

REPUBLIC OF KENYA
MINISTRY OF TRANSPORT & INFRASTRUCTURE



Kenya National Highways Authority

Quality Highways, Better Connections

SELECTION OF CONSULTANTS
REQUEST FOR PROPOSALS (RFP)

FOR

**TENDER TITLE: CONSULTANCY SERVICES FOR DESIGN REVIEW AND
CONSTRUCTION SUPERVISION FOR DUALLING OF
1.7KM SECTION OF BUSIA ROAD (B1)**

TENDER NUMBER: PRQ20200960

ISSUE DATE: 14 JUNE 2021

DUE DATE: 6 JULY 2021 ON OR BEFORE 4.00 P.M. (KENYA TIME).

FINANCED AND PROCURED BY

TRADEMARK EAST AFRICA



JUNE 2021

INVITATION TO TENDER INSTRUCTIONS

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Introduction

1. This Request for Proposals (RFP) and in particular the Instructions for Compiling and Submitting Your Tender are designed to help you produce a tender that is acceptable to TMEA as well as ensuring that tenders are given equal consideration. TMEA will select the most economically advantageous tender. It is essential, therefore, that you provide the information requested in the specific format and no other.

2. TMEA is not bound to accept the lowest, or any, tender. We also reserve the right to request any, or all, to clarify the bids submitted.

3. Pre-bid meeting

There shall be a virtual pre-bid meeting to be held on **22 June 2021 at 11:00 a.m.** and interested bidders can join via this link [Click here to join the meeting](#). An optional site meeting will follow afterwards for the interested bidders subject to confirmation for prior arrangement with the relevant parties. Please forward any clarifications or queries prior to the pre-bid meeting through the procurement email, procurement@trademarkea.com. The Technical team shall be available to respond to any clarifications/queries. The clarifications shall also be available to bidders after the pre-bid meeting for all those who shall not be able to make it for the pre-bid meeting.

Instructions for Compiling and Submitting your Tender

4. Format of Your Tender

Your tender should be submitted in English and be set out in four (4) main parts:

- Part A – Preliminary requirement;
- Part B - Executive Summary;
- Part C - General and Technical; and,
- Part D – Financial.

5. Part A Technical Bid Forms

- Signed Technical Bid Submission Form (Annex 4);
- Signed Confidentiality Agreement Form (Annex 10);
- Signed TMEA Code of Ethics (Annex 6); and,
- Signed Bidders Conflict of Interest Form (Annex 11).
- Signed Intellectual Property (IP) Agreement (Annex 12).
- Signed Organised Crime Policy and Declaration
- Signed Anti-Terrorism Financing Policy and Declaration

Parts A, B & C may be contained in one document including signed Technical Bid Submission Form (Annex 4), Confidentiality Agreement Form (Annex 10), signed TMEA Code of Ethics (Annex 6) and signed Bidders Conflict of Interest Form (Annex 11), signed Intellectual Property (IP) Agreement (Annex 12), signed Organised Crime Policy and Declaration (Annex 13), and signed Anti-Terrorism Policy and Declaration (Annex 14); however, Part D alongside Financial Bid Submission Form (Annex 7) must be separate to enable Technical and Financial bids to be evaluated independently. Please do not include any financial/price information in Part A, B or C. Inclusion of any price information may lead to bid rejection.

6. Part B – Executive Summary

This should be a brief overview of your tender covering how you intend to achieve the outputs and your assessment of the resources required.

7. Part C – General and Technical Tender

Your Technical submission should contain the following;

- a) Any Qualification to Terms of Reference including scanned copies of relevant reference letters.
- b) Technical Response (including method of implementation and your proposed quality assurance mechanisms).
- c) CV of proposed experts with information relevant to this project to support the proposed expert for this assignment. **(See Annex 1 for format)**
- d) Personnel Inputs – include person days without any reference to fees.
- e) Previous relevant Experience.

Bidders are advised to respond in line with or reference to the scoring criteria as captured in Clause 11 of this RFP.

8. Part D – Financial Tender

All prices must be for the duration of the contract (refer to the terms of reference under Clause 14).

Your financial bid should contain the following information:

- Signed and stamped Financial Bid Submission Form (Annex 7);
- Signed and stamped Fair Price non-collusion declaration form (Annex 5);
- Confirmation of acceptance of TMEA's Conditions of Contract without amendments (Annex 3 of the RFP document);
- Pricing details using the enclosed pro-formas. Besides completing proforma 1, bidders must complete proformas 2, 3 and 4 on a fees and expenses basis to demonstrate the cost breakdown of the milestone payments. Innovation is encouraged in the development and pricing of technical and commercial proposals; and

NOTE: TMEA shall determine, on a case by case basis, whether the contract will be based on fees/ reimbursable or on milestone.

9. Confirmation of availability

You must confirm that you will be available to provide the required services for the duration of the contract.

10. Government Tax

Bidders are responsible for establishing the status of the Services for the purpose of any government tax in any East African country. All fee rates proposed **Kenya** and Government of **Kenya** tax laws shall apply.

11. Evaluation Criteria and Process

In assessing the proposals submitted, the Proposal committee will use the Quality and Cost Based Selection (QCBS) selection as per clause **12 below**.

12. Technical evaluation

A. Technical submission evaluation

The technical evaluation will be based on a scoring system marked out of a maximum of **100 marks**. Only proposals that score a minimum of **70 marks** in this technical evaluation will be deemed to be “substantially responsive”. Marks will be awarded according to the following matrix:

Evaluation Criteria		Max Score (100)
A. Methodology & Work plan and Organization staffing		
1	Understanding / Conceptualization of the ToRs /Objectives (10 points)	
1.1	Demonstrable understanding of scope of the assignment and stakeholders involved.	5
1.2	Demonstrate understanding of design review, supervision duration and supervision aspects at various stages of key project activities e.g., surveys, designs, mobilisation, construction, supervision, testing, commissioning and defects liability period.	5
2	Statement of approach/methodology (20 points)	
2.1	Clear Demonstrable understanding of the programme management and contract management functions of similar assignments.	3
2.2	Demonstrable understanding of the review of contractor's designs and employer's requirements.	3
2.3	Demonstrable understanding of the construction supervision and management, inspection and review of contractor's work and project monitoring. Dealing with non-conformities.	3
2.5	Clear Demonstrable understanding of materials testing, acceptance and non-acceptance of tests.	3
2.6	Promotion of technology transfer and training of local capacity	2
2.7	Understanding of Environmental and Social Safeguards monitoring and management	3
2.8	Undertaking of Consultant's reporting	3
3	Work plan showing the study duration. Work plan should be SMART with narrative description and tabular presentation (5 points)	5
4	Comprehensive and logical organo-gram showing key staff and non-key staff (5 points)	5
5	Company Experience in at least 3 similar or related assignments in the last 5 years. (5 points for each) The 3 Assignable should demonstrate the following: <ul style="list-style-type: none"> • At least comparable or higher Contract amount – 1, point; • Specific experience in construction of a Dual carriageway road - 1, point; • Experience in pavement construction involving DBM -1, point; • Experience in construction work in busy urban environment – 2, point. 	15
6	Key Personnel's (45 points)	
1.	Project Director (10 points)	
1.1	Provide evidence for possession of at least Degree in BSc (Civil Engineering) or equivalent	1

1.2	Master's degree holders and above in any of the related field	1
1.3	Registered Professional Engineer with Engineers Board of Kenya or equivalent. Provide copies of certificate.	1.5
1.4	Signed CV and Demonstrate post-qualification experience with over 20 years' experience managing construction projects and over 15 years experience in contract administration, evaluation of contractor's claims.	1
1.5	Experience as Project Engineer/Team leader/Project Director on at least three highway construction contracts of comparable magnitude.	4.5
1.6	Experience in East Africa region	1
2	Resident Engineer (10 points)	
2.1	Provide evidence for possession of at least Degree in BSc (Civil Engineering) or equivalent	1
2.2	Registered Professional Engineer with Engineers Board of Kenya or equivalent. Provide copies of certificate.	1.5
2.3	Signed CV with demonstrable demonstrate post-qualification experience with over 15 years' experience managing construction projects and over 10 years experience in contract administration, evaluation of contractor's claims.	2
2.4	Experience as Resident Engineer in at least three roads construction contracts of comparable magnitude.	4.5
2.5	Experience in East Africa region	1
3	Material/Pavement Engineer (5 points)	
3.1	Provide evidence for possession of at least Degree in BSc (Civil Engineering) or equivalent	0.5
3.2	Registered Professional Engineer with Engineers Board of Kenya or equivalent. Provide copies of certificate.	0.5
3.3	Signed CV with demonstrable demonstrate post-qualification experience with over 10 years' general experience and over 7 years of specific experience	0.5
3.4	Experience as Materials/Pavement Engineer in at least Three roads construction contracts of comparable magnitude.	3
3.5	Experience in East Africa region	0.5
4	Highway Engineer (5 points)	
4.1	Provide evidence for possession of at least Degree in BSc (Civil Engineering) or equivalent	0.5
4.2	Registered Professional Engineer with Engineers Board of Kenya or equivalent. Provide copies of certificate.	0.5
4.3	Signed CV with demonstrable demonstrate post-qualification experience with over 10 years' general experience and over 7 years of specific experience	0.5
4.4	Experience as Highway Engineer in at least Two roads construction contracts of comparable magnitude.	3
4.5	Experience in East Africa region	0.5
5	Drainage/Structural Engineer (5 points)	

5.1	Provide evidence for possession of at least Degree in BSc (Civil Engineering) or equivalent	0.5
5.2	Registered Professional Engineer with Engineers Board of Kenya or equivalent. Provide copies of certificate.	0.5
5.3	Signed CV with demonstrable demonstrate post-qualification experience with over 10 years' general experience and over 7 years of specific experience	0.5
5.4	Experience as Highway Engineer in at least Two roads construction contracts of comparable magnitude.	3
5.5	Experience in East Africa region	0.5
6	Senior Topographical Surveyor (5 points)	
6.1	Provide evidence for possession of at least Degree in BSc (Survey) or equivalent	0.5
6.2	Registered Professional Engineer with Engineers Board of Kenya or equivalent. Provide copies of certificate.	0.5
6.3	Signed CV with demonstrable demonstrate post-qualification experience with over 10 years' general experience and over 7 years of specific experience	0.5
6.4	Experience as Highway Engineer in at least Two roads construction contracts of comparable magnitude.	3
6.5	Experience in East Africa region	0.5
7	Environmental and Social Safeguards Expert (5 points)	
7.1	Undergraduate degree in relevant Social and Environmental studies or equivalent. Attach Certificate.	0.5
7.2	Valid EIA/EA licence from NEMA or equivalent body. Attach Certificate.	1
7.3	Signed CV with demonstrable 7 years' experience in EIA/EA and social studies, assessment and audits including at least 3 roads projects.	1
7.4	Experience in development and overseeing implementation of Environmental Management Plan to road project	2
7.5	Experience in East Africa region	0.5
TOTAL		100

Bidders who achieve the minimum technical score of **70 marks 100 marks** will qualify for the financial evaluation.

The weight given to the technical proposal shall be **70%** and the weight given to the financial proposal shall be **30%**.

13. Financial Evaluation

The formula for determining the financial score (SF) shall be as follows:

$$Sf = 30 \times fm/f \text{ where:}$$

Sf is the financial score

Fm is the lowest fees quoted and

F is the fees of the proposal under consideration.

The lowest fees quoted will be allocated the maximum score of **30%**.

The bidder's proposals will be ranked according to their combined technical score (st) and financial score (sf) and weighted accordingly. The formula for the combined scores shall be as follows;

$$S = ST \times T\% + SF \times P\%$$

Where:

S, is the total combined scores of technical and financial scores

St is the technical score

Sf is the financial score

T is the weight given to the technical proposal (in this case **70%**) and

P is the weight given to the financial proposal (in this case **30%**)

Note P + T will be equal to **100%**.

The bidder who has achieved the highest combined technical and financial score shall be declared successful and subsequently invited for clarifications.

14. Packaging, Submission and Delivery of Tenders

14.1 All tender documents will formally be submitted via the TMEA Procurement Mailbox at the address procurement@trademarkea.com by **Tuesday, 6 July 2021 on or before 4.00 p.m. (Kenya Time)**. The **technical** and **financial** proposals will be submitted as two separate documents in PDF format and the maximum size must not exceed **10 MBs**. The financial proposal **MUST be in PDF and password protected**.

14.2 All queries quoting the tender title and number should be emailed to procurement@trademarkea.com. **TMEA cannot answer any query relating to this tender seven (7) days or less prior to the submission deadline.**

14.3 Late tenders will not be accepted in any circumstance. No special pleadings will be accepted. Faxed and hard copy tenders will not be accepted and shall be rejected.

14.4 In the event that any tenderer(s) mistakenly omits to include in their bid, supporting documentary evidence (such as letters, certificates) or erroneously fails to include the correct number of copies of, USB sticks or CD-ROMs where applicable, TMEA **reserves the right to allow** tenderer(s) to submit such omitted material within 24 hours from the time the omission is discovered.

14.5 TMEA reserves the right to cancel an entire process without incurring any liability whatsoever.

15. Special Conditions

Special conditions of RFP as relates to the General Conditions Contract (GCC): For this tender, the following conditions shall apply.

<p>1. Deviations, Reservations, and Omissions</p>	<p>During the evaluation of bids, the following definitions apply:</p> <ul style="list-style-type: none"> i. "Deviation" is a departure from the requirements specified in the Bidding Document; ii. "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and iii. "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Document.
<p>2. Determination of Responsiveness</p>	<p>The <i>Employer's</i> determination of a bid's responsiveness is to be based on the contents of the bid itself.</p> <p>A substantially responsive bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,</p> <ul style="list-style-type: none"> i. if accepted, would: - <ul style="list-style-type: none"> a) Affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or b) Limit in any substantial way, inconsistent with the Bidding Document, the Employer's rights or the Bidder's obligations under the proposed Contract; or ii. If rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids. <ul style="list-style-type: none"> a) The <i>Employer</i> shall examine the technical aspects of the bid submitted in accordance with ITB 16, Technical Proposal, in particular, to confirm that all requirements of Section 6 (<i>Employer's</i> Requirements) have been met without any material deviation, reservation or omission. b) If a bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the <i>Employer</i> and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

<p>3. Nonconformities, Errors, and Omissions</p>	<p>a) Provided that a bid is substantially responsive, the <i>Employer</i> may waive any non-conformity in the bid.</p> <p>b) Provided that a bid is substantially responsive, the <i>Employer</i> may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the bid. Failure of the Bidder to comply with the request may result in the rejection of its bid.</p> <p>c) Provided that a bid is substantially responsive, the <i>Employer</i> shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price may be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component. The adjustment shall be made using the methods indicated in Section III (Evaluation and Qualification Criteria).</p>
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CONSULTANCY SERVICES FOR DESIGN REVIEW AND CONSTRUCTION SUPERVISION OF BUSIA OSBP APPROACH ROAD (APPROXIMATELY 1.7KM) DUALLING PROJECT**1. BACKGROUND INFORMATION****1.1 General**

TradeMark East Africa (TMEA) is an organization funded by a range of development Agencies to promote Regional trade and Economic integration in East Africa. TMEA is headquartered in Nairobi with branch offices in Bujumbura, Kigali, Kampala, Dar es Salaam, Addis Ababa and Arusha at the EAC secretariat. TMEA is supporting several initiatives to achieve its strategic objectives of Increased Physical Market Access to Markets; Enhanced Trade Environment and Improved Business Competitiveness. TMEA works closely with the government institutions, civil society organizations and private sector and EAC secretariat.

It is in the above context that TradeMark East Africa, under Increased Physical Market Access objective has been involved in the development and support of the One Stop Border Posts (OSBP) across the region, with the Busia OSBP being one of them. Since it's construction the Busia OSBP has facilitated trade across the two neighboring countries Kenya and Uganda as well as serving other great lakes countries like Rwanda, Burundi and Democratic Republic of Congo (DRC)

With the growing trade and subsequently traffic crossing the border, there the approach road into the Busia OSBP has continued to experience increase congestion hampering the performance of the OSBP. TMEA has therefore partnered with the Government of Kenya (GoK) through Kenya National Highways Authority (KeNHA) to improve the current two-lane two-way carriageway to a four-lane dual carriageway to ease the traffic snarl-up at the entry to the OSBP. The project is being carried out by TradeMark East Africa (TMEA) and the Government of Kenya with funding from the United Kingdom through the Foreign and Commonwealth Development office (FCDO).

These Terms of Reference are therefore prepared for the procurement of consulting services required for the construction supervision for the works.

1.2 Selection Criteria

The Consultant selected to undertake the Supervision Consultancy shall have extensive experience in the Construction Supervision of road projects.

1.3 Project Description/ Location

The project is located in Busia County, Busia Township at the approach to the Busia One Stop Border Post (OSBP) and involves dualling of approximately 1.7km section of the 100km B1 Kisumu-Busia at the approach to the Busia OSBP.

The road which currently is a 7m wide two-lane two-way carriageway, has been design to a 24m four-lanes dual carriageway consists of 3.5m 2lanes on each direction 2m cyclepath, 1.5m open drain and 1.5 footpath. The existing pavement structure is to be redone and improved using 150mm cement improved subbase, 150mm GCS base, 150mm DBM, 50mm asphalt concrete wearing course with single seal surface dressing.

Design for the entire 100km Kisumu-Busia road has been done by KeNHA, of which a section of approximately 1.7km has been identified for implementation under this project assignment.

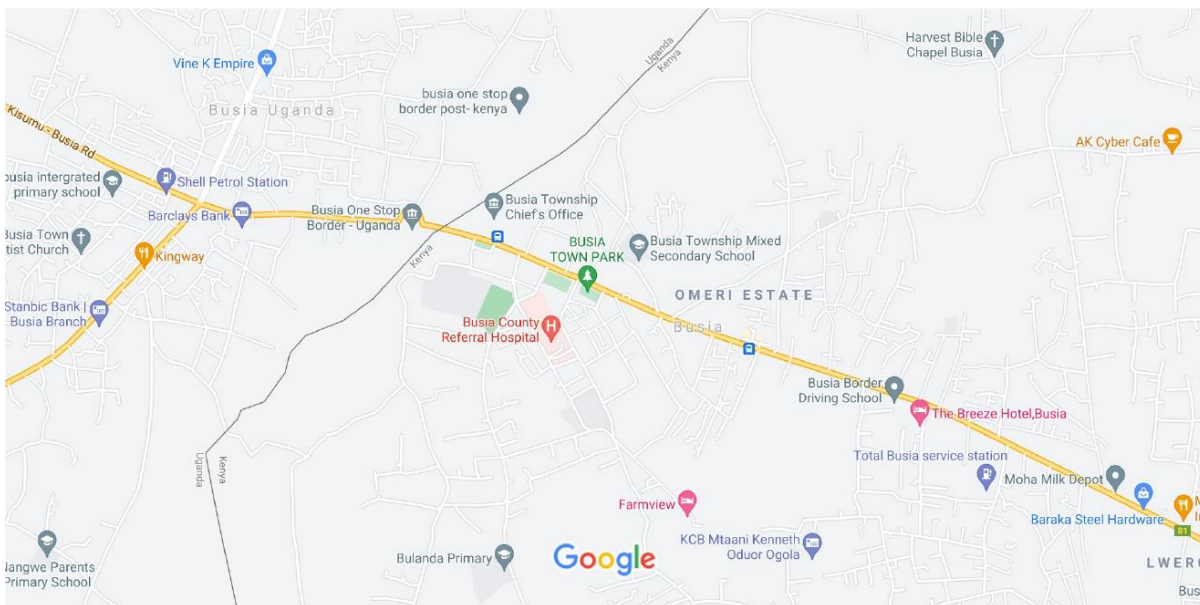


Figure 1: Site Location

2. OBJECTIVE OF THE ASSIGNMENT

2.1 Overall Objective

The overall objective of the project is to attain a sustainable, high capacity, and safe road network, which facilitates economic growth through efficient transit of trucks and people hence contributing to improved trade and peoples living standards. The project aims at reducing heavy traffic congestion at the approach to the OSBP through improved road structure and increased road capacity.

2.2 Specific Objective

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

- Oversee site handover, contractor's mobilization activities and issue notice of commencement of works;
- Ensure the project road is constructed to the required/contracted standard and specifications, and within the Contract Sum.
- Receive the Contractor's work programme and working drawings, submit comments to the Employer's Representative.
 - Supervise all construction works
 - Enforce environmental and social safeguards mitigation measures
 - Check and forward interim and final payment certificates for approval by the Employer's Representative. Review and assess the accuracy of payment certificates based on the Contractor's milestones stated in the contract.
 - Evaluate contractual claims and forward recommendations to the Employer's Representative
 - Review the Contractor's monthly progress and end of project reports and send comments to the Employer's Representative
 - Regularly, conduct project cost appraisals and advice the Client
 - Provide training to client's personnel
 - Support technical audits, NMT design review audits and, baseline and end of project evaluations initiated by the Employer and Financier.
 - Review the Contractor's as built drawings and forward recommendations to the Employer's Representative
 - Prepare final completion report.

3. SCOPE OF CONSULTANCY SERVICES TO BE PROVIDED

3.1 General

The Consultant shall conscientiously 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;

3.2 Background information

The Employer has procured the works contractor for the Construction of approximately 1.7km section of the 100km B1 Kisumu-Busia at the approach to the Busia OSBP to a dual carriageway. The summary of the works to be carried out is as follows:

- i. Construction of site camp, offices and laboratory as well as providing transport for the Employer's Representative and/or his staff.
- ii. Construction of the Road pavement, drainage works, foot paths

- iii. Provision and erection of street lighting, road furniture and road markings, and other miscellaneous works
- iv. Maintenance of existing road during construction period.
- v. Management and control of traffic during the construction works.
- vi. Implementation of the Environmental and Social Management Plan (ESMP).

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

3.3 Specific Objectives of the Consultancy Services

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

- i. Provide the necessary assistance to the Client to ensure that the Works by the Contractor are constructed/erected, commissioned and completed on time, within the Contract Price and that the Works are carried out fulfilling the Employer's Requirements and conforming to Technical Specifications to be agreed between parties from time to time.
- ii. To ensure incorporation of corrective measures to overcome the problems faced during execution of the Contract.
- iii. Continuously upgrade the technological knowledge of the Client's engineering and management staff through on the job training.
- iv. Advise the Client in critical areas of engineering and project management with their expertise and experience.

3.4 Scope of the Consultancy Services

The scope of the consultancy service includes design review and construction supervision as follows: -

- Design Review & Construction Mobilization – reviewing of the existing developed design for the 1.7km section of the road and overseeing contractor's mobilization activities
- Construction Supervision and Defects Liability Period – supervise construction of the designed road infrastructure and management of the works contractor in accordance with the detailed designs, technical specifications, conditions of contract, project cost and duration.

The consultant shall conscientiously fulfil to the highest professional standards the role of the Engineer, as defined under the Works Contract and to supervise construction of the Works (on behalf of the Clients (TMEA/KeNHA) throughout the entire construction period, including the defects liability (maintenance) period.

3.5 Detailed Scope of The Consultancy Services Required

The detailed scope of Consultancy Services required for the specific functions is given below.

3.5.1 Design Review & Construction mobilization

A design for the 1.7km of the road has been carried out by the KeNHA and is the basis for the construction works.

The Consultant shall familiarize himself with the project by reviewing all available documentation on the project

to ascertain their completeness and accuracy for the purpose of the construction activities by the works contractor. The consultant shall also oversee the construction mobilization and commencement of works by the contractor.

3.5.1.1 **Components for Design Review**

Topographic Survey – The consultant shall locate and identify the survey reference points (beacons) and benchmarks established and used for the design and shall undertake a control survey to check the accuracy of the co-ordinates as given on the construction design drawings. The consultant shall also ascertain the correctness of the available survey data and correct any identifies errors. Additional topographic survey data where required shall be carried out including replacement of any missing beacons and/or benchmarks.

Geometric Design (Vertical & Horizontal alignment) – The consultant shall check the computation of the geometric design characteristics of the road along the center line to ascertain compliance with the required geometric standards for both the vertical and horizontal alignment. Staking data shall also be given for points at regular intervals along curves and longer tangent alignments. Where shortfalls are established, correction and amendments can be proposed or recommended.

Material Investigations & Existing Pavement – The consultant shall review and satisfy themselves with the materials investigation carried out on the road alignment and which has been used as a basis for the proposed road upgrading. This shall include the condition of the existing pavement structure.

Pavement Design – The consultant shall review the pavement design in accordance with the projected traffic volumes, loading, alignment soils and all other design standards to ensure that the pavement thickness as designed is sufficient.

Hydrology & Drainage Structures – The consultant shall review the hydrological studies (where available) to ascertain the capacity and suitability of the proposed drainage structure on various locations including culverts, and side drains. Climate resilience of the road infrastructure shall be considered in the review and analysis.

Road Safety & Traffic Management Plan – The consultant shall review the designs in line with the road safety requirements to assess the effectiveness of the road safety provisions. Considering the project area is a busy built-up area, the Consultant shall also work with the contractor to develop a working traffic management plan to be used during the construction of the works in accordance with the works specifications and conditions of contract.

Environmental and Social-economic Impact including Resettlement Issues – The Consultant shall review previously conducted Environmental and Social Impact Assessment (ESIA) studies for the implementation of the recommended Environmental Management Plans (EMP), including incorporation of TMEA’s safeguard policies.

Relocation of Public Utilities – The Consultant shall assess the information provided in the design drawings on existing utility services locations as well as identifying those that may not have been shown. The Consultant shall

liaise with the relevant utility authorities on all proposed relocation of any of the services to be affected by the works. The same shall be done in consultation with the Client.

3.5.1.2 Commencement & Construction Mobilization

The Consultant shall undertake the following responsibilities: -

- Approval of contractor's documentation such as work program, insurances, performance guarantees, advance payment guarantee method statements, staff, quality control plans.
- Assessment of Contractor's mobilization and site preparation
- Approval of contractor's camp site facilities including facilities to be provided to the Engineer.
- Supporting the Client in organizing project kick-off meeting, site possession/handover and issuing of commencement letter to the contractor.
- Co-ordination with Third Parties for smooth project implementation
- Facilitating Resettlement and Social Economic Matters as per the ESIA and resettlement plan
- Coordination with contractor and relevant authorities for the relocation of public utilities
- locate and identify the survey reference points (beacons) and benchmarks established during the design and check the accuracy of the co-ordinates thereof given on the construction drawings.
- Issue construction drawings and setting out data to the contractor.
- Check Contractor's compliance with all the contract provisions before being issues with commencement letter.

3.5.2 Construction supervision

The Consultant shall perform the duties and obligations of "The Engineer" and be fully responsible for the supervision of the construction Works. This will include undertaking all the duties necessary to achieve a successful project, including any additional technical studies and investigations needed to inform adequate technical solutions during execution of works in accordance with the applicable conditions of contract governing the project. An Engineer's Representative shall be appointed, and experienced resident staff assigned to supervise the works on site, all to the final successful completion of the construction contract including the defects liability period.

The duration of the assignment is projected to last 12months for the design review and construction supervision with a 12months defects liability period (DLP) thereafter after substantial completion of the works.

Detailed scope of work under this phase includes:

a) Supervision of Construction Works

During implementation of the works, the consultant shall be required to carry out the following tasks:

- a) Administration of the construction contract from commencement of the works to completion of project including defects liability period;
- b) Establish a system acceptable to the Client for project management.
- c) Review all documents submitted by the Contractor with respect to planning, scheduling and progress during the project execution period.
- d) Establishment of a documentary control system and administer the control system.
- e) Ensure that quality control and engineering standards are consistently maintained throughout the project and within cost and time constraints.
- f) Oversee Contractors' mobilization, review & monitor contractor's proposals, method statements, programmes, and cash flow;
- g) Monitor and review contractor's plans (Traffic management plan, Quality management plan, Occupational Health & Safety Plan);
- h) Approve and/or issues working drawings, setting out data, shop/Workshop drawings etc;
- i) Continuous design review from time to time as may be required
- j) Conduct regular site inspections of construction work activities and installations;
- k) Call for and coordinate project meetings and produce minutes and/or reports thereafter;
- l) Maintain all site records
- m) Prepare regular financial reports related to project progress.
- n) Organize and lead monthly progress meetings.
- o) Generally, inspect and approve materials delivered to site.
- p) Undertake measurement of works, verify quantities and certify contractor's payment due.
- q) Assess and manage construction claims and advice accordingly.
- r) Shall ensure quality control and assurance of the materials, components, techniques and workmanship.
- s) Appropriately inspect the extraction, or fabrication, or assembly of materials and components to affirm quality of such materials/workmanship on site and before delivery to site.
- t) Direct and control the consultant's activities and the site staff.
- u) Ensure that the quality and quantity of contractor's key staff are maintained
- v) Review and monitor implementation of the Environmental & Social Management Plan (ESMP)
- w) Monitor the progress of the works against the Contractor's program and report to Client TMEA/KENHA.

- x) Prepare valuations of works carried out and completed and issue Interim and Final payment Certificates for client's approval.
- y) Preparation and submission of monthly and quarterly progress reports together with up-to-date cost disbursement.
- z) Properly manage project completion and handover, prepare practical completion certificate and commissioning of the facilities for take-over by the Client.

Construction Supervision and Management

The Consultant shall undertake the following:

- i. Establish a system and carry out overall construction supervision and management.
- ii. Check and approve the Contractor 's temporary works and facilities with the Client's concurrence.
- iii. Review, evaluate and approve construction method statements and additional site works of the Contractor, in compliance with the technical and environmental requirements.
- iv. Evaluate and approve the Contractor 's quality assurance/control program.
- v. Issue site instructions on behalf of the Client to the Contractor.
- vi. Review and approve test procedures for materials, plant and equipment to be tested on site by the Contractor and witness such tests with the participation of the Client.

Inspection and Testing at The Contractor's Works and Monitor Delivery

The Consultant with the Client 's participation shall undertake to implement the following: -

- i. Review and approval of quality assurance control plans and delivery schedules of the Contractor.
- ii. Regular review of production schedules and delivery schedules of the Contractor.
- iii. Review and approval of factory testing procedures and factory test results submitted by the Contractor.
- iv. Witnessing of laboratory tests of the field activities and preparation of corresponding records as per the Employer 's Requirements.
- v. Review of test reports on laboratory test results submitted by the Contractor.

Technology Transfer and Training of Client's Staff

- i. 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.
- ii. 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.
- iii. The Consultant shall supervise the training programs implemented by the Contractor for training of O & M works of the Project.
- iv. The Consultant is encouraged to conduct seminars, lectures in addition to the on-the job training to disseminate the knowledge of Counterpart Personnel.

Environmental Management Aspects

The Consultant shall be responsible the following with regard to the Environmental Management.

- i. To ensure that the envisaged environmental mitigation measures specified in the Environmental Impact Assessment (EIA) study report, are implemented and complied by the Contractor during the Contract Period of the Project.
- ii. To establish the environmental monitoring and reporting procedures.

b) Post Construction Supervision & Defects Liability Period

The Consultant shall:

- i. Review the As-built-drawings prepared by the contractor and give recommendations for future maintenance of the infrastructures.
- ii. Secure/compile maintenance and operational manuals for the proper commissioning of the completed road infrastructure and facilities.
- iii. Prepare Final Account to be signed by the Contractor and Consultant and approved by the Client before being adopted.
- iv. Prepare a list of and supervise the rectification of any defects noticed during the defects liability period
- v. Prepare Final Completion Report

Inspection and Acceptance Meeting and Acceptance Tests

The Consultant shall perform the following: -

- i. Lead and co-ordinate the site Taking Over meetings.
- ii. Assist the Client during the Taking Over stage of the Project.
- iii. Review, evaluate and approve the 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.
- iv. Supervise and ensure that all tests are carried out in accordance with the approved procedures.
- v. Supervise the final acceptance tests and test operation of the road and certify the final acceptance test reports prepared by the Contractor.
- vi. Witness the commissioning and acceptance tests with the participation of the Client and submit a detailed completion report to the Client.
- vii. 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.
- viii. Prepare the project completion report and submit to the Client.

4. IMPLEMENTATION SCHEDULE, REPORTING REQUIREMENTS & TIMING

4.1 Implementation Schedule

The overall implementation schedule for the project is as follows:

- Design Review and Construction Mobilization – 1Month
- Construction - 11Months
- Defects Liability Period – 12 Months

4.2 Reporting Requirements, Timing & Schedule of Deliverables

The reports shall be submitted to the Project Manager to the addresses indicated in the Contract. Reports and time frame/schedule shall be adhered to in carrying out the assignment.

The Consultant shall prepare and submit all reports in English and submitted in A4 sized paper. All reports (except Progress Report) shall be submitted initially as draft versions, which shall be finalized to accommodate Clients' comments. Progress reports shall be submitted by the 10th day of the month it falls due.

The Consultant shall arrange to present the technical reports to the Project Manager/ and TMEA. The presentations shall be within 15 days after submission of the hard and soft copies of the reports to allow the Client time to review and generate comments. The presentations shall preferably be in MS PowerPoint.

4.2.1 Design Review & Construction Mobilization

The following reports shall be submitted by the Consultant:

Table 1: Reporting Timelines

SN	Report	Timing	Description	Copies
1	Inception/Mobilization Report	2 Weeks	This report shall briefly describe the mobilization and establishment status of the Consultant, the specific staffing plan, the updated work plan	3Hard Copies & Soft Copy
2	Project management & Quality Control Plan	2Weeks	The report shall detail the procedures and processes the consultant shall put in place for the efficient project management and quality control. It shall comprise a documented management system including the consultant's proposes MIS, Project control Plan, Quality Management Manual including procedures and guidelines for all aspects of works, working templates, technical verification, documents and records management, material testing, change management, Environmental & social management HSE, and key performance indicators to monitor work progress.	3Hard Copies & Soft Copy
3	Design Review Report	1 Month	This report shall detail the finding and recommendation arising from the design review process and shall include reports, calculations, analysis, and drawings if so required.	3Hard Copies & Soft Copy
4	Contractor's Mobilization Report	1Month	Detailing the extent of contractor's mobilization in line with the contract requirements	3Hard Copies & Soft Copy

4.2.2 Construction Supervision and Defects Liability

The following reports shall be submitted by the Consultant:

SN	Report	Timing	Description	Copies
1	Monthly Progress Report	Monthly	Concise summary of the project mobilization, progress and achievements in the previous month, planned activities for the coming month, challenges and critical issues to be addressed reporting the same in form of risk matrix log frame.	3Hard Copies & Soft Copy
2	Quarterly Progress Report	Quarterly	Concise summary of the project mobilization, progress and achievements in the previous quarter, planned activities for the coming quarter, challenges and critical issues to be addressed reporting the same in form of risk matrix log frame. This shall give in detail the cost & time projections for completion, deviations from plan and proposed remedial measures	3Hard Copies & Soft Copy
3	Draft Completion Report	Upon Substantial Completion	This shall provide status of the project before substantial completion certificate is issued and shall detail quality standards for the works, financial appraisal for cost under each bill item and all identified snags	3Hard Copies & Soft Copy
4	Final Completion Report	1Month after DLP	This shall provide all details of the project from start to finish in terms of cost, time, quality, communications, variations/change orders, meetings as well as completion documentation.	3Hard Copies & Soft Copy
5	As Built Drawings	1Month after DLP	This shall include a complete record of As Built information showing final details of the works as built and completed by the contractor.	3Hard Copies & Soft Copy

NOTE: In their Methodology Statement, the Consultant shall provide a fixed layout/template for all the reports to be submitted.

The recipient of this consultancy will be KENHA and TMEA. All reports shall be addressed to the KENHA and a copy to TMEA. All reports to the Client will be delivered to the following address:

Deputy Director-Special Projects -(NETIP)

Directorate of Development, Kenya National Highways Authority (KeNHA)

P.O Box 49712 - 00100 | Tel: 020 4954000

email:p.omondi@kenha.co.ke

Copy of all reports shall be addressed to the following address:

- Kenya Country Director, TradeMark East Africa, P.O. Box 313-00606 Nairobi, Kenya
- Director Engineering, Trademark East Africa, Vincent.rudahunga@trademarkea.com

a) Monthly Progress Reports

A progress report shall be submitted every month by the Consultant to the Client within 7 days after the end of the reporting month. The report shall cover the following items:

- (i) Status reports on design services, plant, Contractor's equipment and personnel mobilization status, construction progress until taking over of the works.
- (ii) Engagement of different personal of the Consultant's team in the works and Utilization of man-months.
- (iii) Description of delays and steps to be taken to overcome them.

b) Quarterly Progress Reports

The Consultant shall submit to the Client of the Quarterly progress reports which are required to be submitted to the Ministries and to the Works Financing Agency, TradeMark East Africa.

- (i) A chronological listing of significant project events.
- (ii) A concise summary of the major highlights of the report.
- (iii) Action on items, comprising a list of significant items on the Project which require resolution by either the Client or the Consultant.

c) 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).

d) 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 Department. The main activities are as follows;

- (i) Regular reviewing of the status of the Project cost and comparison of scheduled disbursements with actual progress.
- (ii) Preparation and regular updating of disbursement schedules.
- (iii) 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.
- (iv) Prepare S-curve depicting cost and schedule, reports for budgeted cost for works scheduled, actual cost for works completed and budget cost for works performed, cost variation, schedule variation, total project estimate to completion.

e) 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.

f) 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 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.

g) 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 Contractor as needed, are to be listed and noted, including the given period of time the Contractor is to rectify. The material handed over by the Contractor to the Client will be checked and listed for status and completeness.

h) Operation & Maintenance Manuals

The Consultant shall review and approve in consultation with the Client, the Operation & Maintenance procedures and manuals submitted by the 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.

i) 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;

- (i) The works Contractor having provided the operating and maintenance manuals, as well as all the drawings and documents handed over to the Client requested in the Contract.
- (ii) No major deficiencies are found, and minor deficiencies are listed in the defects list by the Consultant.
- (iii) Items specified as reverting to the Employer revert accordingly

j) Plant Performance Evaluation Reports

- (i) The consultant shall witness the works performance tests carried out under Test after Completion. They will analyse, evaluate and approve the final performance tests with the concurrence of the Client.
- (ii) The analyses, results and conclusions with recommendations shall be compiled in the performance evaluation report to be submitted to the Client.

k) 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.

l) Final Certificate of Payment

A written statement shall be prepared by the Consultant, to be signed by both parties, the Client and the 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 (RED BOOK) guidelines, —Conditions of Contract, first edition 1999.

5. SPECIFIC RESPONSIBILITIES

5.1 Specific Responsibilities of the Consultant

Facilities, services, and resources to be provided by the Consultant

All information, data and reports obtained from the Client in the execution of Consultancy services shall be properly reviewed and analysed by the Consultant. The Consultant shall be responsible for the correctness of using such data. All such information, data and reports shall be treated as confidential.

The Consultant shall be responsible for arranging for all necessary living accommodation for its site staff and such other services, necessary for the proper implementation of the services under the contract.

The Consultant shall be responsible for making sure that all key staff proposed in the Technical proposal and approved by the Client are available for successful implementation of the assignment as per the schedule provided in the contract. The Consultant shall ensure the same for non-key staff required for effective delivery of their mandate. The Client will keep on investigating their presence and take contractual measures to the Consultant including deduction of the relevant fees in case of absence.

The Consultant shall be responsible for making sure that the assignment is done according to the requirements of the Terms of Reference and the standards. Any cost that will be incurred by the employer as a result of the Consultants non and/or underperformance will be deducted directly from any monies payable to the Consultant.

As part of capacity building and knowledge transfer, the Client may assign counterpart staff from its partners should such need arise. The Consultant will accord such staff necessary support and ensure that they are actively involved in the project.

The Client will assign supervision staff to monitor execution and implementation of the consultancy assignment. The Consultant will ensure close coordination with the assigned Client staff for smooth implementation of the assignment.

5.2 Specific Responsibilities of the Client

Facilities, services, and resources to be provided by the Client KeNHA/TMEA

The Client will provide the following facilities, services, information and support to the Consultant:

- The Client shall provide the Consultant with copies of the works contract and bidding documents, design documents and reports considered relevant to the execution of the Consultant's services.
- The Client shall provide introduction letters where needed to facilitate the access of the Consultant's staff to Government administrations, public organizations, authorities and agencies, etc., whose activities and role are relevant to the consultancy assignment;

- The Client shall facilitate liaison with other relevant institutions in order to introduce the Consultant to them.
- The Client may attach staff to the project for appropriate training and skills development.
- 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.
 - Site transport in the form of supervisory vehicles and
 - Other site facilities, survey and 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.

6.0 TEAM COMPOSITION & QUALIFICATION REQUIREMENTS FOR THE KEY EXPERTS

6.1 Staff Requirement

The consultant is expected to submit, provide and deploy the required mix of experts both key and non-key with the necessary qualification and experience to effectively deliver the concerned projects as detailed in this section.

6.2 Team Composition

The Consultant shall provide names and detailed CV's of the following key staff.

Table 5: Team Composition

Supervision of Works & Defects Liability Period						
Minimum Man Months						
Ref	Post	Design/ Documentation Review (1 Months)	Supervision (12 Months)	Defects Liability Period (12 Months)	Final Account (1 Months)	Total Man Months
1	Project Director	0.1	0.7	0.1	0.1	1
2	Resident Engineer	0.5	11	0.3	0.2	12
3	Materials/Pavement Engineer	0.5	5	0.5	0	6
4	Highway Engineer	0.2	3.6	0	0.2	4
5	Drainage/Structural Engineer	0.2	1.8	0	0	2
6	Senior Topographic Surveyor	0.5	5.5	0	0	6
7	Environmental & Social Safeguards Specialist	1	3	0	0	4
Minimum Total Man - Months		3	30.6	0.9	0.5	35

In addition to the above key staff, the consultant shall provide the following non-key staff deemed necessary for implementation of the assignment.

Non-Key Support Staffing Inputs	
Ref	Description
1	Roads Inspector
2	Laboratory technologist
3	Laboratory technician
4	Laboratory attendant
5	Survey assistant
6	Survey chainman
7	Draughtsman
8	Secretary

Note: Such supporting staff will not be evaluated, thus no names or CVs are required at this stage.

6.3 Qualification Requirement of Key Staff

The Duties/responsibilities, required qualifications and experience of the key staff are as indicated below:

1) Project Director

The Project Director acting as “The Engineer” shall be responsible for the overall management of the project and shall be the principal contact person with the client as far as the supervision contract is concerned.

The Project Director must be a registered Professional Engineer (with a relevant professional regulatory body and have a current practicing certificate), with at least a bachelor’s degree. A postgraduate in Engineering and project management qualifications shall be an added advantage. He/She must have a minimum Twenty (20) years of general experience with Fifteen (15) years cumulative experience of managing projects of a similar nature. He/She must have served in a similar capacity on at least three (3) projects of similar magnitude and complexity in the past 10 years. In addition, he/she must have a working experience at least of 3 years in sub-Saharan Africa. Fluency in written and spoken English is mandatory.

2) Resident Engineer

The Resident Engineer shall be “The Engineer’s Representative” responsible for the overall supervision of the construction project. He/She shall be the principal contact person with respect to the site supervision of the works and the contractor.

The Team Leader must be a registered Professional Engineer (with a relevant professional regulatory body and have a current practicing certificate), with at least a bachelor’s degree. He/She must have a minimum Fifteen (15) years of general experience with Ten (10) years cumulative experience of managing projects of a similar nature. He/She must have served in a similar capacity on at least three (3) projects of similar magnitude and complexity in the past 10 years. In addition, he/she must have a working experience at least of 3 years in sub-Saharan Africa. Fluency in written and spoken English is mandatory.

3) Material/Pavement Engineer

The Pavement and Materials Engineer shall be responsible and in charge of testing laboratory, conducting and supervising materials/pavement tests and analysis. He/She should be conversant with current practice in testing, pavement/materials evaluation and pavement construction strategies. He/She must be a registered Engineer (with a relevant professional regulatory body and have a current practicing certificate), with at least BSc. in Pavement, Materials or Civil Engineering. A postgraduate qualification in pavement engineering is an added advantage. He/She must have a minimum of Ten (10) years of general experience and (7) years of specific experience in pavement evaluation and materials testing, soils investigation and road rehabilitation design and new road design. He/She must have served as Pavement and Materials Engineer on at least two (2) road projects of similar nature and magnitude in the past 10 years. In addition, He/She must have a working experience of at least 3 years in Sub-sahara Africa. Proficiency in written and spoken English is mandatory.

4) Highway Engineer

The Highway Engineer shall be responsible for the design reviews of the geometrical aspects of the road and generation of construction quantities.

He/She must be a registered professional Engineer (with a relevant professional regulatory body and have a current practicing certificate), with at least BSc. in Civil Engineering. A postgraduate qualification in Highway Engineering shall be an added advantage. He/She must have a minimum of Ten (10) years of general experience and seven (7) years specific experience in road studies and designs. He/She must have served in a similar capacity on at least two (2) projects of similar magnitude and complexity in the past 10 years. In addition, he/she must have a working experience of at least 3 years in Sub-Saharan Africa. Proficiency in written and spoken English is mandatory.

5) Drainage/Structural Engineer

The Drainage/Structural Engineer shall be responsible for the design review and supervision of the drainage structures. He/She must be a registered professional Engineer (with a relevant professional regulatory body and have a current practicing certificate), with at least BSc. in Civil Engineering. A postgraduate qualification in Drainage or Structural Engineering shall be an added advantage. He/She must have a minimum of Ten (10) years of general experience and Seven (7) years specific experience in design of Civil engineering structures. He/She must have served in a similar capacity on at least two (2) projects of similar magnitude and complexity in the past 10 years. In addition, he/she must have a working experience of at least 3 years in Sub-Saharan Africa. Proficiency in written and spoken English is mandatory.

6) Senior Topographic Surveyor

The Surveyor shall be responsible for conducting cadastral and topographic surveys. The Surveyor shall be a holder of a Bachelor's degree in land surveying or equivalent. The Surveyor must be registered with a relevant professional licensing/regulatory authority (where applicable). He/She shall possess not less than Ten (10) years' experience in infrastructure projects of which not less than five (5) years must have been on design of an assignment of similar nature. In addition, he/she must have a working experience of at least three (3) years in Sub-Sahara Africa. Fluency in written and spoken English is mandatory.

7) Environmentalist & Social Safeguards Expert

The Environmentalist shall be responsible for the Environmental and Social Impact Assessment (ESIA) aspects of the project including implementation and monitoring of the Environmental Management Plan (EMP) in order to minimize any negative impacts that the road construction will have on the environment. HE/She shall have a

degree in environment management or related discipline. He/She must be registered with a relevant professional licensing/regulatory authority (where applicable). The Consultant shall possess not less than Ten (10) years' experience in infrastructure projects of which not less than five (5) years must have been on supervision of an assignment of similar nature. In addition, he/she must have a working experience of at least three (3) years in Sub-Sahara Africa. Fluency in written and spoken English is mandatory.

6.4 Use of Local Staff

International Consultants are encouraged to associate with local companies and/or individuals by providing good mix of the staff to ensure use of local capacity.

7.0 BUDGET ESTIMATE FOR THE ASSIGNMENT & PAYMENT TERMS

7.1 Budget Estimate for the assignment

The budget estimate range for the assignment is 300,000 – 550,000 inclusive of all applicable taxes.

7.2 Design Review & Construction Mobilization

Ten (10%) per cent of the contract amount shall be paid upon submission and approval of the Inception report and the design review report.

7.3 Construction Supervision

For the balance of 90%, payment shall be based on Pro-rata monthly structure subject to attainment of 10% monthly progress by the contractor with a deduction of 10% retention to be paid after Defects Liability period.

8.0 MONITORING AND EVALUATION

8.1 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.

8.2 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.

9.0 MANAGEMENT & ADMINISTRATION

9.1 Project/Contract Management

The structure for the project implementation is of joint Client with TMEA acting as the financier, procuring and contracting entity, with KeNHA acting on behalf of the GoK as the beneficiary and responsible owner of the road infrastructure during and after construction.

Project managers from the respective institutions TMEA and KeNHA will be appointed with a lead Project manager designated. The Consultants shall maintain close liaison with TMEA and KeNHA as may be required for the performance and delivery of services.

9.2 Contractual Framework and Responsibilities

- a) The Employer for both works and supervision contracts will be the Kenya National Highway Authority. Co-Financier will be TradeMark East Africa.
- b) 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 RED BOOK Conditions of Contract.
- c) 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.
- d) 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 KENHA. 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.
- e) A model letter setting the Delegation of Powers is attached in Annex B to these RFP document.

9.3 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.

9.4 Preparation of Project Management Plan (PMP)

At the project inception stage, the Consultant shall prepare and submit for approval a comprehensive project management plan (CPMP) for implementing the project consultancy service. The CPMP shall be used to guide subsequent design reviews, management of contractors, and implementation of the project, especially in view of the bilateral nature of the project.

The CPMP shall include a project organization chart, project brief for implementation of the construction works, project activity list, project schedule, scope management plan, cost management plan, quality management plan, resource management plan, communication management plan, risk management plan, procurement management plan and stakeholder management plan.

9.5 Quality Management Plan (QMP)

The Consultant shall implement a Quality management System for the assignment in accordance with ISO 9001 requirements, either within the framework of their own organization's quality management systems or one specifically for this assignment. In particular, the Consultant shall prepare a project quality control plan that shall define how they shall ensure key deliverables are produced on time, within budget and to the desired quality. The project control shall include:

- Work schedule and timelines controls
- Budget and cost controls
- Technical verification and quality controls including maintenance of quality records
- Communications controls
- Documents control
- Risk management controls
- Project reviews and progress reporting requirements

The same shall be submitted for review and approval by the Client TMEA/KeNHA. Upon approval, the Client shall follow up on its compliance.

9.6 MANAGEMENT OF COVID-19 PANDEMIC AND OTHER HSE ISSUES

Owing to the current COVID-19 pandemic, the consultant must submit with their technical proposals how they will deal with the covid-19 pandemic, mitigate the spread of it to his staff, stakeholders' staff, and communities around the project area. They should submit their protocols on how they will deal with this among other safeguarding issues.

TRADEMARK EAST AFRICA

JUNE 2021

ANNEX 1: FORMS FOR PERSONNEL/CONSULTANTS

TENDER FOR: [TENDER TITLE]

TENDER NUMBER: [REFERENCE NUMBER]

Proposed Personnel

Bidders should provide the names of suitably qualified personnel to meet the specified requirements for each of the positions listed in your technical proposal.

The data on their experience should be supplied using the Form below for each candidate.

1.	Title of position
	Name
2.	Title of position
	Name
3.	Title of position
	Name
4.	Title of position
	Name
5.	Title of position
	Name
6.	Title of position
	Name
7.	Title of position
	Name

Curriculum Vitae (CV) of Proposed Personnel

The Bidder shall provide all the information requested below. Fields with asterix (*) shall be used for evaluation.

Position*		
Personnel information	Name *	Date of birth
	Education qualification	
	Professional qualifications	
Present employment	Name of Employer	
	Address of Employer	
	Telephone	Contact (manager / personnel officer)
	Fax	E-mail
	Job title	Years with present Employer

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project. Describe degree of responsibility held by the consultant on relevant previous assignments and give dates and locations.

From*	To*	Company, Project, Position, and Relevant Technical and Management Experience*

I, (Insert Consultant Name) certify that to the best of my knowledge the information provided correctly describe me, my qualifications, and my experience.

Signature :

Date

ANNEX 2: PRO-FORMAS

Pro- forma 1

TENDER FOR: [TENDER TITLE]

TENDER NUMBER: [REFERENCE NUMBER]

MILESTONE PAYMENTS PROPOSAL

The amount to be paid for the completion of the services is fixed at \$

Payment will be made either:

a) as a lump sum on completion of the services

or

b) at relevant points throughout the contract period as detailed below

CRITERIA FOR PAYMENT	AMOUNT OF PAYMENT
TOTAL	\$

Pro forma 2

TENDER FOR: [TENDER TITLE]

TENDER NUMBER: [REFERENCE NUMBER]

PROPOSAL BREAKDOWN - PERSONNEL INPUTS AND FEE RATES

NAME	Country (Specify	No Days	Daily Fee Rate	Cost \$
Long Term*				
Short Term				
TOTAL FEES				\$

*** Long Term is in excess of 4 months**

Guidance on Fees and Expenses can be found in Section 2 of the contract - the General Conditions.

Pro- forma 3

TENDER FOR: [TENDER TITLE]

TENDER NUMBER: [REFERENCE NUMBER]

PROPOSAL BREAKDOWN – PROJECT EXPENSES

Costs should be shown separately in the format set out below using separate sheets to provide full details under each heading. **Note that the tenderer quote must include staff accommodation cost.** Fees proposed by tenderers should be inclusive of all taxes.

TRAVEL (state country)		NO.	RATE	COST \$
FARES	International			
	Domestic			
	Other Travel Costs			
Sub Total			\$	
DAILY LIVING COSTS (state country) *Long Term				
	*Short Term			
Sub Total				\$
EQUIPMENT* Items Purchased/Rented (Including vehicles)				

Sub Total			\$
Any other expenses (please list)			
Sub Total			\$
TOTAL PROJECT EXPENSES: (B)			\$

*TMEA will not reimburse costs for normal tools of trade (e.g. portable personal computers)

* Long Term consultants are expected to utilise rented accommodation. No per diem is payable.

*Short Term expectation is either rented accommodation or a hotel

TENDER FOR: [TENDER TITLE]

TENDER NUMBER: [REFERENCE NUMBER]

PROPOSAL BREAKDOWN - SUMMARY OF FEE RATES AND EXPENSES

Total Fees (A) ¹	\$
Total Project Expenses (B) ²	\$
Sub Total	\$
TOTAL	\$

ANNEX 3: CONTRACT

[This is for information purposes only]

CONTRACT FOR CONSULTANCY SERVICES

Section 1 – Form of Contract

CONTRACT FOR: [Insert Title here]

CONTRACT REFERENCE: [Insert Number here]

THIS CONTRACT is made

BETWEEN:

TradeMark East Africa (“TMEA”) having its principal place of business at Equatorial Fidelity Centre, P O Box 313 00606, Nairobi, Kenya;

AND

[Insert Consultant Name] (“The Consultant”) having its principal office located in [Insert Contact Details].

WHEREAS:

TMEA has requested the Consultant to provide certain consulting services as defined in the detailed terms of reference and scope of services attached to this Contract (hereinafter called the “Services”); the Consultant, having represented to TMEA that they have 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.

IT IS HEREBY AGREED as follows:

1. Documents

This Contract from page [Insert page no] to page [Insert page no.] shall comprise the following documents:

Section 1 Form of Contract

Section 2 General Conditions

Section 3 The Services

Section 4 Special Conditions and Key Personnel

Section 5 Fees

This Contract constitutes the entire agreement between the Parties in respect of the Consultant's obligations and supersedes all previous communications between the Parties, other than as expressly provided for in Section 3 and/or Section 4.

2. Contract Signature

If the original Contract is not returned to - TMEA duly completed, signed and dated on behalf of the Consultant within 15 days of the date of signature on behalf of TMEA, TMEA will be entitled, at its sole discretion, to declare this Contract void. No payment will be made to the Consultant under this Contract until a copy of the Contract, signed on behalf of the Consultant is returned to TMEA.

3. Commencement and Duration of the Services

- a. The contract shall be effective on the date both parties sign and the services shall be completed by **[Insert end date]** (End Date") or any other period as may be subsequently agreed by the parties in writing unless this Contract is terminated earlier in accordance with its terms and conditions.
- b. If the services have not commenced in accordance with clause 3a above, TMEA may by not less than 30 days written notice to the consultant, declare the contract to be null and void, and in the event of such declaration, the consultant shall have no claim against TMEA with respect thereto.

4. Financial Limit

Payments under this Contract shall not, in any circumstances, exceed **[XXX]** for fees and **[XXX]** for expenses within a total limit of **[XXX]** inclusive of all taxes applicable ("the Financial Limit").

5. Time of the Essence

Time shall be of the essence as regards the performance by the Consultant of its obligations under this Contract.

For and on behalf of TMEA

Name: **KEN JONES**
Position: **CHIEF CORPORATE SERVICES OFFICER**
Signature:
Date:

For and on behalf of the consultant

Name:
Signature:
Date:

CONTRACT FOR CONSULTANCY SERVICES

Section 2 – General Conditions

1. Definitions

“The Contract” means the agreement entered into between TMEA and the consultant, as recorded in this Contract Document signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

“TMEA Project Manager” means the person nominated by TMEA who is responsible for the management of the Project.

"the Equipment" means any equipment, computer hardware or software, materials, goods and vehicles and associated services necessarily required for the implementation of the Services which are financed or provided by TMEA for use by the Consultant.

"the Financial Limit" means the amount specified in Section 1 and which represents the maximum amount payable by TMEA under this Contract.

“Fees” means the fees payable for the Services as set out in Section 5.

"the Services" means the services to be provided by the Consultant as set out in Section 3.

“the Consultant” means the natural person(s), partnership(s), or company(ies) whose bid to perform this contract has been accepted by TMEA and is named as such in this contract, and includes the legal successors or permitted assigns of the Consultant.

"the Consultant’s Personnel" means any person instructed by the Consultant pursuant to this Contract to undertake any of the Consultant’s obligations under this Contract, including the Consultant’s employees, agents and sub-contractors.

“Subcontractor” means any natural person(s), partnership(s), or company(ies), including its legal successors or permitted assigns, to whom any part of the services to be provided is subcontracted by the Consultant.

2. Interpretation

In the event of any inconsistency between the Form of Contract (Section 1), these General Conditions (Section 2) and the Special Conditions (Section 4), the Special Conditions shall prevail.

3. Project management

TMEA designates the TMEA Project Manager as being responsible for the coordination of activities under this Contract, for the acceptance and approval on behalf of TMEA of the reports and of other deliverables produced by the Consultant, and for receiving and approving invoices for payment.

4. Obligations

- a. TMEA and the Consultant each warrant that it has all the requisite corporate power and authority to enter into this Contract and is fully capable of performing its obligations under this Contract on the terms provided for in this Contract.
- b. The Consultant shall perform the Services and all other obligations under this Contract with all necessary skill, diligence, efficiency and economy to satisfy generally accepted professional standards expected from experts.

- c. The Services shall be provided at the location set out in Section 3. Notwithstanding this, the Consultant may be required to travel to other locations from time to time in carrying out the Services.

5. Indemnification

At its own expense, the Consultant shall indemnify, protect and defend, TMEA, its agents and employees, from and against all actions, claims, losses or damage arising from any act or omission by the Consultant in the performance of the services, including any violation of any legal provisions, or rights of third parties, in respect of patents, trademarks and other forms of intellectual property such as copyrights. Should the act or omission originate from TMEA, then TMEA will indemnify the consultant. The Consultant hereby indemnifies TMEA, its agents and employees against any legal cost, including attorney/own client costs incurred by TMEA in defending any complaints, disputes or claims lodged by any party as a result of the actions or omissions of the Consultant.

6. Consultant's Personnel

- a. The Consultant acknowledges that it and the Consultant's Personnel have no authority to create or incur any liability or obligation on behalf of TMEA, including but not limited to any liability or obligation to expend or incur capital expenditure and not to recruit, employ or dismiss any member of staff employed by TMEA.
- b. The Consultant shall not at any time, either personally or by an agent, directly or indirectly represent itself as being in any way connected with or interested in TMEA save as being engaged to perform the Services.
- c. Save for the Services agreed and set out at Section 3, TMEA is under no obligation to offer work to the Consultant and the Consultant is under no obligation to accept any work, which may be offered by TMEA.
- d. No changes or substitutions may be made to members of the Consultant's Personnel identified in Section 4, if any, of this Contract without TMEA's prior written consent.
- e. If TMEA considers any member of the Consultant's Personnel unsuitable, the Consultant shall substitute such member as quickly as reasonably possible without direct or indirect charge to TMEA with a replacement acceptable to TMEA.
- f. The Consultant is responsible for all acts and omissions of the Consultant's Personnel and for the health, safety and security of such persons and their property.
- g. TMEA is dedicated to gender equality and ensuring equitable and sustainable human development

7. Fees

- a. Subject as follows, payments shall be due to the Consultant in accordance with the Fee payment schedule set out in Section 5. In the case of Fees that are payable upon the completion of milestones as may be set out in Section 4, such fees shall not become due and payable until the completion, to TMEA's satisfaction, of the relevant milestone event or the delivery of the deliverables to TMEA's satisfaction required for the achievement of the relevant milestone satisfactorily
- b. Payment of the Fees shall be subject to TMEA being satisfied that the Consultant is or has been carrying out its duties, obligations and responsibilities under this Contract.
- c. If for any reason TMEA is dissatisfied with performance of this Contract, an appropriate sum may be withheld from payments that would otherwise be due under this Contract. In such event TMEA shall

identify the particular Services with which it is dissatisfied together with the reasons for such dissatisfaction, and payment of the amount outstanding will be made upon remedy of any unsatisfactory work or resolution of outstanding queries.

- d. Fees charged and expenses incurred shall not, in aggregate, exceed the Financial Limit without the prior written consent of TMEA.
- e. No payments shall be made in respect of days not worked due to sickness or holiday or otherwise.
- f. Only the fee rates listed in Section 5 of this Contract will apply to any Services performed by the Consultant under this Contract.

8. Expenses

The Consultant shall be entitled to be reimbursed only for those expenses which have been approved and are set out in Section 5.

9. Invoicing Instructions

- a. Invoices should particularise the contract to which they relate and should be sent to the address referenced in Section 5.
- b. All invoices should contain details of the Services provided, milestones achieved and deliverables provided to which the invoice relates. Where expenses are payable, invoices should be accompanied by proof of the expense. Any invoice not presented in accordance with the above may be rejected and in any event shall be liable to query and delay in payment.
- c. TMEA may request proof of payment in respect of any item and shall be entitled to refuse to meet a claim if this cannot be provided.
- d. TMEA reserves the right to audit, or to nominate a reputable accounting firm to audit the Consultant's records relating to amounts claimed under this Contract during its term and any extension, and for a period of three months thereafter.
- e. TMEA reserves the right not to pay any amount due in respect of an invoice received by TMEA more than 60 days after the day of the Consultant becoming entitled to invoice for the payment to which it relates.
- f. TMEA will deduct withholding tax from the consultant's invoiced amounts as per Government of Kenya regulations. Consultants from countries with double tax agreements will be provided with withholding tax certificates. It is the consultant's responsibility to establish their tax status in the country where the Services will be delivered.

10. Payments

Subject to TMEA being satisfied that the Consultant is or has been carrying out their duties, obligations and responsibilities under this Contract, sums duly approved shall be paid within 30 days of receipt of a valid invoice.

11. Nature of relationship

TMEA and the Consultant agree and intend that this relationship is one of undertaking independent services and specifically is not a relationship of employer or employee agency, joint venture or partnership. Nothing contained herein shall be construed as establishing a relation of master and servant or of principal and agent between TMEA and the Consultant and the Consultant will be solely

responsible for the tax status, tax and any statutory contributions payable of and for the Consultant's Personnel and for all or any of its or the Consultant's Personnel's taxes payable in respect of Fees and reimbursements received in connection with this Contract.

12. Performance Standards

The Consultant undertakes to perform the Services with the highest standards of professional and ethical competence and integrity.

13. Termination

Either TMEA or the Consultant may terminate this Contract, by not less than 30 days written notice. In such cases, TMEA shall be liable to make payments only for work completed and delivered, of acceptable standard.

14. Confidentiality

- a. The Consultant shall not, during the term of this Contract and within two years after its expiration or termination, disclose any proprietary or confidential information relating to the Services, this Contract or TMEA's business or operations without the prior written consent of TMEA.
- b. Notwithstanding the above, the consultant may furnish to its subcontractor such documents, data, and other information it receives from TMEA to the extent required for the subcontractor to perform its work under the contract, in which event the consultant shall obtain an undertaking of confidentiality similar to that imposed on the consultant under this contract.

15. Ownership of Material

- a. Any studies reports or other material, graphic, software or otherwise, prepared by the Consultant for TMEA under the Contract shall belong to and remain the property of TMEA.
- b. Where intellectual property rights in all material produced by the Consultant or the Consultant's Personnel pursuant to the performance of the Services ("the Material") are the property of the Consultant, the Consultant hereby grants to TMEA a worldwide, nonexclusive, irrevocable, royalty free licence to use all the Material.
- c. "use" shall mean, without limitation, the reproduction, publication and sub-licence of all the Material and the intellectual property rights therein, including the reproduction and sale of the Material and products incorporating the same for use by any person or for sale or other dealing anywhere in the world.

16. Code of conduct

The consultant shall at all times act loyally and impartially and as a faithful adviser to TMEA in accordance with the rules and/or codes of conduct of its profession. It shall in particular refrain from making any public statements concerning the services without prior approval of TMEA, and from engaging in any activity which conflicts with its obligations towards TMEA under this contract. It shall not commit TMEA in any way whatsoever without its prior written consent, and shall, where appropriate, make this obligation to third parties.

17. Conflict of interest

The consultant shall refrain from any relationship which would compromise its independence or that of its personnel. If the consultant fails to maintain independence, TMEA may terminate the contract in accordance with the provisions of this contract.

18. Insurance

The Consultant and his/her/their personnel are responsible for ensuring adequate and appropriate medical, travel, Personal Accident or any other insurance cover before beginning work, under a TMEA contract for services. The Consultant's fee is deemed to include an element to cover the cost of all insurance

19. Assignment

The consultant shall not assign, in whole or in part, their obligation under this contract, except with prior written consent of TMEA.

20. Subcontracting

The consultant shall request approval in writing from TMEA for all subcontracts awarded under this contract that are not included in the contract. Subcontracting shall in no event relieve the consultant of any of its obligations, duties, responsibilities or liability under this contract.

21. Law Governing Contract and Language

The Contract shall be governed by the laws of Kenya but in the event of a conflict between Kenyan laws and any other Law, then the laws of Kenya prevail. The language of the Contract shall be English.

22. Dispute Resolution

TMEA and the Consultant agree to seek to resolve any dispute, controversy or claim arising out of or relating to this Contract or the breach, termination or invalidity thereof, by amicable settlement. Where it is not possible to reach an amicable settlement, any dispute, controversy or claim arising out of or relating to this Contract or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the applicable Arbitration Act in the country of contract execution or any statutory modifications or re-enactment thereof for the time being in force. Notwithstanding any adjudication or arbitration proceedings no party shall commit an anticipatory breach of contract.

23. Liability

Except where there has been misconduct, gross negligence, dishonesty or fraud on behalf of the Consultant or the Consultant's Personnel, the Consultant's aggregate liability arising out of or in connection with this Contract shall be limited to the amount of the Financial Limit. The Consultant shall not be liable for any failure to perform or delay in performance of any of its obligations arising out of or in connection with this Contract where such failure or delay is caused by TMEA or any of TMEA's agents, employees or contractors.

24. Force Majeure

- a. The failure of the Consultant 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 act, event, omission or accident beyond its reasonable control (“Force Majeure Event”), provided that the Consultant (i) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (ii) has informed TMEA as soon as possible about the occurrence of such an event and in any event not later than 14 days after the occurrence of such event.
- b. Any period within which the Consultant shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which the Consultant was unable to perform such action as a result of the Force Majeure Event.
- c. During the period of their inability to perform the Services as a result of a Force Majeure Event, the Consultant shall be reimbursed for additional costs reasonably and necessarily incurred by it during such period for the purposes of the Services and in reactivating the Services after the end of such period.

Force Majeure shall not include:

Any event which is caused by the negligence or intentional action of the consultant, or such consultant’s subcontractors or agents or employees; nor any event which a diligent party could reasonably have been expected to both: Take into account from the effective date of the contract; and Avoid or overcome in the carrying out of its obligations.

25. Joint venture, consortium or association

Unless otherwise specified in this contract, if the Consultant is a joint venture, consortium or association, all of the parties shall be jointly and severally liable to TMEA for the fulfilment of the provisions of this contract. The composition or constitution of the joint venture, consortium or association shall not be altered without the prior written consent of TMEA. Any alteration of the composition of the joint venture, consortium or association without prior written consent of TMEA shall be considered to be a breach of contract.

26. Travel

All authorized air travel must be economy class through the most direct and economical route.

CONTRACT FOR CONSULTANCY SERVICES

Section 3 – The Services

TERMS OF REFERENCE

[Insert]

CONTRACT FOR CONSULTANCY SERVICES

Section 4 – Special Conditions and Consultant’s Key Personnel

1. Special conditions

The proposal-both technical and financial-submitted for this tender forms an integral part of this contract.

2. Key Personnel

The following of the Consultant's Personnel cannot be substituted by the Consultant without TMEA's prior written consent:

[Insert]

CONTRACT FOR CONSULTANCY SERVICES

Section 5 – Fees

1. Professional fees

Consultant	Fee rate per day (\$)	Maximum number of days	Total value (\$)
TOTAL 1			

2. Reimbursable expenses

Item	Number	Cost (\$)	Total value (\$)
GRAND TOTAL (1+2)			

All expenses including accommodation must be supported by valid receipts which must be submitted with the relevant invoice. The only exception to this is the payment of subsistence allowances which are paid at TMEA standard rates and which do not need to be supported by receipts.

3. Invoicing instructions

After approval by the recipient, invoices should be sent to invoices@trademarkea.com. Invoices should clearly list the Contract Number (POXXX) and the details of the Consultant's bank account to which TMEA shall transfer payments.

ANNEX 4: TECHNICAL BID SUBMISSION FORM

Note: This form shall be completed and submitted alongside your Qualification/Technical Bid

Technical Bid Submission Form

[The Bidder shall fill in this Form in accordance with the instructions indicated No alterations to its format shall be permitted and no substitutions shall be accepted.]

Date: *[insert date (as day, month and year) of Bid Submission]*

To: TradeMark East Africa

Course View Towers,
Third Floor, Plot 21,
Yusuf Lule Road
P. O. Box 25820 Kampala
Tel: +256 312 223400

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents;
- (b) We offer to supply in conformity with the Bidding Documents and in accordance with the Delivery Schedules specified in the Schedule of Requirements the following Goods and Related Services *[insert a brief description of the Goods and Related Services]*;
- (c) Our bid shall be valid for the period of time specified in the ITT, from the date fixed for the bid submission deadline in accordance with the ITT, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (d) If our bid is accepted, we commit on request to obtain a performance security for the due performance of the Contract;
- (e) We have no conflict of interest;
- (f) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall not constitute a binding contract between us, until a formal contract is prepared and executed.
- (g) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.

Signed: *[signature of person authorized by the Bidder to sign the bid submission form, and whose name and title are shown below]*

Name: *[insert full name]*

Title: *[insert official title]*

Duly authorized to sign the bid for and on behalf of: *[insert complete name of Bidder]*

Dated on _____ day of _____, _____ *[insert date of signing]*

ANNEX 5: FAIR PRICE DECLARATION FORM

Note: This form shall be completed and submitted alongside the Financial bid

We/I _____ [insert name of the consultant or consultancy firm] hereby declare that the price quoted in our financial proposal/quotation/ pro-forma invoice [delete that which is not applicable] are in line with the market rates and/or the approved professional charges and are economical. We also confirm that the prices quoted have been arrived at independently and without consultation with any other supplier. We/I hereby give TradeMark East Africa authority to terminate the contract without further communication should they discover that we/I _____ [insert name of consultant or consultancy firm] are/am in contravention of this declaration.

Name:

Designation:

Signature:

Date:

ANNEX 6: TMEA CODE OF ETHICS

Note: This form shall be completed and submitted alongside the Qualification/Technical Bid

TMEA CODE OF ETHICS

1. Preamble

- 1.1 TradeMark East Africa's (TMEA) success depends on its reputation, integrity, openness and respect for others. The trust and confidence of those with whom we deal is therefore, essential. The protection of our reputation and relationships is of fundamental importance to our long-term sustainability. We recognise our obligations to all those with whom we have a direct relationship such as, donors, staff, service providers, contractors and suppliers, the private sector in general, government, civil society and the wider community.
- 1.2 This document covers fraud and corruption in the use of funds, as well as fraud and corruption engaged in for the purpose of influencing any decision as to the use of funds. All such fraud and corruption is deemed to occur "in connection with the use of TMEA funds". The recourse for funds mismanagement, where TMEA has sufficient evidence, shall lead to refund of monies by the beneficiary involved and prosecution by the authorities.
- 1.3 This document also covers gifts and hospitality. TMEA does not promote receiving or issuing of gifts and hospitality which might reasonably be perceived or seen to compromise any staff or service providers' judgement and integrity.
- 1.4 TMEA will make every attempt to ensure that its reputation is held to the highest standards and treats everyone with fairness and transparency. To that effect TMEA highlights in this documents that whistle blowing of any illegal or unethical activities by staff or service providers should be reported and it will be acted upon accordingly.
- 1.5 No staff member, service provider, contractors or suppliers shall be involved in any activity for personal gain. Any personal interests or interests of a member of one's immediate family in relation to the organisation's business must be disclosed.
- 1.6 Sustainable and Inclusive Trade, including gender mainstreaming also forms part of this document and it is obligatory for all partners to put gender equity issues into practice rather than adopting a superficial approach. This will be through continuous assessment of the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels of the project.
- 1.7 Finally, all partners, consultants, contractors and stakeholders shall sign the last page signifying they have read and understood and will put into practice this document, which is an integral part of the engagement/contract document with TMEA.

2. Definitions

- A "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- A "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- A "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- A "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party, and;
- An "obstructive practice" is;

- Deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a TMEA investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
- Acts intended to materially impede the exercise of the TMEA’s contractual rights of audit or access to information.
- “Gender mainstreaming” is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making humankind concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that both gender benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.
- A “recipient” is any individual, firm, organisation, NGO, PSO or CSO or any partner that works with TMEA and/ or receives TMEA funding either through a contract or a grant.
- “Gift” is a tangible item presented to a party to impress, appreciate, solicit or manage a relationship
- “Hospitality” is an intangible item presented to a party to impress, appreciate, solicit or manage a relationship
- “Whistleblowing” is an act of reporting an activity deemed to be illegal, unethical or a misconduct with or without confidentiality while not being victimized.

3. Managing TMEA relationships

3.1 Relationship with stakeholders

- 3.1.1 TMEA’s reputation depends on the way in which we work. It is vital that our stakeholders have confidence in our competence and professional excellence. We will treat our stakeholders with respect, honesty and fairness.
- 3.1.2 Confidential information relating to our relationship with all stakeholders will be respected. We respect copyright and other intellectual property rights.
- 3.1.3 Where consultants and other third parties are contracted by TMEA to perform duties, they will be expected to act in accordance with this code. The obligation to comply with this document forms an integral part of the engagement we have with partners or consultants who are expected to append their signature, as a confirmation of commitment to adherence.
- 3.1.4 Decisions to hire a consultant or source materials from a particular vendor or supplier are made on the basis of objective criteria such as quality, reliability, technical excellence, price and service. Purchasing decisions must never be made on the basis of personal relationships or the opportunity for personal financial gain.
- 3.1.5 The recipient shall not avoid tax. The recipient will record and report all transactions, including those where payment is made in cash. All taxable perquisites to which staffs are entitled will be listed and declared for tax purposes.
- 3.1.6 TMEA funds, including receipt through award of contracts shall not be used for terrorism and/or any form of organized crime or to support any form of related activities. TMEA shall rely on laws and rules, among others, from donors or country of operation that prohibits acts of terrorism and organized crimes or providing material support or resources to terrorist and/or designated terrorist and organized crime

organizations. If TMEA carries out its due diligence and confirms involvement of any stakeholder including suppliers, it will terminate the contract or agreement and notify the relevant authorities immediately.

3.1.7 TMEA is committed to openness and transparency in communicating with stakeholders and seeks a constructive relationship the wider private sector/ civil society, the media, the government, non-governmental organisations and the general public.

3.2 Relationship with employees

3.2.1 TMEA aims to provide a positive, responsible, open and exemplary working environment. Relationship with staff should be based on respect, dignity and fair treatment for all. We strive to maintain an environment that is based on merit and inclusiveness. The organisation will recruit and promote staff on the basis of their suitability for the job and organisation's needs without discrimination. Diversity of staff is central to our operations and we value it immensely.

3.2.2 TMEA expect staffs to conduct their business activities with colleagues and stakeholders with respect for all and with honesty and courtesy. We will not tolerate harassment or bullying of staff.

3.2.3 The recipient will explain the purpose of its activities and individual jobs, foster effective communication and involve employees in improving their work. As far as possible, it will provide staff with opportunities to enhance their skills and capabilities, enabling them to develop fulfilling careers and to maximise their contribution to the organisation.

3.2.4 The recipient, in recognition of the efforts of an individual, it will maintain an atmosphere of fair terms and conditions of employment and remuneration policies and structures.

3.2.5 The recipient's time, physical and intellectual property should be used for business purposes only. Electronic communication equipment and related services (including email, internet, bulletin boards, fax machines, file storage) must be protected from unauthorised external access or use. Under no circumstances should they be used for receiving illegal, offensive, obscene or otherwise inappropriate materials.

3.2.6 The recipient shall respect staff privacy. We will only collect and retain personal information that is required for effective operation of the organisation or as required by law. The information will be kept confidential and released only to those who have a legitimate need to know. Information received by staff in the course of business dealings may not be used for personal gain.

4. Fraud and corruption

4.1 The recipient shall:

Take all appropriate measures to prevent corrupt, fraudulent, collusive, coercive and obstructive practices in connection with the use of TMEA funds, including (but not limited to):

- adopting appropriate fiduciary and administrative practices and institutional arrangements to ensure that the funds are used only for the purposes for which they were intended, and;
- ensuring that all of its representatives involved in/with the project, and all recipients of funds with which it enters into an agreement related to the Project, receive a copy of this document and are made aware of its contents;

4.2 Immediately report to TMEA any allegations of fraud and corruption; cooperate fully with representatives of TMEA or its appointed agent in any investigation into allegations of fraud and corruption;

4.3 If TMEA determines that any person or entity receiving its funds has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, it may suspend further funding/disbursement/payment;

- 4.4 TMEA reserves the right to demand a refund and may terminate the agreement in place; may also hand over the reports from any investigations to proceed with prosecution;
- 4.5 Take all necessary and appropriate action against any representative declared ineligible, as described below, from duties and responsibilities;
- If TMEA determines that a recipient is also a potential provider of goods, works or services, it shall declare the recipient ineligible;
 - TMEA shall declare a firm, consultant or individual ineligible under this code of ethics if such firm, consultant or individual has been declared ineligible under TMEA procurement guidelines or those of the respective government/partner or any other international organisation; and
 - Assist or enable TMEA to obtain a refund of any resources (assets, monies, materials among other benefits) that have been used inappropriately funds including returning any unutilised funds especially where TMEA is not content with progress.
- 4.6 TMEA will reject a proposal for award and / or will cancel the contract at any time if it determines at any time that representatives of the Recipient or of a beneficiary engaged in corrupt, fraudulent, collusive, misleading/false, coercive or obstructive practices during the procurement or the execution of that contract;
- 4.7 In the event that TMEA establishes to a reasonable degree that a Bidder(s) has misrepresented information in their bid or receives confirmation from a referee that an assignment was not undertaken satisfactory or litigation not captured in the bid submitted is discovered, TMEA shall reject the bid and/ or terminate the contract immediately at any point without incurring any liability whatsoever; and
- 4.8 TMEA at its own discretion, may decide to debar a supplier where there is demonstrable evidence of: (i)The supplier undertaking unethical, illegal, corrupt, or fraudulent activities in connection with a TMEA contract or a TMEA-funded contract; (ii) Persistent poor performance by the supplier under a TMEA contract or a TMEA-funded contract in terms of quality of work or goods delivered, including consistently late delivery; and (iii) Debarment of a supplier by a TMEA donor, the World Bank, or a Government with whom TMEA has a Memorandum of Understanding.

5. Gifts and Hospitality

- 5.1 Gifts and hospitality must not be solicited by any recipient, representative or staff of TMEA.
- 5.2 The receipt or acceptance of gifts and hospitality is related to the issue of conflicts of interest and can leave an organisation vulnerable to accusations of unfairness, partiality, improper inducement or deceit. Its stakeholders' relationships may be perceived to be bias and its ethical reputation will be at risk.
- 5.3 Representatives, agents and any potential bidder intending to work for/with TMEA should not be seen as using their official position to receive, agree to accept or attempt to obtain any payment or other consideration for doing, or not doing, anything or showing favour, or disfavour, to any person as this might reasonably be seen to compromise personal judgement and integrity.
- 5.4 Service providers should not put TMEA in a position to accept gifts and/or hospitality which might be perceived as a compromise to personal judgement and integrity. TMEA reserves the right to reject any gift/hospitality and declare as such.

6. Gender mainstreaming

- 6.1 The core guidelines for gender mainstreaming in TMEA funded projects shall be based on but not limited to the following:

- 6.2 Issues across all areas of activity shall be defined in such a manner that gender differences are diagnosed;
- 6.3 Responsibility for translating gender mainstreaming into practice is system- wide and rests at the highest level of the recipient organisation. Accountability for outcomes needs to be monitored continuously;
- 6.4 Gender mainstreaming also requires that every effort be made to broaden equal participation at all levels of decision-making;
- 6.5 Gender mainstreaming must be institutionalised through concrete steps, mechanisms and processes in all areas of TMEA funded projects;
- 6.6 Gender mainstreaming does not replace the need for targeted, policies and programmes or positive legislation, nor does it substitute for gender units or focal points; and
- 6.7 There shall be clear organisational will and the allocation of adequate human and financial resources for gender mainstreaming from all available funding for the successful translation of the concept into practice.

7. Discrimination of marginalized groups

- 7.1 TMEA believes in respect and equal treatment for everyone regardless of gender, religion, and disability to help lift people out of poverty and injustice and allow them to assert their dignity and guarantee sustainable development through its campaigns for fairer trade rules within the East Africa region, and for better policies at the national level, and also improve on the capacity for local markets
- 7.2 TMEA, its partners and suppliers will therefore not discriminate against any group deemed to be marginalized be it women, men, disabled, religious groups, or ethnic minority and will strive to ensure that they work with partners and/or suppliers who ensure that these groups have and enjoy equal access to jobs, essential services and influence.

8. Whistle Blowing

- 8.1 TMEA has a zero tolerance to corruption policy, to this effect, KPMG has been engaged to provide an independent whistle-blowing hotline for reporting any malpractice involving TMEA resources or staff. This allows both employees and outsiders to report anonymously any unethical practices, including fraud, corruption, and theft. The call-centre is secure and TMEA will not be informed of the identity of any callers.
- 8.2 If you have concerns about unethical behaviour at TMEA, if you have been asked for a bribe in connection with TMEA business, or if you have suspicions about the theft of TMEA resources, we urge you to call the confidential whistle-blower hotline from any of the countries in which TMEA operates:
 - Kenya: 0800 722 770 (toll-free)
 - Uganda: 0800 113 220 (toll-free)
 - Tanzania, Rwanda, South Sudan, and DRC: +254 740 023 702

Alternatively, you can send an email to: tmeaspeak-up@kpmg.com or use the web-portal www.thornhill.co.za/kpmgeaethicsportal.

9. Implementing and monitoring this document

- 9.1 The recipient's commitment to this document is essential to TMEA's success and will be demonstrated through training, enforcement and accountability. Adherence to the provisions of this document is a condition of partnership.

- 9.2 Project Managers should ensure that all recipients receive guidance on this document and understand the values that underpin its usage. They should strive to create an environment that encourages open discussion about any concerns.
- 9.3 This document is a guide rather than an exhaustive description of the recipient's ethics policies and standards. TMEA aims to create a culture in which it is normal for partners to 'do the right thing' and to voice genuinely held concerns about behaviour or decisions that they perceive to be unethical.
- 9.4 All recipients are required to sign stating that they have read this document and have taken all reasonable steps to ensure that they have conducted business responsibly and in compliance with applicable laws and regulations.

10. Miscellaneous

- 10.1 The provisions in this code do not limit any other rights, remedies or obligations of TMEA or the recipient under the Memorandum of Understanding/Agreement or any other document to which TMEA and the Partner are both parties.

11. Commitment to the Code of Ethics

I have read the code and hereby sign as an indication of commitment to ensure the code is incorporated and adhered to.

On behalf of Vendor:

Organisation's name: _____

Title of Signatory: _____

Signature: _____

Date: _____

.....

STAMP/SEAL

ANNEX 7: FINANCIAL BID SUBMISSION FORM

Note: This form shall be completed and submitted alongside the Financial Bid

Financial Bid Submission Form

Dear Sirs:

We, the undersigned, offer to provide the consulting services for [Insert title of assignment] in accordance with your Request for Proposal dated [Insert Date] and our Technical Proposal.

Our attached Financial Proposal is for the amount of [Indicate the corresponding to the amount(s) currency (ies)] [Insert amount(s) in words and figures], including all applicable taxes in line with Clause 9 of this RFP tender document.

This financial bid submission/ proposal is in line with Pro-forma 1, 2, 3 and 4 of Annex 1 of this RFP tender document.

Our Financial Proposal shall be binding upon us subject to the modifications resulting from any contract negotiations, up to expiration of the validity period of the Proposal, up to 120 days after bid submission date, that is, 21st October 2019.

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

We remain,

Yours Sincerely,

Authorized Signature [In full and initials]: _____

Name and Title of Signatory: _____

In the capacity of: _____

Address: _____

E-mail: _____

[For a joint venture, either all members shall sign or only the lead member/ consultant, in which case the power of attorney to sign on behalf of all members shall be attached]

ANNEX 8: PERFORMANCE SECURITY FORM

[This is for information purposes only]

Performance Security Form

Date: *[insert date (as day, month, and year) of Performance Security]*

Procurement Reference No: *[insert Procurement Reference Number]*

To: *[insert complete name of Procuring and Disposing Entity]*

WHEREAS *[insert name complete of Provider]* (hereinafter “the Provider”) has undertaken, pursuant to Contract No. *[insert number]* dated *[insert day, month and year]* to provide *[brief description of the Services]* (hereinafter “the Contract”).

AND WHEREAS it has been stipulated by you in the aforementioned Contract that the Provider shall furnish you with a *[insert type of security]* Security issued by a reputable guarantor for the sum specified therein as security for compliance with the Provider’s performance obligations in accordance with the Contract.

AND WHEREAS the undersigned *[insert complete name of Guarantor]*, legally domiciled in *[insert complete address of Guarantor]*, (hereinafter the “Guarantor”), have agreed to give the Provider a security:

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the Provider, up to a total of *[insert currency and amount of guarantee in words and figures]* and we undertake to pay you, upon your first written demand declaring the Provider to be in default under the Contract, without cavil or argument, any sum or sums within the limits of *[insert currency and amount of guarantee in words and figures]* as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This security is valid until the *[insert number]* day of *[insert month]*, *[insert year]*.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20 (a) is hereby excluded.

Name: *[insert complete name of person signing the Performance Security]*

In the capacity of *[insert legal capacity of person signing the Performance Security]*

Signed: *[signature of person whose name and capacity are shown above]*

Duly authorised to sign the Security for and on behalf of: *[insert complete name of Financial Institution]*

Dated on _____ day of _____, _____ *[insert date of signing]*

ANNEX 9: ADVANCE PAYMENT SECURITY FORM

**[This is for information purposes only]
Advance Payment Security Form**

*The Advance Payment Security should be on the letterhead of the issuing Financial Institution (**MUST be a Commercial Bank**) and should be signed by a person with the proper authority to sign documents that are binding on the Financial Institution]*

Advance Payment Security

Date: *[insert date (as day, month, and year) of Advance Payment Security]*

Procurement Reference No.: *[insert Procurement Reference number]*

To: *[insert complete name of Procuring and Disposing Entity]*

In accordance with the payment provision included in the Contract, in relation to advance payments, *[insert complete name of Provider]* (hereinafter called “the Provider”) shall deposit with TradeMark East Africa a security consisting of *[indicate type of security]*, to guarantee its proper and faithful performance of the obligations imposed by said Clause of the Contract, in the amount of *[insert currency and amount of guarantee in words and figures]*.

We, the undersigned *[insert complete name of Guarantor]*, legally domiciled in *[insert full address of Guarantor]* (hereinafter “the Guarantor”), as instructed by the Provider, agree unconditionally and irrevocably to guarantee as primary obligor and not as surety merely, the payment to TradeMark East Africa on its first demand without whatsoever right of objection on our part and without its first claim to the Provider, in the amount not exceeding *[insert currency and amount of guarantee in words and figures]*.

This security shall remain valid and in full effect from the date of the advance payment received by the Provider under the Contract until *[insert day and month]*, *[insert year]*.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.

Name: *[insert complete name of person signing the Security]*

In the capacity of *[insert legal capacity of person signing the Security]*

Signed: *[signature of person whose name and capacity are shown above]*

Duly authorized to sign the Security for and on behalf of: *[insert complete name of the Financial Institution]*

Dated on _____ day of _____, _____ *[insert date of signing]*

ANNEX 10: CONFIDENTIALITY AGREEMENT

Note: This form shall be completed and submitted alongside the Qualification/Technical Bid

Background

TradeMark East Africa (TMEA) is a not-for-profit organisation funded by a range of development agencies to promote regional trade and prosperity in East Africa. Our vision is 'a united East Africa with flourishing trade, strong investment and less poverty', and our mission is 'to promote rapid advances in East Africa's integration, trade and global competitiveness for all East Africans.'

TMEA was founded in 2010 but became fully operational in 2011. TMEA has scaled up significantly in terms of expenditure and personnel during this time. TMEA works closely with business and civil society organisations, the East African Community (EAC), The Democratic Republic of Congo (DRC) national governments. TMEA has its headquarters in Kigali with branches in Arusha, Bujumbura, Dar es Salaam, Juba, Kampala and Kigali. TMEA seeks to support growth in East African trade through three strategic objectives: -

- 1) Increased market access;
- 2) Enhanced trade environment; and
- 3) Improved business competitiveness.

Further information is available on the TMEA website www.trademarkea.com.

Confidentiality Agreement

It is understood and agreed to that the below identified discloser of confidential information may provide certain information that is and must be kept confidential. To ensure the protection of such information, and to preserve any confidentiality necessary under patent and/or trade secret laws, it is agreed that

1. The Confidential Information to be disclosed can be described as and includes:

Invention description(s), technical and business information relating to proprietary ideas and inventions, ideas, patentable ideas, trade secrets, drawings and/or illustrations, patent searches, existing and/or contemplated products and services, research and development, production, costs, profit and margin information, finances and financial projections, customers, clients, marketing, and current or future business plans and models, regardless of whether such information is designated as "Confidential Information" at the time of its disclosure.

2. The Recipient agrees not to disclose the confidential information obtained from the discloser to anyone unless required to do so by law.

3. This Agreement states the entire agreement between the parties concerning the disclosure of Confidential Information. Any addition or modification to this Agreement must be made in writing and signed by the parties.

4. If any of the provisions of this Agreement are found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision(s) shall be deemed modified to the limited extent required to permit enforcement of the Agreement as a whole.

WHEREFORE, the parties acknowledge that they have read and understand this Agreement and voluntarily accept the duties and obligations set forth herein.

On Behalf of the Service provider:

Name: _____

Signature: _____

Date: _____

ANNEX 11: BIDDERS CONFLICT OF INTEREST FORM

Note: This form shall be completed and submitted alongside the Qualification/Technical Bid

Tender Number:

Tender Title:

TMEA operates procurement processes which are fair, transparent and able to withstand probity. In view of this, TMEA requires that any potential bidder who participates in its procurement processes declares any actual or potential conflicts of interest. Bidders who do not declare relevant conflicts of interest and do not sign this form will not be permitted to participate in TMEA’s procurement processes.

I. Conflict of interest declaration

Potential conflicts of interest can include the following (but the list is **not** exhaustive): -

Relationship with TMEA: -

1. Relationship/ Association with TMEA staff members and/or representatives.
2. Relationship/Association with TMEA’s Board Members and/or office bearers
3. Where applicable; if the bidder was involved in earlier phases of the project for which bids/proposals are now being sought.
4. Knowledge of TMEA’s terms of reference or any bidding documents before they were officially published.

If you are in any doubt about whether something is a potential conflict of interest, you are advised to declare it below

Either:

A) I wish to declare the following conflict(s) of interest: -

1.
2.
3.

Or

B) I have no conflicts of interest to declare.

Please note that TMEA reserves the right to disqualify a bidder if an actual or potential conflict of interest that was not declared, is later discovered.

On behalf of Vendor:

Organisation’s name: _____

Title of Signatory: _____

Signature: _____

Date: _____

ANNEX 12: INTELLECTUAL PROPERTY (IP) AGREEMENT

Note: This form shall be completed and submitted alongside the Qualification/Technical Bid

Purpose

This Agreement on Intellectual property comprises Patents, Copyrights and Confidential Information. The Agreement provides guidance to TMEA, its partners, service providers and/or third parties regarding disclosing and managing inventions made at or under the auspices of TMEA in a manner consistent with TMEA's commitment to strengthening East Africa regional economic integration.

Principle

The patent, copyright and intellectual property agreement shall ensure a fair and equitable balance between creators, owners and users, and the needs of the public.

Copyright

The copyright in all drawings, documents and other materials containing data and information furnished to TMEA by the Provider/Partner shall remain vested in the Provider/Partner or, if they are furnished to the TMEA directly or through the Provider by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

Ownership of Material

Any studies, reports or other material, graphic, software or otherwise, prepared by the Provider for TMEA under any Contract shall belong to and remain the property of TMEA.

Where intellectual property rights in all material produced by the provider or the provider's personnel pursuant to the performance of the Services ("the Material") are the property of the Provider, the Provider shall grant to TMEA a worldwide, nonexclusive, irrevocable, royalty free license to use all the Material. "use" shall mean, without limitation, the reproduction, publication and sub-licence of all the Material and the intellectual property rights therein, including the reproduction and sale of the Material and products incorporating the same for use by any person or for sale or other dealing anywhere in the world.

Confidential Information

TMEA and the Provider/Partner shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party, whether such information has been furnished prior to, during or following termination of any binding engagement. Notwithstanding the above, the Provider/Partner may furnish to its Subcontractor(s) such documents, data and other information it receives from TMEA to the extent required for the Subcontractor(s) to perform its work under any contract, in which event the Provider/Partner shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Provider/Partner under this paragraph.

TMEA shall not use such documents, data and other information received from the Provider for any purpose other than the operation and maintenance of the Supplies. Similarly, the Provider/Partner shall not use such documents, data and other information received from the TMEA for any purpose other than the design, procurement of Goods, construction or such other work and services as are required for the performance of the Contract.

The obligation of a party under the above paragraphs, however, shall not apply to that information which

- a) Now or hereafter enters the public domain through no fault of that party;
- b) Can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto; and
- c) Otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

In witness of the parties hereto append their signatures and seals on the date indicated below:

On behalf of Vendor:

Organisation's name: _____

Designation of Signatory: _____

Signature: _____

Date: _____

ANNEX 13: ORGANISED CRIME POLICY AND DECLARATION

Note: This form shall be completed and submitted alongside the Qualification/Technical Bid

Overview

1. Organised crime can be defined as serious crime planned, coordinated and conducted by people working together on a continuing basis. Their motivation is often, but not always, financial gain. Organised criminals working together for a particular criminal activity or activities are called an organised crime group.
2. Organised criminal activities that include, but not limited to, money laundering, human trafficking and smuggling, animal trafficking, drug dealing, purchase of illegal arms, cyber-crimes, child labour, kidnap and extortion, and organised crime groups will have a negative impact on the region's social and economic development, as well as damaging the reputation to TMEA's donors and stakeholders. See Annex 2 for a list of types of organised crime.
3. TMEA will take all appropriate measures to reduce the risk that TMEA resources are used for unintended purposes including those that are intended for organised criminal activities and/or their support networks.
4. Non-adherence to this policy, in itself, constitutes substantial breach of rules of engagement with TMEA and may lead to immediate termination of engagement with TMEA without need for further notice.
5. TMEA shall rely on an array of laws and rules that fight any potential threat of organised crimes. TMEA shall rely on, among others, any laws from donors or country of operation laws that prohibit financing of organised criminal activities or providing material support or resources to organised criminal groups. TMEA also has a separate Safeguards Policy which also includes measures to address some of these issues.
6. In this policy, the term "partner" shall include any supplier of goods or services, any recipient of TMEA grant funding or financial aid, and any investor making contributions to TMEA.

TMEA organised crime due diligence checks

7. As part of the usual procurement or grant-awarding process (and before a preferred bidder is recommended to the Tender Committee), the Procurement Director shall undertake to the maximum extent reasonably possible the following verification to ensure that any new partner shall substantially protect TMEA's resources from diversion to unintended purposes including financing and participating in organised criminal activities as an organisation and/or through their support networks:
 - i. TMEA shall conduct a reasonable search of publicly available information to determine whether the partner is suspected of any activity relating to organised crime, including financing or other support.
 - ii. TMEA shall seek written confirmation from the partner that they are not involved and/or linked, including their employees, in any way and are not listed in their country of operation or any other as financiers of or participants in organised criminal activities whether as individuals, entities, or organisations, pursuant to national obligations arising from General Assembly resolution 55/25 of 15 November 2000 United Nations Convention against Transnational Organised Crime;
 - iii. As a pre-condition to entering into a contract or other agreement, TMEA shall require partners to certify in writing that they are in compliance with all laws and regulations restricting persons from dealing with any individuals, entities, or groups subject to country of operation sanctions or TMEA donors sanctions, or any other persons known to the partner to support organised crime or to have violated any known organised crime sanctions (see Annex 1);

- iv. TMEA shall require partners to certify in writing that they have taken all reasonable steps to ensure that TMEA resources are not funding organised crime activities or their support networks, nor used for activities that support organised crime. Periodically, the partner shall apprise TMEA of the measures it has taken to meet this goal;
 - v. TMEA may perform routine, on-site audits of partners to the extent reasonable (consistent with the size of the resource, the cost of the audit, and the risks of diversion or abuse of resources) to ensure that the partner has taken adequate measures to protect its/ TMEA resources from diversion to, or abuse or influence by, organised crime individuals, entities or organisations.
8. The certifications submitted by partners shall be valid for three years after which the certifications shall need to be renewed.
 9. In relation to key employees and members of the Board of Directors, before any person is awarded a contract of employment or contract of service as a Director, the People Director shall consult publicly available information to ensure that the person is not reasonably suspected of activity relating to organised criminal activities.
 10. Where an employee has suspicion that a partner is breaching any aspect of this policy, they should report the matter to the Director of Audit & Assurance.

Examples of organised crime

The threats East Africa faces from organised crime include:

- Child sexual exploitation and abuse
- Counterfeit currency
- Cyber-crime - crimes committed through the use of information communication technology
- Drugs - the Class A drugs trade and the illegal drugs market
- Firearms - the use of guns by organised criminals
- Fraud
- Human trafficking - the movement of people for exploitation
- Identity crime - how criminals use false identities and documents
- Intellectual property crime - the counterfeiting and piracy of goods
- Kidnap and extortion
- Money laundering - how criminals 'clean' their dirty money
- Organised theft - commodity related criminality, armed robbery and vehicle crime
- Organised crime groups - what they are and how they are formed
- People smuggling

I confirm that I on behalf of hereby confirm that I have read and wholly understood the anti-organised crime policy provided and do hereby confirm that to the best of my knowledge and that available with the organisation thatdoes not support any organised criminal activities or has links with any organisation or individuals that support the same.

I also therefore give full endorsement that should TMEA establish that this information is inaccurate, action may be taken against (party and self) which could include availing said information to the known anti-organised crime handling unit in my country of operation or any such international unit as approved under resolution 55/25 of 15 November 2000 United Nations Convention against Transnational Organised Crime.

On behalf of Party: -

Organisation's/ consultant/ firm/ company/ JV name: _____

Title of Signatory: _____

Signature: _____

Date: _____

Stamp/ seal: _____

ANNEX 14: ANTI-TERRORISM FINANCING POLICY AND DECLARATION

Note: This form shall be completed and submitted alongside the Qualification/Technical Bid

Overview

11. The United Nations Security Council defines terrorism as “criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act.”
12. TMEA will take all appropriate measures taken to reduce the risk that TMEA resources are used for unintended purposes including exploitation by terrorist organisations and/or their support networks.
13. Non-adherence to this policy, in itself, constitutes substantial breach of rules of engagement with TMEA and may lead to immediate termination of engagement with TMEA without the need for further notice.
14. TMEA shall rely on an array of laws and rules that fight any potential threat of terrorist financing. TMEA relies on, among others, any laws from donors or country of operation laws that prohibit the financing of terrorism or providing material support or resources to terrorists and/or designated terrorist organisations.
15. In this policy, the term “partner” shall include any supplier of goods or services, any recipient of TMEA grant funding or financial aid, and any investor making contributions to TMEA.

TMEA anti-terrorism due diligence checks

16. As part of the usual procurement or grant-awarding process (and before a preferred bidder is recommended to the Tender Committee), the Procurement Director shall undertake, to the maximum extent reasonably possible, the following verification to ensure that any new partner shall substantially protect TMEA’s resources from diversion to unintended purposes including exploitation by terrorist organisations and/or their support networks:
 - vi. TMEA shall conduct a reasonable search of publicly available information to determine whether the partner is suspected of any activity relating to terrorism, including terrorist financing or other support.
 - vii. TMEA shall seek confirmation that the partner does not exist on any country of operation lists of designated terrorist-related individuals, entities, or organisations, pursuant to national obligations arising from United Nations Security Council Resolution 1373;
 - viii. As a pre-condition to entering into a contract or other agreement, TMEA shall require partners to certify in writing that they are in compliance with all laws and regulations restricting persons from dealing with any individuals, entities, or groups subject to country of operation sanctions or TMEA donors sanctions, or any other persons known to the partner to support terrorism or to have violated any known anti-terrorism sanctions (see Annex 1).
 - ix. TMEA shall require partners to certify in writing that they have taken all reasonable steps to ensure that TMEA resources provided are neither distributed to terrorists or their support networks nor used for activities that support terrorism or terrorist organizations. Periodically, the partner shall apprise TMEA of the measures it has taken to meet this goal;
 - x. TMEA may perform routine, on-site audits of partners to the extent reasonable (consistent with the size of the resource, the cost of the audit, and the risks of diversion or abuse of resources) to ensure that the partner has taken adequate measures to protect its/ TMEA resources from diversion to, or abuse or influence by, terrorists or their support networks.

17. The certifications submitted by partners shall be valid for three years after which the certifications shall need to be renewed.
18. In relation to key employees and members of the Board of Directors, before any person is awarded a contract of employment or contract of service as a Director, the People Director shall consult publicly available information to ensure that the person is not reasonably suspected of activity relating to terrorist organisations and/or their support networks.
19. Where an employee has suspicion that a partner is breaching any aspect of this policy, they should report the matter to the Director of Audit & Assurance.

I confirm that I on behalf of hereby confirm that I have read and wholly understood the anti-terrorism policy provided and do hereby confirm that to the best of my knowledge and that available with the organisation that does not support any terrorism activities or has links with any terrorism support organisation.

I also therefore give full endorsement that should TMEA establish that this information is inaccurate, action may be taken against (party and self) which could include availing said information to the known anti-terrorism handling unit in my country of operation or any such international unit as approved under the United Nations Security Council Resolution 1373.

On behalf of Party: -

Organisation's/ consultant/ firm/ company/ JV name: _____

Title of Signatory: _____

Signature: _____

Date: _____

Stamp/ seal: _____