



REPUBLIC OF KENYA

**MINISTRY OF DEVOLUTION AND ASAL
STATE DEPARTMENT FOR DEVOLUTION**

**REQUEST FOR PROPOSAL
TENDER NO. MODA/SDD/OT/RFP/03/2019-2020**

**CONSULTANCY SERVICES TO DEVELOP
PARTICIPATORY PLANNING TOOL KIT FOR KDSP**

(INDIVIDUAL CONSULTANTS)

CLOSING/OPENING DATE: WEDNESDAY 29TH JANUARY 2020

TIME: 10.00 A.M

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INTRODUCTION

1. This standard Request for Proposals for selection of individual professional consultants has been prepared for use by public entities in Kenya. It has been found necessary for selection of individual consultants who are also regulated by their professional institutions or associations as opposed to selection of consultants who could be either individuals or body corporate.
2. This Request for proposals will be used for open tendering, restricted tendering or request for proposals.
3. The general conditions of contract in the Standard Contract Form should not be modified and instead the special conditions of the contract may where necessary be modified by the procuring entity, for use, to reflect the unique circumstances of the particular assignment.



REPUBLIC OF KENYA

**MINISTRY OF DEVOLUTION AND ASALs
STATE DEPARTMENT OF DEVOLUTION**

SECTION I - TENDER NOTICE

The Ministry of Devolution and ASALs, State Department for Devolution, (SDD) invites eligible, qualified and competent firms and individual consultants including those firms owned by Youth, Women and Persons with Disability (YW&PWD) to submit sealed applications for the following tenders: -

S/NO.	Tender Number	Tender Description	Eligible Category	Closing Date and Time
1.	MODA/SDD/OT/RFP/01/2019-2020	Consultancy Services for Direct County Technical Assistance	Individual Consultants	29 th Jan. 2020 At 10 o'clock
2	MODA/SDD/OT/RFP/02/2019-2020	Consultancy Services for Developing Kenya Devolution Support Program(KDSP) Documentary	Consultancy Firms	29 th Jan. 2020 At 10 o'clock
3	MODA/SDD/OT/RFP/03/2019-2020	Consultancy Services to Develop Participatory Planning Tool Kit for KDSP	Individual Consultants	28 th Jan. 2020 At 10 o'clock
4	MODA/SDD/OT/RFP/04/2019-2020	Consultancy Services for Value for Money Assessment (VFM) of KDSP	Consultancy Firms	28 th Jan. 2020 At 10 o'clock
5	MODA/SDD/OT/RFP/05/2019-2020	Consultancy Services for Assessing and Identifying Gaps in County Revenue Collection and Administration	Consultancy Firms	29 th Jan. 2020 At 10 o'clock
6	MODA/SDD/OT/RFP/06/2019-2020	Consultancy Services for Developing Community Participation Manual	Consultancy Firms	29 th Jan. 2020 At 10 o'clock

S/NO.	Tender Number	Tender Description	Eligible Category	Closing Date and Time
7	MODA/SDD/OT /RFP/07/2019-2020	Consultancy services for Development and Implementation of a Communication Plan for the Kenya Cities Urban Forum	Consultancy Firms	29 th Jan. 2020 At 10 o'clock
8	MODA/SDD/OT /RFP/08/2019-2020	Consultancy Services for Strengthening Knowledge Management in Kenya Devolved system for Socio Economic Development	Consultancy Firm	29 th Jan 2020 at 10 o'clock

Interested bidders may access and download detailed tender document and corresponding Terms of Reference/specifications free of charge from: -

- i. Procurement Portal: <http://www.tenders.go.ke>
- ii. The Ministry's Website www.devolutionasals.go.ke.

Duly completed tender documents (Two Hard Copies, One Original (1 No) and one (1 No) Copy should be enclosed in plain sealed envelope clearly marked with tender number and be deposited in the tender box located on 1st floor of Teleposta Towers, Wing C, Kenyatta Avenue, Nairobi, Kenya during office hours (Weekdays 8.00 am to 5.00 pm) on or before **Wednesday, 29th January, 2020 at 10.00 a.m.** and be addressed to:

**Principal Secretary,
Ministry of Devolution and Asals,
State Department for Devolution,
P. O. Box 30004 – 00100.
NAIROBI, KENYA**

Bids will be opened immediately thereafter in the presence of the bidders or their representatives who choose to attend at the 6th floor boardroom, Teleposta Towers, Kenyatta Avenue, Nairobi.

Prices quoted should be net inclusive of all Government taxes and other expenses and must remain valid for **150 days** from the closing/opening date of the tender.

**PRINCIPAL SECRETARY
STATE DEPARTMENT FOR DEVOLUTION**

SECTION II - INFORMATION TO CONSULTANTS

2.1 Introduction

- 2.1.1 The State Department of Devolution will select an individual consultant among those invited to submit proposals or those who respond to the invitation for proposals in accordance with the method of selection detailed under this section and consistent with the regulations.
- 2.1.2 The consultants are invited to submit a technical proposal and a financial proposal for consulting services required for the assignment stated in the letter of invitation (Section I)
- 2.1.3 In the assignment where the procuring entity intends to apply standard conditions of engagement and scales of fees for professional services, which scale of fees will have been approved by a relevant authority, a technical proposal only may be invited and submitted by the consultants. In such a case the highest ranked individual consultant in the technical proposals shall be invited to negotiate a contract on the basis of the set scale of fees. The technical proposals will be the basis for contract negotiations and ultimately for a signed contract with the selected individual consultant.
- 2.1.4 The consultants must familiarize themselves with local conditions as regards the assignment and take them into account in preparing their proposals. To obtain adequate information on the assignment and on the local conditions, consultants are encouraged to liaise with the procuring entity regarding any information that they may require before submitting a proposal.
- 2.1.5 The client will provide the inputs and services specified in the special conditions of contract needed to assist the individual consultant to carry out the assignment.
- 2.1.6 The cost of preparing the proposal and negotiating the contract including any visit to the procuring entity are not reimbursable as a direct cost of the assignment. The procuring entity is not bound to accept any of the proposals submitted.
- 2.1.7 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.

2.2 Clarification and amendment to the RFP documents

- 2.2.1 Individual consultant may request clarification of any of the RFP documents not later than Seven (7) days before the deadline for the submission of the proposals. Any request for clarification must be sent in writing by post, fax email to the procuring entity's address indicated in the special conditions of contract. The procuring entity will respond by post, fax or email 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 individual consultants invited to submit proposals.

- 2.2.2 At any time before the deadline for submission of the proposals, the procuring entity may for any reason; either at its own initiative or in response to a clarification requested by an intended individual consultant amend the RFP. Any amendment shall be issued in writing, fax or email to all invited individual consultants and will be binding on them. The procuring entity may at its discretion extend the deadline for the submission of the proposals.
- 2.2.3 Clarification of tenders shall be requested by the tenderer to be received by the procuring entity not later than 7 days prior to the deadline for submission of tenders.
- 2.2.4 The procuring entity shall reply to and clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.

2.3 Preparation of proposals

- 2.3.1 The individual consultant's proposal shall be written in English language.
- 2.3.2 In preparing the Technical proposal, the individual consultants are expected to examine the documents consisting the 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, the individual consultant must give particular attention to the following:
- (a) If an individual consultant considers that he/she does not have all the expertise required for the assignment, he/she may suggest in the proposals other individual(s) who will assist in the assignment but they will not be party to the contract for the purpose of the performance of the assignment. An individual consultant will not propose other individual consultants invited to submit proposals for the assignment. Any individual consultant in contravention of this requirement shall automatically be disqualified.
 - (b) For all the staff who will be involved in the exercise of the proposals to consultant must indicate their responsibility in the assignment and also the staff time as necessary.
 - (c) The curriculum vitae (CV) of the staff proposed must be submitted with the proposal.
- 2.3.4 The Technical proposal shall provide the following information;
- (a) The individual consultant's CV and a brief of any recent experience of assignment of a similar nature. For each assignment the brief should indicate the profiles of staff involved, contract amount and the individual consultant's involvement.
 - (b) Any comments or suggestions on the Terms of Reference and a list of service and facilities requested to be provided by the procuring entity.

- (c) A description of the methodology and work plan for performing the proposed assignment.
- (d) Any additional information requested in the special conditions of contract.

2.3.5 The Technical proposal shall be separate from the financial proposal and shall not include any financial information.

2.4 Financial proposal

2.4.1 In preparing the financial proposal, the individual consultants are expected to take into account the time required in completing the assignment as outlined in the RFP documents. The financial proposal will therefore be quoted in fees per day or month. The financial proposal may also include other costs as necessary, which will be considered as reimbursables.

2.4.2 The Financial proposal should include the payable taxes.

2.4.3 The fees shall be expressed in Kenya Shillings.

2.4.4 The Financial proposal must remain valid for 180 days after the submission date. During this period, the individual consultant is expected to keep available at his own cost any staff proposed for the assignment. The procuring entity will make best efforts to complete negotiations within this period. If the procuring entity wishes to extend the validity period of the proposals, the consultants who do not agree, have the right not to extend the validity of their proposals.

2.4.5 The financial proposal must comply with the law governing the profession of the consultant.

2.5 Submission, Receipt and opening of proposals

2.5.1 The technical proposal and the financial proposal (if required) shall be prepared in indelible ink. It shall contain no interlineations or overwriting, except as necessary to correct errors made by the individual consultants. The individual consultant must initial any such corrections.

2.5.2 For each proposal the individual consultants shall prepare the proposals in the number of copies indicated in the special conditions of contract. 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 duly marked "FINANCIAL PROPOSAL". Both envelopes shall be placed in an outer envelope and sealed. This outer envelope shall bear the procuring entities address and other information

indicated in the appendix to the instructions to consultants and clearly marked “DO NOT OPEN” before (**as indicated in Appendix to Information to consultants**).

2.5.4 The completed Technical and Financial proposals must be delivered at the submission address on or before the time and date of the submission of the proposals indicated in the appendix to the instructions to consultants. Any proposals received later than the closing date for submission of proposals shall be rejected and returned to the individual consultant unopened. For this purpose, the inner envelope containing the technical and financial proposals will bear the address of the individual consultant submitting the proposals.

2.5.5 After the deadline for submission of proposals the outer envelope and the technical proposals shall be opened immediately by the opening committee. The financial proposals shall be marked with the individual consultant’s number allocated at the time of opening the outer envelope and the technical proposals but shall remain sealed and in the custody of a responsible officer of the procuring entity up to the time set for opening them.

2.6 Evaluation of the Proposal (General)

2.6.1 From the time the proposals are opened to the time of the contract award, if any individual consultant wishes to contact the procuring entity on any matter relating to his/her proposal, he/ she should do so in writing at the address indicated in the appendix to the instructions to consultants. Any effort by an individual consultant to influence the procuring entity’s staff in the evaluation of proposals companion proposals or awards of contract may result in the rejection of the individual consultant proposal.

2.6.2 The proposal evaluation committee shall have no access to the Financial Proposal, which in any case will remain sealed, until the technical evaluation is concluded or finalized.

2.7 Evaluation of Technical Proposals

2.7.1 The evaluation committee appointed by the procuring entity to evaluate the proposals shall carry out the evaluation of technical proposals following the criteria set out in the terms of reference based on the following points criteria

	<u>CRITERIA</u>	<u>POINTS</u>
(i)	Qualifications of the consultant	20
(ii)	Experience related to the assignment	30
(iii)	Methodology in response to the TOR	40
(iv)	Skills and competence	<u>10</u>
	Total points	100

2.7.2 Any proposal which will be examined and found not to comply with all the requirements for submission of the proposals will be declared non responsive. All

the proposals found to have complied with all the requirements for submission of proposal shall be declared responsive by the evaluation committee

- 2.7.3 Each responsive proposal will be given a technical score (ST). Any technical proposal which fails to achieve the total minimum score indicated in the appendix to the information to tenderers shall be rejected at this stage and will not proceed to the next stage of evaluation. The respective financial proposal will be returned to the individual consultant unopened.

2.8 Opening and Evaluation of Financial Proposals

- 2.8.1 After completion of the evaluation of Technical proposals the procuring entity shall notify the individual consultants whose proposal did not meet the minimum technical score or were declared non responsive to the RFP and terms of reference. The notification will indicate that their financial proposals shall not be opened and will be returned to them unopened after the completion of the selection process and contract award. At the same time, the procuring entity shall simultaneously notify the consultants who have secured the minimum technical score that they have passed the technical qualifications and inform them the date and time set by the procuring entity for opening their financial proposal. They will also be invited to attend the opening ceremony if they wish to do so.

- 2.8.2 The financial proposals shall be opened by the procuring entity in the presence of the individual consultants who choose to attend the opening. The name of the individual consultant, the technical score and the proposed fees shall be read out aloud and recorded. The evaluation committee shall prepare minutes of the opening of the financial proposals.

- 2.8.3 The formulae for determining the financial score (SF) unless an alternative formula is indicated in the appendix to the information to tenderers shall be as follows:

$$Sf = 100 \times \frac{fm}{f} \text{ where}$$

Sf is the financial score

Fm is the lowest fees quoted and

F is the fees of the proposal under consideration.

The lowest fees quoted will be allocated the maximum score of 100

- 2.8.4 The individual consultants proposals will be ranked according to their combined technical score (st) and financial score (sf) using the weights indicated in the appendix to the instructions to consultants. Unless otherwise stated in the appendix to the instructions to consultants the formulae for the combined scores shall be as follows;

$$S = ST \times T\% + SF \times P\%$$

Where

S, is the total combined scores of technical and financial scores

St is the technical score
Sf is the financial score
T is the weight given to the technical proposal and
P is the weight given to the financial proposal

Note $P + T$ will be equal to 100%

The individual consultant achieving the highest combined technical and financial score will be invited for negotiations.

2.9 Negotiations

- 2.9.1 Negotiations will be held at the same address indicated in the appendix to the information to consultants. The purpose of the negotiations is for the procuring entity and the individual consultant to reach agreements on all points regarding the assignment and sign a contract.
- 2.9.2 The negotiations will include discussions on the technical proposals, the proposed methodology and work plan, staff and any suggestions made by the individual consultant to improve the Terms of reference. The agreed work plan and Terms of reference will be incorporated in the description of the service or assignment and form part of the contract.
- 2.9.3 The negotiations will be concluded with a review of the draft contract. If negotiations fail, the procuring entity will invite the individual consultant whose proposal achieved the second highest score to negotiate a contract.

2.10 Award of Contract

- 2.10.1 The contract will be awarded after successful negotiations. After negotiations are completed, the procuring entity will promptly notify the other individual consultants that they were unsuccessful and return the financial proposals of the individual consultants who did not pass technical evaluation.
- 2.10.2 The selected individual consultant is expected to commence the assignment on the date indicated in the appendix to the information to consultants or any other date agreed with the procuring entity.

2.11 Confidentiality

- 2.11.1 Information relating to evaluation of proposals and recommendations of contract award shall not be disclosed to the individual consultants who submitted the proposal or to other persons not officially concerned with the process, until the winning individual consultant has been notified that he/she has been awarded the contract.

2.12 Appendix to information to consultants

Note on the Appendix to Information to Consultants

1. The Appendix to information to consultants is intended to assist the State Department of Devolution 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 State Department of Devolution specify in the Appendix to information to consultant and requirements specific to the circumstances of the State Department of Devolution, 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 have been 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.

2.12.1 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 to consultants and the provisions of the Appendix to Information to consultants, provisions of the Appendix herein shall prevail over those of the information to consultants.

Information To Consultants	Appendix to Information to consultants
2.1 Introduction	<ol style="list-style-type: none">(i). Request for proposal is open to interested local qualified individual consultant(ii). Consultants are encouraged to familiarize themselves with the detailed term of reference to respond appropriately.(iii). The Request for proposal closing/opening date is on WEDNESDAY 29TH JAN 2020 at 10.00 A.M. (East African Time).(iv). Performance Security equivalent to 10% of contract price from a reputable bank/insurance company is <u>NOT</u> required at contract signing stage.
2.2 Clarification and Amendment	<ol style="list-style-type: none">(i). Completed documents in plain sealed envelope, clearly marked with the Tender number on the Top left side

Information To Consultants	Appendix to Information to consultants
	<p>should be deposited in the Tender Box situated on 1st Floor, Teleposta Towers, Wing C, Kenyatta Avenue on or before WEDNESDAY 29TH JAN 2020 at 10.00 A.M.</p> <p>(ii). Request for proposal <u>MUST</u> be addressed to,</p> <p style="text-align: center;">Principal Secretary, Ministry of Devolution and ASALs, State Department for Devolution, P.O. Box 30004 - 00100, NAIROBI. Telephone +254-202217475 +254-202215245</p> <p>(iii). All communication between the consultant and the procuring entity shall be in writing</p> <p>(iv). State Department of Devolution (SDD) may conduct verification/inspection exercise (Due diligence) to verify/ascertain authenticity of the information and documents submitted by the consultant.</p> <p>(v). Interested individual consultants may obtain further information, clarification and peruse Request for proposal document at Head of Supply Chain Management Services office, State Department of Devolution (SDD) at Teleposta Towers 1st floor, Wing C, Kenyatta Avenue, Nairobi</p>
2.3 Preparation of Proposals	<p>(i). Consultant <u>MUST</u> not modify, substitute, alter/change the STANDARD TENDER DOCUMENT for Request for proposal. Consultants are only required to attach the necessary documents to the standard tender document.</p> <p>Any modifications, substitution, alterations/change of the STANDARD TENDER DOCUMENT will lead to disqualification of the bid.</p> <p>(ii). Consultant <u>MUST</u> submit detailed CV with detailed work experience, referees among others and relevant copies of the certificates of the ALL the key and support staff to be involved in the consultancy.</p> <p>(iii). Consultant <u>MUST</u> indicate the responsibilities of the staff to be involved in the assignment.</p> <p>(iv). The Consultant <u>MUST</u> meet ALL the mandatory requirements to qualify for technical evaluation.</p> <p>(v). The Consultant <u>MUST</u> submit the necessary and relevant information required as per Terms of Reference (ToR)</p> <p>(vi). The Consultant <u>MUST</u> completely fill, sign and stamp the relevant documents.</p>

Information To Consultants	Appendix to Information to consultants
2.4 Financial Proposal	<ul style="list-style-type: none"> (i). Financial proposal MUST be in Kenya Shillings. (ii). The Request for Proposal MUST be valid for 180 days from closing/opening date and time (iii). The financial proposal MUST include government taxes and all other expenses. (iv). The Consultant MUST submit a detailed schedule of financial proposal indicating the deliverables. (v). The consultant with the highest combined score (technical and financial) may be invited for negotiations if necessary.
2.5 Submission, Receipt and Opening of proposals	<ul style="list-style-type: none"> (v). The submission of the Request for Proposal bid document MUST be in TWO separate envelopes, TECHNICAL and FINANCIAL Proposals. (vi). The TECHNICAL proposal MUST be in Original and Copy. The ‘ORIGINAL’ and ‘COPY’ must be marked clearly on the bid documents and must be placed in a sealed envelope clearly marked TECHNICAL PROPOSAL. NB. The DOWNLOADED STANDARD TENDER DOCUMENT for Request for Proposal must be part of TECHNICAL PROPOSAL submitted. The FINANCIAL proposal <u>MUST</u> be in Original and Copy. The ‘ORIGINAL’ and "COPY’ must be <u>marked</u> clearly on the bid documents and MUST be placed in a sealed envelope clearly marked FINANCIAL PROPOSAL. (vii). Both envelopes of the TECHNICAL AND FINANCIAL PROPOSALS shall be placed in an outer envelope and sealed and the envelope shall bear ONLY THE TENDER NUMBER AND TENDER DESCRIPTION. viii). The outer envelope bearing TECHNICAL and FINANCIAL PROPOSAL shall be deposited in the State Department of Devolution Tender Box located at Telposta Towers, 1st Floor, Wing C, along Kenyatta Avenue, outside Supply Chain Management offices, during normal working hours (8am to 5pm, East African Time), on or before WEDNESDAY 29TH JAN 2020 at 10.00 A.M (East African Time). (ix). Request for proposal bid documents submitted after the deadline shall NOT be accepted. (x). Bidders/representatives are free to attend the Request for Proposal bid opening exercise at the State Department of Devolution Board Room No.660

Information To Consultants	Appendix to Information to consultants
	<p>situated at 6th floor, Teleposta Towers, along Kenyatta Avenue, Nairobi on the closing/opening date and time.</p> <p>(xi). Only the TECHNICAL PROPOSAL will be opened on the closing/opening date and time.</p> <p>(xii). Only financial proposals of the consultants who pass technical evaluation shall be opened.</p> <p>(xiii). Those bidders who will not qualify at the technical evaluation level will have their financial bids returned un-opened.</p> <p>(xiv). Bulky Request for proposal bid documents that will not fit in the tender box shall be received at the Head of Supply Chain Management Office at State Department of Devolution 1st Floor, Wing C, along Kenyatta Avenue, Nairobi during normal working hours (8am to 1pm and 2pm to 5pm East African Time).</p>
2.6 Evaluation of the Proposal (General)	<p>(i). The evaluation shall be carried out as per the detailed Evaluation Criteria set in the Request for Proposal tender documents.</p> <p>(ii). The evaluation will be carried out in three stage evaluation process;</p> <p>(a). Preliminary stage: - Proposal must meet all the mandatory requirements at this stage to proceed to the next stage.</p> <p>(b). Technical Stage: - Proposal must attain a minimum of 70% score to proceed to the next stage of evaluation (financial evaluation stage).</p> <p>(c). Financial stage: - To be conducted only on individual consultants who qualify in technical stage.</p>
2.7 Evaluation of Technical Proposals	<p>(i) Evaluation shall be carried out in strict adherence to the Terms of Reference (TORs)</p> <p>(ii) Evaluation shall be carried out in line with the detailed evaluation criteria set out in the Request for Proposal documents.</p> <p>(iii) Technical Proposal that attain a minimum of 70% score shall be considered responsive and shall proceed to the next stage (financial evaluation).</p>
2.8 Opening and evaluation of financial Proposals	<p>(i) Only Technical Proposal that attained a minimum of 70% score at technical evaluation shall be considered at this stage and their financial proposals will be opened.</p> <p>(ii) Invited Bidders/representatives will be free to attend the financial proposal opening exercise.</p>

Information To Consultants	Appendix to Information to consultants
	<p>(iii) Bidders whose Technical Proposals were not successful shall not be invited for the Opening of the Financial Proposals neither shall they be notified of the results of the Technical Proposals' Evaluation until the process of Tender Evaluation is completed and Tender Award results are published/announced (in conformity to ITC Clause No. 2.11.1).</p> <p>(iv) The Financial Proposals of the Consultants with the responsive Technical Proposals shall be ranked and one with the highest combined (Technical and Financial) score May be recommended for Contract Negotiation if necessary and award.</p>
2.9 Negotiations	<p>The technically responsive Request for Proposal/Tender with the highest combined Technical and Financial Proposal may be invited for negotiation if necessary. Where weight for technical score T= 0.8 and financial Score P=0.2</p>
2.10 Award of Contract	<p>The consultant will commence the obligation of the contract immediately after negotiations or as may be agreed upon at contract signing.</p>
2.11 Confidentiality	<p>The clients and consultant shall ensure confidentiality during contract period.</p>

2.12.2 MANDATORY REQUIREMENTS ARE AS CONTAINED IN THE SPECIAL CONDITIONS OF CONTRACT SECTION 4.1 (a to i) AND THIS WILL FORM BASIS FOR PRELIMINARY EVALUATION

SECTION III - GENERAL CONDITIONS OF CONTRACT FOR CONSULTANCY SERVICES

3.1 Definitions and Interpretation

3.1.1 Definitions

3.1.1.1 Agreement

The Agreement is: - the contract between the Consultant and the Client. The documents forming the contract are listed in the Form of Agreement for Engagement of Consultant.

3.1.2 Client

The Client is: - the Party named as the Client in the Agreement.

3.1.2.1 Client's Representative

The Client's Representative is: - the person named as the Client's Representative.

3.1.3 Confidential Information

Confidential Information means:

- any professional advice or other information of a sensitive nature, whether or not specifically identified as confidential; and
- any information about the Parties, or their businesses, or their clients gained during the currency of this Agreement that is not already in the public domain.

3.1.4 Consultant

The Consultant is: - the Party named as the Consultant in the Agreement.

3.1.5 Consultant's Representative

The Consultant's Representative is: - the person named as the Consultant's Representative in Appendix D.

3.1.6 Contractor

Contractor means: - a person or entity that the Client engages to carry out the whole or part of the Works and includes any subcontractor engaged by a Contractor.

3.1.7 Intellectual Property

3.1.7.1 New Intellectual Property means: - all intellectual property rights, including, but not limited to, copyright, in all concepts, designs, drawings, specifications, plans, studies, reports, and documentation collated, prepared or created by the Consultant

(or persons on behalf of the Consultant) in carrying out the Services but not including preexisting Intellectual Property.

3.1.7.2 Pre-existing Intellectual Property means: - all intellectual property rights owned by the Consultant or any third party and provided or used by the Consultant in carrying out the Services.

3.1.7.3 Client's Intellectual Property means: - all intellectual property rights owned by

3.1.7.4 the Client and provided to the Consultant for the purposes of carrying out the Services or the Works.

3.1.8 Key Personnel

3.1.8.1 Key Personnel are: - the persons named as the Consultant's and/or Sub consultant's Key Personnel in Appendix D or E, including the Consultant's Representative.

3.1.9 Other Consultant

3.1.9.1 Other Consultant means: - a person or entity listed in Appendix F (other than the Consultant) the Client engages to carry out other consulting or advisory services related to the Services. It does not include a Contractor.

3.1.10 Party

3.1.10.1 Party means: - the Client or Consultant; "Parties" means the Client and the Consultant and "Third Party" means any other person or entity as the context requires, including a Contractor and Other Consultants, but excluding sub consultants.

3.1.11 Services

3.1.11.1 The Services are: - the services listed in Appendix A

3.1.12 Sub Consultant

3.1.12.1 Sub consultant means: - a person or entity, as listed in Appendix E, engaged by the Consultant to assist in the provision of the Services, together with any sub consultants appointed under clause 2.4.

3.1.13 Variation

3.1.13.1 Variation means: - a change in scope, time of supply or scale of the Services.

3.1.14 Working Day

3.1.14.1 **A Working Day is:** - a calendar day other than a Saturday, Sunday, statutory or public holiday.

3.1.15 Works

Works means: the physical and other works (if any) relating to the Services, to be carried out by a Contractor or by the Client, including goods and equipment to be supplied to the Client.

3.1.2.1 Interpretation

In these General Conditions of Contract for Consultancy Services, the singular shall include the plural, the masculine shall include the feminine, and vice versa where the context requires.

A reference to a Party includes their respective successors, executors and administrators.

3.2 Obligations of the Consultant

3.2.1 The Services

The Consultant must: - provide the Services set out in Appendix A; and

- perform the Services in accordance with the timetable set out in Appendix A; and
- advise the Client promptly if additional briefing or information is required from the Client to avoid any delay to the provision of Services or Works; and
- act for the Client as set out or implied in Appendix A; and
- notify the Client in writing within 10 Working Days if the Consultant thinks a Client direction is a Variation, and as soon as practicable if the Consultant thinks any other circumstance is a Variation. The notice shall include details of the estimated cost of the Services, likely or estimated impact on the Programme and completion date for the Services and make recommendations on how to proceed.

3.2.2 Duty of Care

Where the Services require the Consultant to certify, decide or use discretion under a contract between the Client and a Third Party, the Consultant must act independently, and with professional skill and judgment, according to the terms of the contract between the Client and the Third Party.

3.2.3 Duty of Independent Judgment

Subject to clause 12.8, the Consultant shall appoint, direct and pay any Sub consultant. The Consultant is responsible to the Client for the services of any Sub consultant.

The sub-contracting of any of the Services shall not relieve the Consultant from any liability or obligation under the Agreement.

If the Client decides for good reason that a Sub consultant is unsuitable, the Client can require the Consultant not to have that Sub consultant perform the Services. The Consultant shall then replace that Sub consultant. Sub consultants may be appointed at any time subject to approval by the Client.

3.2.4 Sub Consultants

3.2.5 Other Consultant

The Consultant must direct and/or co-ordinate the work of Other Consultants where required by the Services. The Consultant shall not be responsible for the services and/or work of Other Consultants.

3.2.6 Ordering Client Materials or Services

The Consultant must obtain the Client's written approval before purchasing or ordering any goods or services, materials or equipment on behalf of the Client.

3.2.7 Client Concerns

The Consultant must remedy any concerns notified by the Client under clause 3.3 to the satisfaction of the Client, or agree with the Client a plan for remedying any such concerns, before proceeding to the next stage of the Services.

3.2.8 Conflicts of Interest

The Consultant must try to ensure that conflicts of interest do not arise, and notify the Client immediately in writing if it is thought that a conflict of interest may arise or has arisen.

Where a conflict of interest is identified and the Client has given informed consent, the Consultant must establish structures and practices which:

- ensure that the conflict is avoided in practice; or
- if avoidance is not practicable, ensure that the effects of conflict are minimized.

In either situation, the Consultant must inform the Client of the structures and practices that have been established.

3.2.9 Instructions to Contractors

The Consultant may instruct the Contractor and/or vary the Works to the extent authorized in Appendix A. The Consultant must not instruct a Contractor to vary the Works in a material way beyond this authority, unless an emergency occurs. In emergency circumstances, the Consultant may vary the Works and shall immediately notify the Client about the changes.

3.2.10 Health and Safety

The Consultant must have in place a health and safety management plan that is appropriate for the Services and comply with any health and safety plan operated by the Party or Third Party in control of the site.

The Consultant is responsible for health and safety issues relating to the provision of the Services including, but not limited to:

- complying with the Consultant's obligations under the Health and Safety in Employment Act 1992 (HSEA); and
- where the Services expressly include management duties in relation to the Works, assisting the Client in complying with the Client's obligations, in relation to the Contractor, under the HSEA including raising health and safety issues with the Contractor and the party in control of the workplace.

Should the Client disregard the Consultant's proper written recommendation on an HSEA matter, the Consultant is deemed to have met the Consultant's obligations in this clause in respect of that matter.

3.2.11 Public Statements

The Consultant must not make any public or media statements to anyone about this Agreement, the Services or the Works without the Client's written approval.

3.2.12 Delay

If at any time the Consultant's performance falls behind the Programme set out in Appendix A (as amended from time to time in accordance with the Agreement), then the Consultant shall notify the Client and, where due to matters within the control of the Consultant, shall take all practicable steps to remedy such delay.

3.3 Obligations of the Client

3.3.1 Payment

The Client must pay the Consultant for the Services according to the terms and conditions set out in Appendix B and elsewhere in this Agreement.

3.3.2 Provision of Information to the Consultant

The Client must:

- provide, free of charge, the information listed in Appendix F; and
- declare any ownership or proprietary rights any other person may have to this information and pay for any royalties or fees; and

- in response to the Consultant's request, provide additional relevant information, within a timeframe that does not materially delay the Services or the Works; and
- accept responsibility for the accuracy of information provided. The Consultant is expected to review all the information provided to ensure that it contains no manifest errors or omissions. No Variation will exist if the information contains manifest errors or omissions that the Consultant should reasonably have been expected to find.

3.3.3 Client Decisions

The Client must respond to any written request from the Consultant for a decision within a reasonable time, to avoid or minimize any delay to the provision of the Services or Works.

If the Services are to be provided in stages, then the Client must approve the current stage before the Consultant may proceed with the next stage. If the Client has any concerns with the current stage, the Client shall notify the Consultant of these in writing prior to giving approval for the Consultant to proceed to the next stage.

3.3.4 Assistance to the Consultant

The Client must co-operate with the Consultant and not obstruct the proper performance of the Services.

The Client must, as soon as practicable:

- provide, free of charge, the personnel, equipment and facilities described in Appendix F; and
- allow the Consultant to visit the site and other locations associated with the Services; and
- obtain and pay for all consents, certificates, approvals, authorities, licences and permits that are needed to lawfully carry out the Works, except where they are to be obtained by the Consultant as set out in Appendix A.

3.3.5 Other Consultants

Where the Consultant has to direct and/or co-ordinate the work of Other Consultants, the Client must include in the conditions of contract with the Other Consultants a requirement that the Other Consultants have the required insurance and that they will work under the direction of, and co-operate with, the Consultant. The amount of insurance required by each Other Consultant shall be the amount specified in Appendix F. If no sum is specified, it shall be not less than that required of the Consultant under Section 6 and the Special Conditions, unless the Client and Consultant specifically agree otherwise.

The Client shall arrange and must pay for the services provided by Other Consultants.

The Client shall be responsible for the services or work provided by Other Consultants.

Where the Client wishes to appoint an Other Consultant not included in Appendix F, the Client shall, where relevant, confer with the Consultant prior to the appointment of an Other

Consultant regarding the scope of work, conditions of contract and selection of the Other Consultant.

3.3.6 Instructions to Others

If, under this Agreement, the Consultant has to direct and/or co-ordinate work carried out by Other Consultants and/or Third Parties directly contracted to the Client, the Client shall give all instructions to such Other Consultants and/or Third Parties through the Consultant.

3.3.7 Matters Affecting the Services

As soon as the Client becomes aware of anything that will materially affect the scope or timing of the Services, the Client must inform the Consultant in writing.

3.3.8 Health and Safety

The Client shall provide to the Consultant a list of known identified hazards relevant to the Services and as set out in Appendix G, and any health and safety management plan operated by the Client that is relevant to the Services.

On sites where there is multiple provision of services and works, the Client shall establish a clear hierarchy of responsibilities related to health and safety management between all parties.

The Consultant does not assume any obligation of the Client under the Health & Safety in Employment Act 1992, unless that obligation is part of the Services.

3.3.9 Approvals

Where approval of the Client is sought under this Agreement, it shall not be unreasonably withheld or delayed.

Where the Client gives its consent, review or approval in respect of any matter arising in relation to the Services, such consent, review or approval shall not reduce the liability of the Consultant in respect of the matter approved except: -

- where the matter being approved reasonably carries some risk; and
- the risk has been identified to the Client in writing; and
- the Client has accepted that risk in writing.

3.4 Personnel

3.4.1 Client's Representative

The Client's Representative has authority to give the Consultant instructions on the Client's behalf; and may monitor, review, approve, accept, reject or confirm any part, or all, of the Services.

If the Client changes the Client's Representative, the Client shall first inform the Consultant in writing.

3.4.2 Consultant's Representative

The Consultant's Representative has authority to receive instructions on behalf of the Consultant and for coordinating and providing the Services as agreed on a day-today basis, and must communicate with the Client's Representative when required.

3.4.3 Key Personnel

The written approval of the Client shall be obtained by the Consultant before Key Personnel can be replaced or substituted.

If the Client decides for good reason that one of the Key Personnel is unsuitable:

- the Client can require the Consultant not to have that person perform the Services; and
- the Consultant shall then replace that person with someone acceptable to the Client; and
- the Client shall not bear any cost or liability arising from the replacement of that person.

3.5 Payment

3.5.1 Time for Payment

The Client must pay the Consultant all amounts claimed and due under this Agreement within the time set out in the Special Conditions.

3.5.2 Disputed and Unpaid Invoices

If the Client disputes an invoice, or part of an invoice, the Client must promptly give the reasons for withholding the disputed amount and pay any undisputed amount.

Where an invoice, or part of an invoice, is not disputed and is not paid as required in clause 5.1, the Client must pay interest on the unpaid amount from due date to the date of actual payment at the Consultant's non-penalty overdraft interest rate.

3.6 Liability and Insurance

3.6.1 Consultant's Liability

Where the Consultant breaches this Agreement, the Consultant is liable to the Client for reasonably foreseeable claims, damages, liabilities (including any liability of the Client to a third party), losses or expenses caused directly by the breach.

3.6.2 Limitation of Liability

The maximum aggregate amount payable, whether in contract, tort or otherwise, in relation to claims, damages, liabilities, losses or expenses, is as specified in the Special Conditions.

3.6.3 Contributory Conduct

If either Party is found liable to the other (whether in contract, tort or otherwise), and the claiming Party and/or a Third Party has contributed to the loss or damage, the liable Party shall only be liable to the proportional extent of its own contribution.

3.6.4 Duration of Liability

Neither party shall be liable for any loss or damage occurring after the period stated in the Special Conditions from the date on which the Services were completed.

3.6.5 Insurance

The Consultant shall take out and maintain for the duration of the Services:

- professional indemnity insurance for the amount of the liability under clause 6.2; and
- public liability insurance cover as set out in the Special Conditions; and
- Provision for reasonable defense costs.

The Consultant shall use all reasonable endeavors to maintain professional indemnity insurance for the duration of liability stated under clause 6.4. If at any time the Consultant is unable to obtain or maintain professional indemnity cover as required by the Agreement, or if any material change to the terms and conditions of the cover occurs, the Consultant shall, as soon as practicable, notify the Client in writing.

3.6.6 Proof of Insurance

If the Client asks, the Consultant must produce certificates evidencing the currency of such cover and proving that professional indemnity and public liability insurance policies meet the requirements in clause 6.5.

3.7 Variations

3.7.1 Variation to the Services

The Client may order a Variation to the Services, in writing, or may ask the Consultant to propose a Variation to the Services, the impact of which on the cost, Programme and completion date for the Services shall be agreed as in 7.2.

Where the Consultant notifies the Client under clause 2.1 that any direction or circumstance should be treated as a Variation, the Client shall as soon as practicable after receiving such notice, but within 10 Working Days, notify the Consultant in writing whether or not it considers the direction or other circumstances to be a Variation.

If the Client does not consider the direction or other circumstance to be a Variation then the Client and Consultant shall attempt to resolve the matter as soon as practicable, and if a Variation entitlement is agreed, proceed as in 7.2.

3.7.2 Agreement of Variations

The Client and the Consultant shall agree, in writing, the value of the Variation and its impact on the Programme and completion date for the Services, or the mechanism under which the value and impact on the Programme and completion date for the Services will be derived.

Where practicable the value of the Variation and impact on the Programme and completion date for the Services shall be agreed between the parties prior to the Variation works progressing.

Where the value of the Variation cannot practicably be agreed between the Parties prior to the Variation works commencing, the parties shall agree to a budget for the Variation works that shall not be exceeded without further agreement between the Parties.

3.7.3 Failure to Agree

In the event that the Parties are unable to reach agreement on the value and impact on the Programme and completion date for the Services, the matter shall be treated as a dispute and resolved in accordance with clause 10.

3.8 Confidentiality

3.8.1 Client Obligations

The Client must:

- identify Confidential Information at the time it is supplied to the Consultant; and
- keep all Confidential Information relating to the Consultant confidential and only use it for the purposes it was made available; and
- not disclose Confidential Information relating to the Consultant without the Consultant's written approval, unless it is necessary for the purposes of the Services or the Works to disclose it to any appropriate third party, or as required by law.

3.8.2 Consultant Obligations

The Consultant must:

- identify Confidential Information at the time it is supplied to the Client; and
- keep all Confidential Information relating to the Client or the Client's project confidential and only use it for the purposes it was made available; and
- not disclose any Confidential Information relating to the Client or the Client's project or the Works without the Client's written approval, unless it is necessary for the purposes of the Services or Works to disclose it to any appropriate third party, or as required by law.

3.8.3 Exclusions

Information shall cease to be Confidential Information when the information is publicly available through no unauthorized act of either Party.

If either Party is legally bound to disclose Confidential Information, that Party must first advise the other Party what information will be provided and limit the information to that required by the law.

3.8.4 Return of Confidential Information

Upon request, and except as in clause 11.3, the Consultant must promptly return to the Client or destroy all Confidential Information which is in the Consultant's possession or control.

3.9 Copyright of Documents

3.9.1 Subject to clause 9.6 all new Intellectual Property held in any medium, whether electronic or otherwise, shall be jointly owned by the Client and the Consultant. The Client and the Consultant hereby grant to the other an unrestricted royalty-free license in perpetuity to copy or use such New Intellectual Property and each Party is free to make whatever use they wish of the New Intellectual Property without any obligation to obtain the other's consent or to account for any future benefits.

3.9.2 All Pre-existing Intellectual Property shall remain the property of the original owner. The Client's Intellectual Property shall remain the property of the Client. The Consultant hereby grants to the Client, or agrees to procure the grant to the Client of, an unrestricted royalty-free licence to use and copy Pre-existing Intellectual Property to the extent reasonably required to enable the Client to make use of the Services or use, adapt, update or amend the Works. The Client hereby grants to the Consultant, an unrestricted royalty-free license to use and copy the Client's Intellectual Property provided to the Consultant to the extent reasonably required to enable the Consultant to provide the Services.

3.9.3 The Consultant confirms (save in respect of any of the Client's Intellectual Property and subject to clause 9.4) that the New Intellectual Property, the Preexisting Intellectual Property, the Services and the Services as incorporated in the Works will not infringe any intellectual property or other rights of any third party.

3.9.4 The Consultant does not warrant the suitability of the New Intellectual Property for any purpose other than the Services or any other use stated in the Agreement.

3.9.5 The Client owns, or has the right to use, Confidential Information disclosed or provided to the Consultant under this Agreement.

3.9.6 The ownership of data and factual information collected by the Consultant and paid for by the Client shall, after payment by the Client, lie with the Client.

3.10 Disputes

- 3.10.1 If there is a dispute between the Parties in relation to this Agreement, or any matter arising from it, the Parties will in good faith in the first instance use their best endeavours to resolve the dispute themselves.
- 3.10.2 If the dispute cannot be resolved by the Parties themselves within a reasonable time, then they must explore whether the dispute can be resolved by use of mediation or other alternative resolution technique.
- 3.10.3 If the dispute is not settled within a reasonable time, then either Party may refer the dispute to arbitration by a sole arbitrator under the provisions of the Arbitration Act, Cap 49 (1995) and the substantive law of Kenya.. The arbitrator will be appointed by agreement between the Parties within 15 working days of written notice of referral by the referring party to the other or, failing agreement, by the President of the Kenya Law Society or its successor body, or any nominee of the President. In either case, the arbitrator must not be a person who has participated in any informal dispute resolution procedure in respect of the dispute.
- 3.10.4 No dispute arising gives either Party the right to suspend their obligations under the terms of this Agreement.

3.11 Termination

3.11.1 Termination of the Agreement

The Client may terminate this Agreement at any time, or under the provisions of clause 12.4, by written notice to the Consultant. As soon as this notice is received, the Consultant shall stop the Services.

The Consultant may terminate this Agreement by written notice only if the Client has materially breached the terms of the Agreement.

At the completion of the Services the Agreement is hereby terminated.

Termination of this Agreement shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.

3.11.2 Payment of Early Termination

If the Client terminates this Agreement, or the Consultant terminates this Agreement because the Client has breached it, then the Client must immediately pay the Consultant for Services provided to the date of termination.

If the Client terminates the Agreement for reasons other than a default by the Consultant, or if the Consultant terminates the Agreement because of a default by the Client, the Client must also pay any reasonable costs that the Consultant incurs solely because of the early termination of the Agreement

3.11.3 Return of Property/ Equipment

At the end of the Services, the Consultant must return to the Client any property, including the Client's Intellectual Property, or equipment of the Client which is in the Consultant's possession or control.

Notwithstanding any other provision in this Agreement the Consultant shall be entitled to retain a copy of all documentation including Confidential Information, drawings, specifications, reports, correspondence, computer files and records of every description for its record keeping purposes only. Such documentation shall include all relevant New, Pre-existing and Client's Intellectual Property. The Consultant shall treat all such documentation as Confidential Information and shall mark it confidential.

3.11.4 Transfer of New Intellectual Property

In the event of termination by the Client, the Consultant shall provide reasonable assistance to the Client in the transfer of the Services (including delivering copies of any New Intellectual Property in the Consultant's control) to the new consultant provided that the Client has made all payments due and owing under the Agreement.

3.12 General Provisions

3.12.1 Law and Currency

This Agreement is subject to Kenyan law. References to shillings are references to Kenya shillings unless otherwise stated. Any arbitration or court proceedings about this Agreement, or the Services, must be brought and heard in Kenya.

3.12.2 Consumer Guarantees Act

The Client and the Consultant agree that, where the Services are provided for the Client's business purposes, the provisions of the Consumer Guarantees Act 1993 are excluded in relation to the Services.

3.12.3 Changes in Legislation

If, after the date of this Agreement, the cost or duration of the Services alter because of changes or additions to any statute, regulation or by-law, or requirements of any authority that has jurisdiction over any part of the Works or the Services, the agreed changes to cost and duration of the Services will be treated as a Variation.

3.12.4 Events beyond Control

Should any event occur which: - is beyond the control of either Party; and

- is neither directly nor indirectly caused by either Party; and
- prevents the performance of the Services (in whole or in part) required under this Agreement,

then those Services will be suspended until such time that it becomes practicable to recommence the Services. This does not include events personal to either Party, such as ill-health or lack of funding or resources.

In the event that there is a reasonable likelihood that the Services are not able to be recommenced, then this Agreement may be terminated by the Client.

In circumstances where the Services or part of the Services have to be suspended or delayed, the Consultant will be allowed extra time to complete the Services and such extra time should be reasonable in the circumstances.

In the event that the suspension continues for greater than 6 months, then this Agreement may be terminated by the Consultant.

3.12.5 Advertising

The Consultant must first obtain the Client's written permission if it wants to put up a sign on or near the site of the Works (or to which the Services relate) that directly or indirectly shows its involvement with the Works

3.12.6 Reporting

The Client and the Consultant shall review and discuss the progress of the Services, as agreed from time to time, or as reasonably requested.

3.12.7 Notices

All demands, notices, requirements and consents this Agreement authorizes or requires, or that relate to this Agreement, must be in writing and will take effect from receipt at any one of the addresses shown in the Special Conditions. These may be delivered:

- by hand or by facsimile, in which case a written confirmation of receipt is required, or
- by registered letter, or
- by email, in which case receipt will take effect upon receipt by the sender of the email message indicating that the email has been opened at the recipient's terminal, provided that any communication received, or deemed received after 5pm, or on a day which is not a Working Day, shall be deemed not to have been received until the next Working Day.

3.12.8 No Assignment

The Consultant must not assign, transfer or subcontract all or part of its rights or obligations under this Agreement without the Client's prior written approval. This approval may be refused without the need to give reasons, except that, in the case where the Consultant requests approval to subcontract to a related company of the Consultant, such approval shall not be unreasonably withheld.

If the Consultant assigns or transfers its rights, the Consultant will remain liable for the performance of its obligations under this Agreement, unless specifically stated to the contrary in any written consent to an assignment or transfer.

3.12.9 Survival of Provisions

The provisions of clauses 2.10, 2.11, 5, 6, 8 and 9 shall continue in effect after termination of the Agreement.

3.12.10 No Waiver

Any waiver given by either Party in connection with this Agreement is binding only if it is in writing, and then strictly in accordance with the terms on which it is given. Subject to this clause, no waiver given by either Party for the purposes of this Agreement affects or limits that Party's rights against the other Party under this Agreement.

3.12.11 Severability

Each term of this Agreement is separately valid and binding. If for any reason either Party cannot rely on any term, all other terms will remain valid and binding, and the Parties will negotiate in good faith for an alternative term with similar financial effect for both Parties.

3.12.12 No Partnership

Nothing in this Agreement is to be construed as evidence of a partnership between the Parties.

3.12.13 GST

Where there is a reference to any payment under this Agreement, GST (or any similar tax) is to be added to the amount of that payment.

3.12.14 Client's Regulatory Functions

If the Client has regulatory functions outside of the Agreement, the Client shall be deemed not to be acting in the capacity of the Client under this Agreement when exercising these functions in good faith

SECTION IV - SPECIAL CONDITIONS OF CONTRACT

The Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract.

4.1 Mandatory Requirements/ Information

The participating candidates are required to furnish the procuring entity with the following **Mandatory Requirements/Information (a-i): -**

- a. Ensure that the Request for Proposal Document is submitted in the right format (Original and One (1 No.) Copy);
- b. The Tenderer **MUST** not modify, substitute, alter/change the **STANDARD TENDER DOCUMENT** for Request for Proposal as per section 2.3 on preparation of proposal instructions to consultants (The Downloaded Tender Document **MUST** be part of the **submitted Technical Proposal document**)
- c. Tenderer **MUST** submit copy of valid Tax Compliance Certificate (PLUS copy of National ID & PIN No. certificate).
- d. **Form of Tender MUST** be dully filled, stamped and signed by the applicant.
NB: -The filled form of tender MUST be enclosed together with the financial proposal. This will be evaluated in the financial evaluation stage.
- e. The Anti-Corruption Declaration Commitment/Pledge **MUST** be dully filled, stamped and signed by the applicant.
- f. Reliable communication services e.g. fixed line telephone, fax, P.O. Box, Cell phone Numbers, Emails and Website address, etc.
- g. Evidence of past performance – copies of Service Orders (S.Os.) or Contracts from established institutions/ organizations be attached.
- h. All pages in the bid document should be paginated, stamped and initialed/signed (following in order eg.1,2,3,4.....100 including the attachments).
- i. The Document should be Properly Bound; Loose Tender Documents will be declared non-responsive.

NB: - Tenderers MUST meet ALL the mandatory requirements to qualify for Detailed Technical Evaluation.

- 4.2 The Successful Tenderers will **NOT** be required to furnish the Procuring Entity with a Performance Security of Ten Percent (10%) of the total Tender Sum before signing the Contract.
- 4.3 Tenderers shall be required to provide evidence of financial stability for at least three years preceding the current audit year. These should be in form of audited accounts and/or bank statements. Failure to submit the evidence may render the Request for Proposal/tender non-responsive.

- 4.4 Tenderers shall be required to submit their Offers in the ORIGINAL and ONE (1No.) copy marked “ORIGINAL OFFER” and the other “COPY OF OFFER”. The original and copy shall be sealed in separate envelopes duly marked as “ORIGINAL” and “COPY”. The TECHNICAL PROPOSAL and the FINANCIAL PROPOSAL shall also be sealed separately ORIGINAL and COPY as appropriate. The envelopes shall then be sealed in one plain outer envelope bearing only the tender number and name pursuant to clause 16of the General Information.
- 4.5 Prices quoted shall be in Kenya Shillings
- 4.6 Blacklisted and suspended firms are not eligible for this procurement.

SECTION V - TERMS OF REFERENCE

CONSULTANCY SERVICES TO DEVELOP PARTICIPATORY PLANNING TOOL KIT FOR KDSP

5.1 Introduction

Participatory planning involves the systematic effort to envision and plan a community's desired development need, while involving and harnessing the specific competencies and input of the community and stakeholders in the process. Participatory planning is part of the decentralization process and aims to identify and solve the critical problems facing the community. Participatory planning enhances transparency of government decision making by allowing citizens to understand how and why the government makes decisions. By consulting the citizens and giving voice to their concerns, the resulting actions address their needs appropriately.

The Constitution of Kenya (2010), County Government Act (2012) and Public Finance Management Act (2012) provides for public participation to be mandatory during the County planning process. The Constitution makes citizen participation a central part of Kenya's governance system. Participation of the people is recognized in Article 10 of the Constitution of Kenya as one of the National values and principles of governance. Further Article 174(c) provides that the object of devolution is to: *"enhance the participation of people in the exercise of the powers of the State and in making decisions affecting them."* Article 184 (1) (c) also requires that mechanisms for participation by residents be included in the national legislation relating to urban areas and cities governance and management.

The Constitution assigns the responsibility to ensure, facilitate and build capacity of the public to participate in the governance to the county government through function 14 (Schedule 4 Part 2). As such, county governments are required to:

- a. Create mechanisms of engagement by ensuring and coordinating the participation of Communities and locations in governance; and
- b. build capacity by assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers.

A key aspect of performing county functions is planning and budgeting on annual, medium and long term basis. This process entails allocating public resources to what has been planned in the county. The planning and budgeting process is provided for further in Section 125 of the PFM Act, 2012 to include:

- a. Integrated development planning process which includes both long term and medium term planning.
- b. Planning and establishing financial and economic priorities for the county over the medium term.

The Ministry of Devolution and ASAL is mandated under Section 121 of the County Government Act, 2012 to support county governments and empower them to provide

effective and efficient services to citizens. To this end, the Ministry, through Kenya Devolution Support Programme (KDSP) is seeking the services of a national consultant to develop a tool kit for participatory planning.

5.2 Purpose / General Objective

The Ministry of Devolution and ASAL intends to develop a participatory planning tool kit to guide county governments and key stakeholders through the county planning processes.

5.3 Specific Objectives

The specific objectives are:

- a. Prepare a practical training manual on participatory planning targeting to deliver training for counties.
Provide a reference with a step-by-step and practical instructions on how to apply the various participatory methods, with further summary notes regarding when to apply the methods, how to organize the sessions and how to capture the information.
- b. To recommend and guide public participation in the CIDPs review process.
- c. To empower Counties to establish systems and structure of participatory planning as provided for in the Constitution, Public Finance Management Act 2012, and the County Government Act, 2012.
- d. To enable the government and citizens to have the necessary knowledge in order to play their role in participatory planning.

5.4 Scope

The work will comprise of desk reviews of documents and reports from various stakeholders. In addition more information will be sourced from stakeholders through questionnaires, focus group discussions, and any other acceptable scientific methods. Specifically:

- I. The Consultant will be required to develop a participatory planning tool kit based on desk research, strategic public consultations and comparative analysis.
- II. Consult with officers from state department of devolution, county governments and other key stakeholders when developing the tool kit.
- III. Identify relevant thematic areas for participatory planning in county governments.
- IV. Identify, recommend and guide on appropriate methods and steps throughout the process of participatory planning in each identified area.
- V. Identify key players /targets in implementing participatory planning methods
- VI. Design and implementation plan/cost to actualize the recommendations of the tool kit
- VII. Develop tools for monitoring and evaluation of the participatory planning.
- VIII. Facilitate meetings with stakeholders for validation of the tool kit .
- IX. Review the following documents:
 1. Constitution of Kenya

2. Public Finance Management Act,2012
3. County Government Act 2012
4. Devolution Sector Plan
5. National Capacity Building Framework
6. County public participation guidelines
7. Third Medium Term Plan

The provision of the documents shall be restricted to those that are centrally relevant and therefore current to the assignment. These shall be provided on the day the contract is signed.

5.5 Deliverables

- I. Inception report within 7 days of signing agreement, detailing the consultant's understanding of the assignment.
- II. The assignment methodology and work plan within 7 days of signing agreement.
- III. Draft participatory planning tool kit in both hard and soft copies to be presented to State Department for Devolution officials for comments after 60 days of the signing agreement.
- IV. Submit a final participatory planning toolkit within one week of receiving the final comments from meetings from stakeholders.

5.6 Duration

The assignment is expected to take not more than 120 days after the signing of the contract.

5.8 Qualifications

At least a Master's degree preferably in public communications, law, development studies, international relations or other relevant fields.

5.9 Experience

- 1.0 Experience
 - Minimum 10 years of relevant experience in participatory planning, research.
 - Demonstrate an understanding of the planning process in the two levels of government.
 - Strong knowledge in public participation.
 - Knowledge or experience on the devolved system of governance.
 - Experience or knowledge of working with Kenyan Civil Society, Governments, or development partners

5.10 Competency

- Ability to work with minimal supervision.
- High level written and oral communications skills in English and Kiswahili.

- Must be result oriented team player with excellent interpersonal skills, including enthusiasm, tact, diplomacy and high level of integrity.
- Excellent networking skills
- Concise analytical skills
- Professional in working with government partners
- Ability to communicate effectively (verbally and written) in cross cultural, politically sensitive environment and present complex ideas to a non-specialist audience.
- Proficiency in the use Microsoft office packages

5.11 Management of the assignment

The Consultant shall report to the PS, Ministry of Devolution, and State Department of Devolution for the operational aspects of the programme. The consultant will work under the supervision and technical direction of the Director, Capacity Building & Technical Assistance Division within the State Department of Devolution, which will provide reports and any data required in their custody.

5.12 Budget/ Financing

DELIVERABLES/TASKS	Percentage (%)
<ul style="list-style-type: none"> • Inception report within 7 days of signing agreement, detailing the consultant's understanding of the assignment detailing the assignment methodology and work plan. 	25
<ul style="list-style-type: none"> • Draft participatory planning tool kit y in both hard and soft copies to be presented to ministry officials for comments after 60 days of the signing agreement. 	35
<ul style="list-style-type: none"> • Submit a final participatory planning toolkit within one (1) week of receiving and updating comments from all stakeholders during the validation workshops. This should be within 120 days since signing of contract. 	40
The total fees payable for the assignment for a period not exceeding 120 working days (%)	100

5.13 Technical Evaluation Criteria

Technical Proposal Scoring Criteria		Points
1	General qualifications	35
1.1	Education/qualification	
	Degree	5
	Masters	17
	PhD	3
	Relevant courses and conferences	5
	Active member of a relevant professional body	5

2	Specific experience related to the job	40
2.1	At least 15years experience designing organisation development/ capacity building programs for institutions	15
2.2	Evidence of working with both Levels of Government in Kenya: a) National Government b) County Governments or, and sub national institutions	8
2.3	Similar assignment undertaken in the public sector in East Africa within the last two years.	10
3.0	Approach and Methodology	25
3.1	Appropriate methodology	10
3.2	Appropriate work plan	10
3.3	Team Structure and support	5
	Total	100

Minimum score 70% to proceed to the next evaluation stage

5.14 Application Process

Interested individuals should submit their applications which should include the following:

Detailed Curriculum Vitae

Please quote “PARTICIPATORY PLANNING TOOL KIT – KDSP PROGRAMME (on the subject line).

SECTION VI- TECHNICAL PROPOSAL (TP)

6.1 Notes on the Preparation of Technical Proposal

The technical proposal shall be prepared and submitted by the consultants.

It shall contain the following:-

- (a) Submission letter
- (b) Particulars of the consultant and ALL support staff including Detailed Curriculum vitae (CV) and copies of the certificates
- (c) Comments and suggestions of the consultant on the terms of reference, personnel, facility, and other requirements to be provided by the procuring entity.
- (d) Description of the methodology and work plan for performing the assignment
- (e) Any proposed staff to assist in the assignment and their experience
- (f) Consultancy services activities time schedule.
- (g) Any other requirement as contained in the Terms of reference (TOR) above

SECTION VII - FINANCIAL PROPOSAL (FP)

7.1 Notes on the Preparation of Financial Proposal

The financial proposal shall be prepared and submitted by the consultants. It shall contain the following.

- (a) Submission letter indicating total fees
- (b) Summary of costs
- (c) Detailed payment schedules and expected completion.
- (d) Breakdown of fees per activity
- (e) Breakdown of reimbursable costs/expenses per activity
- (f) Miscellaneous expenses
- (g) Form of Tender (To be submitted in the sealed financial proposal envelope)
- (h) Any other requirement as contained in the Terms of reference (TOR) above

SECTION VIII - STANDARD CONTRACT FORMS

8.1 Form of Tender

(Note: Form of Tender to be submitted in the sealed Financial Proposal)

To: Date.
.....
.....

Name and address of procuring entity
No.....

Tender

Tender Name.....
.....
.....

Gentlemen and/or Ladies:-

1. Having examined the Tender documents including Addenda No. (Insert numbers) the receipt of which is hereby duly acknowledged, we the undersigned, offer to provide **Consultancy Services to develop participatory planning tool kit for KDSP** under this tender in conformity with the said Tender document for the sum of KShs.....

.....
or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

2. We undertake, if our Tender is accepted, to provide the Insurance Cover Services in accordance with the conditions of the tender.

3. We agree to abide by this Tender for a period of[number] days from the date fixed for Tender opening of the Instructions to Tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

4. This Tender, together with your written acceptance thereof and your notification of award, shall constitute a Contract between us subject to the signing of the contract by both parties.

5. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this _____ day of _____ 20_____

[Signature]

[In the capacity of]

Duly authorized to sign tender for and on behalf of _____

8.2 Registration Data/ Confidential Business Questionnaire

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

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

<p><i>Part 1 – General:</i> Business Name/Supplier/Consultant Location of business premises/Physical address..... Plot No..... Street/Road Postal Address Tel No. Fax Email Nature of Business..... Registration Certificate No./ID No./Certificate of Incorporation No..... PIN No..... Tax Compliance status Business permit/License No..... Maximum value of business which you can handle at any one time – Kshs. Name of your bankers Branch</p>																					
	<p style="text-align: center;">Part 2 (a) – Sole Proprietor</p> Your name in full Age Business Name..... Nationality Country of origin County of Operation..... • Citizenship details																				
	<p style="text-align: center;">Part 2 (b) Partnership</p> Given details of partners as follows: <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">Name</th> <th style="width: 25%;">Nationality</th> <th style="width: 35%;">Citizenship Details</th> <th style="width: 25%;">Shares</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table> Business contact information Tel No..... Email..... (<i>Incase of more than two partners, kindly attach information required above</i>) County of Operation.....	Name	Nationality	Citizenship Details	Shares	1.	2.	3.				
Name	Nationality	Citizenship Details	Shares																		
1.																		
2.																		
3.																		
	<p style="text-align: center;">Part 2 (c) – Registered Company</p> Private or Public State the nominal and issued capital of company- Nominal Kshs. Issued Kshs. Give details of all directors, shareholders and beneficial owners as follows: <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">Name</th> <th style="width: 25%;">Nationality</th> <th style="width: 35%;">Citizenship Details</th> <th style="width: 25%;">Shares</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table> Directors' contact information Tel No..... Email..... (<i>Incase of more than one Director, kindly attach information required above</i>) County of Operation.....	Name	Nationality	Citizenship Details	Shares	1.	2.	3.	4.
Name	Nationality	Citizenship Details	Shares																		
1.																		
2.																		
3.																		
4.																		
Date Stamp/Seal..... Signature of Applicant																					

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

***Disclaimer**

The information provided above should be complete, accurate, adequate and reliable. Any false information will lead to disqualification of the bidder.

8.3 Anti-Corruption Declaration Commitment Pledge

(Sections 62 of the PPAD Act, 2015)

I/We/Messrs.....

of Street, Building, P O Box.....

.....

Contact

Phone

E mail.....

Declare that Public Procurement is based on a free and fair competitive Tendering process which should not be open to abuse.

I/We

declare that I/We will not offer or facilitate, directly or indirectly, any inducement or reward to any public officer, their relations or business associates, in connection with

Tender/Tender No

for or in the subsequent performance of the contract if I/We am/are successful and I/We am/are not debarred from participating in procurement proceedings.

Authorized Signature.....

Name.....

Title of Signatory.....

8.4 Individual Professional Consultants

(Lump-sum payment)

The contract form shall be completed by the procuring entity after the award of the contract and negotiation of the contract. It will be signed by both parties pursuant to the information to consultants clause 2.10.2

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 Consultants 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 Service, “which is made an integral part of this Contract.
 - (ii) The Consultant shall provide the personnel listed 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.”

(Appendices A, B, and C to be prepared as appropriate)

2. **Term** The Consultant shall perform the Services during the period commencing on _____ [insert starting date] and 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 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 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 here below. 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 .

Director Capacity Building 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.

For the Client

For the Consultant

Full name _____

Full name _____

Title _____

Title _____

Signature _____

Signature _____

Date _____

Date _____

8.5 Request for Review Form

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.....of20...

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.

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