

REPUBLIC OF KENYA



COUNTY GOVERNMENT OF MIGORI

TENDER NO: CGM/RFP/EXC/227/2018-2019

TENDER DESCRIPTION:

**REQUEST FOR PROPOSAL (RFP) FOR THE DESIGN AND SUPERVISION
OF THE PROPOSED COUNTY OFFICE HEADQUARTERS, GOVERNOR
AND DEPUTY GOVERNOR'S RESIDENCES FOR COUNTY
GOVERNMENT MIGORI**

APRIL, 2019

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SECTION I - LETTER OF INVITATION

TO: *(Name and Address of Lead Consultant)*

Date _____

Dear Sir/Madam,

RE: PROPOSED DEVELOPMENT OF, GOVERNOR'S RESIDENCE

- 1.1 The County Government of Migori invites proposals for the following consultancy services development of various county infrastructure which comprise Design and Construction Supervision of the County Assembly, County Offices, Governor's Residence and associated civil works
- 1.2 The request for proposals (RFP) includes the following documents:
- Section I - Letter of invitation
 - Section II - Information to consultants
Appendix to Consultants information
 - Section III - Terms of Reference
 - Section IV - Technical proposals
 - Section V - Standard Contract Form
- 1.3 Upon receipt, please inform us
- (a) that you have received the letter of invitation
 - (b) whether or not you will submit a proposal for the assignment

Yours sincerely

(Signature, name and title of procuring entity's official)

SECTION II – INFORMATION TO CONSULTANTS (ITC)

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SECTION II: - INFORMATION TO CONSULTANTS (ITC)

2.1 Introduction

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

2.2 Clarification and Amendment of RFP Documents

- 2.2.1 Consultants may request a clarification of any of the RFP documents only up to Seven [7] days before the proposal submission date. Any request for clarification must be sent in writing by paper mail, cable, telex, facsimile or electronic mail to the Client's address indicated in the Appendix "ITC". The Client will respond by cable, telex, facsimile or electronic mail to such requests and will send written copies of the response (including an explanation of the query but without identifying the source of inquiry) to all invited consultants who intend to submit proposals.
- 2.2.2 At any time before the submission of proposals, the Client may for any reason, whether at his own initiative or in response to a clarification requested by an invited firm, amend the RFP. Any amendment shall be issued in writing through addenda. Addenda shall be sent by mail, cable, telex or facsimile to all invited consultants and will be binding on them. The Client may at his discretion extend the deadline for the submission of proposals.

2.3 Preparation of Technical Proposal

- 2.3.1 The Consultants proposal shall be written in English language
- 2.3.2 In preparing the Technical Proposal, consultants are expected to examine the documents constituting this RFP in detail. Material deficiencies in providing the information requested may result in rejection of a proposal.
- 2.3.3 While preparing the Technical Proposal, consultants must give particular attention to the following:
- (i) If a firm considers that it does not have all the expertise for the assignment, it may obtain a full range of expertise by associating with individual consultant(s) and/or other firms or entities in a joint venture or sub-consultancy as appropriate. Consultants shall not associate with the other consultants invited for this assignment. Any firms associating in contravention of this requirement shall automatically be disqualified.
 - (ii) For assignments on a staff-time basis, the estimated number of professional staff-time is given in the Appendix. The proposal shall however be based on the number of professional staff-time estimated by the firm.
 - (iii) It is desirable that the majority of the key professional staff proposed be permanent employees of the firm or has an extended and stable working relationship with it.
 - (iv) Proposed professional staff must as a minimum, have the experience indicated in Appendix, preferably working under conditions similar to those prevailing in Kenya.

- (v) Alternative professional staff shall not be proposed and only one Curriculum Vitae (CV) may be submitted for each position.

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

- (i) A brief description of the firm's organization and an outline of recent experience on assignments of a similar nature. For each assignment the outline should indicate *inter alia*, the profiles of the staff proposed, duration of the assignment, contract amount and firm's involvement.
- (ii) Any comments or suggestions on the Terms of Reference, a list of services and facilities to be provided by the Client.
- (iii) A description of the methodology and work plan for performing the assignment.
- (iv) The list of the proposed staff team by specialty, the tasks that would be assigned to each staff team member and their timing.
- (v) CVs recently signed by the proposed professional staff and the authorized representative submitting the proposal. Key information should include number of years working for the firm/entity and degree of responsibility held in various assignments during the last ten (10) years.
- (vi) Estimates of the total staff input (professional and support staff staff-time) needed to carry out the assignment supported by bar chart diagrams showing the time proposed for each professional staff team member.
- (vii) A detailed description of the proposed methodology, staffing and monitoring of training, if Appendix "A" specifies training as a major component of the assignment.
- (viii) Any additional information requested in Appendix "A".

2.3.5 The Technical Proposal shall not include any financial information.

2.4 Submission, Receipt, and Opening of Proposals

2.4.1 The original proposal (Technical Proposal and, if required, Financial Proposal; see paragraph. 1.2) shall be prepared in indelible ink. It shall contain no interlineations or overwriting, except as necessary to correct errors made by the firm itself. Any such corrections must be initialed by the persons or person authorized to sign the proposals.

- 2.4.2 For each proposal, the consultants shall prepare the number of copies indicated in Appendix "A". Each Technical Proposal shall be marked "**ORIGINAL**" or "**COPY**" as appropriate. If there are any discrepancies between the original and
- 2.4.3 The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked "**TECHNICAL PROPOSAL,**" and shall bear the submission address and other information indicated in the Appendix "ITC" and be clearly marked, "**DO NOT OPEN, EXCEPT IN PRESENCE OF THE OPENING COMMITTEE.**"
- 2.4.4 The completed Technical Proposals must be delivered at the submission address on or before the time and date stated in the Appendix "ITC". Any proposal received after the closing time for submission of proposals shall be returned to the respective consultant unopened.
- 2.4.5 After the deadline for submission of proposals, the Technical Proposals shall be opened immediately by the opening committee.

2.5 Proposal Evaluation General

- 2.5.1 From the time the bids are opened to the time the Contract is awarded, if any consultant wishes to contact the Client on any matter related to his proposal, he should do so in writing at the address indicated in the Appendix "ITC". Any effort by the firm to influence the Client in the proposal evaluation, proposal comparison or Contract award decisions may result in the rejection of the consultant's proposal.
- 2.5.2 The evaluation shall comprise preliminary evaluation, technical proposal evaluation and due diligence.

2.6 Preliminary / Mandatory Requirements

Each firm in the consortium must submit documentary evidence to support the following:

- 2.6.1 Registration with Ministry of Public works
- 2.6.2 PIN and VAT Certificate
- 2.6.3 Current Tax compliance certificate
- 2.6.4 Certificate of Incorporation or Registration of Business Name from the Registrar of Companies or the Registrar of business names as appropriate. This should include change of particulars where applicable.
- 2.6.5 Duly signed Declaration Form (See section III)
- 2.6.6 Technical Submission form duly signed by all the consulting firms in the Consortium.
- 2.6.7 Joint Venture Agreement where applicable.
- 2.6.8 Registration with their respective statutory registration boards.
- 2.6.9 Audited accounts for at least three (3) consecutive years of the last five (5) years.
- 2.6.10 The firms to have been in existence for more than three years
- 2.6.11 Principals must be registered with respective Boards and be members of 8 at

least one professional body and with current practicing license where applicable.

2.6.12 Principals must have 10 years postgraduate experience.

Failure to submit any item under this section shall lead to automatic disqualification

2.7 Evaluation of Technical Proposal

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

- (i) Specific experience of the consultant related to the assignment

10

(ii)	Adequacy of the proposed work plan and methodology in responding to the terms of reference	40
(iii)	Qualifications and competence of the key staff for the assignment	40
(iv)	Suitability to the transfer of Technology Programme (Training)	<u>10</u>

Total Points **100**

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

2.7.2. Notes on the Criteria

i. **Specific experience of the consultant related to the assignment**

The proposal should clearly demonstrate the experience of the individual firms within the consortium in carrying out work of similar nature, cost and magnitude. The consortium should bear in mind that the proposed project consists of County Headquarter Offices, Deputy Governor and Governors' Residences. Information under this item should be clearly indicated on the 'Firms References Form' under section III of this document.

ii. **Adequacy of the proposed work plan and methodology**

The proposal should present the methodological approach and the programme of works in such a way that their suitability in regard to the Terms of Reference can be assessed and they can be compared with other proposals. This includes a statement of the works organizational plan and the logistics.

The text should clearly state how the project activities are to be undertaken, the resources to be utilized and how the work is to be allocated among the consortium members. It should state how the Consortium will co-ordinate various activities with the client and other relevant parties. The Consortium should also describe the control and measuring systems that they intend to employ to ensure successful completion of the project in terms of quality, time, cost, energy efficiency and any new innovations.

Information under this item should be clearly indicated on the relevant forms under section III of this document.

iii. **Qualifications and competence of the key staff for the assignment**

The biographical data on the personnel should have a cover sheet containing a summary and include here or in the text brief statements by the applicants on their suitability for the envisaged work and function.

Information under this item should be clearly indicated on the format of Curriculum Vitae (CV) for proposed Professional Staff form under section III of this document.

2.8 Due Diligence

Due Diligence entails confirmation of all information submitted by the applicants.

2.9 Negotiations

2.9.1 Negotiations will be held at the same address as "address to send information to"

the Client” indicated in the Appendix “ITC”. The aim is to reach agreement on all points and sign a contract.

- 2.9.2 Negotiations will include a discussion of the Technical Proposal, the proposed methodology (work plan), staffing and any suggestions made by the firm to improve the Terms of Reference. The Client and firm will then work out final Terms of Reference, staffing and bar charts indicating activities, staff periods in the field and in the head office, staff-months, logistics and reporting. The agreed work plan and final Terms of Reference will then be incorporated in the “Description of Services” and form part of the Contract. Special attention will be paid to getting the most the firm can offer within the available budget and to clearly defining the inputs required from the Client to ensure satisfactory implementation of the assignment.
- 2.9.3 Having selected the firm on the basis of, among other things, an evaluation of proposed key professional staff, the Client expects to negotiate a contract on the basis of the experts named in the proposal. Before contract negotiations, the Client will require assurances that the experts will be actually available. The Client will not consider substitutions during contract negotiations unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the firm may be disqualified.
- 2.9.4 The negotiations will conclude with a review of the draft form of the Contract. To complete negotiations the Client and the selected firm will initial the agreed Contract. If negotiations fail, the Client will invite the firm whose proposal received the second highest score to negotiate a contract.
- 2.9.5 The procuring entity shall appoint a team for the purpose of the negotiations.

2.10 Award of Contract

- 2.10.1 The Contract will be awarded following successful negotiations and provision of appropriate Professional Indemnity Cover by the firm.
- 2.10.2 The selected firm is expected to commence the assignment on the date and at the location specified in Appendix “A”.
- 2.10.3 The parties to the contract shall have it signed not earlier than 14 days from the date of notification of contract award unless there is an administrative review request.
- 2.10.4 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 2.10.5 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.
- 2.10.6 To qualify for contract awards, the tenderer shall have the following:
- (a) Necessary qualifications, capability experience, services, equipment and

facilities to provide what is being procured.

(b) Legal capacity to enter into a contract for procurement

(c) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.

(d) Shall not be debarred from participating in public procurement.

(e) Must be Tax compliant

2.11 Confidentiality

2.11.1 Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals or to other persons not officially concerned with the process, until the winning firm has been notified that it has been awarded the Contract.

2.12 Corrupt or fraudulent practices

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

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

2.12.3 Further a consultant who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

Appendix 'A'

Appendix to Information to Consultants

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

Clause Reference

2.1 The name of the Client is: **COUNTY GOVERNMENT MIGORI**

2.1.1 The method of selection is: **Quality Based Selection**

2.1.2 Technical and Financial Proposals are requested: Yes No

The name, objectives, and description of the assignment are: **PROVISION OF BUILDING CONSULTANCY SERVICES FOR THE COUNTY HEADQUARTERS OFFICES, GOVERNOR AND DEPUTY GOVERNOR'S RESIDENCES IN THE COUNTY GOVERNMENT OF MIGORI**

2.1.3 A pre-proposal conference will be held: Yes No [if Yes, indicate date, time and venue]

The name(s), address(es) and telephone numbers of the Client's official(s) are:

**THE ACCOUNTANTING OFFICER
COUNTY GOVERNMENT OF MIGORI
P.O BOX 195 40400
SUNA**

2.1.4 The Client will provide the following inputs: **PROJECT BRIEF, PRELIMINARY DESIGN**

2.3.3 The minimum required experience of proposed firm principals is 10 years post-graduation and must be registered with statutory boards; proof of such registration with the relevant professional body and current licenses is required

2.4.2 Consultants must submit an original and **one** additional copy of the proposal.

2.4.3 The proposal submission address is: Information on the outer envelope should also include:

2.4.4 Proposals must be submitted no later than the following date and time: **9th May, 2019**

2.9.1 The address to send information to the client is:

**THE ACCOUNTANTING OFFICER
COUNTY GOVERNMENT OF MIGORI
P.O BOX 195 40400
SUNA**

2.10.2 The assignment is expected to commence on the date of signing the contract

SECTION III:- TECHNICAL PROPOSAL

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1. Technical proposal submission form
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7. Time schedule for professional personnel
8. Activity (work schedule)

1. TECHNICAL PROPOSAL SUBMISSION FORM

[_____Date]

To: _____[Name and address of Client]

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for

[Title of consulting services] in accordance with your Request for Proposal dated _____ [Date] and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal; Members of the consortium include the following firms:

- (i) Architectural Services(Authorized Signature) _____
- (ii) Quantity Surveying Services (Authorized Signature) _____
- (iii) Civil/Structural Services(Authorized Signature) _____
- (iv) Electrical/Mechanical Services(Authorized Signature) _____

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

We remain,

Yours sincerely,

_____ [Authorized Signature]:

_____ [Name and Title of Signatory]

_____ [Name of Firm]

_____ [Address:]

2. FIRM'S REFERENCES

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

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

Assignment Name:		Country
Location within Country:		Professional Staff provided by Your Firm/Entity(profiles):
Name of Client:		Clients contact person for the assignment.
Address:		No of Staff-Months; Duration of Assignment:
Start Date (Month/Year):	Completion Date (Month/Year):	Approx. Value of Services (Kshs)
Name of Associated Consultants. If any:		No of Months of Professional Staff provided by Associated Consultants:
Name of Senior Staff (Project Director/Coordinator, Team Leader) Involved and Functions Performed:		
Narrative Description of project:		
Description of Actual Services Provided by Your Staff:		

Firm's Name: _____

Name and title of signatory; _____

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

On the Terms of Reference:

- 1)
- 2)
- 3)
- 4)
- 5)

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

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

14. DESCRIPTION OF THE METHODOLOGY AND WORK PLAN FOR PERFORMING THE ASSIGNMENT

5. TEAM COMPOSITION AND TASK ASSIGNMENTS

1. Technical/Managerial Staff

Name	Position	Task

2. Support Staff

Name	Position	Task

6. FORMAT OF CURRICULUM VITAE (CV) FOR PROPOSED PROFESSIONAL STAFF

Proposed Position: _____

Name of Firm: _____

Name of Staff: _____

Profession: _____

Date of Birth: _____

Years with Firm _____ Nationality: _____

Membership in Professional Societies: _____

Detailed Tasks Assigned:

Key Qualifications:

[Give an outline of staff member's experience and training most pertinent to tasks on assignment. Describe degree of responsibility held by staff member on relevant previous assignments and give dates and locations].

Education:

[Summarize college/university and other specialized education of staff member, giving names of schools, dates attended and degree[s] obtained.]

Employment Record:

[Starting with present position, list in reverse order every employment held. List all positions held by staff member since graduation, giving dates, names of employing organizations, titles of positions held, and locations of assignments.]

Certification:

I, the undersigned, certify that these data correctly describe me, my qualifications, and my experience.

[Signature of staff member] Date: _____

[Signature of authorized representative of the firm] Date: _____

Full name of staff member: _____

Full name of authorized representative: _____

7. TIME SCHEDULE FOR PROFESSIONAL PERSONNEL

Months (in the Form of a Bar Chart)

Name	Position	Reports Due/ Activities	1	2	3	4	5	6	7	8	9	10	11	12	Number of months

Reports Due: _____

Activities Duration: _____

Signature (*Authorized representative*): _____

Full Name: _____

Title: _____

Address: _____

8. ACTIVITY (WORK) SCHEDULE

(a). Field Investigation and Study Items

[1st, 2nd, etc, are months from the start of assignment)

	1 st	2 nd	3 rd	4 th	5 th	6 th	7 th	8 th	9 th	10 th	11 th	12 th	
Activity (Work)													

(b). Completion and Submission of Reports

Reports	Date
1. Inception Report	
4. Interim Progress Report (a) First Status Report (b) Second Status Report	
3. Draft Report	
4. Final Report	

SECTION IV: - TERMS OF REFERENCE

a. BACKGROUND

To enable the Migori county Government effectively discharge their duties and functions as provided for in the constitution, the County Government invites consulting firms to design and supervise construction of the following:

- 1) County Headquarters offices
- 2) Governor's residence
- 3) Deputy Governor's residence

The projects are located in Migori County in the republic of Kenya.

b. OBJECTIVES OF THE ASSIGNMENT

The objective of the assignment is to facilitate the reviewing/refining issued preliminary designs, preparation of specifications and bills of Quantities for the execution of the proposed County Head quarters offices, Deputy Governor's and Governor's residence within Migori County and supervise the construction works from inception stage to the issuance of the certificate of making good defects.

The consortium will assist the client in achieving the product within the constraints of time, budget and quality.

The execution of the consultancy shall be in accordance with the ministry of Public Works Conditions of Engagement and Scale of Fees for Professional Services for Building Works 1987 edition with any amendments thereto.

c. SCOPE OF THE PROPOSED DEVELOPMENT

The development will consist of a County Head Quarters' Offices, Deputy Governor and Governor's residences, associated civil works and external works which will include; boundary walls, parking and driveways, services installations and landscaping among others.

d. SCOPE OF CONSULTANCY SERVICES (CONSORTIUM)

The following are the Terms of Reference (T.O.R)

1. The Consortium will be expected to provide the following services:
 - i. Architectural services
 - As provided for under clause 301 Schedule of duties for normal Architectural services contained in the first edition (1987) of Conditions of Engagement and Scale of Fees for Professional Services for Building Works (Part 1 – Building Works) prepared by the Ministry of Works with exception of the Inception (301.1) and preliminary Stage (301.02). Review and refining of these stages will be taken as additional and special services (303.01)
 - Any additional services that may be required authorized and approved by the client.

- Garden and landscape Design as provided for under clause 303.13 – Schedule of duties for additional and special services as contained in the First Edition (1987) of Conditions of Engagement and Scale of Fees for Professional Services for Building Works (Part 1 – Building Works) prepared by the Ministry of Works.
- Any additional services that may be required authorized and approved by the client.
 - ii. Land Surveying Services
 - iii. Quantity Surveying Services
- As provided for under clause 400 Schedule of duties for normal Quantity Surveying services contained in the first edition (1987) of Conditions of Engagement and Scale of Fees for Professional Services for Building Works (Part 1 – Building Works) prepared by the Ministry of Works. All Bills of Quantities for the works shall be prepared by the Quantity Surveyor with exception of the Inception (401.1) and preliminary Stage (401.02). Review and refining of these stages will be taken as additional and special services (403.01)
- Any additional services that may be required authorized and approved by the client.
 - iv. Structural & Civil Engineering Services
- As provided for under clause 600 - Schedule of duties for normal Structural Engineering Services and Clause 701 - Schedule of duties for normal Civil Engineering Services related to Building Works contained in the first edition (1987) of Conditions of Engagement and Scale of Fees for Professional Services for Building Works (Part 1 – Building Works) prepared by the Ministry of Works with exception of the Inception (601.1) and preliminary Stage (601.02). Review and refining of these stages will be taken as additional and special services (603.01)
- Any additional services that may be required authorized and approved by the client.
 - v. Mechanical & Electrical Engineering Services
- As provided for under clause 500 - Schedule of duties for normal Mechanical and Electrical Engineering Services as contained in the first edition (1987) of Conditions of Engagement and Scale of Fees for Professional Services for Building Works (Part 1 – Building Works) prepared by the Ministry of Works with exception of the Inception (501.1) and preliminary Stage (501.02). Review and refining of these stages will be taken as additional and special services (503.01)
- Any additional services that may be required authorized and approved by the client.

e. REPORTS AND TIME SCHEDULE

The Consortium shall be expected to submit the following reports to the client or his representative during the performance of the assignment.

Pre-Contract Stage (Design Stage)

- Reviewed and Refined preliminary sketch designs and associated cost estimates.
- Approved final design drawings and amended cost estimates
- Complete set of Tender Documents comprising approved construction drawings, bills of quantities for main works and specialist works.
- Priced bills of quantities for main works and specialist works.
- Tender evaluation report for main works and specialist works

Contract Stage (Tender Stage)

- Main Contract and Sub – Contract documents duly prepared
- Main Contract and Sub – Contract agreements and conditions of Contract for signature by the parties and the necessary copies upon signing.
- Priced bills of quantities for outstanding specialist works.
- Site handing over report

Post-Contract Stage (Construction Stage)

- Monthly progress reports
- Site inspections reports
- Minutes of site meetings
- Periodic financial appraisals
- Periodic Cash flow projections
- Interim valuations and payment certificates to Main Contractor, Sub-Contractors/suppliers
- Practical completion certificates
- Testing and commissioning reports
- Site handing over report
- Certificate of Making Good Defects
- Final account
- As-built drawings
- Statutory approvals
- Operation and Maintenance manuals
- Any Warranties or guarantees from suppliers

f. DATA, SERVICES, PERSONNEL AND FACILITIES TO BE PROVIDED BY THE CLIENT

- Available site data
- Preliminary Designs
- Project brief and Memorandum
- Any other useful information available

g. TERMS OF PAYMENT

Terms of payment shall be as per the Conditions of Engagement and Scale of Fees for Professional Services for Building Works 1987 edition with any amendments thereto prepared by the Ministry of Public Works.

**SECTION V:
REPUBLIC OF KENYA
STANDARD FORM OF CONTRACT FOR CONSULTING
SERVICES
Large Assignments**

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Special Notes

1. The Client agrees to pay the Consultant according to a schedule of payments linked to the delivery of certain outputs as per the reporting requirements in the contract.
2. The Contract includes four parts: Form of Contract, the General Conditions of Contract, the Special Conditions of Contract and the Appendices.

CONTRACT FOR CONSULTANT'S SERVICES

Large Assignments

between

[name of the Client]

AND

[name of the Consultant]

Dated: _____*[date]*

(iv)

I. FORM OF CONTRACT

Large Assignments

This Agreement (hereinafter called the "Contract") is made the _____ day of the month of _____ [month], [year], between _____, [name of client] of [or whose registered office is situated at _____ [location of office] (hereinafter called the "Client") of the one part AND _____ [name of consultant] of or whose registered office is situated at _____ [location of office] (hereinafter called the "Consultant") of the other part.

WHEREAS

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

NOW THEREFORE the Parties hereto hereby agree as follows:

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

(v)

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

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

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

full name of Client's authorized representative _____

[title] _____

[signature] _____

[date] _____

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

[full name of Consultant's authorized representative] _____

[title] _____

[signature] _____

[date] _____

II. GENERAL CONDITIONS OF CONTRACT

1. GENERAL PROVISIONS

1.1 Definitions

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

- (a) “Applicable Law” means the laws and any other instruments having the force of law in the Republic of Kenya as they may be issued and in force from time to time;
- (b) “Contract” means the Contract signed by the Parties, to which these General Conditions of Contract (GC) are attached together with all the documents listed in Clause 1 of such signed Contract;
- (c) “Contract Price” means the price to be paid for the performance of the Services in accordance with Clause 6 herebelow;
- (d) “Foreign Currency” means any currency other than the Kenya Shilling;
- (e) “GC” means these General Conditions of Contract;
- (f) “Government” means the Government of the Republic of Kenya;
- (g) “Local Currency” means the Kenya Shilling;
- (h) “Member”, in case the Consultant consists of a joint venture of more than one entity, means any of these entities; “Members” means all these entities, and “Member in Charge” means the entity specified in the SC to act on their behalf in exercising all the Consultant’s rights and obligations towards the Client under this Contract;
- (i) “Party” means the Client or the Consultant, as the case may be and “Parties” means both of them;
- (j) “Personnel” means persons hired by the Consultant or by any Subconsultant as employees and assigned to the performance of the Services or any part thereof;
- (k) “SC” means the Special Conditions of Contract by which the GC may be amended or supplemented;
- (l) “Services” means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A; and

- (m) "Sub consultant" means any entity to which the Consultant subcontracts any part of the Services in accordance with the provisions of Clauses 3 and 4.

1.2 Law Governing the Contract

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

1.3 Language

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

1.4 Notices

Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed or when sent by registered mail, telex, telegram or facsimile to such Party at the address specified in the SC.

1.5 Location

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

1.6 Authorized Representatives

Any action required or permitted to be taken and any document required or permitted to be executed under this Contract by the Client or the Consultant may be taken or executed by the officials specified in the SC.

1.7 Taxes and Duties

The Consultant, Sub consultant[s] and their personnel shall pay such taxes, duties, fees and other impositions as may be levied under the Laws of Kenya, the amount of which is deemed to have been included in the Contract Price.

2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

2.1 Effectiveness of Contract

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

2.2 Commencement of Services

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

2.3 Expiration of Contract

Unless terminated earlier pursuant to Clause 2.6, this Contract shall terminate at the end of such time period, after the Effective Date, as is specified in the SC.

2.4 Modification

Modification of the terms and Conditions of this Contract, including any modification of the scope of the Services or the Contract Price, may only be made by written agreement between the Parties.

2.5 Force Majeure

2.5.1 Definition

For the purposes of this Contract, "Force Majeure" means

an event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

2.5.2 No Breach of Contract The failure of a Party to fulfill any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

2.5.3 Extension Of Time Any period within which a Party shall, pursuant to this Contract complete any action or task shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

2.5.4 Payments During the period of his inability to perform the Services as a result of an event of Force Majeure, the Consultant shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by him during such period for the purposes of the Services and in reactivating the Service after the end of such period.

2.6 Termination

2.6.1 By the Client The Client may terminate this Contract by not less than thirty (30) days' written notice of termination to the Consultant, to be given after the occurrence of any of the events specified in this Clause;

- (a) if the Consultant does not remedy a failure in the performance of his obligations under the Contract within thirty (30) days after being notified or within any further period as the Client may have subsequently approved in writing;
- (b) if the Consultant becomes insolvent or bankrupt;
- (c) if, as a result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (d) if the Consultant, in the judgement of the Client, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.
For the purpose of this clause;

"Corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the selection process or in Contract execution.

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

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

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

- (a) if the Client fails to pay any monies due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause 7 within sixty (60) days after receiving written notice from the Consultant that such payment is overdue; or
- (b) if, as a result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

2.6.3 Payment Termination Upon termination of this Contract pursuant to Clauses **upon** 2.6.1 or 2.6.2, the Client shall make the following payments to the Consultant:

- (a) remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination;
- (b) except in the case of termination pursuant to paragraphs (a) and (b) of Clause 2.6.1, reimbursement of any reasonable costs incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel and their eligible dependents.

3. OBLIGATIONS OF THE CONSULTANT

3.1 General The Consultant shall perform the Services and carry out his obligations with all due diligence, efficiency and economy in accordance with generally accepted professional techniques and practices and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the Client and shall at all times support and safeguard the Client’s legitimate interests in any dealing with Sub consultants or third parties.

1.2 Conflict of Interests

3.2.1 Consultant (i) Not to Benefit from Commissions, Discounts, Etc. The remuneration of the Consultant pursuant to Clause 6 shall constitute the Consultant’s sole remuneration in connection with this Contract or the Services and the Consultant shall not accept for his own benefit any trade commission, discount or similar payment in connection with

activities pursuant to this Contract or to the Services or in the discharge of his obligations under the Contract and the Consultant shall use his best efforts to ensure that his personnel, any sub consultant[s] and agents of either of them similarly shall not receive any such additional remuneration.

- (ii) For a period of two years after the expiration of this Contract, the Consultant shall not engage and shall cause his personnel as well as his sub consultant[s] and his/their personnel not to engage in the activity of a purchaser (directly or indirectly) of the assets on which he advised the Client on this Contract nor shall he engage in the activity of an adviser (directly or indirectly) of potential purchasers of such assets.
- (iii) Where the Consultant as part of the Services has the responsibility of advising the Client on the procurement of goods, works or services, the Consultant will comply with any applicable procurement guidelines and shall at all times exercise such responsibility in the best interest of the Client. Any discounts or commissions obtained by the Consultant in the exercise of such procurement shall be for the account of the Client.

3.2.2 Consultant

Affiliates Not to be Otherwise Interested in

The Consultant agrees that, during the term of this **and** Contract and after its termination, the Consultant and his affiliates, as well as any Subconsultant and any of his affiliates, shall be disqualified from providing goods, works or services (other than the Services and any continuation thereof) for any **Project** project resulting from or closely related to the Services.

3.2.3 Prohibition

Conflicting

- (a) Neither the Consultant nor his subconsultant[s] **of** nor their personnel shall engage, either directly or indirectly in any of the following activities: **Activities** during the term of this Contract, any business or professional activities in the Republic of Kenya which would conflict with the activities assigned to them under this Contract; or
- (b) after the termination of this Contract, such other activities as may be specified in the SC.

3.3 Confidentiality

The Consultant, his sub-consultant[s] and the personnel of either of them shall not, either during the term of this Contract or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract or the Client's business or operations without the prior written consent of the Client.

3.4 Insurance to be Taken Out by the Consultant The Consultant (a) shall take out and maintain **Taken Out by the** and shall cause any subconsultant[s] to take out **Consultant** and maintain, at his (or the subconsultants', as the case may be) own cost but on terms and conditions approved by the Client, insurance against the risks and for the coverage, as shall be specified in the SC; and (b) at the Client's request, shall provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums have been paid.

3.5 Consultant's Requiring Approval The Consultant shall obtain the Client's prior **Actions** approval in writing before taking any of the **Client's Prior** following actions;

- (a) entering into a subcontract for the performance of any part of the Services,
- (b) appointing such members of the personnel not listed by name in Appendix C ("Key Personnel and Subconsultants").

3.6 Reporting Obligations The Consultants shall submit to the Client the reports and documents specified in Appendix A in the form, in the numbers, and within the periods set forth in the said Appendix.

3.7 Documents prepared by the Consultant to Be the Property of the Client All plans, drawings, specifications, designs, reports and other documents and software submitted by the Consultant in accordance with Clause 3.6 shall become and remain the property of the Client and the Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Client together with a detailed inventory thereof. The Consultant may retain a copy of such documents and software. Neither Party shall use these documents for purposes unrelated to this Contract without the prior approval of the other Party.

4. CONSULTANT'S PERSONNEL

4.1 Description of Personnel The titles, agreed job descriptions, minimum qualifications and estimated periods of engagement in the carrying out of the Services of the Consultant's Key Personnel are described in Appendix C. The Key Personnel and Sub consultants listed by title as well as by name in Appendix C are hereby approved by the Client.

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

qualifications.

- (b) If the Client finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) the Client has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultant shall, at the Client's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Client.
- (c) The Consultant shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

5. OBLIGATIONS OF THE CLIENT

5.1 Assistance and Exemptions

The Client shall use his best efforts to ensure that he provides the Consultant such assistance and exemptions as may be necessary for due performance of this Contract.

5.2 Change in the Applicable Law

If after the date of this Contract, there is any change in the Laws of Kenya with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Consultant, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties and corresponding adjustments shall be made to the amounts referred to in Clause 6.2 (a) or (b), as the case may be.

5.3 Services and Facilities

The Client shall make available to the Consultant the Services and Facilities listed under Appendix F.

6. PAYMENTS TO THE CONSULTANT

6.1 Consultants Remuneration

The Consultant's total remuneration shall be as per the Conditions of Engagement and Scales of fees for Professional Services for Building Works 1987 edition with any amendments thereto prepared by the Ministry of Public Works.

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

- 6.2 Contract Price** Payments to the consultants shall be in Kenya Shillings.
- 6.3 Payment for Additional Services** For the purposes of determining the remuneration due for additional services as may be agreed under Clause 2.4, a breakdown of the lump-sum price is provided in Appendices D and E.
- 6.4 Terms and Conditions of Payment** Payments will be made to the account of the Consultant and according to the payment schedule stated in the SC. Unless otherwise stated in the SC, the first payment shall be made against the provision by the Consultant of a bank guarantee for the same amount and shall be valid for the period stated in the SC. Any other payment shall be made after the conditions listed in the SC for such payment have been met and the Consultant has submitted an invoice to the Client specifying the amount due.
- 6.5 Interest on Delayed Payment** Payment shall be made within thirty (30) days of receipt of invoice and the relevant documents specified in Clause 6.4. If the Client has delayed payments beyond thirty (30) days after the due date hereof, simple interest shall be paid to the Consultant for each day of delay at a rate three percentage points above the prevailing Central Bank of Kenya's average rate for base lending .

7. SETTLEMENT OF DISPUTES

- 7.1 Amicable Settlement** The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.
- 7.2 Dispute Settlement** Any dispute between the Parties as to matters arising pursuant to this Contract that cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be referred by either Party to the arbitration and final decision of a person to be agreed between the Parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the Chairman of the Chartered Institute of Arbitrators, Kenya Branch, on the request of the applying party.

III. SPECIAL CONDITIONS OF CONTRACT

Number of GC Clause	Amendments of and Supplements to Clauses in the General Conditions of Contract
1.1(i)	The Member in Charge is _____ <i>[name of Member]</i>
1.4	The addresses are: Client: _____ Attention: _____ Telephone: _____ Telex; _____ Facsimile: _____ Consultant: _____ Attention: _____ Telephone; _____ Telex: _____ Facsimile: _____
1.6	The Authorized Representatives are: For the Client: _____ For the Consultant: _____
2.1	The date on which this Contract shall come into effect is(_____) <i>[date]</i> . Note: <i>The date may be specified by reference to conditions of effectiveness of the Contract, such as receipt by Consultants of advance payment and by Client of bank guarantee</i>
2.2	The date for the commencement of Services is _____ <i>[date]</i>
2.3	The period shall be _____ <i>[length of time]</i> . Note: <i>Fill in the period, eg, twenty-four (24) months or such other period as the Parties may agree in writing.</i>

3.4 The risks and coverage shall be:

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

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

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

6.4 Payments shall be made according to the following schedule:

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

- Twenty (20) percent of the Contract Price shall be paid on the commencement date against the submission of a bank guarantee for the same.
- Ten (10) percent of the lump-sum amount shall be paid upon submission of the inception report.
- Twenty-five (25) percent of the lump-sum amount shall be paid upon submission of the interim report.
- Twenty-five (25) percent of the lump-sum amount shall be paid upon submission of the draft final report.
- Twenty (20) percent of the lump-sum amount shall be paid upon approval of the final report.
- The bank guarantee shall be released when the total payments reach fifty (50) percent of the lump-sum amount.

IV. Appendices

APPENDIX A – DESCRIPTION OF THE SERVICES

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

APPENDIX B – REPORTING REQUIREMENTS

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

APPENDIX C– KEY PERSONNEL AND SUBCONSULTANTS

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

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

APPENDIX D – SERVICES AND FACILITIES PROVIDED BY THE CLIENT

To be identified