



**REPUBLIC OF KENYA**

**MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING AND URBAN  
DEVELOPMENT**

**STATE DEPARTMENT OF HOUSING & URBAN DEVELOPMENT**

**REQUEST FOR PROPOSAL**

**FOR**

**PROVISION OF TRANSACTION ADVISORY SERVICES**

**FOR**

**PROPOSED DEVELOPMENT OF CIVIL SERVANTS HOUSING PROJECTS IN  
PARK ROAD, SHAURI MOYO AND STAREHE IN NAIROBI AND MIXED USE  
DEVELOPMENT PROJECTS IN MUGUGA GREEN WESTLANDS NAIROBI AND HOBLEY  
IN MOMBASA THROUGH PUBLIC PRIVATE PARTNERSHIP (PPP) INITIATIVE OF THE  
GOVERNMENT OF KENYA**

**TENDER NO: MTIHU/HUD/CSHS/33/2017-2018**

**The Principal Secretary,**  
State Department of Housing & Urban Development  
Ministry of Transport, Infrastructure, Housing and Urban Development,  
P.O. Box 30119, 00100,  
Ardhi House, 6<sup>th</sup> Floor,  
NAIROBI - KENYA.  
Tel: +254-20-27218050 Ext. 64575  
E-mail: [procurement@housingandurban.go.ke](mailto:procurement@housingandurban.go.ke)

**FEBRUARY 2018**

## TABLE OF CONTENTS

DEFINITIONS OF KEY TERMS .....	3
INTRODUCTION .....	4
SECTION I - INVITATION TO SUBMIT BIDS .....	6
SECTION II: - INFORMATION TO CONSULTANTS (ITC) .....	7
2.1 Introduction .....	7
2.2 Clarification and Amendment of RFP Documents .....	8
2.3 Preparation of Technical Proposal .....	8
2.4 Preparation of Financial Proposal .....	10
2.5 Submission, Receipt, and Opening of Proposals .....	10
2.6 Proposal Evaluation General .....	11
2.7 Evaluation of Technical Proposal .....	12
2.8 Public Opening and Evaluation of Financial Proposal .....	12
2.9 Negotiations .....	14
2.10 Award of Contract .....	15
2.11 Confidentiality .....	15
2.12 Corrupt or fraudulent practices .....	15
SECTION III: - TECHNICAL PROPOSAL .....	21
Notes on the preparation of the Technical Proposals .....	21
SECTION III: TECHNICAL PROPOSAL .....	22
SECTION IV: FINANCIAL PROPOSAL .....	33
SECTION IV: FINANCIAL PROPOSAL STANDARD FORMS .....	34
SECTION V: TERMS OF REFERENCE .....	41
SECTION VI: STANDARD FORM OF CONTRACT .....	42

### DEFINITIONS OF KEY TERMS

<i><b>NO</b></i>	<i><b>Terms</b></i>	<i><b>Meaning</b></i>
<i><b>A</b></i>	Applicable Law	Means the laws and any other instruments having the force of law in the Client's country, or in such other country as may be specified in the Data Sheet, as they may be issued and in force from time to time.
<i><b>B</b></i>	Contracting Authority/Client	Means the implementing agency that signs the Contract for the Services with the selected Consultant.
<i><b>C</b></i>	Consultant/or Bidder	Means a legally established professional consulting firm/individuals or an entity that may provide or provides the Services to the Client under the Contract.
<i><b>D</b></i>	Contract	Means a legally binding written agreement signed between the Client and the Consultant.
<i><b>E</b></i>	Data Sheet	means an integral part of the Instructions to Consultants (ITC) Section 2 that is used to reflect specific country and assignment conditions to supplement, but not to over-write, the provisions of the ITC
<i><b>F</b></i>	Day	Means a calendar day.
<i><b>G</b></i>	Experts	Means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or Joint Venture member(s).
<i><b>H</b></i>	Joint Venture (JV)"	means an association with or without a legal personality distinct from that of its members, of more than one Consultant where one member has the authority to conduct all business for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Client for the performance of the Contract.
<i><b>I</b></i>	Key Expert(s)	means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose CV is taken into account in the technical evaluation of the Consultant's proposal.
<i><b>J</b></i>	Non-Key Expert(s)	means an individual professional provided by the Consultant or its Sub-consultant and who is assigned to perform the Services or any part thereof under the Contract and whose CVs are not evaluated individually.
<i><b>K</b></i>	RFP	means the Request for Proposals to be prepared by the Client for the selection of Consultants, based on the standard RFP.
<i><b>L</b></i>	Services	means the work to be performed by the Consultant pursuant to the Contract
<i><b>M</b></i>	Sub-consultant	means an entity to whom the Consultant intends to subcontract any part of the Services while remaining responsible to the Client during the performance of the Contract

## **INTRODUCTION**

In its endeavor to attract private investment in housing through Public Private Partnership (PPP) initiative, The Government of Kenya through the Ministry of Transport, Infrastructure, Housing & Urban Development (MTIHUD), in accordance with Public Private Partnership Act 2013 (the Act), wishes to procure the Services of a Transaction Advisor (TA) for the development of Civil Servants housing projects in Shauri Moyo, Park Road and Starehe in Nairobi and Mixed use development in Muguga Green in Westland's, Nairobi and Hobley in Mombasa through Public Private Partnerships contractual arrangement.

The housing shortage in Kenya remains a key challenge that requires innovative mechanism to address it. The demand far outstrips supply especially in urban areas where the demand stands at about 250,000 housing units while the supply is about 50,000 leaving a deficit of about 200,000 housing units annually. This is particularly pronounced in low cost housing resulting in proliferation of slums and informal settlements.

The Government has instituted various measures to facilitate housing delivery particularly low-cost housing. This includes infrastructure development, slum upgrading programmes, Civil Servants Housing programme and recently approved Public-Private-Partnerships (PPP) to mobilize financial resources and transfer of technology to hasten delivery of decent housing to Kenyans.

The Government of Kenya through the Ministry of Transport, Infrastructure, Housing & Urban Development under National Housing Programme seeks to facilitate, through multiple strategies, development of 1,000,000 housing units across the country over the next five years. Most of the housing development will be done through PPP contractual arrangements. The programme will commence with the construction of about 10,000 housing units in Nairobi and Mombasa Counties.

The projects are proposed to entail Design, Build, Finance and operate & maintain where the private party constructs the facility and assumes the costs and risks associated with the construction of the buildings and its related infrastructure and upon completion, transfers the ownership of the facility to the contracting authority and continues to maintain the facility on behalf of the contracting authority. It is expected that the PPP arrangement will take a period of 15 years, from commencement, through construction to operation and maintenance.

The projects are to be structured in accordance with the PPP Act 2013, which provides for the participation of the private sector in the financing, developing, maintaining and transferring to the Government/beneficiaries on completion of service availability payment by the Contracting Authority. A PPP Contractual arrangement will be in place to regulate, monitor and supervise the implementation of the projects. The Ministry has constituted the Ministerial Node and the Project Appraisal Team in accordance with the PPP Act 2013 and PPP regulations 2014 for the purposes of procuring these projects. Further, the Ministry intends to procure a Transaction Advisor (TA) for the same purpose of facilitating procurement of these projects.

The approximate housing units and amenities areas indicated below:

**Table I: Approx. Number of Unit**

<b>No.</b>	<b>Proposed Project</b>	<b>Apprx. Acreage</b>	<b>No. of Units (Approx.)</b>
<b>1.</b>	Park Road Housing Project	9.0	1,600
<b>2.</b>	Shauri Moyo Housing Project	11.5	1,800
<b>3.</b>	Starehe Housing Project	22.0	5,000
<b>4</b>	Muguga Green	7.5	750
<b>5</b>	Hobley	6.0	750
	<b>Total No. of Housing Units</b>		<b>10,000 Units</b>

The Transaction advisor (TA) will be engaged for the development of the projects to structure and ensure that the projects to be undertaken through the recommended procurement PPP model are bankable and ensures value for money to the Contracting Authority. The services depending upon the requirement of each project shall generally include:-

- (i) Pre-feasibility studies;
- (ii) Project feasibility studies, including assessing PPP options, environmental, and social and gender safeguards considerations, financial analysis and modeling, and project structuring;
- (iii) Preparation of bidding documents and draft contracts; and
- (iv) Provision of support during the bidding process until financial close or a period of 180 calendar days from the effective date of the contractual agreement signed by and between the Contracting Authority (CA) and the Private Party, whichever is earlier.

The Transaction Advisor is expected to work closely with the Contracting Authority, the PPP Unit (PPPU) and other government agencies as may be required during the assignment. The PPPU shall have an oversight role during the project development stage.

## **SECTION I - INVITATION TO SUBMIT BIDS**

### **INTERNATIONAL TENDER NOTICE FOR PROVISION OF TRANSACTION ADVISORY SERVICES FOR PROPOSED DEVELOPMENT OF CIVIL SERVANTS HOUSING PROJECTS**

**TENDER NUMBER: MTHUD/HUD/CSHS/33/2017-2018**

1. The Government of Republic of Kenya through the Ministry of Transport, Infrastructure, Housing and Urban Development is desirous of developing Civil Servants Houses in Kenya through Public Private Partnership (PPP) model.
2. Public Private Partnership is a mode of procurement governed by the laws of Kenya, PUBLIC PRIVATE PARTNERSHIP ACT NO. 15 OF 2013 and Public Private Partnership Regulations of 2014 and the PPP Unit.
3. The Ministry of Transport, Infrastructure, Housing and Urban Development, now invites eligible Transaction Advisory Professionals and/or its appointees or joint ventures or consortia to submit their sealed bids in order to offer Transaction Advisory services in accordance with the bidding documents.
4. The bidding documents shall be available in the Ministry of Transport, Infrastructure, Housing and Urban Development website: [www.housingandurban.go.ke](http://www.housingandurban.go.ke) and the Government of the Republic of Kenya tender's website: <http://supplier.treasury.go.ke>, interested eligible Transaction Advisory Experts may download bidding documents from the websites and notify the contracting authority for registration or collect the bidding documents from supply chain management office free of charge at Ardhi House 6<sup>th</sup> Floor .
5. Duly completed Tender Documents both Technical proposal (one original and two copies) and Financial proposal (one original) shall be submitted in plain sealed envelopes clearly marked with the Bid Number and Project Name and be deposited in the tender box marked State Department of Housing and Urban Development Tender Box, situated at 6<sup>th</sup> Floor Entrance lobby Ardhi House, First Ngong Avenue, or be addressed and posted to;

**The Principal Secretary,  
State Department of Housing & Urban Development  
Ministry of Transport, Infrastructure, Housing and Urban Development,  
P.O. Box 30119, 00100,  
Ardhi House, 6<sup>th</sup> Floor,  
NAIROBI - KENYA.  
Tel: +254-20-27218050 Ext. 64575  
E-mail: [procurement@housingandurban.go.ke](mailto:procurement@housingandurban.go.ke)**

so as to be received on or before **Friday 9<sup>th</sup> March, 2018 at 12.00 Noon.**

6. The bid documents will be opened immediately after the closing date and time in the presence of Bidders or their representatives who choose to attend the opening at **Ardhi House, 6<sup>th</sup> Floor Conference Room.**

**Head, Supply Chain Management  
For: PRINCIPAL SECRETARY**

## SECTION II: - INFORMATION TO CONSULTANTS (ITC)

### 2.1 Introduction

- 2.1.1 The Ministry of Transport, Infrastructure, Housing & Urban Development named the Appendix to “ITC” as the Contracting Authority invites eligible Transaction advisors and/or its appointees or Joint ventures or consortia to submit their sealed bids in order to offer Transaction Advisory services in accordance with the bidding documents in accordance with the method of selection detailed in the appendix. The method of selection shall be as indicated by the procuring entity in Appendix A.
- 2.1.2 The consultants are invited to submit a **TECHNICAL PROPOSAL** and a **FINANCIAL PROPOSAL**, as specified in the Appendix “ITC” for consulting services required for the assignment named in the said Appendix. The Proposal will be the basis for negotiating and ultimately signing the Contract with the selected Consultant.
- 2.1.3 The consultants must familiarize themselves with local conditions and consider them in preparing their proposals. To obtain first hand information on the assignment and on the local conditions, consultants are encouraged to liaise with the Client regarding any information that they may require before submitting a proposal where applicable. Consultants should contact the officials named in the Appendix “ITC” to arrange for any visit or to obtain additional information. Consultants should ensure that these officials are advised of the visit in adequate time to allow them to make appropriate arrangements.
- 2.1.4 The Ministry of Transport, Infrastructure, Housing & Urban Development will provide the inputs specified in the Appendix “ITC”, and may where possible assist the firm/individuals in obtaining licenses and permits needed to carry out the services and make available relevant project data and reports. In doing so, the CA will timely provide, at no cost to the Consultants, the inputs, relevant project data, and reports required for the preparation of the Consultant’s Proposal.
- 2.1.5 *Cost of bid preparation*  
Bidders shall bear all and any kind of costs related to the preparation and submission of their bids. Please note that (i) the costs of preparing the proposal and of negotiating the Contract, including any visit to the Client are not reimbursable as a direct cost of the assignment; and (ii) the Client is not bound to accept any of the proposals submitted.
- 2.1.6 The procuring entity’s employees, committee members, board members and their relatives (spouse and children) are not eligible to participate.
- 2.1.7 The price to be charged for the tender document shall be **NIL**.
- 2.1.8 The procuring entity shall allow the tenderer to review and download the tender document free of charge from the given website.

## **2.2 Clarification and Amendment of RFP Documents**

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

## **2.3 Preparation of Technical Proposal**

- 2.3.1 In preparing the Technical Proposal, consultants are expected to examine the documents constituting this RFP in detail. Material deficiencies in providing the information requested may result in rejection of a proposal.

### *2.3.2 Language of bidding*

The bidders' proposals and all related correspondence and documents in relation to the Bidding Process shall be written in **English Language**. Supporting documents and printed literature furnished by the bidder may be in another language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by the bidder. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the proposal, the English language shall prevail.

### *2.3.3 Preparation of Technical proposals-specific considerations*

While preparing the Technical Proposal, consultants must give particular attention to the following:

- (i) If a firm considers that it does not have all the expertise for the assignment, it may obtain a full range of expertise by associating with individual consultant(s) and/or other firms or entities in a joint venture or sub-consultancy as appropriate. Any bidder must show proof of such association by providing proof of a Joint Venture Agreement, which shall be signed and stamped.
- (ii) For assignments on a staff-time basis, the estimated number of professional staff-time is given in the Appendix. The proposal shall however be based on the number of professional staff-time estimated by the firm.



- (iii) It is desirable that the majority of the key professional staff proposed be permanent employees of the firm or have an extended and stable working relationship with it.
- (iv) Proposed professional staff must as a minimum, have the experience indicated in Terms of Reference (TOR), preferably working under conditions similar to those prevailing in Kenya.
- (v) Alternative professional staff shall not be proposed and only one Curriculum Vitae (CV) shall be submitted for each position. Certified education and professional certificates must be provided and attached.

#### 2.3.4 *Technical proposal format and content*

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

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

2.3.5 The Technical Proposal shall not include any Financial Information.

## **2.4 Preparation of Financial Proposal**

- 2.4.1 In preparing the Financial Proposal, the consultants are expected to take into account the requirements and conditions outlined in the RFP documents.
- 2.4.2 The Financial Proposal should follow Standard Forms (Section IV). Listing all costs associated with the assignment including; (a) remuneration for key and non-key staff and; (b) reimbursable expenses such as subsistence (per diem, housing), transportation (international and local, for mobilization and demobilization), services and equipment (vehicles, office equipment, furniture, and supplies), office rent, insurance, printing of documents, surveys, and training, if it is a major component of the assignment. If appropriate, these costs should be broken down by activity.
- 2.4.3 The Financial Proposal shall be inclusive of all the local taxes, duties, fees, levies and other charges imposed under the law on the consultants, the sub-consultants and their personnel, unless Appendix “A” specifies otherwise.
- 2.4.4 The Consultant and its Sub-consultants and Experts shall be responsible for meeting all tax liabilities arising out of the Contract.
- 2.4.5 Consultants shall express the price of their transaction advisory services in **Kenya Shillings**.
- 2.4.6 Commissions and gratuities, if any, paid or to be paid by consultants and related to the assignment will be listed in the Financial Proposal submission Form.
- 2.4.7 The Proposal must remain valid for 90 days after the submission date. During this period, the consultant is expected to keep available, at his own cost, the professional staff proposed for the assignment. The Client will make his best effort to complete negotiations within this period. If the Client wishes to extend the validity period of the proposals, the consultants shall agree to the extension.

## **2.5 Submission, Receipt, and Opening of Proposals**

- 2.5.1 The original proposal (Technical Proposal and Financial Proposal) shall be prepared in **INDELIBLE INK**. It shall contain no interlineations or overwriting, except as necessary to correct errors made by the firm itself. Any such corrections must be initialed by the persons or person authorized to sign the proposals.
- 2.5.2 For each proposal, the consultants shall prepare the number of copies indicated in Appendix “A”. Each Technical Proposal and Financial Proposal shall be marked “**ORIGINAL**” or “**COPY**” as appropriate. The bidders must **TECHNICAL & FINACIAL BIDS** as per information provided the appendix “ITC”. If there are any discrepancies between the original and the copies of the proposal, the original shall govern.
- 2.5.3 The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked “**TECHNICAL PROPOSAL**,” and the original and all copies of the Financial Proposal

in a sealed envelope clearly marked “**FINANCIAL PROPOSAL**” and warning: “**DO NOT OPEN WITH THE TECHNICAL PROPOSAL**”. Both envelopes shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address and other information indicated in the Appendix “ITC” and is clearly marked, “**DO NOT OPEN, EXCEPT IN PRESENCE OF THE OPENING COMMITTEE.**”

- 2.5.4 The Consultant (including the individual members of any Joint Venture) shall submit **ONLY ONE PROPOSAL**, either in its own name or as part of a Joint Venture in another Proposal. If a Consultant, including any Joint Venture member, submits or participates in more than one proposal, all such proposals shall be disqualified and rejected. This does not, however, preclude a Sub-consultant, or the Consultant’s staff from participating as Key Experts and Non-Key Experts in more than one Proposal when circumstances justify and if stated in the Data Sheet.
- 2.5.5 An authorized representative of the Consultant shall sign the original submission letters in the required format for both the Technical Proposal and, if applicable, the Financial Proposal and shall initial all pages of both. The authorization shall be in the form of a written power of attorney attached to the Technical Proposal.
- 2.5.6 A Proposal submitted by a Joint Venture shall be signed by all members to be legally binding on all members, or by an authorized representative who has a written power of attorney signed by each member’s authorized representative.
- 2.5.7 The completed Technical and Financial Proposals must be delivered at the submission address on or before the time and date stated in the Appendix “ITC”. Any proposal received after the closing time for submission of proposals shall be returned to the respective consultant unopened.
- 2.5.8 After the deadline for submission of proposals, the opening committee shall open the Technical Proposal immediately at the address and time shown in the Appendix “ITC”. The Financial Proposal shall remain sealed and deposited with a responsible officer of the client department up to the time for public opening of financial proposals.

## **2.6 Proposal Evaluation General**

- 2.6.1 From the time the bids are opened to the time the Contract is awarded, if any consultant wishes to contact the Contracting Authority/Client on any matter related to his proposal, he should do so in writing at the address indicated in the Appendix “ITC”. Any effort by the firm to influence the Client in the proposal evaluation, proposal comparison or Contract award decisions may result in the rejection of the consultant’s proposal.
- 2.6.2 Evaluators of Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded.

## 2.7 Evaluation of Technical Proposal

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

**Table 1: Evaluation criteria**

No	EVALUATION CRITERIA FOR TECHNICAL PROPOSAL	SCORING CRITERIA	
		YES	NO
<b>A</b>	<b>Preliminary screening</b> (Mandatory requirements)		
A1	Legal status of the lead consultant/consortium member and any firm engaged including certified practicing licenses		
A2	If a consortium, Signed Joint Consortium Agreement by all consortium members to be provided		
<i>NB</i>	<i>A bidder who scores NO in the mandatory criteria shall be considered to be non-responsive and shall not proceed to the technical evaluation stage</i>		
<b>B</b>	<b>Technical Evaluation</b>	<b>POINTS</b>	
B1	Specific experience of the consultant/consortia related to the assignment	10	
B2	Adequacy of the proposed work plan and Methodology in responding to the terms of reference	30	
B3	Qualifications and competence of the key staff for the assignment (Relevant education, training, experience in the sector/similar assignments)	40	
B4	Suitability to the transfer of Technology Programme (Training)-Relevance of approach and methodology	5	
B5	Proof of involvement of local staff in the assignment	15	
	<b>TOTAL</b>	<b>100</b>	
<i>NB</i>	<i>A firm/consortium that attains a PASSMARK of St 70 Points and above shall proceed to the last stage of Financial evaluation.</i>		

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

## 2.8 Public Opening and Evaluation of Financial Proposal

2.8.1 After Technical Proposal evaluation, the Contracting Authority shall notify those bidders whose proposals did not meet the minimum qualifying mark or were considered Non-responsive to the RFP and Terms of Reference, indicating that their Financial Proposals will be returned after completing the selection process. The CA shall simultaneously notify the bidders who have secured the minimum qualifying mark, indicating the date and time set for opening the Financial Proposals and stating that the opening ceremony is open to those bidders who choose to attend. The opening date shall not be sooner than seven (7) days after the notification date. The notification may be sent by registered either/or letter, cable, telex, facsimile or electronic mail.

- 2.8.2 The Financial Proposals shall be opened publicly in the presence of the bidders’ representatives who choose to attend. The name of the bidder and the proposed prices shall be read aloud and recorded when the Financial Proposals are opened. The CA shall prepare minutes of the public opening.
- 2.8.3 The evaluation committee will determine whether the Financial Proposals are complete (i.e. whether the consultant has costed all the items of the corresponding Technical Proposal and correct any computational errors. The cost of any unpriced items shall be assumed to be included in other costs in the proposal. In all cases, the total price of the Financial Proposal as submitted shall prevail.
- 2.8.4 While comparing proposal prices between local and foreign firms participating in a selection process in financial evaluation of Proposals, firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias in proposal prices. However, there shall be no such preference in the technical evaluation of the tenders. Proof of local incorporation and citizenship shall be required before the provisions of this sub-clause are applied. The bidder in the financial proposal shall attach details of such proof.
- 2.8.5 The formulae for determining the Financial Score (Sf) shall, unless an alternative formulae is indicated in the Appendix “ITC”, be as follows:-

**Sf = 100 X <sup>FM</sup>/F**      where **Sf** is the financial score;  
**Fm** is the lowest priced financial proposal  
and **F** is the price of the proposal under consideration.

Proposals will be ranked according to their combined technical (*St*) and financial (*Sf*) scores using the weights:

- T*=      the weight given to the Technical Proposal: where T=70%
- P* =      the weight given to the Financial Proposal; where P=30%
- T + P = 1*) indicated in the Appendix.

The combined technical and financial score, **S**, is calculated as follows: - **S = St x T % + Sf x P %**. The firm/bidder/consortia achieving the highest combined technical and financial score will be invited for negotiations.

- 2.8.6 The tender evaluation committee shall evaluate the tender within **30 days** of from the date of opening the tender.
- 2.8.7 Contract price variations shall not be allowed for contracts not exceeding two years (24 months).
- 2.8.8 Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price

2.8.9 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.

## **2.9 Negotiations**

2.9.1 The Contracting Authority shall appoint a team for the purpose of the negotiations. Negotiations will be held at the same address as “address to send information to the Contracting Authority” indicated in the Appendix “ITC”. The aim is to reach agreement on all points and sign a contract.

### *2.9.2 Technical negotiations*

Negotiations will include a discussion of the Technical Proposal, the proposed methodology (work plan), staffing and any suggestions made by the firm to improve the Terms of Reference. The Contracting Authority and successful bidder will then work out final Terms of Reference, staffing and bar charts indicating activities, staff periods in the field and in the head office, staff-months, logistics and reporting. The agreed work plan and final Terms of Reference will then be incorporated in the “Description of Services” and form part of the Contract. Special attention will be paid to getting the most the bidder/firm/consortium can offer within the available budget and to clearly defining the inputs required from the Client to ensure satisfactory implementation of the assignment.

### *2.9.3 Financial negotiations*

The negotiations include the clarification of the Consultant’s tax liability in the Contracting Authority country and how it should be reflected in the Contract. If the selection method included cost as a factor in the evaluation, the total price stated in the Financial Proposal for a Lump-Sum contract shall not be negotiated. Unless there are exceptional reasons, the financial negotiations will not involve the remuneration rates for staff (no breakdown of fees).

### *2.9.4 Availability of key experts/staff*

Having selected the successful bidder/firm/consortium based on, among other things, an evaluation of proposed key professional staff, the CA expects to negotiate a contract based on the experts named in the proposal. Before contract negotiations, the CA will require assurances that the experts will be actually available by requesting for statement of undertaking from the bidder. The CA 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 bidder/firm/consortium may be disqualified.

### *2.9.5 Conclusion of negotiations*

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

## **2.10 Award of Contract**

- 2.10.1 The Contract will be awarded following negotiations. After negotiations are completed, the CA will promptly notify other bidders on the shortlist that they were unsuccessful and return the Financial Proposals of those consultants who did not pass the technical evaluation.
- 2.10.2 The selected bidder shall be expected to commence the assignment on the date and at the location specified in Appendix "A".
- 2.10.3 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.
- 2.10.4 The CA may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 2.10.5 The 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.
- 2.10.6 To qualify for contract awards, the tenderer shall have the following:
  - (a) Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.
  - (b) Legal capacity to enter into a contract for procurement
  - (c) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
  - (d) Shall not be debarred from participating in any public procurement whether locally or internationally.

## **2.11 Confidentiality**

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

## **2.12 Corrupt or fraudulent practices**

- 2.12.1 The CA requires that the bidders observe the highest standards of ethics during the selection and award of the transaction advisory contract and during the performance of the assignment. The tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.
- 2.12.2 The CA will reject a proposal for award if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.

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



## APPENDIX A: Appendix to Information to Consultants (ITC) - Data Sheet-

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

### DATA SHEET

<b>A. GENERAL</b>	
<b>ITC Clause Reference</b>	<b>Details</b>
<b>2.1</b>	<p><b>Name of the Client:</b></p> <p>Ministry of Transport , Infrastructure Housing &amp; Urban Development, State Department of Housing &amp; Urban Development P.O BOX 30119-00100 NAIROBI, Kenya.</p>
<b>2.1.1</b>	<p><b>Method of selection:</b> <b>Quality And Cost Based Selection Method</b> set out in the PPOA consultants selection guideline</p>
<b>2.1.2</b>	<p><b>Financial Proposal to be submitted together with Technical Proposal:</b></p> <p>YES</p> <p><b>The name of the assignment is:</b></p> <p style="text-align: center;">PROVISION OF TRANSACTION ADVISORY SERVICES FOR PROPOSED CIVIL SERVANTS HOUSING PROJECTS IN STAREHE, PARK ROAD, SHAURI MOYO, MUGUGA GREEN IN NAIROBI AND HOBLEY SITE IN MOMBASA.</p> <p style="text-align: center;">TENDER NUMBER: MTIHUD/HUD/CSHS/33/2017-2018</p>
<b>2.1.4</b>	<p><b>The Client will provide the following inputs, project data, reports, etc. to facilitate the preparation of the Proposals:</b></p> <ol style="list-style-type: none"> <li>1. Terms of reference for transaction advisory services</li> <li>2. Request for Proposal for provision of transaction advisory services</li> <li>3. Any other relevant information requested by consultants</li> </ol>

2.2	<p><b>Clarifications may be requested no later than 7 days prior to the submission deadline.</b></p> <p>The contact information for requesting clarifications is:  <b>The Principal Secretary</b>  <b>State Department of Housing &amp; Urban Development</b>  <b>Ministry of Transport, Infrastructure , Housing &amp; Urban development</b>  <b>P.O Box 30119-00100</b>  <b>Ardhi House 6<sup>th</sup> Floor</b>  <b>Nairobi-Kenya</b>  <b>Tel:+254-20-27218050, Ext.64575</b>  <b>E-mail: procurement@housing@urban.go.ke</b></p>
<b>B. PREPARATION OF PROPOSALS</b>	
2.3.2	Proposals shall be submitted in <b>ENGLISH</b> language
2.3, and 2.4	<p><b>The Proposal shall comprise the following:</b></p> <p>1. Technical Proposal- 1 ORIGINAL &amp; 2 COPIES  2. Financial proposal- 1 ORIGINAL</p>
2.4.7	<b>Proposals must remain valid for 90 calendar days</b> after the proposal submission deadline
2.4.3	“ <b>Information on the Consultant’s tax obligations in the Client’s country can be found</b> <i>Kenya Revenue Authority Website on <a href="http://www.kra.go.ke">www.kra.go.ke</a></i>
2.4.5	The Financial Proposal shall be stated in <b>Kenya Shillings</b>
<b>C. SUBMISSION, OPENING AND EVALUATION</b>	
2.5.1	<p><b>The Consultants shall have the option of submitting their Proposals physically at Tender box at the</b></p> <p>Ministry of Transport, Infrastructure , Housing &amp; Urban development  State Department of Housing &amp; Urban Development  P.O Box 30119-00100  Ardhi House 6<sup>th</sup> Floor  Nairobi-Kenya</p> <p><b>or electronically through the email : procurement@housing@urban.go.ke</b></p>
2.5.5	<p><b>The Consultant must submit:</b></p> <p>(a) <b>TECHNICAL PROPOSAL: ONE (1) ORIGINAL and (2) COPIES;</b></p> <p>(b) <b>FINANCIAL PROPOSAL: ONE (1) ORIGINAL.</b></p>

<p><b>2.5.8</b></p>	<p><b>The Proposals must be submitted no later than:</b></p> <p><b>DATE:</b> 9<sup>TH</sup> MARCH 2018</p> <p><b>TIME:</b>1200HRS LOCAL TIME</p> <p><b>The Proposal submission address is:</b></p> <p>Tender Box, situated at 6<sup>th</sup> Floor Entrance lobby Ardhi House, First Ngong Avenue  Ministry of Transport, Infrastructure , Housing &amp; Urban development  State Department of Housing &amp; Urban Development  P.O Box 30119-00100  Ardhi House 6<sup>th</sup> Floor  Nairobi-Kenya  or sent via email to <a href="mailto:procurement@housing@urban.go.ke">procurement@housing@urban.go.ke</a></p>
<p><b>2.5.9</b></p>	<p><b>The opening shall take place at :</b></p> <p>Street Address: 1<sup>ST</sup> Ngong Avenue ,Ardhi House  Floor, room number: 6<sup>th</sup> Floor Boardroom  City: Nairobi  Country: Kenya  Date: 9<sup>th</sup> March 2018  Time: 1200 hrs local time</p>
<p><b>2.5.9</b></p>	<p><b>In addition, the following information will be read aloud at the opening of the Technical Proposals</b>  Name of the consultant/bidder/Joint venture firm; No. of bids both original and copies</p>
<p><b>2.7</b></p>	<p><b>Criteria, sub-criteria, and point system for the evaluation of the TECHNICAL PROPOSAL:</b></p> <p>(i) <b>Specific experience of the Consultant (as a firm) relevant to the Assignment: 10 Points</b></p> <p>(ii) <b>Adequacy and quality of the proposed methodology, and work plan in responding to the Terms of Reference (TORs):30 points</b></p> <p>{<u>Notes to Consultant</u>: the Client will assess whether the proposed methodology is clear, responds to the TORs, work plan is realistic and implementable; overall team composition is balanced and has an appropriate skills mix; and the work plan has right input of Experts as provided for in the TOR's}</p> <p>(iii) <b>Key Experts' qualifications and competence for the Assignment: 40 Points</b></p> <p>The number of points to be assigned to each of the above positions shall be determined considering the following three sub-criteria and relevant percentage weights:</p> <ol style="list-style-type: none"> <li>1. General qualifications(general education, training, and experience): <b>20%</b></li> <li>2. Adequacy for the Assignment (relevant education, training, experience in the sector/similar assignments ) : <b>70%</b></li> </ol>

	<p>3. Relevant experience in the region (working level fluency in local language(s)/knowledge of local culture or administrative system, government organization, etc.): <b>10%</b>  <b>Total weight: 100%</b></p> <p>(iv) <b>Transfer of knowledge (training) program</b> (relevance of approach and methodology):  Total points for criterion (iv): <b>5 Points</b></p> <p>(v) <b>Participation by local staff among proposed Key Experts</b> <b>15 Points</b>  Calculated as a ratio of the national Key Experts' time-input (in person-months) to the total number of Key Experts' time-input (in person-months) in the Consultant's Technical Proposal]</p> <p><b>TOTAL POINTS FOR THE FIVE CRITERIA: 100</b></p> <p>.....</p> <p><b>NB: The minimum technical score (St) required to pass is: 70%</b></p>
2.4.3	The financial proposal should be inclusive of all the applicable taxes including Value Added Tax (VAT).
2.8.5 (QCBS only)	<p><b>The lowest evaluated Financial Proposal (Fm) is given the maximum financial score (Sf) of 100.</b></p> <p><b>The formula for determining the financial scores (Sf) of all other Proposals is calculated as following:</b></p> <p>Sf = 100 x Fm/ F, in which "Sf" is the financial score, "Fm" is the lowest price, and "F" the price of the proposal under consideration.</p> <p><b>The weights given to the Technical (T) and Financial (P) Proposals are:</b>  <b>T = 0.7 and</b>  <b>P = 0.3</b></p> <p>Proposals are ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) as following: S = St x T% + Sf x P%.</p>
<b>D. NEGOTIATIONS AND AWARD</b>	
2.9.1	<p><b>Expected date and address for contract negotiations:</b>  <b>Date:</b> To be communicated once the successful bidder is identified.  <b>Address:</b> Ardhi House 6<sup>th</sup> Floor Boardroom or any other venue that shall be communicated prior to negotiations exercise  at  Ministry of Transport , Infrastructure Housing &amp; Urban Development,  State Department of Housing &amp; Urban Development  P.O BOX 30119-00100  NAIROBI, Kenya.</p>

### **SECTION III: - TECHNICAL PROPOSAL**

#### **Notes on the preparation of the Technical Proposals**

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

### **SECTION III: TECHNICAL PROPOSAL**

#### **Table of Contents**

A.	Technical proposal submission form.....	23
B.	Firms references.....	24
C.	Comments and suggestions of consultants on the Terms of reference and on data, services and facilities to be provided by the procuring entity.....	25
D.	Description of the methodology and work plan for performing the assignment.....	26
E.	Team composition and Task assignments.....	27
F.	Format of curriculum vitae (CV) for proposed Professional staff.....	28
G.	Time schedule for professional personnel.....	30
H.	Activity (work schedule).....	31

**A. TECHNICAL PROPOSAL SUBMISSION FORM**

[\_\_\_\_\_ *Date*]

To: \_\_\_\_\_ [*Name and address of Client*]

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for \_\_\_\_\_  
\_\_\_\_\_ [*Title of consulting services*] in accordance with your Request for  
Proposal dated \_\_\_\_\_ [*Date*] and our Proposal. We are hereby submitting our  
Proposal, which includes this Technical Proposal, [and a Financial Proposal sealed under a separate  
envelope-*where applicable*].

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

We remain,

Yours sincerely,

\_\_\_\_\_ [*Authorized Signature*]

\_\_\_\_\_ [*Name and Title of Signatory*]

\_\_\_\_\_ [*Name of Firm*]

\_\_\_\_\_ [*Address*]

**B. FIRM’S/ INDIVIDUAL CONSULTANT’S REFERENCES**

**Relevant Services Carried Out in the Last Five Years that Best Illustrate Qualifications (Refer to the TOR for the number of years for individual staff)**

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

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

Firm’s Name: \_\_\_\_\_

Name and title of signatory; \_\_\_\_\_

***NB: Proof of undertaking such assignments must be attached by the bidder.***

*(May be amended as necessary)*



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

---

On the Terms of Reference:

- 1.....
- 2.....
- 3.....
- 4.....
- 5.....
- 6.....
- 7.....

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

- 1.....
- 2.....
- 3.....
- 4.....
- 5.....
- 6.....

**D. DESCRIPTION OF THE METHODOLOGY AND WORK PLAN FOR PERFORMING THE ASSIGNMENT**

---

## **E. TEAM COMPOSITION AND TASK ASSIGNMENTS**

### **1. Technical/Managerial Staff**

Name	Position	Task

### **2. Support Staff**

Name	Position	Task

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

Proposed Position: \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Name of Staff: \_\_\_\_\_

Profession: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Years with Firm: \_\_\_\_\_ Nationality: \_\_\_\_\_

Membership in Professional Societies: \_\_\_\_\_

---

Detailed Tasks Assigned: \_\_\_\_\_

---

**Key Qualifications:**

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

---

**Education:**

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

---

**Employment Record:**

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

---

**Certification:**

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

\_\_\_\_\_ Date: \_\_\_\_\_  
*[Signature of staff member]*

\_\_\_\_\_ Date: \_\_\_\_\_  
*[Signature of authorised representative of the firm]*

Full name of staff member: \_\_\_\_\_

Full name of authorized representative: \_\_\_\_\_

*NB: Attach certified copies of academic and professional certificates as applicable.*



**G. TIME SCHEDULE FOR PROFESSIONAL PERSONNEL**

Months (in the Form of a Bar Chart)

Name	Position	Reports Due/ Activities	Months (in the Form of a Bar Chart)												Number of months		
			1	2	3	4	5	6	7	8	9	10	11	12			

Reports Due: \_\_\_\_\_

Activities Duration: \_\_\_\_\_

Signature: \_\_\_\_\_  
(Authorized representative)

Full Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

## H. ACTIVITY (WORK) SCHEDULE

### (a). Field Investigation and Study Items

*[1<sup>st</sup>, 2<sup>nd</sup>, etc, are months from the start of assignment)*

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

### (b). Completion and Submission of Reports

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



## **SECTION IV: - FINANCIAL PROPOSAL**

### Notes on preparation of Financial Proposal

- 4.1 The Financial proposal prepared by the consultant should list the costs associated with the assignment. These costs normally cover remuneration for staff, subsistence, transportation, services and equipment, printing of documents, surveys etc as may be applicable. The costs should be broken down to be clearly understood by the procuring entity.
- 4.2 The financial proposal shall be in Kenya Shillings or any other currency allowed in the request for proposal and shall take into account the tax liability and cost of insurances specified in the request for proposal. The proposal must be inclusive of all applicable taxes in Kenya.
- 4.3 The financial proposal should be prepared using the Standard forms provided in this part

**SECTION IV: FINANCIAL PROPOSAL STANDARD FORMS**

**Table of Contents**

	Page
1. Financial proposal submission Form.....	34
2. Summary of costs .....	35
3. Breakdown of price/per activity.....	36
4. Breakdown of remuneration per activity.....	37
5. Reimbursables per activity.....	38
6. Miscellaneous expenses.....	39

**1. FINANCIAL PROPOSAL SUBMISSION FORM**

Date] \_\_\_\_\_/

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
*[Name and address of Client]*

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for (\_\_\_\_\_) *[Title of consulting services]* in accordance with your Request for Proposal dated (\_\_\_\_\_) *[Date]* and our Proposal. Our attached Financial Proposal is for the sum of (\_\_\_\_\_) *[Amount in words and figures]* inclusive of the taxes.

We remain,

Yours sincerely,

\_\_\_\_\_ *[Authorized Signature]*

: \_\_\_\_\_ *[Name and Title of Signatory]:*

\_\_\_\_\_ *[Name of Firm]*

\_\_\_\_\_ *[Address]*

## 2. SUMMARY OF COSTS

Costs	Currency(ies)	Amount(s)
Subtotal		
Taxes		
Total Amount of Financial Proposal		<hr/>

### 3. BREAKDOWN OF PRICE PER ACTIVITY

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

#### 4. 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				_____

### 5. REIMBURSABLES 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				

**6. 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				
3.	Equipment: computers etc.				
4.	Software				
	Grand Total				_____



**SECTION V: - TERMS OF REFERENCE**

**REFER TO THE TERMS OF REFERENCE (TOR)  
DOCUMENT**

**SECTION VI: DRAFT STANDARD FORM OF CONTRACT**

**F O R**

**TRANSACTION ADVISORY SERVICES**

**FOR**

**PROPOSED DEVELOPMENT OF CIVILSERVANTS HOUSINGPROJECTS IN  
PARK ROAD, SHAURI MOYO AND STAREHE IN NAIROBIAND MIXED USE  
DEVELOPMENT PROJECTS IN MUGUGA GREEN WESTLANDS NAIROBI AND HOBLEY  
IN MOMBASATHROUGHPUBLIC PRIVATE PARTNERSHIP (PPP) INITIATIVE OF THE  
GOVERNMENT OF KENYA**

**TENDER NO: MTIHUD/HUD/CSHS/33/2017-2018**

**The Principal Secretary,**  
Ministry of Transport, Infrastructure, Housing and Urban Development,  
State Department of Housing & Urban Development  
P.O. Box 30119, 00100,  
Ardhi House, 6<sup>th</sup> Floor,  
NAIROBI - KENYA.  
Tel: +254-20-27218050 Ext. 64575  
E-mail: [procurement@housingandurban.go.ke](mailto:procurement@housingandurban.go.ke)

## Special Notes

1. The Lump-Sum price is arrived at on the basis of inputs – including rates – provided by the Consultant. The Client agrees to pay the Consultant according to a schedule of payments linked to the delivery of certain outputs, usually reports. Lump-sum contracts have the simplicity of administration, the Client having only to be satisfied with the outputs without monitoring the staff inputs and should be used for large Assignments in for example Design; Engineering; Supervision and Management Services; Master plans; Economic and Feasibility studies; and Surveys.
2. The Contract includes four parts: Form of Contract, the General Conditions of Contract, the Special Conditions of Contract and the Appendices. The Client using this standard contract should not alter the General Conditions. Any adjustment to meet any specific project features should be made only in the Special Conditions.

# CONTRACT FOR TRANSACTION ADVISORY SERVICES

between

**MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING & URBAN DEVELOPMENT**

AND

---

*[name of the Consultant]*

Dated: \_\_\_\_\_ *[date]*

## FORM OF CONTRACT

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

\_\_\_\_\_ [name of consultant] of [or whose registered office is situated at] \_\_\_\_\_ [location of office] (hereinafter called the "Consultant") of the other part.

### WHEREAS

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

NOW THEREFORE the Parties hereto hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:
  - (a) The General Conditions of Contract;
  - (b) The Special Conditions of Contract;
  - (c) The following Appendices: [*Note: If any of these Appendices are not used, they should be deleted from the list*]
    - Appendix A: Description of the Services
    - Appendix B: Reporting Requirements
    - Appendix C: Key Personnel and Sub consultants
    - Appendix D: Breakdown of Contract Price in Foreign Currency
    - Appendix E: Breakdown of Contract Price in Local Currency
    - Appendix F: Services and Facilities Provided by the Client
    - Appendix E: Terms of Reference
2. The mutual rights and obligations of the Client and the Consultants shall be as set forth in the Contract; in particular:

- (a) The Consultant shall carry out the Services in accordance with the provisions of the Contract; and
- (b) the Client shall make payments to the Consultant in accordance with the provisions of the Contract.

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

For and on behalf of \_\_\_\_\_ *[name of client]*

*[full name of Client's authorised representative]* \_\_\_\_\_

*[title]* \_\_\_\_\_

*[signature]* \_\_\_\_\_

*[date]* \_\_\_\_\_

For and on behalf of \_\_\_\_\_ *[name of consultant]*

*[full name of Consultant's authorized representative]* \_\_\_\_\_

*[title]* \_\_\_\_\_

*[signature]* \_\_\_\_\_

*[date]* \_\_\_\_\_

# GENERAL CONDITIONS OF CONTRACT

## 1. GENERAL PROVISIONS

### 1.1 Definitions

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

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

- (l) “Services” means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A; and
- (m) “Sub consultant,” means any entity to which the Consultant subcontracts any part of the Services in accordance with the provisions of Clauses 3 and 4.

**1.2 Law Governing the Contract**

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

**1.3 Language**

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

**1.4 Notices**

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

**1.5 Location**

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

**1.6 Authorized Representative’s**

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

**1.7 Taxes and Duties**

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

**2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT**

**2.1 Effectiveness of Contract**

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

**2.2 Commencement of Services**

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



- 2.3 Expiration of Contract** Unless terminated earlier pursuant to Clause 2.6, this Contract shall terminate at the end of such time period, after the Effective Date, as is specified in the SC.
- 2.4 Modification** Modification of the terms and Conditions of this Contract, including any modification of the scope of the Services or the Contract Price, may only be made by written agreement between the Parties.
- 2.5 Force Majeure**
- 2.5.1 Definition** For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party and which makes a Party’s performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.
- 2.5.2 No Breach of Contract** The failure of a Party to fulfill any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.
- 2.5.3 Extension Of Time** Any period within which a Party shall, pursuant to this Contract complete any action or task shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.
- 2.5.4 Payments** During the period of his inability to perform the Services as a result of an event of Force Majeure, the Consultant shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by him during such period for the purposes of the Services and in reactivating the Service after the end of such period.
- 2.6 Termination**
- 2.6.1 By the Client** The Client may terminate this Contract by not less than thirty (30) days’ written notice of termination to the Consultant, to be given after the occurrence of any of the events specified in this Clause;
- (a) if the Consultant does not remedy a failure in the performance of his obligations under the Contract within thirty (30) days after

being notified or within any further period as the Client may have subsequently approved in writing;

- (b) if the Consultant becomes insolvent or bankrupt;
- (c) if, as a result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (d) if the Consultant, in the judgement of the Client, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this clause;

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

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

### **2.6.2 By the Consultant**

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

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

### **2.6.3 Payment 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 Consultant:

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

### 3. OBLIGATIONS OF THE CONSULTANT

#### 3.1 General

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

#### 1.2 Conflict of Interests

##### 3.2.1 Consultant (i) Not to Benefit from Commissions, Discounts, Etc.

The remuneration of the Consultant pursuant to clause 6 shall constitute the Consultant's sole remuneration in connection with this Contract or the Services and the Consultant shall not accept for his own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of his obligations under the Contract and the Consultant shall use his best efforts to ensure that his personnel, any sub consultant[s] and agents of either of them similarly shall not receive any such additional remuneration.

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

procurement guidelines and shall at all times exercise such responsibility in the best interest of the Client. Any discounts or commissions obtained by the Consultant in the exercise of such procurement shall be for the account of the Client.

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

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

**3.2.3 Prohibition of Conflicting Activities**

Neither the Consultant nor his sub consultant[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 Consultant, his subconsultant[s] and the personnel of either of them shall not, either during the term of this Contract or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract or the Client's business or operations without the prior written consent of the Client.

**3.4 Insurance to be Taken Out by the Consultant**

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

- 3.5 Consultant's Actions requiring Client's Prior Approval** The Consultant shall obtain the Client's prior approval in writing
- (a) , entering into a subcontract for the performance of any part of the Services before taking any of the following actions;
  - (b) appointing such members of the personnel not listed by name in Appendix C ("Key Personnel and Sub consultants").
- 3.6 Reporting Obligations** The Consultants shall submit to the Client the reports and documents specified in Appendix A in the form, in the numbers, and within the periods set forth in the said Appendix.
- 3.7 Documents prepared by the Consultant to Be the Property of the Client** All plans, drawings, specifications, designs, reports and other documents and software submitted by the Consultant in accordance with Clause 3.6 shall become and remain the property of the Client and the Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Client together with a detailed inventory thereof. The Consultant may retain a copy of such documents and software. Neither Party shall use these documents for purposes unrelated to this Contract without the prior approval of the other Party.

#### 4. CONSULTANT'S PERSONNEL

- 4.1 Description of Personnel** The titles, agreed job descriptions, minimum qualifications and estimated - periods of engagement in the carrying out of the Services of the Consultant's Key Personnel are described in Appendix C. The Key Personnel and Sub consultants listed by title as well as by name in Appendix C are hereby approved by the Client.
- 4.2 Removal and/or Replacement Of Personnel**
- (a) Except as the Client may otherwise agree, no changes shall be made in the Key Personnel. If for any reason beyond the reasonable control of the Consultant, it becomes necessary to replace any of the Key Personnel, the Consultant shall provide as a replacement a person of equivalent or better qualifications.
  - (b) If the Client finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) the Client has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultant shall, at the Client's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Client.

- (c) The Consultant shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

## 5. OBLIGATIONS OF THE CLIENT

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

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

**5.3 Services and Facilities** N/A

## 6. PAYMENTS TO THE CONSULTANT

**6.1 Lump-Sum Remuneration** The Consultant's total remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all staff costs, Sub consultants' costs, printing, communications, travel, accommodation and the like and all other costs incurred by the Consultant in carrying out the Services described in Appendix A. Except as provided in Clause 5.2, the Contract Price may only be increased above the amounts stated in Clause 6.2 if the Parties have agreed to additional payments in accordance with Clause 2.4.

**6.2 Contract Price** (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** Payments will be made to the account of the Consultant and according to the payment schedule stated in the SC.

## **Payment**

Unless otherwise stated in the SC, the first payment shall be made against the provision by the Consultant of a bank guarantee for the same amount and shall be valid for the period stated in the SC. Any other payment shall be made after the conditions listed in the SC for such payment have been met and the Consultant has submitted an invoice to the Client specifying the amount due.

### **6.5 Interest on Delayed Payment**

Payment shall be made within thirty (30) days of receipt of invoice and the relevant documents specified in Clause 6.4. If the Client has delayed payments beyond thirty (30) days after the due date hereof, simple interest shall be paid to the Consultant for each day of delay at a rate three percentage points above the prevailing Central Bank of Kenya's average rate for base lending .

## **7. SETTLEMENT OF DISPUTES**

### **7.1 Amicable Settlement**

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation

### **7.2 Dispute Settlement**

Any dispute between the Parties as to matters arising pursuant to this Contract that cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be referred by either Party to the arbitration and final decision of a person to be agreed between the Parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the Chairman of the Chartered Institute of Arbitrators, Kenya Branch, on the request of the applying party.

## SPECIAL CONDITIONS OF CONTRACT

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



(ii) Loss of or damage to equipment and property \_\_\_\_\_

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

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

6.4 Payments shall be made according to the following schedule:

No	Assignment outcome	Proposed remuneration schedule	Proposed dates
<b>PHASE I</b>			
<b>1</b>	Advance payment	10%	
<b>2</b>	Completion of draft feasibility study report	10%	
<b>3</b>	Final feasibility report & presentation of findings and recommendations	15%	
<b>4</b>	Acceptance & approval by PPP unit	5%	
	<b>Sub-Total 1</b>	<b>40%</b>	
<b>PHASE II</b>			
<b>1</b>	Completion of RFQ documents and prequalification report	5%	
<b>2</b>	Completion of RFP documentation and evaluation	15%	
<b>3</b>	Negotiations & execution of commercial close	20%	
<b>4</b>	Financial close and contract signing	20%	
	<b>Sub- Total 2</b>	<b>60%</b>	
	<b>TOTAL</b>	<b>100%</b>	

6.5 For the purpose of this contract, Financial close would be defined as the date of execution of the loan agreement between the lenders and the concessionaire / successful bidder and the fulfillment of the Consultant's obligations under Phase II of the Scope of Works.

6.6 The following provision shall apply to the advance payment and the advance bank payment guarantee:

- (1) An advance payment of 10% of the contract price and in the currency of the contract shall be made against submission of advance payment Bank Guarantee within 14 days after the effective date and the Bank Guarantee shall be released after successful completion of the first milestone.
- (2) The advance bank payment guarantee shall be in the amount and in the currency of the currency (ies) of the advance payment.

### **III. APPENDICES**

#### **APPENDIX A – DESCRIPTION OF THE SERVICES**

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

#### **APPENDIX B – REPORTING REQUIREMENTS**

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

#### **APPENDIX C– KEY PERSONNEL AND SUB-CONSULTANTS**

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

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

#### **APPENDIX D – BREAKDOWN OF CONTRACT PRICE IN FOREIGN CURRENCY**

*List here the elements of cost used to arrive at the breakdown of the lump-sum price – foreign currency portion:*

1.     *Monthly rates for Personnel (Key Personnel and other Personnel).*
2.     *Reimbursable expenditures.*

*This appendix will exclusively be used for determining remuneration for additional services.*

#### **APPENDIX E – BREAKDOWN OF CONTRACT PRICE IN LOCAL CURRENCY**

*List here the elements of cost used to arrive at the breakdown of the lump-sum price – local currency portion.*

1.     *Monthly rates for Personnel (Key Personnel and other Personnel).*
2.     *Reimbursable expenditures.*

*This appendix will exclusively be used for determining remuneration for additional services.*

#### **APPENDIX F: SERVICES AND FACILITIES PROVIDED BY THE CLIENT**