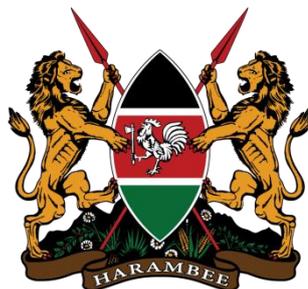


THE REPUBLIC OF KENYA



KENYA NATIONAL HIGHWAYS AUTHORITY

Prequalification Document for the Procurement of
Consulting Services for

Design (Review), Tender Documentation, Site
Supervision and Contract Administration of the Kenya
- South Sudan Road Link, Kitale – Morphus Section
(± 75 km)

Financed by KfW (BMZ No. 202062065)

October 2017

For use in two stage international competitive bidding

Kenya National Highways Authority
Blue Shield Towers, Upper Hill, 1st Floor
P. O. Box 49712-00100
NAIROBI, KENYA



FOREWORD

1. This Standard Prequalification Document ("SPQ") has been prepared by KfW Development Bank ("KfW").
2. Project Executing Agencies (referred to hereafter as "Employer") shall use this SPQ for the procurement of consulting services financed in whole or in part by KfW.
3. This SPQ is to be used for the selection of Consultants in two stage International Competitive Bidding procedures as described in Section 2 of the KfW Guidelines for the Assignment of Consultants in Financial Cooperation with Partner Countries ("Guidelines") and where applicable, in National Competitive Bidding procedures.
4. Any alternative Prequalification documents for two stage procedures, proposed for use by Employers in Financial Cooperation projects, may not deviate from the Standard Prequalification Document in a substantive manner.
5. Employers are invited to seek advice from local competent sources to ascertain its suitability regarding the applicable law, as well as its comprehensiveness. KfW will not be liable for the use of this document by the Project Executing Agency (PEA) in part or full.

**German Financial Cooperation with the
Government of the Republic of Kenya**

**Rehabilitation / Upgrading of the Kenya - South
Sudan Road Link, Kitale – Morphus Road Section
(± 75 km)**

Prequalification Document

for

**Consulting Services for Design (Review), Tender
Documentation, Site Supervision and Contract
Administration**

**Employer: Kenya National Highways Authority
(KeNHA)**

October 2017

BMZ No. 202062065

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1. GENERAL

1.1 SCOPE OF APPLICATION AND DEFINITIONS

- 1.1.1 In connection with the Invitation for Prequalification indicated in Section II, Special Provisions (**SP**), the Employer, as defined in the **SC**, issues this Prequalification Document ("Prequalification Document") to prospective applicants ("Applicants") interested in submitting applications ("Applications") for prequalification to bid for the assignment described in SP 1.5.1. The International Competitive Bidding ("ICB") number corresponding to this prequalification is also provided in the **SP**.
- 1.1.2 The Employer as indicated in the **SP** has applied for or received financing (hereinafter called "funds") from KfW Development Bank (hereinafter called "KfW") towards the cost of the project named in the **SP**. The Employer intends to apply a portion of the funds to eligible payments under the contract(s) resulting from the bidding for which this prequalification is conducted.
- 1.1.3 The following definitions apply:
- (a) "Applicable Guidelines" means the KfW Guidelines for the Assignment of Consultants in Financial Cooperation with Partner Countries.
 - (b) "Applicable Law" means the laws and any other instruments having the force of law in the Employer's country.
 - (c) "Applicant(s)" means an entity or an association of entities (JV) that submits a set of documents as specified hereunder for being prequalified to submit a proposal.
 - (d) "Consultant" means a legally-established professional consulting firm or an entity that may provide or provides the Services to the Employer under a Contract.
 - (e) "Contract" means a legally binding written agreement signed between the Employer and the Consultant.
 - (f) "Day" means a calendar day.
 - (g) "Employer" means the contracting party that legally concludes the Contract for the Services with the selected Consultant notwithstanding the representation by KfW in case of an agency

contract¹.

- (h) "Government" means the Government of the Employer's country.
- (i) "Joint Venture (JV)" means an association with or without a legal personality distinct from that of its members, of more than one Consultant where one member has the authority to conduct all business for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Employer for the performance of the Contract. The terms Joint Venture and Consortium can be used interchangeably.
- (j) "Services" means the work to be performed by the Consultant pursuant to the Contract.
- (k) "Sub-Consultant" means an entity to whom the Consultant intends to subcontract any part of the Services while remaining responsible to the Employer as contracting party during the performance of the Contract.
- (l) "Special Provisions (SP)" means an integral part of this Prequalification Document that is used to reflect specific country and project conditions to supplement, but not to over-write, the General Provisions.

1.2 SELECTION OF THE CONSULTANT

1.2.1 To execute the project, the Employer intends to select one or several Consultants in accordance with the procedure named in the **SP**. In special cases the Employer might engage a specialised consultant, called Tender Agent to conduct the selection procedure on its behalf or KfW acts under an agency contract for the Employer. The selection shall be carried out in line with the provisions of the Guidelines for Assignment of Consultants in Financial Cooperation with Partners Countries (Guidelines) available at www.kfw-entwicklungsbank.de.

1.2.2 To execute the project, the Employer intends to select one or several Consultants in accordance with the procedure named in the **SP**. The selection shall be carried out in line with the provisions of the Guidelines for Assignment of Consultants in Financial Cooperation with Partners Countries (Guidelines) available at www.kfw-entwicklungsbank.de.

1.3 PREQUALIFICATION PROCEDURE

1.3.1 This Prequalification Document sets out the prequalification procedure, including but not limited to the minimum requirements towards the experience and

¹ The term *Employer* in this document shall have the same meaning as the terms *Client* and *Project Executing Agency* in the KfW Guidelines for Assignment of Consultants in Financial Cooperation with Partner Countries.

capabilities of the Applicants and the evaluation method. The Applicants who demonstrate to the Employer's satisfaction that they have the experience and the capabilities to execute the project shall be shortlisted in accordance with GP 4.2 to participate in the subsequent tendering procedure.

1.4 APPLICANTS

- 1.4.1 An Applicant may be a firm that is a private entity, a government-owned entity — subject to SP 1.4.1 - or a combination of such entities in the form of a joint venture (“JV”) under an existing JV Agreement or with the intent to enter into such an agreement supported by Declarations of Association. In the case of a JV, all members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms. The Applicant shall nominate an authorized representative who shall have the authority to conduct all business for and on behalf of the Applicant and any and all its members, if the Applicant is a JV, during the prequalification process, bidding (in the event the Applicant submits a bid) and during contract execution (in the event the Applicant is awarded the Contract). Unless specified in the **SP**, there is no limit on the number of members in a JV.
- 1.4.2 A firm may apply for prequalification both individually, and as part of a JV, or as a sub-consultant. If prequalified, it will not be permitted to submit a proposal for the same contract both as an individual firm and as a part of the joint venture. However, a firm may participate as a sub-consultant in more than one proposal, but only in that capacity. Proposals submitted in violation of this procedure will be rejected.
- 1.4.3 KfW's eligibility criteria for prequalification are described in Section V.
- 1.4.4 Applicants shall not have a conflict of interest. Any Applicant found to have a conflict of interest shall be disqualified. An Applicant may be considered to have a conflict of interest for the purpose of this prequalification process, if the Applicant:
- (a) Directly or indirectly controls, is controlled by or is under common control with another Applicant; or
 - (b) Receives or has received any direct or indirect subsidy from another Applicant; or
 - (c) Has the same legal representative as another Applicant; or
 - (d) Has a relationship with another Applicant, directly or through common third parties, that puts it in a position to influence the application of another Applicant, or influence the decisions of the Employer

regarding this prequalification process; or

- (e) Any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the prequalification; or
- (f) Any of its affiliates has been hired (or is proposed to be hired) by the Employer as Engineer for the Contract implementation; or
- (g) Has a close business or family relationship with a professional staff of the Employer (or of the project implementing agency, or of a recipient of a part of the loan) who: (i) are directly or indirectly involved in the preparation of the prequalification documents or specifications of the contract, and/or the prequalification evaluation process; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to KfW throughout the procurement process and execution of the contract.
- (h) An Applicant shall not be under suspension from bidding by the Employer as the result of the execution of a Bid–Securing Declaration.

1.4.5 An Applicant shall provide such evidence of eligibility satisfactory to the Employer, as the Employer shall reasonably request.

1.4.6 The materials, equipment and services to be supplied under the Contract and financed by KfW may have their origin in any country subject to the restrictions specified in Section V, and all expenditures under the Contract will not contravene such restrictions.

1.5 REQUESTED SERVICES

1.5.1 A brief description of the requested consulting services is presented in the **SP**.

2. CONTENTS AND PREPARATION OF THE APPLICATION

2.1 PRE-QUALIFICATION DOCUMENT AND COMMUNICATION

2.1.1 These Prequalification Documents consist of the sections indicated below, which should be read in conjunction with any Addendum issued in accordance with GP 2.6.

- Section I General Provisions (GP);
- Section II Special Provisions (SP);
- Section III Application Forms:
 - Form 1: Sample Declaration of Submitting a Proposal in Case of Being Shortlisted;
 - Form 2: Sample Declaration of Association
 - Form 3: Sample Declaration on Affiliated Firms

- Form 4: Declaration of Undertaking
- Form 5: Financial Capacity Statement
- Form 6: Project Experience
- Form 7a: Applicant's Access to Expertise Required for the Assignment (Key Experts)
- Form 7b: Applicant's Human Resource Capacity (Permanent Staff)

- Section IV: KfW Policy – Corrupt and Fraudulent practices – Social and Environmental Responsibility;
- Section V: KfW Eligibility Criteria

2.1.2 Unless obtained directly from the Employer, the Employer accepts no responsibility for the completeness of the Prequalification Documents, responses to requests for clarification, or Addenda in accordance with GP 2.6. In case of any discrepancies, documents issued directly by the Employer shall prevail.

2.1.3 The Applicant is expected to examine all instructions, forms, and terms in the Prequalification Documents and to furnish with its Application all information or documentation as is required by the Prequalification Documents.

2.1.4 The Application, as well as all correspondence and documents relating to the Application exchanged between the Applicant and the Employer shall be in the language of this document. Any official documents presented in a different language shall be accompanied by a certified translation into the language of this document. The Employer reserves the right to verify the translation. In case of discrepancies the original document shall prevail.

2.1.5 All communication between the Employer and Applicants shall take place in writing. For the purposes of the prequalification document in writing shall mean communicated in written form (for example by post, e-mail or facsimile) and delivered with proof of receipt.

**2.2
DOCUMENTS COMPRISING
THE APPLICATION**

2.2.1 The Application submitted by the Applicant shall comprise the following:

- (a) Application Letter, indicating the Applicant's name, address, telephone, fax and email. If the Applicant is an association, the Application Letter shall also describe the form of association and list the association

members;

- (b) A Power of Attorney authorizing the representative of the Applicant, designated in accordance with GP 1.4.1 to submit the Application on behalf of the Applicant. If the Applicant is an association, the Power of Attorney shall be provided by the Lead Consultant nominated in the association agreement or in the Declarations of Association, submitted in accordance with GP 2.2.1(d)(II). If the representative of the Applicant is the owner, member or director of the Applicant or the Applicant's Lead Consultant, if so nominated in accordance with GP 2.2.1(d)(II), a Power of Attorney shall not be necessary.

- (c) Presentation of the Applicant (maximum 10 pages, no brochures). If the Applicant is a single entity, the Presentation shall describe the Applicant's type of entity, ownership structure and organisation chart, as well as its main business areas as they apply to the project. If the Applicant is an association, the Presentation shall provide this information about each association member as well as a description of the intended form of collaboration of the members within the association.

- (d) Statements and Declarations: False information provided in the following Statements and Declarations shall lead to the exclusion of the Applicant from the tender process:
 - (I) Declaration of Submitting a Proposal in Case of Being Shortlisted in the format provided in Form 1.

 - (II) If the Applicant is an existing association, the Applicant shall submit a proof of the existing Association Agreement, indicating the Lead Consultant. If the Applicant is an association, which the members intend to form for the purpose of executing the contract, each member of the association shall submit a Declaration of Association, indicating the Lead Consultant, in the format provided in Form 2.

 - (III) Statement on Affiliated Firms in the

format provided in Form 3. If the Applicant is an association, separate statements shall be provided by each member of the association.

(IV) Declaration of Undertaking in the format provided in Form 4. If the Applicant is an association, separate declarations shall be provided by each member of the association.

(V) Financial Capacity Statement in the format provided in Form 5 and supported by the Applicant's Balance Sheets and Profit and Loss Statements. If the Applicant is an association, separate statements, including the supporting Balance Sheets and Profit and Loss Statements, shall be provided by each member of the association. All Balance Sheets and Profit and Loss Statements shall be certified by a reputable auditor.

(VI) List of project references in the format provided in Form 6. Unless otherwise stated in the **SP** the references shall be limited to a maximum of 10 projects carried out during the 5 years preceding the publication of this prequalification document. The Employer reserves the right to contact the clients indicated in the references to ascertain the information provided by the Applicant.

(VII) List of Available Expertise and Human Resource Capacity in the format provided in Form 7.

(e) Any other documentation required in the SP.

2.2.2 Applicants shall submit concise and clear, but substantial documents and adhere to the above structure. Any interlineations, erasures or overwriting shall be valid only if initialled by the Applicant's representative designated in accordance with GP 1.4.1.

2.3 COST OF BIDDING

2.3.1 All cost relating to the preparation of the Application, including but not limited to site visits, obtaining information, preparation and submission of the Application, shall be borne by

the Applicant.

**2.4
SIGNING OF THE
APPLICATION AND THE
NUMBER OF COPIES**

- 2.4.1 The Applicant shall prepare one original Application as described in GP 2.2 and clearly mark it "ORIGINAL". All documents comprising the original Application shall be typed or written in indelible ink and shall be signed by the Applicant's representative designated in accordance with GP 1.4.1. If the Applicant is an association, the statements and declarations submitted by the members of the association in accordance with GP 2.2.1(d)(II) - (VII) shall be signed by duly authorized officials, such as owners or directors of the respective members.
- 2.4.2 The Applicant shall prepare copies of the signed original Application and clearly mark each of them "COPY". The number and type of copies of the Application shall be in accordance with the **SP**. In the event of any discrepancy between the original and the copies, the original shall prevail.
- 2.4.3. If electronic copies of the proposal are required in accordance with GP 2.4.2, they shall be presented as unalterable and printable PDF files on CD or DVD disks, marked accordingly.

**2.5
CLARIFICATION OF
PREQUALIFICATION
DOCUMENT**

- 2.5.1 Applicants may request a clarification of the Prequalification Document no later than fourteen (14) days prior to the deadline for the submission of Applications in accordance with GP 3.2.1. Any request for clarification shall be sent in writing to the address indicated in the **SP**. Responses shall be in writing and shall be sent to all prospective Applicants who have obtained the Prequalification Document directly from the Employer, including a description of the inquiry but without identifying its source, not later than seven (7) days prior to the deadline for the submission of Applications in accordance with GP 3.2.1.
- 2.5.2 If necessary, the Employer may send clarifications of the Prequalification Document to all prospective Applicants who have obtained the Prequalification Document directly from the Employer, not later than seven (7) days prior to the deadline for the submission of Application in accordance with GP 3.2.1.

**2.6
AMENDMENT OF
PREQUALIFICATION**

- 2.6.1 At any time prior to the deadline for the submission of Applications but not later than seven (7) days before the submission date the

DOCUMENT

Employer may amend the Prequalification Document by issuing an Addendum.

2.6.2 Any Addendum issued shall be part of the Prequalification Document and shall be communicated immediately in writing to all prospective Applicants who have obtained the Prequalification Document from the Employer.

2.6.3 To give Applicants reasonable time to take an Addendum into account in preparing their Applications, the Employer may, at its discretion, extend the deadline for the submission of Applications in accordance with GP 3.2.2.

3 SUBMISSION OF APPLICATIONS

3.1 SEALING AND IDENTIFICATION OF APPLICATIONS

3.1.1 The Applicant shall enclose the original and the copies of the Application in a sealed envelope that shall:

(a) bear the name and address of the Applicant;

(b) be addressed to the Employer, in accordance with GP 3.2 below;

(c) bear the project title and/or tender number;

(d) bear the following words clearly visible „Not to be opened by the Postal Service - Prequalification for “ and the name of the assignment.

3.1.2 The Employer shall not be responsible for misplacement, losing or premature opening of the Application if the envelope is not sealed or marked in accordance with GP 3.1.1.

3.2 DEADLINE FOR SUBMISSION OF APPLICATIONS, OPENING

3.2.1 Applicants may submit their Applications by mail, by courier or by hand, against confirmation of receipt. Applications shall be submitted by the Applicants at the address and no later than the deadline indicated in the **SP**. Any Application received by the Employer after the deadline shall be declared late and rejected, and promptly disposed of.

3.2.2 The Employer may, at its discretion, extend the deadline for the submission of Applications by amending the Prequalification Document in accordance with GP 2.6, in which case all rights and obligations of the Employer and the Applicants subject to the previous deadline shall

thereafter be subject to the deadline as extended.

3.2.3 The preparation and the submission of the Applications is the responsibility of the Applicant and no relief or consideration can be given for errors and omissions.

3.2.4 If copies of the Application shall be sent to multiple addresses in accordance with GP 3.2.1, the timely receipt of the original Application in compliance with GP 3.2.1 shall be decisive for the timely submission of the Application.

3.2.5 The opening of the Applications received in accordance with GP 3.2.1 shall take place shortly after the submission date by the Employer's tender commission or the Employer's representative as indicated in **SP 1.2.1**. In any case the opening shall be undertaken in the presence of at least one witness, and a written opening protocol signed by all individuals present shall be established containing names and addresses of all Applications received, whether they have been received on time and sealed as per GP 3.1.1.

4 EVALUATION-PROCESS OF THE PREQUALIFICATION DOCUMENTS

4.1 CONFIDENTIALITY

4.1.1 After the opening of the Applications and until the announcement of the prequalification results to the Applicants no communication of any type between the Applicants and the Employer, its staff or any other person involved in the evaluation is permitted except as specified under GP 4.3.

4.1.2 Information relating to the Applications, their evaluation and result shall not be disclosed to Applicants or any other persons not officially concerned with the prequalification procedure until the Employer notifies the Applicants of the prequalification results.

4.2 EVALUATION

4.2.1 The Employer shall reject an Application that is not substantially responsive to the requirements of this prequalification document. An Application shall be considered as responsive if the following documents are submitted:

Responsiveness criteria	
1.	Declaration of Undertaking (Form 4)
2.	Financial Capability Statements and supporting documentation (Form 5)
3.	Application Submission Form (Form 1)
4.	Power(s) of Attorney authorizing the representative of the Applicant (Attachment to Form 1)
5.	If the Applicant is an association, either proof of the existing Association Agreement or a Declaration of Association (Form 2)

4.2.2 The Employer shall evaluate the responsive Applications in terms of the prequalification criteria indicated in the **SP** and award each responsive Application a prequalification score of up to 100 points.

4.2.3 For the purposes of scoring individual prequalification sub-criteria in accordance with GP 4.2.3 the Employer shall apply the following qualitative approach to each criteria:

(a) 100% of the max. score: Outstanding, if the Application substantially exceeds the requirement in accordance with the respective sub-criterion (exhaustive, conclusive, comprehensive, precise and further leading suggestion / idea / offering). No errors or omissions are noted.

(b) 75% of the max. score: Above average, if the Application meets or marginally exceeds the requirement in accordance with the respective sub-criterion (exhaustive, conclusive, comprehensive, precise). Minor errors or omissions noted;

(c) 50% of the max. score: Average, if the Application basically meets the requirement in accordance with the respective sub-criterion. Major errors or omissions noted;

(d) 25% of the max. score: Below average, if the Application substantially deviates from or indicates misunderstanding of the requirement in accordance with the respective sub-criterion. Major errors or omissions are noted comprising the

fulfilment of the sub-criterion;

- (e) 0 % of the max. score: Insufficient / Fail, if the Application does not meet the requirement at all in accordance with the respective sub-criterion or does not provide any information regarding the requirement.

4.2.4. The Employer shall reject an Application if,

- (a) it has determined that the Application is nonresponsive in accordance with GP 4.2.1
- (b) it has awarded the Application a prequalification score, which is lower than the minimum prequalification score of 70 points out of 100.

4.2.5 The Employer shall establish a shortlist consisting of not more than five Applicants whose Applications were determined to be responsive and were awarded a prequalification score higher than the minimum prequalification score. If more than five Applicants were awarded a prequalification score higher than the minimum prequalification score, the Employer shall shortlist only the five highest-scored Applicants.

4.2.6 The Employer shall inform all Applicants about the outcome of the prequalification process and invite the shortlisted Applicants to submit technical and financial proposals on the basis of a Request for Proposals.

4.3 EMPLOYER'S RIGHT TO ACCEPT OR REJECT APPLICATIONS

4.3.1 The Employer reserves the right to accept or reject any Application, and to annul the prequalification process and reject all Applications at any time, without thereby incurring any liability to the Applicants.

4.3.2 The Employer is not bound to select any Applicant.

4.4 NOTIFICATION OF PREQUALIFICATION

4.4.1 The Employer shall notify all Applicants in writing of the names of those Applicants who have been prequalified. In addition, those Applicants who have been disqualified will be informed separately.

4.4.2 Applicants that have not been prequalified may write to the Employer to request, in writing, the grounds on which they were disqualified.

**4.5
REQUEST FOR PROPOSAL**

- 4.5.1 Promptly after the notification of the results of the prequalification, the Employer shall invite bids from all the Applicants that have been prequalified.
- 4.5.2 Bidders may be required to provide a Bid Security or a Bid-Securing Declaration acceptable to the Employer in the form and an amount to be specified in the Bidding Documents, and the successful Bidder shall be required to provide a Performance Security as specified in the Bidding Documents.

SECTION II - SPECIAL PROVISIONS (SP)

(the references refer to the respective figures in the General Provisions)

1.1.1 EMPLOYER

The Employer and Project Executing Agency (PEA) is **Kenya National Highway Authority (KeNHA)**

The ICB name and reference number is **KeNHA/1816/2017**.

Consulting Services for Design (Review), Tender Documentation, Site Supervision and Contract Administration of the Kenya - South Sudan road link Rehabilitation / Upgrading of Kitale – Morpus road section (± 75 km)

The prerequisites for disbursements for this assignment are not yet finalised. Any contractual commitment related to this tender procedure is subject to the readiness of disbursement of funds for this assignment.

1.2.1 SELECTION OF THE CONSULTANT

The Consultants shall be selected in accordance with an international, public and unrestricted invitation to tender conducted in two stages, namely prequalification and competitive tendering. In the first stage of the procedure the general suitability of the bidders is examined whereas in the second stage a competition among the prequalified bidders is held to select the bidder who has submitted the best bid in terms of the quality of services offered and the price for those services attributing 70 % weight to the Technical Proposal and 30 % to the Financial Proposal.

The selection of the Consultant will be done in accordance with GP 4.2. A short-list of not more than five prequalified consultants will be invited to submit a technical and financial proposal.

1.4.1 Participation of government-owned entity is not permitted. The Applicant may be a single entity or an association of entities (Joint Venture or Consortium).

1.4.3 APPLICANTS

The following conditions shall apply to the engagement of Sub-Consultants by the Applicant: **Sub-Consultants are permitted to be engaged by more than one Applicant.**

1.5.1 REQUESTED SERVICES

The road forms part of the Kenya – South Sudan international corridor, from Kitale to Morpus over a length of approximately 75 km. The road

starts in the town of Kitale at the junction of road A1 and road C48. The first 5 km of the road alignment are located in an urban setting. The road subsequently enters a rural setting occasionally passing a number of smaller settlements and a mountainous section with some long and steep gradients before ending in the village of Morpus.

The road is critical to promote and facilitate a regional economic integration of South Sudan by providing access to the Mombasa Port, facilitate relief and reconstruction efforts in South Sudan and improved integration of Turkana district in the Kenyan economy.

The objective of the project is to rehabilitate / upgrade the existing road and the construction of a weighbridge station. The works are having significant environmental and social impacts and hence require the implementation of comprehensive environmental and social management measures. Involuntary resettlement, compensation and livelihood restoration are part of the key issues to be addressed and the management of overall road safety is a key concern.

The services requested under this assignment are as follows:

a) Design Review of the entire project, including a re-design of the Kamatira hill section (± 7 km), covering: geometric design, pavement design, hydrological analysis and hydraulic design, materials investigations and road safety audit. Based on the design review and the newly designed section, undertake a comprehensive review, update and completion of Environmental and Social Safeguard documents, the Engineering Drawings, the Bill of Materials and Cost Estimate. The Environmental and Social Safeguard documents (including but not limited to ESMP, RAP, Livelihood Restoration Plan) need to be in line with the national legislation in Kenya and with the applicable international Environmental and Social Safeguard standards as per KfW sustainability guidelines.

b) Preparation of Tender Documentation in accordance with KeNHA's and KfW's guidelines using a 2-stage International Competitive Bidding (ICB) procedure.

c) Support the PEA with the Procurement of the Works including announcements, pre-qualification, organizing of pre-bid meeting and tender site visit, and clarifications to bidders, technical and financial evaluation, negotiations and preparation of contract documents."

d) Site Supervision and Contract Administration provided by a team of Experts and Support Staff for site supervision, project management and contract administration to ensure that the project is delivered within budget, on time, to required standards and compliant with the environmental and social safeguards. Site supervision comprises the Environmental and Social dimension of the works including monitoring

of the implementation of all environmental and social management plans. Tasks will also comprise capacity building for different parties involved in the Environmental and Social management of the works.”

The indicative work plan (61 months) of the Services is as follows:

- a) Design review and finalization of project documentation: 6 months;
- b) Tender period, tender evaluation and contract negotiations: 7 months;
- c) Site supervision and contract administration: 36 months (plus 12 months defects liability period).

Services are to be provided by a core team of key experts:

- 1. Team Leader / Highway Engineer
- 2. Pavement Engineer
- 3. Materials Engineer / Laboratory Manager
- 4. Resident Engineer
- 5. Environmental Management / Safeguards Specialist
- 6. Social Management / Safeguards Specialist
- 7. Stakeholder Engagement / Community Liaison Specialist

In addition, the Consultant is expected to assign additional short-term experts:

- 8. Road Safety Expert
- 9. Contract Expert
- 10. Structural Engineer (Bridges)
- 11. Hydrologist, Drainage, Climate Change Resilience Expert
- 12. Transport Economist
- 13. Senior Surveyor
- 14. Resettlement and Livelihood Restoration Expert
- 15. Biodiversity Expert

And, finally, the Consultant is expected to provide the proposed staff who are available for Project Management and Technical Backstopping from the home office (these should be permanent employees):

- 16. Project Director (Project Management)
- 17. Technical Director (Performance Monitoring and Technical Backstopping)

2.2.1 DOCUMENTS COMPRISING THE APPLICATION

A maximum of 10 project description sheets should be presented following the format presented in Form 6. The project references should be carefully selected reflecting the evaluation criteria, sub-criteria and point system mentioned in SP 4.2.3.

The selected projects must have been substantially completed (> 80% of the contract value invoiced) within the last 10 years counting backwards from the date of submission of this Expression of Interest.

2.4.2 SIGNING OF THE APPLICATION AND THE NUMBER OF COPIES

In addition to the original Application document another **3 (three)** hard copies shall be submitted. Each original and copy of the Application shall include a soft copy as unalterable and printable PDF file on a CD / DVD disk or USB flash drive, marked accordingly.

2.5.1 CLARIFICATION OF PREQUALIFICATION DOCUMENT

The Employer may clarify details of this invitation either at his own initiative or in response to clarifications requested by an interested consultant at any time. Such question and its clarification will be sent by e-mail to all registered parties who have solicited a copy of the pre qualification document. Deadline for last enquiries is 14 calendar days before the submission date.

Requests for clarifications are to be sent to both the following email addresses:

- KeNHA: gmsp@kenha.co.ke
- Tender Agent: jan.bijl@yahoo.com

Further information can be obtained from the address below during weekdays (Monday to Friday from 08:00 to 17:00 hours (local time), excluding public holidays.

Deputy Director, Special Projects, Directorate of Development
Kenya National Highways Authority, Blueshield Towers, Hospital Road
Second Floor
NAIROBI, KENYA
Telephone: +254 20 4954200, Fax No. 020 8042928
Email addresses: (1) dg@kenha.co.ke or (2) gmsp@kenha.co.ke

3.2.1 DEADLINE FOR SUBMISSION OF APPLICATIONS

One (1) original and **three (3)** copies of the Application (Expression of Interest) shall be submitted to the address below (in person, by courier or registered mail) by latest **11:00 hours Kenya time on Friday 1st December, 2017** . Late submissions will be disqualified and not considered for evaluation.

Tender N° KeNHA/1816/2017
Deputy Director, Supply Chain Management
Kenya National Highways Authority

Blueshield Towers, Upper Hill, 1st Floor, Room Supply Chain
Management Department.
P.O. Box 49712-00100
NAIROBI, KENYA

The original Application and **three (3)** copies of the Expression of Interest shall be submitted in a sealed envelope clearly marked:

“Expression of Interest for Consulting Services for the Kenya - South Sudan road link Kitale – Morpus road section”

Tender Reference: KeNHA/1816/2017

“Do not open before Friday 1st December, 2017 11:00 hours”

The applications will be opened in public at the KeNHA offices, on Friday 1st December, 2017, 11h30 Kenyan time, at the address stated above.

KeNHA will forward one copy of the Expression of Interest to the Tender Agent, who will assist with the evaluation and short-listing procedure.

4.2 EVALUATION

4.2.1 The Applicant shall demonstrate the following financial capabilities:

Subject	Requirement	Single Entity	Joint Venture			Submission Requirements
			All Parties Combined	Each Party	One Party	
Turn Over	Minimum turn over: € 15 Million for each of the last three years	Must meet req.	Must meet req.	Not Applicable	Lead Party > 50% of the Requirement (> €7.5 Million)	GP 2.2.1. d) V / Annexe V
Profitability	Average profitability: current ratio > 1.1 for each of the last three years	Must meet req.	Not Applicable	Must meet req.	Not Applicable	

4.2.3 The Employer shall evaluate the Applications determined to be responsive in accordance with GP 4.2.2 in accordance with the following criteria, sub-criteria and point system:

Qualification criteria	Max. Score

1. Applicant's Relevant Work Experience	45
1.1 Experience with implementing projects of similar size and nature, namely trunk road design and supervision, design of road sections in mountainous areas, conducting road safety audits and designing road safety improvements (the best 5 projects are scored). This sub-criterion is evaluated on the basis of the project references submitted in accordance with GP 2.2.1(d)(VI).	25
1.2 Experience with the preparation of environmental and social safeguard documents for road projects and effective monitoring of its compliance during construction works (the best 5 projects are scored). This sub-criterion is evaluated on the basis of the project references submitted in accordance with GP 2.2.1(d)(VI).	10 (min. score of 8 required)
1.3 Experience working in Kenya or East African Region preferable in the road sector (the best 5 projects are scored). This sub-criterion is evaluated on the basis of the project references submitted in accordance with GP 2.2.1(d)(VI).	10
2. Applicant's Capability to Mobilise Experienced and Qualified Staff	55
2.1 The qualification and relevant professional experience of Key Experts described in SP 1.5.1 to which the Applicant has access. This sub-criterion is evaluated on the basis of the list submitted in accordance with GP 2.2.1(d)(VII).	30
2.2 The extent to which the Applicant has access to personnel appropriate for the tasks described in SP 1.5.1. This sub-criterion is evaluated on the basis of the list submitted in accordance with GP 2.2.1(d)(VII).	10
2.3 Assessment of the key personnel in permanent employment available to provide project management services, performance monitoring of the in-country team and technical backstopping services from the home. This sub-criterion is evaluated on the basis of the list submitted in accordance with GP 2.2.1(d)(VII).	10
3. Is the Application concise and related to the project?	5
Overall Total Score	100

SECTION III – APPLICATION FORMS

Form 1 – Sample Declaration of Submitting a Proposal in Case of Being Shortlisted

Declaration of Submitting a Proposal in Case of Being Shortlisted

LETTER TO BE PREPARED ON COMPANY LETTER HEAD

To: The Director General
Kenya National Highways Authority
Blue Shield Towers, Upper Hill, 1st Floor
P.O. Box 49712 - 00100
NAIROBI, KENYA

Project: Design (Review), Tender Documentation, Site Supervision and Contract Administration of the Kenya - South Sudan Road Link, Kitale – Morphus Section (\pm 75 km)

Tender Ref./ Project ID:

We hereby declare that in the event that *[insert the name of the Applicant]* is shortlisted by the Employer to participate in the tendering phase for the assignment named above, *[insert the name of the Applicant]* shall submit a proposal, subject to the details of the tender documentation, and technical and financial practicability.

[Insert the following text if the Application includes one or several Sub-Consultants, whose qualifications should be considered by the Employer in the pre-qualification process:

“We request that the qualifications of the following Sub-Consultant(s) shall be considered by the Employer in the pre-qualification process,

[List Sub-Consultants here]

If short-listed, we undertake to submit a proposal that includes all of the above Sub-Consultants.”

[Signature of the authorised representative of the Applicant, designated in accordance with GP 1.4.5]

Form 2 - Sample Declaration of Association

Declaration of Association

LETTER TO BE PREPARED ON COMPANY LETTER HEAD

To: The Director General
Kenya National Highways Authority
Blue Shield Towers, Upper Hill, 1st Floor
P.O. Box 49712 - 00100
NAIROBI, KENYA

Project: Design (Review), Tender Documentation, Site Supervision and Contract Administration of the Kenya - South Sudan Road Link, Kitale – Morphus Section (\pm 75 km)

Tender Ref./ Project ID:

We hereby declare our intent to associate with the following firms for the purpose of forming a *[insert here “joint venture” or “consortium”]*:

[Insert the names of the other association members here]

[Insert the name of the Lead Consultant] shall be the Lead Consultant.

We hereby confirm that we have not associated with any other firms for the purposes of this assignment and that we will not submit an application separately from the firms listed above. Further, we understand that if a Consultant appears as an associate in more than one Application, all Applications in which the Consultant appears shall be disqualified.

In the event that this association is awarded a Contract, we shall perform the services in the composition and in the form of cooperation described above.

[Signature of the authorised representative of the Applicant, designated in accordance with GP 1.4.5]

Form 3 – Sample Declaration on Affiliated Firms

Declaration on Affiliated Firms

LETTER TO BE PREPARED ON COMPANY LETTER HEAD

**To: The Director General
Kenya National Highways Authority
Blue Shield Towers, Upper Hill, 1st Floor
P.O. Box 49712 - 00100
NAIROBI, KENYA**

Project: Design (Review), Tender Documentation, Site Supervision and Contract Administration of the Kenya - South Sudan Road Link, Kitale – Morphus Section (\pm 75 km)

Tender Ref./ Project ID:

We hereby declare that *[insert the name of the entity submitting the declaration]* is an independent consulting firm. We do not have any links, other than existing or future cooperation agreements in the field of *[insert the main field of the entity's work]*, with other firms which may be interested in the execution of the project.

Should we, or the association in which we are members, be awarded the contract, the entities with which we are affiliated, other than the associates or the sub-consultants for this assignment, shall not take part in the project in any other form or reveal information gained during the assignment concerned.

[Signature of the authorised representative of the Applicant, designated in accordance with GP 1.4.5]

Form 4 – Declaration of Undertaking

Declaration of Undertaking

LETTER TO BE PREPARED ON COMPANY LETTER HEAD

Reference name of the Application / Bid / Contract: Project: Design (Review), Tender Documentation, Site Supervision and Contract Administration of the Kenya - South Sudan Road Link, Kitale – Morphus Section (\pm 75 km) ("**the Contract**")

To: The Director General
Kenya National Highways Authority ("**the Contracting Authority**")
Blue Shield Towers, Upper Hill, 1st Floor
P.O. Box 49712 - 00100
NAIROBI, KENYA

1. We recognise and accept that KfW ("KfW") only finances projects of the Contracting Authority subject to its own conditions which are set out in the contractual agreements it has entered into with the Contracting Authority. As a matter of consequence, no legal relationship exists between KfW and our company, our joint venture or our subcontractors, suppliers or subconsultants. The Contracting Authority retains exclusive responsibility for the preparation and implementation of the procurement process and performance of the contract. The Contracting Authority means the Purchaser, the Employer, the Client or the Project Executing Agency as the case may be, for the procurement of goods, works, plants, consulting services or non-consulting services.
2. We hereby certify that neither we nor any of our board members or legal representatives nor any other member of our joint venture or – in the case of being awarded a contract - any of our subcontractors, suppliers or subconsultants are in any of the following situations:
 - 2.1) Being bankrupt, wound up or ceasing our activities, having our activities administered by the courts, having entered into receivership, reorganisation or being in any analogous situation arising from any similar procedure;
 - 2.2) Having been:
 - a. convicted, within the past five years by a court decision, which has the force of *res judicata* in the country where the Contract is implemented, of fraud, corruption or of any other offense committed during a procurement process or performance of a contract (*in the event of such conviction, the applicant or bidder shall attach to this Declaration of Undertaking supporting information showing that this conviction is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction*);
 - b. subject to an administrative sanction within the past five years by the European Union or by national authorities either in the country of the Contracting Authority or of KfW, for fraud, corruption or for any other offense committed during a procurement process or performance of a

contract (*in the event of such sanction, the applicant or bidder shall attach to this Declaration of Undertaking supporting information showing that this sanction is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction*);

c. convicted, within the past five years by a court decision, which has the force of *res judicata*, of fraud, corruption or of any other offense committed during the procurement process or performance of an KfW-financed contract;

2.3) Being listed for financial sanctions by the United Nations, the European Union and/or Germany for the purposes of fight-against-terrorist financing or threat to international peace and security. This criterion of exclusion is also applicable to legal persons, whose majority of shares are held or factually controlled by a listed natural or legal person;

2.4) Having been subject within the past five years to a contract termination fully settled against us for significant or persistent failure to comply with our contractual obligations during contract performance, unless this termination was challenged and dispute resolution is still pending or has not confirmed a full settlement against us;

2.5) Not having fulfilled our fiscal obligations regarding payments of taxes in accordance with the legal provisions of either the country where we are constituted or the Contracting Authority's country;

2.6) Being subject to an exclusion decision of the World Bank or any other international development financing institution and being listed on the website <http://www.worldbank.org/debarr> respectively the relevant list of any other international development financing institution (*in the event of such exclusion, the applicant or bidder shall attach to this Declaration of Undertaking supporting information showing that this exclusion is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction*);

2.7) Having created false documents or committed misrepresentation in documentation requested by the Contracting Authority as part of the procurement process of this Contract.

3. We hereby certify that neither we, nor any of the members of our joint venture or any of our subcontractors, suppliers or subconsultants are in any of the following situations of conflict of interest:

3.1) Being an affiliate controlled by the Contracting Authority or a shareholder controlling the Contracting Authority, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;

3.2) Having a business or family relationship with a Contracting Authority's staff involved in the procurement process or the supervision of the resulting Contract, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;

3.3) Being controlled by or controlling another bidder or consultant, or being under common control with another bidder or consultant, or receiving from or granting subsidies directly or indirectly to another bidder or consultant,

having the same legal representative as another bidder or consultant, maintaining direct or indirect contacts with another bidder or consultant which allows us to have or give access to information contained in the respective applications, bids or proposals, influencing them or influencing decisions of the Contracting Authority;

3.4) Being engaged in a consulting services activity, which, by its nature, may be in conflict with the assignments that we would carry out for the Contracting Authority;

3.5) In the case of procurement of goods, works or plants:

i. Having prepared or having been associated with a consultant who prepared specifications, drawings, calculations and other documentation to be used in the procurement process of this Contract;

ii. Having been recruited (or being proposed to be recruited) ourselves or any of our affiliates, to carry out works supervision or inspection for this Contract;

4. If we are a state-owned entity, and compete in a procurement process, we certify that we have legal and financial autonomy and that we operate under commercial laws and regulations.

5. We undertake to bring to the attention of the Contracting Authority, which will inform KfW, any change in situation with regard to points 2 to 4 here above.

6. In the context of the procurement process and performance of the corresponding contract:

6.1) We have not and we will not engage in any dishonest conduct (act or omission) deliberately intended to deceive others, to intentionally conceal items, to violate or vitiate someone's consent, to make them circumvent legal or regulatory requirements and/or to violate their internal rules in order to obtain illegitimate profit.

6.2) We have not and we will not engage in any dishonest conduct (act or omission) contrary to our legal or regulatory obligations or our internal rules in order to obtain illegitimate profit;

6.3) We have not promised, offered or given and we will not promise, offer or give, directly or indirectly to (i) any Person who holds a legislative, executive, administrative or judicial mandate within the State of the Contracting Authority regardless of whether that Person was nominated or elected, regardless of the permanent or temporary, paid or unpaid nature of the position and regardless of the hierarchical level the Person occupies, (ii) any other Person who performs a public function, including for a State institution or a State-owned company, or who provides a public service, or (iii) any other person defined as a Public Officer by the national laws of the Contracting Authority's country, an undue advantage of any kind, for himself or for another Person or entity, for such Public Officer to act or refrain from acting in his official capacity;

6.4) We have not promised, offered or given and we will not promise, offer or give, directly or indirectly to any Person who occupies an executive

position in a private sector entity or works for such an entity, regardless of the nature of his/her capacity, any undue advantage of any kind, for himself or another Person or entity for such Person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations;

6.5) We have not and we will not engage in any practice likely to influence the contract award process to the detriment of the Contracting Authority and, in particular, in any anti-competitive practice having for object or for effect to prevent, restrict or distort competition, namely by limiting access to the market or the free exercise of competition by other undertakings;

6.6) Neither we nor any of the members of our joint venture or any of our subcontractors, suppliers or subconsultants shall acquire or supply any equipment nor operate in any sectors under an embargo of the United Nations, the European Union or Germany;

6.7) We commit ourselves to comply with and ensure that our subcontractors, suppliers, in particular those for major supply items, or consultants comply with international environmental and labour standards, consistent with laws and regulations applicable in the country of implementation of the Contract and the fundamental conventions of the International Labour Organisation² (ILO) and international environmental treaties. Moreover, we shall implement environmental and social risks mitigation measures when specified in the relevant environmental and social management plans provided by the Contracting Authority.

7. We, as well as all members of our joint venture and our subcontractors, suppliers or subconsultants will provide information and authorise KfW or an agent appointed by KfW to inspect on site accounts, records and other documents relating to the entire procurement and award process and – in the case of being awarded a contract – the execution of the contract and to have them audited by auditors or agents appointed by KfW.

Name: _____ In the capacity of: _____

Duly empowered to sign in the name and on behalf of³: _____

Signature:

Dated:

[Signature of the authorised representative of the Applicant, designated in accordance with GP 1.4.1]

² In case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant / Bidder / Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions with respect to a) workers grievances on working conditions and terms of employment, b) child labour, c) forced labour, d) worker's organisations and e) non-discrimination.

³ In case of joint venture, insert the name of the joint venture. The person who will sign the application, bid or proposal on behalf of the applicant, bidder or consultant shall attach a power of attorney from the applicant, bidder or consultant.

Form 5 – Financial Capacity Statement

Names of all the Partners in a Joint Venture
1. Lead Partner
2. Partner
3. Etc.

Financial data to be filled for each partner:

Financial Capacity Statements shall be supported by the Applicant's Balance Sheets and Profit and Loss Statements. If the Applicant is an association, separate statements, including the supporting Balance Sheets and Profit and Loss Statements, shall be provided by each member of the association. All Balance Sheets and Profit and Loss Statements shall be certified by a reputable auditor.

Financial data (to be filled for each partner)	2 years before last year ⁱ EUR	Year before last year EUR	Last year EUR	Average ⁱⁱ EUR	This year EUR
a. Annual turnover ⁱⁱⁱ , excl. this contract					
b. Current Assets ^{iv}					
c. Current Liabilities ^v					
d. Current Ratio (b/c) ^{vi}					

ⁱ Last year is the last accounting year for entity.

ⁱⁱ Amounts entered in the 'Average' column shall be the mathematical average of the amounts entered in the three preceding columns of the same row.

ⁱⁱⁱ The gross inflow of economic benefits (cash, receivables, other assets) generated from the ordinary operating activities of the enterprise (such as sales of goods, sales of services, interest, royalties, and dividends) during the year.

^{iv} A balance sheet account that represents the value of all assets that are reasonably expected to be converted into cash within one year in the normal course of business. Current assets include cash, accounts receivable, inventory, marketable securities, prepaid expenses and other liquid assets that can be readily converted to cash.

^v A company's debts or obligations that are due within one year. Current liabilities appear on the company's balance sheet and include short term debt, accounts payable, accrued liabilities and other debts.

^{vi} To help in the interpretation of the adequacy of working capital, the current ratio, which compares the current assets with the current liabilities.

Form 6 – Project Experience (Max. 10 Project Description Sheets)

Ref no: ...	Project title		...					
Name of legal entity (declaring consultant)	Project Country	Overall project value (EUR)*	Proportion carried out by the legal entity (%)*	Provided staff input (person months)	Name of client	Origin of funding	Dates (start/end)	Name of association members, if any
...
Name of client's contact person, email and telephone number:								
Detailed description of project (background, objectives and main activities)						Services provided by the legal entity for the project		
...						...		

* If the overall project value refers to overall project cost inclusive of Consulting services please indicate the consulting fee separately. The portion carried out by the legal entity refers to that figure.

Form 7a – Applicant’s Access to Expertise Required for the Assignment (Key Experts)

Complete the list below to demonstrate the extent to which you have access (internally / externally) to expertise required for this assignment / for the project team profiles described in GP 1.5.1. The Applicant shall not present a potential project team. Do not attach CVs as no detailed evaluation of candidates for the project team shall be carried out at the prequalification stage. The focus here is on access and availability to project relevant expertise described in GP 1.5.1. It is understood that prequalified Applicants are not required to include staff named below into their proposal.

Name of Expert	Age or Date of Birth	Professional Education and Degree Obtained (Year)	Years of Relevant Professional Experience	Relationship with / Years within the Applicant ¹	Brief Description of project-relevant experience	Experience in Kenya or Eastern African Region (name countries)	Languages (specify)
Team Leader / Highway Engineer							
Pavement Engineer							
Etc.							

The table is to be filled for the following expert positions:

Core Team of Key Experts:

Team Leader / Highway Engineer
 Pavement Engineer
 Materials / Geotechnical Engineer / Laboratory Manager
 Resident Engineer
 Environmental Management / Safeguards Specialist
 Social Management / Safeguards Specialist
 Stakeholder Engagement / Community Liaison Specialist

Other Experts:

Road Safety Expert
 Contract Expert
 Structural Engineer (Bridges)
 Hydrologist, Drainage, Climate Change Resilience Expert
 Transport Economist
 Senior Surveyor
 Resettlement and Livelihood Restoration Expert
 Biodiversity Expert

¹ For permanently employed indicate “PE”. For freelance experts (e.g. with retainer contracts or formal agreements) indicate “FE”. Indicate how long the expert has been associated with the Applicant. For sub-consultant staff indicate “Sub”. Staff from affiliated firms of the Applicant shall be considered as sub-consultant staff.

Form 7b – Applicant’s Human Resource Capacity (Permanent Staff)

Assessment of the key personnel in permanent employment available to provide project management services, performance monitoring of the in-country team and technical backstopping services from the home. This sub-criterion is evaluated on the basis of the list submitted in accordance with GP 2.2.1 (d) (VII).

Permanent Staff Category	2014	2015	2016
Total permanent staff number of the Applicant			
Permanent staff in sectors relevant to the project	2014	2015	2016
Pavement engineering			
Structural (Bridge) Engineering			
Geotechnical and Materials Investigations			
Survey Work and Geometric Design			
Computer Aided Design (CAD Office)			

Please substantiate above statements with an organizational chart(s) of the firm or the relevant parts of the firm.

Complete the list below to demonstrate the extent to which you have access to key personnel in permanent employment available to provide project management services, performance monitoring of the in-country team and technical backstopping services from the home office. A short CV of max. 3 pages should be attached.

Name of Expert	Age or Date of Birth	Professional Education and Degree Obtained (Year)	Years of Relevant Professional Experience	Relationship with / Years within the Applicant ¹	Brief Description of project-relevant experience	Experience in Kenya or Eastern African Region (name countries)	Languages (specify)
Project Director (Project Management Services)							

Technical Director (Performance Monitoring and Technical Backstopping)							

SECTION IV – KfW POLICY – CORRUPT AND FRAUDULENT PRACTICES – SOCIAL AND ENVIRONMENTAL RESPONSIBILITY

1) Corrupt and Fraudulent Practices

The Contracting Authority and the contractors, suppliers, subcontractors, consultants or subconsultants must observe the highest standard of ethics during the procurement process and performance of the contract. The Contracting Authority means the Project Executing Agency, the Purchaser, the Employer, the Client, as the case may be, for the procurement of goods, works, plants, consulting services or non-consulting services.

By signing the Declaration of Undertaking the contractors, suppliers, subcontractors, consultants or subconsultants declare that (i) “it did not engage in any practice likely to influence the contract award process to the Contracting Authority’s detriment, and that it did not and will not get involved in any anti-competitive practice”, and that (ii) “the procurement process and the performance of the contract did not and shall not give rise to any act of corruption or fraud”.

Moreover, KfW requires the Contracting Authority to include in the Procurement Documents and KfW-financed contracts a provision requiring that suppliers, contractors, subcontractors, consultants or subconsultants will provide information and will permit KfW or an agent appointed by KfW to inspect on site their accounts, records and documents relating to the procurement process relating to the submission of the Application, bid submission (in case prequalified), and contract performance (in the case of award), of the KfW-financed contract, and to have them audited by auditors appointed by KfW.

KfW reserves the right to take any action it deems appropriate to check that these ethics rules are observed and reserves, in particular, the rights to:

- (a) Reject a proposal for a contract award if during the qualification and selection process the contractor, the supplier or the consultant that is recommended for the award have engaged in acts of corruption, directly or by means of an agent, or fraud or anti-competitive practices in view of being awarded the Contract;
- (b) Declare misprocurement and exercise its rights on the ground of the contractual agreements with the Contracting Authority relating to suspension of disbursements, early repayment and termination if, at any time, the Contracting Authority, contractors, suppliers, subcontractors, consultants or subconsultants or their legal representatives have engaged in acts of corruption, fraud or anti-competitive practices during the procurement process or performance of the contract without the Contracting Authority having taken appropriate action in due time satisfactory to KfW to remedy the situation, including by failing to inform KfW at the time they knew of such practices.

KfW defines, for the purposes of this provision, the terms set forth below as follows:

- (a) Corruption of a Public Officer means:
 - (i) The act of promising, offering or giving to a Public Officer, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such Public Officer to act or refrain from acting in his official capacity; or

- (ii) The act by which a Public Officer solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such Public Officer to act or refrain from acting in his official capacity.
- (b) A Public Officer shall be construed as meaning:
- (i) Any person who holds a legislative, executive, administrative or judicial mandate (within the country of the Contracting Authority) regardless of whether that person was nominated or elected, regardless of the permanent or temporary, paid or unpaid nature of the position and regardless of the hierarchical level the person occupies;
 - (ii) Any other person who performs a public function, including for a State institution or a State-owned company, or who provides a public service;
 - (iii) Any other person defined as a Public Officer by the national laws of the country of the Contracting Authority.
- (a) Corruption of a private person means:
- (i) The act of promising, offering or giving to any person other than a Public Officer, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations; or
 - (ii) The act by which any person other than a Public Officer solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations;
- (b) Fraud means any dishonest conduct (act or omission), whether or not it constitutes a criminal offence, deliberately intended to deceive others, to intentionally conceal items, to violate or vitiate consent, to circumvent legal or regulatory requirements and/or to violate internal rules in order to obtain illegitimate profit.
- (c) Anti-competitive practices mean:
- (i) Any concerted or implied practices which have as their object or effect the prevention, restriction or distortion of competition within a marketplace, especially where they (i) limit access to the marketplace or free exercise of competition by other undertakings, (ii) prevent free, competition-driven price determination by artificially causing price increases or decreases, (iii) restrict or control production, markets, investments or technical progress; or (iv) divide up market shares or sources of supply;
 - (ii) Any abuse by one undertaking or a group of undertakings which hold a dominant position on an internal market or on a substantial part of it;
 - (iii) Any practice whereby prices are quoted or set unreasonably low, the object of which is to eliminate an undertaking or any of its products from a market or to prevent it from entering the market.

2) **Social and Environmental Responsibility**

In order to promote sustainable development, KfW seeks to ensure that internationally recognized environmental and social standards are complied with. Candidates for KfW-financed contracts shall consequently undertake in the Declaration of Undertaking to:

- (a) Comply with and ensure that all their subcontractors, suppliers, in particular those for major supply items, or consultants comply with international environmental and labour standards, consistent with applicable law and regulations in the country of implementation of the contract and the fundamental conventions of the International Labour Organisation⁶ (ILO) and international environmental treaties;
- (b) Implement environmental and social risks mitigation measures when specified in the environmental and social management plan (ESMP) provided by the Contracting Authority.

⁶ *In case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant / Bidder / Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions with respect to a) workers grievances on working conditions and terms of employment, b) child labour, c) forced labour, d) worker's organisations and e) non-discrimination.*

SECTION V – KfW ELIGIBILITY CRITERIA

Eligibility in KfW-Financed Procurement

1. To the exception of any equipment or any sector which is subject to an embargo by the United Nations, the European Union or Germany, all goods, works, plants, consulting services and non-consulting services are eligible for KfW financing regardless of the country of origin of the contractor, supplier, subcontractor, consultant or subconsultant inputs or resources used in the implementation processes. The Contracting Authority means the Purchaser, the Employer, the Client or the Project Executing Agency as the case may be, for the procurement of goods, works, plants, consulting services or non-consulting services.
2. Natural or legal persons (including board members or legal representatives, all members of a joint venture or any of their suppliers, contractors, subcontractors, consultants or subconsultants) shall not be awarded a KfW-financed contract if, on the date of submission of an application, a bid or a proposal, or on the date of award of a contract, they:
 - 2.1 are bankrupt or being wound up or ceasing their activities, are having their activities administered by the courts, have entered into receivership, or are in any analogous situation arising from a similar procedure;
 - 2.2 have been:
 - (a) convicted, within the past five years by a court decision, which has the force of *res judicata* in the country where the contract is implemented, of fraud, corruption or of any other offense committed during a procurement process or performance of a contract, unless they provide supporting information together with their Declaration of Undertaking (Form available as Appendix to the Application, Bid or Proposal Submission Form) which shows that this conviction is not relevant in the context of this contract and that adequate compliance measures have been taken in reaction;
 - (b) subject to an administrative sanction within the past five years by the European Union or by national authorities either in the country of the Contracting Authority or of KfW, for fraud, corruption or for any other offense committed during a procurement process or performance of a contract, unless they provide supporting information together with their Declaration of Undertaking (Form available as Appendix to the Application, Bid or Proposal Submission Form) which shows that this sanction is not relevant in the context of this contract and that adequate compliance measures have been taken in reaction;
 - (c) convicted, within the past five years by a court decision, which has the force of *res judicata*, of fraud, corruption or of any other offense committed during the procurement process or performance of an KfW-financed contract;
 - 2.3 are listed for financial sanctions by the United Nations, the European Union and/or Germany for the purposes of fight-against-terrorist financing or threat to international peace and security. This criterion of exclusion is also applicable

to legal persons, whose majority of shares are held or factually controlled by a listed natural or legal person;

- 2.4 have been subject within the past five years to a contract termination fully settled against them for significant or persistent failure to comply with their contractual obligations during contract performance, unless this termination was challenged and the dispute resolution is still pending or has not confirmed a full settlement against them;
- 2.5 have not fulfilled their fiscal obligations regarding payments of taxes in accordance with the legal provisions of either the country where they are constituted or the Contracting Authority's country;
- 2.6 are subject to an exclusion decision of the World Bank and are listed on the website <http://www.worldbank.org/debarr>, unless they provide supporting information together with their Declaration of Undertaking (Form available as Appendix to the Application, Bid or Proposal Submission Form) which shows that this exclusion is not relevant in the context of this contract and that adequate compliance measures have been taken in reaction;
- 2.7 have created false documents or committed misrepresentation in documentation requested by the Contracting Authority as part of the procurement process of this Contract.

State-owned entities may compete only if they can establish that they (i) are legally and financially autonomous, and (ii) operate under commercial law. To be eligible, a state-owned entity shall establish to KfW's satisfaction, through all relevant documents, including its Charter and other information KfW may request, that it: (i) is a legal entity separate from their state (ii) does not currently receive substantial subsidies or budget support; (iii) operates like any commercial enterprise, and, inter alia, is not obliged to pass on its surplus to their state, can acquire rights and liabilities, borrow funds and be liable for repayment of its debts, and can be declared bankrupt.