



**Kenya National Highways Authority**

**Quality Highways, Better Connections**

**CONSULTANCY SERVICES FOR CONSTRUCTION  
SUPERVISION OF**

**UPGRADING OF KIBWEZI – MUTOMO – KITUI – KABATI –  
MIGWANI ROAD (A9/B64)**

**EPC TURNKEY COMMERCIAL CONTRACT**

**TENDER No. KeNHA/1469/2016**

**NOVEMBER 2016**

**General Manager (Design &  
Construction)  
Kenya National Highways Authority  
P.O. BOX 49712-00100  
NAIROBI**

**Director General  
Kenya National Highways  
Authority  
P.O. BOX 49712-00100  
NAIROBI**

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**SECTION A:**  
**LETTER OF INVITATION**



**Kenya National Highways Authority**  
**Quality Highways, Better Connections**

**TENDER NOTICE**

**UPGRADING OF KIBWEZI – MUTOMO – KITUI – KABATI – MIGWANI ROAD (A9/B64)  
ROAD UNDER EPC TURNKEY CONSTRUCTION CONTRACT  
CONSULTANCY SERVICES FOR CONSTRUCTION SUPERVISION**

The Kenya National Highways Authority (KeNHA) is a State Corporation established under the Kenya Roads Act, 2007, with the responsibility for the management, development, rehabilitation and maintenance of national roads.

The Authority is planning to embark on the Construction of Kibwezi – Mutomo – Kitui – Kabati - Migwani (A9/B64) Road. The project road is part of the Mombasa - Isiolo - Addis Ababa Road Transport Corridor and starts from Kibwezi passes Kitui and ends in Migwani. The length of the whole project is approximately 192 Km including 18 Km of Township roads. The construction works shall be undertaken through a Design and Build Contract (FIDIC EPC/Turnkey based).

The Authority invites sealed bids from eligible Consultancy Engineering firms registered with the Ministry of Transport and Infrastructure and/or Engineers Board of Kenya (EBK) to submit technical and financial proposals for the above Consultancy Services. The Consultancy Services shall be funded by the Government of Kenya (GoK).

The details of the scope of assignment are included in the Request for Proposals document. Consultants are advised to visit site, ascertain actual site conditions and make necessary comments to the TOR before submitting the bids.

The following are mandatory requirements that **must** be submitted together with the proposal

- **Certified** copy of certificate of Incorporation
- Curriculum vitae (CVs) of the proposed key staff **duly signed** by the proposed individual
- **Certified** copy of valid Tax Compliance Certificate
- **Certified** copies of certificates and testimonials of the proposed key staff
- Letters of availability for the assignment **signed by the proposed key staff**.
- **Certified** copy of Proof of Registration with the Ministry of Transport and Infrastructure and/or Engineers Board of Kenya (EBK) as Engineering Consulting Firm or equivalent professional regulatory body
- Firm's Current work load
- Litigation history (**sworn affidavit**)
- Client references on previous experience
- Duly filled Confidential Business Questionnaire

**Additional Instructions to Consultants**

- The proposed personnel must not be currently engaged in supervision works of an ongoing roads project in Kenya; and
- A person proposed as Key personnel by more than one bidder for the same bid shall cause the disqualification of the bidders
- All interested firms must communicate in writing to the address below, within fourteen (14) days from the date of this advertisement, that they will be submitting proposals and provide details of other firms they will be associating with.
- Ensure serialization of your document as part of the mandatory requirements
- All interested bidders will be required to check KeNHA website [www.kenha.co.ke](http://www.kenha.co.ke) for any further clarification on this tender.
- **A mandatory pre-tender site visit shall be organized on Friday 9<sup>th</sup> December, 2016 at 0900hrs starting at Kibwezi (A8/A9) Junction followed by Pre-bid meeting at 14.30hrs at Migwani.**

Procurement shall be based on the post qualification method and the above details will be submitted with the proposal.

Interested Consultants may obtain further information and Request for Proposal documents from the address indicated below upon payment of a non-refundable fee of Kshs. One thousand (1,000.00) during office hours (weekdays from 0800hr to 1700hr EAT, excluding public holidays). The RFP document may also be downloaded free of charge from IFMIS Kenya Suppliers Portal and Kenya National Highways Authority websites: [supplier.treasury.go.ke](http://supplier.treasury.go.ke) and [www.kenha.co.ke](http://www.kenha.co.ke). Bidders who download the tender documents are requested to forward their particulars (name and contacts) to [procurement@kenha.co.ke](mailto:procurement@kenha.co.ke) for purpose of registration and sending any clarifications/addenda.

The proposal shall be enclosed in a plain sealed envelope marked with the Tender name and reference number and deposited in the tender box situated at KeNHA headquarters mezzanine Floor, Blue Shield Towers or be addressed as indicated below so as to be received **on or before 13<sup>th</sup> January 2017 at 1100hrs East Africa Time**

**The Procurement Manager  
Kenya National Highways Authority,  
Blue Shield Towers, Upper Hill, 1st Floor,  
P. O. Box 49712,  
NAIROBI, KENYA**

Opening of the proposals will take place immediately thereafter at the KeNHA Board Room, 3rd Floor, Blue Shield Towers in the presence of firm's representatives who choose to attend. KeNHA reserves the right to accept or reject any or all proposals without giving reasons thereof.

**Procurement Manager  
For: DIRECTOR GENERAL**

## **SECTION B: - INFORMATION TO CONSULTANTS**

- |  |  |
|--|--|
| <b>1. Introduction</b>                                 | <p><b>1.1</b> The Client named in Annex “A” will select a firm among the bidders, in accordance with the method of selection detailed under this section.</p> <p>1.2 The Consultants are required to submit both a Technical Proposal and a Financial Proposal, as specified in Annex “A” for consulting services required for the assignment named in the said Annex. The proposal will be the basis for Contract negotiations and ultimately for a signed Contract with the selected firm.</p> <p>1.3 The Consultants must familiarize themselves with local conditions and take them into account 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. Consultants should contact the officials named in Annex “A” 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.</p> <p>1.4 The Client will provide the inputs specified in Annex “A”, assist the firm in obtaining licenses and permits needed to carry out the services and make available relevant project data and reports.</p> <p>1.5 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.</p> |
| <b>2. Clarification and Amendment of RFP Documents</b> | <p>2.1 Consultants may request a clarification of any of the RFP documents only up to seven [7] days before the proposal submission date. Any request for clarification must be sent in writing by paper mail, cable, telex, facsimile or electronic mail to the Client’s address indicated in Annex “A”. 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.</p> <p>2.2 At any time before the submission of proposals, the Client may for any reason, whether at his own initiative or in response to a clarification requested by the bidding firm, amend the RFP. Any amendment shall</p>   |

be issued in writing through Tender Notice. Tender Notice shall be sent by mail, cable, telex or facsimile to all invited Consultants and will be binding on them. The Client may at his discretion extend the deadline for the submission of proposals.

**3. Preparation  
of Technical  
Proposal**

3.1 The Consultant's proposal shall be written in English language.

**3.2 In preparing the technical proposal, Consultants are expected to** examine the documents constituting this RFP in detail. Material deficiencies in providing the information requested may result in rejection of a proposal.

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

- (i) If a firm considers that it does not have all the expertise for the assignment, it may obtain a full range of expertise by associating with individual Consultant(s) and/or other firms or entities in a joint venture or sub consultancy as appropriate.
- (ii) For assignments on a staff-time basis, the estimated number of professional staff-months is given in Annex "C". Any costs associated with any other staff required on the project shall be factored in the staff itemised under Annex C.
- (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 Annex "A", preferably working under conditions similar to those prevailing in Kenya.
- (v) Alternative professional staff shall not be proposed and only one Curriculum Vitae (CV) may be submitted for each position.

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

- (i) A brief description of the firm's organization and an outline of recent experience on assignments of a similar nature. For each assignment the outline should indicate *inter alia*, the profiles of the staff proposed, duration of the assignment, contract amount and firm's involvement.
- (ii) Any comments or suggestions on the Terms of Reference, a list of services and facilities to be provided by the Client.

- (iii) A description of the methodology and work plan for performing the assignment.
- (iv) The list of the proposed staff team by speciality, the tasks that would be assigned to each staff team member and their timing.
- (v) CVs recently signed by the proposed professional staff and the authorized representative submitting the proposal. Key information should include number of years working for the firm/entity and degree of responsibility held in various assignments during the last ten (10) years.
- (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 Annex “A” specifies training as a major component of the assignment.
- (viii) Any additional information requested in Annex “A”.

3.5 The Technical Proposal shall not include any financial information.

## **1.0 Financial Proposal**

### **3.6 In preparing the Financial Proposal, Consultants**

are expected to take into account the requirements and conditions outlined in the RFP documents. The Financial Proposal should follow Standard Forms (Section D). It lists all costs associated with the assignment including; (a) remuneration for staff (in the field and at headquarters), and; (b) reimbursable expenses such as subsistence (per diem, housing), transportation (international and local, for mobilization and demobilization), services and equipment (vehicles, office equipment, furniture, and supplies), office rent, insurance, printing of documents, surveys, and training, if it is a major component of the assignment. If appropriate these costs should be broken down by activity.

3.7 The Financial Proposal should clearly identify as a separate amount, the local taxes, duties, fees, levies and other charges imposed under the law on the Consultants, the sub-Consultants and their personnel, unless Annex “A” specifies otherwise.

3.8 Consultants shall express the price of their services in Kenya Shillings.

3.9 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.

- 3.10 The Proposal must remain valid for 90 days after the submission date. The Consultant shall include in his submissions a declaration confirming the 90 days validity period. 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 who do not agree have the right not to extend the validity of their proposals.
4. **Submission, Receipt, and Opening of Proposals**
- 4.1 The original proposal (Technical Proposal and Financial Proposal; see para. 1.2) 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 initialled by the persons or person authorised to sign the proposals.
- 4.2 For each proposal, the Consultants shall prepare the number of copies indicated in Annex “A”. Each Technical Proposal and Financial Proposal shall be marked “**ORIGINAL**” or “**COPY**” as appropriate. If there are any discrepancies between the original and the copies of the proposal, the original shall govern.
- 4.3 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 Annex “A” and be clearly marked, “**DO NOT OPEN, EXCEPT IN PRESENCE OF THE EVALUATION COMMITTEE.**”
- 4.4 The completed Technical and Financial Proposals must be delivered at the submission address on or before the time and date stated in Annex “A”. Any proposal received after the closing time for submission of proposals shall be returned to the respective Consultant unopened.
- 4.5 After the deadline for submission of proposals, the Technical Proposal shall be opened immediately by the evaluation committee. The Financial Proposal shall remain sealed and deposited with a responsible officer of the client department until all submitted proposals are opened publicly.
5. **Proposal Evaluation General**
- 5.1 From the time the bids are opened to the time the Contract is awarded, if any Consultant wishes to contact the Client on any matter related to his proposal, he should do so in writing at the address indicated in Annex “A”. 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.

**Evaluation  
of Technical  
Proposals**

5.2 Evaluators of Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded.

5.3 The Evaluation Committee appointed by the Client shall evaluate the proposals on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria as follows: -

	<b>Points</b>
(i) Organisation Experience, Method and Work plan	40
(ii) Description and Qualifications of the key staff for the assignment	60
Total Points	<b><u>100</u></b>

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 Annex "A".

**Public  
Opening and  
Evaluation of  
Financial  
Proposals**

5.4 After Technical Proposal evaluation, the Client shall notify those Consultants whose proposals did not meet the minimum qualifying mark or were considered non-responsive to the RFP and Terms of Reference, indicating that their Financial Proposals will be returned after completing the selection process. The Client shall simultaneously notify the Consultants who have secured the minimum qualifying mark, indicating the date and time set for opening the Financial Proposals and stating that the opening ceremony is open to those Consultants who choose to attend. The notification may be sent by registered letter, cable, telex, facsimile or electronic mail.

5.5 The Financial Proposals shall be opened publicly in the presence of the Consultants' representatives who choose to attend.

5.6 The name of the Consultant, the technical scores and the proposed prices shall be read aloud and recorded when the Financial Proposals are opened. The Client shall prepare minutes of the public opening.

- 5.7 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.
- 5.8 While comparing proposal prices between local and foreign firms participating (where applicable) in a selection process in financial evaluation of Proposals, firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias in proposal prices. However, there shall be no such preference in the technical evaluation of the tenders. Proof of local incorporation and citizenship shall be required before the provisions of this sub-clause are applied. Details of such proof shall be attached by the Consultant in the financial proposal.
- 5.9 The formulae for determining the Financial Score (Sf) shall, unless an alternative formulae is indicated in Annex “A”, be as follows:-  
$$Sf = 100 \times \frac{FM}{F}$$
where Sf is the financial score; FM is the lowest priced financial proposal and F is the price of the proposal under consideration. Proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) indicated in the Appendix. The combined technical and financial score, S, is calculated as follows: -  $S = St \times T \% + Sf \times P \%$ . The firm achieving the highest combined technical and financial score will be invited for negotiations.

## **6. Negotiations**

- 6.1 Negotiations will be held at the same address as “address to send information to the Client” indicated in Annex “A”. The aim is to reach agreement on all points and sign a contract.
- 6.2 Negotiations will include a discussion of the Technical Proposal, the proposed methodology (work plan), staffing and any suggestions made by the firm to improve the Terms of Reference. The Client and firm will then work out final Terms of Reference, staffing and bar charts indicating activities, staff periods in the field and in the head office, staff-months, logistics and reporting.  
The agreed work plan and final Terms of Reference will then be incorporated in the “Description of Services” and form part of the Contract. Special attention will be paid to getting the most the firm can offer within the available budget and to clearly defining the inputs required from the Client to ensure satisfactory implementation of the assignment.
- 6.3 Unless there are exceptional reasons, the financial negotiations will not involve the remuneration rates for staff (no breakdown of fees).

- 6.4 Having selected the firm on the basis of, among other things, an evaluation of proposed key professional staff, the Client expects to negotiate a contract on the basis of the experts named in the proposal. Before contract negotiations, the Client will require assurances that the experts will be actually available. The Client will not consider substitutions during contract negotiations unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the firm may be disqualified.
- 6.5 The negotiations will conclude with a review of the draft form of the Contract. To complete negotiations the Client and the selected firm will initial the agreed Contract.  
If negotiations fail, the Client will invite the firm whose proposal received the second highest score to negotiate a contract.
- 7. Award of Contract**
- 7.1 The Contract will be awarded following negotiations. After negotiations are completed, the Client will promptly notify other Consultants on the shortlist that they were unsuccessful and return the Financial Proposals of those Consultants who did not pass the technical evaluation.
- 7.2 The selected firm is expected to commence the assignment on the date and at the location specified in Annex “A”.
- 8. Confidentiality**
- 8.1 Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the Consultants who submitted the proposals or to other persons not officially concerned with the process, until the winning firm has been notified that it has been awarded the Contract.
- 9. Corrupt or Fraudulent Practices**
- 9.1 The procuring entity requires that the Consultants observe the highest standards of ethics during the Selection and award of the consultancy contract and also during the performance of the assignment. The tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices
- 9.2 The procuring entity will reject a proposal for award if it determines that the Consultant recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.
- 9.3 Further a Consultant who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

**ANNEX “A”**

**Clause**

**Reference**

- 1.2                      The name of the client is:  
***Director General***  
***Kenya National Highways Authority (KeNHA)***  
***P.O. Box 49712-00100***  
***NAIROBI, KENYA.***
- 1.3                      The method of selection is: ***Quality and Cost Based Selection***
- Technical and Financial Proposals are requested: ***Yes***
- A Technical Proposal only is requested: ***No***
- The name, objectives, and description of the assignment are:
- CONSULTANCY SERVICES FOR SUPERVISION OF UPGRADING OF  
KIBWEZI – MUTOMO – KITUI – KABATI – MIGWANI ROAD (A9/B64)  
ROAD - EPC TURNKEY COMMERCIAL CONTRACT**
- A pre-proposal conference will be held: ***No***
- 1.3                      The name(s), address (es) and telephone numbers of the Client’s official(s) are:  
General Manager (Design & Construction)  
P.O. Box 49712 -00100  
Nairobi  
Email: gmdc@kenha.co.ke or samuel.ogege@kenha.co.ke
- 1.4                      The Client may provide the following inputs subject to availability:  
The client shall arrange for the following documents to be viewed at the office of the  
Procurement Manager –KeNHA.
- i. Available Drawings for the Civil Works project***
  - ii. Contract Document for Civil Works***

1.5 The client shall also give assistance to facilitate the timely granting of the Consultant and his personnel of:

- i). Unobstructed access to all sites and locations involved in carrying out the services

3.3 (i) The duration required to complete the assignment is  
Time for Completion of Design-Build – 42 months  
Defects Notification Period – 12 months

The minimum required experience in years of proposed professional staff and the points assigned to each staff is tabulated below.

S/No	Description	General Experience Years	Staff No	Total Points
1)	Project Director	15	1	3
2)	Resident Engineer	15	1	5
3)	Highway/Masurement Engineer	10	1	5
4)	Materials Engineer	10	1	5
5)	Structural/Drainage Engineer	10	1	4
6)	Transport Economist	10	1	4
7)	Senior Surveyor	10	1	4
8)	Materials Technologist (1 No.)	8	1	3
9)	Senior Road Inspector (3 No.)	8	3	9
10)	Environment Expert	10	1	3
11)	Architect	5	1	4
12)	Electrical Engineer	5	1	4
13)	Mechanical Engineer	5	1	4
14)	Sociologist	10	1	3
		<b>Total</b>	<b>16</b>	<b>60</b>

All other required staff must be listed and their remuneration to be included in the financial proposal.

The breakdown of marks for organisation, method and work plan will be awarded as follows:

Firms experience and organisation	10 mks
Comments on Terms of Reference	10 mks
Methodology and work plan	15 mks
Timetable of Activities	5 mks
<b>Total</b>	<b><u>40marks</u></b>

Organisation, Work plan and Methodology shall include rationale, strategy, timetable of activities and log frame with contents.

An Evaluation grid is attached (Annex C).

- 3.4 (i) Training is a specific component of this assignment:

***Yes.***

- 3.6 (ii) The Fees for these Services shall be monthly payments as broken down in Section D.

- 3.7 Taxes:

***The Consultant shall be liable to pay all taxes, duties and levies including VAT and withholding tax in accordance with the laws of Kenya and the Client shall not reimburse any amount paid in this context.***

- 4.2 Consultants must submit an original and 3 (*Three*) additional copies of each proposal.

- 4.3 The proposal submission address is:

***Procurement Manager  
Kenya National Highways Authority  
Blue Shield Towers  
Upper Hill – 1<sup>st</sup> Floor  
P.O. Box 49712-00100  
NAIROBI***

The outer envelope shall also be clearly marked:

**“CONSULTANCY SERVICES FOR SUPERVISION OF  
UPGRADING OF KIBWEZI – MUTOMO – KITUI – KABATI –  
MIGWANI ROAD (A9/B64) ROAD - EPC TURNKEY  
COMMERCIAL CONTRACT”**

- 4.4 Proposals must be submitted no later than the following date and time:

**13<sup>th</sup> January 2017 at 1100hrs East Africa Time**

5.1 The address to send information to the Client is:

***Procurement Manager  
Kenya National Highways Authority  
Blue Shield Towers  
Upper Hill – 1<sup>st</sup> Floor  
P.O. Box 49712-00100  
NAIROBI***

5.3 The minimum technical score required to pass is **80%**

5.8 Firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed preferential bias ***in accordance with the laws of Kenya***

5.9 *The weights are as follows: -*

*T= 80,*

*P=20*

## ANNEX “B”

### MODEL LETTER OF DELEGATION OF POWERS TO ASSISTANT EMPLOYER’S REPRESENTATIVE



**Kenya National Highways Authority**

**Quality Highways, Better Connections**

Blue Shield Towers, Hospital Road, Upper Hill P.O. Box 49712 – 00100 Nairobi  
Tel 020 – 8013842 Email dg@kenha.co.ke / info@kenha.co.ke Website www.kenha.co.ke

Ref. No.

Date:

Addressee

#### **DELEGATION OF THE POWERS OF THE EMPLOYER’S REPRESENTATIVE/ APPOINTMENT AS ASSISTANT EMPLOYER’S REPRESENTATIVE**

I write to confirm that you are hereby appointed as Assistant Employer’s Representative to perform the duties of the Employer’s Representative as stipulated in the EPC/Turnkey Conditions of Contract on the above road project with the following specific limitations on the powers and authority.

The Employer’s Representative in this contract shall be the General Manager (Design & Construction).

Clause 2.1 **Right of Access to the Site**

You are authorized to receive, review and forward to us the Contractor’s proposals as regards programme affecting possession of the site.

Clause 4.4 **Opportunities for other Contractors**

Clause 4.5 **Payments to Nominated Sub-Contractors**

You are authorized to demand from the Contractor proof of payments to nominated Sub-Contractors and to make recommendations to us accordingly.

Clause 5 **Documents mutually Explanatory**

Clause 6.8 **Contractor’s Superintendence**

With the reservation of approval by us of the Contractor’s Agent, or any subsequent change thereof, you are authorised to deal with any relative matters concerning superintendence.

Clause 6.9 **Contractor’s Personnel**

Within the limitation given in Clause 6.8 above.

Clause 7 **Inspection**

Within the limitation given in Clause 5 above.



- Clause 7.6      **Remedial Work**  
Subject to our approval, you are authorised to issue instructions to the Contractor to carry out urgent repairs. Any dispute concerning the liability for the urgent repairs shall be referred to the Employer's Representative.
- Clause 6.10      **Returns of Personnel and Equipment**
- Clause 7          **Quality of Materials and Workmanship**  
Within the limitations given in Clause 13 below.
- Clause 10.1      **Taking-Over Certificate**  
It is your duty to arrange for substantial completion inspection and prepare minutes of the same. Taking over certificates shall be issued by this office.
- Clause 11.9      **Performance Certificate**  
It is your duty to arrange for inspection of the site at the end of the Defects Notification Period and prepare minutes of the same. The Performance Certificate shall be issued by this office.
- Clause 11.11      **Clearance of Site on Completion**
- Clause 13.1      **Variations and Orders for Variations to be in Writing**  
Our approval must be obtained prior to any Variation being authorized.
- Clause 13.3      **Valuation of Variations and Power of Employer to Determinations**  
Subject to our final approval you are authorized to enter into negotiations on the value of Variations, to a limit of 25% of the Contract Price. You are also authorised to receive notification of Contractor's intention to claim and to inform the Contractor of Engineer's approval of the value of Variations and determinations.
- Clause 13.5      **Use of Provisional Sums and Production of Quotations**  
You are authorized to order expenditure against provisional sums subject to individual limit of Kshs. 25,000 (Twenty Five Thousand Shillings only).
- Clause 13.6      **Dayworks**  
You are authorized to order minor works to be carried out on a daywork basis. Minor works in this case are regarded as those estimated to be less than Kshs. 25,000/= (Twenty Five Thousand Shillings). You are also authorized to receive receipt of other vouchers. You must closely monitor Dayworks Expenditure against the scheduled cost.
- Clause 13.8      **Variation of Price**  
You are authorised to deal with requests for Variation of Price within the limits of this Clause and subject to our approval.

Clause 14.6     **Interim Payments**

You are authorized to receive the statement referred to in Sub-Clause (6) hereof and to evaluate the amount of the interim certificate therein referred to. The evaluation made by you is subject to our approval.

Clause 17.2     **Cares of Works**

Clause 20.1     **Contractor's Claims**

Subject to our approval you are authorized to receive details of claims and examine matters of fact and such like with the Contractor.

In addition, it should be noted that the Resident Engineer has authority to act as described in the following Clauses: -

Clause 3.2     **Employer's Personnel**

Requirements for assigning duties and delegated Authority

Clause 4.7     **Setting Out**

Clause 4.8     **Safety, Watching and Temporary Works**

Clause 4.9     **Quality Assurance**

Clause 4.24    **Fossils**

Clause 6.5     **Restriction on Working Hours**

Authorisation of work at night, on public holidays or locally recognized days of rest.

Clause 8.3     **Programme**

Receipt of programme. Approval of programme will be given by us.

Clause 18     **Insurance etc.**

Receipt of Insurance

You should operate strictly within your delegated powers and authority, as you will be held liable for any ultra vires actions.

You are hereby required to immediately appoint and delegate authority to the approved Resident Engineer with a copy to us.

By copy of this letter, the Contractor is being informed of your appointment as the Assistant Employer's Representative under the contract.

Eng. XXXXXX

**GENERAL MANAGER (DESIGN & CONSTRUCTION)**

**CC: Director General**  
Kenya National Highways Authority (KeNHA)  
P. O. Box 49712  
**NAIROBI.**

Contractor XXX  
P.O. Box .....  
**NAIROBI.**

## **ANNEX “C”**

### **EVALUATION GRID**

<b>ITEM</b>	<b>MAXIMUM SCORE</b>
Firms Experience and Organisation	10
Comments on terms of reference	10
Methodology and Work plan	15
Time table of activities	5
<b>Total score for Organisation and Methodology</b>	<b>40</b>

### **KEY PERSONNEL**

#### **1. Project Director**

Qualification and skills	1
General professional experience	1
Specific professional experience	1

#### **2. Resident Engineer**

Qualification and Skills	1
General professional experience	1
Specific professional experience	3

#### **3. Highway/Measurement Engineer**

Qualification and skills	1
General professional experience	1
Specific professional experience	3

#### **4. Materials Engineer**

Qualification and Skills	1
General professional experience	1
Specific professional experience	3

#### **5. Structural/Drainage Engineer**

Qualification and Skills	1
General professional experience	1
Specific professional experience	2

#### **6. Transport Economist**

Qualification and skills	1
General professional experience	1
Specific professional experience	2

#### **7. Senior Surveyor**

Qualification and skills	1
General professional experience	1
Specific professional experience	2

<b>8. Materials Technologist</b>	
Qualification and Skills	1
General professional experience	1
Specific professional experience	1
<b>9. Senior Roads Inspector 1</b>	
Qualification and Skills	1
General professional experience	1
Specific professional experience	1
<b>10. Senior Roads Inspector 2</b>	
Qualification and Skills	1
General professional experience	1
Specific professional experience	1
<b>11. Senior Roads Inspector 3</b>	
Qualification and Skills	1
General professional experience	1
Specific professional experience	1
<b>12. Environment Expert</b>	
Qualification and skills	1
General professional experience	1
Specific professional experience	1
<b>13. Architect</b>	
Qualification and skills	1
General professional experience	1
Specific professional experience	2
<b>14. Electrical Engineer</b>	
Qualification and skills	1
General professional experience	1
Specific professional experience	2
<b>15. Mechanical Engineer</b>	
Qualification and skills	1
General professional experience	1
Specific professional experience	2
<b>16. Sociologist</b>	
Qualification and skills	1
General professional experience	1
Specific professional experience	1
<b>Total score for Key Personnel</b>	<b>60</b>

## **SECTION C: -**

### **TECHNICAL PROPOSAL – STANDARD FORMS**

These forms shall include;

- i) Technical Proposal submission form.
- ii) Firm's references.
- iii) Comments and suggestions of Consultants on the Terms of Reference and on data, services and facilities to be provided by the Client.
- iv) Description of the methodology and work plan for performing the assignment.
- v) Team composition and task assignments.
- vi) Firm's Current Workload
- vii) Format of curriculum vitae (CV) for proposed professional staff.
- viii) Time schedule for professional personnel – short term experts
- ix) Time schedule for professional personnel – construction period
- x) Time schedule for professional personnel – defects liability period
- xi) Activity (work) schedule.
- xii) Confidential Business Questionnaire

**(i). 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 you receive.

We remain,

Yours sincerely,

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

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

:

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

:

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

## (ii). FIRM'S REFERENCES

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

Using the format below, provide information on each assignment for which your firm either individually as a corporate entity or in association, was legally contracted **(attach letters of awards or completion certificates as proof of evidence)**.

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

Firm's Name: \_\_\_\_\_

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



**(iii) 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.

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

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

**(iv) DESCRIPTION OF THE METHODOLOGY AND WORK PLAN FOR  
PERFORMING THE ASSIGNMENT**

---

**(v) TEAM COMPOSITION AND TASK ASSIGNMENTS**

**1. Technical/Managerial Staff**

<b>Name</b>	<b>Position</b>	<b>Task</b>

**2. Support Staff**

<b>Name</b>	<b>Position</b>	<b>Task</b>

**(vi). FIRM'S CURRENT WORKLOAD**

Using the format below, provide information on each assignment for which your firm either individually as a corporate entity or in association, is legally contracted to carry out (attach letters of award of contracts).

Assignment Name:	Country	
Location within Country:	Professional Staff provided by Your	
	Firm/Entity(profiles):	
Name of Client:	No. of Staff:	
Address:	No of Staff-Months; Duration of Assignment:	
Start Date (Month/Year):	Expected date of Completion (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; \_\_\_\_\_

**(vii). 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: \_\_\_\_\_

Current Engagement: \_\_\_\_\_

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.

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

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

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

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

**(viii). TIME SCHEDULE FOR PROFESSIONAL PERSONNEL – (Short Term Experts)**

			Months (in the Form of a Bar Chart)											
Name	Position	Reports Due/ Activities	1	2	3	4	5	6	7	8	.....	15		

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

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

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

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

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

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

**(ix). TIME SCHEDULE FOR PROFESSIONAL PERSONNEL – Construction period**

Months (in the Form of a Bar Chart)

Name	Position	Reports Due/ Activities	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
------	----------	----------------------------	---	---	---	---	---	---	---	---	---	----	----	----	----	----	----

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

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

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

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

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

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

**(x). TIME SCHEDULE FOR PROFESSIONAL PERSONNEL – Defects liability period**

Months (in the Form of a Bar Chart)

Name	Position	Reports Due/ Activities	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
------	----------	----------------------------	---	---	---	---	---	---	---	---	---	----	----	----	----	----	----

Reports Due: \_\_\_\_\_  
Activities Duration: \_\_\_\_\_

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

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

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

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



**(xi). ACTIVITY (WORK) SCHEDULE**

**(a). Supervision Activities**

*[M0, M1, M3 are months from the start of assignment)*

	M1	M2	M3	M4	....Mn	M(n+1)	M(n+2)	M(n+3)
Activity (Work)								
_____								
_____								
_____								
_____								

**(xii). CONFIDENTIAL BUSINESS QUESTIONNAIRE**

You are requested to give the particulars indicated in Part 1 and either Part 2 (a), 2(b) or 2(c) whichever applies to your type of business.

You are advised that it is a serious offence to give false information on this Form.

**Part 1 - General:**

Business name.....

Location of business premises

.....

Plot No..... Street/Road.....

Postal Address..... Tel No.....

Nature of business.....

.....

Current Trade Licence No. .... Expiring Date.....

Maximum value of business which you can handle at any one time:

Kshs.....

Name of your Bankers.....

Branch.....

Are you an agent of the Kenya National Trading Corporation? YES/NO

**Part 2(a) - Sole Proprietor:**

Your name in full.....

Age.....

Nationality .....Country of origin.....

\*Citizenship details.....

**Part 2(b) - Partnership:**

Give details of partners as follows:

Name	Nationality	Citizenship Details*	Shares
------	-------------	----------------------	--------

1.....

2.....

3.....

4.....

5.....

**Part 2(c) - Registered Company:**

Private or public.....

State the nominal and issued capital of the company-

Nominal Kshs.....

Issued Kshs.....

Give details of all directors as follows:

Name	Nationality	Citizenship Details*	Shares
------	-------------	----------------------	--------

1.....

2.....

3.....

4.....

5.....

**Part 2(d) - Interest in the Firm:**

Is there any person / persons in the Kenya National Highways authority who has interest in this firm?  
Yes /No\*\*

.....

.....

Date

Signature of Bidder

\* Attach Proof of Citizenship

\*\* Delete as necessary

## **SECTION D:-**

### **FINANCIAL PROPOSAL – STANDARD FORMS**

These forms shall include;

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

**FINANCIAL PROPOSAL SUBMISSION FORMS**

\_\_\_\_\_ [ 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 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]

**(i) SUMMARY OF COSTS**

<b>Costs</b>	<b>Currency(ies)</b>	<b>Amount(s)</b>
Subtotal 1		
Add 10% Contingency		
Sub Total 2		
Add VAT (16% of Sub Total 2)		
Total Amount of Financial Proposal		<hr/>

**(ii) BREAKDOWN OF PRICE PER ACTIVITY**

<b>Activity NO.:</b> _____	<b>Description:</b> _____
<b>Price Component</b>	<b>Amount(s)</b>
Remuneration	
Reimbursable Expenses	
Miscellaneous Expenses	
Subtotal	<hr/>

**(iii) BREAKDOWN OF REMUNERATION PER ACTIVITY**

<b>Activity No.</b> _____ <b>Activity Name:</b> _____						
<b>Names of Staff</b>	<b>Position</b>	<b>Input (Staff months, days or hours Rate as appropriate.)</b>	<b>Remuneration</b>	<b>Amount</b>		
Grand total		<hr/>				

**(iv). REIMBURSABLES PER ACTIVITY**

**Activity No:** \_\_\_\_\_ **Activity Name:** \_\_\_\_\_

No.	Description	Unit	Quantity	Unit Price	Total Amount
1.	Road travel	Kms			
2	Subsistence Allowance	Day			
	etc				
	Grand Total				_____

**(v) MISCELLANEOUS EXPENSES**

**Activity No.** \_\_\_\_\_ **Activity Name:** \_\_\_\_\_

No.	Description	Unit	Quantity	Unit Price	Total Amount
1.					
2.					
3.					
4.	Grand total				_____



## **SECTION E: -**

### **TERMS OF REFERENCE**

#### **1.0 BACKGROUND**

##### **1.1 General**

The Government of the Republic of Kenya (GoK) has applied for a development loan from China EXIM Bank towards financing of the project for Upgrading of Kibwezi-Mutomo-Kitui (A9/B64) Road on an EPC Turnkey Commercial Contract. On the other hand, the Government through the Development Budget seeks to engage the services of a Consultancy Firm to undertake the provision of supervision services for the EPC Contractor.

The Government of Kenya, through its implementing agency, the Kenya National Highways Authority shall require the Consultant to render all technical support services which may be deemed relevant to the above work. The detailed description of the consulting services to be performed is described in these Terms of Reference (TOR).

##### **1.2 Selection Criteria**

The Consultant selected to undertake the Supervision Consultancy shall have had extensive experience in the Construction Supervision of road projects. The Consultant shall have specific experience in undertaking design and build (EPC) contracts.

##### **1.3 Project Description**

The project road is part of the Mombasa - Isiolo - Addis Ababa Road Transport Corridor. The road starts from Kibwezi and passes through Kitui and ends at Migwani. The length of the whole project is approximately 192 Km including 18 Km of Township roads.

#### **2.0 PROJECT OBJECTIVES**

The overall objective of the project is to attain a sustainable, safe road network, which facilitates economic growth and improves living standards in Kenya.

The development of the project road will result in the following benefits:

- Improvement of socio-economy status of Makueni and Kitui counties and the whole country as a whole
- The project road will link Kitui with other counties and help boost tourism, mineral exploitation and transportation of agricultural produce, and link the region to the Mombasa port
- Reduction of travel time and vehicle maintenance & operation costs.
- The project as part of the Mombasa – Isiolo – Addis Ababa Road Transport Corridor will strengthen and boost regional trade between Kenya, Ethiopia and South Sudan
- Strengthening the connection between Kenya's three main regional transport corridors Northern Corridor (A8), the Kenya – Ethiopia Corridor (A2), Thika – Garissa – Liboi (A3).

### **3.0 SCOPE OF THE WORKS CONTRACT**

The scope of the EPC Contractor works consists of the following:

- Engineering, Procurement and Construction of Kibwezi – Kitui(145km) (A9) Road;
- Engineering, Procurement and Construction of Kabati-Migwani direction (B64) (16.71 km);
- Related Township Road totaling 18 Km
  - a. Kibwezi Township Road: (3km)
  - b. Ikutha Township Road: (3km)
  - c. Mutomo Township Road: (4km)
  - d. Kitui Township Road: (8km)
- Kibwezi, Kitui Interchanges;
- Rehabilitation of Kitui – Kabati (12km) existing (A9) road
- Kibwezi and Kitui Road Side Amenities
- The project road shall include bypasses to the following towns:
  - a. Ikutha Town
  - b. Mutomo Town
  - c. Ikanga Town
  - d. Kitui Town
  - e. Migwani Town

Further, the scope of works shall include the construction of drainage structures, earthworks, pavement layers and urban road facilities to enhance accessibility, mobility and safety of road users.

Any other works as may be instructed by the Employer's Representative or as agreed between the Contractor and the Employer

### **4.0 OVERALL OBJECTIVES OF THE CONSULTANCY SERVICES**

The concept of this Consultancy Services is formulated to achieve the following key objectives of the execution of the Project.

- The Consultant shall thoroughly fulfil, to the highest professional standards, the role of the delegated powers by the Employer's Representative to supervise the construction of the works and to ensure that they are executed in accordance with the Conditions of Contract, Employer's requirements, Specifications and any amendments thereto; and to ensure that so far as is reasonably possible, within the Contract Price and Contract Period allowed under the Contract or any agreed amendments thereto.
- The Consultant shall advice the Employer on important matters regarding contract management, contract administration, instructions/variations and including but not limited determinations.

### **5.0 SCOPE OF CONSULTANCY SERVICES**

The Consultant will be appointed as the Assistant Employer's Representative and shall provide services, based on FIDIC EPC/TURNKEY Conditions of contract, to include but not be limited to the following:

#### **EPC Contractor's Detailed Engineering Designs**

- The Consultant shall prepare socio-economic baseline study for the project road with the objective of establishing how the improvement of the road will influence social and economic

development. The socio-economic data shall be used as a point of comparison to assess the positive (and negative) impacts of the road development.

- Undertake data collection relating the socio-economic situation along the project road prior to project commencement, during project implementation and 2 years after the completion of the project
- Establish the socio-economic situation and the pre-project behaviour of the population and infrastructure in the project area
- Undertake periodic monitoring and evaluation at mid and end term of the socio economic situation following the road construction project to determine progress on achievements of desired outcomes.
- Review and submit for Engineers approval EPC Contractor detailed engineering designs, material investigation report, pavement design report, structural report, hydrological report, as built drawings and project completion report, Land acquisition plans, Environment and Social Assessment Report and specifications, book of drawings and process
- Provide necessary guidance to formulate (i) Drawing Classification System and (ii) Plant Identification System and review the systems proposed by the EPC Contractor.
- Examine and review all drawings, procedures, documents and detail designs submitted by or requested from the EPC Contractor. These include drawings and designs requiring approval from regulatory bodies as well. Such drawings and documents cover all technical aspects relevant to the Project.
- Review and check the detailed engineering designs of the Project to ensure its compliance with the Environmental Impact Assessment (EIA) requirements.

#### **Construction Supervision and Management**

- Be stationed at the site office/s provided under the works contract with counterpart personnel to supervise the construction, erection and consequently commissioning of the Project on full time basis.
- Establish a system acceptable to the Client for project management including documentary control system and administration of the control system. The Consultant shall establish acceptable internal quality management plan.
- Review all documents submitted by the EPC Contractor with respect to planning, scheduling and progress during the project execution period.
- Act on behalf of the Client within the delegated authority in carrying out his duties including project management & related functions in accordance with Clause 3.3, Conditions of Contract for EPC/ Turnkey Projects, FIDIC First Edition (1999) in the implementation of the Project.
- Preparation and submission of monthly and quarterly progress reports together with up

- Supervising and ensuring and that construction works are constructed in accordance with the Contract agreement and are within the contract sum and period.
- Issue site instructions on behalf of the Client to the EPC Contractor and undertake supervision of all aspects of civil, structural works and related works, testing during incorporation into the works, commissioning and assist the Client during performance tests and provisional acceptance.
- Review, evaluate and approve construction method statements and additional site works of the EPC Contractor, in compliance with the technical and environmental requirements.
- Monitor the Project in every stage of the Project and take appropriate corrective measures.
- Provide accurate and timely feedback to the Client about the various aspects of the Project including schedule, design, cost implications and trouble shooting.
- Provide technical assistance during the Defects Notification Period and final acceptance of the Works.
- Organize and conduct periodic and special meetings to support contract administration
- Checking and reviewing monthly progress and final reports before submission to the Engineer
- Checking and revising the Contractor's programme to ensure completion of works within the time for completion
- Considering and certifying the amount of interim and final payments from the Contractor

#### **Determinations**

- Maintain records of contractual claims, if any by the EPC Contractor.
- Assist the Client in contractual matters with the EPC Contractor (guarantees, performance bonds, insurance, claims, etc.)
- Evaluate contractual claims and forward recommendations to the Engineer for determination

#### **Quality Management**

- Evaluate and approve the EPC Contractor 's Quality Control and Quality Assurance Plans. The quality management system shall comply with ISO 9001:2001 and shall cover all stages of the Contract including design, procurement, execution, construction, completion, testing, commissioning and activities during the Defects Notification Period.
- Inspection and testing at the manufacturer 's works and monitor delivery according to the Employer 's Requirements (Ref. Clause 1.1.1.3, Conditions of Contract for EPC/ Turnkey Projects, FIDIC First Edition (1999) and Technical Specifications.
- Assist the Client during taking over stage of the project including coordinating of taking over meetings.
- perform or witness as required under the Contract, all tests on all materials and workmanship performed by the Contractor, both at the site and outside the site, to ensure that the materials and

workmanship conform to the specifications. Notify the Contractor and the Employer immediately on the rejection of any non-compliance, followed by details in writing. Maintain files of all testing data, to be available for review on a daily basis.

- Prepare and submit the Taking over Certificates and other Acceptance Certificates as defined in the contract specifications subjected to the prior approval of the Client.
- Review, evaluate and approve the EPC Contractor's Taking Over start up and the testing procedures including that of performance tests to verify the guarantees. The test procedures shall comply with the internationally accepted relevant standards.
- Ensure that quality control and engineering standards are consistently maintained throughout the project duration within cost and time constraints. Supervise and ensure that all tests are carried out in accordance with the approved procedures.
- Review and monitor quality control, health and safety procedures/manuals for the Project.
- Supervise the final acceptance tests and test operation of the road and certify the final acceptance test reports prepared by the EPC Contractor.
- Witness the commissioning and acceptance tests with the participation of the Client and submit a detailed completion report to the Client.

#### **Technology Transfer and Training of Client's Staff**

The Client will assign his engineers and other key personnel as Counterpart Personnel to work with the Consultant 's and Contractor's team and they will work closely with the Consultant in the Work phases of design review, construction, and other related project works in order to make use of the opportunity for technology transfer.

These Counterpart Personnel will work under the supervision and management of the Consultant. However, the administrative matters and the payments of the Counterpart Personnel is the responsibility of the Client or as spelt in the works Contract.

#### **Environmental and Social Management Aspects**

The Consultant shall be responsible for the following regarding Environmental and Social Management aspects of the project road.

- To ensure that the envisaged Environmental and Social mitigation measures specified in the Environmental and Social Impact Assessment (EIA) study report and NEMA license, are implemented and complied by the EPC Contractor during the Contract Period of the Project.
- To establish and report on the Environmental and Social monitoring and evaluation procedures.
- Assist the client in land acquisition and implementation of the Resettlement Action Plan (RAP)
- To ensure the design and construction works are undertaken in accordance with NEMA Environmental Guidelines, including social and resettlement guidance, Kenyan Laws on Gender Policy, and environmental requirements of the Government of Kenya as well as Site-specific Environmental Management Plan ("EMP").

## **6.0 DELIVERABLE REPORTS**

All reports to the Client will be delivered to the following address:

**To General Manager (Design & Construction)  
Kenya National Highways Authority  
P.O. Box 49712-00100  
NAIROBI**

The reports shall be written in English, and shall be submitted in the number of copies tabulated below. In their Methodology Statement, the Consultant shall provide a fixed layout for these reports. The reports shall be submitted as follows:-

<b>Report</b>	<b>No. of Hard Copies</b>	<b>No of Soft Copies</b>
Socio-Economic Baseline Report	5	5
Monthly Progress Reports	5	5
Quarterly Progress Summary Reports	5	5
Provisional Completion Report	5	5
Provisional Accounts	5	5
Final Project Completion Report	5	5
As build drawings (hard and soft copies)	5	5

### **a) Inception Report**

An inception report shall be submitted within four (4) weeks from the commencement of the Consulting services. It shall include the proposals on how the Objectives and Scope of the services are to be achieved.

### **b) Implementation Schedule of the Project**

An implementation schedule shall be prepared by the Consultant, taking as an input basis, the Time Program of the EPC Contract. This implementation schedule shall be submitted along with the Inception Report. It is required to highlight in particular the milestones to be met in order that the Project can be executed smoothly.

### **c) Reports**

The Consultant shall prepare design audits and or design review memoranda as required during the implementation phase, depending on the needs to address specific points related to the EPC Contractor's design.

### **d) Design Review Comments**

The Consultant shall prepare design review reports as required during the implementation phase, depending on the needs to address specific Employer's requirements related to the EPC Contractor's design.

**e) Monthly Progress Reports**

A progress report shall be submitted every month by the Consultant to the Client, addressed to the General Manager (Design and Construction), within 7 days after the end of the reporting month. The report shall cover the following items:

1. Status reports on design services, plant, Contractor's equipment and personnel mobilization status, construction progress until taking over of the works.
2. Engagement of different personal of the Consultant's team in the works and Utilization of man-months.
3. Description of delays and steps to be taken to overcome them.
4. Any other project aspect considered necessary by the Engineer

**f) Quarterly Progress Reports**

1. The Consultant shall submit to the Client of the Quarterly progress reports which are required to be submitted to the Ministries
2. A chronological listing of significant project events.
3. A concise summary of the major highlights of the report.
4. Action on items, comprising a list of significant items on the Project which require resolution by either the Client or the Consultant.

**g) Inspection Reports**

The Consultant shall submit for each test, a formal inspection report including test details of each inspection/test conducted, in the month the inspection is done.

**h) Socio-Economic Baseline Report**

The Consultant shall prepare inception, draft and final baseline socio economic reports.

The shall prepare a Mid-term review report at the middle of the road upgrade project period when instructed by KeNHA. The report shall incorporate a review of the baseline indicators, identify any deviations and make recommendations to ensure achievement of the desired impacts.

The Consultant shall prepare an evaluation report after the completion of the road construction. The report shall evaluate the impact of road development by comparing the baseline indicators with the data collected one year after project completion.

The reports shall be approved by the Employer before proceeding to next stage of the assignment.

**i) Site Inspection Reports**

The Consultant shall prepare and submit site inspection reports for key activities as defined during the implementation phase of the inspection. They shall also include related documents and/or comments with results or suggested remedial actions (if deemed to be necessary).

**j) Disbursement Schedules**

The Consultant shall monitor and review the Project cost and expenditure and prepare the periodic statements in close co-ordination with the Client's relevant divisions. The main activities are as follows;

1. Regular reviewing of the status of the Project cost and comparison of scheduled disbursements with actual progress.
2. Preparation and regular updating of disbursement schedules.
3. Review total project cash flow, establish an early warning system, and prepare projections to track unfavourable cost trends pro-activity, draw action plans and advise the Client.
4. Prepare S-curve depicting cost and schedule, reports for budgeted cost for EPC works scheduled, actual cost for works completed and budget cost for works performed, cost variation, schedule variation, total project estimate to completion.

**k) Updating of Consultants Assignment Schedule**

Consultant shall prepare and submit the updated consultancy schedule as necessary due to the change of the status and conditions of the Project according to the progress of the Project.

**l) Commissioning Reports**

The Consultant shall review and approve in consultation with the Client the relevant completion reports with enclosed test results for the particular work sections submitted by the EPC Contractor. These reports shall address all —Tests on Completion and —Tests after Completion including their results. The approval of the completion reports shall be a pre-condition for issue of any Taking-over Certificate and Tests after Completion.

**m) Final Inspection Report, Minor Outstanding Work and Defects List with Enclosed Test Results**

The final inspection report of the Consultant shall address the status of the work items at the time of Taking-over by the Client. The minor outstanding works, defects, failures, shortcomings are to be listed and compiled. Possible remedial actions by the EPC Contractor as needed, are to be listed and noted, including the given period of time the EPC Contractor is to rectify. The material handed over by the EPC Contractor to the Client will be checked and listed for status and completeness.

**n) Operation & Maintenance Manuals**

The Consultant shall review and approve in consultation with the Client, the Operation & Maintenance procedures and manuals submitted by the EPC Contractor, within four (4) weeks before the commencement of the commissioning.

Furthermore the Consultant shall prepare and submit a —Reference Manual for the Project providing recommendations of the Consultant with cross references to related documents along with the approved Operation & Maintenance manual.



**o) Taking Over Certificate**

The Taking-over certificate shall be prepared and issued by the Consultant in consultation with the Client, following the successful completion of the works provided that Consultant is satisfied that the defects or deficiencies have been successfully rectified. The issue of the Taking-over Certificate shall be subjected to;

1. The EPC Contractor having provided the operating and maintenance manuals, as well as all the drawings and documents handled over to the Client requested in the Contract.
2. No major deficiencies are found and minor deficiencies are listed in the defects list by the Consultant.
3. Items specified as reverting to the Employer revert accordingly

**p) Plant Performance Evaluation Reports**

1. The Consultant shall witness the works performance tests carried out under Test after Completion. They will analyze, evaluate and approve the final performance tests with the concurrence of the Client.
2. The analyses, results and conclusions with recommendations shall be compiled in the performance evaluation report to be submitted to the Client.

**q) Performance Certificate**

The Consultant shall prepare for the final inspection and acceptance meeting, thereafter prepare the Performance Certificate with the approval of the Client and submit after the expiry date of the Defects Notification Period, to the Client who will issue the Performance Certificate to the Contractor.

**r) Final Certificate of Payment**

A written statement shall be prepared by the Consultant, to be signed by both parties, the Client and the EPC Contractor that all financial obligations by both parties are fulfilled. This final payment certificate shall be prepared and issued in accordance with the relevant clauses of the FIDIC guidelines, —Conditions of Contract for EPC/Turnkey Projects, first edition 1999.

## **7.0 PROJECT MANAGEMENT, CONTRACTUAL FRAMEWORK AND RESPONSIBILITIES**

1. The Employer for both works and supervision contracts will be the Director General, Kenya National Highways Authority (KeNHA) whereas the Employer's Representative will be the General Manager (Design & Construction), KeNHA.
2. The Consultant selected for the supervision of the works, hereinafter called the Consultant, will be the Assistant Employer's Representative for the works contract. The Employer's Representative will delegate certain of his responsibilities for the implementation of the works contract to the Assistant Employer's Representative within the framework of the FIDIC EPC /TURNKEY BASED Conditions of Contract.
3. Responsibilities that the Employer's Representative will retain with respect to the works contract will include all legal and financial issues arising from claims and disputes by third parties relating to land tenure, national planning, damage caused to commercial interests and issues of similar nature. The Employer's Representative will also retain the responsibilities for the project budget and the management of the financial allocations to the contracts, conclusion of these contracts and issuing of commencement orders and variation orders. In these matters he will closely liaise with the Employer's Representative.
4. The Employer's Representative shall identify a Project Engineer, who will facilitate decision making in matters pertaining to the supervision and the works contracts that are either not covered by the delegation of powers to the Consultant or that need a decision by the Employer's Representative once the Consultant has fulfilled all his obligations under these Terms of Reference. The Project Engineer will be the Consultant's day-to-day contact person in the Kenya National Highways Authority. The Consultant will keep the Project Engineer informed in a detailed way of all developments on site. The Project Engineer will visit the site regularly and will attend all site meetings.
5. A model letter setting the Delegation of Powers is attached in Annex B to these RFP document.

## **8.0 LOGISTICS AND TIMING**

### **8.1 Project location:**

The road starts from Kibwezi in Makueni County, and links Kitui, Tharaka Nithi and Meru Counties. The project road is part of the Mombasa - Isiolo - Addis Ababa Road Transport Corridor.

### **8.2 Project period:**

The Contract period shall be 54 months, including;-

**Phase I:** Works supervision - 42 months

**Phase II:** 12 months (Defects Liability Period)

## **9.0 STAFF REQUIREMENTS**

The Consultant shall provide the following staff required for the performance of the duties described above:

<b>S/No.</b>	<b>Staff</b>	<b>Effective Man Months</b>	
		<b>Construction Period</b>	<b>Defects Liability Period</b>
1)	Project Director	5	2
2)	Resident Engineer	42	4
3)	Highway/Measurement Engineer	42	0
4)	Materials Engineer	42	4
5)	Structural/Drainage Engineer	15	0
6)	Transport Economist	6	0
7)	Senior Surveyor	42	4
8)	Materials Technologist (1 No.)	42	4
9)	Senior Road Inspector (3 No.)	126	12
10)	Environment Expert	15	0
11)	Architect	3	0
12)	Electrical Engineer	3	0
13)	Mechanical Engineer	3	0
14)	Sociologist	10	0
	<b>TOTAL</b>	<b>396</b>	<b>30</b>

The works contract shall provide for the attendance to the Resident Engineer only in the categories of labourers, chainmen and office messengers/assistants.

Remuneration for all other Support Staff such as Survey Assistants, Laboratory Technicians and a Secretary and any other expenses required for proper functioning of the site supervision or backstopping shall be factored in the rates for listed staff.

The profiles of the key experts to be provided by the Consultant for this contract are as follows:

**Project Director**

**(i) *Qualifications and skills***

Must possess University Degree BSc (Civil Engineering) or equivalent and be a Registered Engineer and Registered Consulting Engineer with Engineers Board of Kenya or equivalent such as Member of the Institution of Civil Engineers (U.K.) etc. A Masters Degree will be an added advantage.

**(ii) *General professional experience***

A minimum of 15 years practical post-qualification experience

**(iii) *Specific professional experience***

Must have extensive broad experience in highway design works contract administration, evaluation of Contractor's claims for at least 10 years and more specifically have recent service as a Project Director on at least two highway construction contracts of comparable magnitude. Knowledge of FIDIC contract procedure is mandatory. Previous experience on road projects in East Africa will be an advantage.

**Resident Engineer**

**(i) *Qualifications and skills***

Must possess University Degree BSc (Civil Engineering) or equivalent and be a registered engineer with Engineers Board of Kenya or equivalent such as Member of the Institution of Civil Engineers (U.K.) etc. A Masters Degree will be an added advantage.

**(ii) *General professional experience***

A minimum of 15 years practical post-qualification experience

**(iii) *Specific professional experience***

Must have extensive broad experience in highway design works contract administration, evaluation of Contractor's claims for at least 10 years and more specifically have recent service as a resident engineer on at least one highway construction contract of comparable magnitude. The Resident Engineer must demonstrate knowledge of FIDIC, particularly Design and Build FIDIC EPC/Turnkey based contracts. Previous experience on road projects in East Africa will be an advantage.

Must have extensive and broad experience in works contract administration and evaluation of Contractors' claims for at least ten (10) years.

**Highway/Measurement Engineer**

**(i) *Qualifications and skills***

Must possess University Degree BSc (Civil Engineering) or equivalent and be registered with Engineers Board of Kenya or equivalent such as the Institution of Civil Engineers (U.K.) etc. A Masters Degree will be an added advantage.

**(ii) *General professional experience***

A minimum of 10 years practical post-qualification experience in road projects

**(iii) *Specific professional experience***

Must have 10 years of relevant cumulative experience in international trunk road design and construction and has successfully completed at least 3 projects of similar magnitude and complexity in a similar capacity during the past 10 years.

Previous experience on road projects in East Africa will be an advantage.

**Materials Engineer**

**(i) *Qualifications and skills***

Must possess University Degree BSc (Civil Engineering) or equivalent and be registered with Engineers Board of Kenya or equivalent such as the Institution of Civil Engineers (U.K.) etc. A Masters Degree will be an added advantage.

**(ii) *General professional experience***

A minimum of 10 years practical post-qualification experience in road projects

**(iii) *Specific professional experience***

Must have 8 years relevant experienced in soils and materials sampling and testing for large road construction contracts. Experience in bituminous materials testing and quality control is mandatory.

Experience with analytical pavement evaluation methods is desirable. Previous experience on road projects in East Africa will be an advantage.

**Structural /Drainage Engineer**

**(i) *Qualifications and skills***

Must possess University Degree BSc (Civil Engineering) or equivalent and be a registered engineer with Engineers Board of Kenya or equivalent, such as Member of the Institution of Civil Engineers (U.K.) etc. A Master's Degree will be an added advantage.

**(ii) *General professional experience***

A minimum of 10 years practical post-qualification experience

**(iii) *Specific professional experience***

At least 8 years' experience in structural analysis and design and construction of bridges and minor road drainage structures including urban drainage systems. Should be familiar with the latest Computer Aided Design applications.

**Transport Economist**

**(i) *Qualifications and skills***

Must possess University Degree BSc (Civil Engineering) and/or Transport Economics and be registered with relevant professional institution like Engineers Board of Kenya or equivalent. A Master's Degree will be an added advantage.

**(ii) *General professional experience***

A minimum of 10 years practical post-qualification experience

**(iii) *Specific professional experience***

Must have minimum 8 years extensive and broad experience in Project Management, Monitoring and Evaluation, Social and Economic Evaluation.

**Senior Surveyor**

**(i) *Qualifications and skills***

Must possess BSc. Degree or equivalent in Survey & Photogrammetry or related field and must be a Registered with Institute of Surveyors of Kenya or equivalent.  
A Masters Degree will be an added advantage.

**(ii) *General professional experience***

A minimum of 10 years practical post-qualification experience

**(iii) *Specific professional experience***

He/She must have served in similar capacity in at least three road projects of similar magnitude and complexity. He/She must familiar with the latest electronic survey equipment including GPS, Total Stations and associated computer applications. Previous experience on road projects in East Africa will be an advantage.

**Materials Technologist**

**(i) *Qualifications and skills***

Must possess a Higher National Diploma in Civil Engineering from Kenya Polytechnic or equivalent.

**(ii) *General professional experience***

A minimum of 8 years practical post-qualification experience on road projects.

**(iii) *Specific professional experience***

Must be experienced on soils and materials sampling and testing for large road construction contracts. Particular experience with laboratory testing of stabilised mixes, bituminous mixes and surface dressing is essential.

**Senior Roads Inspector (3 No.)**

**(i) *Qualifications and skills***

Must possess a KNEC Diploma in Civil Engineering from Kenya Polytechnic or its equivalent.

**(ii) *General professional experience***

A minimum of 8 years practical post-qualification experience

**(iii) *Specific professional experience***

Must be experienced on-site inspection and works measurement of large road construction contracts. Familiarity with electronic survey equipment will be an advantage.

**Environment Expert**

**(i) *Qualifications and skills***

Must possess a Degree in Environmental Management or related discipline and must be registered as Lead Expert (NEMA) or equivalent.

**(ii) *General professional experience***

Must have minimum of ten (10) years of practical post qualification experience in environmental studies of infrastructural projects.

**(iii) *Specific professional experience***

Must have minimum of 5 years working experience on environmental management with sound knowledge of environmental issues, initiatives and implementation of mitigation measures in construction of bridges and road works.

**Architect**

**(i) *Qualifications and skills***

Must possess University Degree BA (Architecture) or equivalent and be registered with Board of Registration of Architects & Quantity Surveyors of Kenya (BORAQS).  
A Master's Degree will be an added advantage.

**(ii) *General professional experience***

A minimum of 5 years' practical post-qualification experience in buildings projects

**(iii) *Specific professional experience***

Must have 10 years of relevant cumulative experience in design and construction supervision of buildings projects and has successfully completed at least 3 projects of similar magnitude and complexity in a similar capacity during the past 10 years.  
Previous experience on road projects in East Africa will be an advantage.

**Electrical Engineer**

**(i) *Qualifications and skills***

Must possess University Degree (BSc Electrical Engineering) or equivalent and be registered with Engineers Board of Kenya or equivalent.  
A Masters Degree will be an added advantage.

**(ii) *General professional experience***

Must have extensive and broad experience planning, design and construction of electrical works in building projects for at least five (5) years.

**(iii) *Specific professional experience***

Must have minimum five (5) years specific experience as Electrical Engineer for building works of comparable magnitude.  
Knowledge of FIDIC Contract Procedure and Donor Funded Projects requirements is desirable.  
Previous experience on building projects in East Africa will be an added advantage.

**Mechanical Engineer**

**(i) *Qualifications and skills***

Must possess University Degree (BSc Mechanical Engineering) or equivalent and be registered with Engineers Board of Kenya or equivalent.  
A Masters Degree will be an added advantage.

**(ii) General professional experience**

Must have extensive and broad experience planning, design and construction of mechanical works in building projects for at least five (5) years.

**(iii) Specific professional experience**

Must have minimum five (5) years specific experience as Mechanical Engineer for building works of comparable magnitude.

**Sociologist**

**(i) Qualifications and skills**

The specialist should be qualified with a degree in Gender/Social science management or related discipline.

**(ii) Professional experience**

Must have minimum of ten (10) years of practical post qualification experience in development work with social and gender components, including the design and /or management, social impact assessment and mitigation measures of infrastructure programs and projects in Africa. The specialist should be cognizant of the area and local people who will be affected by the project. Proven ability in helping developing counties to formulate and implement gender strategies.



## **10.0 WORK SCHEDULE**

The Consultant shall propose a schedule of activities and corresponding deployment of manpower, which will ensure that all duties entrusted to him, will be adequately performed. This schedule, together with a comprehensive statement justifying the proposed deployment will be incorporated in the methodology statement.

### **10.1 Facilities To Be Provided By The Employer**

Under the Terms and Conditions of the Works Contracts, the Consultant shall be provided with:

- Fully furnished and equipped site office.
- Fully equipped site laboratory.
- Furnished site housing accommodation.
- Site transport in the form of supervisory vehicles and
- Other site facilities, survey and drawing office equipment, computers and utilities necessary for the execution of the services, including office consumables, and office operating expenses.

It shall be the responsibility of the Consultant to supervise the supply and provision and maintenance of the said buildings, furniture, equipment and vehicles by the Works Contractor in accordance with the works contract. The Consultant shall ensure that any items designated to revert to the Employer after completion of the Works Contract are officially handed over to the Employer in good condition as soon as they are no longer required on the Works Contract.

## **11.0 MONITORING AND EVALUATION**

### **11.1 Definition Of Indicators**

In his Technical Proposal (Organisation and Methodology), the Consultant shall propose relevant key indicators for monitoring project progress, results, activities and assumptions and show how these will be monitored.

As a minimum, the Consultant will regularly review the physical work progress in terms of number of Km of road construction and completed to various levels in compliance with the drawings and specifications in relation to the Contractor's approved work programme and cash flow projections, schedule of plant and manpower resources.

The Consultant will regularly appraise this information in his Progress Reports and in Site Meetings and discuss them with the Contractor and the Engineer.

### **11.2 Reviews and Evaluations**

Project reviews and evaluation applying monitoring indicators will be presented in the regular progress reports and the Final Project Completion Report will contain an overall assessment.

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**Special Notes**

1. The Contract 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 stipulated under clause 6.4 of Special Conditions of Contract.
2. The Contract includes four parts: Form of Contract, the General Conditions of Contract, the Special Conditions of Contract and the Appendices.

## **CONTRACT FOR CONSULTANT’S SERVICES**

between

\_\_\_\_\_  
*[name of the Client]*

AND

\_\_\_\_\_  
*[name of the Consultant]*

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

## **I. FORM OF AGREEMENT**

This **AGREEMENT** (hereinafter called the “Contract”) is made this \_\_\_\_\_ day of \_\_\_\_\_ [month], [year], between **KENYA NATIONAL HIGHWAYS AUTHORITY** a body corporate established under the Kenya Roads Act, of Post Office Box Number 49712-00100, Nairobi [whose office is situated at Blue Shield Towers, Hospital Road, Upper Hill ] (hereinafter called “*the Authority*”) 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**

The Authority awarded the contract for Consultancy Supervision for the Upgrading of Kibwezi-Mutomo-Kitui-Kabati-Migwani road (A9/B64) Road at a contract sum of \_\_\_\_\_

## **NOW THIS AGREEMENT WITNESSETH** as follows:

1. The following documents attached hereto shall be deemed to form and be read and construed as part of this Contract:
  - (a) Letter of Award and Acceptance
  - (b) General Conditions of Contract;
  - (c) Special Conditions of Contract;
  - (d) Technical Bid Submission Form
  - (e) Financial Bid Submission form
  - (f) Terms of Reference
  - (g) Comments of the Consultant on the Terms of Reference
  - (h) Team Composition and Task assignments
  - (i) Work Methodology
  - (j) Cost breakdown of Consultancy Services
  - (k) Professional Indemnity Cover
  - (l) Schedule of Supplementary Information
2. The Authority hereby covenants to pay the Consultant the Contract Price upon satisfactory provision of the Services.
3. The Consultant shall not assign, in whole or in part, its obligations to perform under this Contract, except with the Authority’s prior written consent.
4. The Authority may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the Consultant terminate this Contract in whole or in part if the Consultant fails to provide any or all of the Services as provided in this Contract or if the Consultant has engaged in corrupt or fraudulent practices in competing for or execution of this Contract.
5. The contract shall be interpreted in accordance with the Laws of Kenya.

6. Any notice shall be deemed to have been given when sent by post or hand delivery to the other party's address as listed in this Contract.

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

**SEALED** with the Common Seal of **KENYA NATIONAL HIGHWAYS AUTHORITY**

In the presence of:

1. Director General

.....  
(Signature)

2. General Manager (Design & Construction)

.....  
(Signature)

**SEALED** with the Common Seal of the Supplier,

.....  
In the presence of:

.....  
(Name)

.....  
(Signature)

**WITNESSED BY**

.....  
(Name)

.....  
(Signature)

## **II. GENERAL CONDITIONS OF CONTRACT**

### **1.0 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 SubConsultant 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) “SubConsultant” 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 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 Consultant may be taken or executed by the officials specified in the SC.

**1.7 Taxes and Duties**

The Consultant, SubConsultant[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 fulfil 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.

- (e) For the purpose of this clause;

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

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

- (f) 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.

#### **3.2 Conflict of Interests**

##### **3.2.1 Consultant Not to Benefit from Commissions, Discounts, Etc.**

- (i) The remuneration of the Consultant pursuant to Clause 6 shall constitute the Consultant's sole remuneration in connection with this Contract or the Services and the Consultant shall not accept for his own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of his obligations under the Contract and the Consultant shall use his best efforts to ensure that his personnel, any subConsultant[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 subConsultant[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 subConsultant[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 sub-Consultant[s] and the personnel of either of them shall not, either during the term of this Contract or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract or 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 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 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 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  
agree, no changes shall be made in  
  
Replacement  
Of Personnel**

(a) Except as the Client may otherwise **and/or** 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 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 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**

The Client shall make available to the Consultant the Services and Facilities listed under Appendix E.

## **6. PAYMENTS TO THE CONSULTANT**

### **6.1 Monthly Remuneration**

The Consultant's total remuneration shall not exceed the Contract Price and shall be based on monthly payments 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**

The price payable is set forth in the Special Conditions.

### **6.3 Payment for Additional**

2.4, a breakdown of the Contract price is provided in Appendices D.

For the purposes of determining the remuneration due for additional services as may be agreed under Clause **Services**

- |  |   |
|--|---|
| <b>6.4 Terms and Conditions of Payment</b> | Payments will be made to the account of the Consultant and according to the payment schedule stated in the “Special Conditions of Contract”.  |
| <b>6.5 Interest on Delayed Payment</b>     | 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 ninety (90) 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**

- |                                |  |
|--------------------------------|--|
| <b>7.1 Amicable Settlement</b> | The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.   |
| <b>7.2 Dispute Settlement</b>  | 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. |



### **III. SPECIAL CONDITIONS OF CONTRACT**

<b>Number of GC Clause</b>	<b>Amendments of and Supplements to Clauses in the General Conditions of Contract</b>
1.1(i)	The Member in Charge is General Manager (Design & Construction) for the Client and the Project Director for the Consultant.
1.4	<p>The addresses are:</p> <p>Client: Director General, Kenya National Highways Authority Blue Shield Towers, Hospital Road, Upper Hill, P.O. Box 49712-00100 NAIROBI, KENYA</p> <p>Telephone: +254 (020) 8013842 Fax: +254 (020) 2720044 Email: dg@kenha.co.ke</p> <p>Consultant: _____ Attention: _____</p> <p>Telephone; _____ Telex: _____</p> <p>Facsimile: _____</p>
1.6	<p>The Authorized Representatives are:</p> <p>For the Client: General Manager-Design &amp; Construction, Kenya National Highways Authority Blue Shield Towers, Hospital Road, Upper Hill, P.O. Box 49712-00100 NAIROBI, KENYA</p> <p>For the Consultant _____</p>
2.1	The contract shall come into effect immediately after execution by all parties.
2.2	The date for the commencement of Services is _____[date]
2.3	<p>The period shall be fifty four (54) months comprising of :</p> <p>Phase 1: Works Supervision-42 Months</p>

Phase 2: Works Defects Liability Period -12 Months

3.4

The risks and coverage shall be:

- (i) Professional Liability: **Full amount of this contract excluding taxes and contingency amount.**
- (ii) Loss of or damage to equipment and property:  
**Kshs 10,000,000**
- (iii) Third party Liability: **Kshs 10,000,000**
- (iv) Employer's Liability and workers compensation:  
**Kshs 10,000,000**

6.2(a)

The amount in local Currency is \_\_\_\_\_ *[Insert amount]*

6.4

Payments shall be made on monthly basis.

Payments in Kshs shall be made to the following Account

Account Number: \_\_\_\_\_

Account Name: \_\_\_\_\_

Bank: \_\_\_\_\_

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

6.5

Payments will be made within 90 (ninety) days of receipt of the invoice and relevant documents

#### **IV. APPENDICES**

**APPENDIX A: LETTER OF AWARD AND ACCEPTANCE (to be inserted)**

**APPENDIX B: TERMS OF REFERENCE (to be inserted)**

**APPENDIX C: COMMENTS ON TERMS OF REFERENCE (to be inserted)**

**APPENDIX D: DESCRIPTION OF THE METHODOLOGY AND  
WORKPLAN FOR PERFORMING THE ASSIGNMENT  
(to be inserted)**

**APPENDIX E: TIME SCHEDULE FOR PROFESSIONAL PERSONNEL  
(to be inserted)**

**APPENDIX F: TEAM COMPOSITION AND TASK ASSIGNMENTS (to be  
inserted)**

**APPENDIX G: CURRICULUM VITAE (CV) FOR PROPOSED  
PROFESSIONAL STAFF (to be inserted)**

**APPENDIX H: ACTIVITY (WORKPLAN) SCHEDULE (to be inserted)**

**APPENDIX I: FINANCIAL PROPOSAL**

**APPENDIX J: OTHER SUBMISSIONS**

- *Technical proposal submission form*
- *Firm's References*
- *Financial proposal submission form*

**APPENDIX K: REQUEST FOR PROPOSALS (to be inserted)**