



**KENYA ROADS BOARD (KRB)**

**REQUEST FOR PROPOSALS FOR  
CONSULTANCY SERVICES TO DEVELOP AN  
ENVIROMENTAL, SOCIAL AND GOVERNANCE (ESG)  
STRATEGY.**

**KRB/T/10/2023-24**

**(March 2024)**

**ISO 9001:2015 CERTIFIED**

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## **SECTION 1: LETTER OF REQUEST FOR PROPOSAL (RFP)**

### **Section 1 (A): Request for Proposal (RFP)**

**Date: 19<sup>th</sup> March 2024**

Reference No.: KRB/T/10/2023-24

**Name of Assignment: Provision of Consultancy Services to develop an Environmental, Social, and Governance (ESG) Strategy.**

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**To: All Interested Firms**

**Dear Bidders/Tenderers (All Interested Firms)**

1. **Kenya Roads Board** has set aside funds in its budget towards the cost of the subject consulting services.

Kenya Roads Board now invites proposals to provide the following consulting services (herein after called “the services”): **Provision of Consultancy Services to develop an Environmental, Social, and Governance (ESG) Strategy.**

2. More details on the Services are provided in Section 5: Terms of Reference.
3. This Request for Proposals (RFP) has been addressed to the following Consulting Firms: **Is open to all qualified and interested Firms.**
4. It is not permissible to transfer this RFP to any other firm.
5. A firm will be selected under Quality and Cost Based Selection (QCBS) Method and in a format as described in this RFP, in accordance with the Public Procurement and Asset Disposal Act 2015, a copy of which is found at the following website: [www.ppra.go.ke](http://www.ppra.go.ke).
6. The RFP shall contain the following sections: -

Section 1: Letter of Request for Proposals  
Section 2: Instructions to Consultants and Data Sheet  
Section 3: Technical Proposal Standard Forms  
Section 4: Financial Proposal Standard Forms  
Section 5: Terms of Reference  
Section 6: Standard Forms of Contract (Lump - Sum)

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*Provision of Consultancy Services to Develop an Environmental, Social and Governance (ESG) Strategy.*

7. Details on the proposal's submission date, time and address are provided in the ITC 18.5 of the Data Sheet.
8. The proposal shall be deposited in the Tender Box situated on 6<sup>th</sup> Floor, Kenya Re Towers to be received by **12.00 Noon on Thursday 28th March 2024**.
9. The proposals will be opened immediately on the same day (**Thursday 28th March 2024**) in the presence of Bidders or their representatives who may wish to attend. Any proposals received after the closing time shall be returned unopened.

Yours sincerely,

**R. Mohamed, MBS**  
**DIRECTOR GENERAL**

## **SECTION 2: INSTRUCTIONS TO CONSULTANTS AND DATA SHEET**

### **Section 2(A): Instructions to Consultants (ITC)**

**Tenderers are informed that the information under this Section 2(A) is standard. It is important to refer to the Data Sheet Section 2(B) which amends and complements the provisions of this Section 2(A)**

#### **A. GENERAL PROVISIONS**

##### **a) Meanings/Definitions**

- a) “Affiliate(s)” means an individual or an entity that directly or indirectly controls, is controlled by, or is under common control with the Consultant.
- b) “Applicable Law” means the laws and any other instruments having the force of law in Kenya.
- c) “Procuring Entity” means the entity that is carrying out the consultant selection process and signs the Contract for the Services with the selected Consultant.
- d) “Consultant” means a legally established professional consulting firm or an entity that may provide or provides the Services to the Procuring Entity under the Contract.
- e) “Contract” means a legally binding written agreement signed between the Procuring Entity and the Consultant and includes all the attached documents listed in its Clause 1 (the General Conditions of Contract (GCC), the Special Conditions of Contract (SCC), and the Appendices).
- f) “Data Sheet” means an integral part of the Instructions to Consultants (ITC) Section 2 that is used to reflect specific assignment conditions to supplement, but not to over-write, the provisions of the ITC.
- g) “Day” means a calendar day unless otherwise specified as "Business Day". A Business Day is any day that is an official working day in Kenya and excludes official public holidays.
- h) “Experts” means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or Joint Venture member(s).
- i) “Government” means the Government of the Republic of Kenya.
- j) “In writing” means communicated in written form such as by mail, e-mail, fax, including, if specified in the Data Sheet, distributed or received through the electronic-procurement system used by the Procuring Entity with proof of receipt.
- k) “Joint Venture (JV)” means an association with or without a legal personality distinct from that of its members, of more than one Consultant where one member has the authority to conduct all business for and on

behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Procuring Entity for the performance of the Contract.

- l) “Key Expert(s)” means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose CV is considered in the technical evaluation of the Consultant's proposal.
- m) “ITC” (this Section 2 of the RFP) means the Instructions to Consultants that provides the Consultants with all information needed to prepare their Proposals.
- n) “Letter of RFP” means the letter of invitation being sent by the Procuring Entity to the Consultants.
- o) “Non-Key Expert(s)” means an individual professional provided by the Consultant or its Sub-consultant and who is assigned to perform the Services or any part thereof under the Contract and whose CVs are not evaluated individually.
- p) “Proposal” means the Technical Proposal and the Financial Proposal of the Consultant.
- q) “Public Procurement Regulatory Authority (PPRA)” means the statutory authority of the Government of Kenya that is mandated with the role of regulating and monitoring compliance with the public procurement law and regulations.
- r) “RFP” means the Request for Proposals to be prepared by the Procuring Entity for the selection of Consultants.
- s) “Services” means the work to be performed by the Consultant pursuant to the Contract.
- t) “Sub-consultant” means an entity to whom the Consultant intends to subcontract any part of the Services while the Consultant remains responsible to the Procuring Entity during the whole performance of the Contract.
- v) “Terms of Reference (TORs)” means the Terms of Reference that explains the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of the Procuring Entity and the Consultant, and expected results and deliverables of the assignment.

## **b) Introduction**

- 2.1 The Procuring Entity named in the Data Sheet intends to select a consultant from those listed in the Request for Proposals (RFP), in accordance with the method of selection specified in the Data Sheet.
- 2.2 The Consultant are invited to submit a Technical Proposal and a Financial

Proposal, for consulting services required for the assignment named in the Data Sheet. The Proposal will be the basis for negotiating and ultimately signing the Contract with the selected Consultant.

- 2.3 The Consultants should familiarize themselves with the local conditions and take them into account in preparing their Proposals, including attending a pre-proposal conference if one is specified in the Data Sheet. Attending any such pre-proposal conference is optional and is at the Consultants' expense.
- 2.4 The Procuring Entity will timely provide, at no cost to the Consultants, the inputs, relevant project data, and reports required for the preparation of the Consultant's Proposal as specified in the Data Sheet.

**c) Conflict of Interest**

- 3.1 The Consultant is required to provide professional, objective, and impartial advice, always holding the Procuring Entity's interest's paramount, strictly avoiding conflicts with other assignments or its own corporate interests and acting without any consideration for future work.
- 3.2 The Consultant has an obligation to disclose to the Procuring Entity any situation of actual or potential conflict that impacts its capacity to serve the best interest of the Procuring Entity. Failure to disclose such situations may lead to the disqualification of the Consultant or the termination of its Contract.
- 3.3 Without limitation on the generality of the foregoing, and unless stated otherwise in the Data Sheet, the Consultant shall not be hired under the circumstances set forth below:

*i) Conflicting Activities*

Conflict between consulting activities and procurement of goods, works or non-consulting services: a firm that has been engaged by the Procuring Entity to provide goods, works, or non-consulting services for a project, or any of its Affiliates, shall be disqualified from providing consulting services resulting from or directly related to those goods, works, or non-consulting services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, or any of its Affiliates, shall be disqualified from subsequently providing goods or works or non-consulting services resulting from or directly related to the consulting services for such preparation or implementation.

*ii) Conflicting Assignments*

Conflict among consulting assignments: A Consultant (including its Experts and Sub-consultants) or any of its Affiliates shall not be hired for any assignment that, by its nature, may conflict with another assignment of the Consultant for the same or for another Procuring Entity.

(iii) *Conflicting Relationships*

Relationship with the Procuring Entity's staff: a Consultant (including its Experts and Sub-consultants) that has a close business or personal relationship with senior management or professional staff of the Procuring Entity who has the ability to influence the bidding process and: (i) are directly or indirectly involved in the preparation of the Terms of Reference for the assignment, (ii) the selection process for the Contract, or (iii) the supervision of the Contract, may not be awarded a Contract, unless the conflict stemming from such relationship has been resolved in a manner that determines there is no conflict to affect this selection process.

iv) *Others*

Any other types of conflicting relationships as indicated in the Data Sheet.

**d) Unfair Competitive Advantage**

4.1 Fairness and transparency in the selection process require that the Consultants or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the assignment in question. To that end, the Procuring Entity shall indicate in the Data Sheet and make available to all Consultants together with this RFP all information that would in that respect give such Consultant any unfair competitive advantage over competing Consultants.

**e) Corrupt and Fraudulent Practices**

5.1 Consultant firms or any of its members shall not be involved in corrupt, coercive, obstructive, collusive or fraudulent practice. Consultant firms or any of its members that are proven to have been involved in any of these practices shall be automatically disqualified and would not be awarded a contract.

5.2 The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any Consultant found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Consultants shall be required to complete and sign the "Certificate of Independent Proposal Determination" annexed to the Proposal Form.

5.3 In further pursuance of this policy, Consultants shall permit and shall cause their agents (where declared or not), subcontractors, sub-consultants, service providers, suppliers, and their personnel, to permit the Government and its agencies to inspect all accounts, records and other documents relating to any short-listing process, Proposal submission, and contract performance (in the case of award), and to have them audited by auditors, investigators or compliance officers.

## **f) Eligibility**

- 6.1 In selection of Consultants, short-listing shall be composed of firms or individuals who belong to the same line of professional business and who are almost of the same capability.
- 6.2 Unless otherwise specified in the Data Sheet, the Procuring Entity permits Consultants including proposed experts, joint ventures and individual members from all countries and categories to offer consulting services. The maximum number of members so far JV shall be specified in the DS.
- 6.3 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for submission of proposals, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website [www.cak.go.ke](http://www.cak.go.ke).
- 6.4 Public Officers of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.
- 6.5 It is the Consultant's responsibility to ensure that it's Experts, joint venture members, Sub-consultants, agents (declared or not), sub-contractors, service providers, suppliers and/or their employees meet the eligibility requirements.
- 6.6 As an exception to the foregoing ITC 6.1 and 6.2 above:
  - a) Sanctions: A firm or an individual that has been debarred from participating in public procurement shall be ineligible to be awarded a contract, or to benefit from the contract, financially or otherwise, during the debarment period. The list of debarred firms and individuals is available from the website of PPRA: [www.ppra.go.ke](http://www.ppra.go.ke).
  - b) Prohibitions: Firms and individuals of a country or goods in a country may be ineligible if:
    - i) As a matter of law or official regulations, Kenya prohibits commercial relations with that country; or
    - ii) By an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or services from that country or

any payments to any country, person, or entity in that country.

- c) Restrictions for Government-owned Enterprises: Government-owned enterprises or institutions in Kenya shall be eligible only if they can establish that they;
  - i) Are legally and financially autonomous,
  - ii) Operate under commercial law, and
  - iii) That they are not dependent agencies of the Procuring Entity.
- d) Restrictions for public employees: Government officials and civil servants and employees of public institutions shall not be hired for consulting contracts.

6.7 Margin of Preference and Reservations: No margin of preference shall be allowed in the selection of consultants. Reservations may however be allowed to a specific group of businesses (these groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case may be), and who are appropriately registered as such by the authority to be specified in the Data Sheets. A procuring entity shall ensure that the invitation to submit proposals specifically includes only businesses or firms belonging to one group.

## **B. PREPARATION OF PROPOSALS**

### **7. General Considerations**

7.1 In preparing the Proposal, the Consultant is expected to examine the RFP in detail. Material deficiencies in providing the information requested in the RFP may result in rejection of the Proposal.

### **8. Cost of Preparation of Proposal**

8.1 The Consultant shall bear all costs associated with the preparation and submission of its Proposal, and the Procuring Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the selection process. The Procuring Entity is not bound to accept any proposal and reserves the right to annul the selection process at any time prior to Contract award, without there by incurring any liability to the Consultant.

### **9. Language**

9.1 The Proposal, as well as all correspondence and documents relating to the Proposal exchanged between the Consultant and the Procuring Entity shall be written in the English language.

### **10. Documents Comprising the Proposal**

10.1 The Proposal shall comprise the documents and forms listed in the Data Sheet.

- 10.2 The Consultant shall declare in the Financial Proposal Submission Form, that in competing for and executing a contract, it shall undertake to observe the laws of Kenya against fraud and corruption including bribery, as well as against anti-competitive practices including bid rigging.
- 10.3 The Consultant shall furnish information on commissions, gratuities and fees, if any, paid or to be paid to agents or any other party relating to this Proposal and, if awarded, Contract execution, as requested in the Financial Proposal Submission Form.

## **11. Only One Proposal**

- 11.1 The Consultant (including the individual members of any Joint Venture) shall submit only one Proposal, either in its own name or as part of a Joint Venture in another Proposal. If a Consultant, including any Joint Venture member, submits or participates in more than one proposal, all such proposals shall be disqualified and rejected. This does not, however, preclude Sub-consultant, or the Consultant's staff from participating as Key Experts and Non-Key Experts in more than one Proposal when circumstances justify and if stated in the Data Sheet.
- 11.2 Members of a joint venture may not also make an individual Proposal, be a subcontractor in a separate proposal or be part of another joint venture for the purposes of the same Contract.
- 11.3 Should a Joint Venture subsequently win the Contract, it shall consider whether an application for exemption from the Competition Authority of Kenya is merited pursuant to Section 25 of the Competition Act 2010.

## **12. Proposal Validity**

### **a. Proposal Validity Period**

- 12.1 The Data Sheet indicates the period during which the Consultant's Proposal must remain valid after the Proposal submission deadline.
- 12.2 During this period, the Consultant shall maintain its original Proposal without any change, including the availability of the Key Experts, the proposed rates and the total price.
- 12.3 If it is established that any Key Expert nominated in the Consultant's Proposal was not available at the time of Proposal submission or was included in the Proposal without his/her confirmation, such Proposal shall be disqualified and rejected for further evaluation and may be subject to sanctions in accordance with ITC 5.

**b. Extension of Validity Period**

- 12.4 The Procuring Entity will make its best effort to complete the negotiations within the proposal's validity period. However, should the need arise, the Procuring Entity may request, in writing, all Consultants who submitted Proposals prior to the submission deadline to extend the Proposals' validity.
- 12.5 If the Consultant agrees to extend the validity of its Proposal, it shall be done without any change in the original Proposal and with the confirmation of the availability of the Key Experts, except as provided in ITC 12.7.
- 12.6 The Consultant has the right to refuse to extend the validity of its Proposal in which case such Proposal will not be further evaluated.

**b. Substitution of Key Experts at Validity Extension**

- 12.7 If any of the Key Experts become unavailable for the extended validity period, the Consultant shall provide a written adequate justification and evidence satisfactory to the Procuring Entity together with the substitution request. In such case, a replacement Key Expert shall have equal or better qualifications and experience than those of the originally proposed Key Expert. The technical evaluation score, however, will remain to be based on the evaluation of the CV of the original Key Expert.
- 12.8 If the Consultant fails to provide a substitute Key Expert with equal or better qualifications, or if the provided reasons for the replacement or justification are unacceptable to the Procuring Entity, such Proposal will be rejected.

**c. Sub-Contracting**

- 12.9 The Consultant shall not subcontract the whole or part of the Services without reasonable justification and written approval of the Procuring Entity.

**13. Clarification and Amendment of RFP**

- 13.1 The Consultant may request a clarification of any part of the RFP during the period indicated in the Data Sheet before the Proposals' submission deadline. Any request for clarification must be sent in writing, or by standard electronic means, to the Procuring Entity's address indicated in the Data Sheet. The Procuring Entity will respond in writing, or by standard electronic means, and will send written copies of the response (including an explanation of the query but without identifying its source) to all Consultants. Should the Procuring Entity deem it necessary to amend the RFP as a result of a clarification, it shall do so following the procedure described below:
- 13.2 At any time before the proposal submission deadline, the Procuring Entity may amend the RFP by issuing an amendment in writing or by standard electronic means. The amendment shall be sent to all invited Consultants and will be

binding on them. The Consultants shall acknowledge receipt of all amendments in writing.

- 13.3 If the amendment is substantial, the Procuring Entity may extend the proposal submission deadline to give the Consultants reasonable time to take an amendment into account in their Proposals.
- 13.4 The Consultant may submit a modified Proposal or a modification to any part of it at any time prior to the proposal submission deadline. No modifications to the Technical or Financial Proposal shall be accepted after the deadline.

#### **14. Preparation of Proposals – Specific Considerations**

- 14.1 While preparing the Proposal, the Consultant must give particular attention to the following:
  - (a) If a Consultant considers that it may enhance its expertise for the assignment by associating with other consultants in the form of a Joint Venture or as Sub-consultants, it may do so as long as only one Proposal is submitted, in accordance with ITC 11 above. A Consultant cannot associate with shortlisted Consultant(s). When associating with non-shortlisted/non-invited firms in the form of a joint venture or a sub-consultancy, the shortlisted/invited Consultant shall be a lead member. If shortlisted/invited Consultant associates with each other, any of them can be a lead member.
  - (b) The Procuring Entity may indicate in the Data Sheet the estimated amount or Key Experts' time input (expressed in person-month), or the Procuring Entity's estimated total cost of the assignment, but not both. This estimate is indicative and the Proposal shall be based on the Consultant's own estimates for the same. This clause shall not apply when using Fixed Budget selection method.
  - (c) For assignments under the Fixed-Budget selection method, the estimated Key Experts' time input shall not be disclosed. Total available budget, with an indication whether it is inclusive or exclusive of taxes, is given in the Data Sheet, and the Financial Proposal shall not exceed this budget.
  - d) Key Experts shall not appear in more than one proposal unless so allowed in the Data Sheet. Invited firms must confirm and ensure their Key experts do not appear in proposal of other invited firms, otherwise proposals with Key experts appearing in other proposals will be rejected.

#### **15. Technical Proposal Format and Content**

- 15.1 The Technical Proposal shall be prepared using the Standard Forms provided in Section 3 of the RFP and shall comprise the documents listed in the Data Sheet under ITC 10.1. The Technical Proposal shall not include any financial information. A Technical Proposal containing material financial information shall be declared non-responsive.

- 15.2 Consultant shall not propose alternative Key Experts. Only one CV shall be submitted for each Key Expert position. Failure to comply with this requirement will make the Proposal non-responsive.

## **16. Financial Proposal**

- 16.1 The Financial Proposal shall be prepared using the Standard Forms provided in Section 4 of the RFP. It shall list all costs associated with the assignment, including (a) remuneration for Key Experts and Non-Key Experts, (b) reimbursable expenses indicated in the Data Sheet. Irrespective of the consultant selection method, any Consultant that does not submit itemized and priced financial proposal, or merely refers the Procuring Entity to other legal instruments for the applicable minimum remuneration fees shall be considered non-responsive.

### **a. Price Adjustment**

- 16.2 For assignments with a duration exceeding 18 months, a price adjustment provision for foreign and/or local inflation for remuneration rates apply if so, stated in the Data Sheet.

### **b. Taxes**

- 16.3 The Consultant and its Sub-consultants and Experts are responsible for meeting all tax liabilities arising out of the Contract unless stated otherwise in the Data Sheet. Information on taxes in Kenya is provided in the Data Sheet.

### **c. Currency of Proposal**

- 16.4 The Consultant may express the price for its Services in the currency or currencies as stated in the Data Sheet. If indicated in the Data Sheet, the portion of the price representing local cost shall be stated in Kenya Shillings.

### **d. Currency of Payment**

- 16.5 Payment under the Contract shall be made in the currency or currencies in which the payment is requested in the Proposal.

## **C. SUBMISSION, OPENING AND EVALUATION**

### **17. Submission, Sealing, and Marking of Proposals**

- 17.1 The Consultant shall submit a signed and complete Proposal comprising the documents and forms in accordance with ITC 10 (Documents Comprising Proposal). Consultants shall mark as "CONFIDENTIAL" information in their Proposals which is confidential to their business. This may include proprietary information, trade secrets or commercial or financially sensitive information. The submission can be done by mail or by hand. If specified in the Data Sheet, the Consultant has the option of submitting its Proposals electronically.

- 17.2 An authorized representative of the Consultant shall sign the original submission letters in the required format for both the Technical Proposal and the Financial Proposals and shall initial all pages of both. The authorization shall be in the form of a written power of attorney attached to the Technical Proposal.
- 17.3 A Proposal submitted by a Joint Venture shall be signed by all members so as to be legally binding on all members, or by an authorized representative who has a written power of attorney signed by each member's authorized representative.
- 17.4 Any modifications, revisions, interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Proposal.
- 17.5 The signed Proposal shall be marked "ORIGINAL", and its copies marked "COPY" as appropriate. The number of copies is indicated in the Data Sheet. All copies shall be made from the signed original. If there are discrepancies between the original and the copies, the original shall prevail.

## **18. Sealing and Marking of Proposals**

- 18.1 The firm shall deliver the Proposals in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the assignment, addressed to the Procuring Entity and a warning "DO NOT OPEN BEFORE..... (The time and date for proposal opening date". Within the single envelope, package or container, the Firm shall place the following separate, sealed envelopes:
- 18.2 In the single sealed envelope, or in a single sealed package, or in a single sealed container the following documents shall be enclosed and shall be addressed as follows:
- i) in an envelope or package or container marked "ORIGINAL", all documents comprising the Technical Proposal, as described in ITC11;
  - ii) in an envelope or package or container marked "COPIES", all required copies of the Technical Proposal;
  - iii) in an envelope or package or container marked "ORIGINAL", all required copies of the Financial Proposal; and
- 18.3 The inner envelopes or packages or containers shall:
- i) Bear the name and address of the Procuring Entity.
  - ii) Bear the name and address of the Firm; and
  - iii) Bear the name and Reference number of the Assignment.
- 18.4 If an envelope or package or container is not sealed and marked as required, the Procuring Entity will assume no responsibility for the misplacement or premature opening of the proposal. Proposals that are misplaced or opened

prematurely will not be accepted.

- 18.5 The Proposal or its modifications must be sent to the address indicated in the Data Sheet and received by the Procuring Entity no later than the deadline indicated in the Data Sheet, or any extension to this deadline. Any Proposal or its modification received by the Procuring Entity after the deadline shall be declared late and rejected, and promptly returned unopened.

## **19. Confidentiality/Canvassing**

- 19.1 From the time the Proposals are opened to the time the Contract is awarded, the Consultant should not contact the Procuring Entity on any matter related to its Technical and/or Financial Proposal. Information relating to the evaluation of Proposals and award recommendations shall not be disclosed to the Consultants who submitted the Proposals or to any other party not officially concerned with the process, until the publication of the Contract award information.
- 19.2 Any attempt by consultants or any one on behalf of the Consultant to influence improperly the Procuring Entity in the evaluation of the Proposals or Contract award decisions may result in the rejection of its Proposal and may be subject to the application of prevailing PPRA's debarment procedures.
- 19.3 Notwithstanding the above provisions, from the time of the Proposals' opening to the time of Contract award publication, if a Consultant wishes to contact the Procuring Entity on any matter related to the selection process, it should do so only in writing.

## **20. Opening of Technical Proposals**

- 20.1 The Procuring Entity's opening committee shall conduct the opening of the Technical Proposals in the presence of the Consultants' authorized representatives who choose to attend (in person, or online if this option is offered in the Data Sheet). The opening date, time and the address are stated in the Data Sheet. The envelopes with the Financial Proposal shall remain sealed and shall be securely stored by the Procuring Entity or with a reputable public auditor or independent authority until they are opened in accordance with ITC22.
- 20.2 At the opening of the Technical Proposals the following shall be read out: (i) the name and the country of the Consultant or, in case of a Joint Venture, the name of the Joint Venture, the name of the lead member and the names and the countries of all members; (ii) the presence or absence of a duly sealed envelope with the Financial Proposal; (iii) any modifications to the Proposal submitted prior to proposal submission deadline; and (iv) any other information deemed appropriate or as indicated in the Data Sheet.

## **21. Proposals Evaluation**

- 21.1 Subject to provision of ITC 15.1, the valuers of the Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded and after the Procuring Entity notifies all the Consultants in accordance with ITC 22.1.
- 21.2 The Consultant is not permitted to alter or modify its Proposal in anyway after the proposal submission deadline except as permitted under ITC12.7. While evaluating the Proposals, the Evaluation Committee will conduct the evaluation solely on the basis of the submitted Technical and Financial Proposals.

## **22. Evaluation of Technical Proposals**

- 22.1 The Procuring Entity's evaluation committee shall evaluate the Technical Proposals that have passed the eligibility and mandatory criteria, on the basis of their responsiveness to the Terms of Reference and the RFP. The eligibility and mandatory criteria shall include the following and any other that may include in the Data sheet.
- i) Firm has submitted the required number of copies of the Technical Proposals.
  - ii) Firm has submitted a sealed financial proposal.
  - iii) The Proposal is valid for the required number of days.
  - iv) The Technical Proposal is signed by the person with power of attorney, without material deviation, reservation, or omission.
  - v) The Technical Proposal is complete with all the forms and required documentary evidence submitted.
  - vi) A valid tax compliance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 3.14 for Kenyan firms.
  - vii) Key Experts are from eligible countries.
  - viii) Key Experts do not appear in more than one proposal, if so required.
  - ix) A short-listed firm has not participated in more than one proposal, if so required.
  - x) The Consultant is not insolvent, in receivership, bankrupt or in the process of being wound up.
  - xi) The Consultant, its sub-consultants and experts have not engaged in or been convicted of corrupt or fraudulent practices.
  - xii) The Consultant is neither precluded from entering a Contract nor debarred by PPRA.
  - xiii) The firm has not proposed employing public officials, civil servants, and employees of public institutions.
  - xiv) The Consultant, its sub-consultants and experts have no conflicts of interest.
- 22.2 Each responsive Proposal will be given a technical score. A Proposal shall be rejected at this stage if it does not respond to important aspects of the RFP or if

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it fails to achieve the minimum technical score indicated in the Data Sheet.

## **23. Public Opening of Financial Proposals**

### **23.1 Unsuccessful Proposals**

After the technical evaluation is completed, the Procuring Entity shall notify those Consultants whose Proposals were considered non-responsive to the RFP and TOR or did not meet the minimum qualifying technical score, advising them the following: (i) their Proposal was not responsive to the RFP and TOR or did not meet the minimum qualifying technical score; (ii) provide information relating to the Consultant's overall technical score, as well as scores obtained for each criterion and sub-criterion; (iii) their Financial Proposals will be returned unopened after completing the selection process and Contract signing; and (iv) notify them of the date, time and location of the public opening of the Financial Proposals and invite them to attend.

### **23.2 Financial Proposals for QBS, CQS and SSS**

Following the ranking of the Technical Proposals, when the selection is based on QBS or CQS, the top-ranked Consultant is invited to negotiate the Contract. Only the Financial Proposal of the technically top-ranked Consultant is opened by the opening committee. All other Financial Proposals shall be returned unopened after the Contract negotiations are successfully concluded and the Contract is signed with the successful Consultant.

When the selection is based on the SSS method and if the invited Consultant meets the minimum technical score required passing, the financial proposal shall be opened and the Consultant invited to negotiate the contract.

### **23.3 Financial Proposals for QCBS, FBS, LCS**

Following the ranking of the Technical Proposals, and after internal approvals, the Procuring Entity shall simultaneously notify in writing those Consultants whose Proposals were considered responsive to the RFP and TOR, and that have achieved the minimum qualifying technical score, advising them the following: (i) their Proposal was responsive to the RFP and TOR and met the minimum qualifying technical score; (ii) provide information relating to the Consultant's overall technical score, as well as scores obtained for each criterion and sub-criterion; (iii) their Financial Proposal will be opened at the public opening of Financial Proposals; and (iv) notify them of the date, time and location of the public opening and invite them for the opening of the Financial Proposals.

### **23.4 Opening of Financial Proposals**

The opening date should allow the Consultants sufficient time to decide for attending the opening and shall be no less than five (5) Business Days from the

date of notification of the results of the technical evaluation, described in ITC 22.1 and 22.2.

The Consultant's attendance at the opening of the Financial Proposals (in person, or online if such option is indicated in the Data Sheet) is optional and is at the Consultant's choice.

The Financial Proposals shall be opened publicly by the Procuring Entity's opening committee in the presence of the representatives of the Consultants and anyone else who chooses to attend. Any interested party who wishes to attend this public opening should contact the Procuring Entity as indicated in the Data Sheet. At the opening, the names of the Consultants, and the overall technical scores, including the break-down by criterion, shall be read aloud. The Financial Proposals will then be inspected to confirm that they have remained sealed and unopened. These Financial Proposals shall be then opened, and the total prices read aloud and recorded. Copies of the record shall be sent to all Consultants who submitted Proposals.

## **24. Correction of Errors**

- 24.1 Activities and items described in the Technical Proposal but not priced in the Financial Proposal, shall be assumed to be included in the prices of other activities or items, and no corrections are made to the Financial Proposal.
- 24.2 Time-Based Contracts: If a Time-Based contract form is included in the RFP, in case of discrepancy between (i) a partial amount (sub-total) and the total amount, or (ii) between the amount derived by multiplication of unit price with quantity and the total price, or (iii) between figures and words, the later will prevail. In case of discrepancy between the Technical and Financial Proposals in indicating quantities of input, the Technical Proposal prevails, and the Procuring Entity's evaluation committee shall correct the quantification indicated in the Financial Proposal so as to make it consistent with that indicated in the Technical Proposal, apply the relevant unit price included in the Financial Proposal to the corrected quantity, and correct the total Proposal cost.
- 24.3 Lump-Sum Contracts: If a Lump-Sum contract form is included in the RFP, the Consultant is deemed to have included all prices in the Financial Proposal, so neither arithmetical correction nor price adjustments shall be made. The total price, net of taxes understood as per ITC 25 below, specified in the Financial Proposal (Form FIN-1) shall be considered as the offered price.

## **25. Taxes**

- 25.1 Subject to ITC 24.2, all taxes are deemed to be included in the Consultant's financial proposal as separate items, and, therefore, considered in the

evaluation.

- 25.2 All local identifiable taxes levied on the contract invoices (such as sales tax, VAT, excise tax, or any similar taxes or levies) and income and withholding tax payable to Kenya on the remuneration of non-resident Experts for the services rendered in Kenya are dealt with in accordance with the instructions in the Data Sheet.

## **26. Conversion to Single Currency**

- 26.1 For the evaluation purposes, prices shall be converted to a single currency using the selling rates of exchange, source and date indicated in the Data Sheet.

## **27. Abnormally Low Prices**

- 27.1 An Abnormally Low Price is one where the financial price, in combination with other constituent elements of the proposal, appears unreasonably low to the extent that the price raises material concerns with the Procuring Entity as to the capability of the Consulting firm to perform the Contract for the offered price.
- 27.2 In the event of identification of a potentially Abnormally Low Price by the evaluation committee, the Procuring Entity shall seek written clarification from the firm, including a detailed price analyses of its price in relation to the subject matter of the contract, scope, delivery schedule, allocation of risks and responsibilities and any other requirements of the RFP document.
- 27.3 After evaluation of the price analyses, if the Procuring Entity determines that the firm has failed to demonstrate its capability to perform the contract for the offered price, the Procuring Entity shall reject the firm's proposal.

## **28. Abnormally High Prices**

- 28.1 An abnormally high price is one where the proposal price, in combination with other constituent elements of the proposal, appears unreasonably too high to the extent that the Procuring Entity is concerned that it (the Procuring Entity) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Consultants is compromised.
- 28.2 In case of an abnormally high tender price, the Procuring Entity shall make a survey of the market prices, check if the estimated cost of the contract is correct, and review the RFP to check if the specifications, TOR, scope of work and conditions of contract are contributory to the abnormally high proposals. The Procuring Entity may also seek written clarification from the Consultants on the reason or the high proposal price. The Procuring Entity shall proceed as follows:
- i) If the proposal price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the proposal

depending on the Procuring Entity's budget considerations.

- ii) If specifications, TOR, scope of work and/or conditions of contract are contributory to the abnormally high proposal prices, the Procuring Entity shall reject all proposals and may re-invite for proposals for the contract based on revised estimates, specifications, TOR, scope of work and conditions of contract.

28.3 If the Procuring Entity determines that the Proposal Price is abnormally too high because genuine competition between consultants is compromised (*often due to collusion, corruption or other manipulations*), the Procuring Entity shall reject all Proposals and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before re-inviting for proposals.

## **29. Combined Quality and Cost Evaluation**

### **a. Quality and Cost Based Selection (QCBS) Method**

29.1 In the case of Quality and Cost Based Selection (QCBS), the total score is calculated by weighting the technical and financial scores and adding them as per the formula and instructions in the Data Sheet. The Consultant that achieves the highest combined technical and financial score will be notified and invited for negotiations.

### **b. Fixed Budget Selection (FBS) Method**

29.2 In the case of FBS, those Proposals that exceed the budget indicated in ITC 14.1.4 of the Data Sheet shall be rejected. The Procuring Entity's evaluation committee will select the Consultant with the highest-ranked Technical Proposal that does not exceed the budget indicated in the RFP, notify and invite such Consultant to negotiate the Contract.

### **c. Least Cost Selection (LCS) Method**

29.3 In the case of Least-Cost Selection (LCS), the Procuring Entity's evaluation committee will select the Consultant whose Proposal is the lowest evaluated total price among those Proposals that achieve the minimum technical score required to pass, notify the Consultant and invite the Consultant to negotiate the Contract.

### **d. Combined Technical and Evaluation Report**

29.4 The evaluation committee shall prepare a combined technical and financial evaluation report, with specific recommendations for award or otherwise and subject to the required approvals within the Procuring Entity prior to notifications and invitation of Consultant for negotiations.

### **30. Notification of Intention to enter into a Contract/Notification of Award**

30.1 The Procuring Entity shall send to each Consultant (that has not already been notified that it has been unsuccessful) the Notification of Intention to Award the Contract to the successful Consultant. The **Notification of Intention to enter into a Contract / Notification of Award** shall contain, at a minimum, the following information:

- i) The name and address of the Consultant with whom the Procuring Entity successfully negotiated a contract;
- ii) the contract price of the successful Proposal;
- iii) a statement of the reasons why the recipient's Proposal was unsuccessful
- iv) the expiry date of the Standstill Period, and
- v) instructions on how to request a debriefing and/or submit a complaint during the standstill period;

### **31. Standstill Period**

31.1 The Standstill Period shall be the number of days stated in the Data Sheet. The Standstill Period commences the day after the date the Procuring Entity has transmitted to each Consultant (that has not already been notified that it has been unsuccessful) the Notification of Intention to Award the Contract. The Contract shall not be signed earlier than the expiry of the Standstill Period. This period shall be allowed for aggrieved Consultants to lodge an appeal. The procedure for appeal and the authority to determine the appeal or complaint is as indicated in the Data Sheet.

## **D. NEGOTIATIONS AND AWARD**

### **32. Negotiations**

32.1 The negotiations will be held at the date and address indicated in the Data Sheet with the Consultant's representative(s) who must have written power of attorney to negotiate and sign a Contract on behalf of the Consultant.

32.2 The evaluation committee shall prepare minutes of negotiations that are signed by the Accounting Officer and the Consultant's authorized representative.

#### **32.3 Availability of Key Experts**

The invited Consultant shall confirm the availability of all Key Experts included in the Proposal as a pre-requisite to the negotiations, or, if applicable, a replacement in accordance with ITC 12. Failure to confirm the Key Experts' availability may result in the rejection of the Consultant's Proposal and the Procuring Entity proceeding to negotiate the Contract with the next-ranked Consultant.

32.4 Notwithstanding the above, the substitution Key Experts at the negotiations may be considered if due solely to circumstances outside the reasonable control

of and not foreseeable by the Consultant, including but not limited to death or medical in capacity. In such case, the Consultant shall offer a substitute Key Expert within the period of time specified in the letter of invitation to negotiate the Contract, who shall have equivalent or better qualifications and experience than the original candidate.

### **32.5 Technical negotiations**

The technical negotiations include discussions of the Terms of Reference (TORs), the proposed methodology, the Procuring Entity's inputs, the special conditions of the Contract, and finalizing the "Description of Services" part of the Contract. These discussions shall not substantially alter the original scope of services under the TOR or the terms of the contract, lest the quality of the final product, its price, or the relevance of the initial evaluation be affected.

### **32.6 Financial negotiations**

The financial negotiations include the clarification of the Consultant's tax liability in Kenya and how it should be reflected in the Contract. All applicable taxes shall be itemized separately and included in the contract price.

32.7 If the selection method included cost as a factor in the evaluation (that is QCBS, FBS, LCS), the unit rates and the total price stated in the Financial Proposal for a Lump-Sum contract shall not be negotiated.

32.8 Where QBS or CQS methods was used for a *Lump-sum Contract* as indicated in the RFP, the unit rates negotiations shall not take place, except when the offered Key Experts and Non-Key Experts' remuneration rates are much higher than the typically charged rates by consultants in similar contracts or the professional practice. In such case, the Procuring Entity may ask for clarifications and, if the fees are very high, ask to change the rates. The format for (i) providing information on remuneration rates in the case of QBS and CQS; and (ii) clarifying remuneration rates' structure under this Clause, is provided in Appendix A to the Financial Form FIN-3: Financial Negotiations – Breakdown of Remuneration Rates. If after the clarifications, the price is still considered too high, the Procuring Entity may terminate the negotiation and invite the next ranked Consultant to open its financial proposal and negotiate the contract.

32.9 In the case of a *Time- Based contract*, negotiation of unit rates shall not take place, except when the offered Key Experts and Non-Key Experts' remuneration rates are much higher than the typically charged rates by consultants in similar contracts. In such case, the Procuring Entity may ask for clarifications and, if the fees are very high, ask to change the rates. The format for (i) providing information on remuneration rates in the case of QBS and CQS; and (ii) clarifying remuneration rates 'structure under this Clause, is provided in Appendix A to the Financial Form FIN-3: Financial Negotiations-Breakdown of Remuneration Rates. If after the clarifications, the price is still considered too high, the Procuring Entity may terminate the negotiation and invite the next ranked Consultant for negotiations.

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32.10 Where SSS method was used as indicated in the RFP, both the unit rates and total price shall be negotiated. If the negotiations fail, the Procuring Entity shall terminate the Consultant selection process. In that event, the Procuring Entity shall review the consultancy requirements and market conditions prior to deciding to use an appropriate selection method to again procure the consulting services.

### **33. Conclusion of Negotiations**

33.1 The negotiations are concluded with a review of the finalized draft Contract, which then shall be initialed by the Accounting Officer and the Consultant's authorized representative and minutes prepared to record the outcome of the negotiations.

33.2 If the negotiations fail, the Procuring Entity shall inform the Consultant in writing of all pending issues and disagreements and provide a final opportunity to the Consultant to respond. If disagreement persists, the Procuring Entity shall terminate the negotiations informing the Consultant of the reasons for doing so. The Procuring Entity will invite the next-ranked Consultant to negotiate a Contract. Once the Procuring Entity commences negotiations with the next-ranked Consultant, the Procuring Entity shall not reopen the earlier negotiations.

### **34. Letter of Award**

34.1 Upon expiry of the Standstill Period, specified in ITC 28.1, after satisfactorily addressing any appeal that has been filed within the Standstill Period, and upon successful negotiations, the Procuring Entity shall send a Letter of Award to the successful Consultant. The letter shall confirm the Procuring Entity's award of Contract to the successful Consultant and requesting the Consultant to sign and return the draft negotiated Contract within Twenty-One (21) Days from the date of the Letter of Award.

### **35. Signing of Contract**

35.1 The Contract shall be signed prior to the expiration of the Proposal Validity Period and promptly after expiry of the Standstill Period, specified in ITC 28.1 and upon satisfactorily addressing any complaint that has been filed within the Standstill Period.

35.2 The Consultant is expected to commence the assignment on the date and at the location specified in the Data Sheet.

### **36. Publication of Procurement Contract**

36.1 Within the period specified in the Data Sheet, the Procuring Entity shall publish the awarded Contract which shall contain, at a minimum, the following information: (a) name and address of the Procuring Entity; (b) name and reference number of the contract being awarded, (c) the selection method used;

(a) names of the consultants that submitted proposals; (e) names of all Consultants whose Proposals were rejected or were not evaluated; (f) the name of the successful consultant, the final total contract price, the contract duration and a summary of its scope.

- 36.2 Consider carefully the information on consultants to be published, particularly evaluation by the Procuring Entity, to avoid disclosing information which can facilitate bid-rigging formation going forward. Suggest amendment as follows:
- 36.3 The awarded Contract shall be published on the Procuring Entity's website with free access if available and in the official procurement tender portal.

## Section 2 (B): Data Sheet

The following information for procurement of consultancy services and selection of consultants shall complement or amend the provisions of the information to consultants **(Section 2(A))**. Wherever there is a conflict between the provisions of the instruction to consultants and the provisions of the data sheet, the provisions of the data sheet herein shall prevail over those of the information to consultants.

GENERAL PROVISIONS	
Reference to ITC Clause	
1(j)	Electronic procurement system shall <b>NOT</b> be used.
2.1	Name of the Procuring Entity: <b><i>Kenya Roads Board.</i></b> The method of selection is <b><i>Quality and Cost Based Selection Method (QCBS).</i></b>
2.2	Technical and Financial Proposal to be submitted together in two separate envelopes: <b>Yes.</b>  The name of the assignment is:  Provision of Consultancy Services to develop an Environmental, Social and Governance (ESG) Strategy.
2.3	A pre-proposal conference will be held: <b>No</b>

	telephone numbers of the contact person. This will facilitate communication as bidders seek clarification during the tendering period.
2.4	The Client will provide the following inputs: 1. The Client will be available to clarify any matters that may arise. 2. Provide information, documentation and records required for the assignment within reasonable time of request. 3. Provide timely comments to documents prepared by the Consultant for the assignment. 4. Procuring entity will provide the information listed in the Terms of Reference to facilitate the preparation of the proposals.
6.2	Maximum number of members in the Joint Venture (JV) shall be: <b>N/A</b>
6.6(a)	The list of debarred firms and individuals is available at the PPRA's website <a href="http://www.ppra.go.ke">www.ppra.go.ke</a> or email <a href="mailto:complaints@ppra.go.ke">complaints@ppra.go.ke</a> .
6.7	The business will be registered with Public Procurement Regulatory Authority: <b>Not Applicable.</b>

<b>B. Preparation of Proposals</b>	
10.1	<p>The proposal shall comprise the following: -</p> <p><b>1<sup>st</sup> Inner Envelope with the Technical Proposal</b></p> <p>Power of Attorney to sign the Proposal</p> <p><b>TECH – 1:</b> Technical Proposal Submission Form</p> <p><b>TECH – 2:</b> Consultant’s Organization and Experience</p> <p><b>TECH – 3:</b> Comments and Suggestions</p> <p><b>TECH – 4:</b> Description of Approach, Methodology and Work plans</p> <p><b>TECH – 5:</b> Work Schedule and Planning for Deliverables</p> <p><b>TECH – 6:</b> Team Composition, Assignment and Key Experts input</p> <p><b>TECH – 7:</b> Mandatory Documentary Evidence</p> <p>AND</p> <p><b>2<sup>nd</sup> Inner Envelope with the Financial Proposal</b></p> <p>(1) <b>FIN - 1:</b> Financial Proposal Submission Form</p> <p>(2) <b>FIN – 2:</b> Summary of Costs</p> <p>(3) <b>FIN – 3:</b> Breakdown of Remuneration</p> <p>(4) <b>FIN – 4:</b> Breakdown of the Reimbursable Expenses</p>
12.1	Proposal must remain valid for <b>120 days</b> after the proposal submission deadline.
12.9	The services shall not be sub-contracted.

13.1	<p>Clarifications may be requested not later than <b>3 days</b> prior to the submission deadline.</p> <p>The contact information for requesting information or clarification is:  Deputy Director Supply Chain  Kenya Roads Board,  P.O. Box 73718-00200, Nairobi,  Tel: 2722865/6/8, 4980000,  Email: <a href="mailto:tenders@krb.go.ke">tenders@krb.go.ke</a>.</p>
14.1 (b)	Estimated inputs for Key Experts’ time-input: <b>See TOR Qualification and inputs of Key Experts</b>
14.1 (d)	Key Experts shall <b>NOT</b> appear in more than one proposal except for proposals by the same firm or consortium for different packages.
16.1(b)	The financial proposal will include the requirements as specified in Form <b>FIN 1 to FIN 4</b> of the RFP document.
16.2	There shall be <b>NO</b> price adjustment during the contract period.

16.3	Information on the Consultant's tax obligations in the procuring entity's country can be found on the Kenya Revenue Authority website: <a href="http://www.kra.go.ke">www.kra.go.ke</a>
16.4	The Financial Proposal shall be stated in: <b>Kenya Shillings</b>
<b>C. Submission, Opening and Evaluation</b>	
17.1	The Consultant <b>SHALL NOT</b> have the option of submitting their proposals electronically.
17.2	All pages in the Proposal shall be serially numbered (e.g. 1, 2, 3, ...) and initialed by the firm's or Joint Venture Authorized Representative.
17.5	The Consultant must submit: (a) Technical proposal: One (1) original and one (1) copy. (b) Financial Proposal: One (1) Original and one (1) copy.
18.5	The proposals must be submitted not later than: Date: <b>Thursday 28th March 2024</b> . Time: 12:00Hrs East African Time.  The proposal submission address is Director General, Kenya Roads Board P.O. BOX 73718 – 00200, NAIROBI.
	<p>Tender Box on 6<sup>th</sup> Floor, Kenya Re Towers, Off Ragati Road, Upper Hill Area.</p> <p>Information on the Outer Envelope should also include: <b>TENDER NO KRB/T/10/2023-24. PROVISION OF CONSULTANCY SERVICES TO DEVELOP AN ENVIRONMENTAL, SOCIAL AND GOVERNANCE STRATEGY.</b></p> <p><b>DO NOT OPEN, EXCEPT IN THE PRESENCE OF THE TENDER OPENING COMMITTEE.</b></p>
20.1	<p>An online option of the opening of the Technical Proposal is offered: <b>No.</b></p> <p>The opening shall take place at: Street Address: Kenya Re Towers, Off Ragati Road, Upper Hill Area Floor Number: 6<sup>th</sup> Floor Room Number: Board Room City: Nairobi County: Nairobi Country: Kenya Date: <b>Thursday 28th March 2024</b> Time: 12:00Hrs East African Time</p>
22.1	Other eligibility and mandatory criteria shall be: Refer to the Mandatory Requirements in <b>FORM TECH 7.</b>

22.2	<p>The Criteria, sub-criteria and point system for the evaluation of the technical proposals is as provided below: -</p> <p>The broad Evaluation Criteria will be as below:</p> <ol style="list-style-type: none"> <li><b>1. Mandatory evaluation stage</b></li> <li><b>2. Technical evaluation stage</b></li> <li><b>3. Financial evaluation stage</b></li> </ol> <p>(The Board may choose to carry out due diligence to confirm any information provided by a bidder before recommending for award)</p> <p><i>The minimum Technical Score required to pass in the technical evaluation is at least 75% out of the 100%. Firms that score at least 75% shall proceed for the next stage of financial evaluation while firms that score below 75% shall be rejected at this stage and their financial proposals shall be returned to them unopened.</i></p>
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Item No.	Description	Marks (%)
1.	Firm's General and Specific Experience relevant to the assignment.	40
2.	Adequacy, Quality of the Proposed Methodology and Work Plan in responding to the Terms of Reference (TORs).	30
3.	Key Experts' Qualification and Competence for the Assignment.	30
	<b>TOTAL</b>	<b>100%</b>

	<p><i>unopened after the end of the procurement process.</i></p> <p><b>TECHINAL EVALUATION CRITERIA</b></p> <p>The technical evaluation will be guided by the following steps that we intend to go through. As indicated in the document only Firms or Joint Ventures that score at least 75% or more in the technical evaluation shall proceed to the next stage of financial evaluation.</p> <p><b>Technical Evaluation Process and Rating</b></p> <p>The technical evaluation will be carried out in accordance with the criteria as indicated in the RFP. The evaluation will be done in panel form by an Evaluation Committee so that the members will carry out the evaluation preferably in the same room to enable clarification of issues that may arise and also to ease co-ordination.</p> <p>Each evaluator will carry out the evaluation independently but do it thoroughly with an open mind to avoid biases and be able to assess all the bidders on the same platform in order that KRB may be able to contract the services of the most highly rated bidder to carry out the assignment.</p> <p><b>Scoring/Rating Procedure</b></p> <p>Each evaluator will review each proposal and score/rate independently. Following these individual evaluations, the committee shall reconvene for moderation.</p> <p>The aim of moderation is to review all the scores to ensure that evaluators strike balanced ratings to avoid situations where the marks are extreme. However, individual evaluators have the right to stick to their scores without changing them if they strongly feel so. However, they will be expected to justify their position in writing, and this will be reflected in the evaluation report.</p> <p><b>Unforeseen Issues</b> -</p> <p>Each evaluator should record any unique issues not captured in the evaluation process that may have a bearing in the total evaluation. If the evaluators feel strongly that those issues may affect the responsiveness of the tender, the committee will discuss and agree on the next course of action. Material deviation from the TOR, information that may negate performance of the services etc. may lead to disqualification of the tender.</p> <p><b>Comments on each Firm</b></p> <p>Each evaluator will also note the strong and weak points of each firm which will form part of the final report.</p>
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	<b>Detailed Technical Evaluation Criteria</b>	
	<b>Criteria I: Firm's General and Specific Experience relevant to the assignment. Max. 10 Marks</b>	<b>40 Marks</b>
	<p><b>1.1 Description to indicate understanding of the Consultancy and description of the technical capabilities and resources to carry out this specific assignment</b></p> <ul style="list-style-type: none"> <li>• Demonstrate your understanding of the assignment- <b>marks- 3:</b></li> <li>• Technical Capability: Provide an Organization Chart and show the technical personnel for the assignment <b>(2 Marks)</b>.</li> </ul> <p><b>1.2 General and specific experience of the firm in relation to this assignment- Max. 35 Marks</b></p> <p>The firm should provide specific experience, as a firm, of at least Five (5) relevant assignments specifying whether public, private, or any other for assignments done in the last ten (10) years in the format provided in <b>Form Tech-2</b>. The firm should also provide copies of relevant documents for each claimed experience or assignment.</p> <ul style="list-style-type: none"> <li>• The firm should provide <b>experience</b> of the firm in similar assignments from the Corporate Sector - <b>20 marks (at least 5 projects, each 4 marks)</b></li> <li>• The Firm should provide recommendation letters from the Organizations indicated above. Letters <b>MUST</b> be in the Client's letter head, signed and stamped. <b>15 marks (3 marks for each letter)</b></li> </ul> <p><i>Each listed relevant assignment/project with support documentation shall earn a total of <b>4 marks</b> (i.e. 1 mark for listing &amp; detailing in provided form, plus 3 marks for providing support documentation).</i></p> <p><i>The claimed reference shall be substantiated by presenting copies of support documentation as detailed below - which shall be included in the proposal.</i></p> <p><i>(i) Letter of recommendation accompanied by copy of signed Form of contract (not the whole contract), Or</i></p> <p><i>(ii) Completion certificate accompanied by copy of signed Form of contract (not the whole contract), Or</i></p>	<p>5</p> <p>35</p>

		(iii) For ongoing projects - Letter of award accompanied by Acceptance of award and copy of signed Form of contract (not the whole contract)	
		<b>Total Criteria I</b>	<b>40</b>
		<b>Criteria II: Adequacy, Quality of the Proposed Methodology and Work Plan in responding to the Terms of Reference (TORs).</b>	<b>20</b>
		<b>(i) Consultant's Understanding of TOR</b>  (a) Consultant's comments, suggestions, and areas of improvement on the TOR that are value adding, comments on data, facilities, background reports and administrative support to be provided by the Client ( <b>2 Marks</b> ).	<b>2</b>

		<b>(ii) Approach and methodology of the work to be carried out in the Assignment</b>  (a) Consultants Approach and Methodology of the Work to be Carried out in the Assignment ( <b>16 marks</b> ) <ul style="list-style-type: none"> <li>i) Demonstration of the ability to review relevant documentation including KRB Act, Strategic plan, Performance Contracts, Policies and Strategies. – <b>1 mark</b></li> <li>ii) Demonstrate how the Consultant will conduct Stakeholders Consultations including workshops, focus group discussion and interview to gather input and feedback – <b>2 mks.</b></li> <li>iii) Demonstrate ability to analyze data and synthesize findings to identify key environmental and social priorities and challenges – <b>1 mks.</b></li> <li>iv) Demonstration on how to identify ESG risks, opportunities, and Benchmarks. – <b>1 mks</b></li> <li>v) Demonstrate how to engage internal and</li> </ul>	<b>16</b>
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	<p>external stakeholders to gather diverse perspective and inputs for strategy development, how to develop a sustainability statement for KRB. <b>1 mks</b></p> <p>vi) Demonstrate ability to develop an implementation plan including strategies, Key Performance Indicators (KPIs), strategy to mainstream ESG principles into KRB processes, reporting and monitoring framework. <b>2 mks</b></p> <p>(b) Consultants understanding of the deliverables and outputs of the assignment – <b>8 Marks</b> <i>(0.5 marks to detailing report/output and its timeline + 0.5 marks for expounding the contents of the report = total for 1 mark per report/output)</i></p> <p>i) Inception Report</p> <p>ii) ESG Assessment Report</p> <p>iii) Stakeholders Engagement Summary</p> <p>iv) Draft &amp; Final Strategy Document</p> <p>v) Implementation Plan</p> <p>vi) Dissemination and Training Materials.</p> <p>vii) GRI Training for key staff members.</p> <p>viii) One day sensitization workshop to the Board and Executive Committee.</p>	
	<p><b>(iii) Work Plan:</b></p> <p>The Consultants submissions, charts, works programmes and writeups are in tandem with the Client expectations (Conformity to work plan schedule of the consultancy and the key personnel) as the format provided in <b>FORM TECH-5</b>.</p> <p>(a) Time schedule for activity (work plan /time scale)- Time Schedule for Key Personnel and Submission of Reports – <b>2 Mark</b></p>	<b>2</b>
	<b>Total Criteria II</b>	<b>20</b>

	<b>Criteria III: Key Experts' Qualification and Competence for the Assignment.</b>	
	<b>ESG EXPERT (Team Leader)</b>	
	<b>Academic and professional qualifications:</b> (i) A Doctorate (PhD) degree in Environmental Sciences, Business Strategy, Social Sciences, Public Policy, or related field from a recognized University – <b>2 Marks</b> (ii) A bachelor's degree in environmental science, economics, Sustainability studies social sciences or related field. – <b>1 Mark</b> (iii) Certification in Global Reporting Initiative ESG Practitioner. - <b>2 Marks</b> (iv) Professional qualification in financial, Sustainability, ESG, reporting or related field. - <b>1 Mark</b>	<b>6</b>
	<b>General and Specific Experience</b>	<b>9</b>
	(i) Minimum 15 years' general experience in strategy development, Sustainability, Corporate Governance, Environmental Management, Social Impact assessment. – <b>2 Mark</b>  (ii) Minimum of ten (10) years professional experience; in ESG Strategies/ framework development, Global reporting Initiative, Sustainability Initiative or related. – <b>5 Marks</b> (iii) Experience in working with government partners and other stakeholders in public sector development programs– <b>2 Marks</b>	
	<b>Sub-total for ESG Consultant</b>	<b>15</b>
	<b>Governance Specialist</b>	
	<b>Academic and professional qualifications:</b> (i) A degree in Law, Governance or equivalent from a recognized University - <b>1 Mark</b>  (ii) Professional Qualification in Governance, Compliance, or related field. <b>1 Marks.</b>	<b>2</b>

	<b>General and Specific Experience</b> (i) At least Eight (8) years general experience in legal advisory- <b>2 Marks</b> (ii) Minimum of five (5) years professional experience; demonstrated practical experience in developing governance frameworks. - <b>2 Mark</b> (iii) Demonstratable knowledge in designing and implementing governance frameworks - <b>3 Mark.</b>	7
	<b>Sub-total for Governance Specialist</b>	9
	<b>Sustainability Specialist</b>	
	<b>Academic and professional qualifications:</b> (i) A degree in Environmental Sciences, Development Finance, Economics, Sustainability studies, Social Sciences, or related field in Governance or equivalent from a recognized University - <b>1 Mark</b>	1
	<b>General and Specific Experience</b> (i) At least 5 years general experience in Corporate Governance, Environmental Management, Social Impact Assessment. - <b>2 Mark</b> (ii) Minimum 3 years specific experience in ESG Strategies, Global reporting initiatives, and Sustainability initiatives. - <b>2 Mark</b> (iii) Demonstratable in-depth understanding of ESG Frameworks, Sustainability Global reporting guidelines standards, Compliance and Reporting. - <b>3 Marks</b>	7
	<b>Sub-total for Governance Specialist</b>	8
	<b>Stakeholder Engagement Specialist</b>	
	<b>Academic and professional qualifications:</b> (i) Master's degree in communications, Public Relations, Environmental Studies, Business Administration, or related field. (ii) Professional Qualifications in stakeholder engagement, Community relations, Project Management or related field.	2

	<b>General and Specific Experience</b> <b>(i)</b> Eight (8) Years general experience in public relations, Community development stakeholder engagement or related field. <b>-2Marks</b> <b>(ii)</b> Three (3) years professional experience in ESG Strategies. <b>-2 Marks</b> <b>(iii)</b> Demonstratable knowledge in concepts, Techniques and Practices, Data collection, analysis, and reporting. <b>-2 marks.</b>	6
	<b>Sub-total for Stakeholder Engagement Specialist</b>	8
	<b>Total Criteria III</b>	40
	<b>Grand Total</b>	100
23.4	An online option of the opening of the Financial Proposal is offered: <b>NO.</b>	
25.2	Taxes: The Consultant shall pay all applicable taxes in accordance with the laws of Kenya. The Client shall deduct withholding tax as per the current Government of Kenya regulations.	
26.1	All Consultant's quoted rates and amounts shall be in Kenya Shillings.	
29.1 (a)	<p>The lowest evaluated Financial Proposal (Fm) is given the maximum financial score (Sf) of 100.</p> <p>The formulae for determining the Financial Scores (Sf) of all other Proposals shall be calculated as follows:-</p> <p><math>Sf = 100 \times Fm / F</math>, in which "Sf" is the financial score, "Fm" is the lowest price, and "F" the price of the proposal under consideration.</p> <p>The weights given to the Technical (T) and Financial (P) Proposals are: T = 0.70 P = 0.30</p> <p>Proposals are ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) as following: <math>S = St \times T\% + Sf \times P\%</math>. The firm achieving the highest combined technical and financial score shall be invited for negotiations.</p>	
31.1	The Standstill Period shall be <b>14 days</b> .	

32.1	<p>Contract Negotiations shall be held in the Physical Address provided below:-</p> <p>Kenya Roads Board Offices, 3<sup>rd</sup>  Floor, Kenya Re Towers, Off  Ragati Road, Upper Hill,  P. O. Box 73718 - 00200, Nairobi,  Tel: +254 - 020 - 2722865/6/8, +2544980000  Email: <a href="mailto:tenders@krb.go.ke">tenders@krb.go.ke</a></p>
35.2	<p>The Consultant shall be expected to commence the assignment within 14 days after issuance of commencement letter.</p>

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### **SECTION 3: TECHNICAL PROPOSAL STANDARD FORMS**

*{Notes to Consultant shown in brackets {} throughout Section 3 provide guidance to the Consultant to prepare the Technical Proposal; they should not appear on the Proposals to be submitted.}*

#### **1. FORMTECH-1: TECHNICAL PROPOSAL SUBMISSION FORM**

*{Location, Date}*

To: The Director General  
Kenya Roads Board,  
6th Floor, Off Ragati Road, Upper Hill,  
P. O. Box 73718 – 00200,  
NAIROBI.

Dear Sir,

We, the undersigned, offer to provide Consultancy Services to Undertake a Study on the Economic Impact of Electric Mobility on Sustainability of the Road Maintenance Levy in accordance with your RFP dated [Insert Date] and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal and a Financial Proposal sealed in a separate envelope.

*{If the Consultant is a joint venture, insert the following: We are submitting our Proposal in association/as a consortium/as a joint venture with: {Insert a list with full name and the legal address of each member, and indicate the lead member}. We have attached a copy*

*{insert: "of our letter of intent to form a joint venture" or, if a JV is already formed, "of the JV agreement"} signed by every participating member, which details the likely legal structure of and the confirmation of joint and severable liability of the members of the said joint venture.*

**OR** *{If the Consultant's Proposal includes Sub-consultants, insert the following:} We are submitting our Proposal with the following firms as Sub-consultants: {insert a list with full name and address of each Sub-consultant.}*

We hereby declare that:

- a) All the information and statements made in this Proposal are true and we accept that any misinterpretation or misrepresentation contained in this Proposal may lead to our disqualification by the Procuring Entity or may be sanctioned by the PPRA.
- b) Our Proposal shall be valid and remain binding upon us for the period of time specified in the Data Sheet, Clause 12.1.
- c) We have no conflict of interest in accordance with ITC 3.
- d) We meet the eligibility requirements as stated in ITC 6, and we confirm our understanding of our obligation to abide by the Government's policy in regard to

- corrupt, fraudulent and prohibited practices as per ITC 5.
- e) In competing for (and, if the award is made to us, in executing) the Contract, we undertake to observe the laws against fraud and corruption, including bribery, as well as laws against anti-competitive practices, including bid rigging in force in Kenya; we hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption or anti-competitive practices.
  - f) We confirm that we are not insolvent, in receivership, bankrupt or on the process of being wound up.
  - g) The Consultant shall declare in the Technical Proposal Submission Form, that in competing for and executing a contract, it shall undertake to observe the laws of Kenya against fraud and corruption including bribery, as well as against anti-competitive practices including bid-rigging.
  - h) We are not guilty of any serious violation of fair employment laws and practices. We undertake to observe the laws of Kenya against fraud and corruption including bribery, as well as against collusive and anti-competitive practices, including bid rigging. To this effect we have signed the "Certificate of Independent Proposal Determination" attached below. We also undertake to adhere by the Code of Ethics for persons participating in Public Procurement and Asset Disposal Activities in Kenya, copy available from [www.ppra.go.ke](http://www.ppra.go.ke) during the procurement process and the execution of any resulting contract.
  - i) We, along with any of our sub-consultants are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the PPRA.
  - j) Except as stated in the ITC 12 and Data Sheet, we undertake to negotiate a Contract on the basis of the proposed Key Experts. We accept that the substitution of Key Experts for reasons other than those stated in ITC Clause 12 and ITC Clause 29.3 and 29.4 may lead to the termination of Contract negotiations.
  - k) Our Proposal is binding upon us and subject to any modifications resulting from the Contract negotiations.
  - l) We understand that the Procuring Entity is not bound to accept any Proposal that it receives.

We undertake, if our Proposal is accepted and the Contract is signed, to initiate the Services related to the assignment no later than the date indicated in Clause 32.2 of the Data Sheet.

We remain,

Yours sincerely,

**Authorized Signature {In full and initials}:**

Name and Title of Signatory:

Name of Consultant (*company's name or JV's name*):

Contact information (*phone and e-mail*):

{For a joint venture, either all members shall sign or only the lead member, in which case the power of attorney to sign on behalf of all members shall be attached}.

## 2. CERTIFICATE OF INDEPENDENT PROPOSAL DETERMINATION

I, the undersigned, in submitting the accompanying TECHNICAL PROPOSAL SUBMISSION FORM to **Kenya Roads Board**.

for: \_\_\_\_\_ *[Name and number of tender]* in response to the request for tenders made by: *[Name of Tenderer]* do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of \_\_\_\_\_ *[Name of Tenderer]* that:

1. I have read and I understand the contents of this Certificate;
2. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;
4. For the purposes of this Certificate and the Tender, I understand that the word "competitor" shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:
  - Has been requested to submit a Tender in response to this request for tenders;
  - could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;
5. The Tenderer discloses that the Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
6. In particular, without limiting the generality of paragraphs (5) above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
  - prices;
  - methods, factors or formulas used to calculate prices;
  - the intention or decision to submit, or not to submit, a proposal;
7. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this RFP relates;
8. The terms of the RFP have not been, and will not be, knowingly disclosed by the Consultant, directly or indirectly, to any competitor, prior to the date and time of the official proposed opening, or of the awarding of the Contract, which ever comes first, unless otherwise required by law.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*[Name, title and signature of authorized agent of Consultant and Date]*

### **3. APPENDIX TO FORM OF PROPOSAL ON FRAUD AND CORRUPTION CLAUSE (for information)**

#### **Purpose**

The government of Kenya's Anti-Corruption and Economic Crime laws and their sanction's policies and procedures, Public Procurement and Asset Disposal Act (*No. 33 of 2015*) and its Regulation, and any other Kenya's Acts or Regulations related to Fraud and Corruption, and similar offences, shall apply with respect to Public Procurement Processes and Contracts that are governed by the laws of Kenya.

#### **Requirements**

The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts ,and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1 above.

Kenya's public procurement and asset disposal act (*No. 33 of 2015*) under Section 66 describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted below highlight Kenya's policy of no tolerance for such practices and behaviour:

- 1) A person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
  - 2) A person referred to under sub section (1) who contravenes the provisions of that sub-section commits an offence;
  - 3) Without limiting the generality of the subsection (1) and (2), the person shall be: -
    - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
    - b) if a contract has already been entered into with the person, the contract shall be avoidable;
  - 4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
  - 5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement:-
-

- i. Shall not take part in the procurement proceedings;
  - ii. Shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
  - iii. Shall not be a sub-contractor for the tender to whom was awarded contract, or a member of the group of tenderers to whom the contract was awarded, but the sub-contractor appointed shall meet all the requirements of this Act.
- 6) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;
- 7) If a person contravenes sub section (1) with respect to a conflict of interest described in subsection (5) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer.
- 8) Incompliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:
- a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
- i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
  - ii) "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
  - iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
  - iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
  - v) "obstructive practice" is:
    - i) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the

- investigation or from pursuing the investigation; or
- ii) Acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3e. below.
- b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:  
 "fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.
  - c) Rejects a proposal or award<sup>1</sup> of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
  - d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or debar or recommend to appropriate authority (ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;
  - e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers and their Sub-contractors, Sub- consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect<sup>2</sup> all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and
  - f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a "Self-Declaration Form" as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

<sup>1</sup>For the avoidance of doubt, a party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in A consultancy, and tendering, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or

*amendment introducing a material modification to any existing contract.*

*<sup>2</sup> Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Investigating Authority or persons appointed by the Procuring Entity to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/audit, and making copies thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.*

#### **4. FORM TECH-2: CONSULTANT'S ORGANIZATION AND EXPERIENCE**

Form TECH-2: a brief description of the Consultant's organization and an outline of the recent experience of the Consultant that is most relevant to the assignment. In the case of a joint venture, information on similar assignments shall be provided for each partner. For each assignment, the outline should indicate the names of the Consultant's Key Experts and Sub-consultants who participated, the duration of the assignment, the contract amount (total and, if it was done in a form of a joint venture or a sub-consultancy, the amount paid to the Consultant), and the Consultant's role/involvement.

##### **A - Consultant's Organization**

Provide here a brief description of the background and organization of your company, and - in case of a joint venture - of each member for this assignment.

##### **B - Consultant's Experience**

1. List **five (5)** previous General assignments successfully completed using the Form provided below under (3).
  2. List **three (3)** previous similar/relevant assignments successfully completed in the last ten (10) years using the Form provided below under (3).
  3. List only those assignments for which the Consultant was legally contracted by the Procuring Entity as a company or was one of the joint venture partners. Assignments completed by the Consultant's individual experts working privately or through other consulting firms cannot be claimed as the relevant experience of the Consultant, or that of the Consultant's partners or sub-consultants, but can be claimed by the Experts themselves in their Curriculum Vitae (CV).
  4. The Consultant shall substantiate their claimed experience by presenting copies of relevant documents such as form of contract (not whole contract), letter of recommendation, performance/completion certificate etc. which shall be included in the proposal.
-

<b>Firms References</b>	
Assignment Name:	Approx. value of the contract (KES)
Country:	Duration of assignment (Months)
Name of Procuring Entity	Total No. of staff-months of the assignment
Contact Address Email:	Approx. value of the services provided by your firm under the contract:
Start date (Month/year): Completion Date	No. of professional staff – man days provided by associated Consultants:
Role on Assignment: (E.g. Lead Member in ABC JV, or Sole Consultant):	Name of senior professional staff of your firm involved and functions performed:
Narrative description of Assignment:	
Description of actual services provided by your staff within the assignment:	
Name of Consulting Firm	Name and Title of Signatory

### 3 **FORM TECH-3: COMMENTS AND SUGGESTIONS**

Form TECH-3: The Consultant to provide comments and suggestions on the Terms of Reference, counterpart staff and facilities to be provided by the Procuring Entity that could improve the quality/effectiveness of the assignment; and on requirements for counterpart staff and facilities, which are provided by the Procuring Entity, including: administrative support, office space, local transportation, equipment, data, etc.

#### **A - On the Terms of Reference**

*{Improvements to the Terms of Reference, if any}*

##### **(a) Comments on the Terms of Reference**

Section/Page	Clause	Item Description	Comments/Suggestions

**(b) Comments on the data, services and facilities to be provided by the Client, and on any other section of this RFP Document:**

**B - On Counterpart Staff and Facilities**

*{Include comments on counterpart staff and facilities to be provided by the Procuring Entity. For example, administrative support, office space, local transportation, equipment, data, background reports, etc., if any}*

**4 FORM TECH-4: DESCRIPTION OF APPROACH, METHODOLOGY, AND WORK PLAN**

Form TECH-4: a description of the approach, methodology and work plan in responding to the terms of reference for performing the assignment, including a detailed description of the proposed methodology and staffing for training, if the Terms of Reference specify training as a specific component of the assignment.

{The structure of your Technical Proposal:

- a) Technical Approach and Methodology
- b) Work Plan
- c) Organization and Staffing
  - i) Technical Approach and Methodology. *{Please explain your understanding of the objectives of the assignment as outlined in the Terms of Reference (TORs), the technical approach, and the methodology you would adopt for implementing the tasks to deliver the expected output(s), and the degree of detail of such output. Please do not repeat/copy the TOR sin here.}*
  - ii) Work Plan. *{Please outline the plan for the implementation of the main activities/tasks of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Procuring Entity), and tentative delivery dates of their ports. The proposed work plan should be consistent with the technical approach and methodology, showing your understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents (including reports) to be delivered as final output(s) should be included here. The work plan should be consistent with the Work Schedule Form.}*
  - iii) Organization and Staffing. *{Please describe the structure and composition of your team, including the list of the Key Experts, Non-Key Experts and relevant technical and administrative support staff.}*

### FORM TECH-5: WORK SCHEDULE AND PLANNING FOR DELIVERABLES

Deliverables of the Assignment	Months from Start of Assignment																		
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	.....	..	24	Total	
Inception Reports																			
Etc																			

1. List the deliverables with the breakdown for activities required to produce them and other benchmarks such as the Procuring Entity's approvals. For phased assignments, indicate the activities, delivery of reports, and benchmarks separately for each phase.
2. Duration of activities shall be indicated in a form of a bar chart.
3. Include a legend, if necessary, to help read the chart.

### 5 FORM TECH- 6A: TEAM COMPOSITION, ASSIGNMENT, AND KEY EXPERTS' INPUTS

Name	Proposed Position	Activities	Experts Inputs for the Deliverables (Listed under TECH-5)															Total Time-Input (in months)					
			1	2	3	4	5	6	7	8	9	10	11	12	13	...	...	...	...	...	24	Total	
a) Report 1 – e.g. Inception Report																							
b) Report 2																							

- a) For Key Experts, the input should be indicated individually for the same positions as required under the ITC Data Sheet 21.2.
- b) Months are counted from the start of the assignment/mobilization.
- c) “Home” means work in the office in the expert’s country of residence. “Field” work means work carried out in Kenya, or outside the normal residence of the Expert in Kenya or any other country outside the expert’s country of residence.

## 6 **FORM TECH-6B: CURRICULUM VITAE (CV)**

Position Title and No.	<i>{e.g., K-1, Team Leader}</i>
Name of Expert:	<i>{Insert full name}</i>
Date of Birth:	<i>{day/month/year}</i>
Country of Citizenship	

**Education:** *{List college/university or other specialized education, giving names of educational institutions, dates attended, degree(s)/diploma(s) obtained}.....*

Employment record relevant to the assignment: *{Starting with present position, list in reverse order. Please provide dates, name of employing organization, titles of positions held, types of activities performed and location of the assignment, and contact information of previous Procuring Entity's and employing organization(s) who can be contacted for references. Past employment that is not relevant to the assignment does not need to be included.}*

Period	Employing organization and your title/position. Contact Infor for references	Country	Summary of activities performed relevant to the Assignment
[e.g., May 2011-present]	[e.g., Ministry of ....., advisor/consultant to...  For references: Tel...../e - mail.....; Mr. Bbbbbb, deputy manager]		

Membership in Professional Associations and Publications: \_\_\_\_\_

Language Skills (indicate only languages in which you can work): \_\_\_\_\_

Adequacy for the Assignment:

Detailed Tasks Assigned on Consultant's Team of Experts	Reference to Prior Work/Assignment that Best Illustrates Capability to Handle the Assigned Tasks
{List all deliverables/tasks as in TECH-5 in which the Expert will be involved}	

*Provision of Consultancy Services to Develop an Environmental, Social and Governance (ESG) Strategy.*

Expert's contact information :(e-mail.....phone... ..)

Certification:

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications, and my experience, and I am available to undertake the assignment in case of an award. I understand that any misstatement or misrepresentation described herein may lead to my disqualification or dismissal by the Procuring Entity, and/or sanctions by the PPRA.

Name of Expert \_\_\_\_\_ Signature \_\_\_\_\_

Date \_\_\_\_\_ {day/month/year}

Name of authorized \_\_\_\_\_ Signature. \_\_\_\_\_

Date \_\_\_\_\_ {day / month/year}

Representative of the Consultant (the same who signs the Proposal)

**(C.V'S NOT SIGNED BY OWNER OR AUTHORISED REPRESENTATIVE AND WITHOUT CERTIFICATES ATTACHED SHALL NOT BE EVALUATED)**

## **7. FORM TECH-7: MANDATORY SUPPORT DOCUMENTS**

### **Preliminary Examination / Substantive Responsiveness**

Bidders who do not meet the mandatory conditions below shall be declared non-responsive and their tenders shall not be evaluated.

1. Bidder should be registered under the relevant law. Proof of incorporation and registration to be indicated.
2. Bidder to submit valid copy of tax compliance certificate from Kenya Revenue Authority or equivalent should be submitted.
3. Copy of CR12 for limited company, CR13 for Partnerships issued within the last 6Months or National Identification card for Sole Proprietor.
4. A valid single business permit from County Government for 2024.
5. Organization's statement on their Litigation history
6. Dully filled signed and stamped Technical Proposal Form.
7. Dully filled signed and stamped Financial Proposal Form.
8. Dully filled signed and stamped Confidential Business Questionnaire.
9. Dully filled, signed, and stamped Certificate of Independent Tender determination form.
10. Dully filled signed and stamped form **SD1**
11. Dully filled signed and stamped form **SD2**
12. Dully filled, signed and stamped declaration and Commitment to the code of ethics **SD3**.
13. NEMA Registration as a firm of expert.

*Provision of Consultancy Services to Develop an Environmental, Social and Governance (ESG) Strategy.*

14. GRI Certified training Partner Certification.
15. Audited accounts dully signed and stamped by a registered Certified Public Accountant for the last three years.
16. Written declaration letter signed and stamped by an attorney/Commissioner of Oaths that the firm/person/tender is not guilty of violation of fair employment laws and practices.
17. The proposals must remain valid for 120 days from the date of submission of the tender.
18. One original and one copy of the tender documents **MUST be sequentially Paginated/Serialized/Numbered on each page including all the attachments in the order of 123.....**
19. The technical and financial proposals must be signed by the person with the power of attorney, without material deviation, reservation or omission. All bidders must attach the power of attorney.

## 8 FORM TECH - 8: SELF-DECLARATION FORMS

### A. FORM SD1: SELF DECLARATION THAT THE PERSON/TENDERER IS NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015.

I, ....., of Post Office Box ..... being a resident of ..... in the Republic of ..... do hereby make a statement as follows: -

THAT I am the Company Secretary/Chief Executive/Managing Director/Principal Officer/Director of..... (Insert name of the Company) who is a Bidder in respect of **Tender No. ....** for..... (Insert tender title/description) for... .....(Insert name of the Procuring entity) and duly authorized and competent to make this statement.

1. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.

2. THAT what is deposed to here in above is true to the best of my knowledge, information and belief.

.....  
(Title) (Signature) (Date)

Bidder Official Stamp

### B. FORM SD2: SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE.

I,.....of P. O. Box.....being a resident of.....in the Republic of ..... do hereby make a statement as follows: -

1. THAT I am the Chief Executive/Managing Director/Principal Officer/ Director of (insert name of the Company) who is a Bidder in respect of **Tender for Provision of Consultancy services to Develop an Environmental, Social and Governance Strategy.**

and duly authorized and competent to make this statement.

2.THAT the aforesaid Bidder, its servants and/or agents /subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/ or agents of Kenya Roads Board which is the procuring entity.

3.THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of Kenya Roads Board.

4.THAT the aforesaid Bidder will not engage /has not engaged in any collusive practice with other bidders participating in the subject tender.

5.THAT what is deponed to herein above is true to the best of my knowledge information and belief.

.....  
(Title)

.....  
(Signature)

.....  
(Date)

Bidder's Official Stamp

**C. FORM SD3: DECLARATION AND COMMITMENT TO THE CODE OF ETHICS**

I .....  
(person) on behalf of ***(Name of the Business/ Company/Firm)*** ..... declare that I have read and fully understood the contents of the Public Procurement & Asset Disposal Act, 2015, Regulations and the Code of Ethics for persons participating in Public Procurement and Asset Disposal Activities in Kenya and my responsibilities under the Code.

I do hereby commit to abide by the provisions of the Code of Ethics for persons participating in Public Procurement and Asset Disposal.

Name of Authorized signatory.....

Sign.....

Position.....

Office address.....Telephone.....

E-mail.....

Name of the Firm/Company.....

Date.....

***(Company Seal/ Rubber Stamp where applicable)***

Witness

Name .....

Sign.....

Date.....

#### **SECTION 4. FINANCIAL PROPOSAL STANDARD FORMS**

*{Notes to Consultant shown in brackets {..} provide guidance to the Consultant to prepare the Financial Proposals; they should not appear on the Financial Proposals to be submitted.}*

Financial Proposal Standard Forms shall be used for the preparation of the Financial Proposal according to the instructions provided in Section 2.

FIN-1: Financial Proposal Submission Form

FIN-2: Summary of Costs

FIN-3: Breakdown of Remuneration

FIN-4: Reimbursable Expenses

## A. FORM FIN-1: FINANCIAL PROPOSAL SUBMISSION FORM

.....{Location, Date}

To:

The Director General

Kenya Roads Board

6<sup>th</sup> Floor, Kenya Re Towers, Off Ragati Road, Upper Hill,

P.O. Box 73718 – 00200,

Nairobi.

Dear Sirs:

We, the undersigned, offer to provide the consulting services for..... *[Insert title of assignment]* in accordance with your Request for Proposal dated .....*[Insert Date]* and our Technical Proposal.

Our attached Financial Proposal is for the amount of .....  
*{Indicate the corresponding to the amount currency} {Insert amounts in words and figures}*, including of all taxes in accordance with ITC 24.2 in the Data Sheet. The estimated amount of local taxes is.....*{Insert currency} {Insert amount in words and figures}*.

*{Please note that all amounts shall be the same as in Form FIN-2}.*

Our Financial Proposal shall be valid and remain binding upon us, subject to the modifications resulting from Contract negotiations, for the period of time specified in the ITC 12.1 Data Sheet.

Commissions and gratuities paid or to be paid by us to an agent or any third party relating to preparation or submission of this Proposal and Contract execution, paid if we are awarded the Contract, are listed below:

Name and Address, Amount and Purpose of Commission of Agents, Currency or Gratuity

*{If no payments are made or promised, add the following statement: "No commissions or gratuities have been or are to be paid by us to agents or any third party relating to this Proposal and Contract execution."}*

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

We remain,

Yours sincerely,

Signature .....*(of Consultant's authorized representative) {In full and initials}*:

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*Provision of Consultancy Services to Develop an Environmental, Social and Governance (ESG) Strategy.*

Full name: ..... {Insert full name of authorized representative}  
 Title: ..... {Insert title/position of authorized representative}  
 Name of Consultant..... (Company's name or JV's name):  
 Capacity ..... {Insert the person's capacity to sign for the Consultant}  
 Physical Address..... {Insert the authorized representative's address}  
 Phone: ..... {Insert the authorized representative's phone and fax number, if applicable} Email: ..... {Insert the authorized representative's email address}

*{For a joint venture, either all members shall sign or only the lead member/consultant, in which case the power of attorney to sign on behalf of all members shall be attached}*

## B. FORM FIN-2: SUMMARY OF COSTS

**TABLE 1: SUMMARY OF COSTS**

Item	Description	Table	Total Cost (KShs)
A.	Staff Remuneration	Table-2	
B.	Transport Costs	Table-3	
C.	Miscellaneous Expenses	Table-4	
D.	Reimbursable costs	Table-5	
E.	<b>Sub-total (A+B+C+D)</b>		
F.	Contingencies: 10% of (E)		
G.	VAT: 16% of (E+F)		
<b>H.</b>	<b>Grand summary (Total amount of Financial Proposal) (F+G+H)</b>		

**Table 2: Breakdown of Staff Remuneration Costs**

	STAFF	Unit	Quantity	Rate (KShs)	Amount (KShs)
	<b>Key Staff</b>				
2.1	ESG Expert/Team Leader	Man Months	3.0		
2.2	Governance Specialist	Man Months	2.0		
2.2	Sustainability Expert	Man Months	2.0		
2.3	Stakeholder Engagement Expert	Man Months	2.0		
	<b>Total Remuneration Costs</b>				

**Table 3: Breakdown of Transport Costs**

	<b>STAFF</b>	<b>No. of Consultants</b>	<b>Rate (KShs)</b>	<b>Amount (KShs)</b>
3.1	Consultants Flight Expenses for air travel (Mombasa)	4 No.		
3.2	Consultants Flight Expenses for air travel (Kisumu)	4 No.		
	<b>Total Transport Costs</b>			

**Table-4: Breakdown of Miscellaneous Costs**

	<b>STAFF</b>	<b>Unit</b>	<b>Quantity</b>	<b>Rate (KShs)</b>	<b>Amount (KShs)</b>
4.1	Communication costs (telephone, e- mail, courier`)	Lump Sum	1		
4.2	Drafting, reproduction of reports	Lump Sum	1		
4.3	Office Costs	Months	3		
	<b>Total Miscellaneous Costs</b>				

**Table-5: Breakdown of Reimbursable Expenses**

	<b>STAFF</b>	<b>Unit</b>	<b>Quantity</b>	<b>Rate (KShs)</b>	<b>Amount (KShs)</b>
5.1	Consultants ground transport and subsistence expenses during workshops	Provisional sum			
5.2	Consultant's profits and overheads on item No. 6.1 above	xx%			
	<b>Total Reimbursable Expenses</b>				

## SECTION 5: TERMS OF REFERENCE

### CONSULTANCY SERVICES TO DEVELOP AN ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG) STRATEGY FOR KENYA ROADS BOARD (KRB)

#### 1.0 BACKGROUND

##### 1.1 Purpose of the Board

The Kenya Roads Board (KRB) is a statutory body established by the Kenya Roads Board Act No. 7 of 1999. The object and purpose for which the Board is established is to oversee the road network in Kenya and coordinate the maintenance, rehabilitation and development funded by the fund and to advise the Cabinet Secretary for Roads & Transport on all matters related thereto.”

##### 1.2 KRB Mandates

The mandates of KRB are detailed in the Kenya Roads Board Act, 1999 as to:

- (a) co-ordinate the optimal utilization of the Fund in implementation of programmes relating to the maintenance, rehabilitation and development of the road network;
- (b) Seek to achieve optimal efficiency and cost effectiveness in road works funded by the Fund;
- (c) Manage the Fund and allocate monies from the Fund in accordance with the Act;
- (d) Based on a five year road investment programme approved by the Minister and the Minister for Finance, determine the allocation of financial resources from any other source available to the Board required by road agencies for the maintenance, rehabilitation and development of the road network to ensure that the allocation of funds is pegged to specific categories of roads and that not less than;
  - (i) twenty percent(22%) of monies from the Fund is allocated equally to all Constituencies in the country to be administered by the Rural Roads Authority;
  - (ii) twelve percent (10%) of the monies from the Fund is allocated equitably to districts in respect of Rural roads administered by the Rural roads Authority;
  - (iii) forty percent (40%) of the monies from the Fund is allocated in respect of the national roads to be administered by the National Highways Authority;
  - (iv) fifteen percent (15%) of the monies from the Fund is allocated in respect of the Urban Roads Authority;
  - (v) one percent (1%) of the monies from the Fund is allocated in respect of roads in national parks and reserves to be administered by the Kenya Wildlife Service, and
  - (vi) a maximum of two percent (2%) of the monies from the Fund is allocated in respect of a recurrent expenditure of the Board.
- (e) ensure that the remainder of the monies from the Fund (10%) described in paragraph (d) shall be allocated annually by the Board with the approval of the Minister to road investment programme derived from the five-year road investment programme approved by the Minister

responsible for roads and the Minister for Finance.

- (f) ensure that a maximum of ten percent (10%) of all monies allocated to each road agency is utilized for development purposes by the said agency;
- (g) monitor and evaluate, by means of technical, financial and performance audits, the delivery of goods, works and services funded by the Fund;
- (h) in implementing paragraph (g), pay due regard to public procurement and disposal regulations and additional guidelines issued or approved by the Minister;
- (i) recommend to the minister appropriate levels of road user charges, fines, penalties, levies or any sums required to be collected under the Road Maintenance Levy Fund Act, 1993 and paid into the Fund;
- (j) recommend to the Minister such periodic reviews of the Fuel Levy as are necessary for the purposes of the Fund, and
- (k) Identify, quantify and recommend to the Minister such other potential sources of revenue as may be available to the Fund for the development, rehabilitation and maintenance of roads.

### 1.3 Vision of KRB

***“An efficient road network for a prosperous nation”***

### 1.4 Mission of KRB

***To oversee and coordinate road maintenance, rehabilitation and development through optimal utilization of the Fund for a sustainable road network.”***

### 1.5 Objectives of KRB

The Board’s Strategic Plan 2023-2027 includes the following key result areas that form the key pillars in propelling the Board towards realization of its vision.

#### **(i) Management of the Road Fund**

The Board will enhance and safeguard the road maintenance levy fund and mobilize resources to meet the current and future demand for road maintenance.

#### **(ii) Oversight and Coordination of the Road Network**

The Board shall seek to facilitate research, planning and programming and monitoring and evaluation of maintenance, rehabilitation and development of the national trunk and county roads funded by the KRB Fund;

#### **(iii) Strengthen Institutional Capacity**

The Board will enhance its operational, governance and human resources capacity to meet stakeholders and sectoral demands.

### 1.6 Core Values

KRB is guided by the following core values

- i) Excellence**
- ii) Integrity**
- iii) Inclusiveness**

#### iv) Innovation

### 1.7 Stakeholders:

The following are KRB's stakeholders, functions and expectations;

Name of Stakeholder	Stakeholder's expectation from the Board	The Board's expectation from respective stakeholder
Ministry of Roads and Transport	<ul style="list-style-type: none"> <li>• Efficient management of Kenya Roads Board Fund (KRBF).</li> <li>• Effectively execute its advisory role to the government on matters to do with roads.</li> <li>• Collaborate in formulation of appropriate policies in the road sub-sector.</li> <li>• Coordinate preparation, monitoring and evaluation of the APRP.</li> </ul>	<ul style="list-style-type: none"> <li>• Provide leadership and support to the Board.</li> <li>• Provide policy guidelines to the Board on the maintenance, rehabilitation, and development of the road network.</li> <li>• Determine the specifications and approve standards for use on road maintenance, rehabilitation, and development.</li> <li>• Timely approval of APRP and other strategic road programmes.</li> </ul>
The National Treasury and Economic planning	<ul style="list-style-type: none"> <li>• Efficient management of KRBF in compliance with the laws, policies and regulations.</li> <li>• Appropriate budgeting and reporting on application of KRBF.</li> <li>• Submission of 5 Year Road Sector Investment Programme (RSIP) for approval.</li> </ul>	<ul style="list-style-type: none"> <li>• Support and collaboration.</li> <li>• Advice and guidance on management of the fund.</li> <li>• Approval of the APRP, RSIP and Budget.</li> </ul>
Road Agencies (KeNHA, KeRRA, KURA, KWS)	<ul style="list-style-type: none"> <li>• Accountability and transparency in management of KRBF.</li> <li>• Timely issuance of ceilings for effective planning and preparation of Annual Public Roads Programme.</li> <li>• Timely disbursement of KRBF funds.</li> <li>• Collaboration on implementation of KRBF funded programmes.</li> </ul>	<ul style="list-style-type: none"> <li>• Timely submission of ARWP for planning purposes.</li> <li>• Compliance with standards in maintenance, rehabilitation and development of KRBF funded programmes.</li> <li>• Prudent utilization of KRBF.</li> <li>• Timely reporting.</li> <li>• Compliance with KRB Act and other relevant guidelines.</li> <li>• Collaboration with the Board.</li> </ul>
County Government		
National Assembly and Senate	Manage the fund in accordance with the law.	<ul style="list-style-type: none"> <li>• Establishment of enabling legal framework.</li> <li>• Oversight.</li> </ul>
Constituency Ro	Timely disbursement of RMLF	<ul style="list-style-type: none"> <li>• Adherence to the workplan</li> </ul>

Name of Stakeholder	Stakeholder's expectation from the Board	The Board's expectation from respective stakeholder
ad Committees	funds.	<ul style="list-style-type: none"> <li>• Efficient work prioritization, planning and implementation.</li> </ul>
Development partners	Support and collaboration in road maintenance, rehabilitation, and development.	Provision of financial support and technical advice for the Road Sub-sector.
Other Government Ministries and SAGAs	Collaboration for an efficient road network.	Collaboration for an efficient road network.
Industry associations	An efficient road network.	<ul style="list-style-type: none"> <li>• Public participation</li> <li>• Provision of support including Board oversight.</li> </ul>
Road users	An efficient road network.	<ul style="list-style-type: none"> <li>• Proper use of the road.</li> <li>• Active participation in road sector programmes.</li> </ul>
Regional/ African States	An efficient road network.	<ul style="list-style-type: none"> <li>• Compliance with regional transit toll guidelines.</li> <li>• Compliance with regional axle load laws.</li> <li>• Collaboration.</li> </ul>
Suppliers and contractors	Timely payments for services rendered and goods supplied.	Efficient delivery of quality products and services.
Universities and research institutions	Collaboration and research.	<ul style="list-style-type: none"> <li>• Stakeholder engagements &amp; partnerships.</li> <li>• Timely technical advice based on research findings.</li> </ul>
Media	Timely, accurate and reliable information.	<ul style="list-style-type: none"> <li>• Responsible and accurate reporting.</li> <li>• Fair coverage.</li> </ul>
Board of Directors	Efficient management of Board operations and the funds in line with the KRB Act and other legal and policy frameworks.	<ul style="list-style-type: none"> <li>• Support in timely policy approval.</li> <li>• Offer timely advisory to CS Ministry of Road and Transport.</li> <li>• Enhanced lobbying and networking both locally and internationally.</li> </ul>
Staff	Conducive work environment.	Efficient and effective service delivery to the Board.

## 2.0 Background

Kenya Roads Board (KRB) is committed to enhancing the country's road infrastructure while ensuring sustainable development and positive impacts on local communities. Recognizing the importance of Environmental, Social and Governance (ESG) principles in road development, rehabilitation and

maintenance, KRB aims to develop a comprehensive 5-year Strategic Plan that integrates these considerations. The plan will guide KRB in achieving its objectives while minimizing adverse environmental and social impacts and maximizing benefits for communities.

### **3.0 Objectives of the Consultancy**

The objective of the Consultancy is to develop a comprehensive 5-year Environmental, Social, Governance (ESG) Strategy for Kenya Roads Board that addresses environmental, social and governance impacts associated with road maintenance, rehabilitation and development and aligned to international standards and best practices.

#### **3.1 Specific Objectives**

The Consultant will:

- (i) Undertake a comprehensive review of existing policies, regulations and current ESG practices in Kenya Roads Board;
- (ii) Carry out a gap analysis of the state of ESG at Kenya Road Board;
- (iii) Engage stakeholders including Government agencies, local communities, private sector, development partners and road users to gather input and ensure alignment with stakeholders priorities and concerns
- (iv) Identify potential risks, opportunities, and benchmarks associated with environmental, social, and governance practices in the context of road maintenance and development.
- (v) Develop a Sustainability statement for Kenya Roads Board;
- (vi) Develop a comprehensive 5-Year ESG Strategic Plan that outlines goals, objectives and key performance indicators (KPIs) related to ESG in road maintenance, rehabilitation and development and aligned with KRB's vision and mission;
- (vii) Propose recommendations for incorporating Environmental, Social, and Governance (ESG) considerations into the decision making and operations, processes and reporting frameworks of Kenya Roads Board;
- (viii) Identify capacity building needs and propose strategies for enhancing the Board's capacity to implement the Strategy effectively;
- (ix) Train the relevant staff on the GRI certification
- (x) Prepare comprehensive documentation, presentations and training materials for KRB's Board and management.

### **4.0 SCOPE OF WORK OR SERVICES OF THE ASSIGNMENT**

To achieve the objectives of the consultancy, the tasks of the consultant will include, but are not necessarily limited to, the following:

- (i) **Milestone 1: Inception Report – 14 billable days**  
The consultant will be expected to prepare and submit a detailed work plan and methodology with specific activities and their timelines including the training sessions. The expected output under this is the inception report.
  
- (ii) **Milestone 2: Interim Report-45 billable days.**  
ESG Gap Assessment and opportunity review of relevant documents, literature review and stakeholder engagement, draft sustainability statement for Kenya Roads Board and a draft 5-Year ESG Strategy for KRB.
  - (a) Carry out a gap analysis of the state of ESG at Kenya Road Board including identify potential risks, opportunities, and benchmarks associated with environmental, social, and governance practices in the context of road maintenance and development.
  - (b) Review relevant documentation including KRB Act, Strategic Plan, Performance Contracts, Policies and Strategies.
  - (c) Undertake a comprehensive review of existing policies, regulations and current ESG practices in Kenya Roads Board.
  - (d) Engage stakeholders including Government agencies, local communities, private sector, development partners and road users to gather input and ensure alignment with stakeholders' priorities and concerns.
  - (e) Develop Sustainability Statement for KRB.
  - (f) Develop a draft ESG Strategy for KRB.
  - (g) Develop an implementation plan including strategies, key performance (KPIs) and Monitoring Framework.
  - (h) Develop a strategy to mainstream ESG Principles into KRB processes and reporting Frameworks.
  
- (iii) **Milestone 3: Final Report 90 billable days.**  
Training ESG Strategy and preparation of the final sustainability statement and ESG Strategy for KRB.
  - (a) Identify Capacity building needs and propose strategies for enhancing the Board's and management capacity to implement the strategy effectively.
  - (b) Train the relevant staff on the GRI certification.
  - (c) Prepare comprehensive documentation, presentations, and training materials for KRB's Board and management.
  - (d) Incorporation of comments from the various stakeholders to finalize the sustainability statement for Kenya Roads Board and a draft 5-Year ESG Strategy for KRB.

**(iv) Validation Workshops –**

The consultant is expected to prepare and present the interim and draft reports/policy in 2 No. validation workshops. The client will organize and cater for the workshops as noted in 6.0 below.

The consultant will incorporate the stakeholders' feedback and input in the draft documents and submit to the client the draft and final reports as stipulated in 8.0 below.

**5.0 CONDUCT OF THE CONSULTANCY**

The consultant will report directly to the Director General or his authorized representative. The Consultant shall carry out the assignment within their premises but if need be the Consultant may carry out some activities within the premises of Kenya Roads Board with prior arrangements. The Consultant will work closely with KRB Secretariat. The Consultant shall be responsible for the coordination of meetings and other activities under the Consultancy.

**6.0 FACILITIES TO BE PROVIDED BY KRB**

KRB shall provide the Consultant with the following:-

- i) All the data and reports that the Consultant may need to assist in carrying out their duties.
- ii) Introduction letters to various institutions to assist in gathering data for purposes of this assignment.
- iii) If there is need for a workshop, KRB shall provide:-
  - Premises for the workshop
  - Meals during the workshop period
  - Transport and Accommodation for the Consultants if the workshop is held at a venue outside Nairobi

## 7.0 DURATION

It is estimated that the consultancy services shall be undertaken within a contract period of 3 calendar months from the date of signing of the contract.

## 8.0 DELIVERABLES AND TIME SCHEDULES

	Deliverable	Timelines
1.	Inception Report: will present the methodology to carry out the assignment and timelines, and identify information gaps, challenges, and guidance/documents required from the KRB, and a detailed work plan.	2 weeks after commencement
2.	Interim Report containing a succinct analysis of critical information relevant for development of the envisaged reports.	2 weeks from submission of Inception Report
3.	Validation Workshop (1) – to present the Interim Reports	Within two weeks of submission of the Interim Report
4.	Draft reports with clearly articulated issues as informed by inputs from the background information and stakeholder feedback/comments obtained during validation workshop (1)	2 weeks after the validation workshop
5.	Validation Workshop (2) – to present the Draft Reports to the Board	End of 2 <sup>nd</sup> Month
6.	Submission of final reports with clearly articulated issues and is informed by inputs from the background information and stakeholder feedback/comments obtained during validation workshop (2). The reports should be in publishable quality	End of 3 <sup>rd</sup> Month

	GRI Training for key staff	End of 3 <sup>rd</sup> Month
	<b>Deliverable</b>	<b>Timelines</b>
1.	Inception Report: will present the methodology to carry out the assignment and timelines, and identify information gaps, challenges and guidance/documents required from the KRB, and a detailed work plan.	2 weeks after commencement
2.	Interim Report containing a succinct analysis of critical information relevant for development of the envisaged reports.	2 weeks from submission of Inception Report
3.	Validation Workshop (1) Report – to present the Interim Reports	Within two weeks of submission of the Interim Report
4.	Draft reports with clearly articulated issues as informed by inputs from the background information and stakeholder feedback/comments obtained during validation workshop (1)	3 weeks after the validation workshop
5.	Validation Workshop (2) Report – to present the Draft Reports to the Board	End of 2 <sup>nd</sup> Month
6.	Submission of final reports with clearly articulated issues and is informed by inputs from the background information and stakeholder feedback/comments obtained during validation workshop (2). The reports should be in publishable quality	End of 3 <sup>rd</sup> Month

The contract will be output-based and payments made upon delivery of satisfactory outputs.

## 9.0 KEY EXPERTS

The minimum required academic qualifications and experience of proposed key professional staff is as Table 1 below:

<b>Table No. 1</b>			
<b>Personnel</b>	<b>No.</b>	<b>Minimum Qualification</b>	<b>Minimum experience</b>
Team leader (ESG Expert)	1	<ul style="list-style-type: none"> <li>• A PhD degree in Environmental Sciences, Business Strategy, Social Sciences, Public Policy, or related field. from a recognized University.</li> <li>• A bachelor's degree in environmental science, economics, Sustainability studies social sciences or related field.</li> <li>• Certification in Global Reporting Initiative ESG Practioner</li> <li>• Professional qualification in financial, Sustainability, ESG, reporting or related field.</li> </ul>	<ul style="list-style-type: none"> <li>• Minimum 15 years' general experience in strategy development, Sustainability, Corporate Governance, Environmental Management, Social Impact assessment.</li> <li>• Minimum of ten (10) years professional experience; in ESG Strategies/ framework development, Global reporting Initiative, Sustainability Initiative or related Field</li> <li>• Demonstratable in-depth understanding ESG principles, Standards, International best practices, stakeholder engagement, reporting guidelines, Compliance, Data analysis.</li> <li>• Demonstrated experience in working with government partners and other stakeholders in public sector development programs.</li> </ul>
<b>Governance Specialist</b>		<ul style="list-style-type: none"> <li>• A degree in Law, Governance or equivalent from a recognized University.</li> </ul>	<ul style="list-style-type: none"> <li>• At least Eight (8) years general experience in legal advisory.</li> <li>• Minimum of five (5) years professional experience; demonstrated practical experience in developing governance frameworks.</li> <li>• Demonstratable knowledge in designing and implementing governance framework.</li> <li>• Demonstratable Computer Literacy in relevant areas,</li> </ul>

<b>Sustainability Specialist</b>		<ul style="list-style-type: none"> <li>• A degree in Environmental Sciences, Development Finance, Economics, Sustainability studies, Social Sciences, or related field. Governance or equivalent from a recognized University</li> </ul>	<p>Proficiency in using data analysis software and statistical tools. -in working with</p> <ul style="list-style-type: none"> <li>• At least 5 years general experience in Corporate Governance, Environmental Management, Social Impact Assessment.</li> <li>• Minimum 3 years specific experience in ESG Strategies, Global reporting initiatives, and Sustainability initiatives.</li> <li>• Demonstratable in depth understanding of ESG Frameworks, Sustainability Global reporting guidelines standards, Compliance and Reporting.</li> <li>• Proficiency in data analysis, impact assessment, Global reporting Initiatives or related field.</li> </ul>
<b>Stakeholder Engagement Specialist</b>		<ul style="list-style-type: none"> <li>• Master's and bachelor's degree in communications, Public Relations, Environmental Studies, Business Administration, or related field.</li> <li>• Professional Qualifications in stakeholder engagement, Community relations, Project Management, or related field.</li> </ul>	<ul style="list-style-type: none"> <li>• Eight (8) Years general experience in public relations, Community development stakeholder engagement or related field.</li> <li>• Three (3) years professional experience in ESG Strategies.</li> <li>• Demonstratable knowledge in concepts, Techniques and Practices, Data collection, analysis, and reporting.</li> <li>• Demonstratable Computer literacy in relevant areas Proficiency in using data analysis software and statistical tools.</li> </ul>

#### **10.0 OWNERSHIP OF DATA**

All the computer software, maps, data and information developed, collected or obtained from the Client during this assignment shall belong to the Client. No use shall be made of them without prior written authorization from the Client.

At the end of the Contract, the Consultant shall relinquish all data, maps, software and information (including the database, programs, codes and related documentation) to the Client and shall make no use of them in any other assignment without prior written authority from the Client.

The Client shall retain all copyrights of all software and publications produced during the assignment.

## **SECTION 6: CONDITIONS OF CONTRACT AND CONTRACT FORMS FOR CONSULTANCY SERVICES**

### **LUMP – SUM CONTRACT**

**Consulting Services for:** Provision of Consultancy Services to Develop an Environmental, Social and Governance (ESG) Strategy

**Contract No.:** KRB/T/10/2023-2024.

**Contract Description:** Provision of Consultancy Services to Develop an Environmental, Social and Governance (ESG) Strategy.

Between

**Kenya Roads Board**

And

---

*[Name of the Consultant]*

Date:

## FORM OF CONTRACT – LUMP - SUM

This CONTRACT (herein after called the “Contract”) is made the..... day of the month of ..... [month], .....[year], between, on the one hand, **Kenya Roads Board** (herein after called the “Procuring Entity”) and, on the other hand, ..... [name of Consultant] (herein after called the “Consultant”).

*[If the Consultant consists of more than one entity, the above should be partially amended to read as follows: “... (hereinafter called the “Procuring Entity”) and, on the other hand, a Joint Venture (name of the JV) consisting of the following entities, each member of which will be jointly and severally liable to the Procuring Entity for all the Consultant's obligations under this Contract, namely, [name of member] and [name of member] (herein after called the “Consultant”).]*

### WHEREAS

- a) The Procuring Entity has requested the Consultant to provide certain consulting services as defined in this Contract (herein after called the “Services”);
- b) the Consultant, having represented to the Procuring Entity that it has the required professional skills, expertise and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract;
- c) the Procuring Entity has set aside a budget and funds toward the cost of the Services and intends to apply a portion of these funds towards payments under this Contract;

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents attached here to shall be deemed to form an integral part of this Contract:

- a) The General Conditions of Contract;
- b) The Special Conditions of Contract;
- c) Appendices:
  - Appendix A: Terms of Reference
  - Appendix B: Key Experts
  - Appendix C: Breakdown of Contract Price
  - Appendix D: Form of Advance Payments Guarantee

In the event of any inconsistency between the documents, the following order of precedence shall prevail: The Special Conditions of Contract; the General Conditions of Contract; Appendix A; Appendix B; Appendix C; Appendix D. Any reference to this Contract shall include, where the context permits, a reference to its Appendices.

2. The mutual rights and obligations of the Procuring Entity and the Consultant 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 Procuring Entity shall make payments to the Consultant in accordance with the provisions of the Contract.

IN WITNESS WHERE OF, the Parties here to 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 **Kenya Roads Board**

Rashid K. Mohamed

*Director General*

*Signature* \_\_\_\_\_

For and on behalf of ..... *[Name of Consultant or Name of a Joint Venture] [Authorized Representative of the Consultant–name and signature] [Note: For a joint venture, either all members shall sign or only the lead member, in which case the power of attorney to sign on behalf of all members shall be attached.]*

For and on behalf of each of the members of the Consultant.....

*[Insert the Name of the Joint Venture] [Name of the lead member]*

*[Authorized Representative on behalf of a Joint Venture] [Add signature blocks for each member if all are signing]*

## **SECTION 7: GENERAL CONDITIONS OF CONTRACT**

### **A. General Provisions**

#### **1. Definitions**

- a) Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:
- b) “Applicable Law” means the laws and any other instruments having the force of law in Kenya.
- c) “Consultant” means a legally established professional consulting firm or entity selected by the Procuring Entity to provide the Services under the signed Contract.
- d) “Contract” means the legally binding written agreement signed between the Procuring Entity and the Consultant and which includes all the attached documents listed in its paragraph 1 of the Form of Contract (the General Conditions (GCC), the Special Conditions (SCC), and the Appendices).
- e) “Procuring Entity” means the Procuring Entity that signs the Contract for the Services with the selected Consultant.
- f) “Day” means a working day unless indicated otherwise.
- g) “Effective Date” means the date on which this Contract comes into force and effect pursuant to Clause GCC 11.
- h) “Experts” means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or JV member(s) assigned by the Consultant to perform the Services or any part thereof under the Contract.
- i) “Foreign Currency” means any currency other than the currency of Kenya.
- j) “GCC” mean these General Conditions of Contract.
- k) “Government” means the government of Kenya.
- l) “Joint Venture (JV)” means an association with or without a legal personality distinct from that of its members, of more than one entity where one member has the authority to conduct all businesses for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Procuring Entity for the performance of the Contract.
- m) “Key Expert(s)” means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose Curricula Vitae (CV) was taken into account in the technical evaluation of the Consultant's proposal.
- n) “Local Currency” means the Kenya Shillings, the currency of Kenya.

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- o) “Non-Key Expert(s)” means an individual professional provided by the Consultant or its Sub-consultant to perform the Services or any part here of under the Contract.
- p) “Party” means the Procuring Entity or the Consultant, as the case may be, and “Parties” means both of them.
- q) “SCC” means the Special Conditions of Contract by which the GCC may be amended or supplemented but not over-written.
- r) “Services” means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A hereto.
- s) “Sub-consultants” means an entity to whom/which the Consultant subcontracts any part of the Services while remaining solely liable for the execution of the Contract.
- t) “Third Party “means any person or entity other than the Government, the Procuring Entity, the Consultant or a Sub-consultant.

## **2. Relationship between the Parties**

- 5.1 Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the Procuring Entity and the Consultant. The Consultant, subject to this Contract, has complete charge of the Experts and Sub-consultants, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

## **3.Law Governing Contract**

- 3.1 This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Laws of Kenya.

## **4.Language**

- 4.1 This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

## **5.Headings**

- 5.1 The headings shall not limit, alter or affect the meaning of this Contract.

## **6.Communications**

- 6.1 Any communication required or permitted to be given or made pursuant to this Contract shall be in writing in the English Language. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified

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in the SCC.

6.2 A Party may change its address for notice here under by giving the other Party any communication of such change to the address specified in the SCC.

## **7 Location**

7.1 The Services shall be performed at such locations as are specified in Appendix A hereto and, where the location of a particular task is not so specified, at such locations, whether in Kenya or elsewhere, as the Procuring Entity may approve.

## **8 Authority of Member in Charge**

8.1 In case the Consultant is a Joint Venture, the members hereby authorize the member specified in the SCC to act on their behalf in exercising all the Consultant's rights and obligations towards the Procuring Entity under this Contract, including without limitation the receiving of instructions and payments from the Procuring Entity.

## **9 Authorized Representatives**

9.1 Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Procuring Entity or the Consultant may be taken or executed by the officials specified in the SCC.

## **10 Corrupt and Fraudulent Practices**

10.1 The government requires compliance with its policy regarding corrupt and fraudulent/prohibited practices as set forth in its laws and policies.

10.2 **Commissions and Fees-**The Procuring Entity requires the Consultant to disclose any commissions, gratuities or fees that may have been paid or are to be paid to agents or any other party with respect to the selection process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee. Failure to disclose such commissions, gratuities or fees may result in termination of the Contract by the Procuring Entity and/or sanctions by the PPRA.

## **Commencement, Completion, Modification and Termination of Contract**

### **11 Effectiveness of Contract**

11.1 This Contract shall come into force and effect on the date (the "Effective Date") of the Procuring Entity's notice to the Consultant instructing the Consultant to begin carrying out the Services. This notice shall confirm that the effectiveness conditions, if any, listed in the SCC have been met.

### **12 Termination of Contract for Failure to Become Effective**

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12.1 If this Contract has not become effective within such time period after the date of Contract signature as specified in the SCC, either Party may, by not less than twenty-two (22) days written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect there to.

### **13 Commencement of Services**

13.1 The Consultant shall confirm availability of Key Experts and begins carrying out the Services not later than the number of days after the Effective Date specified in the SCC.

### **14 Expiration of Contract**

14.1 Unless terminated earlier pursuant to Clause GCC19 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the SCC.

### **15 Entire Agreement**

15.1 This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

### **16 Modifications or Variations**

16.1 Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party.

### **17 Force Majeure**

#### **a. Definition**

17.1 For the purposes of this Contract, "Force Majeure" means event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible under the circumstances, and subject to those requirements, includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action confiscation or any other action by Government agencies.

17.2 Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's Experts, Sub-consultants or agents or employees, nor (ii) any event which a diligent Party

could reasonably have been expected to both take into account at the time of the conclusion of this Contract and avoid or overcome in the carrying out of its obligations hereunder.

17.3 Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

**b. No Breach of Contract**

17.4 The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this Contract in so far as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

**c. Measures to be taken**

17.5

party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

17.6 A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) calendar days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.

a) 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.

b) During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the Procuring Entity, shall either:

☐ demobilize, in which case the Consultant shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the Procuring Entity, in reactivating the Services; or

☐ Continue with the Services to the extent reasonably possible, in which case the Consultant shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred.

17.7 In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clauses GCC 44 & 45.

## **18 Suspension**

18.1 The Procuring Entity may, by written notice of suspension to the Consultant, suspend all payments to the Consultant here under if the Consultant fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Consultant to remedy such failure within a period not exceeding thirty (30) calendar days after receipt by the Consultant of such notice of suspension.

## **19 Termination**

19.1 This Contract may be terminated by either Party as per provisions set up below:

### **a. By the Procuring Entity**

19.1.1 The Procuring Entity may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause. In such an occurrence, the Procuring Entity shall give at least thirty (30) calendar days' written notice of termination to the Consultant in case of the events referred to in (a) through (d); at least sixty (60) calendar days' written notice in case of the event referred to in (e); and at least five (5) calendar days' written notice in case of the event referred to in (f):

a If the Consultant fails to remedy a failure in the performance of its obligations here under, as specified in a notice of suspension pursuant to Clause GCC 18;

b If the Consultant becomes (or, if the Consultant consists of more than one entity, if any of its members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;

c If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GCC 45.1;

d If, as the 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) calendar days;

e If the Procuring Entity, in its sole discretion and for any reason whatsoever, decides to terminate this Contract;

f If the Consultant fails to confirm availability of Key Experts as required in Clause GCC 13.

19.1.2 Furthermore, if the Procuring Entity determines that the Consultant has engaged in corrupt, fraudulent, collusive, coercive [or obstructive] practices, in competing for or in executing the Contract, then the Procuring Entity may, after giving fourteen (14) calendar days written notice to the Consultant, terminate the Consultant's employment under the Contract.

**b. By the Consultant**

The Consultant may terminate this Contract, by not less than thirty (30) calendar days' written notice to the Procuring Entity, in case of the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause.

- a) If the Procuring Entity fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause GCC 45.1 within forty-five (45) calendar days after receiving written notice from the Consultant that such payment is overdue.
- b) If, as the 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) calendar days.
- c) If the Procuring Entity fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC 45.1.
- d) If the Procuring Entity is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Consultant may have subsequently approved in writing) following the receipt by the Procuring Entity of the Consultant's notice specifying such breach.

**c. Cessation of Rights and Obligations**

19.1.4 Upon termination of this Contract pursuant to Clauses GCC 12 or GCC 19 hereof, or upon expiration of this Contract pursuant to Clause GCC 14, all rights and obligations of the Parties here under shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause GCC 22, (iii) the Consultant's obligation to permit in section, copying and auditing of their accounts and records set forth in Clause GCC 25, and (iv) any right which a Party may have under the Applicable Law.

**d. Cessation of Services**

19.1.5. Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GCC 19a or GCC 19b, the Consultant shall immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the Procuring Entity, the Consultant shall proceed as provided, respectively, by Clauses GCC 27 or GCC 28.

**e. Payment up on Termination**

19.1.6 Upon termination of this Contract, the Procuring Entity shall make the following payments to the Consultant:

- a) Payment or Services satisfactorily performed prior to the effective date of termination; and

b) In the case of termination pursuant to paragraphs (d) and (e) of Clause GCC 19.1.1, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract, including the cost of the return travel of the Experts.

## **C. Obligations of the Consultant**

### **16. General**

#### **a. Standard of Performance**

20.1 The Consultant shall perform the Services and carry out the Services with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as a faithful adviser to the Procuring Entity, and shall at all times support and safeguard the Procuring Entity's legitimate interests in any dealings with the third parties.

20.2 The Consultant shall employ and provide such qualified and experienced Experts and Sub-consultants as are required to carry out the Services.

20.3 The Consultant may subcontract part of the Services to an extent and with such Key Experts and Sub-consultants as may be approved in advance by the Procuring Entity. Notwithstanding such approval, the Consultant shall retain full responsibility for the Services.

#### **b. Law Applicable to Services**

20.4. The Consultant shall perform the Services in accordance with the Contract and the Applicable Law and shall take all practicable steps to ensure that any of its Experts and Sub-consultants, comply with the Applicable Law.

20.5 Throughout the execution of the Contract, the Consultant shall comply with the import of goods and services prohibitions in Kenya when;

a As a matter of law or official regulations, Kenya prohibits commercial relations with that country; or

b by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods from that country or any payments to any country, person, or entity in that country.

20.6. The Procuring Entity shall notify the Consultant in writing of relevant local customs, and the Consultant shall, after such notification, respect such customs.

## **21 Conflict of Interests**

21.1 The Consultant shall hold the Procuring Entity's interest paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.

### **a. Consultant Not to Benefit from Commissions, Discounts, etc.**

21.1.1 The payment of the Consultant pursuant to GCC F (Clauses GCC 38 through 42) shall constitute the Consultant's only payment in connection with this Contract and, subject to Clause GCC 21.1.3, the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations here under, and the Consultant shall use its best efforts to ensure that any Sub-consultants, as well as the Experts and agents of either of them, similarly shall not receive any such additional payment.

21.1.2 Furthermore, if the Consultant, as part of the Services, has the responsibility of advising the Procuring Entity on the procurement of goods, works or services, the Consultant shall at all times exercise such responsibility in the best interest of the Procuring Entity. Any discounts or commissions obtained by the Consultant in the exercise of such procurement responsibility shall be for the account of the Procuring Entity.

### **b. Consultant and Affiliates Not to Engage in Certain Activities**

21.1.3 The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-consultants and any entity affiliated with such Sub-consultants, shall be disqualified from providing goods, works or non-consulting services resulting from or directly related to the Consultant's Services for the preparation or implementation of the project.

### **c. Prohibition of Conflicting Activities**

21.1.4 The Consultant shall not engage and shall cause its Experts as well as its Sub-consultants not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.

### **d. Strict Duty to Disclose Conflicting Activities**

21.1.5 The Consultant has an obligation and shall ensure that its Experts and Sub-consultants shall have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Procuring Entity, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Consultant or the termination of its Contract.

## **22 Confidentiality**

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22.1 Except with the prior written consent of the Procuring Entity, the Consultant and the Experts shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant and the Experts make public the recommendations formulated in the course of, or because of, the Services.

## **23 Liability of the Consultant**

23.1 Subject to additional provisions, if any, set forth in the SCC, the Consultant's liability under this Contract shall be as determined under the Applicable Law.

## **24 Insurance to be taken out by the Consultant**

24.1 The Consultant (i) shall take out and maintain and shall cause any Sub-consultants to take out and maintain, at its (or the Sub-consultants', as the case may be) own cost but on terms and conditions approved by the Procuring Entity, insurance against the risks, and for the coverage specified in the SCC, and (ii) at the Procuring Entity's request, shall provide evidence to the Procuring Entity showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid. The Consultant shall ensure that such insurance is in place prior to commencing the Services as stated in Clause GCC 13.

## **25 Accounting, Inspection and Auditing**

25.1 The Consultant shall keep and shall make all reasonable efforts to cause its Sub-consultants to keep, accurate and systematic accounts and records in respect of the Services and in such form and detail as will clearly identify relevant time changes and costs.

25.2 The Consultant shall permit and shall cause its Sub-consultants to permit, the PPRA and/ or persons appointed by the PPRA to inspect the site and /or all accounts and records relating to the performance of the Contract and the submission of the Proposal to provide the Services, and to have such accounts and records audited by auditors appointed by the PPRA if requested by the PPRA. The Consultant's attention is drawn to Clause GCC 10 which provides, inter alia, that acts intended to materially impede the exercise of the PPRA's inspection and audit rights provided for under this Clause GCC 25.2 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility under the PPRA's prevailing sanctions procedures).

## **26 Reporting Obligations**

26.1 The Consultant shall submit to the Procuring Entity the reports and documents specified in Appendix A, in the form, in the numbers and within the time periods set forth in the said Appendix.

## **27 Proprietary Rights of the Procuring Entity in Reports and Records**

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27.1 Unless otherwise indicated in the SCC, all reports and relevant data and information such as maps, diagrams, plans, databases, other documents and software, supporting records or material compiled or prepared by the Consultant for the Procuring Entity in the course of the Services shall be confidential and become and remain the absolute property of the Procuring Entity. The Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Procuring Entity, together with a detailed inventory thereof. The Consultant may retain a copy of such documents, data and/or software but shall not use the same for purposes unrelated to this Contract without prior written approval of the Procuring Entity.

27.2 If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of the plans, drawings, specifications, designs, databases, other documents and software, the Consultant shall obtain the Procuring Entity's prior written approval to such agreements, and the Procuring Entity shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned. Other restrictions about the future use of these documents and software, if any, shall be specified in the SCC.

## **28 Equipment, Vehicles and Materials**

28.1 Equipment, vehicles and materials made available to the Consultant by the Procuring Entity or purchased by the Consultant wholly or partly with funds provided by the Procuring Entity, shall be the property of the Procuring Entity and shall be marked accordingly. Upon termination or expiration of this Contract, the Consultant shall make available to the Procuring Entity an inventory of such equipment, vehicles and materials and shall dispose of such equipment, vehicles and materials in accordance with the Procuring Entity's instructions. While in possession of such equipment, vehicles and materials, the Consultant, unless otherwise instructed by the Procuring Entity in writing, shall insure them at the expense of the Procuring Entity in an amount equal to their full replacement value.

28.2 Any equipment or materials brought by the Consultant or its Experts into Kenya for the use either for the project or personal use shall remain the property of the Consultant or the Experts concerned, as applicable.

## **D. Consultant's Experts and Sub-consultants**

### **29 Description of Key Experts**

29.1 The title, agreed job description, minimum qualification and estimated period of engagement to carry out the Services of each of the Consultant's Key Experts are described in Appendix B.

### **30 Replacement of Key Experts**

30.1 Except as the Procuring Entity may otherwise agree in writing, no

changes shall be made in the Key Experts.

30.2 Notwithstanding the above, the substitution of Key Experts during Contract execution may be considered only based on the Consultant's written request and due to circumstances outside the reasonable control of the Consultant, including but not limited to death or medical incapacity. In such case, the Consultant shall forth with provide as a replacement, a person of equivalent or better qualifications and experience, and at the same rate of remuneration.

### **31 Removal of Experts or Sub-consultants**

31.1 If the Procuring Entity finds that any of the Experts or Sub-consultant has committed serious misconduct or has been charged with having committed a criminal action, or shall the Procuring Entity determine that Consultant's Expert of Sub consultant have engaged in corrupt, fraudulent, collusive, coercive [or obstructive] practice while performing the Services, the Consultant shall, at the Procuring Entity's written request, provide a replacement.

31.2 In the event that any of Key Experts, Non-Key Experts or Sub-consultants is found by the Procuring Entity to be incompetent or incapable in discharging assigned duties, the Procuring Entity, specifying the grounds, therefore, may request the Consultant to provide a replacement.

31.3 Any replacement of the removed Experts or Sub consultants shall possess better qualifications and experience and shall be acceptable to the Procuring Entity.

31.4 The Consultant shall bear all costs arising out of or incidental to any removal and/or replacement of such Experts.

### **E. Obligations of the Procuring Entity**

### **32 Assistance and Exemptions**

32.1 Unless otherwise specified in the SCC, the Procuring Entity shall use its best efforts to:

- a Assist the Consultant with obtaining work permits and such other documents as shall be necessary to enable the Consultant to perform the Services.
- b Assist the Consultant with promptly obtaining, for the Experts and, if appropriate, their eligible dependents, all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in Kenya while carrying out the Services under the Contract.
- c Facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Experts and their eligible dependents.
- d Issue to officials, agents and representatives of the Government all such

instructions and information as may be necessary or appropriate for the prompt and effective implementation of the Services.

e Assist the Consultant and the Experts and any Sub-consultants employed by the Consultant for the Services with obtaining exemption from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity in Kenya according to the applicable law in Kenya.

32.2 Assist the Consultant, any Sub-consultants and the Experts of either of them with obtaining the privilege, pursuant to the applicable law in Kenya, of bringing into Kenya reasonable amounts of foreign currency for the purposes of the Services or for the personal use of the Experts and of withdrawing any such amounts as may be earned therein by the Experts in the execution of the Services.

32.3 Provide to the Consultant any such other assistance as may be specified in the SCC.

### **33 Access to Project Site**

33.1 The Procuring Entity warrants that the Consultant shall have, free of charge, unimpeded access to the project site in respect of which access is required for the performance of the Services. The Procuring Entity will be responsible for any damage to the project site or any property thereon resulting from such access and will indemnify the Consultant and each of the experts in respect of liability for any such damage, unless such damage is caused by the willful default or negligence of the Consultant or any Sub-consultants or the Experts of either of them.

### **34 Change in the Applicable Law Related to Taxes and Duties**

34.1 If, after the date of this Contract, there is any change in the applicable law in Kenya with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, 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 hereto, and corresponding adjustments shall be made to the Contract price amount specified in Clause GCC 39.1

### **35 Services, Facilities and Property of the Procuring Entity**

35.1 The Procuring Entity shall make available to the Consultant and the Experts, for the purposes of the Services and free of any charge, the services, facilities and property described in the Terms of Reference (Appendix A) at the times and in the manner specified in said Appendix A.

### **36 Counterpart Personnel**

36.1 The Procuring Entity shall make available to the Consultant free of charge such professional and support counterpart personnel, to be nominated by the Procuring Entity with the Consultant's advice, if specified in Appendix A.

36.2 Professional and support counterpart personnel, excluding Procuring Entity's liaison personnel, shall work under the exclusive direction of the Consultant. If any member of the counterpart personnel fails to perform adequately any work as signed to such member by the Consultant that is consistent with the position occupied by such member, the Consultant may request the replacement of such member, and the Procuring Entity shall not unreasonably refuse to act upon such request.

### **37 Payment Obligation**

37.1 In consideration of the Services performed by the Consultant under this Contract, the Procuring Entity shall make such payments to the Consultant for the deliverables specified in Appendix A and in such manner as is provided by GCCF below.

### **F. Payments to the Consultant**

#### **38 Contract Price**

38.1 The Contract price is fixed and is set forth in the SCC. The Contract price breakdown is provided in Appendix C.

38.2 Any change to the Contract price specified in Clause 38.1 can be made only if the Parties have agreed to the revised scope of Services pursuant to Clause GCC 16 and have amended in writing the Terms of Reference in Appendix A.

#### **39 Taxes and Duties**

39.1 The Consultant, Sub-consultants and Experts are responsible for meeting any and all tax liabilities arising out of the Contract unless it is stated otherwise in the SCC.

#### **40 Currency of Payment**

40.1 Any payment under this Contract shall be made in the currency (ies) of the Contract.

#### **41 Mode of Billing and Payment**

41.1 The total payments under this Contract shall not exceed the Contract price set forth in Clause GCC 38.1.

41.2 The payments under this Contract shall be made in lump-sum instalments against deliverables specified in Appendix A. The payments will be made according to the payment schedule stated in the SCC.

41.2.1 Advance payment: Unless otherwise indicated in the SCC, an advance payment shall be made against an advance payment bank guarantee acceptable to the Procuring Entity in an amount (or amounts) and in a currency (or currencies) specified in the SCC. Such guarantee (I) is to remain effective until

the advance payment has been fully set off, and (ii) is to be in the form set forth in Appendix D, or in such other form as the Procuring Entity shall have approved in writing. The advance payments will be set off by the Procuring Entity in equal portions against the lump-sum installments specified in the SCC until said advance payments have been fully set off.

41.1.2 *The Lump-Sum Instalment Payments.* The Procuring Entity shall pay the Consultant within sixty (60) days after the receipt by the Procuring Entity of the deliverable(s) and the cover invoice for the related lump-sum installment payment. The payment can be withheld if the Procuring Entity does not approve the submitted deliverable(s) as satisfactory in which case the Procuring Entity shall provide comments to the Consultant within the same sixty (60) days period. The Consultant shall thereupon promptly make any necessary corrections, and there after the fore going process shall be repeated.

41.1.3 *The Final Payment:* The final payment under this Clause shall be made only after the final report has been submitted by the Consultant and approved as satisfactory by the Procuring Entity. The Services shall then be deemed completed and finally accepted by the Procuring Entity. The last lump-sum instalment shall be deemed approved for payment by the Procuring Entity within ninety (90) calendar days after receipt of the final report by the Procuring Entity unless the Procuring Entity, within such ninety (90) calendar day period, gives written notice to the Consultant specifying in detail deficiencies in the Services, the final report. The Consultant shall thereupon promptly make any necessary corrections, and there after the fore going process shall be repeated.

41.1.4 All payments under this Contract shall be made to the accounts of the Consultant specified in the SCC.

41.1.5 With the exception of the final payment under 41.2.3 above, payments do not constitute acceptance of the whole Services nor relieve the Consultant of any obligations here under.

## **42 Interest on Delayed Payments**

42.1 If the Procuring Entity had delayed payments beyond thirty (30) days after the due date stated in Clause GCC 41.1.2, interest shall be paid to the Consultant on any amount due by, not paid on, such due date for each day of delay at the annual rate stated in the SCC.

## **G. Fairness and Good Faith**

### **43 Good Faith**

43.1 The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

## **H. Settlement of Disputes**

### **44 Amicable Settlement**

44.1.2 The Parties shall seek to resolve any dispute amicably by mutual consultation.

44.1.3 If either Party objects to any action or in action of the other Party, the objecting Party may file a written Notice of Dispute to the other Party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within fourteen (14) days after receipt. If that Party fails to respond within fourteen (14) days, or the dispute cannot be amicably settled within fourteen (14) days following the response of that Party, Clause GCC 45.1 shall apply.

### **45 Dispute Resolution**

45.1 Any dispute between the Parties arising under or related to this Contract that cannot be settled amicably may be referred to by either Party to the adjudication/arbitration in accordance with the provisions specified in the SCC.

## SECTION 8: SPECIAL CONDITIONS OF CONTRACT

*[Notes in brackets are for guidance purposes only and should be deleted in the final text of the signed contract]*

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1 (a)	The Contract shall be construed in accordance with the laws of Kenya.
4.1	The language is: <b>English</b>
6.1 and 6.2	<p>The Addresses are:</p> <p>Procuring Entity: Kenya Roads Board 6th Floor, Kenya Re Towers Off Ragati Road, Upper Hill P.O. Box 73718 – 00200, Nairobi Attention: R. Mohamed, the Director General</p> <p>Facsimile: 254 (020) 2722865/6 E-mail: <a href="mailto:tenders@krb.go.ke">tenders@krb.go.ke</a></p> <p>Consultant: Attention: Facsimile: E-mail:</p> <p>To be valid, all emails and fax messages must be followed by a signed written confirmation.</p>
8.1	<p><i>[If the Consultant consists only of one entity, state "N/A", OR If the Consultant is a Joint Venture consisting of more than one entity, the name of the JV member whose address is specified in Clause SCC 6.1 should be inserted here].</i></p> <p>The Lead Member on behalf of the JV is _____ <i>[Insert name of member]</i></p>
9.1	<p>The Authorized Representatives are:</p> <p>For Kenya Roads Board: R. Mohamed, Director General</p> <p>For the Consultant : <i>[Authorized Representative with Power of Attorney, Title]</i></p>
11.1	<p>The effectiveness conditions are the following:</p> <p><i>The date on which this contract shall come into effect is the date on which both parties sign the contract.</i></p>
12.1	<p>Termination of Contract for Failure to Become Effective:</p> <p>The time period shall be _____ <i>[Insert time period, e.g. : four months]</i></p>
13.1	<p>Commencement of Services:</p> <p>The number of days shall be <b>fourteen (14)</b>.</p>

	Confirmation of Key Experts' availability to start Assignment shall be submitted to the Procuring Entity in writing as a statement signed by each Key Expert.
14.1	Expiration of Contract: The time shall be <b>3 months</b> inclusive of a one-month period for the completion of the final report.
21 b	The Procuring Entity reserves the right to determine on a case-by-case basis whether the Consultant should be disqualified from providing goods, works or non-consulting services due to a conflict of a nature described in Clause GCC 21.1.3. <b>Yes.</b>
22.1	Confidentiality: (i) Any information obtained by the consultant shall remain strictly confidential during the contract period and two years after the expiry of the Contract. (ii) All documents prepared by the Consultant shall become the property of the Client and shall not be used without the Client's approval  Consultants shall bring to the attention of their staff involved in this project; the terms and conditions of this contract with regard to the confidentiality clauses.
23.1	No additional provisions.
24.1	The insurance coverage against the risks shall be follows: The risks and coverage shall be: <b>i. Motor vehicle : <u>N/A</u></b> <b>ii. Third Party liability : N/A</b> <b>iii. Workers' compensation : <u>N/A</u></b> <b>iv. Professional liability: <u>N/A</u></b> <b>v. <u>Loss</u> or damage to equipment and property: <u>N/A</u></b>
27.1	The additional rights to the use of the documents are: None.
27.2	The Consultant shall not use any reports and documents produced in the course of the assignment for purposes unrelated to this Contract without the prior written approval of the Client. This also includes data gathered in the process of conducting the assignment.
29.1 and 29.2	<b>i. Replacement of key staff shall require the prior approval of the Client.</b> <b>ii. Where key personnel are replaced by the Consultant without agreement of the client, the inputs of such personnel shall not be paid.</b>

31.1 (a) through (e)	All the aspects and requirements enumerated in Clause 31.1 shall be the sole responsibility of the Consultant. Any costs incurred in obtaining the said documents shall be borne by the Consultant.
32.2	Not Applicable for this Clause 32.1
34.1	Not Applicable for this Contract.
36.1	Not Applicable
38.1	<p>The Contract price is: _____ {insert amount and currency for each currency as applicable} {indicate: inclusive or exclusive} of local taxes.</p> <p>Any local taxes chargeable in respect of this Contract for the Services provided by the Consultant shall {insert as appropriate: "be paid" or "reimbursed"} by the Procuring Entity {insert as appropriate: "for" or "to"} the Consultant.</p> <p>The amount of such taxes is _____ {insert the amount as finalized at the Contract's negotiations on the basis of the tax amounts provided by the Consultant in Form FIN-2 of the Consultant's Financial Proposal.</p>
40.2.1	<p>The following provisions shall apply to the advance payment and the advance bank payment guarantee:</p> <ol style="list-style-type: none"> <li>1) Upon request by the Consultant, an advance payment equivalent to 20% of the Contract Sum shall be paid not later than 30 days after issuance of the order to commence and against the submission of a bank guarantee of the same amount from a reputable bank by the Consultant.</li> <li>2) The advance payment shall be set off by the Client against each payment certificates raised for the services rendered by the Consultant on a prorated basis such that all the full amount shall have been recovered when 40% of the Consultancy contract sum shall be due for payment.</li> <li>3) The advance bank payment guarantee shall be in Kenyan Shillings. The bank guarantee will be released when the advance payment has been fully set off.</li> </ol>
41.2 (a)	<p>Payments shall be made on a lumpsum basis at a certain percentage of the Consultancy contract Sum (excluding provisional sums &amp; contingencies) as follows:</p> <ol style="list-style-type: none"> <li>a) 20% of the lumpsum amount after approval of the inception report.</li> <li>b) 40% of the lumpsum amount after presentation (Validation Workshop 1) and approval of the interim report,</li> <li>c) 40% of the lumpsum amount after approval of the Final Report.</li> </ol> <p>Payments for Provisional Sums and Contingencies: N/A</p>

41.2 (b)	Rejection of an invoice by the Client shall be notified not later than <b>fourteen (14) days</b> after submission by the Consultants, otherwise it shall be deemed to have been approved for payment.
41.2 (c)	<p>Payment Obligation</p> <p>Payment shall be made within <b>thirty (30) days</b> of the Client's approval of the invoice and the relevant documents specified in Clause 41.2(a), and within <b>thirty (30) days</b> in the case of the final payment.</p>
41.1.4	<p>The accounts are:</p> <p>For local currency: {insert account}.</p>
42.1	The Interest Rate shall be the prevailing Central Bank of Kenya Treasury Bill Rate after the expiry of 90 days upon receipt of the invoice for the services rendered by the Consultant.
44.1.2	<p>Dispute Resolution:</p> <p>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 in accordance with Kenya Arbitration Act 1995. 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 request of the applying party.</p>
45.1	<p>Disputes shall be settled by arbitration in accordance with the following provisions:</p> <p>1) Selection of Arbitrators. Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three(3) arbitrators, in accordance with the following provisions:</p> <p>a) Where the Parties agree the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty(30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to {name an appropriate international body, e.g., the Federation Internationale des Ingenieurs-Conseil (FIDIC) of Lausanne Switzerland} for a list of not fewer than five(5) nominees and, on receipt of such list, the Parties shall alternately strike names there from, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the last date of the list, {insert the name of the same professional body as above} shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute.</p>

	<p>b) Where the Parties do not agree that the dispute concerns a technical matter, the Procuring entity and the Consultant shall each appoint one (1) arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty(30) days after the latter of the two(2) arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by {name an appropriate international appointing authority, e.g., the Secretary General of the Permanent Court of Arbitration, The Hague; the Secretary General of the International Centre for Settlement of Investment Disputes, Washington, D.C.; the International Chamber of Commerce, Paris; etc.}</p> <p>c) If, in a dispute subject to paragraph(b) above, one Party fails to appoint its arbitrator within thirty(30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the {name the same appointing authority as in said paragraph</p> <p>d) to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.</p>
	<p>2. Rules of Procedure. Except as otherwise stated herein, arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in force on the date of this Contract.</p> <p>3. Substitute Arbitrators. If for any reason an arbitrator is unable to perform his/her function, a substitute shall be appointed in the same manner as the original arbitrator.</p> <p>4. Nationality and Qualifications of Arbitrators. The sole arbitrator or the third arbitrator appointed pursuant to paragraphs 1(a) through 1(c) above shall be an Internationally recognized legal or technical expert with extensive expensive experience in relation to the matter in dispute and shall not be a national of the Consultant's home country  {If the Consultant consists of more than one entity, add: or of the home country of any of their members or Parties] or of the Government's country. For the purposes of this Clause, "home country" means any of:</p> <p>a) the country of incorporation of the Consultant {If the Consultant consists of more than one entity, add: or of any of their members or Parties}; or</p> <p>b) the country in which the Consultant's {or any of their members' or Parties'} principal place of business is located; or</p> <p>c) the country of nationality of a majority of the Consultant's {or of any members' or Parties' } shareholders; or</p> <p>d) the country of nationality of the Sub-consultants concerned, where the dispute involves a subcontract.</p>

## **SECTION 9: APPENDICES**

### **Appendix A – Terms of Reference**

[Note: This Appendix shall include the final Terms of Reference (TORs) worked out by the Procuring Entity and the Consultant during the negotiations; dates for completion of various tasks; location of performance for different tasks; detailed reporting requirements and list of deliverables against which the payments to the Consultant will be made; Procuring Entity's input, including counterpart personnel assigned by the Procuring Entity to work on the Consultant's team; specific tasks or actions that require prior approval by the Procuring Entity.

Insert the text based on the Section 5 (Terms of Reference) of the ITC in the RFP and modified based on the Forms TECH-1 through TECH-5 of the Consultant's Proposal. Highlight the changes to Section 5 of the RFP]

.....

### **Appendix B - Key Experts**

*[Insert a table based on Form TECH-6 of the Consultant's Technical Proposal and finalized at the Contract's negotiations. Attach the CVs (updated and signed by the respective Key Experts) demonstrating the qualifications of Key Experts.]*

.....

### **Appendix C – Breakdown of Contract Price**

*{Insert the table with the unit rates to arrive at the breakdown of the lump-sum price. The table shall be based on [Form FIN-3 and FIN-4] of the Consultant's Proposal and reflect any changes agreed at the Contract negotiations, if any. The footnote shall list such changes made to [Form FIN-3 and FIN-4] at the negotiations or state that none has been made.}*

### **Appendix D - Form of Advance Payment Guarantee**

[Note: See Clause GCC 41.2.1 and SCC 41.2.1]

Bank Guarantee for Advance Payment \_\_\_\_\_ [Bank's Name and Address of Issuing Branch or Office] Beneficiary: [Name and Address of Procuring Entity]  
Date: \_\_\_\_\_

ADVANCE PAYMENT GUARANTEE No.: \_\_\_\_\_

We have been informed that \_\_\_\_\_ [name of Consultant or a name of the Joint Venture, same as appears on the signed Contract] (herein after called "the Consultant") has entered into Contract No. \_\_\_\_\_ [reference number of the contract] dated \_\_\_\_\_ with you, for the provision of \_\_\_\_\_ [brief description of Services] (herein after called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an

advance payment in the sum of \_\_\_\_\_*[amount in figures]* () *[amount in words]* is to be made against an advance payment guarantee.

At the request of the Consultant, we \_\_\_\_\_*[name of bank]* here by irrevocably undertake to pay you any sum or sums not exceeding in total an amount of \_\_\_\_\_*[amount in figures]* () *[amount in words]*<sup>1</sup> upon receipt by us of your first demand in writing accompanied by a written statement stating that the Consultant are in breach of their obligation under the Contract because the Consultant have used the advance payment for purposes other than toward providing the Services under the Contract.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Consultant on their account number \_\_\_\_\_ at \_\_\_\_\_*[name and address of bank]*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Consultant as indicated in copies of certified monthly statements which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of the monthly payment certificate indicating that the Consultant has made

Full repayment of the amount of the advance payment, or on the day of \_\_\_\_\_, <sup>2</sup> whichever is earlier.

Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

*[Signature]*

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**Note:** All italicized text is for indicative purposes only to assist in preparing this form and shall be deleted from the final product

## **SECTION 10: NOTIFICATION FORMS**

### **1.0 NOTIFICATION OF INTENTION TO AWARD**

Procuring Entity: Kenya Roads Board

Contract title: Provision of Consultancy Services to undertake a study on the economic impact of electric mobility on sustainability of the Road Maintenance Levy

KRB/T/10 /2023-2024

RFP No: \_\_\_\_\_ *[insert RF Preference number]*

This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period. During the Standstill Period you may:

- a) Request a debriefing in relation to the evaluation of your Proposal, and/or
- b) Submit a Procurement-related Complaint in relation to the decision to award the contract.

The successful Consultant

Name:	<i>[insert name of successful Consultant]</i>
Address:	<i>[insert address of the successful Consultant]</i>
Contract price:	<i>[insert contract price of the successful Consultant]</i>

## 2.0 NOTIFICATION OF AWARD

*[use letterhead paper of the Procuring Entity][date]\_\_\_\_\_*

To:\_\_\_\_\_ *[name and address of the winning Consultant]*

**Subject: Notification of Award Contract No.....**

This is to notify you that your Proposal dated\_\_\_\_\_ *[insert date]* for consulting services for *[name of the assignment]* as negotiated with you on\_ for the contract amount of \_\_\_\_\_ *[Insert amount in numbers and words and name of currency]* is hereby accepted by our agency.

You are requested to: (i) sign and return the draft negotiated Contract attached here with within eight (8) Business Days from the date of receipt of this notification; and (ii) furnish the additional information on beneficial ownership in accordance with the Data Sheet of ITC 32.1 within eight (8) days using the Beneficial Ownership Disclosure Form, included in Section 7 of the Request of Proposals.

Authorized Signature:\_\_\_\_\_ Name and Title of Signatory: \_\_\_\_\_  
Name of Agency:\_\_\_\_\_

**Attachment:** *Draft Negotiated Contract*

## 3.0 BENEFICIAL OWNERSHIP DISCLOSURE FORM

Request for Proposal Reference No.:\_\_\_\_\_ *[insert identificationno]*

Name of the Assignment:\_\_\_\_\_ *[insert name of the assignment]* To:\_\_\_\_\_ *[insert complete name of Procuring Entity]*

In response to your notification of award dated\_\_\_\_\_ *[insert date of notification of award]* to furnish additional information on beneficial ownership: select one option as applicable and delete the options that are not applicable

I) We here by provide the following beneficial ownership information.

***Details of beneficial ownership***

<b>Identity of Beneficial Owner</b>	<b>Directly or indirectly holding 25% or more of the shares  (Yes /No)</b>	<b>Directly or indirectly holding 25 % or more of the  Voting Rights  (Yes /No)</b>	<b>Directly or indirectly having the right to appoint a majority of the board of the directors or an equivalent governing body of the Consultant  (Yes /No)</b>
<i>[include full name (last, middle, first), nationality, country of residence]</i>			

OR

- ii) *We declare that there is no Beneficial Owner meeting one or more of the following conditions: directly or indirectly holding 25% or more of the shares. Directly or indirectly holding 25% or more of the voting rights. Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Consultant.*

OR

- iii) *We declare that we are unable to identify any Beneficial Owner meeting one or more of the following conditions. [If this option is selected, the Consultant shall provide explanation on why it is unable to identify any Beneficial Owner]*

*Directly or indirectly holding 25% or more of the shares. Directly or indirectly holding 25% or more of the voting rights.*

*Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Consultant]"*

*Name of the Consultant: .....\*[insert complete name of the Consultant]\_\_*

*Name of the person duly authorized to sign the Proposal on behalf of the Consultant: \*\*  
[insert complete name of person duly authorized to sign the Proposal]*

*Title of the person signing the Proposal .....[insert complete title of the person signing the Proposal]*

*Signature of the person named above .....[insert signature of person whose name and capacity are shown above]*

*Date signed .....[insert date of signing] day of [Insert month], [insert year].*

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*Provision of Consultancy Services to Develop an Environmental, Social and Governance (ESG) Strategy.*

