “the Contract”) is entered into this _____ [Insert starting date of assignment], by _____ and _____ between _____ [Insert Client’s name] of [or whose registered office is situated at] _____ [insert Client’s address](hereinafter called “the Client”) of the one part AND

_____ [Insert Consultant’s name] of [or whose registered office is situated at] _____ [insert Consultant’s address](hereinafter called “the Consultant”) of the other part.

WHEREAS the Client wishes to have the Consultant perform the services [hereinafter referred to as “the Services”, and

WHEREAS the Consultant is willing to perform the said Services,

NOW THEREFORE THE PARTIES hereby agree as follows:

- 1. Services**
 - (i) The Consultant shall perform the Services specified in Appendix A, “Terms of Reference and Scope of Services,” which is made an integral part of this Contract.
 - (ii) The Consultant shall provide the personnel listed in Appendix B, “Consultant’s Personnel,” to perform the Services.
 - (iii) The Consultant shall submit to the Client the reports in the form and within the time periods specified in Appendix C, “Consultant’s Reporting Obligations.”

2. Term The Consultant shall perform the Services during the period commencing on _____ [Insert starting date] and continuing through to _____ [Insert completion date], or any other period(s) as may be subsequently agreed by the parties in writing.

3. Payment A. Ceiling

For Services rendered pursuant to Appendix A, the Client shall pay the Consultant an amount not to exceed _____ *[Insert amount]*. This amount has been established based on the understanding that it includes all of the Consultant's costs and profits as well as any tax obligation that may be imposed on the Consultant.

B. Schedule of Payments

The schedule of payments is specified below (Modify in order to reflect the output required as described in Appendix C.)

Kshs _____ upon the Client's receipt of a copy of this Contract signed by the Consultant;

Kshs _____ upon the Client's receipt of the draft report, acceptable to the Client; and

Kshs _____ upon the Client's receipt of the final report, acceptable to the Client.

Kshs _____ Total

C. Payment Conditions

Payment shall be made in Kenya Shillings unless otherwise specified not later than thirty [30] days following submission by the Consultant of invoices in duplicate to the Coordinator designated in Clause 4 herebelow. If the Client has delayed payments beyond thirty (30) days after the due date hereof, simple interest shall be paid to the Consultant for each day of delay at a rate three percentage points above the prevailing Central Bank of Kenya's average rate for base lending.

4. Project Administration

A. Coordinator.

The Client designates _____ *[insert name]* as Client's Coordinator; the Coordinator will be responsible for the coordination of activities under this Contract, for acceptance and approval of the reports and of other deliverables by the Client and for receiving and approving invoices for payment.

B. Reports.

The reports listed in Appendix C, "Consultant's Reporting Obligations," shall be submitted in the course of the assignment and will constitute the basis for the payments to be made under paragraph 3.

5. Performance Standards

The Consultant undertakes to perform the Services with the highest standards of professional and ethical competence and integrity. The Consultant shall promptly replace any employees

assigned under this Contract that the Client considers unsatisfactory.

- 6. Confidentiality**

The Consultant shall not, during the term of this Contract and within two years after its expiration, disclose any proprietary or confidential information relating to the Services, this Contract or the Client's business or operations without the prior written consent of the Client.
- 7. Ownership of Material**

Any studies, reports or other material, graphic, software or otherwise prepared by the Consultant for the Client under the Contract shall belong to and remain the property of the Client. The Consultant may retain a copy of such documents and software.
- 8. Consultant Not to be Engaged in certain Activities**

The Consultant agrees that during the term of this Contract and after its termination the Consultant and any entity affiliated with the Consultant shall be disqualified from providing goods, works or services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.
- 9. Insurance**

The Consultant will be responsible for taking out any appropriate insurance coverage.
- 10. Assignment**

The Consultant shall not assign this Contract or sub-contract any portion of it without the Client's prior written consent.
- 11. Law Governing Contract and Language**

The Contract shall be governed by the laws of Kenya and the language of the Contract shall be English Language.
- 12. Dispute Resolution**

Any dispute arising out of the Contract which cannot be amicably settled between the parties shall 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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FOR THE CLIENT FOR THE CONSULTANT

Full name; _____ Full name; _____

Title: _____ Title: _____

Signature; _____ Signature; _____

Date; _____ Date; _____

(iv)

LIST OF APPENDICES

Appendix A: Terms of Reference and Scope of Services

Appendix B: Consultant's Personnel

Appendix C: Consultant's Reporting Obligations

(v)

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.

1. Please acknowledge receipt of this letter of notification signifying your acceptance.
2. 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.
3. 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
of20.....

SIGNED

Board Secretary

BIDDER'S DECLARATION AND INTEGRITY PACT

BIDDER'S DECLARATION

We/I the undersigned, in the capacity of for [name of the company/firm/individual] certify that the **bidder is not in any of the following situations:**

- 1 Bankruptcy; are the subject of proceedings for a declaration of bankruptcy, or of an order for compulsory winding up or administration by court, or of any other similar proceedings;
- 2 Payments to us have been suspended in accordance with the judgment of a court other than a judgment declaring bankruptcy and resulting, in accordance with our national laws, in the total or partial loss of the right to administer and dispose off our property;
- 3 Legal proceedings have been instituted against us involving an order suspending payments and which may result, in accordance with our national laws, in a declaration of bankruptcy or in any other situation entailing the total or partial loss of the right to administer and dispose of our property;
- 4 Are being wound up, or our affairs are being administered by court, or have entered into an arrangement with creditors, or have suspended business activities or are subject to an injunction against running business by a court of law;
- 5 Have been convicted by a final judgment of any crime or offence concerning our/my professional conduct;
- 6 Are guilty of serious misrepresentation with regard to information required for participation in an invitation to tender or execution of a tender already awarded; and
- 7 Are in breach of contract on another contract with the Government of Kenya or other local or international contracting authority or foreign government.
- 8 Have been convicted of an offence concerning our/my professional conduct by a court of law, or found guilty of grave professional misconduct;
- 9 Have not fulfilled obligations relating to payments of taxes or statutory contributions.

If the bidder is in any of the above listed situations, kindly attach documents giving details of the situation.

Names in full: [.....]

Duly authorized to sign this bid on behalf of (bidder's name):

[.....]

Place and date: [.....]

Stamp of the firm/company:

INTEGRITY PACT

Bidder's Oath to fulfill the Integrity Pact

Accepting that transparent business management and fair public administration are key to social development and national competitiveness, and in an effort to purge corruption and apply sanctions to corrupt businesses, and in full support of the worthy goals of this Integrity Pact, concerning the present tender for: _____, all personnel of _____ and its sub-contractors and agents hereby agree that:

1. We shall not conduct any unethical business practices, such as bid-rigging for the sake of a particular bidder to win the bid, or price-fixing. If proven as a fact that we have engaged in bid-rigging for the sake of a particular bidder to win the bid, we shall accept to be prohibited from submitting bids placed by National Oil Corporation of Kenya (herein referred to as NATIONAL OIL) for a period of two (2) years. If proven that we have discussed with other bidders in a bid to fix a price, or rigged a bid for a particular bidder to win the bid, we shall accept the prohibition from submitting bids placed by NATIONAL OIL for a period of two (2) years. If any unethical behaviour is tantamount to a fraudulent practice, we accept that such a case may be handed over to the authorities for investigation and possible prosecution.
2. In the process of bidding, or concluding or execution of a contract, we shall not offer any bribe, gifts, entertainment or any other undue benefits directly or indirectly to related officials, and in case it is proved that we have violated any terms of this Integrity Pact in relation with a bid, or concluding or execution of a contract, or offered bribes for favours in a contract, to win a contract, or facilitate payment which should not have been forthcoming, we shall accept the prohibition from submitting a bid placed by NATIONAL OIL for a period of two (2) years. If proven as a fact that we have offered bribes to NATIONAL OIL or related officials for favours regarding a bid or contract to a bidder or a winning bidder, or for the purpose of faulty execution of the objectives of a contract, we shall accept the prohibition from submitting bids placed by NATIONAL OIL for a period of two (2) years. If proven that we have offered bribes to NATIONAL OIL or related officials in relation to bidding, or concluding or execution of a contract, we shall accept the prohibition from submitting bids placed by NATIONAL OIL for a period of two (2) years.
3. In case it is proven that we have offered bribes to a related official or a NATIONAL OIL official regarding a bid, or concluding or execution of a contract, we shall accept the cancellation of the contract, and shall not file any civil, administrative or criminal appeals.
4. We shall make our best effort to institute a Company Code of Conduct that prohibits bribery, bid rigging/fixing or any other corrupt practices in business relations with officials and NATIONAL OIL, and a company regulation that prohibits any retaliatory acts toward anyone reporting inside corruption.
5. In addition, I confirm on behalf of the bidder that the details included in the bidders profile and experience sheet and our quotation are correct to the best of my knowledge and belief. In addition, we authorize, NATIONAL OIL to seek information from any source to confirm our compliance with the requirements of this Integrity Pact.
6. The bidder authorizes NATIONAL OIL, to seek information from any source, including publication of the name of the bidder to confirm that the bidder is compliant with the requirements of this Integrity Pact.

We shall fulfill this Integrity Pact as a solemn oath made on the basis of mutual trust, and, if and when we win a bid, we shall sign and fulfill the above as a "Special Condition of Contract," and not file any civil, administrative or criminal appeals regarding any of the above terms.

Dated: _____

Signed by: _____
(Chief Executive/Managing Director)

Full Name printed: _____