



**COMMUNICATIONS
AUTHORITY OF KENYA**

**REQUEST FOR PROPOSALS TO UNDERTAKE ANNUAL
CONSUMER BEHAVIOR AND TRENDS SURVEY**

TENDER NO: CA/PROC/RFP/08/2018-2019

**Head of Procurement
Communications Authority of Kenya
P.O. Box 14448 – 00800
Nairobi, Kenya Tel: +254 20 4242000/0703-042000**

SECTION A:

INVITATION TO TENDER

REQUEST FOR PROPOSALS TO UNDERTAKE ANNUAL CONSUMER BEHAVIOR AND TRENDS SURVEY: CA/PROC/ RFP/08/2018-2019.

The Communications Authority of Kenya (CA) is the regulatory agency for the Information, Communications and Technology (ICT) sector in Kenya with oversight over the provision of telecommunications, radio communications, broadcasting, electronic transactions and postal and courier services. CA is also responsible for the Country's numbering and frequency spectrum resources as well as protecting the interests of consumers of ICT services.

The Authority is seeking the services of a firm to undertake the above-mentioned services as detailed in the tender document. The consultancy services shall be provided over a period of **three (3) years** with research and reporting carried out on an annual basis.

You are invited to collect the tender documents from the Procurement Division, Communications Authority of Kenya, CA Centre 3rd floor Wing A, along Waiyaki Way, Nairobi, during normal working hours upon payment of a non-refundable fee of **Kshs.1,000.00** (hard copy of the tender document).

The Tender documents can also be accessed and downloaded from the IFMIS Supplier Portal: <http://supplier.treasury.go.ke> and the Authority's website: <https://ca.go.ke/about-us/do-business-with-us/open-tenders/> *free of charge*. Firms that download the document must arrange to forward their particulars/contacts to the Head of Procurement, Communications Authority of Kenya, through email address tenders@ca.go.ke before the closing date for records and for the purposes of receiving clarifications and/or addendums, if any.

Bidders are required to undertake serialization of all bid documents as per requirements of the Public Procurement and Asset Disposal Act (PPADA), 2015 clause 74(1)(i) to enable safeguard loss of documentation during and after evaluation.

Duly completed RFP documents, in a plain sealed envelope marked; **“REQUEST FOR PROPOSALS TO UNDERTAKE ANNUAL CONSUMER BEHAVIOR AND TRENDS SURVEY: CA/PROC/ RFP/08/2018-2019**, should be mailed to the address below or deposited in the CA tender box on the ground floor of the CA Centre along Waiyaki Way on or before **9th January, 2019 at 10.30 a.m.**

**The Head of Procurement,
Communications Authority of Kenya,
P.O. Box 14448,
Nairobi 00800.
Tel: 4242000/0703-042000
Website: www.ca.go.ke**

The Technical and Financial proposals should be enclosed in separate envelopes and each envelope clearly marked as shown below before enclosure in an outer envelope.

- (i) **Technical proposal** to undertake annual consumer behavior and trends survey.
- (ii) **Financial proposal** to undertake annual consumer behavior and trends survey.

Tenders will be opened immediately thereafter in the presence of bidders or representatives who choose to attend at the CA Centre meeting room 2 on the ground Floor

SECTION B: - INFORMATION TO BIDDERS

1. Information Required from Each Bidder

1.1. General Information

The language for this tender is English and any attached document by a bidder which is not in English, must be accompanied by its English translation.

NO.	Heading	Notes
1.	Introduction	<p>The proposal must remain valid for 150 days after the submission date. The Authority may require this period to be extended where necessary.</p> <p>The bid proposal shall be written in English in indelible ink.</p> <p>The proposals shall contain no interlineations or overwriting except as necessary to correct errors made by the bidder itself. Any such corrections must be initialed by the persons or person authorized to sign the proposals.</p> <p>Bidders are required to provide a company profile and organization structure, company history, physical and postal address, telephone, email and other contacts. Services offered by the firm and affiliations with other firms.</p> <p>Bidders shall submit a separate Technical Proposal and Financial Proposal. These submissions should be accompanied by respective cover letters in the format shown in <i>appendix C</i>.</p> <p>Bidders shall prepare two (2) copies of each proposal. Each copy of the Technical Proposal or Financial Proposal shall be marked “ORIGINAL” or “COPY” as appropriate. If there are any discrepancies between the original proposal and its copy, the original shall take precedence.</p> <p>The original and copy of the Technical Proposal shall be placed in a sealed envelope clearly marked “TECHNICAL PROPOSAL,” while the original and copy of the Financial Proposal shall be placed in another envelope, sealed and clearly marked “FINANCIAL PROPOSAL” with a warning: “DO NOT OPEN WITH THE TECHNICAL PROPOSAL”. Both the Technical Proposal and Financial Proposal envelopes shall then be placed into an outer envelope and sealed. This outer envelope shall bear the Authority’s submission address, namely:</p> <p style="text-align: center;">The Head of Procurement Communications Authority of Kenya P. O. Box 14448 Nairobi 00800</p> <p>and clearly marked, “DO NOT OPEN, EXCEPT IN THE PRESENCE OF AUTHORIZED OFFICERS OF THE</p>

NO.	Heading	Notes
		AUTHORITY.” The completed Technical and Financial Proposals must be delivered at the Authority’s submission address on or before the closing date which is on 9th January, 2019 at 10.30 a.m. East African time. Any proposal received after the closing date shall be returned unopened to the firm, which submitted it.
2.	Clarification and Amendments of RFP Tender Document	Bidders may request clarifications on the tender document seven [7] days before the closing date. Requests for clarification must be sent in writing by letter or electronic mail to the Authority’s submission address above. The Authority will respond to such requests by written letter or electronic mail to not only the requesting bidder but to all other Bidders. The response will include a recast of the query without identifying the source of inquiry. At any time before the submission of proposals, the Authority may, whether at its own initiative or in response to a clarification requested by a Bidder, amend the RFP. Any amendment shall be issued in writing through addendum and circulated to all bidders. Addendum shall be by written letter or electronic mail to all bidders and will be binding on them. The Authority may at its discretion extend the deadline for the submission of proposals.

1.2. Preparation of Technical Proposal

Bidders are required to prepare the technical proposal to include the items listed on the table below. The technical proposal shall not include any financial information.

No.	Heading	Notes
1.	Company Details	Company profile and organization structure, company history, physical and postal address, telephone, email and other contacts. Services offered by the firm and affiliations with other firms.
2.	Company Experience	A description of three (3) assignments in the development of a finance and accounts policies and procedures manual that may be related to this assignment and the firm has undertaken in the last 5 years. Use the format shown in <i>appendix D</i> to list the assignments done.
3.	Company Proposal	A proposed methodology by the bidder on how it intends to undertake this project including the evaluation of (the detailed ToRs are at <i>appendix A</i>):
4.	Staff Qualifications	Bidders shall provide CVs and testimonials of at least three (3) key staff who shall be directly involved in the project. Use the format in <i>appendix E</i> to structure this part.

1.3. Preparation of Financial Proposal

Bidders are required to prepare the financial proposal including the cost of achieving the milestones in their technical proposals. Bidders are also expected to indicate their proposed

payment schedule in line with their proposed work schedule. The table below summarizes the requirements of the financials proposal.

No.	Heading	Notes
1.	Financial Proposal	Bidders shall express the price of their services to the Authority for this project in Kenya Shillings (KES). The exchange rate on the closing date shall be used for the conversion to Kenya shillings. The exchange rate will be as per the Central Bank of Kenya rates during the closing date of the proposal.
		The financial proposal should list all the activities to be performed plus their associated costs and all summed up in one figure inclusive of any taxes (where applicable). Use the format of <i>Appendix F</i> to structure the financial proposal.
		The evaluation committee will determine whether the financial proposals are complete i.e. whether the bidder 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 any case, the total price of the financial proposal as submitted by the bidder shall prevail.

1.4. Evaluation of Technical Proposals

No.	Heading	Notes
1.	Evaluation of Technical Proposals	After the proposals have been submitted by the closing date, the Tender Opening Committee shall open the Technical Proposal. The Financial Proposal shall remain sealed and only Financial Proposal of qualified Technical Proposal shall be opened in accordance with the timelines of this tender.
		From the closing date to the time the contract is awarded, if any Bidder wishes to contact the Authority on any matter related to this tender, they should do so in writing at the official address provided. Any effort by the firm to influence the Authority on the outcome of the evaluation may result in the rejection of the bidder's proposal.
		Evaluators of Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded. Only the Financial Proposals of the Bidders that qualify at the technical evaluation stage shall be opened.
		The minimum technical score required to qualify to proceed to the financial evaluation stage is 60/80 .
		After the evaluation of the Technical Proposal, the Authority shall notify the Bidders whose proposals did not meet the minimum qualification indicating that their Financial Proposals shall be returned unopened at the end of the tendering process. The firms that will score 60 and above will be invited to witness the opening of the financial proposals.

1.5. Evaluation of Financial Proposals

No.	Heading	Notes
	Evaluation of Financial Proposals	<p>Only Financial Proposals of Technically qualified bids shall be opened.</p> <p>The Authority shall then undertake the evaluation of the Financial Proposals and determine the winner of the tender in accordance with the Evaluation Criteria.</p>

1.6. Other activities Related to the Tender

No.	Heading	Notes
1.	Award of Contract	<p>The Contract will be awarded to the winner of the tender following negotiations based on the general conditions of the contract as in <i>Appendix G</i>.</p> <p>After negotiations are completed, the Authority will notify other bidders who qualified at the Technical Proposal stage that they were unsuccessful. The Authority shall also return unopened the Financial Proposals of those Bidders who did not pass the technical evaluation stages.</p> <p>The contractor awarded shall be expected to commence the assignment within twenty-one (21) calendar days from the date of execution of the contract.</p>
2.	Performance Bond	<p>The Contractor awarded shall prior to execution of the contract Agreement furnish the Authority with a Performance Bond in form of bank guarantee that will remain valid for Thirty (30) days beyond the validity of the contract and the value of the Performance Bond shall be equivalent to 5 % of the Contract Value.</p> <p>The proceeds of the performance Bond shall be payable to the Communications Authority of Kenya as compensation for any loss or damage resulting from failure by the contractor awarded to fulfill its obligations under this tender.</p> <p>The performance bond shall be in the form of an On-Demand-Bank-Guarantee issued by a reputable Bank carrying on business within Kenya and acceptable to the Authority.</p> <p>The performance bond will be discharged by the Communications Authority of Kenya and returned to the firm not later than Ninety (90) days following the expiry of this Agreement or earlier termination.</p> <p>Use the format of Appendix I to structure the Performance Bond.</p>

Confidentiality - Information relating to the evaluation of proposals and recommendations concerning awards shall not be disclosed to bidders or other persons except in accordance with the law.

SECTION C: EVALUATION OF THE BIDS

The proposals accepted by the closing date shall be subjected to three (3) stages of the evaluation process, namely:

- i. Mandatory Evaluation Stage- Pass/ Fail Basis
- ii. Technical Capacity Evaluation - 80%
- iii. Financial Evaluation- 20 %

i. Mandatory Evaluation Stage:

Bidder shall be required to provide the following and the evaluation will be on pass/fail basis:

NO	MANDATORY REQUIREMENTS
1.	Compliance with submission requirements (<i>Two (2) hard paper copies of the tender documents</i>).
2.	Company profile (Company history, contacts and services)
3.	The bidder must submit a CR12 Form obtained from Attorney General’s office showing the shareholders/Trustees of the firm
4.	Certificate of business incorporation/registration of the firm in the domicile country. Provide a list of shareholders and the Directors with their contact details
5.	Attach a copy of a valid PIN certificate for the firm
6.	A copy of a valid tax compliance certificate from the firm’s domicile country
7.	Audited accounts for the last 3 years (2015, 2016 and 2017)

Note:

In the case of Joint Ventures, the agreement between the parties MUST be provided in the submission of the tender document and the leading firm’s documents are the ONLY documents subjected to the above-mentioned criteria. In the case of contracts with third party supplier’s standard contracts MUST be provided

Failure to submit any one of the above requirements will lead to disqualification or failure. Only those firms who pass at the mandatory stage will proceed to the technical capacity evaluation stage.

ii. Technical Capacity Evaluation

The bidders that will qualify at the mandatory evaluation stage shall be subjected to the technical capacity evaluation. The maximum scores attainable at the technical evaluation stage shall be eighty (80) out of eighty (80). Bidders who attain sixty (60) marks and above out of eighty (80) will qualify to proceed to the Financial Evaluation stage. The Authority reserves the right to verify the accuracy of the information provided.

No.	Criteria	Maximum Score	Total Score
1.	Experience of Firm (bidder) as a corporate entity engaged in Consumer behavior and trends research		
	a. The Bidder should demonstrate the research organization's experience in carrying out consumer behavior and trends research. The Bidder MUST provide a detailed description of at least three (3) assignments of similar scope done in the past three years (between July 2015- July 2018) providing the name/title of the survey, detailed description of the consumer behavior study, name and contact details of organization that commissioned the study, contact persons of the said organization, resource persons used in the assignment and letter of recommendation.	9	15
	b. The Bidder MUST provide number of research studies on consumer behavior undertaken in the ICT sector in the last five (5) years (List at least two (2) research study's providing the name/title of the survey, detailed description of the consumer behavior study, name and contact details of organization that commissioned the study, contact persons of the said organization, resource persons used in the assignment and letter of recommendation.)	4	
	c. Scope of projects undertaken (State the value terms against each client detailed in a and b above Average Value: > KShs. 3,000,000.00 (Max Score: 2 Marks) Average Value: KShs. 2,000,000.00- KShs. 3,000,000.00 (Max Score: 1 Marks) Average Value: < KShs. 2,000,000.00 (Max Score: 0 Marks)	2	
2.	Expertise to undertake Consumer Behavior and trends Research		
	a. Understanding of work to be undertaken		
	i) Conformity of the Bidders research methodology to the Terms of Reference (ToRs). The bidder Must provide a detailed description of how they shall execute the research and how the proposed methodology will meet ALL the terms of reference and objectives of the research study.	16	40
	ii) Bidders initiatives and comments on the ToR's (Provide	8	

No.	Criteria	Maximum Score	Total Score
	detailed comments on the Terms of Reference)		
	b. Appropriateness of Research Methodology		
	i) Bidders completeness of description of the methodology, work plan and effectiveness of data collection and analysis	8	
	ii) Bidders proposal should provide a detailed description of the implication of international best practice on ICT regulation, consumer behavior, consumer protection, empowerment and education vs. research	5	
	iii) Bidders proposal should provide a detailed sampling framework and methodology detailing geographic locations where data is to be collected. This is based on developing a sample that will be representative of current 47 counties.	3	
3.	Human Resource Capacity		
	The Bidder should share the qualifications and competence of the key staff for the assignment.		
	a) Team leader. Bidder MUST attach CV of Team leader		
	i) Must possess at least a PhD/ Master's degree in Behavioral Economics, Behavioral Science, Economics, Mathematics/ Statistics, Psychology, Research, ICT Regulation and Policy, Public Policy. Attach certificates of academic qualifications. (Max Score: 2 Marks)		
	ii) Possess at least 10 years' experience in undertaking behavioral science research, policy and regulation. Provide the details of the research study's participated as team leader: specifically, name/title of the survey, detailed description of the consumer behavior study, name and contact details of organization that commissioned the study and contact persons of the said organization. (Max Score: 2 Marks).	12	20
	iii) Demonstrate ability to undertake behavioral science and public policy research by attaching at least four (4) research documents, reports, journal articles, publications or conference presentations/manuscripts on consumer behavior, ICT policy and regulation or consumer protection carried out in past five (5) years. (Max Score: 6 Marks)		
	iv) The Bidder MUST be a member of a relevant professional organization/association and MUST declare availability of staff during the period of the contract. Attach membership		

No.	Criteria	Maximum Score	Total Score
	certificate and signed declaration of availability. (Max Score: 2 Mark)		
	b) Other Professional Staff. Bidding firm should provide academic qualifications of proposed professional staff.		
	i) The bidder MUST provide a package of qualified staff in behavioral science, economics, mathematics, statistics, data analysts, data science, psychology. All staff must have a University degree and have more than five (5) years' experience undertaking research in consumer behavior research, public policy and/or ICT regulation (attach CVs recently signed by the proposed professional staff and authorized representative submitting the proposal). The CV should detail, academic qualification and copy of certificates of qualifications, detail the number of years worked in the organization, degree of responsibility and specific role held in various assignments during the last 5 years.	6	
	ii) Submit a sample organigram detailing the structure and function of all proposed staff	2	
4.	Financial Capacity		
	Average turnover of KES. 10 million and above for past three financial years (Provide audited account for the last three years 2015, 2016 and 2017)	5	5
Total			80

To be eligible to proceed to the next evaluation stage, bidders must score at least sixty (60) out of eighty (80) at the technical evaluation stage.

iii. Financial Evaluation and Scores

The financial proposals of the bidders that qualify at the technical evaluation stage shall be opened and evaluated.

Bidders are also expected to indicate their proposed payment schedule in line with their proposed work schedule in the format below. The Authority is not bound by a Bidder's proposed payment schedule but the proposal will form part of the contract negotiations with the winning Bidder.

However, where a Bidder has not proposed a payment schedule, the Authority will ensure the bidder is paid quarterly after submission of the research reports and the same shall not be negotiable.

No.	Work Description	Percentage of Tender Sum	Amount
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			(KES) incl. VAT
	Total	100%	

At the Financial Evaluation stage, the following formulae shall be applied to derive the financial score.

The committee shall thereafter compute the financial scores out of 20 points using the following formulae: -

$$\frac{\text{Lowest evaluated bid}}{\text{Bid Price}} \times 20 = \text{Financial Scores}$$

The technical and financial scores will be combined and the firm achieving the highest combined scores will be considered for award of the tender.

NB: The financial proposals for both local and international firms must include all applicable taxes. The taxes currently applicable to consultancies are:

- Withholding Taxes- There is an applicable tax rate for local and international firms. For international firms the withholding taxes vary from country to country depending on the double taxation agreement with Kenya. The applicable percentage must therefore be included and shown in the financial proposal submitted.
- Value Added Tax (VAT) – The VAT is loaded up to the service cost and the applicable rate currently is 16% of the project cost. This is applicable to all the firms and must be included and shown in the financial proposal.

Local Preference

While comparing price proposal between local and foreign firms participating in a selection process in financial evaluations, firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 20% preferential bias in proposed 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. The bidders in the financial bid shall attach details of such proof.

iv. Total Bid Score

A Bidder's final scores will be the addition of a Bidder's technical evaluation scores and the Bidder's financial evaluation scores.

$$\text{Bidder's Total Scores} = \text{Bidder's Technical Scores} + \text{Bidder's Financial Scores}$$

The technical and financial scores will be combined and the firm achieving the **HIGHEST COMBINED SCORES** will be considered for award of the tender.

NB: The financial proposals for both local and international firms must include all applicable taxes. The taxes currently applicable to consultancies are:

- Withholding Taxes- There is an applicable withholding tax rate on services.
- Value Added Tax (VAT) – The VAT is loaded up to the service cost and the applicable rate currently is 16% of the cost. This is applicable to all the firms and must be included and shown in the financial proposal.

TERMS OF REFERENCE FOR CONSULTANCY TO CARRY OUT CONSUMER BEHAVIOR AND TRENDS RESEARCH

1. INTRODUCTION

The Communications Authority of Kenya (CA) is the regulatory agency for the Information, Communications and Technology (ICT) sector in Kenya with oversight over the provision of telecommunications, radio communications, broadcasting, electronic transactions and postal and courier services. CA is also responsible for the Country's numbering and frequency spectrum resources as well as protecting the interests of consumers of ICT services.

The Authority serves to protect the users and consumers of communications services with regard to the prices, the quality and variety of those services. In so doing, the Authority seeks to have deeper understanding of consumers in the communications market in Kenya with a view to develop appropriate regulatory interventions to enable consumers exercise their rights to choice and quality services as well as increase their confidence in the market.

The Authority therefore seek to undertake an annual survey on consumer behaviour and trends in Kenya.

2. BACKGROUND

Consumers of communication services are vulnerable in some ways due to

- Lack of awareness of ICT related issues
- Vast information gap amongst consumers of ICT
- Weak consumer organizations in Kenya
- The technical nature of ICT is challenging to Consumers
- Lack of knowledge, skills in Consumer rights
- Lack of knowledge on where/how to seek redress

The Authority, with a view to protect consumer of communication services has, among other initiatives, instituted the following Consumer Protection mechanisms;

- 2.1. **Legislative Mechanisms and Instruments:** The development and implementation of appropriate legislature to aid consumers of communications products and services with remedies that will protect consumers in the communication sector.
- 2.2. **Redress Mechanism:** the Authority has developed a complaints handling mechanism that enables the facilitation of resolution of consumer complaints in the event that their communication service provider had not resolved the matter satisfactorily. The outcome of the reports or actions taken in the progress of each case may result to:

- 2.2.1. Regulatory action e.g. penalties, suspension from sale of service for a specific communication service provider
 - 2.2.2. Changes in licence terms and conditions of communication service providers
 - 2.2.3. Changes in the procedure for issuance of licences
- 2.3. **Consumer Education:** This program empowers consumers of communication services and equips them with skills and knowledge to enable them make better decisions in the purchasing and use of communication services. The objectives of the Consumer Education programme are as follows:
- Enable consumers interpret available information and make informed discerning and responsible consumer choices
 - Enable consumer to know their basic rights and responsibilities
 - Enable consumers analyze consumer information
 - Enable consumers develop confidence and skills to complain effectively and resolve problems related to communication services
 - Give information that will enable consumers to know where to seek for help and advice when necessary
 - Enable consumers to recognize the wider social and economic impact of their decisions

3. THE CONSUMER BEHAVIOR AND TRENDS SURVEY

As a result of liberalization and increased competition in the Communications industry in Kenya, consumers find themselves in a market where they have:

- i) A greater level of choice as a result of increased number of communication products and services
- ii) A greater source of information as a result of increased marketing information from communication service and providers
- iii) Increased attention from service providers customer care representatives as a consequence of competition;
- iv) Increased access to information for their use in making purchase and use decisions
- v) Access to equal experience and quality of communication services
- vi) Been increasingly exposed to effects of political, social economic factors in making their purchase and use decisions in the ICT market

The Authority has in the past carried out a consumer behaviour and trends survey to understand the behaviour of consumers with regards to purchase and usage of ICT services. The previous survey's have focused on motivation to switch service providers, sources of ICT information and the level of trust they attribute to their preferred sources of information. Those survey's also sought to establish the level of consumer awareness of the role of the Authority and their level of usage of the Authority's consumer protection mechanisms. In addition, they went on to secure information that would enable the Authority understand consumer's behaviour and trends in relation to e-commerce, SIM card registration regulations and ownership/purchase and use of

ICT devices, cybersecurity. These previous surveys' relied more on internally developed indicators and the Authority intends to leverage more on international best practice in consumer protection and empowerment so as to identify appropriate indicators.

The Authority, therefore, intends to engage the services of a firm that shall assist the Authority in developing appropriate consumer behaviour indicators that shall enable the Authority establish the Consumer's health with regards to purchase and use of communication services. The Authority main aim is draw insights from behaviour into developing appropriate regulatory interventions (both direct and indirect) that will improve consumer's experiences and confidence in the market.

3.1. OBJECTIVES OF THE SURVEY

The Authority therefore intends to undertake an annual survey that is seeks to understand consumer purchase and use behaviour in the ICT market. This will enable the Authority develop appropriate regulatory interventions and consumer protection mechanisms and specifically:

1. Develop a framework for undertaking consumer behaviour and trends survey. The framework, should in the very least facilitate in the identification of appropriate consumer behaviour indicators, survey and tracking methodology, leveraging on appropriate consumer behaviour models, methodology for the identification of appropriate regulatory interventions, mechanism for measurement of impact of implementation of interventions, develop survey instruments e.t.c.
2. Review existing policy, legal and regulatory frameworks on consumer protection and empowerment and initiatives and recommend appropriate changes to enhance their effectiveness;
3. To identify and track consumer behaviour and decision making process in the purchase and use of communication services on an annual basis as per proposed and approved consumer behaviour indicators;
4. Segment consumers of communication services based on predetermined format for ease of implementation of proposed regulatory interventions.
5. Prepare periodic and an annual reports (and infographics) on consumer behaviour in the Kenyan market.
6. To propose appropriate consumer protection interventions to be implemented by the Authority.
7. Recommend any other relevant intervention(s) that would increase the confidence of ICT consumers in the communications market in Kenya.
8. Leverage on international expertise to train at least fifteen CA staff on international best practise in consumer protection, regulation and consumer behaviour and trends on an annual basis.

3.2. SAMPLE SELECTION

The survey should draw the appropriate representative samples from all the 47 counties in Kenya. The information should include users of all ICT goods and services e.g. voice telephony, data, internet, postal, courier, radio, TV (Free to air, Pay, Digital) e.t.c.

4. CONSULTANCY PERIOD AND STUDY IMPLEMENTATION

These TOR's serves to solicit for a firm with expertise and background in undertaking consumer behavioural research and providing advise on public policy, ICT regulation and consumer protection. The consultancy services shall be provided over a period of three (3) years with research and reporting carried out on an annual basis. The consultancy firm may engage a different firm in a joint venture to facilitate data collection based on approved survey instruments.

4.1. DELIVERABLES

The firm shall be expected to, in the very least deliver the following

1. An Inception report detailing study methodology, tools and schedule.
2. A framework for undertaking consumer behaviour and trends survey
3. Prepare and submit monthly progress reports in predetermined format
4. Submission of Annual executive summary reports in form of a PowerPoint presentation, infographics and full report. The reports should be delivered in soft copy and two (2) hard copy bound and printed in colour in a predetermined format.
5. Submission of detailed annual report. PowerPoint presentation, infographics and full report. The reports should be delivered in soft copy and two (2) hard copy bound and printed in colour in a predetermined format.
6. Training curriculum, materials and reports for all trainings carried out on annual basis.

4.2. DELIVERABLES (OUTPUTS) /TIMELINES

The Authority's financial year runs from July to June of the following year. Once the framework been approved. The surveys shall commence once approvals for commencement have been provided.

APPENDIX “B”

Clause Reference

- 1.1 & 2.1 The name of the Client is:
Communications Authority of Kenya
- The method of selection is: **Quality and Cost Based selection method**
- 1.2 Technical and Financial Proposals are requested: **Yes**
- 1.3 A Technical Proposal only is requested: **No**
- The name, objectives, and description of the assignment are: **As per the Terms of Reference.**
- 1.3 Pre-proposal conferences will be held: Yes _____ No ____ [*if Yes, indicate date, time and venue*] **No**
- The name(s), address (es) and telephone numbers of the Client’s official(s) are: **P.O BOX 14448 NAIROBI 00800; Tel: +254-20-4242000;**
- 1.4 The Client will provide the following inputs: **any information required on the assignment**
- 3.3 (i) The minimum required experience of proposed professional staff is:[*Insert title, number of years of professional experience, specific expertise*]
Lead Consultant- 10 years.
Other Consultants -5 years
- 3.4 (ii) Training is a specific component of this assignment:
No
- (viii) Additional information in the Technical Proposal includes:
N/A
- 3.7 Taxes: All taxes to be included in the financial proposal.
Consultants must submit an original and two (2) additional copies of each proposal
- 4.2 The proposal submission address is as shown below. Information on the outer envelope should also include: **Tender Number and Tender Description addressed to:**

Head of Procurement
Communications Authority of Kenya
P.O Box 14448
Nairobi 00800

4.3 Proposals must be submitted no later than **9th January 2019 at 10:30 a.m.**

4.4 The address to send information to the Client is: **P.O Box 14448-00800, NAIROBI.**

4.5 The minimum technical score required to pass is ***60/80***

The assignment is expected to commence after submission of performance bond and signing the contract within an agreed time frame between the two parties.

Appendix C

1. Technical Proposal Submission Form

[_____ *Date*]

To: _____ [*Name and address of Client*]

Ladies/Gentlemen:

We, the undersigned, offer to undertake the services in accordance with your Request for Proposal dated _____ [*Date*] and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal, [and a Financial Proposal sealed under a separate envelope].

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

We remain,

Yours sincerely,

_____ [*Authorized Signature*]:

_____ [*Name and Title of Signatory*]

_____ [*Name of Firm*]

_____ [*Address:*]

2. Financial Proposal Submission Form

_____ *[Date]*

To: _____

[Name and address of Client]

Ladies/Gentlemen:

We, the undersigned, offer undertake the services in accordance with your Request for Proposal dated (_____) *[Date]* and our Proposal. Our attached Financial Proposal is for the sum of (_____) *[Amount in words and figures]* inclusive of all the taxes.

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

We remain,
Yours sincerely,

_____ *[Authorized Signature]*

_____ *[Name and Title of Signatory]:*

_____ *[Name of Firm]*

_____ *[Address]*

Appendix D:

(ii). Bidder's Experience

Give information on three (3) assignments in provision of such services that the firm was legally contracted to undertake in the recent past either individually as a corporate entity or in association with others.

Assignment 1

	Bidder's response
Name of Client Firm	
Client Contacts	
Nature of Task	
Duration	
Output of the task	
Status of the task (complete/ongoing/deferred)	

Repeat the above for assignment 2 & 3.

We understand that by submitting these firms, we have no reservation to the Authority contacting any of the firms for confidential information related to our performance in the said assignment.

Yours sincerely,

_____ *[Authorized Signature]*

_____ *[Name and Title of Signatory]:*

_____ *[Name of Firm]*

_____ *[Address]*

Appendix E

Format of Curriculum Vitae (CV) and Testimonials for the proposed professional staff

Details of Staff 1:

Proposed Role: _____

Name of Staff: _____

Profession: _____

Experience (Yrs): _____

Years with Firm: _____

Nationality: _____

Membership in Professional Societies: _____

Detailed Tasks Assigned: _____

Key Qualifications:

[Give an outline of the staff's experience and training pertaining to this assignment. Describe degree of responsibility held by this staff on previous assignments related to this assignment and give dates and locations of the assignment].

Education:

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

Employment Record:

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

Certification:

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

[Name]

[Signature of staff member]

[Date]

[Name of authorized representative of the firm]

[Signature of authorized representative of the firm]

[Date]

Repeat the same for staff 2 & 3.

Appendix F

Financial Proposal Structure

No.	Milestone	Cost (Kshs.)
1.		
2.		
3. etc		
Sub Total		
Taxes		
Total Amount of Financial Proposal		

Appendix G

General Conditions of the Contract

1. General Provisions

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

- (a) “Applicable Law” means the laws and any other instruments having the force of law in the Republic of Kenya as they may be issued and in force from time to time;
- (b) “Bidder” means any person who has requested and has been supplied with the Tender Document for this contract in accordance with the request procedures set out herein;
- (c) “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;
- (d) “Contract Price” means the price to be paid for the performance of the Services in accordance with Clause 6 here
- (e) “Foreign Currency” means any currency other than the Kenya Shilling;
- (f) “GC” means these General Conditions of Contract;
- (g) “Government” means the Government of the Republic of Kenya;
- (h) “Local Currency” means the Kenya Shilling;
- (i) “Member”, in case the Bidder 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 Bidder’s rights and obligations towards the Client under this Contract;
- (j) “Party” means the Client or the Bidder, as the case may be and “Parties” means both of them;
- (k) “Personnel” means persons hired by the Bidder or by any Sub Bidder as employees and assigned to the performance of the Services or any part thereof;
- (l) “SC” means the Special Conditions of Contract by which the GC may be amended or supplemented;
- (m) “Services” means the work to be performed by the Bidder pursuant to this Contract, as described in Appendix A; and
- (n) “Sub Bidder” means any entity to which the Bidder subcontracts any part of the Services in accordance with the provisions of Clauses 3 and 4.

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

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

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

- 1.5 Location** The Services shall be performed at such locations as are specified in *Appendix A* and, where the location of a particular task is not so specified, at such locations, whether in the Republic of Kenya or elsewhere, as the Client may approve.
- 1.6 Authorized Representatives'** Any action required or permitted to be taken and any document required or permitted to be executed under this Contract by the Client or the Bidder may be taken or executed by the officials specified in the SC.
- 1.7 Taxes and Duties** The Bidder, Sub-Bidder [s] and their personnel shall pay such taxes, duties, fees and other impositions as may be levied under the Laws of Kenya, the amount of which is deemed to have been included in the Contract Price.

2. Commencement, Completion, Modification And Termination Of Contract

- 2.1 Effectiveness of Contract** This Contract shall come into effect on the date the Contract is signed by both Parties and such other later date as may be stated in the SC.
- 2.2 Commencement of Services** The Bidder shall begin carrying out the Services thirty (30) days after the date the Contract becomes effective or at such other date as may be specified in the SC.
- 2.3 Expiration of Contract** Unless terminated earlier pursuant to Clause 2.6, this Contract shall terminate at the end of such time period, after the Effective Date, as is specified in the SC.
- 2.4 Modification** Modification of the terms and Conditions of this Contract, including any modification of the scope of the Services or the Contract Price, may only be made by written agreement between the Parties.
- 2.5 Force Majeure**
- 2.5.1 Definition** For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.
- 2.5.2 No Breach of Contract** The failure of a Party to fulfill any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

2.5.3 Extension of Time

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

2.5.4 Payments

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

2.6 Termination

2.6.1 By the Client

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

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

For the purpose of this clause;

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

(xi)

“fraudulent practice” means a misrepresentation of facts in order to influence a selection process or the execution of Contract to the detriment of the Client, and includes

collusive practice among Bidders (prior to or after submission of proposals) designed to establish prices at artificial non-competitive levels and to deprive the Client of the benefits of free and open competition.

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

2.6.2 By the Bidder

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

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

2.6.3 Payment Upon Termination

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

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

3. Obligations Of The Bidder

3.1 General

The Bidder 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 Bidder shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the Client and shall at all times support and safeguard the Client's legitimate interests in any dealing with Sub Bidders or third parties.

3.2.1 Bidder Not to Benefit from

- (i) The remuneration of the Bidder pursuant to Clause 6 shall constitute the Bidder's sole remuneration in connection with this Contract or the Services and the Bidder shall not accept

**Commissions,
Discounts,
Etc.**

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

**3.2.2 Bidder
and
Affiliates
Not to be
Otherwise
Interested in
Project**

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

**3.2.3 Prohibition
of
Conflicting
Activities**

Neither the Bidder nor his sub-Bidder[s] nor their personnel shall engage, either directly or indirectly in any of the following activities:

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

3.3 Confidentiality The Bidder, his sub-Bidder[s] and the personnel of either of them shall not, either during the term of this Contract or within five (5) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract or the Client's business or operations without the prior written consent of the Client.

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

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

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

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

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

4. Bidder's Personnel

4.1 Description of Personnel The titles, agreed job descriptions, minimum qualifications and estimated periods of engagement in the carrying out of the Services of the Bidder's Key Personnel are described in Section C.

The Client hereby approves the Key Personnel and Sub Bidders listed by title as well as by name in Section C.

**4.2 Removal
and/ or
Replacement
Of Personnel**

- (a) Except as the Client may otherwise agree, no changes shall be made in the Key Personnel. If for any reason beyond the reasonable control of the Bidder, it becomes necessary to replace any of the Key Personnel, the Bidder shall provide as a replacement a person of equivalent or better qualifications.
- (b) If the Client finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) the Client has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Bidder shall, at the Client's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Client.
- (c) The Bidder shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

5. Obligations of the Client

**5.1 Assistance and
Exemptions**

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

**5.2 Change in the
Applicable Law**

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

5.3 Services and Facilities

The Client shall make available to the Bidder the Services and Facilities listed under Appendix G.

6. Payments to the Bidder

- 6.1 Lump-Sum Remuneration** The Bidder's total remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all staff costs, Sub-Bidders' costs, printing, communications, travel, accommodation and the like and all other costs incurred by the Bidder in carrying out the Services. Except as provided in Clause 5.2, the Contract Price may only be increased above the amounts stated in Clause 6.2 if the Parties have agreed to additional payments in accordance with Clause 2.4.
- 6.2 Contract Price** (a) The price payable in foreign currency is set forth in the SC.
(b) The price payable in local currency is set forth in the SC.
- 6.3 Payment for Additional** For the purposes of determining the remuneration due for additional services as may be agreed under Services Clause 2.4, a breakdown of the lump-sum price is provided in Appendices D and E.
- 6.4 Terms and Conditions of Payment** Payments will be made to the account of the Bidder and according to the payment schedule stated in the SC. Unless otherwise stated in the SC, the first payment shall be made against the provision by the Bidder of a bank guarantee for the same amount and shall be valid for the period stated in the SC. Any other payment shall be made after the conditions listed in the SC for such payment have been met and the Bidder has submitted an invoice to the Client specifying the amount due.
- 6.5 Interest on Delayed Payment** Payment shall be made within thirty (30) days of receipt of invoice and the relevant documents specified in Clause 6.4. If the Client has delayed payments beyond thirty (30) days after the due date hereof, simple interest shall be paid to the Bidder for each day of delay at a rate three percentage points above the prevailing Central Bank of Kenya's average rate for base lending .

7. Settlement of Disputes

- 7.1 Amicable Settlement** The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.
- 7.2 Dispute Settlement** If 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 shall be referred by either Party to mediation subject to both parties agreeing on the

choice of mediator within (14) days, failure to which the dispute shall be referred to arbitration by a sole Arbitrator, who shall be appointed by the Chairman of the Chartered Institute of Arbitrators, Kenya Chapter and agreed upon by both parties on the request of the applying party. The seat of the Arbitration shall be Nairobi, Kenya.

Appendix H

CONTRACT FORM

THIS AGREEMENT made the _____ day of _____ 2018 between **Communications Authority of Kenya** (hereinafter called “the Employer”) of the one part and _____ (hereinafter called “the Bidder”) of the other part:

WHEREAS the Employer invited tenders for certain goods and ancillary services, viz., provide the Services and has accepted a tender by the Bidder for the provision of the services in the sum of _____

_____ (words) _____ [figures] (hereinafter called “the Contract Price”).

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 referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz:
 - (a) The Tender Form and the Price Schedule submitted by the Tenderer;
 - (b) The schedule of Requirements;
 - (c) The General Conditions of Contract;
 - (d) The Special Conditions of Contract; and
 - (e) The Employer’s Notification of Award and Bidders’ letter of Acceptance.
3. In consideration of the payments to be made by the Employer to the Bidder, the Bidder hereby covenants with the Employer to provide the services in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Bidder in consideration of the provision of the services, 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 Bidder undertakes to perform the services with the highest standards of proficiency and ethical competence and integrity.

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

SIGNED FOR AND ON BEHALF OF THE COMMUNICATIONS AUTHORITY OF KENYA

DIRECTOR-GENERAL)
)
In the presence of:)
)

DIRECTOR/LEGAL SERVICES)

SIGNED FOR AND ON BEHALF OF

DIRECTOR)
)
In the presence of:)
)

SECRETARY)

Appendix I

PERFORMANCE BANK GUARANTEE

(To be on the letterhead of the Bank)

To: Communications Authority of Kenya
Waiyaki Way
P.O. Box 14448, 00800
NAIROBI. Kenya.

WHEREAS _____ [name of Bidder]
(hereinafter called “the Bidder”) has undertaken, in pursuance of Contract No. _____ dated _____ 2018 to provide _____ (hereinafter called “the Contract”).

AND WHEREAS it has been stipulated by you in the said Contract that the Bidder shall furnish you with a bank guarantee by a reputable bank for the sum specified therein as security for compliance with the Bidder’s performance obligations in accordance with the Contract.

AND WHEREAS we have agreed to give the Bidder a guarantee:

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the Contractor, up to a total of **(5% of BID PRICE)**.

_____ (words) _____ (figures), and we undertake to pay you, upon your first written demand declaring the Bidder to be in default under the Contract and without cavil or argument, any sum or sums within the limits of _____ as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

The guarantee is valid until the _____ day of _____ 2018.

Signature and seal of the Guarantors

[name of bank]

[address]

[date]