



**REQUEST FOR PROPOSALS FOR PROVISION OF
BASELINE SURVEY FOR POSTAL & COURIER
SERVICES IN KENYA**

TENDER NO: CA/PROC/RFP/03/2019-2020

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 FOR PROVISION OF BASELINE SURVEY FOR POSTAL & COURIER SERVICES IN KENYA: CA/PROC/ RFP/03/2019-2020.

The Communications Authority of Kenya (CA) is the regulator of the ICT industry with the mandate to oversee telecommunications, e-commerce, broadcasting and postal/courier services. CA is also responsible for managing the country's numbering and frequency spectrum resources.

The Authority is seeking the services of a firm to undertake the above-mentioned services as detailed in the tender documents.

You are invited to collect the tender documents from the Provision of Baseline Survey for Postal & Courier Services in Kenya at 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://www.tenders.go.ke/website/tenders/Index> and the Authority's website: www.ca.go.ke. 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.

Duly completed RFP documents, in a plain sealed envelope marked; **“FOR PROVISION OF BASELINE SURVEY FOR POSTAL & COURIER SERVICES IN KENYA: CA/PROC/ RFP/03/2019-2020**, 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 **23rd October, 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** for provision of baseline Survey on postal and courier services in Kenya.
- (ii) **Financial proposal** for provision of baseline Survey on postal and courier services in Kenya.

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: - INSTRUCTION TO TENDERERS

- . 2.1.1 This Invitation to tender is open to all Research Consultant Firms eligible as described in the instructions to Tenderers. Successful Tenderers shall provide the services for the stipulated duration from the date of commencement (hereinafter referred to as the term) specified in the tender documents.
- . 2.1.2 The Communications Authority's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender unless where specially allowed under section 131 of the Act.
- . 2.1.3 Tenderers shall provide the qualification information statement that the Tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Communications Authority of Kenya (CA) to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the services under this Invitation for tenders.
- . 2.1.4 Tenderers involved in corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

2.2 Cost of Tendering

- . 2.2.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the CA, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- . 2.2.2 The bid document shall be downloaded from the CA website free of charge.
- . 2.2.3 The CA shall allow the Tenderer to review the tender document free of charge before purchase.

2.3 Contents of Tender Document

- 2.3.1 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tender documents. Failure to furnish all information required by the tender documents or to submit a tender not substantially responsive to the tender documents in every respect will be at the Tenderers risk and may result in the rejection of its tender.

2.4 Clarification of Documents

2.4.1 A prospective candidate making inquiries of the tender document may notify the CA in writing or by post, fax or email at the entity's address indicated in the Invitation for tenders. The CA will respond in writing to any request for clarification of the tender documents, which it receives no later than seven (7) days prior to the deadline for the submission of tenders, prescribed by the CA. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective Tenderers who have received the tender documents".

. 2.4.2 The CA shall reply to any clarifications sought by the Tenderer within 3 days of receiving the request to enable the Tenderer to make timely submission of its tender.

2.5 Amendment of Documents

. 2.5.1 At any time prior to the deadline for submission of tenders, the CA, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Tenderer, may modify the tender documents by issuing an addendum.

2.6 Language of Tender

2.6.1 The tender prepared by the Tenderer, as well as all correspondence and documents relating to the tender exchanged by the Tenderer and the CA, shall be written in English language. Any printed literature furnished by the Tenderer may be written in another language provided they are accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the tender, the English translation shall govern.

2.7 Tender Prices

2.7.1 The Tenderer shall indicate on the Price schedule the unit prices where applicable and total tender prices of the services it proposes to provide under the contract.

2.7.2 Prices indicated on the Price Schedule shall be the cost of the services quoted including all customs duties and VAT and other taxes payable:

2.7.3 Prices quoted by the Tenderer shall be fixed during the Tenderer's performance of the contract and not subject to variation on any account. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected,

2.7.4 Contract price variations shall not be allowed for contracts not exceeding One year (12 months).

Where contract price variation is allowed, the variation shall not exceed 25% of the original contract price. The variation can only be applicable after one year

2.8 Tender Currencies

2.8.1 Prices shall be quoted in Kenya Shillings unless otherwise specified in the Appendix to Instructions to Tenderers.

2.9 Tenderers Eligibility and Qualifications

2.9.1 The Tenderer shall furnish, as part of its tender, documents establishing the Tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.

2.9.2 The documentary evidence of the Tenderers qualifications to perform the contract if its tender is accepted shall establish to the CA's satisfaction that the Tenderer has the financial and technical capability necessary to perform the contract.

2.9.3 Tender Security

2.9.3.1 The Tenderer shall furnish, as part of its tender, a tender security for the amount and form specified in the Invitation to tender. The tender security shall be in the amount not exceeding 2 per cent of the tender price.

2.9.3.2 The tender security is required to protect the CA against the risk of Tenderer's conduct which would warrant the security's forfeiture.

2.12.4 The tender security shall be denominated in a Kenya Shillings or in another freely convertible currency and shall be in the form of:

- a) A bank Guarantee.
- b) Cash.
- c) Such Insurance Guarantee Approved by the Authority.
- d) Letter of Credit.
- e) A guarantee by a deposit taking microfinance institution, Sacco Society , the Youth Enterprise development fund or the Women Enterprise Fund

2.9.5 Any tender not secured will be rejected by the CA as non-responsive.

2.9.6 Unsuccessful Tenderer's security will be discharged or returned as promptly as soon as possible but not later than thirty (30) days after the expiration of the period of

tender validity prescribed by the CA.

- . 2.9.7 The successful Tenderer's tender security will be discharged upon the Tenderer signing the contract, and furnishing the performance security..
- . 2.9.8 The tender security may be forfeited:
 - . (a) If a Tenderer withdraws its tender during the period of tender validity specified by the CA on the Tender Form; or
 - . (b) In the case of a successful Tenderer, if the Tenderer fails:
 - . (i) to sign the contract or
 - . (ii) to furnish performance security in accordance with paragraph 31. .

2.10 Validity of Tenders

- . 2.10.1 Tenders shall remain valid for 150 days or as specified in the invitation to tender after date of tender opening prescribed by the CA,. A tender valid for a shorter period shall be rejected by the CA as nonresponsive.
- . 2.10.2 In exceptional circumstances, the CA may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided shall also be suitably extended. A Tenderer may refuse the request without forfeiting its tender security. A Tenderer granting the request will not be required nor permitted to modify its tender.

2.11 Format and Signing of Tender

- . 2.11.1 The Tenderer shall prepare two copies of the tender, clearly marking each "**ORIGINAL TENDER**" and "**COPY OF TENDER,**" as appropriate. In the event of any discrepancy between them, the original shall govern.
- . 2.11.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the Tenderer or a person or persons duly authorized to bind the Tenderer to the contract. All pages of the tender, except for unamended printed literature, shall be initialed by the person or persons signing the tender.
- . 2.11.3 The tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the Tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

2.12 Sealing and Marking of Tenders

- . 2.12.1 The Tenderer shall seal the original and each copy of the tender in separate envelopes, duly marking the envelopes as “**ORIGINAL**” and “**COPY.**” The envelopes shall then be sealed in an outer envelope. The inner and outer envelopes shall: (a) be addressed to the CA at the address given in the invitation to tender (b) bear, tender number and name in the invitation to tender and the words: “**Do not open before Wednesday 23rd September, 2019 at 10.30 a.m**”
- . 2.12.2 The inner envelopes shall also indicate the name and address of the Tenderer to enable the tender to be returned unopened in case it is declared “late”.
- . 2.12.3 If the outer envelope is not sealed and marked as required the CA will assume no responsibility for the tender’s misplacement or premature opening.

2.12.4 Deadline for Submission of Tenders

- . 2.12.5 Tenders must be received by the CA at the address specified no later than **Wednesday 23rd October 2019 at 10.30 a.m**”.
- . 2.12.6 The CA may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents, in which case all rights and obligations of the CA and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.
- . 2.12.7 Bulky tenders which will not fit in the tender box shall be received by the CA’s head of Procurement who will provide custody until the date of the tender opening.

2.13 Modification and Withdrawal of Tenders

- . 2.13.1 The Tenderer may modify or withdraw its tender after the tender’s submission, provided that written notice of the modification , including substitution or withdrawal of the tender’s is received by the CA prior to the deadline prescribed for the submission of tenders.
- . 2.13.2 The Tenderer’s modification or withdrawal notice shall be prepared, sealed, marked, and dispatched. A withdrawal notice may also be sent by cable, but followed by a signed confirmation copy, postmarked no later than the deadline for submission of tenders.
- . 2.13.3 No tender may be modified after the deadline for submission of tenders.

- . 2.13.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the Tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the Tenderer's forfeiture of its tender security.
- . 2.13.5 The CA may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- . 2.13.6 The CA shall give prompt notice of the termination to the Tenderers and on request give its reasons for termination within 14 days of receiving the request from any Tenderer.

2.14 Opening of Tenders

2.18.1 The CA will open all tenders in the presence of Tenderers' representatives who choose to attend, at 10.30.am on Wednesday 23rd October, 2019 at 10.30 a.m'' and in the location specified in the invitation to tender. The Tenderers' representatives who are present shall sign a register evidencing their attendance.

- . 2.14.2 The Tenderers' names, tender modifications or withdrawals, tender prices, discounts, and the presence or absence of requisite tender security and such other details as the CA, at its discretion, may consider appropriate, will be announced at the opening.
- . 2.14.3 The CA will prepare minutes of the tender opening which will be submitted to the Tenderers that signed the tender opening register and will have made the request.

2.15 Clarification of Tenders

- . 2.15.1 To assist in the examination, evaluation and comparison of tenders the CA may at its discretion, ask the Tenderer for a clarification of its tender. The request for clarification and the response shall be in writing, and no change in the prices or substance shall be sought, offered, or permitted.
- . 2.15.2 Any effort by the Tenderer to influence the CA in the CA's tender evaluation, tender comparison or contract award decisions may result in the rejection of the Tenderers tender. Comparison or contract award decisions may result in the rejection of the Tenderers' tender.

2.16 Preliminary Examination and Responsiveness

- . 2.16.1 The CA will examine the tenders to determine whether they are complete, whether

any computational errors have been made, whether required securities have been furnished whether the documents have been properly signed, and whether the tenders are generally in order.

- . 2.16.2 The CA may waive any minor informality or nonconformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any Tenderer.
- . 2.16.3 Prior to the detailed evaluation, the CA will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one which conforms to all the terms and conditions of the tender documents without material deviations. The CA's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.
- . 2.16.4 If a tender is not substantially responsive, it will be rejected by the CA and may not subsequently be made responsive by the Tenderer by correction of the nonconformity.

2.17 Conversion to a Single Currency

2.17.1 where other currencies are used, CA will convert those currencies to Kenya shillings using the selling exchange rate on the date of tender closing provided by the central bank of Kenya.

2.18 Evaluation and Comparison of Tenders.

2.18.1 The CA will evaluate and compare the tenders, which have been determined to be substantially responsive, The comparison shall be of the price including all costs as well as duties and taxes payable on all the materials to be used in the provision of the services. The CA's evaluation of a tender will take into account, in addition to the tender price the technical specifications:

2.19 Tender Evaluation:

2.19.1 The tender evaluation committee shall evaluate the tender within 30 days from the date of opening the tender. To qualify for contract awards, the Tenderer shall have the following:-

- . (a) Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.

- . (b) Legal capacity to enter into a contract for procurement
- . (c) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing
- . (d) Shall not be debarred from participating in public procurement. .

2.20 Award of Contract

2.20.1 Post Qualification

2.20.2 In the absence of pre-qualification, the CA will determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily. The determination will take into account the Tenderer's financial and technical capabilities. It will be based upon an examination of the documentary evidence of the Tenderers qualifications submitted by the Tenderer, as well as such other information as the CA deems necessary and appropriate.

2.20.3 The CA will award the contract to the successful Tenderer whose tender has been determined to be substantially responsive and has been determined to be the responsive based on the evaluation criteria, the evaluated tender, provided further that the Tenderer is determined to be qualified to perform the contract satisfactorily.

2.20.4 The CA reserves the right to accept or reject any tender and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected Tenderer or Tenderers or any obligation to inform the affected Tenderer or Tenderers of the grounds for the CA's action. If the CA determines that none of the Tenderers is responsive; the CA shall notify each Tenderer who submitted a tender A Tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement

2.21 Notification of Intention for Award

- . 2.21.1 Prior to the expiration of the period of tender validity, the CA will notify the successful Tenderer in writing that its tender has been accepted.
- . 2.21.2 The notification of intention to award will NOT constitute the formation of the Contract but will have to wait until the contract is finally signed by both parties.
- . 2.21.3 Upon the successful Tenderer's furnishing of the performance security CA will promptly notify each unsuccessful Tenderer and will discharge its tender security.

2.22 Signing of Contract

- . 2.22.1 At the same time as the CA notifies the successful Tenderer that its tender has been accepted, the CA will simultaneously inform the other Tenderers that their tenders have not been successful.
- . 2.22.2 Within fourteen (14) days of receipt of the Contract Form, the successful Tenderer shall sign and date the contract and return it to the CA.
- . 2.22.3 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

2.23 Performance Security

- . 2.23.1 Within thirty (30) days of the receipt of notification of award from the CA, the successful Tenderer shall furnish the performance security in accordance with the Conditions of Contract, in the Performance Security Form provided in the tender documents, or in another form acceptable to the CA.
- . 2.23.2 Failure of the successful Tenderer to comply with the requirement shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the CA may make the award to the next lowest evaluated or call for new tenders.

2.24 Corrupt or Fraudulent Practices

- . 2.24.1 The CA requires that Tenderers observe the highest standard of ethics during the procurement process and execution of contracts. A Tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.
- . 2.24.2 The CA will reject a proposal for award if it determines that the Tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;
- . 2.24.3 Further, a Tenderer who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

3.0 Information Required from Each Bidder

3.1 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 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 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 AUTHORITY.”</p> <p>The completed Technical and Financial Proposals must be delivered at the Authority’s submission address on or before the closing date which is on 23rd October, 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.</p>
2.	Clarification and Amendments of RFP Tender	<p>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</p>

NO.	Heading	Notes
	Document	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.

3.2 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 survey that may be related to this assignment and the firm has undertaken in the last ten (10) 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 survey 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 four (4) key staff who shall be directly involved in the project. Use the format in <i>appendix D</i> to structure this part.

3.3 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 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 E</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 there shall be no correction of Arithmetical errors. Tender with arithmetic

No.	Heading	Notes
		errors will be considered nonresponsive and disqualified from the procurement process. 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.

3.4 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 Proposal shall be opened in accordance with the timelines of this tender.</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>

3.5 -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>
	Selection Method	<i>The proposal will be evaluated based on quality and cost based selection method QCBC.</i>

1.1. 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 F</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 seven (7) 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 G 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.	Provide CR12 or similar document for the firms in the joint venture/partnership showing ownership of the firm(s) or a certified list of shareholders/partners and the director with their contract details. <i>The tender is exclusively reserved to firms that are owned by Kenyans (One hundred percent (100%) shares).</i>
4.	Attach a copy of the certificate of incorporation or registration of the firm
5.	Attach a copy of a valid PIN certificate for the firm
6.	A copy of a valid KRA tax compliance certificate as at date of Tender opening
7.	Audited accounts for the last 3 years (2016,2017,and 2018)
8.	Must provide tender security of Kshs. 100,0000 in form of bank guarantee or a bank draft issued by a reputable bank located in Kenya or Insurance bond from the firms approved by PPRA.
9.	Duly filled, signed and stamped Anti-Corruption Declaration Form in the format provided under <i>Appendix H</i>
10.	Joint Venture Agreement signed by all parties, <i>in the case of a joint venture the lead firm must be Kenyan owned and will be evaluated on mandatory and financial requirements while the other firm will be evaluated on technical requirements.</i>

Failure to submit any one of the above mandatory 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.

No.	Criteria	Weight
1	Experience of the Firm (bidder)	
(a).	<p>a) The Bidder should demonstrate experience in undertaking research activities on a national scale. The Bidder MUST provide a detailed description of at least three (3) assignments of similar scope done in the past ten (10) years providing the name/title of the assignments, detailed description of the baseline surveys, name and contact details of organization that commissioned the survey, contact persons of the said organization and resource persons used in the assignment.</p> <p><i>1 mark for each survey up to a max of 3 studies</i></p> <p>b) The Bidder MUST provide a detailed description of two (2) ICT related research studies in the last five (5) years providing the name/title of the assignments, detailed description of the baseline surveys, name and contact details of organization that commissioned the study, contact persons of the said organization and resource persons used in the assignment.</p> <p>The Bidder MUST provide two (2) letters of recommendation for studies mentioned in (b) above</p> <p><i>3 marks for each ICT related study up to a maximum of two ICT studies</i></p> <p><i>2 marks for each recommendation letter up to a max of 2 recommendation letters for the (ICT related) studies mentioned in (b) above</i></p>	15
	<p>c) Scope of projects undertaken (State the value terms against each client detailed in a and b above</p> <p>Average Value: > KES. 10,000,000.00 (Max Score: 2 Marks)</p> <p>Average Value: >KES. 5,000,000.00- KShs. 10,000,000.00 (Max Score: 1.5 Marks)</p> <p>Average Value: < KES. 5,000,000.00 (Max Score: 0.5 Marks)</p>	
2	Methodology and Work plan	
	<p>i. Bidders initiatives and understanding of ToR's (Provide detailed comments on the Terms of Reference). (8 Marks)</p> <p>ii. Conformity of the Bidders research methodology to the Terms of Reference (ToRs). The bidders must provide a detailed description of how they shall execute the survey and how the proposed methodology will meet ALL the terms of reference and objectives of the survey (10 Marks).</p> <p>iii. Detailed work plan for the Postal and Courier Baseline Survey (<i>Description of the activities and timelines</i>) (4 Marks)</p>	35

	<p>Draft Report Outline and Sampling Framework</p> <p>iv. A detailed outline of how the topics will be arranged in final report of the survey <i>6 marks</i></p> <p>v. 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 <i>(7 Marks)</i></p>	
3	<p>Human Resource Capacity</p>	
	<p>The Bidder should provide evidence of qualifications and competence of the key staff for the assignment</p> <p>a) Team leader. Bidder MUST attach CV of Team leader in the format provided in Appendix D</p> <p>i) Must possess at least a Master’s degree from a reputable University and experience in in Postal and Courier industry., Attach certificates of academic qualifications. <i>(3 Marks for Masters degree certificate and 2 Marks for the CV, 0 Marks for not attaching the Masters certificate)</i></p> <p>ii) Posses at least ten (10) years’ experience in undertaking surveys at a national level in the country or region. Provide the details of the research studies participated as a team leader: specifically, name/title of the survey, detailed description of the surveys, name and contact details of organization that commissioned the study and contact persons of the said organization. <i>10 Years and above – 3 Marks</i> <i>Below 10 Years – 0 Marks</i></p> <p>iii) Demonstrate ability to undertake survey/research in communications and/ or postal and Courier industry by listing at least four (4) research documents, reports, journal articles and publications or conference presentations/manuscripts on postal and courier industry carried out in past ten (10) years. <i>(Max Score: 4 Marks).</i></p> <p>iv) Demonstrated Experience of survey/research in postal and courier industry <i>(Max Score 2 Marks)</i></p> <p>v) The Team Leader MUST be a member of a relevant professional organization/association.<i>(Max Score: 1 Mark)</i></p> <p>b) Other Professional Staff.</p> <p>The bidder MUST provide a team of at least four (4) qualified staff to undertake the survey. All the four (4) staff must have a University degree and with more than three (3) years’ experience in undertaking relevant surveys/research (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 3</p>	25

	years. i. Economist/Finance Expert with experience in financial modeling. (2 Marks) ii. Statistician with experience in large surveys. (2 Marks) iii. A Geographic Information System (GIS) expert with expertise in mapping of utility services (2 Marks) iv. Postal and Courier Expert with experience in the sector (2 Marks)	
	Bidders should submit an organogram detailing the structure and functions of all proposed staff (2 Marks)	2
	Financial Capacity	
	Average turnover of KES.10 million and above for past three financial years (<i>Provide audited account for the last three (3) years 2016, 2017 and 2018</i>)	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 data 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 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.

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

Appendix A

TERMS OF REFERENCE – BASELINE SURVEY FOR POSTAL & COURIER SERVICES

I. BACKGROUND

Postal/Courier service is a fundamental sector for the sustainable growth of electronic commerce in the country. For this reason, there is need to bridge access gaps in the sub-sector for the benefit of all citizens.

The main objective of the study therefore is to, identify challenges facing service providers in rolling-out of Postal and Courier services in Kenya, with a view to developing a strategy or interventions that can be implemented by the Kenyan Government and the Communication Authority of Kenya in developing mechanisms and strategy of rolling out services in unserved and underserved areas.

Further, the study shall seek to identify challenges facing consumers including Persons with Disabilities (PWDs) in their effort to access Postal and Courier services with a view to develop strategies of addressing these challenges.

II. TERMS OF REFERENCE AND SCOPE OF WORK

The specific terms of reference for the consultancy are as follows:

1. Situational Analysis: The Nature of Postal Services in Rural and Urban areas of Kenya

Undertake a situational analysis of postal and courier services in rural and urban areas of Kenya by assessing the level of service provision in the and people's access to the existing communication services.

- a) Assess population/regional access to Postal/Courier services with reference to community needs and preferences (assess demand patterns and any variations).
- b) Assess population/regional access to Postal/Courier services with regard to domestic and cross-border electronic commerce activities.
- c) Identify and describe gender and socio-economic factors affecting access, needs and preference for Postal/Courier services.
- d) Estimate the cost of providing Universal Service Obligations for Postal/Courier Services in Kenya.
- e) Estimate the financial return and required subsidies for extending Postal/Courier services to the underserved and unserved areas.
- f) Study the current and future outlook of the responsiveness by Postal Cooperation of Kenya (PCK) in its obligation of providing Universal Postal Services.

- g) With regard to Universal Postal Services, assess the viability of reviving decommissioned postal offices and the attendant operational cost of keeping them running / operational.
- h) Study the viability of unbundling of Universal Postal Services to private courier operators.
- i) Analyze affordability and economical options for Postal/Courier services (income and distribution, cost of post office boxes and cost of the various post office products).
- j) Develop a universal service implementation plan / roadmap that shows how access to postal services will be improved over the next five years in Kenya.

2. Analyze the challenges related to the existing Postal Services

- a) Level of access and usage to both licensed and unlicensed postal/courier services in the rural and urban areas of Kenya.
- b) Factors affecting accessibility and usage of licensed postal/courier services by the unserved and underserved populations.
- c) Level of affordability to licensed postal services in the underserved and unserved areas of Kenya.
- d) Gender and socio-cultural factors hindering access and usage including acquisition of Postal services.

3. Develop Strategies for Improving Postal/Courier Services

- a) Guide on the use of public-private partnership in the provision of Postal/Courier services in Kenya.
- b) Outline options for appropriate rural Postal/Courier services and show how complementarity and diversity can improve Postal/Courier services in the communities.
- c) Provide guidelines on appropriate spending levels for services in relation to the regions. Consider economical options to enhance affordability and access to postal services among the poor (including credits, subsidies, taxes and duties).
- d) Propose ways to adopt participative planning and empowerment of rural communities to access postal services
- e) Propose interventions to address gender, cultural and other obstacles to make postal services accessible for all.
- f) Consider ways to improve effective demand for Postal/Courier services.
- g) Outline options for institutional arrangements and stakeholder involvement.
- h) Consider alternative ways to improve access to and demand for Postal/Courier services (shopping and administrative centers, and of provision of communal facilities).
- i) Develop an action plan for achieving universal Postal/Courier service in the country.

4. Deliverables / Output

The output from the consultancy shall be as summarized below:

- a) Inception Report for Postal/Courier
- b) First Draft Report for Postal/Courier
- c) Stakeholders Consultations Workshop Report
- d) Revised Draft Postal/Courier Report
- e) Final Report for the Postal/Courier
- f) Dissemination of the Final Report to Stakeholders.
- g) Subsidy financing model for postal and courier services
- h) Interactive Coverage Maps for Postal and Courier services

III. COMPETENCES AND EXPERIENCE

The consultant is expected to be a firm or joint venture of firms or persons and will be selected based on its experience and capacity in carrying out related research on postal / courier sub sectors. The consultant team is expected to have demonstrable experience in research and surveys, in the ICT sector. Previous experience in design and implementation of research and surveys in the postal and courier sub-sectors will be an added advantage.

The consultant is expected to be an interdisciplinary team with knowledge and experience in the information Communication and Technology sector, and a track record of having undertaken research projects, which have been implemented in the region.

Key staff should include:

- a) Team leader/manager with relevant work experience in national surveys and research with bias in postal and courier sector.
- b) An Economist/finance expert with experience with financial modeling,
- c) A proficient statisticians with experience in GIS mapping
- d) Postal and Courier service Expert with experience in the industry
- e) Members of the consultant team should be proficient in written and spoken English.

V. TIME LINES

It is estimated that the Postal/Courier study will take between 9 to 13 months after the award of Tender.

Appendix B

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 C:

(ii). Bidder's Experience

Give information on three (3) assignments in provision of such services that the firm was legally contracted to undertaken 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 D

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 E

Financial Proposal Structure

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

Appendix F

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
Commissions,
Discounts,
Etc.
the**

(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 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 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 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.

CONTRACT FORM

THIS AGREEMENT made the _____ day of _____ 2019 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 Postal Courier Survey 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 G

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 _____ 2019 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 _____ 2019.

Signature and seal of the Guarantors

[name of bank]

[address]

[date]

Appendix H

ANTI-CORRUPTION DECLARATION COMMITMENT/ PLEDGE

(Section 62 PPADA, 2015)

I/We/Messrs.....

of Street, Building, P O Box.....

.....

Contact/Phone/E mail.....

I/We

declare that I/We will not offer or facilitate, directly or indirectly, any inducement or reward to any public officer, their relations or business associates, in connection with

Tender name.....

Tender Nofor or in the subsequent performance of the contract if I/We am/are successful.

Authorized Signature.....

Name and Title of Signatory.....