



REQUEST FOR PROPOSAL (RFP)

FOR

**DEVELOPMENT OF NHC EPS FACTORY MARKETING
STRATEGY 2021-2025**

NHC/RFP/MS/010/20-21

INVITATION DATE : 16TH MARCH 2021

CLOSING DATE : 13TH APRIL 2021 11.00A.M

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SECTION I - LETTER OF INVITATION

TO: *(Name and Address of Consultants)*

Dear Sir/Madam,

RE: **REQUEST FOR PROPOSAL FOR DEVELOPMENT OF NHC EPS FACTORY
MARKETING STRATEGY 2021-2025**

NHC intends to engage services of a competent consultant for Development of NHC EPS
Factory Marketing Strategy 2021-2025

1.1.1

1.1.2 Prices quoted should be **inclusive of all taxes** and must be in Kenya shillings and shall remain valid for **120 days** from the closing date.

1.1.3 Bidder(s) should not mutilate the bid document issued by the procuring entity and shall ensure serialization of pages for each bid submitted.

1.1.4 Duly completed bid document (s) are to be enclosed in plain sealed envelopes, marked with the "**Tender Number & Tender Description**" and be addressed to;

**The Managing Director,
P.O. Box 30257-00100,
NAIROBI.**

and must be received in the tender box at NHC Headquarters, **Ground Floor** during normal working hours before **13th April 2021 at 11.00 A.M.**

1.1.5 Bids shall be opened immediately thereafter in the presence of candidates representative who choose to attend at the NHC Conference Room 10th floor. **Late bids shall be rejected.**

MANAGING DIRECTOR

SECTION II – INFORMATION TO CONSULTANTS (ITC)

2.0. General Provisions – Definitions

- (i) "Client" means the National Housing Corporation (NHC).
- (ii) "Consultant" means the firm that has signed the contract with NHC.
- (iii) "Contract" means a legally binding written agreement signed between NHC and Consultant and includes all attached documents listed in Conditions of Contract.
- (iv) "Personnel" means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose CV is taken into account in short listing the Consultant's invited to submit proposals.
- (v) "Non-Key Personnel" means an individual professional provided by the Consultant who is assigned to perform the Services or any part thereof under the Contract and whose CVs are not evaluated individually.
- (vi) "Proposal" means the Technical and Financial Proposal of the Consultant.
- (vii) "Services" means work to be performed by Consultant pursuant to the Contract.
- (viii) "TORs" means the "Terms of Reference" that explain the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of NHC and the Consultant, and expected results and deliverables of the assignment.

2.1 Introduction

- 2.1.1 The Consultant(s) are invited to submit a Technical Proposal and a Financial Proposal, as specified herein for consulting services required.
- 2.1.2 NHC's employees, board members and their relatives (spouse and children) are not eligible to participate.
- 2.1.3 There shall be no price charged for the RFP document.

2.2 Clarification and Amendment of RFP Documents

- 2.2.1 Consultants may request a clarification of any of the RFP only up to 2 days before the proposal submission date. Any request for clarification must be sent in writing by paper mail or electronic mail to NHC. NHC will respond by electronic mail to such requests and will send written copies of the response including an explanation of the query.
- 2.2.2 At any time before the submission of proposals, NHC may for any reason, whether at its own initiative or in response to a clarification requested by an invited firm, amend the RFP. Any amendment shall be issued in writing through addenda. Addenda shall be sent by mail, cable, telex or facsimile to all invited Consultants and will be binding on them. NHC may at its discretion extend the deadline for the submission of proposals.

2.3 Preparation of Technical Proposal

2.3.1 The Consultants proposal shall be written in English language

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

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

- (i) If a firm considers that it does not have all the expertise for the assignment, it may obtain a full range of expertise by associating with individual consultant(s) and/or other firms or entities in a joint venture or sub-consultancy as appropriate. Consultants shall not associate with the other Consultants invited for this assignment. Firms associating in contravention of this requirement shall automatically be disqualified.
- (ii) For assignments on a staff-time basis, the estimated number of professional staff-time should be indicated. The proposal shall however be based on the number of professional staff-time estimated by the firm.
- (iii) It is desirable that the majority of the key professional staff proposed be permanent employees of the firm or has an extended and stable working relationship with it.
- (iv) Alternative professional staff shall not be proposed and only one Curriculum Vitae (CV) may be submitted for each position.

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

- (i) A brief description of the firm's organization and an outline of recent experience on assignments of a similar nature. For each assignment the outline should indicate *inter alia*, the profiles of the staff proposed, duration of the assignment, contract amount and firm's involvement.
- (ii) The consultant may provide any comments or suggestions on the Terms of Reference.
- (iii) A description of the methodology and work plan for performing the assignment.
- (iv) The list of the proposed staff team by specialty, the tasks that would be assigned to each staff team member and their timing.
- (v) CVs recently signed by the proposed professional staff and the authorized representative submitting the proposal. Key information should include number of years working for the firm/entity and degree of responsibility held in various assignments in the last seven (7) years.

- (vi) Estimates of the total staff input (professional and support staff-time) needed to carry out the assignment supported by bar chart diagrams showing the time proposed for each professional staff team member.
- (vii) A detailed description of the proposed methodology, work plan, staffing and monitoring of training, forms a major component of the assignment.

2.3.5 The Technical Proposal shall not include any financial information.

2.4 Preparation of Financial Proposal

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

2.4.2 The Financial Proposal should clearly identify as a separate amount, the local taxes, duties, fees, levies and other charges imposed under the law on the Consultants, the sub-Consultants and their personnel.

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

2.4.4 Commissions and gratuities, if any, paid or to be paid by Consultants and related to the assignment will be listed in the Financial Proposal Submission Form.

2.4.5 The Proposal must remain valid for **120 days** after the submission date. During this period, the consultant is expected to keep available, at his own cost, the professional staff proposed for the assignment. NHC will make its best effort to complete negotiations within this period. If NHC wishes to extend the validity period of the proposals, the Consultants shall agree to the extension.

2.5 Submission, Receipt, and Opening of Proposals

2.5.1 The original Technical Proposal and, if required, Financial Proposal; shall be prepared in indelible ink. It shall contain no interlineations or overwriting, except as necessary to correct errors made by the firm itself. Any such corrections must be initialed by the persons or person authorized to sign the proposals.

- 2.5.2 For each proposal, the Consultants shall prepare an original and copy of both the technical and financial proposal. Each Proposal shall be marked either **"Original"** or **"Copy"** as appropriate. If there are any discrepancies between the original and the copies of the proposal, the original shall govern.
- 2.5.3 The tenderer is required to serialize all pages for each bid submitted.
- 2.5.4 The original and copy of the Technical Proposal shall be placed in a sealed envelope clearly marked **"Technical Proposal,"** and the original and one copy of the Financial Proposal in a sealed envelope clearly marked **"Financial Proposal"** and warning: **"Do not open with the Technical Proposal"**. Both envelopes shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address and clearly marked, **"Do not open except in presence of Opening Committee."**
- 2.5.5 The completed Technical and Financial Proposals must be delivered at the submission address on or before the time and date stated. Any proposal received after the closing time for submission of proposals shall be returned to the respective consultant unopened.
- 2.5.6 After the deadline for submission of proposals, the Technical Proposal shall be opened immediately by the opening committee. The Financial Proposal shall remain sealed and deposited with a responsible officer of NHC up to the time for public opening of financial proposals.

2.6 **Proposal Evaluation General**

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

2.7 **Evaluation of Technical Proposal**

- 2.7.1 The evaluation committee appointed by the Client shall evaluate the proposals on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria as indicated.

2.8 Public Opening and Evaluation of Financial Proposal

- 2.8.1 After Technical Proposal evaluation, NHC shall notify those Consultants whose proposals did not meet the minimum qualifying mark or were considered non-responsive to the RFP and Terms of Reference, indicating that their Financial Proposals will be returned after completing the selection process. NHC shall simultaneously notify the Consultants who have secured the minimum qualifying mark, indicating the date and time set for opening the Financial Proposals and stating that the opening ceremony is open to those Consultants who choose to attend. The opening date shall not be sooner than seven (7) days after the notification date. The notification may be sent by registered letter, cable, telex, facsimile or electronic mail.
- 2.8.2 Financial Proposals shall be opened publicly in the presence of the Consultants' representatives who choose to attend. NHC shall prepare minutes of the opening.
- 2.8.3 The evaluation committee will determine whether the financial proposals are complete (i.e. whether the consultant has costed all the items of the corresponding Technical Proposal and correct any computational errors. The cost of any unpriced items shall be assumed to be included in other costs in the proposal. In all cases, the total price of the Financial Proposal as submitted shall prevail.
- 2.8.4 While comparing proposal prices between local and foreign firms participating in a selection process in financial evaluation of Proposals, firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias in proposal prices. However, there shall be no such preference in the technical evaluation of the tenders. Proof of local incorporation and citizenship shall be required before the provisions of this sub-clause are applied. Details of such proof shall be attached by the Consultant in the financial proposal.
- 2.8.5 The tender evaluation committee shall evaluate the tender within 21days from the date of opening the tender.
- 2.8.6 Contract price variations shall not be allowed for contracts not exceeding one year (12 months) from the date of signing the contract.
- 2.8.7 Where contract price variation is allowed, the variation shall not exceed 25% of the original contract price
- 2.8.8 Price variation requests shall be processed within 30 days of receiving the request.

2.9 Negotiations

- 2.9.1 Negotiations will be held at the same address as "address to send information to NHC". The aim is to reach agreement on all points and sign a contract.
- 2.9.2 Negotiations will include a discussion of the Technical Proposal, the proposed methodology (work plan), staffing and any suggestions made by the firm to improve the Terms of Reference. NHC and firm will then work out final Terms of Reference, staffing and bar charts indicating activities, staff periods in the field and in the head office, staff-months, logistics and reporting. The agreed work plan and final Terms of Reference will then be incorporated in the "Description of Services" and form part of the Contract. Special attention will be paid to getting the most the firm can offer within the available budget and to clearly defining the inputs required from NHC to ensure satisfactory implementation of the assignment.
- 2.9.3 Unless there are exceptional reasons, the financial negotiations will not involve the remuneration rates for staff (no breakdown of fees).
- 2.9.4 Having selected the firm on the basis of, among other things, an evaluation of proposed key professional staff, NHC expects to negotiate a contract on the basis of the experts named in the proposal. Before contract negotiations, NHC will require assurances that the experts will be actually available. NHC will not consider substitutions during contract negotiations unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the firm may be disqualified.
- 2.9.5 The negotiations will conclude with a review of the draft form of the Contract. To complete negotiations NHC and the selected firm will initial the agreed Contract.

2.10 Award of Contract

- 2.10.1 The Contract will be awarded following negotiations. After negotiations are completed, NHC will promptly notify other Consultants on the shortlist that they were unsuccessful and return the Financial Proposals of those Consultants who did not pass the technical evaluation.
- 2.10.2 The selected firm is expected to commence the assignment on the date and at the location specified herein above.

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

2.10.4 NHC may at any time terminate procurement proceedings prior to notification of tender award and shall not be liable to any person for the termination.

2.10.5 NHC shall give notice of the termination to all persons who submitted tenders within fourteen days of termination and such notice shall contain the reason for termination.

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

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

2.11 Confidentiality

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

2.12 Corrupt or fraudulent practices

2.12.1 NHC requires that the Consultants observe the highest standards of ethics during the selection and award of the consultancy contract and also during the performance of the assignment. The tenderer shall sign a declaration that he/she has not and will not be involved in corrupt or fraudulent practices.

SECTION III: - EVALUATION CRITERIA

The Corporation shall select Quality and Cost Based Selection (QCBS) method as the preferred method to be used to evaluate proposals. "Quality and Cost Based Selection" method is a method that uses a competitive process that takes into account the quality of the proposal and the cost of the services in the selection of the successful firm.

The bidder obtaining the highest combined score based on the formula provided in the request for proposal document shall be invited for negotiations and if successful be recommended for the award of contract.

I. Preliminary/Mandatory Evaluation Criteria

- (i) Submit a copy of Certificate of Registration/Incorporation.
- (ii) Submit a copy of the Valid Tax Compliance Certificate.
- (iii) Provide a copy of CR12 Certificate
- (iv) Provide self-declaration that the bidder is not debarred from participating in Public Procurement.
- (v) Provide self-declaration that the bidder will not engage in any corrupt practice.
- (vi) Duly filled Tender Securing Declaration Form.

II. Technical Evaluation Criteria

In preparing the technical proposals the consultant is expected to examine all terms and information included in the RFP. Failure to provide all requested information shall be at the consultants own risk and may result in rejection of the consultant's proposal.

The technical proposal shall provide all required information and any necessary additional information and shall be prepared using the standard forms provided in this Section. The Technical proposal shall not include any financial information.

S/ No	Technical Evaluation	Score Out of 100
1.	Experience in undertaking similar assignments (Marketing Strategy) (Attach evidence of at least 3 assignments) (10 marks each)	30 Marks
2.	Letters of reference from at least 3 clients on similar assignments (Marketing Strategy) (5Marks for each)	15 Marks
3.	Provide signed CVs and Testimonials of 3 key relevant professional staff (5marks for each)	15 Marks
4.	A detailed methodology demonstrating clear understanding of Terms of Reference	20 Marks
5.	Proposed Work Plan	10 Marks
6.	Evidence of sound financial state in form of Audited Financial Accounts for the last two years (2018 & 2019) (5 Marks Each)	10 Marks

NB: The minimum qualifying score will be 70 Marks. Bidders who will not attain this score will be considered non-responsive.

III. Financial Evaluation

The formulae for determining the Financial Score (Sf) shall, unless an alternative formulae is indicated in the Appendix "ITC", be as follows:

$$Sf = 100 \times \frac{FM}{F}$$

Where;

Sf is the financial score;

FM is the lowest priced financial proposal and;

F is the price of the proposal under consideration.

Proposals will be ranked according to their combined technical (*St*) and financial (*Sf*) scores using the weights (*T*= weight given to the Technical Proposal and *P*= weight given to the Financial Proposal; $T + P = 1$) indicated in the Appendix. The combined technical and financial score, *S*, is calculated as follows:- $S = St \times T\% + Sf \times P\%$.

The Combined Technical and Financial Scores shall be determined using the Formula above. Weights given to the Technical and Financial Proposals are:

$$T = 0.70$$

$$P = 0.30$$

The firm achieving the highest combined technical and financial score will be invited for negotiations.

Notes on Preparing the Financial Proposals:

- a) The financial proposal will be sealed separately and shall include a price schedule as well as the financial submission form for each project.
- b) In preparing the financial proposals the consultant is expected to examine all the costs involved in execution of the assignment. Failure to provide for all expenses shall be at the consultants own risk.
- c) The technical proposal shall not include any element of financial proposal.
- d) The financial proposal should be sealed separately.

SECTION IV: TERMS OF REFERENCE

Background

In its bid to deliver on the mandate of housing the nation, the Corporation identified EPS technology as one of the alternatives for mass production of houses and set up a factory that commenced production in March 2013. The main products are:

- Structural (Load Bearing) Single Wall Panels
- Structural (Load Bearing) Double Wall Panels
- Non-structural Single Wall Panels
- Floor/Staircase Panels
- EPS Block/Sheet
- Galvanized Steel Wire-mesh

The Feasibility study carried out at inception indicated that the factory would breakeven in the 3rd year of its operation at 59% of the installed capacity. This, however, is yet to be realized seven (7) years down the line. The Corporation is therefore planning to develop a Marketing Strategy covering the period 2021-2025 to competitively position the EPS panels in the market and turn the Factory into profitability. To facilitate this process, the Corporation seeks to engage a Consultant.

2.0 Terms of Reference (ToRs)

The Corporation takes cognizance of the fact that its operating environment has significantly changed given the Government policy direction towards delivery of housing to Kenyans under the Big Four development agenda, and the effects of COVID-19 on real estate and construction industry. The Consultant will be expected to guide the process to infuse fresh thinking into the strategy development phase and ensuring all along that the process is highly participatory, a sense of ownership by the Management and Board. The following are the broad objectives which will guide the process:

- Facilitate a review of the performance of the EPS Factory since the commencement of operation in 2013.
- Facilitate the process of preparing the 2021-2025 Marketing Strategy which is geared towards positioning EPS products in the market and turning the Factory into profitability.
- Develop new products
 - Using the existing technology
 - Using new technology(ies)

Specific ToRs for the exercise are as follow;

- i. Review the performance of EPS Factory with a view of determining the following;
 - How has the Factory performed
 - What are the challenges faced
- ii. Evaluate the environment in which the Factory is operating and assess its impact on EPS panels and the overall performance.
- iii. Analyze the prevailing market dynamics in relation to:
 - a) EPS products in the market
 - b) Prevailing market prices
 - c) NHC - EPS market share and positioning
 - d) Target market
 - e) Market raw materials prices
 - f) How to achieve cost leadership
 - g) Market differentiation of NHC-EPS products and product mix
 - h) Customer focus and market segmentation
 - i) Economies of scale and economies of scope.
 - j) Plant utilization and efficiency
 - k) Technical support to clients and capacity building
- iv. Carry out consultations with Management, Board and other stakeholders on operational environment of the EPS Factory.
- v. Facilitate Management in the development of a new Marketing Strategy 2021-2025 that;
 - Competitively positions EPS panels in the market
 - Increases the Sales Revenue and turn the Factory into profitability
 - Ensures long term sustainability of the business
 - Explores and develops new products using the existing and/or new technology(ies)
- vi. Compile, in collaboration with NHC Marketing Strategy Champions, the first draft of the Marketing Strategy.
- vii. Submit the draft Marketing Strategy for review by Management.
- viii. Compile the final draft, incorporating Management inputs, and make a presentation to the Board for additional inputs

- ix. Write the final Marketing Strategy incorporating comments from the Management and Board.
- x. Present the Marketing Strategy to Management and staff through sensitization sessions
- xi. Prepare the final Marketing Strategy, and its abridged version, document for publication
- xii. Provide a work plan for the entire process.

3.0 Expected Milestones

The Consultant will be expected to realize the following milestones in the process of preparing and delivery of the NHC EPS Factory Marketing Strategy

- i. Prepare and present the Inception report to Management before commencement of the of Marketing Strategy preparation process
- ii. Submit a report on the review of the performance of EPS Factory since 2013
- iii. Conduct a Management workshop on the draft Marketing Strategy
- iv. Conduct a Board retreat on the draft Marketing Strategy
- v. Finalize the draft Marketing Strategy and submit to NHC for validation
- vi. Present the NHC EPS Factory Marketing Strategy 2021-2025 ready for publication. This will include an abridged version of the Strategy.

4.0. Time frame

The assignment is expected to be completed in a period not exceeding Sixty **(60) working days** from the date of executing the consultancy agreement by both NHC and the Consultant.

5.0 Consultancy Fees

The Consultant will be paid professional fees upon completion of the assignment.

SECTION V: TECHNICAL PROPOSAL SUBMISSION FORM

REF No..... Dated.....

TO:

Dear Sir,

REF: Request for Proposal for Development of NHC EPS Factory Marketing Strategy 2021-2025

We, the undersigned, offer to provide the consulting services for..... in accordance with your request for proposals dated *[insert date]*. We are hereby submitting our Technical Proposal, in response to your invitation to us to submit a technical proposal and a financial proposal.

We hereby declare that:

- (a) All the information and statements made in this Technical Proposal are true and we accept that any misinterpretation or misrepresentation contained in this Proposal may lead to our disqualification by NHC.
- (b) Our Proposal shall be valid and remain binding upon us for the period of **120 days** from the date of tender/proposal opening.
- (c) We have no conflict of interest as indicated in the Information to Consultants.
- (d) In competing for (and, if the award is made to us, in executing) the Contract, we undertake to observe the laws against fraud and corruption, including bribery, in force in the country of Kenya.
- (e) We undertake to negotiate a Contract on the basis of the technical proposal to carry out the assignment. We accept that there will be no substitution of key personnel for reasons, other than those stated in the Information to Consultants which may lead to the termination of Contract negotiations and even the contract itself.
- (g) Our Proposal is binding upon us and it is subject to any modifications resulting from the Contract negotiations.

We undertake, if our Proposal is accepted and the Contract is signed, to initiate the Services related to the assignment no later than the date indicated in the negotiated contract. We understand that NHC is not bound to accept any Proposal that it receives.

We remain, Yours Sincerely,
Authorized Signature

Name of Consultant.....

Address.....

Contact phone.....

STAMP OR SEAL *****

SECTION VI: - FINANCIAL PROPOSAL SUBMISSION FORMS

REF NO.

Dated.....

TO:

Dear Sir,

REF: Request for Proposal for Development of NHC EPS Factory Marketing Strategy 2021-2025

We, the undersigned, offer to provide the consulting services for **REF: Request for Development of NHC EPS Factory Marketing Strategy 2021-2025** in accordance with your request for proposals and our Technical Proposal. We are hereby submitting our Financial Proposal, in response to your invitation to us to submit a technical proposal and a financial proposal. Our Financial Proposal is **(Amount in Figures)Kshs**.....
(Amount in words) Kshs

- (a) Our Financial Proposal shall be binding upon us subject to the modifications resulting from negotiations, up to expiration of the validity period of the Proposal, i.e. Proposals must remain valid for **120** days from the closing date of the proposal/tender as indicated in the instructions to Consultants.
- (b) No commissions and gratuities paid or to be paid by us to agents relating to this Proposal and Contract execution, if we are awarded the Contract, are allowed in our price proposal.
- (c) We understand you are not bound to accept any Proposal you receive.

We remain, Yours
Sincerely,

Authorized Signature _____
 Name of Consultant _____
 Address _____
 Contact phone _____
 Contact e-mail address): _____
 STAMP OR SEAL *****

SECTION VII: GENERAL CONDITIONS OF CONTRACT

7.0 GENERAL PROVISIONS

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

- (a) "Applicable Law" means the laws and any other instruments having the force of law in the Republic of Kenya as they may be issued and in force from time to time;
- (b) "Contract" means the Contract signed by the Parties, to which these General Conditions of Contract (GC) are attached together with all the documents listed in Clause 1 of such signed Contract;
- (c) "Contract Price" means the price to be paid for the performance of the Services in accordance with Clause 6 here below;
- (d) "Foreign Currency" means any currency other than the Kenya Shilling;
- (e) "GC" means these General Conditions of Contract;
- (f) "Government" means the Government of the Republic of Kenya;
- (g) "Local Currency" means the Kenya Shilling;
- (h) "Member", in case the Consultant consists of a joint venture of more than one entity, means any of these entities; "Members" means all these entities, and "Member in Charge" means the entity specified herein to act on their behalf in exercising all the Consultant's rights and obligations towards NHC under this Contract;
- (i) "Party" means NHC or the Consultant, as the case may be and "Parties" means both of them;
- (j) "Personnel" means persons hired by the Consultant or by any Sub-consultant as employees and assigned to the performance of the Services or any part thereof;
- (k) "Services" means the work to be performed by the Consultant pursuant to this Contract, as described.
- (l) "Sub consultant" means any entity to which the Consultant subcontracts any part of the Services in accordance with the provisions of Clauses 3 and 4.

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

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

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

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

7.1.6 Authorized Representatives Any action required or permitted to be taken and any document required or permitted to be executed under this Contract by NHC or the Consultant may be taken or executed by the officials specified herein.

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

7.2 Commencement, Completion, Modification and Termination of Contract

7.2.1 Effectiveness of the Contract. This Contract shall come into effect on the date Contract is signed by both Parties and such other later date as may be stated herein.

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

7.2.3 Expiration of Contract. Unless terminated earlier, this Contract shall terminate at the end of such time period, after the Effective Date, as is specified herein.

7.2.4 Modification. Modification of the terms and Conditions of this Contract, including any modification of the scope of the Services or the Contract Price, may only be made by written agreement between the Parties.

7.2.5 Force Majeure

7.2.5.1 Definition For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

7.2.5.2 No Breach of Contract The failure of a Party to fulfill any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible on the occurrence of such an event.

7.2.6 Extension of Time. Any period within which a Party shall, pursuant to this Contract complete any action or task shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

7.2.7 Payments. During the period of his inability to perform the Services as a result of an event of Force Majeure, the Consultant shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by him during such period for the purposes of the Services and in reactivating the Service after the end of such period.

7.3 Termination

7.3.1 **By NHC:** NHC may terminate this Contract by written notice of termination to the Consultant, to be given after the occurrence of any of the events specified in this Clause;

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

For the purpose of this clause;

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

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

(e) if NHC in his sole discretion decides to terminate this Contract.

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

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

7.4 Payment upon Termination: Upon termination of this Contract, NHC shall make the following payments to the Consultant:

- (a) remuneration for Services satisfactorily performed prior to the effective date of termination;
- (b) except in the case of termination pursuant to paragraphs (a) and (b) of Clause 7.3.2, reimbursement of any reasonable costs incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel and their eligible dependents.

7.5 OBLIGATIONS OF THE CONSULTANT

7.5.1 General

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

7.5.2 Conflict of Interests

7.5.2.1 Consultant Not to Benefit from Commissions Discounts, Etc.

- (i) The remuneration of the Consultant pursuant to Clause 6 shall constitute the Consultant's sole remuneration in connection with this Contract or the Services and the Consultant shall not accept for his own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of his obligations under the Contract and the Consultant shall use his best efforts to ensure that his personnel, any sub consultant[s] and agents of either of them similarly shall not receive any such additional remuneration.
- (ii) For a period of two years after the expiration of this Contract, the Consultant shall not engage and shall cause his personnel as well as his sub consultant[s] and his/their personnel not to engage in the activity of a purchaser (directly or indirectly) of the assets on which he advised NHC on this Contract nor shall he engage in the activity of an adviser (directly or indirectly) of potential purchasers of such assets.
- (iii) Where the Consultant as part of the Services has the responsibility of advising NHC on the procurement of goods, works or services, the Consultant will comply with any applicable procurement guidelines and shall at all times exercise such responsibility in the best interest of NHC. Any discounts or commissions obtained by the Consultant in the exercise of such procurement shall be for the account of NHC.

7.5.2.2 Consultant and Affiliates not to be otherwise interested in Project

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

7.5.2.3 Prohibition of Conflicting Activities

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

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

7.6 Confidentiality

The Consultant, his sub consultant[s] and the personnel of either of them shall not, either during the term of this Contract or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract or NHC's business or operations without the prior written consent of NHC.

7.7 Insurance to be taken out by the Consultant

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

7.8 Consultant's Actions Requiring Client's Prior Approval

The Consultant shall obtain NHC's prior approval in writing before taking any of the following actions;

- (a) Entering into a subcontract for the performance of any part of the Services,
- (b) Appointing such members of the personnel not listed by name ("Key Personnel and Sub Consultants").

7.9 Reporting Obligations

The Consultants shall submit to NHC the reports and documents specified.

7.10 Documents prepared by the Consultant to Be the Property of NHC

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

7.11 CONSULTANT'S PERSONNEL

7.11.1 Description of Personnel

The titles, agreed job descriptions, minimum qualifications and estimated periods of engagement in the carrying out of the Services of the Consultant's Key Personnel. The Key Personnel and Sub Consultants listed by title as well as by name.

7.11.2 Removal and/or Replacement of Personnel

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

7.12. OBLIGATIONS OF NHC

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

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

7.12.3 Services and Facilities NHC shall make available to the Consultant the Services and Facilities required.

7.13 PAYMENTS TO THE CONSULTANT

7.13.1 Lump-Sum Remuneration The Consultant's total remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all staff costs, and all other costs incurred by the Consultant in carrying out the Services.

7.13.2 Contract Price

The contract price will be in Kenya Shillings Only.

7.13.3 Payment for Additional Services

For the purposes of determining the remuneration due for additional services as may be agreed.

7.13.4 Terms and Conditions of Payment

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

7.13.5 Interest on Delayed Payment. Payment shall be made within thirty (30) days of receipt of invoice and other supporting documents.

SELF DECLARATION THAT THE PERSON/CONSULTANT IS NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015

I,, of Post Office Box
being a resident ofin the Republic of
..... do hereby make a statement as follows:-

1. THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Director of (insert name of the Company) who is a Bidder in respect of Tender No. for(insert Proposal title/description) for(insert name of the Procuring entity) and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.
3. THAT what is deponed to hereinabove is true to the best of my knowledge, information and belief.

..... (Title) (Signature)

Bidder's Official Stamp

SELF DECLARATION THAT THE PERSON/CONSULTANT WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE

I,of P. O. Box being a resident of in the Republic of do hereby make a statement as follows:-

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of (insert name of the Company) who is a Bidder in respect of Tender No.for(insert Proposal title/description) or (insert name of the Procuring Entity) and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its servants and/or agents /subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Management, Board, Staff and/or employees and/or agents of.....(insert name of the Procuring entity) which is the procuring entity.
3. THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of (name of the procuring entity)
4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject Proposal
5. THAT what is deponed to herein above is true to the best of my knowledge information and belief.

..... (Title) (Signature)

Bidder's Official Stamp

TENDER SECURING DECLARATION

[The Tenderer shall fill in this Form in accordance with the instructions indicated.]

Date: Tender No.....
*[insert **date** (as day, month and year)] [insert **Number of Tendering process**]*

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

We, the undersigned, declare that:

We understand that, according to your conditions, tenders must be supported by a Tender-Securing Declaration.

We accept that our future ability to tender shall be jeopardized if we are in breach of our obligation(s) under the Tender conditions, because we:

(a) have withdrawn our Tender during the period of Tender validity specified in the Form of Tender;

or

(b) having been notified of the acceptance of our Tender by the Purchaser during the period of Tender validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the conditions of the tender.

We understand this Tender Securing Declaration shall expire if we are not the successful Tenderer, upon the earlier of (i) our receipt of your notification to us of the name of the successful Tenderer; or (ii) twenty-eight days after the expiration of our Tender.

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

In the capacity of.....
[insert legal capacity of person signing the Tender Securing Declaration]

Name:
*[insert **complete name of person signing the Tender Securing Declaration**]*

Duly authorized to sign the Tender for and on behalf of:

.....
*[insert **complete name of Tenderer**]*

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

*[insert **Company Seal**]*

CONTRACT FORM

THIS AGREEMENT made the _____ day of _____ 20__ between [name of Procurement entity] of _____ [country of Procurement entity] (hereinafter called "the Procuring entity") of the one part and [name of tenderer] of _____ [city and country of tenderer] (hereinafter called "the tenderer") of the other part: WHEREAS the Procuring entity invited tenders for the Medical Healthcare cover and has accepted a tender by the tenderer for the supply of the services in the sum of _____ [Contract price in words in figures] (Hereinafter called "the Contract Price").

NOW THIS AGREEMENT WITNESSTH AS FOLLOWS:-

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz:
 - (a) the Tender Form and the Price Schedule submitted by the tenderer;
 - (b) the Schedule of Requirements
 - (c) the Details of cover
 - (d) the General Conditions of Contract
 - (e) the Special Conditions of Contract; and
 - (f) the Procuring entity's Notification of Award
3. In consideration of the payments to be made by the Procuring entity to the tenderer as hereinafter mentioned, the tenderer hereby covenants with the Procuring entity to provide the Medical Healthcare cover and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Procuring entity hereby covenants to pay the tenderer in consideration of the provision of the services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the contract at the times and in the manner prescribed by the contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with their respective laws the day and year first above written

Signed, sealed, delivered by _____ the _____ (for the Procuring entity)

Signed, sealed, delivered by _____ the _____ (for the tenderer) in the presence of;