

REPUBLIC OF KENYA



MINISTRY OF ENVIRONMENT AND FORESTRY

REQUEST FOR PROPOSAL

FIRMS/INDIVIDUALS

TENDER NO: MOE&F/MEAS/RFP/003/2018 -2019

FOR

**CONSULTANCY SERVICES FOR LEGAL AND POLICY CONSULTANT TO DEVELOP A
NATIONAL OVERVIEW OF THE ARTISANAL SMALL-SCALE GOLD MINING (ASGM)
SECTOR**

CLOSING DATE: TUESDAY 11th SEPTEMBER, 2018
AT 11.00 A.M. (EAST AFRICAN TIME)

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SECTION I - INVITATION TO TENDER

RE: CONSULTANCY SERVICES FOR LEGAL AND POLICY CONSULTANT TO DEVELOP A NATIONAL OVERVIEW OF THE ARTISANAL SMALL-SCALE GOLD MINING (ASGM) SECTOR

Tender No: MOE&F/MEAS/RFP/003/2018 -2019

1.1 The **Ministry of Environment and Forestry (ME&F)** invites sealed proposals for the consultancy services as detailed in the tender document

1.2 The request for proposals (RFP) includes the following documents:

- Section I - Invitation to tender
- Section II - Information to consultants
Appendix to Consultants information
- Section III - Terms of Reference
- Section IV - Technical proposals
- Section V - Financial proposal
- Section VI - Standard Contract Form
- Section VII - Form of tender

1.4 Interested eligible firms may obtain further information from and inspect the request for Proposal document at Ministry of Environment and Forestry , Ragati Road, NHIF building, 11th floor Supply Chain Department Room 1104 during normal working hours or download from the Ministry's website www.environment.go.ke. and can also be accessed and downloaded from the IFMIS Supplier portal: <http://supplier.treasury.go.ke>. the firms that download the document must arrange to forward their details to the Head of procurement, Ministry of Environment and Forestry, NHIF building, Ragati Road, NHIF building, 11th floor 1102 before the closing date for records and for purposes of receiving clarifications and /or addendum if an or through email address procurement@environment.go.ke .

The RFP will be issued free of charge

1.5 Prices quoted should be net inclusive of all taxes and delivery costs, must be expressed in Kenya shillings and shall remain valid for period of (150) days from the closing date of the tender.

Duly completed tender documents should be submitted in an enclosed two plain sealed envelopes clearly marked:

- (i) Technical proposal for consultancy services for legal and policy consultant to develop a national overview of the artisanal small-scale gold mining (ASGM) sector.
- (ii) Financial proposal for consultancy services of legal and policy consultant to develop a national overview of the artisanal small-scale gold mining (ASGM) sector.

, and marked with the tender number and be deposited in the tender box provided at

Ragati Road, N.H.I.F 11th floor. Building Ministry of Environment and forestry

Tender Box or be addressed and posted to **(Principal Secretary, Ministry of**

Environment and forestry P.O. Box 30126 NAIROBI to be received on or before Tuesday 11th

September, 2018 *at 11.00 A.M East African time.*

- 1.6 Tenders will be opened immediately thereafter in the presence of the tenderers representatives who choose to attend the opening at **Ragati Road, N.H.I.F.** Building Ministry of Environment and Forestry Tender Box located at 11th floor, and at the Ministry's Conference room located at 12th floor.

Principal Secretary
Ministry of Environment and forestry

SECTION II – INFORMATION TO CONSULTANTS (ITC)

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SECTION II: - INFORMATION TO CONSULTANTS (ITC)

2.1 Introduction

- 2.1.1 The Client named the Appendix to “ITC” will select a firm among those invited to submit a proposal, in accordance with the method of selection detailed in the appendix. The method of selection shall be as indicated by the procuring entity in the Appendix.
- 2.1.2 The consultants are invited to submit a Technical Proposal and a Financial Proposal, or a Technical Proposal only, as specified in the Appendix “ITC” for consulting services required for the assignment named in the said Appendix. A Technical Proposal only may be submitted in assignments where the Client intends to apply standard conditions of engagement and scales of fees for professional services which are regulated as is the case with Building and Civil Engineering Consulting services. In such a case the highest ranked firm of the technical proposal shall be invited to negotiate a contract on the basis of scale fees. The proposal will be the basis for Contract negotiations and ultimately for a signed Contract with the selected firm.
- 2.1.3 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 and to attend a pre-proposal conference where applicable. Consultants should contact the officials named in the Appendix “ITC” to arrange for any visit or to obtain additional information on the pre-proposal conference. Consultants should ensure that these officials are advised of the visit in adequate time to allow them to make appropriate arrangements.
- 2.1.4 The **ME&F** will provide the inputs specified in the Appendix “ITC”, assist the firm in obtaining licenses and permits needed to carry out the services and make available relevant project data and reports.
- 2.1.5 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.
- 2.1.6 The **ME&F** employees, committee members, board members and their relative (spouse and children) are not eligible to participate.
- 2.1.7 The price to be charged for the tender document shall be **NIL/=**

2.1.8 The **ME&F** shall allow the tenderer to review the tender document free of charge before purchase.

2.2 Clarification and Amendment of RFP Documents

2.2.1 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 the Appendix "ITC". The Client will respond by cable, telex, facsimile or electronic mail to such requests and will send written copies of the response (including an explanation of the query but without identifying the source of inquiry) to all invited consultants who intend to submit proposals.

2.2.2 At any time before the submission of proposals, the Client may for any reason, whether at his own initiative or in response to a clarification requested by an invited firm, amend the RFP. Any amendment shall be issued in writing through addenda. Addenda 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.

2.3 Preparation of Technical Proposal

2.3.1 The Consultants proposal shall be written in English language

2.3.2 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.

2.3.3 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. Consultants shall not associate with the other consultants invited for this assignment. Any firms associating in contravention of this requirement shall automatically be disqualified.
- (ii) For assignments on a staff-time basis, the estimated number of professional staff-time is given in the Appendix. The proposal shall however be based on the number of professional staff-time estimated by the firm.
- (iii) It is desirable that the majority of the key professional staff proposed be permanent employees of the firm or have an extended and stable working relationship with it.

- (iv) Proposed professional staff must as a minimum, have the experience indicated in Appendix, 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.

2.3.4 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 specialty, the tasks that would be assigned to each staff team member and their timing.
- (v) CVs recently signed by the proposed professional staff and the authorized representative submitting the proposal. Key information should include number of years working for the firm/entity and degree of responsibility held in various assignments during 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 Appendix "A" specifies training as a major component of the assignment.
- (viii) Any additional information requested in Appendix "A".

2.3.5 The Technical Proposal shall not include any financial information.

2.4 Preparation of Financial Proposal

2.4.1 In preparing the Financial Proposal, 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.

- 2.4.2 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 Appendix "A" specifies otherwise.
- 2.4.3 Consultants **shall** express the price of their services in **Kenya Shillings**.
- 2.4.4 Commissions and gratuities, if any, paid or to be paid by consultants and related to the assignment will be listed in the Financial Proposal submission Form.
- 2.4.5 The Proposal must remain valid for 150 days after the submission date. During this period, the consultant is expected to keep available, at his own cost, the professional staff proposed for the assignment. The Client will make his best effort to complete negotiations within this period. If the Client wishes to extend the validity period of the proposals, the consultants shall agree to the extension.

2.5 Submission, Receipt, and Opening of Proposals

- 2.5.1 The original proposal (Technical Proposal and, if required, Financial Proposal; see para. 1.2) shall be prepared in indelible ink. It shall contain no interlineation or overwriting, except as necessary to correct errors made by the firm itself. Any such corrections must be initialed by the persons or person authorised to sign the proposals.
- 2.5.2 For each proposal, the consultants shall prepare the number of copies indicated in Appendix "A". Each Technical Proposal and Financial Proposal shall be marked "**ORIGINAL**" or "**COPY**" as appropriate. If there are any discrepancies between the original and the copies of the proposal, the original shall govern.
- 2.5.3 The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked "**TECHNICAL PROPOSAL**," and the original and all copies of the Financial Proposal in a sealed envelope clearly marked "**FINANCIAL PROPOSAL**" and warning: "**DO NOT OPEN WITH THE TECHNICAL PROPOSAL**". Both envelopes shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address and other information indicated in the Appendix "ITC" and be clearly marked, "**DO NOT OPEN, EXCEPT IN PRESENCE OF THE TENDER OPENING COMMITTEE.**"
- 2.5.4 The completed Technical and Financial Proposals must be delivered at the submission address on or before the time and date stated in the Appendix

“ITC”. Any proposal received after the closing time for submission of proposals shall be returned to the respective consultant unopened.

2.5.5 After the deadline for submission of proposals, the Technical Proposal shall be opened immediately by the opening committee. The Financial Proposal shall remain sealed and deposited with a responsible officer of the client department up to the time for public opening of financial proposals.

2.6 Proposal Evaluation General

2.6.1 From the time the bids are opened to the time the Contract is awarded, if any consultant wishes to contact the Client on any matter related to his proposal, he should do so in writing at the address indicated in the Appendix “ITC”. Any effort by the firm to influence the Client in the proposal evaluation, proposal comparison or Contract award decisions may result in the rejection of the consultant’s proposal.

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

2.7 Evaluation

The evaluation committee appointed by the Client shall evaluate the proposals on the basis of their responsiveness to the Terms of Reference applying the technical specifications , special conditions and general conditions as follows

2.7.0 Evaluation Criteria

The tenders submitted will be evaluated in three (3) stages; Mandatory, Technical and Financial. The evaluation criteria will be based on the following weights: -

- 1 Mandatory – Pass/Fail
- 2 Technical – Out of 100% with a pass mark of 70%
- 3 Financial – 20%

A Mandatory Requirements

The tender shall undergo a general pre-qualification process in order to determine the compliance of a bid with the following mandatory requirements. Tenderers are required to comply with the following requirements, failure to which the firm shall not proceed to the next stage of evaluation

No	Requirements	Pass	Fail
1.	Company profile (Company history, contacts and services)		
2.	Copy of Certificate of business incorporation/registration		
3.	Provide a list of shareholders/partners and the Directors with their contact details(CR 12)		
4.	Copy of Valid and current Tax Compliance Certificate		
5.	Copy of Business permit/license		
6.	Two copies of the Request for Proposal (RFP) documents (Original and a copy) both technical and financial		
7.	Audited Accounts for the last 3 years (2014,2015 and 2016)		
8.	All pages of the tender document must be numbered and serialized by the tenderer to follow the format 001 to the last page of the document.		
9.	Written Declaration letter that tenderer have never and shall not engage in any corrupt or fraudulent practices in the procurement proceedings		
10.	Written Declaration letter that the firm/person and his or her subcontractor, if any is not debarred from participating in procurement proceedings		
11.	Written Declaration letter that the firm/person is not guilty of any serious violation of fair employment laws and practices		

NB: The tenderers who do not satisfy any of the above requirements shall be considered non – responsive and will not be evaluated further

B (b) Technical Evaluation

The technical evaluation is as appended in the table below:-

	<i>CRITERIA – Technical evaluation</i>	WEIGHT
A	Relevant Experience for the Assignment (Corporate)	15
1	The tenderer should have Professional experience in the dealing with communities and other vulnerable groups mining sector with special emphasis in ASGM,Past consulting experiences in baseline surveys/assessments and dealing with chemicals multilateral environmental agreements for example Minamata Convention on Mercury ,Skills in data acquisition and management, and basic knowledge of the scientific method and Past trainings on UN environment on conducting mercury inventory List assignments carried out in the last five years; provide dates and contact persons, name of the organization/company and resource personnel used for each (Score of 2 each per relevant assignment up to a maximum of five assignments.)	10
2	The firm should have at least 5 years of experience in projects and result-based management Involvement (Score of 1mark per year)	5
B	Methodology and Approach	48

1	Demonstrate an understanding of the Participation in Minamata Convention on mercury meetings	3
2	Demonstrate an understanding of linkage between convention and ASGM NAP guideline.	5
3	Demonstrate an understanding of the legal and policy issues on Chemicals & Waste	3
4	Knowledge on Legal and regulatory status of ASGM	5
5	Understanding the TORs Consultant's initiatives and comments on the TORs	5
6	Demonstrable policy on research ethics including protection and respect for privacy ,rights and freedoms of miners	4
7	Appropriateness/ Completeness of description of Methodology with reference to TORs in terms of, but not limited to: <ul style="list-style-type: none"> • Objectives of the assignment - 2 • Scope of works - 2 • Deliverables - 2 • Engagement of stakeholders and collaboration – 3 • Public communication and outreach- 2 • Training and communication with client - 2 • Effectiveness of the information/data collection - 2 • Monitoring and evaluation – 2 • Structure of Final document-2 	19
8	Project schedule and work plan with clear allocation of duties on proposed staff and final report outline	4
C	Human Resource Capacity	28
1	Team leader: General education background and professional qualifications, length of experience, positions held, duration with the firm and experience in legal and policy in chemicals and waste related disciplines in the ASGM. The minimum qualifications is Master's Degree in the relevant fields Attached detailed CVs as indicated in the prescribed format and academic certificates	9
2	Associate consultants: Education background, qualifications and experience, positions held and duration with the firm .The minimum qualifications is Bachelor's Degree in relevant field. Evidence of adequacy and capability of carrying out the assignment: experience in legal and policy in chemicals, waste and ASGM. Attached detailed CVs as indicated in the prescribed format and academic certificates	9
3	Proof of availability of the whole team throughout the duration of assignment	4
4	Understanding of the NAP process and delivery of Specific reports on ASGM	6
D	Financial Capability	9
1	Prove of adequate financial resources to undertake the exercises with average annual turnover of Kshs 500,000 for 2 years as per audited accounts for 2015 and 2016 .	9
	TOTAL	100

To be eligible for the Financial Evaluation, tenderers must score at least seventy (70) out of hundred (100) at the Technical Evaluation stage

The tenderers Technical scores shall be weighted in accordance with the formula $TTS/HTSS \times 80$, where;
TSS-Tenderers technical Scores
HTSS- Highest Technical score Scored
70- Weights for Technical scores

C FINANCIAL PROPOSAL

- Financial evaluation will involve only the tenderers who scored 70 marks out of 100 in the Technical Evaluation above

Note: Tenderers will be expected to quote in KES. Inclusive of all taxes in the following format:-

Work Description	Amount (Kshs)
Consultancy services for legal and policy consultant to develop a national overview of the artisanal small-scale gold mining (asgm) sector	
Reimbursement (if any)	
Total	

Tenderers are also expected to indicate their proposed payment schedule in the following format. The payment schedule will form part of the contract for the winning tenderer.

DELIVERABLES

- (i) Prepare an Inception Report which shall be ready within the first 3 days after signing of contract.
- (ii) Prepare a Draft Report to be finalized within the next 9 days after Preparation of an Inception Report.
- (i) Organize Seminar /Workshop to subject the draft report to the scrutiny of stakeholders within a period of 5 days after Preparation of a Draft Report
- (ii) Submit Final Draft Report 3 days after the Organization of Seminar/ Workshop of stakeholders

2.7 Public Opening and Evaluation Criteria of Financial Proposal

2.8.1 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 opening date shall not be sooner than seven (7) days after the notification date. The notification may be sent by registered letter, cable, telex, facsimile or electronic mail.

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

$$Sf = 20 \times \frac{Fm}{F} \text{ where}$$

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.

- 2.8.6 The tender evaluation committee shall evaluate the tender within 30 days of from the date of opening the tender.
- 2.8.7 Contract price **variations shall not be allowed** for contracts not exceeding one year (12 months).

- 2.8.8 Where contract price variation is allowed, the variation shall not exceed 15% of the original contract price
- 2.8.9 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.

2.9 Negotiations

- 2.9.1 Negotiations will be held at the same address as “address to send information to the Client” indicated in the Appendix “ITC”. The aim is to reach agreement on all points and sign a contract.
- 2.9.2 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 firm that can offer within the available budget and to clearly defining the inputs required from the Client to ensure satisfactory implementation of the assignment.
- 2.9.3 Unless there are exceptional reasons, the financial negotiations will not involve the remuneration rates for staff (no breakdown of fees).
- 2.9.4 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.
- 2.9.5 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.
- 2.9.6 The **ME&F** shall appoint a team for the purpose of the negotiations.

2.10 Award of Contract

- 2.10.1 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.

2.10.2 The selected firm is expected to commence the assignment on the date and at the location specified in Appendix "A".

2.10.3 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

2.10.4 The **ME&F** may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

2.10.5 The **ME&F** shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

2.10.6 To qualify for contract awards, the tenderer shall have the following:

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

(b) Legal capacity to enter into a contract for procurement

(c) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.

(d) Shall not be debarred from participating in public procurement.

2.11 Confidentiality

2.11.1 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.

2.12 Corrupt or fraudulent practices

2.12.1 The **ME&F** 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.

2.12.2 The **ME&F** 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.

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

APPENDIX “A”

Clause Reference

Appendix to Information to Consultants

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

Clause Reference

2.1 The name of the Client is: ***Principal Secretary
Ministry of Environment and Forestry***

2.1.1 The method of selection is: ***Quality Cost Based Selection (QCBS)***

2.1.2 Technical and Financial Proposals are requested: ***Yes***

The name, objectives, and description of the assignment are ***as per Terms of Reference provided.***

2.1.3 A pre-proposal conference will be held: ***No***

The name(s), address (es) and telephone numbers of the Client’s official(s) are:
***Principal Secretary
Ministry of Environment and Forestry
P.O. Box 30126 00100 Nairobi, KENYA***

2.1.4 The Client will provide the following inputs: ***as per the Terms of Reference provided.***

2.1.5 (i) The estimated number of professional staff days required for the assignment is; ***20 working days***

(ii) The minimum required experience of proposed professional staff is ***as stated in the document provided***

2.1.6 (iii) Training is a specific component of this assignment: ***No***

(iv) Additional information in the Technical Proposal includes:
As per Terms of Reference provided

2.1.7 Taxes: ***financial proposal should be inclusive of all taxes payable under this contract.***

2.5.2 Consultants must ***submit an original , one (1No) additional hard copy*** and one original softcopy of each proposal.

2.5.3 The proposal submission address is as shown below: Information on the outer envelope should also include: ***“Do Not Open Before Tuesday 11th September, 2018 at 11.00 a.m”***

2.5.4 2.5.4 Proposals must be submitted no later than the following date and time: ***Tuesday 11th September, 2018 at 11.00 a.m”***

2.6.1 The address to send information to the Client is:

**Principal Secretary
Ministry of Environment and Forestry
P.O. Box 30126 00100 Nairobi, KENYA**

3.7.1 The minimum technical score required to pass is ***70 out of 100 points***

2.7.1 Alternative formulae for determining the financial scores is the following ***Not Applicable***

The assignment is expected to commence on immediately after signing of contract.

2.9.2 **Payment terms** : Full payment after completion of the assignment

SECTION III: - TECHNICAL PROPOSAL

Preparation of the Technical Proposals

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

SECTION III - TECHNICAL PROPOSAL

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1. TECHNICAL PROPOSAL SUBMISSION FORM

[_____ Date]

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

Ladies/Gentlemen:

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

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

We remain,

Yours sincerely,

[*Authorized Signature*]:

[*Name and Title of Signatory*]:

[*Name of Firm*]:

[*Address*]:

2. FIRM'S REFERENCES

Relevant Services Carried Out in the Last three 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.

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

Firm's Name: _____

Name and title of signatory; _____

(May be amended as necessary)

3. 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.

**14.DESCRPTION OF THE METHODOLOGY AND WORK PLAN FOR
PERFORMING THE ASSIGNMENT**

5. TEAM COMPOSITION AND TASK ASSIGNMENTS

1. Technical/Managerial Staff

Name	Position	Task

2. Support Staff

Name	Position	Task

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

Proposed Position: _____

Name of Firm: _____

Name of Staff: _____

Profession: _____

Date of Birth: _____

Years with Firm: _____ Nationality: _____

Membership in Professional Societies: _____

Detailed Tasks Assigned: _____

Key Qualifications:

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

Education:

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

Employment Record:

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

Certification:

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

_____ Date: _____
[Signature of staff member]

_____ Date; _____
[Signature of authorised representative of the firm]

Full name of staff member: _____

Full name of authorized representative: _____

7. TIME SCHEDULE FOR PROFESSIONAL PERSONNEL

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

Reports Due: _____

Activities Duration: _____

Signature: _____
(Authorized representative)

Full Name: _____

Title: _____

Address: _____

8. ACTIVITY (WORK) SCHEDULE

(a). Time frame

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

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

(b). Completion and Submission of Reports

- i) Prepare an Inception Report which shall be ready within the first 3 days upon signing of contract.
- (ii) Prepare a Draft Report to be finalized within the next 9 days after Preparation of Inception Report.
- (iii) Organize Seminar/Workshop to subject the draft report to the scrutiny of stakeholders within a period of 5 days after Preparation of a Draft Report
- (iv) Submit Final Draft Report 3 days after the Organization of Seminar / Workshop with stakeholders

SECTION IV: - FINANCIAL PROPOSAL

Preparation of Financial Proposal

- 2.1 The Financial proposal prepared by the consultant should list the costs associated with the assignment. These costs normally cover remuneration for staff, subsistence, transportation, services and equipment, printing of documents, surveys etc as may be applicable. The costs should be broken down to be clearly understood by the **Ministry of Environment & Forestry**.
- 2.2 The financial proposal shall be in Kenya Shillings and shall take into account the tax liability and cost of insurances specified in the request for proposal.
- 2.3 The financial proposal should be prepared using the Standard forms provided in this part

SECTION IV - FINANCIAL PROPOSAL STANDARD FORMS

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1. FINANCIAL PROPOSAL SUBMISSION FORM

_____ [Date]

To: _____

[Name and address of Client]

Ladies/Gentlemen:

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

We remain,

Yours sincerely,

_____ *[Authorized Signature]:*

_____ *[Name and Title of Signatory]:*

_____ *[Name of Firm]*

_____ *[Address]*

2. SUMMARY OF COSTS

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

3. BREAKDOWN OF PRICE PER ACTIVITY

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

4. BREAKDOWN OF REMUNERATION PER ACTIVITY

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

5. REIMBURSABLES PER ACTIVITY

Activity No: _____

Name: _____

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

6. MISCELLANEOUS EXPENSES

Activity No. _____

Activity Name: _____

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

REPUBLIC OF KENYA



MINISTRY OF ENVIRONMENT AND FORESTRY

TERMS OF REFERENCE

CONSULTANCY SERVICES FOR LEGAL AND POLICY CONSULTANT TO DEVELOP A NATIONAL OVERVIEW OF THE ARTISANAL SMALL-SCALE GOLD MINING (ASGM) SECTOR

1. Background

Kenya has received a grant from the Global Environment Facility towards development of a national action Plan NAP to address artisanal gold mining in Kenya under the Minamata convention on mercury

The background information on the convention is available on www.minamata.org.

Specifically the guideline for develop a NAP is detailed in the document.

The consultant must read the prodoc document of the project on linkages between sound chemicals management, waste management in general and health care waste in particular and how open burning of waste leads to emissions of unintentionally produced persistent organic pollutants (UPOPs).

2. Objective of the Consultancy

The overall objective of the consultancy is establish a national overview of the ASGM sector, including baseline estimates of mercury use and practices and thus gets a full understanding of comprehensive information of the ASGM sector in Kenya using the methodology developed by UN Environment.

3. Methodology

The baseline study will help develop a national overview of the ASGM sector in Kenya and will entail the following.

1. Desk study that will entail compiling all available information on ASGM. The desk study will be complemented by the interviews with the key stakeholders at the national and local level.
2. Field visits at the selected ASGM sites in Kenya in order to collect more in depth information via interviews with mining community, observations and physical measurements.

3. Scope of Work

The lead consultant will use three other thematic consultants to gather national information on the following, using the methodology developed by the UN Environment.

- a) Legal and regulatory status of ASGM;
- b) Baseline estimates of mercury emissions and releases from the ASGM sector; Using the Minamata Convention guidelines;
- c) Policies surrounding ASGM;
- d) Geographic distribution of ASGM;
- e) Economics, such as earnings per capita, mercury supply, use and demand, information on gold trade and export, cost of living, and access to finance for miners. The project will search in particular for information about gender and children aspects of the ASGM economics;
- f) Size of the formal and informal ASGM economy;
- g) Information about access to basic education, health care (including health effects of mercury exposure) and other services in mining communities;
- h) Information about access to technical assistance for miners;
- i) Leadership and organization of ASGM at national and local levels.
- j) Information gaps at the local and national scale that can be addressed;
- k) Known information about the influence of ASGM practices and policies in neighbouring countries.

Task of the Consultant

- a) Plan field trips (e.g. choose areas to visit, schedule trip, etc.) and make needed logistical arrangements;
- b) Collect and analyse data during field research trips (e.g. visit mining sites, interview miners and their families, etc.), based on UN Environment toolkit and NAP guidance document;
- c) Conduct desk research on available information on ASGM sector in Kenya, according to the categories listed above;
- d) Develop a draft and finalize national overview of legal and policy aspects of the ASGM sector, and develop problem statement list.

4. Experiences for the Consultant

The project will be awarded to a recognized firm/individual which can propose a research team with the following criteria:

- Experience of conducting social economic and financing baseline studies, impact assessments, at national and regional level.
- 5 years' proven experience in the social economic sector
- Knowledge of existing research networks, international partnerships and experience in the ASGM sector.
- Previous experience in the mining sector especially within ASM and with community based enterprises will be an advantage.
- Expert knowledge of research techniques and participatory research methods as well as of quantitative research methods.
- Ability to present data concisely and clearly.
- Demonstrable policy on research ethics including protection and respect for privacy; and disclosure of conflict of interest.

Qualifications

The lead consultant will be able to work with diverse professionals and experts and may have the following qualifications:

1. Minimum educational background: , economics, Finance mining, engineering, Law, Policy, Social Sciences and Natural Sciences etc.
2. Professional experience in the dealing with communities and other vulnerable groups mining sector with special emphasis in ASGM .
3. Past consulting experiences in baseline surveys/assessments and dealing with chemicals multilateral environmental agreements for example Minamata Convention on Mercury will be an added advantage.

4. Knowledge of national, regional and financing mechanisms such as the Global Environment Facility GEF international legislations including on international conventions and especially the Minamata Convention.
5. Skills in data acquisition and management, and basic knowledge of the scientific method.
6. Good problem-solving skills, open minded, able to take initiative and be proactive in daily tasks
7. Excellent experiences in stakeholder engagement.
8. Past trainings on UN environment on conducting mercury inventory will be an added advantage.

Deliverables

The legal and policy consultant to be hired will be required to:-

- (i) Prepare an Inception Report which shall be ready within the first 3 days of the review period.
- (ii) Prepare a Draft Report to be finalized within the next 9 days after Preparation an Inception Report.
- (v) Organize Seminars and Workshops to subject the draft report to the scrutiny of stakeholders within a period of 5 days after Preparation of a Draft Report
- (vi) Submit Final Draft Report 3 days after the Organization of Seminars and Workshops of stakeholders

Overall the consultancy is expected to take 20 working days.

1. Evaluation Criteria

	CRITERIA – Technical evaluation	WEIGHT
A	Relevant Experience for the Assignment (Corporate)	15
	The tenderer should have Professional experience in the dealing with communities and other vulnerable groups mining sector with special emphasis in ASGM, Past consulting experiences in baseline surveys/assessments and dealing with chemicals multilateral environmental agreements for example Minamata Convention on Mercury ,Skills in data acquisition and management, and basic knowledge of the scientific method and Past trainings on UN environment on conducting mercury inventory or any other related assignment List assignments carried out in the last five years; provide dates and contact persons, name of the organization/company and resource personnel used for each (Score of 2 each per relevant assignment up to a maximum of five assignments.)	10
1		
2	The firm should have at least 5 years of experience in projects and result-based management Involvement (Score of 1mark per year)	5
B	Methodology and Approach	48
1	Demonstrate an understanding of the Participation in Minamata Convention on mercury meetings	3
2	Demonstrate an understanding of linkage between convention and ASGM NAP guideline.	5
3	Demonstrate an understanding of the legal and policy issues on Chemicals & Waste	3
4	Knowledge on Legal and regulatory status of ASGM	5
5	Understanding the TORs Consultant’s initiatives and comments on the TORs	5
6	Demonstrable policy on research ethics including protection and respect for privacy ,rights and freedoms of miners	4
7	Appropriateness/ Completeness of description of Methodology with reference to TORs in terms of, but not limited to: <ul style="list-style-type: none"> • Objectives of the assignment - 2 • Scope of works - 2 • Deliverables - 2 • Engagement of stakeholders and collaboration – 3 • Public communication and outreach- 2 • Training and communication with client - 2 • Effectiveness of the information/data collection - 2 • Monitoring and evaluation – 2 • Structure of Final document-2 	19
8	Project schedule and work plan with clear allocation of duties on proposed staff and final report outline	4
C	Human Resource Capacity	28

1	Team leader: General education background and professional qualifications, length of experience, positions held, duration with the firm and experience in legal and policy in chemicals and waste related disciplines in the ASGM. The minimum qualifications is Master's Degree in the relevant fields Attached detailed CVs as indicated in the prescribed format and academic certificates	9
2	Associate consultants: Education background, qualifications and experience, positions held and duration with the firm .The minimum qualifications is Bachelor`s Degree in relevant field. Evidence of adequacy and capability of carrying out the assignment: experience in legal and policy in chemicals, waste and ASGM. Attached detailed CVs as indicated in the prescribed format and academic certificates	9
3	Proof of availability of the whole team throughout the duration of assignment	4
4	Understanding of the NAP process and delivery of Specific reports on ASGM	6
D	Financial Capability	9
1	Prove of adequate financial resources to undertake the exercises with average annual turnover of Kshs 500,000 for 2 years as per audited accounts for 2015 and 2016 .	9
	TOTAL	100

2. Duration of assignment, duty of station and expected places of travel

The assignment is expected to be carried out after signing of contract.

3. Remuneration

The remunerations will be considered as follows:

Duration is 20 days

- Payment will be based on Government of Kenya terms and condition for the relevant contract modality.
- Payment will be done after completion of the assignment

4. Application process

Interested and qualified candidates should submit their applications which should include the following:

- Technical proposal explaining why you are the most suitable for the work
- Provide a brief methodology on how they will approach and conduct the work.
- Financial proposal indicating break down of activities/ tasks and the daily rates, total amount per each task and the lump sum amount for the total deliverables.
- Personal CV including past experience in similar projects and at least 3 references.

SECTION VI:

REPUBLIC OF KENYA

SAMPLE O F C O N T R A C T

F O R

CONSULTING SERVICES

**Large Assignments
(Lump- Sum payment)**

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CONTRACT FOR CONSULTANT'S SERVICES

Large Assignments (Lump-Sum Payments)

between

[name of the Client]

AND

[name of the Consultant]

Dated: _____*[date]*

I. FORM OF CONTRACT

Large Assignments (Lump-Sum Payments)

This Agreement (hereinafter called the "Contract") is made the _____ day of the month of _____ [month], [year], between **Principal Secretary, Ministry of Environment and forestry P.O. Box 30126 00100 Nairobi, KENYA** whose registered office is situated at **NHIF BUILDING**, (hereinafter called the "Client") of the one part

AND

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

WHEREAS

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

NOW THEREFORE the Parties hereto hereby agree as follows:

- 1. The following documents attached hereto shall be deemed to form an integral part of this Contract:
 - (a) The General Conditions of Contract;
 - (b) The Special Conditions of Contract;
 - (c) The following Appendices:
 - Appendix A: Description of the Services
 - Appendix B: Reporting Requirements
 - Appendix C: Key Personnel and Sub consultants
 - Appendix E: Breakdown of Contract Price in Local Currency
 - Appendix F: Services and Facilities Provided by the Client
- 2. The mutual rights and obligations of the Client and the Consultants shall be as set forth in the Contract; in particular:
 - (a) The Consultant shall carry out the Services in accordance with the provisions of the Contract; and
 - (b) the Client shall make payments to the Consultant in accordance with the provisions of the Contract.

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

For and on behalf of _____ [*name of client*]

[*full name* of _____ Client's
authorised representative _____

[*title*] _____

[*signature*] _____

[*date*] _____

For and on behalf of _____ [*name of consultant*]

[*full name of Consultant's*
authorized representative] _____

[*title*] _____

[*signature*] _____

[*date*] _____

GENERAL CONDITIONS OF CONTRACT

1. GENERAL PROVISIONS

1.1 Definitions

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

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

- (l) “Services” means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A; and
- (m) “Sub consultant” means any entity to which the Consultant subcontracts any part of the Services in accordance with the provisions of Clauses 3 and 4.
- (n) ME&F mean Ministry of Environment and Forestry
- (o) ASGM means Artisanal small scale Gold Mining
- (p) NAP mean National action Plan
- (q) CV means Curriculum vitae
- (r) TORs means terms of reference
- (s) UN means united Nations

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

The Consultant, Sub consultant[s] and their personnel

Duties shall pay such taxes, duties, fees and other impositions as may be levied under the Laws of Kenya, the amount of which is deemed to have been included in the Contract Price.

2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

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

reasonably and necessarily incurred by him during such period for the purposes of the Services and in reactivating the Service after the end of such period.

2.6 Termination

2.6.1 By the Client

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

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

For the purpose of this clause;

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

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

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

2.6.2 By the Consultant

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

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

2.6.3 Payment upon Termination Upon termination of this Contract pursuant to Clauses 2.6.1 or 2.6.2, the Client shall make the following payments to the Consultant:

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

3. OBLIGATIONS OF THE CONSULTANT

3.1 General

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

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 sub consultant[s] and agents of either of them similarly shall not receive any such additional remuneration.

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

3.2.2 Consultant and Affiliates Not to be Otherwise Interested in Project

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

3.2.3 Prohibition of Conflicting Activities

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

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

3.3 Confidentiality

The Consultant, his 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 Subconsultants").

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

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

4 CONSULTANT'S PERSONNEL

4.1 Description The titles, agreed job descriptions, minimum qualifica-

of Personnel tions and estimated periods of engagement in the carrying out of the Services of the Consultant's Key Personnel are described in Appendix C. The Key Personnel and Sub consultants listed by title as well as by name in Appendix C are hereby approved by the Client.

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

5. OBLIGATIONS OF THE CLIENT

5.1 Assistance and Exemptions

The Client shall use his best efforts to ensure that he provides the Consultant 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 F.

6. PAYMENTS TO THE CONSULTANT

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

7. SETTLEMENT OF DISPUTES

- 7.1 Amicable Settlement** The Parties shall use their best efforts to settle

amicably all disputes arising out of or in connection with this Contract or its interpretation.

7.2 Dispute Settlement

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

III. SPECIAL CONDITIONS OF CONTRACT

Number of GC Amendments of and Supplements to Clauses in the Clause General Conditions of Contract

1.0 Tenderers shall include the following information and documents with their tenders, unless otherwise stated :

No	Requirements	Pass	Fail
1.	Company profile (Company history, contacts and services)		
2.	Copy of Certificate of business incorporation/registration		
3.	Provide a list of shareholders/partners and the Directors with their contact details(CR 12).		
4.	Copy of Valid and current Tax Compliance Certificate		
5.	Copy of Business permit/license		
6.	Two copies of the Request for Proposal (RFP) documents (Original and a copy) both technical and financial		
7.	Audited Accounts for the last 3 years (2014,2015 and 2016)		
8.	All pages of the tender document must be numbered and serialized by the tenderer to follow the format 001..... to the last page of the document.		
9.	Written Declaration letter that tenderer have never and shall not engage in any corrupt or fraudulent practices in the procurement proceedings		
10.	Written Declaration letter that the firm/person and his or her subcontractor, if any is not debarred from participating in procurement proceedings		
11.	Written Declaration letter that the firm/person is not guilty of any serious violation of fair employment laws and practices		

1.1(i) The Member in Charge is **N/A**

1.2 The addresses are:

Client: ***Principal Secretary
Ministry of Environment and Forestry***

Attention:
Email:
Telephone: _____
Telex; _____
Facsimile: _____

Consultant: _____
Attention: _____
Telephone; _____
Telex: _____
Facsimile: _____

1.3 The Authorized Representatives are:

For the Client:
The Principal Secretary
Ministry of Environment and Forestry

For the Consultant: _____

2.1 The date on which this Contract shall come into effect
Is (_____) [date].

Note: *The date may be specified by reference to conditions of effectiveness of the Contract, such as receipt by Consultants of advance payment and by Client of bank guarantee*

2.2 The date for the commencement of Services is **immediately after contract effectiveness date.**

2.3 The period shall be **20 working days**

3.4 The risks and coverage shall be:

- (i) Professional Liability **100% on consultant**
- (ii) Loss of or damage to equipment and property **100% on consultant**

6.2(a) The amount in foreign currency or currencies is **Not Applicable.**

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

6.4 Payments shall be made after completion of the contract.

IV. Appendices

APPENDIX A – DESCRIPTION OF THE SERVICES

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

APPENDIX B – REPORTING REQUIREMENTS

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

APPENDIX C– KEY PERSONNEL AND SUBCONSULTANTS

List under:

- C-1 Titles [and names, if already available], detailed job descriptions and minimum qualifications of Personnel and staff-months for each.*
- C-2 List of approved Sub consultants (if already available) same information with respect to their Personnel as in C-1.*

APPENDIX D – BREAKDOWN OF CONTRACT PRICE IN FOREIGN CURRENCY

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

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

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

APPENDIX E – BREAKDOWN OF CONTRACT PRICE IN LOCAL CURRENCY

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

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

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

APPENDIX F – SERVICES AND FACILITIES PROVIDED BY THE CLIENT

CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

You are requested to give the particulars indicated in Part 1 and either Part 2(a), 2(b) or 2 (c) whichever applied 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. Fax E mail

 Nature of Business

 Registration Certificate No.

 Maximum value of business which you can handle at any one time – Kshs.

 Name of your bankers Branch

Part 2 (a) – Sole Proprietor

Your name in full Age

 Nationality Country of origin

 • Citizenship details

Part 2 (b) Partnership

Given details of partners as follows:

Name	Shares	Nationality	Citizenship
1.
2.
3.
4.

Part 2 (c) – Registered Company

Private or Public

 State the nominal and issued capital of company-
 Nominal Kshs.
 Issued Kshs.
 Given details of all directors as follows

Name	Shares	Nationality	Citizenship
1.....
2.
3.
4.

Date Signature of Candidate
stamp-----name

- If a Kenya Citizen, indicate under “Citizenship Details” whether by Birth, Naturalization or registration.

FORM OF TENDER

Date _____

Tender No. _____

To: _____

[name and address of procuring entity]

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda Nos. *[insert numbers]*, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to the service (..... *(insert equipment description)* in conformity with the said tender documents for the sum of *(total tender amount in words and figures)* or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

2. We undertake, if our Tender is accepted, to provide the service in accordance with the schedule specified in the Schedule of Requirements.

3. If our Tender is accepted, we will obtain the guarantee of a bank in a sum of equivalent to Nil percent of the Contract Price for the due performance of the Contract , in the form prescribed by *Procuring entity*).

4. We agree to abide by this Tender for a period of *[number]* days from the date fixed for tender opening of the Instructions to tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

5. This Tender, together with your written acceptance there of and your notification of award, shall constitute a Contract, between us. Subject to signing of the Contract by the parties.

6. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this _____ day of _____ 20 _____

[signature]

[in the capacity of]

Duly authorized to sign tender for an on behalf of _____