



**REQUEST FOR PROPOSALS FOR
PROVISION OF CONSULTANCY SERVICES
FOR THE STUDY ON OVER-THE-TOP (OTTs)
TECHNOLOGIES/SERVICES IN KENYA**

TENDER NO: CA/PROC/RFP/11/2018-2019

SUBMISSION DEADLINE

9th JANUARY 2019 AT 10:30 AM

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

SECTION A: INVITATION TO TENDER

REQUEST FOR PROPOSALS FOR PROVISION OF CONSULTANCY SERVICES FOR THE STUDY ON OVER-THE-TOP (OTTs) TECHNOLOGIES/SERVICES IN KENYA: CA/PROC/RFP/11/2018-2019.

The Communications Authority of Kenya (CA) is the regulatory authority for the communications sector in Kenya with regulatory oversight over the provision of telecommunications; radio communications; broadcasting; electronic transactions; the country's numbering and frequency spectrum resources as well as postal services. The Authority is also charged with the protection of consumers of these services.

To achieve this mandate, the Authority under its strategic objective of enabling widespread deployment of infrastructure and services through promotion of rollout of new and emerging technologies by removing regulatory impediments, plans to undertake a study to determine the regulatory mechanisms that can be employed to cater for new emerging areas with specific focus on over the top (OTT) services, and thereafter propose the approach that the Authority can take in order to address this emerging area.

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 Kshs. 1,000.00 or The tender document can also be accessed and downloaded from the IFMIS Supplier Portal: <http://supplier.treasury.go.ke> and the Authority's website: www.ca.go.ke. *free of charge* The 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.

Prices quoted should be net inclusive of all taxes and delivery costs. The quotation must be expressed in Kenya shillings and shall remain valid for period of (150) days from the closing date of the tender. Duly completed RFP documents, in a plain sealed envelope marked; **CA/PROC/RFP/11/2018-2019 “REQUEST FOR PROPOSAL FOR PROVISION OF CONSULTANCY SERVICES FOR THE STUDY ON OVER-THE-TOP (OTTs) TECHNOLOGIES /SERVICES IN KENYA”** 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.**

**Head of procurement,
Communications Authority of Kenya,
P.O. Box 14448,
Nairobi 00800.
Tel: 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 for** Consultancy services for the study on over-the top (OTTs) technologies/services in Kenya.
- (ii) **Financial proposal for** Consultancy services for the study on over-the top (OTTs) technologies/services in Kenya.

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

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 certified 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 separate Technical Proposal and Financial Proposal. These submissions should be accompanied by respective cover letters in the format shown in <i>appendix B</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 govern.</p> <p>Bidders are required to serialized the tender document in a format of 0001.....up to the last page as provided for in the PPDA Act 2015 section 74 (i)</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> |

| NO. | Heading | Notes |
|-----|--|--|
| | | and clearly marked, “DO NOT OPEN, EXCEPT IN THE PRESENCE OF AUTHORIZED OFFICERS OF THE 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) similar consultancies on over-the-top technologies/services or in ICT related to this assignment that the firm has undertaken in the last 5 years. Use the format shown in <i>appendix C</i> to list the assignments done. |
| 3. | Company Proposal | A proposed methodology by the bidder on how it intends to undertake this project the detailed ToRs are at <i>appendix A</i>): |
| 4. | Staff Qualifications | Bidders shall provide CVs and testimonials of at least four (4) key staff who shall be directly involved in the project. Use the format in <i>appendix D</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 | <p>Bidders shall express the price of their services to the Authority for this project in Kenya Shillings (KES).</p> <p>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>section D</i> to structure the financial proposal.</p> <p>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.</p> |

1.4. Evaluation of Technical Proposals

| NO. | Heading | Notes |
|-----|--|---|
| 1. | Evaluation of Technical Proposals | <p>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 Proposals shall be opened in accordance with the timelines of this tender. n.</p> <p>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.</p> <p>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.</p> <p>The minimum technical score required to qualify to proceed to the financial evaluation stage is 60/80.</p> <p>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.</p> |

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 II</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 after signing 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 1 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 tenders presented 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 Evaluation - 80%
- iii. Financial Proposal - 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. | Company profile (Company history, contacts and services) |
| 2. | Certificate of business incorporation/registration of the firm in the domicile country/copy of partnership deed. |
| 3. | CR12 or equivalent document indicating shareholders/partners and the Directors with their contact details |
| 4. | A copy of a valid tax compliance certificate from the firm's domicile country |

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

ii. Technical Evaluation Criteria and Scores

The bidders that will qualify at the mandatory evaluation stage shall be subjected to the technical evaluation criteria. 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.

| Criteria | Maximum Score |
|--|---------------|
| <p>1. Experience of the Firm</p> | |
| <p>Bidders must provide a description of at least three (3) assignments undertaken in the last five (5) years where bidder provided similar consultancy studies in the ICT sector with at least one (1) of the assignments having been carried out for a Regulator.</p> <p><i>{5 marks for a assignment carried out for a Regulator (Max. 5 marks)</i></p> <p><i>3 marks each for assignment carried out for any other two (2) firms (Max. 6 marks)}</i></p> <p style="text-align: right;">(Max. 11 Marks)</p> <p>Out of the three (3) assignments submitted above, bidders must detail the organization name and address, contact person(s), contact details, contract amount and a detailed outline of the assignment.</p> <p><i>{2 marks each for the organization name and address, contact person(s), contact details, contract amount and a detailed outline of the assignments}</i></p> <p style="text-align: right;">(Max. 6 Marks)</p> <p>Reference of similar studies on ICTs and/ or Telecommunication technologies for regulatory oversight .Accessibility to such reports, either from a website or as preferred by the bidder, in ICTs and/ or Telecommunication Technologies will be an added advantage<i>{2 marks for similar studies on ICTs and/or Telecommunications technologies for regulatory oversight and accessibility to such reports}</i></p> <p style="text-align: right;">(Max. 2 Marks)</p> <p>Bidders must submit three (3) recommendation letters from the firms listed above.</p> <p><i>{3 marks for each recommendation letter from reference site x 3 sites}</i></p> <p style="text-align: right;">(Max. 9 Marks)</p> | 28 |
| <p>2. Methodology and Work plan</p> | |
| <p>Bidders must submit a description of the methodology and work plan (Gantt chart) for performing the assignment which must contain at least the following:</p> <ol style="list-style-type: none"> i. Detailed activities and milestones, ii. Timelines, and iii. Resources required. <p><i>{Adequacy of the proposed work plan and methodology detailing estimated staff inputs-time needed to carry out the assignment, showing the time proposed for each professional staff team member }</i></p> <p style="text-align: right;">(Max. 10 Points)</p> <p><i>{Understanding the TORs and Consultant’s initiatives and comments on the TORs Comments on how the bidder shall meet the Terms of Reference, deliver the deliverables and any additional inputs}</i></p> | 20 |

| Criteria | Maximum Score |
|---|---------------|
| (Max. 10 Marks) | |
| 3. Human Resource Capacity | |
| <p>Bidders must submit a list of proposed Project staff team by specialty, the tasks that would be assigned to each staff team member and the timings.</p> <p>a) Lead Consultant:</p> <p>Minimum qualifications and competence of the Lead Consultant must be at least a Master degree in ICT related field, Telecommunications, Engineering, ICT Regulation or other relevant field.</p> <p>Relevant Experience:</p> <ul style="list-style-type: none"> i. At least 10 years’ experience in an ICT field and/or Telecommunication, Technology/Policy and Regulation ii. Demonstrable experience in ICT or related technology studies. Experience in telecommunication technology study is an advantage <p><i>{2 marks for CV; 3 marks for Masters Degree certificate; 5 marks for minimum Ten (10) years’ experience in ICT field and/or Telecommunication, Technology/policy and Regulation 4 marks for Experience in telecommunication technology study}</i></p> <p style="text-align: right;">(Max. 14 Marks)</p> <p>b) Other consultants:</p> <p>Minimum qualifications and competence of at least three (3) personnel who will support implementation of the assignment must be at least a University degree and at least four (4) years’ consultancy experience in ICT related field, Telecommunications, Engineering, ICT Regulation or other relevant field. A Master degree is an added advantage;</p> <p>Relevant Team Experience:</p> <ul style="list-style-type: none"> i. Consultancy on ICTs and/ or telecommunication technologies <p><i>{1.5 marks for each CV (Max. 4.5 marks), 1.5 marks for a University certificate for each of the consultants (Max. 4.5 marks), 3 marks for minimum of four (4) years’ experience for each of the consultants (Max. 9 marks)}</i></p> <p style="text-align: right;">(Max. 18 Marks)</p> | 32 |
| Total | 80 |

iii. Financial Evaluation and Scores

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

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 un-priced 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.

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 at the conclusion of the contract and the same shall not be negotiable.

| No. | Work Description | Percentage of Tender Sum | Amount (KES) |
|-----|------------------|--------------------------|--------------|
| | | | |
| | | | |
| | Total | 100% | |

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

The evaluation committee shall thereafter compute the financial scores out of 20 points using the following formula:

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

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 consultancy 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.

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.

Bidder's Total Scores = Bidder's Technical Scores + Bidder's Financial Scores

The Bidder with the highest total scores will be declared the winner of the contract.

1.7. Negotiations

1.7.1. Negotiations will be held at the CA Centre, along Waiyaki Way, with the aim of reaching an agreement on all points and sign a contract.

1.7.2. Unless there are exceptional reasons, the financial negotiations will not involve the remuneration rates for staff (no breakdown of fees).

1.7.3. Having selected the firm on the basis of, among other things, an Evaluation of proposed key professional staff, the Authority expects to negotiate a contract on the basis of the experts named in the proposal. Before contract negotiations, the Authority will require assurances that the experts will be actually available. The Authority 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.

1.7.4. The negotiations will conclude with a review of the draft form of the Contract. To complete negotiations the Authority and the selected firm will initial the agreed Contract. If negotiations fail, the Authority will invite the firm whose proposal received the second highest score to negotiate a contract.

1.8. Award of Contract

1.8.1 The Contract will be awarded following negotiations. After negotiations are completed, the Authority 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.

1.8.2 The selected firm is expected to commence the assignment on the date and at the location as specified by the Authority.

1.9. Performance Bond

The selected firm shall within Seven (7) days from the date of executing the Contract Agreement furnish Communications Authority of Kenya with a Performance Bond that will remain valid for Thirty (30) days beyond the duration of this Agreement or any termination thereof and whose value shall be equivalent to **5% of the Contract Value** and to be provided before execution of contract.

The proceeds of the performance Bond shall be payable to Communications Authority of Kenya as compensation for any delay or damage resulting from failure by the firm to fulfill its obligations hereunder.

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.

The Performance Bond will be discharged by Communications Authority of Kenya and returned to the firm not later than Ninety (90) days following the expiry of this Agreement or earlier termination.

2.0 Confidentiality

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.

APPENDIX “A”

Clause Reference

- 2.1 The name of the Client is:
Communications Authority of Kenya
- 1.2 The method of selection is: **Quality and Cost Based selection method**
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.**
- 1.4 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**
- 1.5 (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 -4 years
- 1.6 (ii) Training is a specific component of this assignment:
No
- (viii) Additional information in the Technical Proposal includes:
N/A
- 1.7 Taxes: All taxes to be included in the financial proposal.
- 1.8 Consultants must submit an original and two (2) additional copies of each proposal. Bidders shall submit **separate Technical Proposal and Financial Proposal**. These submissions should be accompanied by respective cover letters in the format shown in *appendix B*.

- 4.2 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 govern.
- 4.3 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
- 4.4 Bidders are required to serialized the tender document in a format of 0001.....up to the last page as provided for in the PPDA Act 2015 section 74 (i).
- 4.5 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.

SECTION C: - TECHNICAL PROPOSAL – STANDARD FORMS

The following sample formats have been attached:

- i) Technical Proposal submission form.
- ii) Firm's references.
- iii) Comments and suggestions of consultants on the Terms of Reference and on data, services and facilities to be provided by the Authority.
- iv) Description of the methodology and work plan for performing the assignment.
- v) Team composition and task assignments.
- vi) Format of curriculum vitae (CV) for proposed professional staff.
- vii) Time schedule for professional personnel.
- viii) Activity (work) schedule.

All firms must submit the above forms.

1. Technical Proposal Submission Form

[_____ *Date*]

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

Ladies/Gentlemen:

We, the undersigned, offer to provide the consultancy 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. FIRM'S REFERENCES

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

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

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

Firm's Name: _____

Name and title of signatory; _____

Repeat the above for assignment 2 & 3.

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

On the Terms of Reference:

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

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

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

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

5. TEAM COMPOSITION AND TASK ASSIGNMENTS

1. Technical/Managerial Staff

| Name | Position | Task |
|------|----------|------|
| | | |
| | | |
| | | |
| | | |
| | | |

2. Support Staff

| Name | Position | Task |
|------|----------|------|
| | | |
| | | |
| | | |
| | | |

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

Details of staff 1

Proposed

Position: _____

Name of

Firm: _____

Name of

Staff: _____

Profession:

Date of

Birth: _____

Years with Firm: _____

Nationality: _____

Membership in Professional

Societies: _____

Detailed Tasks

Assigned: _____

Key Qualifications:

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

Education:

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

Employment Record:

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

Certification:

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

_____ Date:

[Signature of staff member]

Date; _____

[Signature of authorized representative of the firm]

Full name of staff member: _____

Full name of authorized representative: _____

Repeat the same for staff 2 & 3

7. TIME SCHEDULE FOR PROFESSIONAL PERSONNEL

Weeks (in the Form of a Bar Chart)

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

Reports Due: _____

Activities Duration: _____

Signature: _____

(Authorized representative)

Full Name: _____

Title: _____

Address: _____

8. ACTIVITY (WORK) SCHEDULE

(a). Field Investigation and Study Items

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

| | 1 st | 2 nd | 3 rd | 4 th | 5 th | 6 th | 7 th | 8 th | 9 th | 10 th | 11 th | 12 th | |
|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|------------------|------------------|------------------|--|
| | | | | | | | | | | | | | |
| Activity (Work) | | | | | | | | | | | | | |
| | | | | | | | | | | | | | |
| <hr/> | | | | | | | | | | | | | |
| <hr/> | | | | | | | | | | | | | |
| <hr/> | | | | | | | | | | | | | |

(b). Completion and Submission of Reports

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

SECTION D: FINANCIAL PROPOSAL – STANDARD FORMS

The following sample formats for the Financial Proposal have been attached:

- i) Financial Proposal submission form.
- ii) Summary of costs.
- iii) Breakdown of price per activity.
- iv) Breakdown of remuneration per activity.
- v) Reimbursable per activity.
- vi) Miscellaneous expenses.

i. FORM OF TENDER- *SUBMITTED WITH FINANCIAL PROPOSAL*

FROM-----

DATE -----

To: -----

RE: REQUEST FOR PROPOSAL (RFP) FOR PROVISION OF CONSULTANCY SERVICES FOR THE STUDY ON OVER-THE-TOP (OTTs) TECHNOLOGIES/SERVICES IN KENYA

In accordance with Tender Number ----- Date-----

I/We-----

Tender an amount of Kshs.-----

In accordance with the attached tender forms / conditions of tender / schedule of requirements and in conformity with the scheduled delivery arrangements stated.

I/We understand that the Authority reserves the right to accept or reject this tender for any reason it considers justifiable.

I/We agree that the terms of this tender will remain valid for and will not be withdrawn for a period of----- days from the final date of submission of tender.

In the event of this tender being accepted within the stipulated -----days; I/We agree to provide consultancy services as indicated in this tender to be quoted delivery dates and failure on my/our part to meet these requirements constitutes a breach on contract.

Witnessed by-----
 Address-----
 Signature of Witness-----
 Date-----

Tenderer's Name-----
 Tenderer's Signature-----
 Tenderer's designation-----
 Full address-----
 Telephone No-----
 Telegraphic Address-----
 Date-----

ii. SUMMARY OF COSTS

| Costs | Currency(ies) | Amount(s) | |
|------------------------------------|---------------|-----------|--|
| Subtotal | | | |
| Taxes | | | |
| Total Amount of Financial Proposal | | _____ | |

iii. BREAKDOWN OF PRICE PER ACTIVITY

| | |
|------------------------|--------------------|
| Activity NO.: _____ | Description: _____ |
| Price Component | Amount(s) |
| Remuneration | |
| Reimbursable | |
| Miscellaneous Expenses | |
| Subtotal | _____ |

iv. BREAKDOWN OF REMUNERATION PER ACTIVITY

| Activity No. _____ Name: _____ | | | | |
|--------------------------------|----------|--|----------------------|--------|
| Names | Position | Input(Staff months, days or hours as appropriate.) | Remuneration Rate | Amount |
| Regular staff (i) (ii) | | | | |
| Consultants | | | | |
| Grand Total | | | | |

v. REIMBURSABLE PER ACTIVITY

Activity No: _____ Name: _____

| No. | Description | Unit | Quantity | Unit Price | Total Amount |
|-----|-----------------------|------|----------|------------|--------------|
| 1. | Air travel | Trip | | | |
| 2 | Road travel | Kms | | | |
| 3. | Rail travel | Kms | | | |
| 4. | Subsistence Allowance | Day | | | _____ |
| | Grand Total | | | | |

vi. MISCELLANEOUS EXPENSES

Activity No _____ Activity Name: _____

| No. | Description | Unit | Quantity | Unit Price | Total Amount |
|-----|--|------|----------|------------|--------------|
| 1. | Communication costs _____ _____ (telephone, telegram, telex) | | | | |
| 2. | Drafting, reproduction of reports Equipment: computers etc. | | | | |
| 3. | Software | | | | |
| 4. | Grand Total | | | | _____ |

SECTION E.

TERMS OF REFERENCE (TORS) FOR THE CONSULTANCY SERVICES FOR THE STUDY ON OVER-THE-TOP (OTTs) TECHNOLOGIES/SERVICES IN KENYA .

1. INTRODUCTION

The Communications Authority of Kenya (CA) is the regulatory authority for the communications sector in Kenya with regulatory oversight over the provision of telecommunications; radio communications; broadcasting; electronic transactions; the country's numbering and frequency spectrum resources as well as postal services. The Authority is also charged with the protection of consumers of these services.

To achieve this mandate, the Authority under its strategic objective of enabling widespread deployment of infrastructure and services through promotion of rollout of new and emerging technologies by removing regulatory impediments, shall undertake a study to determine the regulatory mechanisms that can be employed to cater for new emerging areas with specific focus on over the top (OTT) services, and propose the approach that the Authority can take in order to address this emerging area.

The study will unveil the level of adoption and impact of the OTTs in the various Regulatory markets segments and inform the best regulatory approach to be adopted in Kenya.

2. TERMS OF REFERENCE AND DELIVERABLES

2.1. Terms of Reference

1. The Authority seeks to engage a firm, for a period of approximately four (4) months to provide consultancy services on OTT study.
2. To accomplish this task, the Consultant will be required to adhere to the Terms of Reference stated below, and where necessary expand the scope:
 - a) To establish the scope of emerging OTTs, the level of adoption of OTTs in Kenya and other parts of the world, in telecoms, postal/courier (E – Commerce), broadcast and other relevant sub-sectors, as well as factors influencing consumer choice.
 - b) To examine and review the impact OTTs on different concerns in the industry (including but not limited to Telecoms, Postal/Courier and Broadcast sectors), inter alia:
 - i) Regulatory Imbalance
 - ii) Revenue Loss/negative impact on the national economy
 - iii) Security Concerns
 - iv) Data Privacy concerns
 - v) Non-assurance of Quality of Service (QoS)
 - vi) Lack of Directory Services and Emergency Services
 - vii) Non Regulation of OTT Broadcasting Content
 - viii) Non Regulation of OTT telecoms services
 - ix) Copyright concerns

- x) Privacy concerns
 - c) To examine and determine the effect of OTT services on business models of other traditional service providers such as telecommunications operators, broadcasters, Postal and postal/courier operators in terms of competition, market development and revenue streams as well as impact on government revenues accruing from taxes.
 - d) To determine the challenges of telecommunication, and broadcasting, postal and courier Regulatory frameworks in Kenya on OTTs and vice versa.
 - e) To establish the impact of Net Neutrality concept on the adoption or otherwise of OTTs
 - f) To establish emerging challenges that regulators may face in regulating OTTs and mitigation measures to be undertaken to address the challenges.
 - g) To make appropriate recommendations on regulating OTT broadcasting content, Intellectual Property Rights (IPR) concerns, and Net neutrality aspects of OTTs.
 - h) To make appropriate recommendations on regulating Telecoms, Postal and courier OTTs concerns and Net neutrality aspects of OTTs.
 - i) To advise on how OTT platforms can be used to promote local innovations such as how to make local apps/content more accessible on such platforms.
 - j) To make appropriate recommendations on the basis of the study findings, on the best regulatory approaches that may be employed to address OTTs coexistence with traditional telecoms providers, broadcast providers, Postal and courier Operators
3. The output of this market study should include both short-term and long-term solutions.

3.1.0 Expected deliverables (Outputs)

- a) Inception Report
 - i) The purpose of this report is to present an overview of the current status of OTTs rollout in Kenya, their impact on existing licensed players markets including financial implication.
 - ii) This report shall also examine the adequacy of the Authority's regulatory framework in regard to new and emerging technologies in the country.
 - iii) The report shall also give a comprehensive comparative analysis of the recent developments or initiatives to regulate new emerging areas including OTTs in Kenya, other countries in the region and the world at large.
 - iv) The consultant is expected to outline the methodology to be used in carrying out the study and provide a justification as to why undertaking the study is necessary for the development of the sector.
- b) Progress reports
 - (i) The consultant will appraise the Authority on the progress of the study through regular reports after every milestone.
- c) Interim Report

- (i) This will be a draft final report on the level of adoption of OTTs in Kenya, proposed possible regulatory mechanisms that can be employed to cater for over the top (OTT) services and generally new emerging technologies and proposes the approach that the Authority can take in order to address the OTTs and other emerging areas.
- (ii) This report will present both qualitative and quantitative findings of the study in adherence with set Terms of Reference (TOR) as outlined by the Authority. The consultant(s) may be expected to present this report in the final workshop attended by stakeholders.

d) Final Report

- (i) The final report will be developed as per the TORs and will have addressed any comments emanating from the Authority and other stakeholders.

4. Competence and Experience

The bidder should have practical experience in undertaking empirical research, national surveys, qualitative and quantitative analysis. The bidder will be required to provide evidence of past experience in carrying out large surveys in public/private settings. Knowledge of legacy and emerging systems in the ICT sector hinging on over the top technologies shall be an added advantage.

5.0 Project Duration

The project is expected to take a maximum of four (4) months

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) "Authority" means the Communications Authority of Kenya.
- ((c) "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;
- ((d) "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;
- ((e) "Contract Price" means the price to be paid for the performance of the Services in accordance with Clause 6 here
- ((f) "Foreign Currency" means any currency other than the Kenya Shilling;
- ((g) "GC" means these General Conditions of Contract;
- ((h) "Government" means the Government of the Republic of Kenya;
- ((i) "Local Currency" means the Kenya Shilling;
- ((j) "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;

- ((k) "Party" means the Client or the Bidder, as the case may be and "Parties" means both of them;
- ((l) "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;
- ((m) "SC" means the Special Conditions of Contract by which the GC may be amended or supplemented;
- ((n) "Services" means the work to be performed by the Bidder pursuant to this Contract, as described in Appendix A; and
- ((o) "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 (21) 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** The failure of a Party to fulfill any of its obligations under

of Contract 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. 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 Key Personnel and Sub Bidders listed by title as well as by name in Section C are hereby approved by the Client.

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

- (a) Except as the Client may otherwise agree, no changes shall be made in the Key Personnel. If for any reason beyond the reasonable control of the 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.

- (a) 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 F.

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** 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 part

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]

