



KENYA POWER PENSION FUND

TENDER NO. KPPF/PROC/2-E/03/18

**REQUEST FOR PROPOSALS FOR PROVISION OF TRANSACTION ADVISORY SERVICES
CONSULTANCY FOR PROPOSED RE-DEVELOPMENT OF RIARA ROAD PLOT ON LR 330/1192**

MARCH 2018

Stima Plaza, Kolobot Road,
P.O. Box 1548 - 00600
Nairobi, Kenya.

TEL NO: 254-20-3201020

EMAIL: tenders@kplcpensionfund.co.ke

**ALL CANDIDATES ARE ADVISED TO READ CAREFULLY THIS TENDER DOCUMENT IN ITS
ENTIRETY BEFORE MAKING ANY BID**

Table of Contents

SECTION I - LETTER OF INVITATION	3
SECTION II – INFORMATION TO CONSULTANTS (ITC).....	5
2.1 Introduction.....	5
2.2 Clarification and Amendment of RFP Documents.....	6
2.3 Preparation of Technical Proposal.....	6
2.4 Preparation of Financial Proposal.....	8
2.5 Submission, Receipt, and Opening of Proposals.....	8
2.6 Proposal Evaluation General.....	9
2.7 Evaluation of Technical Proposal.....	9
2.8 Public Opening and Evaluation of Financial Proposal	10
2.9 Negotiations.....	11
2.10 Award of Contract.....	11
2.11 Confidentiality	12
2.12 Corrupt or fraudulent practices.....	12
APPENDIX TO INFORMATION TO CONSULTANTS (ITC).....	13
SECTION III: - TECHNICAL PROPOSAL	20
SECTION IV: - FINANCIAL PROPOSAL	29
SECTION V:-TERMS OF REFERENCE	32
5.1 BACKGROUND	32
5.2 SCOPE OF SERVICES.....	34
5.3 DELIVERABLES	35
5.4 REPORTING ARRANGEMENTS	38
5.5 QUALITY ASSURANCE REVIEWS OF THE WORK	39
5.6 MONITORING PROGRESS OF ASSIGNMENT.....	39
5.7 PRICING	39
5.8 ESSENTIAL DUTIES AND RESPONSIBILITIES OF KPPF	39
5.9 ESSENTIAL DUTIES AND RESPONSIBILITIES OF THE CONSULTANT	40
5.10 DURATION OF THE ASSIGNMENT	40
5.11 ETHICAL CODE AND PROFESSIONALISM.....	41
SECTION VI: FORM OF CONTRACT	42
SECTION VII: GENERAL CONDITIONS OF CONTRACT	46
5.12 GENERAL PROVISIONS.....	46
5.13 COMMENCEMENT, COMPLETION, MODIFICATION A N D TERMINATION OFCONTRACT 47	
5.14 Termination.....	48
5.15 Payment upon Termination	49
5.16 Consequences Termination	49

5.17	OBLIGATIONS OF THE CONSULTANT	50
5.18	Confidentiality	52
5.19	Insurance to be Taken Out by the Consultant	53
5.20	Consultant's Actions Requiring Client's Prior Approval.....	53
5.21	Reporting Obligations.....	53
5.22	Documents prepared by the Consultant to Be the Property of KPPF.....	53
5.23	CONSULTANT'S PERSONNEL	54
5.24	OBLIGATIONS OF KPPF.....	54
5.25	PAYMENTS TO THE CONSULTANT	55
5.26	SETTLEMENT OF DISPUTES	56
SECTION VII: SPECIAL CONDITIONS OF CONTRACT		57

Date

TO: *(Name and Address of Consultants)*

Dear Sir/Madam,

RE: REQUEST FOR PROPOSALS FOR PROVISION OF TRANSACTION ADVISORY SERVICES CONSULTANCY FOR PROPOSED RE-DEVELOPMENT OF RIARA ROAD PLOT ON LR 330/1192

_KPPF invites Proposals from interested eligible firms to provide Consultancy Services for above mentioned.

Details of the required information can be downloaded **FREE OF CHARGE** from www.kplcpensionfund.co.ke

Prices quoted should be net inclusive of all taxes, must be expressed in Kenya shillings and shall remain valid for a period of **120 days** from the closing date of the Proposal.

Each copy of technical and financial proposal shall be paginated serially, prior to submission.

Tenders must be accompanied by a **Tender Security of Kenya Shillings Fifty Thousand Only (Kshs 50,000)** from a local bank licensed or an insurance company approved by PPRA payable to the CEO & Trust Secretary, Kenya Power Pension Fund.

Completed tender documents **MUST** be enclosed in plain sealed envelopes (separated as technical proposal and financial proposal) , marked with the **Tender Number and Name** and be deposited in the Tender Box next to the lift lobby located at Stima Plaza, Ground Floor, Kolobot Road, Nairobi, Kenya addressed to:

CEO & TRUST SECRETARY
Kenya Power Pension Fund,
Stima Plaza Ground Floor, Kolobot Road,
P.O Box 1548 – 00600
Nairobi, Kenya.

So as to be received on or before **Tuesday 10th April 2018 at 11.30 AM.**

Tenders will be opened immediately thereafter in the presence of the tenderers' representatives who choose to attend the opening at the Auditorium Stima Plaza, Basement, Kolobot Road, Nairobi, Kenya.

You are informed that it is not permissible to transfer this invitation to any other Consultant. A consultant will be selected under **Quality Cost Based Selection (QCBS)** described in this RFP, in accordance with the policies established in the Public Procurement and Asset Disposal Act [PPDA] 2015

KPPF reserves the right to accept or reject any tender and may annul the tendering process and reject all tenders at any time prior to contract award without thereby incurring any liability to the affected tenderer or tenderers.

CEO & TRUST SECRETARY

SECTION II – INFORMATION TO CONSULTANTS (ITC)

2 General Provisions - Definitions

- (i) “Client” means the Kenya Power Pension Fund (KPPF).
- (ii) “Consultant” means the firm that has signed the contract with KPPF.
- (iii) “Contract” means a legally binding written agreement signed between KPPF and the Consultant and includes all the attached documents listed in Conditions of Contract.
- (iv) “Personnel” 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 taken into account in the shortlisting the Consultant’s invited to submit proposals.
- (v) “Non-Key P e r s o n e l ” means an individual professional provided by t h e Consultant who is assigned to perform the Services or any part thereof under the Contract and whose CVs are not evaluated individually.
- (vi) “Proposal” means the Technical and Financial Proposal of the Consultant.
- (vii) “Services” means the work to be performed by the Consultant pursuant to the Contract.
- (viii) “TORs” means the “Terms of Reference” that explain the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of KPPF and the Consultant, and expected results and deliverables of the assignment.

2.1 Introduction

- 2.1.1 The Client named in 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.
- 2.1.2 The Consultants are invited to submit a Technical Proposal and a Financial Proposal, as specified in the Appendix “ITC” for consulting services required for the assignment named in the said Appendix.

- 2.1.3** The Consultants must familiarize themselves with local conditions and take them into account in preparing their proposals. To obtain firsthand information on the assignment and on the local conditions, Consultants are encouraged to liaise with KPPF regarding any information that they may require before submitting a proposal and also to familiarize themselves with the site situated along Kolobot Road next to Stima Plaza building. 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** KPPF 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 KPPF are not reimbursable as a direct cost of the assignment; and (ii) KPPF is not bound to accept any of the proposals submitted.
- 2.1.6** KPPF's employees, committee members, board members and their relative (spouse and children) are not eligible to participate.
- 2.1.7** The procuring entity shall allow the tenderer to download the RFP document free of charge

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, or electronic mail to KPPF's address indicated in the Appendix "ITC". KPPF will respond by 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, KPPF 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. KPPF 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 sub-consultancy as appropriate. Consultants shall not associate with the other Consultants invited for this assignment. Firms associating in contravention of this requirement shall automatically be disqualified.

In all cases the shortlisted firm must ensure that **proposed key staffs** are not appearing on the proposal of any other shortlisted firm. Firms with proposed key staff 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 the RFP to Information to Consultants, 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 KPPF.
- (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 period stated in the technical evaluation criteria.
- (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.
- (vi) A detailed description of the proposed methodology, staffing and monitoring of Training.
- (vii) Any additional information requested.

2.3.5 The **Technical Proposal** shall not include any **financial information**.

2.4 Preparation of Financial Proposal

- 2.4.1 In preparing the Financial Proposal, Consultants are expected to take into account the requirements and conditions outlined in the RFP documents. The Financial Proposal should follow Standard Forms (Section D). It lists all costs associated with the assignment including; (a) remuneration for staff (in the field and at headquarters), and; (b) reimbursable expenses such as subsistence (per diem, housing), transportation (international and local, for mobilization and demobilization), services and equipment (vehicles, office equipment, furniture, and supplies), office rent, insurance, printing of documents, surveys, and training, if it is a major component of the assignment. If appropriate these costs should be broken down by activity.
- 2.4.2 The Financial Proposal should clearly identify as a separate amount, the local taxes, duties, fees, levies and other charges imposed under the law on the Consultants, the sub-Consultants and their personnel.
- 2.4.3 Commissions and gratuities, if any, paid or to be paid by Consultants and related to the assignment will be listed in the Financial Proposal Submission Form.
- 2.4.4 The Proposal must remain valid for **120 days** after the submission date. During this period, the consultant is expected to keep available, at his own cost, the professional staff proposed for the assignment. KPPF will make his best effort to complete negotiations within this period. If KPPF wishes to extend the validity period of the proposals, the Consultants shall agree to the extension.

2.5 Submission, Receipt, and Opening of Proposals

- 2.5.1 The original Technical Proposal and Financial Proposal; 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.

- 2.5.2 For each proposal, the Consultants shall prepare the number of copies indicated in Appendix "ITC". Each Technical Proposal and Financial Proposal shall be marked "**ORIGINAL**" or "**COPY**" as appropriate. If there are any discrepancies between the original and the copies of the proposal, the original shall govern.
- 2.5.3 The Tenderer is required to serialize all pages for each bid submitted
- 2.5.4 The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked "**TECHNICAL PROPOSAL,**" and the original and all copies of the Financial Proposal in a sealed envelope clearly marked "**FINANCIAL PROPOSAL**" and warning: "**DO NOT OPEN WITH THE TECHNICAL PROPOSAL**". Both envelopes shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address and other information indicated in the Appendix "ITC" and is clearly marked, "**DO NOT OPEN, EXCEPT IN PRESENCE OF THE OPENING COMMITTEE.**"
- 2.5.5 The completed Technical and Financial Proposals must be delivered at the Submission address on or before the time and date stated in the Appendix "ITC". Any proposal received after the closing time for submission of proposals shall be returned to the respective consultant unopened.
- 2.5.6 After the deadline for submission of proposals, the Technical Proposal shall be opened immediately by the opening committee. The Financial Proposal shall remain sealed and deposited with a responsible officer of KPPF department up to the time for public opening of financial proposals.

2.6 Proposal Evaluation General

- 2.6.1 From the time the bids are opened to the time the Contract is awarded, if any consultant wishes to contact KPPF 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 KPPF in the proposal evaluation, proposal comparison or Contract award decisions may result in the rejection of the consultant's proposal.
- 2.6.2 Evaluators of Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded.

2.7 Evaluation of Technical Proposal

- 2.7.1 The evaluation committee appointed by the Client shall evaluate the proposals on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria as indicated in the Appendix to information to consultants.

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

2.8 Public Opening and Evaluation of Financial Proposal

- 2.8.1 After Technical Proposal evaluation, KPPF shall notify those Consultants whose proposals did not meet the minimum qualifying mark or were considered non-responsive to the RFP and Terms of Reference, indicating that their Financial Proposals will be returned after completing the selection process. KPPF shall simultaneously notify the Consultants who have secured the minimum qualifying mark, **indicating the date and time set for opening the Financial Proposals** and stating that the opening ceremony is open to those Consultants who choose to attend. The opening date **shall not be sooner than seven (7) days** after the notification date. The notification may be sent by registered letter, cable, telex, facsimile or electronic mail.
- 2.8.2 The Financial Proposals shall be opened publicly in the presence of the consultants' representatives who choose to attend. The name of the consultant, the technical scores and the proposed prices shall be read aloud and recorded when the Financial Proposals are opened. KPPF shall prepare minutes of the public opening.
- 2.8.3 The evaluation committee will determine whether the financial proposals are complete (i.e. whether the consultant has costed all the items of the corresponding Technical Proposal and correct any computational errors. The cost of any unpriced items shall be assumed to be included in other costs in the proposal. In all cases, the total price of the Financial Proposal as submitted shall prevail.
- 2.8.4 While comparing proposal prices between local and foreign firms participating in a selection process in financial evaluation of Proposals, firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias in proposal prices. However, there shall be no such preference in the technical evaluation of the tenders. proof of local incorporation and citizenship shall be required before the provisions of this sub-clause are applied. Details of such proof shall be attached by the Consultant in the financial proposal.
- 2.8.5 The formulae for determining the Financial Score (Sf) shall, unless an alternative formulae is indicated in the Appendix "ITC", be as follows:- Sf =

$100 \times \frac{FM}{F}$ where Sf is the financial score;

FM is the lowest priced financial proposal and F is the price of the proposal under consideration. Proposals will be ranked according to their combined technical (*St*) and financial (*Sf*) scores using the weights (*T*=the weight given to the Technical Proposal; *P*= the weight given to the Financial Proposal; $T + P = 1$) indicated in the Appendix. The combined technical and financial score, S, is calculated as follows:- $S = St \times T \% + Sf \times P \%$. The firm achieving the highest combined technical and financial score will be invited for negotiations.

- 2.8.6 The tender evaluation committee shall evaluate the tender within 30 days from the date of opening the tender.
- 2.8.7 Contract price variations shall not be allowed for contracts not exceeding one year (12 months).
- 2.8.8 Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price
- 2.8.9 Price variation requests shall be processed by KPPF within 30 days of receiving the request.

2.9 Negotiations

- 2.9.1 Negotiations will be held at the same address as “address to send information to KPPF” 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. KPPF 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 KPPF to ensure satisfactory implementation of the assignment.
- 2.9.3 Unless there are exceptional reasons, the financial negotiations will not involve the remuneration rates for staff (no breakdown of fees).
- 2.9.4 Having selected the firm on the basis of, among other things, an evaluation of proposed key professional staff, KPPF expects to negotiate a contract on the basis of the experts named in the proposal. Before contract negotiations, KPPF will require **assurances that the experts will be actually available**. KPPF will **not consider substitutions during contract negotiations** unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the firm may be disqualified.
- 2.9.5 The negotiations will conclude with a review of the draft form of the Contract. To complete negotiations KPPF and the selected firm will initial the agreed Contract. If negotiations fail, KPPF will invite the firm whose proposal received the second highest score to negotiate a contract.
- 2.9.6 KPPF shall appoint a team for the purpose of the negotiations.

2.10 Award of Contract

- 2.10.1 The Contract will be awarded following negotiations. After negotiations are completed, KPPF will promptly notify other Consultants on

the shortlist that they were unsuccessful and return the Financial Proposals of those Consultants who did not pass the technical evaluation.

- 2.10.2 The selected firm is expected to commence the assignment on the date and at the location specified as per contract.
- 2.10.3 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.
- 2.10.4 KPPF may at any time terminate procurement proceedings prior to notification of tender award and shall not be liable to any person for the termination.
- 2.10.5 KPPF shall give notice of the termination to all persons who submitted tenders of the termination within fourteen days of termination and such notice shall contain the reason for termination.
- 2.10.6 To qualify for contract awards, the tenderer shall have the following:
 - (a) Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.
 - (b) Legal capacity to enter into a contract for procurement
 - (c) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
 - (d) Shall not be debarred from participating in public procurement.

2.11 Confidentiality

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

2.12 Corrupt or fraudulent practices

- 2.12.1 KPPF 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/she has not and will not be involved in corrupt or fraudulent practices.
- 2.12.2 KPPF will reject a proposal for award if it determines that the consultant recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.
- 2.12.3 Further a consultant who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

APPENDIX TO INFORMATION TO CONSULTANTS (ITC)

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

2.1.1 The name of client is: **Kenya Power Pension Fund**

2.1.1 The method of selection is: **Quality and Cost Based (QCBS)**

2.1.2 Technical and Financial Proposals are requested: **Yes**

The name, objectives, and description of the assignment are: **REQUEST FOR PROPOSALS FOR PROVISION OF TRANSACTION ADVISORY SERVICES CONSULTANCY FOR PROPOSED RE-DEVELOPMENT OF RIARA ROAD PLOT ON LR 330/1192**

2.1.3 The consultants are advise to visit the site and seek for plans for the proposed Stima Plaza expansion to enable them make an informed quotation.

All enquiries regarding the RFP and the assignment can be made to:

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

Procurement Officer,

Kenya Power Pension Fund ,

Stima plaza ground Floor, Kolobot Road,

P.O Box 1548 – 00600

Nairobi, Kenya.

TEL NO: 254-20-3201020

EMAIL: tenders@kplcpensionfund.co.ke

2.1.7 Price Charged for RFP Document: **Free of Charge**

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.

2.3.3 The estimated number of professional staff months required for the assignment is; 2 per month or any number that the consultant deem to be adequate for the assignment.

2.4.2 Reimbursable expenses costs **Not Applicable**

2.4.2 Taxes: **All applicable taxes to be included in the Financial Proposals**

2.5.2 Consultants must submit an original and an additional **one (1)** copy of the **technical proposal**. Consultants must submit an original and additional **one (1)** copy of the **financial proposal**.

2.5.4 The proposal submission address is:

**CEO & TRUST SECRETARY
Kenya Power Pension Fund,
Stima Plaza Ground Floor, Kolobot Road,
P.O Box 1548 – 00600
Nairobi, Kenya.**

PROPOSALS TO BE DEPOSITED IN THE TENDER BOX ON GROUND FLOOR NEXT TO THE LIFT LOBBY, KENYA POWER STIMA PLAZA, KOLOBOT ROAD, PARKLANDS.

Information on the outer envelope should also include:

**CEO & TRUST SECRETARY
Kenya Power Pension Fund,
Stima Plaza Ground Floor, Kolobot Road,
P.O Box 1548 – 00600
Nairobi, Kenya.**

and the information; **REQUEST FOR PROPOSALS FOR PROVISION OF TRANSACTION ADVISORY SERVICES CONSULTANCY FOR PROPOSED RE-DEVELOPMENT OF RIARA ROAD PLOT ON LR 330/1192**

and clearly marked, **“DO NOT OPEN, EXCEPT IN PRESENCE OF THE OPENING COMMITTEE.”**

2.5.5 Proposals must be submitted no later than **10th APRIL 2018 at 11.30 AM**

2.6.1 The address to seek any information to KPPF is:

Procurement Officer,

Kenya Power Pension Fund ,

Stima plaza ground Floor, Kolobot Road,

P.O Box 1548 – 00600

Nairobi, Kenya.

TEL NO: 254-20-3201020

EMAIL: tenders@kplcpensionfund.co.ke

2.7.1 The Evaluation Committee shall evaluate the proposals on the basis of their responsiveness to the **Mandatory Requirements of the RFP and Terms of Reference, applying the evaluation criteria** as follows:

I. Preliminary Evaluation Criteria (Mandatory Requirements) The tenderer Must:

- (i) Submit the required number of copies of both the technical and financial proposals and **must be separated** as instructed.
- (ii) Submit certificate of registration/incorporation of the firm/ signed consortium agreement for consortiums
- (iii) Submit a valid tax compliance certificate from the date of tender opening for the lead TA/firm
- (iv) Submit a dully filled, signed and stamped Technical Proposal Submission Form, Activity (Work) Schedule Form, Firm's References Form
- (v) Submit an Original bid bond/security of Kshs. 50,000 from a local bank licensed by Central Bank of Kenya or from an Insurance company approved the PPRA valid for at 120 days from the date of tender opening. (MUST BE SUBMITTED WITH THE TECHNICAL PROPOSAL)
- (vi) Provide a self-declaration that the firm/ consortium are not debarred from participating in Public Procurement.
- (vii) Provide a self-declaration that firm/ consortium will not engage in any corrupt practice

NB: Only bidders who pass the preliminary stage will proceed to technical evaluation.

II. Technical Evaluation Criteria

The proposals shall be evaluated using the following criteria and score points with total of 100marks:

1. Team Qualification and experience; (45 marks)

Qualifications of the team to handle the assignment. CVs and certificates must to be attached in order to score marks. **All experts must have good English communication and writing skills.**

	Position	Expertise Qualification Required	Marks
1	Lead expert/ Team leader	<ul style="list-style-type: none"> • A university degree in Finance, Management, Economics, Engineering, Architecture, real estate or any other relevant field. =2.5 marks • At least 10 years demonstrated experience in provision of private partnership transaction advisory services in development of real estate projects including extensive experience in project structuring and risk analysis, allocation and management; project agreements; bid process management including preparation of bidding process documentation and post-bid process monitoring.=5marks • Successful structuring of private partnership projects with at least one successfully financially closed project as team leader in real estate project. = 2.5Marks • Experience in development of large infrastructure projects structuring, risk analysis, allocation and management, project agreements, bid process management, including preparation of bidding process documentation and post- bid process monitoring. The lead expert shall be responsible in leading the team in providing transaction advisory services in all the relevant fields.. 5 marks 	15 Marks

2	Financial Expert	<ul style="list-style-type: none"> • A university degree in actuarial sciences, finance and economics with a relevant post graduate and professional qualification. =2.5marks • At least 10 years of professional experience in private partnership and project finance, with a proven record of accomplishment in financial evaluation and financial modeling of private partnership /joint ventures in real projects. 2.5Marks • 4years' experience in financial modeling, structuring of large infrastructure projects on CPM, project costing and revenue forecast, development of financing plans, global insurance and guarantee products, etc., with relevant private partnership and project finance experience until financial close and successful contract award of 1 similar project .2.5Marks • Demonstrated experience in dealing with project finance structures and products and experience in capital raising having financially closed at least one of private partnership project of at least US\$ 10 Million. Experience in the housing/social infrastructure will be additional merit. 2.5Marks 	10Marks
3	Legal Expert	<ul style="list-style-type: none"> • A university degree in Law with current practicing license as an advocate of High Court of Kenya=2.5marks • A minimum of 10 years' demonstrated experience in drafting contractual agreements and other legal instruments on similar works; managing bidding process, and resolving legal issues, policy and institutional assessment; and, successful preparation of similar projects and experience in real estate project/infrastructural projects=Marks 10 • Experience in dispute resolution in the real estate/infrastructure sector. Marks 2.5 	15Marks
4	Support Staff	<ul style="list-style-type: none"> • A university degree in finance, economics, actuarial sciences, law, engineering, real estate and architecture with a relevant experience=5Marks 	5Marks

2. Methodology (10 marks)

Proposed approach and methodology to be adopted for the assignment including tools to be used, estimated time and report architecture

Item	Marks
Planning and information gathering	2.5
Workplan and methodology in responding to terms of reference	2.5
Finalization, reporting and Financial Estimation for Implementation,	2.5
Activity schedule	2.5

3. Referees (10 marks)

The bidder to provide five recommendation letters from previous corporate clients within the last 15 years (2 marks for each)

4. Financial Capability (20 marks)

The average turnover of the consortium/firm for the last financial three years. To submit audited complete financial statements for the last three years. Unaudited financial statements will score zero.

Item	Amounts (Kshs)	Marks
Average turnover for	Above 150 million	20
	Below 150 million but above 100 million	10
	Below 100 but above 50 million	5
	Below 50 million	1

5. Value addition (5marks)

Value addition to the assignments/improvements to our Terms of Reference

- Detailed and comprehensive Technology and Knowledge transfer (training) (2 marks)
- Post assignment support (1.5marks)
- Negotiations: Relevant experience and track record minimum one successfully concluded projects (1.5marks)

6. Proof of involvement of local staff in the assignment (5 marks)

Tenderers will proceed to the financial evaluation stage if they score a minimum of 75 marks and above in the criteria. Technical will carry a weighting of 75% .

(b) The Financial Proposal Evaluation.

The Financial proposals of qualified firms will be opened and checked for any arithmetical errors and any anomalies.

- The opening date of the financial proposal shall be the date indicated in the notification letter to technically compliant bidder(s).

- The Total price **MUST** be indicated on the financial proposal submission form which is duly signed and stamped by the consultant.
- The formulae for determining the financial scores is the following:
 $S_f = 100 \times \frac{F_M}{F}$ where S_f is the financial score;

F_M is the lowest priced financial proposal and F is the price of the proposal under consideration. The lowest priced bidder shall score 25%

The combined technical and financial scores shall be determined using the formula in clause 2.8.5. The Weights given to The Technical (T) and Financial Proposals(P) are:

$$T=0.75$$

$$P= 0.25$$

Successful bidder will be the highest combined score and Successful bidder may be invited by the Fund for Negotiations.

- 2.8.4 The assignment is expected to commence at Nairobi, Kenya when due for execution or as shall be informed.

SECTION III: - TECHNICAL PROPOSAL

Notes on the preparation of the Technical Proposals

3 TECHNICAL PROPOSAL FORMS

- 3.1 The Consultant shall complete this form and submit it as part of the Consultant's proposal, attaching all technical submissions as required and the technical proposal forms provided.
- 3.2 In preparing the technical proposals the consultant is expected to examine all terms and information included in the RFP. Failure to provide all requested information shall be at the consultant's own risk and may result in rejection of the consultant's proposal.
- 3.3 The technical proposal shall provide all required information and any necessary additional information and shall be prepared using the standard forms provided in this Section.
- 3.4 The Technical proposal shall not include any financial information unless it is allowed in the Appendix to information to the consultants or the Special Conditions of contract.

1. **TECHNICAL PROPOSAL SUBMISSION FORM**

TENDER NO KPPF/PROC/2-E/03/ 2018

Date.....

To:.....

CEO & TRUST SECRETARY

Kenya Power Pension Fund,

Stima Plaza Ground Floor, Kolobot Road,

P.O Box 1548 – 00600

Nairobi, Kenya.

Dear Sir,

REF: TECHNICAL PROPOSAL FOR REQUEST FOR PROPOSALS FOR PROVISION OF TRANSACTION ADVISORY SERVICES CONSULTANCY FOR PROPOSED RE-DEVELOPMENT OF RIARA ROAD PLOT ON LR 330/1192

We, the undersigned, offer to provide the consulting services for the above mentioned in accordance with your request for proposals dated *[insert date]*. We are hereby submitting our Technical Proposal, in response to your invitation to us to submit a technical proposal and a financial proposal.

We hereby declare that:

- (a) All the information and statements made in this Technical Proposal are true and we accept that any misinterpretation or misrepresentation contained in this Proposal may lead to our disqualification by KPPF.
- (b) Our Proposal shall be valid and remain binding upon us for the period of 120 days from the date of tender/proposal opening.
- (c) We have no conflict of interest.
- (d) 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, in force in the country of Kenya
- (e) We undertake to negotiate a Contract on the basis of the technical proposal to carry out the assignment.

- (f) We accept that there will be no substitution of key personnel for reasons which may lead to the termination of Contract negotiations and even the contract itself.
- (g) Our Proposal is binding upon us and it is subject to any modifications resulting from the Contract negotiations.

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 the negotiated contract. We understand that KPPF is not bound to accept any Proposal that it receives.

We remain, Yours

Sincerely,

Authorized Signature _____

Name of Consultant _____

Address _____

Contact phone

Contact e-mail address):

Stamp or Seal

2. FIRM'S REFERENCES

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

Provide a section on the profile of the firm, including relevant experience on services carried out over the last five years, indicating the actual contracts carried out, the estimated costs, and their references (person who can be contacted, telephone number and email address). Using the format below, provide information on each assignment (not less than three assignments) for which your firm either individually, as a corporate entity or in association, was legally contracted and provide supporting documentary evidence.

(BIDDERS TO USE THEIR OWN FORMAT)

.....
.....
.....
.....
.....

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes me, my qualifications, and my experience. I understand that any wilful misstatement described herein may lead to my disqualification or dismissal, if engaged.

Date: _____

[Signature of staff member or authorized representative of the staff]

Day/Month/Year

Full name of authorized representative:

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

Provide and justify here any modifications or improvement to the Terms of Reference to improve performance in carrying out the assignment, such as deleting some activity you consider unnecessary, or adding another, or proposing a different phasing of the activities. Such suggestions should be concise and to the point, and incorporated in your Proposal. Also provide comments on counterpart staff and facilities to be provided by KPPF to improve performance in carrying out the assignment. KPPF shall not be bound to any comments or suggestions provided.

On the Terms of reference:

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

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

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

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

Provide a section on **Approach, Methodology and Work plan** for performing the assignment that should include:

- (a) Technical Approach and Methodology,
- (a) Work Plan, and
- (b) Organization and Staffing,

- (a) **Technical Approach and Methodology.** In this chapter the Consultant should explain his /her understanding of the objectives of the assignment, approach to the services, methodology for carrying out the activities and obtaining the expected output, and the degree of detail of such output. The Consultant should highlight the problems being addressed and their importance, and explain the technical approach the Consultant would adopt to address them. The Consultant should also explain the methodologies proposed to adopt and highlight the compatibility of those methodologies with the proposed approach.
- (b) **Work Plan.** In this chapter the Consultant should propose the main activities of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by KPPF), and delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents, including reports and tables to be delivered as final output, should be included here. The work plan should be consistent with the “ACTIVITY (WORK) SCHEDULE FORM” on Paragraph 6 below.
- (c) **Organization and Staffing.** In this chapter the Consultant should propose the structure and composition of the Consultant’s team. The Consultant should list the main disciplines of the assignment, the key personnel responsible, and proposed technical and support staff. In addition to describing the structure and composition of the Consultant’s team, the Consultants shall summarize it on the **Staffing Form** below.

5. TEAM COMPOSITION AND TASK ASSIGNMENTS

STAFFING FORM

	Name of Key Personnel	Position	Tasks	Time required for assignment
1		Team Leader		
2		Assistant Consultant		
3		Assistant Consultant		
4				
5				
	Name of Non-Key Personnel			
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

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

The Consultant shall provide a signed CV of each of the Key Personnel on the Format of Curriculum Vitae for individual Consultants outlined below.

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;
Start Date (Month/Year): Completion Date	Approx. Value of Services (Kshs)
(Month/Year):	
Name of Associated Consultants. If any:	No of Months of Professional
Name of Senior Staff Team Leader) Involved and Functions Performed:	
Narrative Description of project:	
Description of Actual Services Provided by Your Staff:	

7. ACTIVITY TIME SCHEDULE FOR THE ASSIGNMENT

The Consultant will prepare an activity schedule that will take care of all phases of the assignment, i.e. document review, field work and assembling of information and writing the reports. The Consultant will organize work Teams and time table to complete this field work, including all associated travel/field costs. To this end, the Consultant will prepare an activity that would closely follow (but not necessarily be same as) the “Activity (Work) Schedule Format” below. The Consultant should derive these activities from the TOR, e.g. sampled contracts, Inception Report, field work, monthly reports, draft report, final report, etc. in sufficient detail.

SECTION IV: - FINANCIAL PROPOSAL

4 FINANCIAL PROPOSAL

The Consultant shall complete this form and submit it as part of the Consultant’s proposal, attaching all financial submissions as required herein and in the financial proposal forms provided.

FINANCIAL PROPOSAL SUBMISSION FORM

TENDER NO KPPF/PROC/2-E/03/18

Date

TO:

CEO & TRUST SECRETARY

Kenya Power Pension Fund,

Stima Plaza Ground Floor, Kolobot Road,

P.O Box 1548 – 00600

Nairobi, Kenya.

Dear Sir,

RE : FINANCIAL PROPOSAL FOR PROVISION OF TRANSACTION ADVISORY SERVICES CONSULTANCY FOR PROPOSED RE-DEVELOPMENT OF RIARA ROAD PLOT ON LR 330/1192 TENDER NO. KPPF/PROC/2-E/03/18

(a) We, the undersigned, offer to provide the consulting services for **REQUEST FOR PROPOSALS FOR PROVISION OF TRANSACTION ADVISORY SERVICES CONSULTANCY FOR PROPOSED RE-DEVELOPMENT OF RIARA ROAD PLOT ON LR 330/1192** in accordance with your request for proposals dated *[insert date]* and our Technical Proposal. We are hereby submitting our Financial Proposal, in response to your invitation to us to submit a technical proposal and a financial proposal. Our attached Financial Proposal is (In words) (In figures) This amount is inclusive of all taxes levied in Kenya

or in other countries, which shall be identified during negotiations and shall be added to the contract price.

- (b) Our Financial Proposal shall be binding upon us subject to the modifications resulting from Contract negotiations, up to expiration of the validity period of the Proposal, i.e. Proposals must remain valid for 120 days after the submission date as indicated in the instructions to Consultants.
- (c) No commissions and gratuities paid or to be paid by us to agents relating to this Proposal and Contract execution, if we are awarded the Contract, are allowed in our price proposal
- (d) We understand you are not bound to accept any Proposal you receive.

Yours Sincerely,

Authorized Signature _____

Name of Consultant _____

Address _____

Contact phone _____

Contact e-mail address) _____

STAMP OR SEAL _____

2. BREAKDOWN OF CONTRACT PRICE (All costs will be as a percentage inclusive of all taxes, insurances, overheads and profit).

- a.
- b.
- c.

Total cost from above.....

Signed.....(Consultant) Date

SECTION V:-TERMS OF REFERENCE

5 TERMS OF REFERENCE FOR REQUEST FOR PROPOSALS FOR PROVISION OF TRANSACTION ADVISORY SERVICES CONSULTANCY FOR PROPOSED RE-DEVELOPMENT OF RIARA ROAD PLOT ON LR 330/1192

5.1 BACKGROUND

The Kenya Power Pension Fund (“KPPF” or “the Fund”) is one of the leading Kenyan occupational pension funds that has 10,874 members and more than Kshs. 30 billion in assets under management (AUM) across its two pension funds – Defined Benefit (DB) and Defined Contribution (DC).

The DB and DC Funds were established with the main purpose of providing pension and cash benefits for members, who are employees of the Kenya Power & Lighting Company Limited, upon their retirement and where applicable, relief for the dependents of deceased members. The DB Fund was established on 3rd May 1971 and was closed to new members and ceased receiving contributions from members with effect from 30th June 2006. The DC Fund was established on 1st July 2006 and receives a percentage of members’ salaries as mandatory contributions and also receives additional voluntary contributions (AVC).

The Funds managed by a Board of Trustees that is responsible for establishing and maintaining policies and objectives for all aspects of the Funds’ operations. To ensure efficiency in the delivery of services to members, Trustees have established a Secretariat to carry out the day-to-day management of the two Funds. The Secretariat has adopted a management structure that comprises different departments that include Pensions Administration, Finance & Investments, Property, Human Resources & Administration, Procurement and ICT.

The Vision of KPPF is to be “the best-in-class occupational pension fund in the whole of Africa.”

In an endeavor to realize its vision and mission, KPPF abides to core values namely:

1. Integrity
2. Accountability
3. Courtesy
4. Efficiency
5. Stewardship

KPPF is looking for consultancy services as indicated in the scope of work.

5.2 INTRODUCTION

- 5.2.1** The Fund wishes to undertake redevelopment on its property containing by measurement 3.13 acres into a mixed-use complex that would accommodate different property asset types such as residential, retail and commercial.
- 5.2.2** The property is situated off Ngong Road branching off this Road at Dagoretti Corner for about 300 meters. It is within the neighbourhood of Nakumatt Junction and it fronts both Naivasha and Riara Road in Lavington area, Nairobi city.
- 5.2.3** The property is a fairly flat rectangular shaped commercial plot of loam soils. Boundaries are marked with masonry walls topped with electric wire fence all round. Entrance to the subject property is via three gates, with the main gate along Naivasha Road and two other gates along Riara Road. The property is currently developed with two (2 No) double and three storied commercial blocks of offices and 2 No. warehouses attached to the three storied commercial blocks.
- 5.2.4** In its endeavour to attract private investment in housing through Joint Ventures or private partnership initiative, the Fund wishes to procure the Services of a Transaction Advisor (TA) to facilitate /identify suitable partners.

5.3 OBJECTIVE OF THE TA SERVICES

- 5.3.1** The primary objective of the Transaction Advisor is to develop a well- structured and bankable joint venture/partnership to redevelop the Funds' property and achieve an annualized return of 25%. The returns as shall be agreed upon and stipulated in the joint ventures/partnership agreement.
- 5.3.2** The (TA) shall assist in the preparation of documents seeking for partnership with potential investor(s) in a joint venture/partnership arrangement where the investor(s) is/are willing to finance and participate in the development of the proposed project.
- 5.3.3** The TA shall be required to show that the structure of the joint venture/partnership ensures:
- (i) The project provides Value for Money to the Fund
 - (ii) The project is affordable and acceptable by the market
 - (iii) The project is commercially viable
 - (iv) The project is acceptable to the all parties

(v) The necessary approvals are granted.

5.4 SCOPE OF SERVICES

5.4.1 The TA is expected to work closely with the Fund and other stakeholders as may be required during the assignment. The Fund shall have an oversight role during the project development stage.

5.4.2 The TA is expected to familiarize with all background documentation and preparatory work conducted to date and shall be responsible for carrying out technical, financial and legal framework that are deemed necessary for the successful completion of the transactions in the project including and not limited to:

- (i) Relevant existing reports, studies, audits etc;
- (ii) All information pertaining market structure;
- (iii) Existing financial forecasts, historical financial performance and technical operating history;
- (iv) Existing laws & regulatory requirements.

5.4.3 The TA shall be expected to develop and present a well-defined shadow financial model comprising of sourcing, pricing and repayment modes. The project financing shall include the Fund equity in terms of land.

5.4.4 The (TA) will also be involved in the preparation of a Special Purpose Vehicle (SPV) which shall be a legal entity created solely to serve for facilitation of a financial arrangement or creation of a financial instrument for purposes of this project under the Joint Venture/ Private Partnership Agreement.

5.4.5 The TA shall be expected to develop a legal framework articulating legal provisions in **private partnership** projects, addressing legal implications, providing legal assistance to project team **and Fund** to address **any** legal issues.

5.4.6 The TA will look into the following;

- i. Technical requirements and design including performance specifications and standards.
- ii. Financial and economic aspect (preparation of financial and economic models).
- iii. Environmental, social and governance safeguards.

- iv. Legal and institutional aspect.
- v. Preparation of bidding documents and draft contracts; and
- vi. Provision of support during the bidding process until financial close from the effective date of the contractual agreement signed by and between the Fund and the Private Party, whichever is earlier.

5.5 DELIVERABLES

5.5.1 JV/private partnership structuring.

The TA shall be responsible for submitting all reports and documents as may be required by the Fund to successfully develop the Joint Ventures (JV)/Private Partnership structure.

5.5.2 Management of the Private Partnership /Joint Ventures Bidding Process

The TA in consultation with the Fund shall prepare all the necessary documents to undertake a competitive and transparent bidding process. Specifically, the TA shall prepare bid documents; Request for Proposal (RFP), Draft Contract and other related documents in accordance with the agreed contracts until the award of the contract to the successful bidders. The responsibility of the TA shall include the following:

(i) Detailed procurement plan

The TA will design a complete procurement plan and process based on applicable procurement laws including:

- a) Recommend & advise the appropriate bid strategy in accordance with the relevant laws;
- b) Prepare all necessary bid/tender documents, including the draft contractual agreements (SPV), Project Information Memorandum, Request For Proposals (RFP), bid bulletins, qualification and evaluation criteria, invitation to bid, including all appropriate Bid Forms such as Bid Letter, Statement of Bid, Technical Bid Proposal, Financial Bid Proposal, e.t.c
- c) The TA shall prepare a draft Special Purpose Vehicle (SPV) agreement in close coordination with the Fund. The said draft agreement must take into account the agreed risk allocation regime and use best practice to maximize competition and pricing low while protecting Fund's interests with a view to facilitate project implementation and manageability over the project period.
- d) Advice on mechanisms to maximize competition while avoiding unrealistic bids and project vulnerability from overly aggressive bidding.

- e) Review of information to be provided by Fund to bidders to manage third party liabilities.
- f) Design of key aspects of the tender procedure, for example the number of stages in the process, use of competitive dialogue, deciding whether and to what extent to accept variant bids and non-conforming bids, how many bidders must bid before the process is valid, what rules to set in relation to the assessment of bids (scoring regimes, timing of bids and rejecting of excessively low bids) and how to maximize competition without sacrificing quality of bids.
- g) Design of the bidder communication strategy, including marketing, road shows, bidder conferences, data room creation and management (actual and virtual), dialogue meetings, and mechanisms to gather bidder comments and concerns and resolving them.
- h) Preparation of Information Memorandum and other marketing materials
- i) All advice shall be compliant with applicable law (and considering any constraints or opportunities associated with applicable law), international best practice and market feedback.
- j) The TA will prepare and deliver a draft procurement plan to the Fund, and subsequently a final procurement plan. The TA will conduct workshops with the Fund and other key stakeholders to explain risk assessment and allocation, the procurement plan and the roles and responsibilities of all parties.

(ii) Preparation of Bid Process, Design and Bid Documents:

The TA will prepare a complete set of procurement documents, complying with applicable law.

The TA must also provide the Fund with all the necessary drafting, bidder communication and administrative support necessary for the entire procurement process through to financial close and be conducted in accordance with law and to the highest standards of efficiency, quality and integrity.

(iii) Request for Proposals (RFP)

The TA will prepare an RFP document in accordance with public all applicable laws and regulations, consistent with the results of the Feasibility Study. The RFP must concisely set out:

- a) design criteria

- b) the output and performance specifications
- c) requirements for compliant bids
- d) a risk profile as established in the feasibility study
- e) the payment mechanism
- f) the bid process
- g) evaluation criteria
- h) bidder communication systems and procedures
- i) bid forms – technical and financial bid submission forms, bid letter, statement of compliance etc.
- j) all other information necessary to ensure compliant, high quality and comparable bids

(iv) Approvals.

The TA will provide a list of all necessary approvals needed for procurement and implementation of the project, with a time schedule for obtaining the approvals given the time needed to obtain each and their position on the project critical path.

(v) Administration of the Bidding Process

The TA will provide all necessary support to the Fund for the efficient and professional management of the bidding process. This includes creating & managing information, facilitating structured engagement between the TA, Fund and bidders, helping the Fund to communicate effectively with bidders (including responding to bidder queries, managing bidder conferences and one on one/ dialogue meetings), amending documents further to bidder comments, receiving bids, helping in bid evaluation processes, etc.

(vi) Evaluation.

The TA will provide a framework for evaluation with a scoring regime and guidelines consistent with the RFP, to facilitate the evaluation committee's tasks.

(vii) Support during Bidding Process and Evaluation

The TA shall assist the Fund to undertake the following activities.

- a) Issuance of all bidding notices, bids and conduct of the pre- bid conference/s,
- b) Responding to queries upon proper consultation with the Fund
- c) Evaluation of bids and award,
- d) Contract finalization.

5.5.3 Assistance towards Financial Closure of the Project

- i) The TA shall provide all the required assistance and advisory support until the financial closure of the Project.
- ii) The TA shall also compile a comprehensive close-out report and case study and must incorporate any additional factors that may be required by the Fund. The close-out report will be a confidential document of the Fund.
- iii) While carrying out the specific tasks, the TA shall build capacities of the Fund and secretariat through technology and knowledge transfer during the entire duration of the assignment.

5.6 TRANSACTION ADVISORY TEAM COMPOSITION

5.6.1 The TA shall comprise a single incorporated organization or a consortium (led by a single lead advisory organization). The members of the TA team should have both the skill and experience necessary to undertake the range of tasks set out in these terms of reference. Each individual on the team must be personally available to do the work as and when required.

5.6.2 The lead team member in the consortium/organization shall be held accountable, in terms of the transaction advisor contract, for ensuring project deliverables and for the professional conduct and integrity of the entire team.

5.6.3 The TA shall provide a **signed consortium agreement** document showing the composition of the consortium and the members provided therein shall be available during the period of the assignment.

5.6.4 The TA should also have knowledge of the project's taxation framework, including exemptions and tax exemption regime, the Pension Scheme's accounting systems, domestic and global insurance

5.6.5 The list of experts provided in the evaluation criteria is indicative and the Fund may request for additional experts that may be required to successfully complete the assignment

5.7 REPORTING ARRANGEMENTS

The Consultants will report to the representative of KPPF and ultimately to CEO & TRUST SECRETARY of KPPF as the Client and principal contact for the consultancy, and from whom all necessary approvals will be obtained.

The Lead Consultant shall, in close consultation with client, arrange consultative meetings with all client at regular intervals or whenever there is need.

5.8 QUALITY ASSURANCE REVIEWS OF THE WORK

Quality Assurance of the assignment will be provided in form of regularly reporting as agreed by the parties to the Board of Trustees and adherence to schedules and timeframes.

5.9 MONITORING PROGRESS OF ASSIGNMENT

The KPPF shall monitor and evaluate the progress of the Consultancy through the reports on the deliverables on a regular basis to be agreed upon by the parties. The committee's reports will be submitted to CEO & TRUST SECRETARY through his appointee as may be required.

5.10 PRICING

- (i) A detailed cost breakdown structure must be included;
- (ii) All pricing must be shown inclusive of any applicable taxes ; and
- (iii) All pricing must be completed on the standard template as prescribed in the tender document

Note: Reimbursable expenses are not allowed

5.11 ESSENTIAL DUTIES AND RESPONSIBILITIES OF KPPF

KPPF shall furnish the Consultant with design brief/wish list for the project.

In addition, KPPF shall:

- (i) be responsible for; liaison between the Consultant and monitoring of the consultancy service;
- (ii) review reports/documents submitted by the consultant and give feedback to the consultant accordingly as provided for in the TORs; and
- (iii) provide the consultants with any other relevant assistance that may be required during the execution of the contract

5.12 ESSENTIAL DUTIES AND RESPONSIBILITIES OF THE CONSULTANT

The consultant will:

- (i) Operate from its offices other than in exceptional situations and provide own manpower, work facilities, equipment, stationery, supplies and all operational requirements to carry out the assignment and provide the services required;
- (ii) ensure that there is high quality of service rendered;
- (iii) liaise with the KPPF on a regular basis in order to report progress; communicate, in writing, to KPPF any issues and/or concerns that may affect performance of the consultancy in the course of the assignment; and
- (iv) produce and submit acceptable reports to KPPF and perform activities mentioned in the TOR within the agreed timelines.

5.13 DURATION OF THE ASSIGNMENT

The duration of the assignment will be based on the contract signed by the Fund and main contractor currently on site.

5.14 ETHICAL CODE AND PROFESSIONALISM

The Consultant shall carry out the above assignment in accordance with the highest standard of ethical competence, integrity and professionalism, having due regard to the nature and purpose of the assignment. The Consultant will at all-times and purpose, regard as strictly confidential all knowledge and information not within the public domain which may be acquired in the course of carrying out this assignment and the information shall not be directly or indirectly disclosed to any person whatsoever, except with the written permission of the Client.

The Consultants will waive all copyrights of documents, data and information prepared as part of this assignment in favour of the KPPF.

SECTION VI: FORM OF CONTRACT

CONTRACT AGREEMENT FORM

THIS AGREEMENT made this.....day of.....20.... **BETWEEN THE KENYA POWER & LIGHTING COMPANY LIMITED STAFF RETIREMENT BENEFITS SCHEME**, a retirement benefits fund licensed by Retirement Benefits Authority situated at Stima Plaza, Kolobot Road, Parklands, Nairobi in the Republic of **Kenya** and of Post Office Box Number *1548-00600*, Nairobi in the Republic aforesaid (*hereinafter referred to as the "KPPF"*) of the one part,

AND

.....a duly registered entity according to the laws ofand of Post Office Box Number..... in the Republic aforesaid, (*hereinafter referred to as the "Consultant"*) of the other part;

WHEREAS KPPF invited tenders for certain services, that is to say, for **Consultancy Services** under Tender Number.....

AND WHEREAS KPPF has accepted the Tender by the Consultant for the services in the sum of **Kshs.****VAT Inclusive say**.....(*hereinafter called "the Contract Price"*) as outlined in the notification of award letter referred to in clause 5(g).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS: -

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract and the Tender Document.
2. Unless the context or express provision otherwise requires: -
 - a) reference to "this Agreement" includes its recitals, any schedules and documents mentioned hereunder and any reference to this Agreement or to any other document includes a reference to the other document as varied supplemented and or replaced in any manner from time to time.
 - b) any reference to any Act shall include any statutory extension, amendment, modification, re-amendment or replacement of such Act and any rule, regulation or order made thereunder.
 - c) words importing the masculine gender only, include the feminine gender or (as the case may be) the neutral gender.
 - d) words importing the singular number only include the plural number and

vice-versa and where there are two or more persons included in the expression the *“Consultant”* the covenants, agreements obligations expressed to be made or performed by the Consultant shall be deemed to be made or performed by such persons jointly and severally.

e) where there are two or more persons included in the expression the *“Consultant”* any act default or omission by the Consultant shall be deemed to be an act default or omission by any one or more of such persons.

3. In consideration of the payment to be made by KPPF to the Consultant as hereinbefore mentioned, the Consultant hereby covenants with KPPF to perform and provide the services and remedy any defects thereon in conformity in all respects with the provisions of the Contract.

4. KPPF hereby covenants to pay the Consultant in consideration of the proper performance and provision of the services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

5. The following documents shall constitute the Contract between KPPF and the Consultant and each shall be read and construed as an integral part of the Contract: -

- a. this Contract Agreement
- b. the Special Conditions of Contract as per the Tender Document
- c. the General Conditions of Contract as per the Tender Document
- d. the Price Schedules/ Financial Proposal submitted by the Consultant and agreed upon with KPPF.
- e. the Terms of Reference as per KPPF’s Tender Document
- f. the Consultant’s obligations t KPPF
- g. KPPF’s Notification of Award dated
- h. the technical submission form
- i. Proposed workplan and schedule of activities

6. In the event of any ambiguity or conflict between the contract documents listed above, the order of precedence shall be the order in which the contract documents are listed in 5 above except where otherwise mutually agreed in writing.

7. The Commencement Date shall be the working day immediately following the fulfillment of all the following: -

- a) Execution of this Contract Agreement by KPPF and the Consultant.
 - b) Issuance of the Performance Bond by the Consultant and confirmation of its authenticity by KPPF.
 - c) Issuance of the Official Order by KPPF to the Consultant.
8. The period of contract validity shall begin from the Commencement date and end sixty (60) days after the last date of the agreed performance schedule.
Provided that the expiry period of the Warranty shall be as prescribed and further provided that the Warranty shall survive the expiry of the contract.
9. It shall be the responsibility of the Consultant to ensure that its Performance Security is valid at all times during the period of contract validity and further is in the full amount as contracted.
10. Any amendment, change, addition, deletion or variation howsoever to this Contract shall only be valid and effective where expressed in writing and signed by both parties.
11. No failure or delay to exercise any power, right or remedy by KPPF shall operate as a waiver of that right, power or remedy and no single or partial exercise of any other right, power or remedy.
12. Notwithstanding proper completion of performance or parts thereof, all the provisions of this Contract shall continue in full force and effect to the extent that any of them remain to be implemented or performed unless otherwise expressly agreed upon by both parties.
13. Any notice required to be given in writing to any Party herein shall be deemed to have been sufficiently served, if where delivered personally, one day after such delivery; notices by electronic mail and facsimile shall be deemed to be served one day after the date of such transmission and delivery respectively, notices sent by post shall be deemed served seven (7) days after posting by registered post (*and proof of posting shall be proof of service*), notices sent by courier shall be deemed served two (2) days after such receipt by the courier service for Local Suppliers and five (5) days for Foreign Suppliers.
14. For the purposes of Notices, the address of KPPF shall be CEO & Trust Secretary, Kenya Power Pension Fund, Ground Floor, Stima Plaza, Kolobot Road, Post Office Box Number 1548–00600, Nairobi, Kenya. The address for the Consultant shall be the Consultant’s address as stated by it in the Confidential Business Questionnaire provided in the Tender Document.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Kenya the day and year first above written.

SIGNED for and on behalf
of **KPPF**

CEO & TRUST SECRETARY

SEALED with the **COMMON SEAL**
of the **CONSULTANT**
in the presence of:-

DIRECTOR

Affix Consultant's Seal here

DIRECTOR'S FULL NAMES

and in the presence of:-

DIRECTOR/ COMPANY SECRETARY

DIRECTOR/ COMPANY SECRETARY'S FULL NAMES

SECTION VII: GENERAL CONDITIONS OF CONTRACT

5.15 GENERAL PROVISIONS

5.15.1 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 here below;
- (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 KPPF under this Contract;
- (i) "Party" means KPPF 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 Sub-consultant 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 the tender document ; and

(m) "Sub consultant" means any entity to which the Consultant subcontracts any part of the Services

(n) Law Governing the Contract This Contract, its meaning and interpretation and relationship between the Parties shall be governed by the Laws of Kenya.

5.15.2 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.

5.15.3 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.

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

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

5.15.6 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.

5.16 COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

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

5.16.2 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.

5.16.3 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.

5.16.4 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.

5.16.5 Force Majeure

5.16.5.1 Definition For the purposes of this Contract, "Force Majeure" means and 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.

5.16.5.2 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.

5.16.6 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.

5.16.7 Payments. Neither party shall incur any liability by reason of failure to perform any obligations reserved hereunder, if such failure is occasioned by a Force Majeure. Force Majeure shall mean any event or circumstance which is beyond the control of the party seeking to rely on such Force Majeure, which shall not be limited to, natural disasters, exceptionally adverse weather conditions, war and other hostilities, rebellion, revolution, insurrection, military usurpation and civil war, riot, commotion, fire, tornado, strikes, lockouts, or civil disorder, and other events, which could not reasonably have been foreseen by that party at the date of this Agreement, the consequences of which could not reasonably have been avoided by that party, and which prevents that party from performing any of its obligations under this Agreement.

5.17 Termination

5.17.1 KPPF 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 KPPF 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 judgment of KPPF, 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 KPPF, 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 KPPF of the benefits of free and open competition.

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

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

- (a) if KPPF 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.

5.18 Payment upon Termination

Upon termination of this Contract pursuant to Clauses 2.6.1 or 2.6.2, KPPF shall make the following payments to the Consultant:

- (a) remuneration for Services satisfactorily performed prior to the effective date of termination;

5.19 Consequences Termination

- a. The Technical Team Leader shall immediately deliver to the Client all non-copyrighted work for which the consultants were responsible together with any files, correspondence, documents and property belonging to the Client, which may be in the Design Team possession or control.
- b. Termination or expiration of this Agreement for any reason shall be without prejudice to all accrued rights, liabilities and remedies. The parties shall continue to be bound by all

the provisions of this Agreement that specifically provide or by their nature are deemed to survive the termination of this Agreement.

5.20 OBLIGATIONS OF THE CONSULTANT

5.20.1 General

- a. 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 KPPF and shall at all times support and safeguard KPPF's legitimate interests in any dealing with Sub Consultants or third The Design Team shall execute the Services as set out in Annexure B to E.
- b. The consultant shall exercise reasonable professional skill, care and diligence in the performance of their respective obligations in terms of this Agreement.
- c. Where the Services assigned to the consultant and/or a specific member of the Design Team include the obligation to certify or to exercise discretion or quasi-arbitrational functions in carrying out the Services, the Design Team shall be obliged to exercise such obligations, discretions and functions in an independent professional manner acting with reasonable skill, care and diligence with regard to all interests involved.
- d. The consultant shall not make any material alteration, or addition to, or omission from the approved design, budget or programme without the consent of the Client and except when required to do so by law or when arising from an emergency. The Design Team shall notify the Client as soon as practicable of the action taken.
- e. The consultant shall co-operate in absolute good faith, comply with and accurately and timorously adhere to all reasonable requests by the Client.
- f. The Consultant shall furnish the services of qualified personnel (named in the Schedule) that are necessary or appropriate for the carrying out and completion of the services. In the event that the Consultant needs to substitute personnel,

the consultants undertakes to provide a fully qualified person(s) with similar or higher qualifications acceptable to the Client provided that:

- 5.20.2 The substitute(s) shall be under a contract with the consultants.
- 5.20.3 The Client shall not be obliged to pay any additional fees for the substitute(s).
- 5.20.4 Upon completion of selected milestones (details of which are in the Work Plan attached as Annexure G) or as and when agreed by the parties, the Technical Team Leader shall prepare and submit a report for the Client in a format approved by the Client or on a flash disc in a format usable by the Client.
- 5.20.5 The Consultants be lawfully licensed to execute the services in the Republic of Kenya and in accordance with the applicable laws, rules and regulations of their respective professional association and tax compliant in accordance with the applicable laws of the Republic of Kenya.
- 5.20.6 The Technical Team Leader shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and shall make such material available at its office during the duration of this Agreement and for the duration of six (6) years and/or until pending litigation has been completely and fully resolved, whichever occurs last. The Client shall have access during normal business hours to any and all books, documents, papers and records which are directly related to this Agreement for the purpose of carrying out audits and for checking the amount of work performed by the Design Team.

5.20.7 Conflict of Interests

5.20.7.1 Consultant Not to Benefit from Commissions, Discounts, Etc.

- (i) The remuneration of the Consultant pursuant to Clause 6 shall constitute the Consultant's sole remuneration in connection with this Contract or the Services and the Consultant shall not accept for his own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of his obligations under the Contract and the Consultant shall use his best efforts to ensure that his personnel, any sub consultant[s] and agents of either of them similarly shall not receive any such additional remuneration.
- (ii) For a period of two years after the expiration of this Contract, the Consultant shall not engage and shall cause his personnel as well as his sub consultant[s] and his/their personnel not to engage in the activity of a purchaser (directly or indirectly) of the assets on which he advised

KPPF 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 KPPF 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 KPPF. Any discounts or commissions obtained by the Consultant in the exercise of such procurement shall be for the account of KPPF.

5.20.7.2 Consultant and Affiliates Not to be Otherwise Interested in Project

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

5.20.7.3 Prohibition of Conflicting Activities

Neither the Consultant nor his sub consultant[s] nor their personnel shall engage, either directly or indirectly in any conflicting activities:

- (a) during the term of this Contract, any business or professional activities in the Republic of Kenya which would conflict with the activities assigned to them under this Contract; or
- (b) after the termination of this Contract, such other activities as may be specified in the SC.

5.21 Confidentiality

Confidential information means all documents, software, reports, data, records, forms and other material obtained by the consultant from the client in the course of performing the services;

- That have been marked as confidential;
- Whose confidential nature has been made known by the client to the consultant;
- That due to the character and nature , a reasonable person under like circumstances would treat as confidential.

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 KPPF's business or operations without the prior written consent of KPPF.

5.22 Insurance to be Taken Out by the Consultant

The Consultant

(a) shall take out and maintain and shall cause any sub consultant[s] to take out and maintain, at his (or the sub Consultants', as the case may be) own cost but on terms and conditions approved by KPPF, insurance against the risks and for the coverage; and;

(b) at KPPF's request, shall provide evidence to KPPF showing that such insurance has been taken out and maintained and that the current premiums have been paid.

The Consultant will be responsible for taking out all appropriate insurance coverage for Professional Liability and loss of or damage to equipment and property.

5.23 Consultant's Actions Requiring Client's Prior Approval

The Consultant shall obtain KPPF's prior approval in writing before taking any of the following actions;

(a) entering into a subcontract for the performance of any part of the Services,

(b) appointing such members of the personnel not listed by name ("Key Personnel and Sub Consultants").

5.24 Reporting Obligations

The Consultants shall submit to KPPF the reports and documents specified in this RFP in the form, in the numbers, and within the periods set forth in the said Appendix.

5.25 Documents prepared by the Consultant to Be the Property of KPPF

All plans, drawings, specifications, designs, reports and other documents and software submitted by the Consultant shall become and remain the property of KPPF and the Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to KPPF 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.

5.26 CONSULTANT'S PERSONNEL

5.26.1 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. The Key Personnel and Sub Consultants listed by title as well as by name are hereby approved by KPPF.

5.26.2 Removal and/or Replacement of Personnel

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

5.27 OBLIGATIONS OF KPPF

5.27.1 Assistance and Exemptions KPPF shall use his best efforts to ensure that it provides the Consultant such assistance and exemptions as may be necessary for due performance of this Contract.

5.27.2 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 indicated on contract or as the case may be.

5.27.3 Services and Facilities; KPPF shall make available to the Consultant the Services and Facilities needed. KPPF shall make any decisions in respect of the services or any use of the product of the services

5.28 PAYMENTS TO THE CONSULTANT

5.28.1 Lump-Sum Remuneration The Consultant's total remuneration shall not exceed the Contract Price and shall be a fixed amount all inclusive of VAT, all staff costs, Sub Consultants' costs, printing, communications, travel, accommodation and the like and all other costs incurred by the Consultant in carrying out the Services described. Except as provided, the Contract Price may only be increased above the amounts stated in contract if the Parties have agreed to additional payments.

5.28.2 Contract Price

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

5.28.3 Payment for Additional Services. For the purposes of determining the remuneration due for additional services as may be agreed, a breakdown of the lump-sum price is to be provided.

5.28.4 Terms and Conditions of Payment Payments will be made to the account of the Consultant and according to the payment schedule provided. 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 any conditions that may be listed in the SC for such payment have been met and the Consultant has submitted an invoice to KPPF specifying the amount due.

5.28.5 Interest on Delayed Payment shall be made within thirty (30) days of receipt of invoice and the relevant documents. If KPPF 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.

5.29 SETTLEMENT OF DISPUTES

5.29.1 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.

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.

SECTION VII: SPECIAL CONDITIONS OF CONTRACT

The Special Conditions of Contract hereinafter abbreviated as SC shall form part of the Conditions of Contract. They are made in accordance with the law and KPPF's guidelines, practices, procedures and working circumstances. They shall amend, add to and vary the GC. The clauses in this section need not therefore, be completed but must be completed by KPPF if any changes to the GC provisions are deemed necessary. Whenever there is a conflict between the GC and SC, the provisions of the SC shall prevail over those in the GC.

8.1 Schedule of Payments

Payments to the consultants shall be in installments as shown below:

The schedule of payments is specified below;

No	Assignment outcome	Proposed remuneration schedule	Proposed dates
1	upon signing of this contract, submission of an Inception Report, and a Performance Bank Guarantee of 10% of contract price in the format provided issued by a local bank licensed by the central bank of Kenya;	20%	
2	Submission and acceptance of completed RFP documentation, Evaluation and award	20%	
3	Negotiations & execution of commercial close	25%	
4	Financial close, Preparation and signing Joint ventures/private partnership agreements	35%	

8.2 Payment Conditions

Payment shall be made in Kenya Shillings unless otherwise specified not later than thirty [30] days following submission by the Consultant of invoices in duplicate to KPPF and payments will be made within thirty (30) days after the due date hereof.

8.3 The Consultant shall be entitled to render invoices taking cognisance of the apportionment of fees in the Schedule.

8.4 The consultant shall be entitled to invoice on the first day of the month for Services rendered in the previous month taking cognizance of the apportionment of fees described in Clause 8.1 above.

8.5 The Client shall make payment by cheque or RTGS to the respective bank account for the consultant

8.6 The consultant shall raise all invoices and requests for reimbursements where applicable in Kenya Shillings. The Client will settle such invoices and requests in Kenya Shillings

8.7 Should the Client dispute any aspect of an invoice, the Client shall give notice with reasons before the due date for payment and shall not delay payment of the undisputed amount.

8.8 The parties hereby acknowledge that the Client is a withholding tax agent for the Kenya Revenue Authority. Pursuant to its obligations as such, the Client shall make payment of the professional fees less the withholding tax payable on the same by the Design Team/Other Consultants. Aside from this obligation, the Client shall make payment without any set-off and herewith waives all rights to any such set-off.