



OPEN NATIONAL TENDER

**REQUEST FOR PROPOSAL (RFP) FOR BOARD EVALUATION SERVICE FOR
KenGen STAFF RETIREMENT BENEFITS SCHEME (DB & DC SCHEMES)**

TENDER NO. KenGenSRBS/T007/2020

CLOSING DATE: 17TH JUNE 2020 AT 10:30 A.M.

EMAIL: tenders@kengensrbs.co.ke

The Trust Secretary,
KenGen Staff Retirement Benefits Scheme,
P.O BOX 47936 – 000100,
KenGen Pension Plaza 2, 11th Floor,
Kolobot Road, Parklands - Nairobi.
Tel No: 0711036286/0711036932.

MAY 2020.

ALL CANDIDATES ARE ADVISED TO READ CAREFULLY THIS TENDER DOCUMENT IN ITS
ENTIRETY BEFORE MAKING ANY BID.

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SECTION I ~ LETTER OF INVITATION

DATE: 26th May 2020.

- 1.1. The KenGen PLC pension Schemes invite interested eligible bidders to submit their bids for **Board Evaluation Services** for both the DB Scheme and DC Scheme. *The appointed Firm shall offer service to both Schemes (DB & DC Schemes).*

A complete set of tender documents may be downloaded by interested candidates free of charge from www.kengensrbs.co.ke or public tenders portal www.tenders.go.ke. **All bidders taking part in this tender must forward their particulars immediately for recording and any further clarifications and addenda to tenders@kengensrbs.co.ke.** (Company Name and Contact Details)

- 1.2 Tendering will be conducted through the Bidding procedures specified in the Public Procurement and Asset Disposal Act, 2015, the Public Procurement and Disposal Regulations, 2006 and Amendment Regulations (2013) Nos. 106 and 114.

- 1.3 Interested firms may obtain further information on the tender document from;
CEO & Trust Secretary

KenGen Staff Retirement Benefits Scheme
KenGen Pension Plaza 2, Kolobot Road, Parklands
P.O. Box 47936 – 00100
Nairobi, Kenya
Tel: +254-02-3666932
Email : tenders@kengensrbs.co.ke

- 1.4 Completed Tenders are to be enclosed in plain sealed envelopes (**separated as technical proposal and financial proposal**), marked with the tender reference number and name, and be deposited in the Tender Box located on **KenGen Pension Plaza 2, 11th Floor**, Kolobot Road, Nairobi, Kenya addressed to:

CEO & Trust Secretary
KenGen Staff Retirement Benefits Scheme ,
KenGen Pension Plaza 2, Kolobot Road, Parklands
P.O. Box 47936 – 00100
Nairobi, Kenya

To be received on or before **17th June 2020 AT 10.30 A.M.**

- 1.5 Tenders will be opened promptly thereafter and ***Government (MOH) directive regarding Covid-19 shall be observed.***
- 1.6 All tenderers whose applications will have been received before the closing date and time will be advised of the results of their applications.
- 1.7 Prices quoted should be inclusive of all taxes and delivery costs to the required site (where applicable) and must be in Kenya Shillings and shall remain valid for One Hundred and Twenty (120) days from the closing date of the tender.

- 1.8 You are informed that it is not permissible to transfer this invitation to any other Consultant. A consultant will be selected under **Quality Cost Based Selection (QCBS)** described in this RFP, in accordance with the policies established in the Public Procurement and Asset Disposal Act [PPDA] 2015.

- 1.9 The Scheme reserves the right to accept or reject any tender and may annul the tendering process and reject all tenders at any time prior to contract award without thereby incurring any liability to the affected tenderer or tenderers.

SECTION II – INFORMATION TO CONSULTANTS (ITC)

2 General Provisions - Definitions

- (i) “Client” means the **KenGen Staff Retirement Benefits Scheme**
- (ii) “Consultant” means the firm that has signed the contract with **KenGen Staff Retirement Benefits Scheme**.
- (iii) “Contract” means a legally binding written agreement signed between DB Scheme and the Consultant and includes all the 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 this Contract and whose CV is taken into account in the shortlisting 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 the work to be performed by the 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 DB Scheme and the Consultant, and expected results and deliverables of the assignment.

2.1 Introduction

- 2.1.1 The Client named in the Appendix to “ITC” will select a firm among those invited to submit a proposal, in accordance with the method of selection detailed in the appendix.
- 2.1.2 The Consultants are invited to submit a Technical Proposal and a Financial Proposal, as specified in the Appendix “ITC” for consulting services required for the assignment named in the said Appendix.

- 2.1.3 The Consultants must familiarize themselves with local conditions and take them into account in preparing their proposals. To obtain firsthand information on the assignment and on the local conditions, Consultants are encouraged to liaise with Scheme regarding any information that they may require before submitting a proposal and also to familiarize themselves with the site situated along Kolobot Road, KenGen Pension Plaza 2, next to Stima Plaza building. Consultants should contact the officials named in the Appendix “ITC” to arrange for any visit or to obtain additional information on the pre-proposal conference. Consultants should ensure that these officials are advised of the visit in adequate time to allow them to make appropriate arrangements.
- 2.1.4 Scheme will provide the inputs specified in the Appendix “ITC”, assist the firm in obtaining licenses and permits needed to carry out the services and make available relevant project data and reports.
- 2.1.5 Please note that (i) the costs of preparing the proposal and of negotiating the Contract, including any visit to Scheme are not reimbursable as a direct cost of the assignment; and (ii) Scheme is not bound to accept any of the proposals submitted.
- 2.1.6 Scheme’s employees, committee members, board members and their relative (spouse and children) are not eligible to participate.
- 2.1.7 The procuring entity shall allow the tenderer to download the RFP document free of charge.

2.2 Clarification and Amendment of RFP Documents

- 2.2.1 Consultants may request a clarification of any of the RFP documents only up to seven [7] days before the proposal submission date. Any request for clarification must be sent in writing by paper mail, or electronic mail to Scheme’s address indicated in the Appendix “ITC”. Scheme will respond by electronic mail to such requests and will send written copies of the response (including an explanation of the query but without identifying the source of inquiry) to all invited Consultants who intend to submit proposals.
- 2.2.2 At any time before the submission of proposals, Scheme may for any reason, whether at his own initiative or in response to a clarification requested by an invited firm, amend the RFP. Any amendment shall be issued in writing through addenda. Addenda shall be sent by mail, cable, telex or facsimile to all invited Consultants and will be binding on them. Scheme may at his discretion extend the deadline for the submission of proposals.

2.3 Preparation of Technical Proposal

- 2.3.1 The Consultants proposal shall be written in English language

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

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

- (i) If a firm considers that it does not have all the expertise for the assignment, it may obtain a full range of expertise by associating with individual consultant(s) and/or 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.

In all cases the shortlisted firm must ensure that **proposed key staffs** are not appearing on the proposal of any other shortlisted firm. Firms with proposed key staff in contravention of this requirement shall automatically be disqualified.

- (ii) For assignments on a staff-time basis, the estimated number of professional staff-time is given in the Appendix. The proposal shall however be based on the number of professional staff-time estimated by the firm.
- (iii) It is desirable that the majority of the key professional staff proposed be permanent employees of the firm or has an extended and stable working relationship with it.
- (iv) Proposed professional staff must as a minimum, have the experience indicated in the RFP to Information to Consultants, preferably working under conditions similar to those prevailing in Kenya.
- (v) Alternative professional staff shall not be proposed and only one Curriculum Vitae (CV) may be submitted for each position.

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

- (i) A brief description of the firm's organization and an outline of recent experience on assignments of a similar nature. For each assignment the outline should indicate *inter alia*, the profiles of the staff proposed, duration of the assignment, contract amount and firm's involvement.
- (ii) Any comments or suggestions on the Terms of Reference, a list of services and facilities to be provided by Scheme.
- (iii) A description of the methodology and work plan for performing the assignment.
- (iv) The list of the proposed staff team by specialty, the tasks that would be assigned to each staff team member and their timing.

- (v) CVs recently signed by the proposed professional staff and the authorized representative submitting the proposal. Key information should include number of years working for the firm/entity and degree of responsibility held in various assignments during the period stated in the technical evaluation criteria.
- (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.
- (vi) A detailed description of the proposed methodology, Staffing and Monitoring of training.
- (vii) Any additional information requested.

2.3.5 The **Technical Proposals shall not include any financial information.**

2.4 Preparation of Financial Proposal

- 2.4.1 In preparing the Financial Proposal, Consultants are expected to take into account the requirements and conditions outlined in the RFP documents. The Financial Proposal should follow Standard Forms (Section D). It lists all costs associated with the assignment including; (a) remuneration for staff (in the field and at headquarters), and; (b) reimbursable expenses such as subsistence (per diem, housing), transportation (international and local, for mobilization and demobilization), services and equipment (vehicles, office equipment, furniture, and supplies), office rent, insurance, printing of documents, surveys, and training, if it is a major component of the assignment. If appropriate these costs should be broken down by activity.
- 2.4.2 The Financial Proposal should clearly identify as a separate amount, the local taxes, duties, fees, levies and other charges imposed under the law on the Consultants, the sub-Consultants and their personnel.
- 2.4.3 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.
- 2.4.4 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. The Scheme will make his best effort to complete negotiations within this period. If the Scheme 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 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 the number of copies indicated in Appendix "ITC". Each Technical Proposal and Financial Proposal shall be marked "**ORIGINAL**" or "**COPY**" as appropriate. If there are any discrepancies between the original and the copies of the proposal, the original shall govern.
- 2.5.3 The Tenderer is required to serialize all pages for each bid submitted.
- 2.5.4 The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked "**TECHNICAL PROPOSAL,**" and the original and all copies of the Financial Proposal in a sealed envelope clearly marked "**FINANCIAL PROPOSAL**" and warning: "**DO NOT OPEN WITH THE TECHNICAL PROPOSAL**". Both envelopes shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address and other information indicated in the Appendix "ITC" and is clearly marked, "**DO NOT OPEN, EXCEPT IN PRESENCE OF THE 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 in the "ITC". 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 Scheme department up to the time for public opening of financial proposals.

2.6 Proposal Evaluation General

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

2.7 Evaluation 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 in the Appendix to information to consultants.

Each responsive proposal will be given a technical score (*St*). Actual score points are provided in the Appendix “ITC”. A proposal shall be rejected at this stage if it does not respond to important aspects of the Terms of Reference or if it fails to achieve the minimum technical score indicated in the Appendix “ITC”.

2.8 Public Opening and Evaluation of Financial Proposal

2.8.1 After Technical Proposal evaluation, Scheme 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. Scheme shall simultaneously notify the Consultants who have secured the minimum qualifying mark, **indicating the date and time set for opening the Financial Proposals** and stating that the opening ceremony is open to those Consultants who choose to attend. The opening date **shall not be sooner than seven (7) days** after the notification date. The notification may be sent by registered letter, cable, telex, facsimile or electronic mail.

2.8.2 The Financial Proposals shall be opened publicly in the presence of the consultants’ representatives who choose to attend. The name of the consultant, the technical scores and the proposed prices shall be read aloud and recorded when the Financial Proposals are opened. Scheme shall prepare minutes of the public opening.

2.8.3 The evaluation committee will determine whether the financial proposals are complete (i.e. whether the consultant has costed all the items of the corresponding Technical Proposal and correct any computational errors. The cost of any unpriced items shall be assumed to be included in other costs in the proposal. In all cases, the total price of the Financial proposal as submitted shall prevail.

2.8.4 While comparing proposal prices between local and foreign firms participating in a selection process in financial evaluation of proposals, firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias in proposal prices. However, there shall be no such preference in the technical evaluation of the tenders. Proof of local incorporation and citizenship shall be required before the provisions of this sub-clause are applied. Details of such proof shall be attached by the Consultant in the financial proposal.

2.8.5 The formulae for determining the Financial Score (*Sf*) shall, unless an alternative formulae is indicated in the Appendix “ITC”, be as follows: -
$$Sf = 100 \times \frac{FM}{F}$$
 where *Sf* is the financial score; *FM* is the lowest priced financial proposal and *F* is the price of the proposal under consideration. Proposals will be ranked according to their combined technical (*St*) and financial (*Sf*) scores using the weights (*T*=the weight given to the Technical Proposal; *P*= the weight given to

the Financial Proposal: $T + p = I$) indicated in the Appendix. The combined technical and financial score, S , is calculated as follows:- $S = S_t \times T \% + S_f \times P \%$. The firm achieving the highest combined technical and financial score will be invited for negotiations.

- 2.8.6 The tender evaluation committee shall evaluate the tender within 30 days from the date of opening the tender.
- 2.8.7 Contract price variations shall not be allowed for contracts not exceeding one year (12 months).
- 2.8.8 Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price.
- 2.8.9 Price variation requests shall be processed by scheme 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 KenGen DB Scheme ” indicated in the Appendix “ITC”. The aim is to reach agreement on all points and sign a contract.
- 2.9.2 Negotiations will include a discussion of the Technical Proposal, the proposed methodology (work plan), staffing and any suggestions made by the firm to improve the Terms of Reference. Scheme 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 Scheme 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 fees breakdown).
- 2.9.4 Having selected the firm on the basis of, among other things, an evaluation of proposed key professional staff, Scheme expects to negotiate a contract on the basis of the experts named in the proposal. Before contract negotiations, Scheme will require **assurances that the experts will be actually available**. Scheme 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 Scheme and the selected firm will initial the agreed Contract. If negotiations fail, Scheme will invite the firm whose proposal received the second highest score to negotiate a contract.

2.9.6 Scheme shall appoint a team for the purpose of the negotiations.

2.10 Award of Contract

2.10.1 The Contract will be awarded following negotiations. After negotiations are completed, Scheme 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 as per contract.

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

2.10.4 The Scheme 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 Scheme shall give notice of the termination to all persons who submitted tenders of the termination 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 The Scheme 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.

2.12.2 Scheme will reject a proposal for award if it determines that the consultant recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.

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

APPENDIX TO INFORMATION TO CONSULTANTS (ITC)

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

Clause Reference

- 2.1.1 The name of client is: **KenGen Staff Retirement Benefits Scheme**
2.1.1 Selection Method: **Quality and Cost Based (QCBS)**

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

The name, objectives, and description of the assignment are: **REQUEST FOR PROPOSAL FOR BOARD EVALUATION.**

- 2.1.3 **All enquiries regarding the RFP and the assignment can be made to:**

The name(s), address(es) and telephone numbers of Scheme's official(s) are:

CEO & Trust Secretary

**KenGen Staff Retirement Benefits Scheme
KenGen Pension Plaza 2, Kolobot Road, Parklands
P.O. Box 47936 – 00100
Nairobi, Kenya
Tel: +254-02-3666932
Email : tenders@kengensrbs.co.ke**

- 2.1.7 Price Charged for RFP Document: **Free of Charge.**

- 2.1.8 Consultants may request a clarification of any of the RFP documents only up to seven [7] days before the proposal submission date.

- 2.1.9 The estimated number of professional staff months required for the assignment is; 2 per month or any number that the consultant deem to be adequate for the assignment.

- 2.1.10 Reimbursable expenses costs **Not Applicable**

- 2.1.11 Taxes: **All applicable taxes to be included in the Financial Proposals.**

- 2.1.12 Consultants must submit an original and an additional **one (1)** copy of the **technical proposal**. Consultants must submit an original and additional **one (1)** copy of the **financial proposal**.

2.1.13 The proposal submission address is:

**CEO & Trust Secretary
KenGen Staff Retirement Benefits Scheme
KenGen Pension Plaza 2, Kolobot Road, Parklands
P.O. Box 47936 – 00100
Nairobi, Kenya**

**PROPOSALS TO BE DEPOSITED IN THE TENDER BOX ON 11TH FLOOR OF
KenGen PENSION PLAZA 2, KOLOBOT ROAD, PARKLANDS.**

Information on the outer envelope should also include:

**CEO & Trust Secretary
KenGen Staff Retirement Benefits Scheme
KenGen Pension Plaza 2, Kolobot Road, Parklands
P.O. Box 47936 – 00100
Nairobi, Kenya**

and the information: **REQUEST FOR PROPOSAL FOR BOARD EVALUATION SERVICE** and clearly marked, **“DO NOT OPEN, EXCEPT IN PRESENCE OF THE OPENING COMMITTEE.”**

2.1.14 Proposals must be submitted no later than **17th June 2020 at 10.30 AM**

2.1.15 The address to seek any information to Scheme is:

**CEO & Trust Secretary
KenGen Staff Retirement Benefits Scheme
KenGen Pension Plaza 2, Kolobot Road, Parklands
P.O. Box 47936 – 00100
Nairobi, Kenya.
Tel: +254-02-3666932
Email : tenders@kengensrbs.co.ke**

2.1.16 The Evaluation Committee shall evaluate the proposals on the basis of their responsiveness to the **Mandatory Requirements of the RFP and Terms of Reference, applying the evaluation criteria** as follows:

I. Preliminary Evaluation Criteria (Mandatory Requirements) The tenderer Must:

- (i) Submit the required number of copies of both the technical and financial proposals and with financials enclosed separately **(one original and one copy of both technical and financial proposals) the documents Must be bound.**
- (ii) Submit certificate of registration/incorporation.
- (iii) Submit current and valid tax compliance certificate **up to at least tender opening date.**
- (iv) Submit a dully filled, signed and stamped Technical Proposal Submission Form and Activity (Work) Schedule. – form 3.1
- (v) Confidential Business Questionnaire – *in the format provided in this tender document* – form 3.2
- (vi) Provide a self-declaration that firm and the consultants will not engage in any corrupt practice - *in the format provided in this tender document* – form 3.3
- (vii) The consultants **Must** submit current and valid certification relevant certification in the field of trade.
- (viii) MUST provide valid professional indemnity Cover from a local insurance company

Note:

Only bidders who meet above requirements will proceed to technical evaluation.

II. Technical Evaluation Criteria

The proposals shall be evaluated using the following criteria and score points with total of 100 marks:

1. Qualification and Experience (46 marks)

This MUST be supported by CVs and copies of academic and professional certificates (CVs and certificates MUST be certified by the CEO / MD or the head of the bidding firm)

Team	Qualification and Experience	Marks
Lead Consultant	Relevant professional membership	5
	Master education in business related or relevant field	5
	Experience in governance and board evaluation consultancy	15
	<ul style="list-style-type: none"> ➤ 7 years - 15 marks 4 - 6 years - 10 marks Below 3 years - 0 	
Two Assistant Consultants	Relevant professional membership. (Each 2.5 marks)	5
	Undergraduate in Business related or relevant. (Each 3 marks)	6
	Experience in governance and board evaluation consultancy	10
	<ul style="list-style-type: none"> ➤ 4 years - 5 marks 1 – 3 years - 3 marks Below 1 years - 0 	

2. Methodology (32 marks)

Proposed approach and methodology to be adopted for the assignment including tools to be used, estimated time and reports in accordance with terms of reference.

Item	Marks
Planning and Information gathering	8
Conformity and understanding of the terms of reference	8
Finalization and reporting including draft and final reports	8
Work Plan and activity schedule in Line with the terms of Reference	8

3. Referees (16 marks)

The bidder to provide four (4) recommendation letters (**Board Consultancy and governance**) from previous clients (References Must be in the Institutions Letter head – where similar or related services were offered addressed to CEO & Trust Secretary)

4. Value addition (6 marks)

Value addition to the assignments/improvements to our terms of reference.

- a. Post assignment implementation Strategies and support for sustenance of the internal Board Evaluation and (4 marks)
- b. Knowledge transfer (2 mark)

Tenderers will proceed to the financial evaluation stage if they score a minimum of 85 marks in the criteria. Technical will carry a weighting of 80%.

III. The Financial Proposal Evaluation.

The Financial proposals of qualified firms will be opened and checked for any arithmetical errors and any anomalies.

- The opening date of the financial proposal shall be the date indicated in the notification letter to technically compliant bidder(s).
- The formulae for determining the financial scores is the following: $S_f = 100 \times \frac{FM}{F}$ where S_f is the financial score;

FM is the lowest priced financial proposal and F is the price of the proposal under consideration. The lowest priced bidder shall score 20%

The combined technical and financial scores shall be determined using the formula in clause 2.8.5. The Weights given to The Technical (T) and Financial Proposals(P) are:

$$T=0.80$$

$$P= 0.20$$

Successful bidder will be the highest combined score and Successful bidder may be invited by the Fund for Negotiations.

2.8.4 The assignment is expected to commence at Nairobi, Kenya when due for execution or as shall be informed.

SECTION III: ~ TECHNICAL PROPOSAL

Notes on the preparation of the Technical Proposals

3 TECHNICAL PROPOSAL FORMS

- 3.1 The Consultant shall complete this form and submit it as part of the Consultant's proposal, attaching all technical submissions as required and the technical proposal forms provided.
- 3.2 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 consultant's own risk and may result in rejection of the consultant's proposal.
- 3.3 The technical proposal shall provide all required information and any necessary additional information and shall be prepared using the standard forms provided in this Section.
- 3.4 The Technical proposal shall not include any financial information unless it is allowed in the Appendix to information to the consultants or the Special Conditions of contract.

3.1 TECHNICAL PROPOSAL SUBMISSION FORM

Date.....

To:.....

CEO & Trust Secretary
KenGen Staff Retirement Benefits Scheme
KenGen Pension Plaza 2, Kolobot Road, Parklands
P.O. Box 47936 – 00100
Nairobi, Kenya

Dear Sir,

TECHNICAL PROPOSAL REQUEST FOR PROPOSAL FOR BOARD EVALAUTION SERVICES

We, the undersigned, offer to provide the consulting services for the above mentioned 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 Scheme.
- (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.
- (d) In competing for (and, if the award is made to us, in executing) the Contract, we undertakes 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.
- (f) We accept that there will be no substitution of key personnel for reasons 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 Scheme is not bound to accept any Proposal that it receives.

We remain,
Yours Sincerely,

Authorized Signature _____
Name of Consultant

_____ Address

_____ Contact

Phone

Contact e-mail address):

Stamp or Seal

3.2 MANDATORY CONFIDENTIAL BUSINESS QUESTIONNAIRE

(Must be filled by all applicants or Tenderers' who choose to participate in this tender)

Name of Applicant (s).....

You are requested to give the particulars in Part1 and either Part 2 (a), 2(b) or 2(c), which ever applies to your type of business. Part 2(d) to part 2(i/j) must be filled. You are advised that giving wrong or false information on this Form will lead to automatic disqualification/termination of your business proposal at your cost.

Part 1 – General

Business Name:.....Certificate of Incorporation
/Registration No.....Location of Business premises:
Country.....Physical address.....
Town.....Building.....
Floor.....Plot No.....
Street/Road.....Postal Address.....
Postal/Country Code.....Telephone No's.....
Fax No's.....E-mail address.....
Website.....
Contact Person (*Full Names*).....
Direct/Mobile No's.....
Title.....
Power of Attorney (**Yes/No**) If **Yes**, attach written document.
Nature of Business (*Indicate whether manufacturer, distributor, etc*).....

(Applicable to Local suppliers only)

Local Authority Trading License No.....Expiry Date.....
Value Added Tax No
Value of the largest single assignment you have undertaken to date
(*USD/KShs*)..... Was this successfully undertaken?
Yes/No.....(If **Yes**, attach reference)
Name(s) of your banker(s).....
Branches.....Tel. No's.....

Part 2 (a)–Sole Proprietor (if applicable)

Full names.....
Nationality.....Country of Origin.....
Company Profile.....(*Attach brochures or annual reports in case of public company*)

Part2 (b)–Partnerships (if applicable)

Give details of partners as follows:

Full Names Nationality Citizenship Details Shares

1.

2.

Company Profile.....N/A.....(*Attach brochures*)

Part2 (c)–Registered Company (if applicable)

Private or public.....

Company Profile.....(*Attach brochures or annual reports in case of public companies*)

State the nominal and issued capital of the Company

Nominal KShs.....

Issued KShs.....

List of top ten (10) shareholders and distribution of shareholding in the company. Give details of all

Directors as follows:-

Full Names Nationality Citizenship Details Shares

1.....

2.....

Part 2(d)– Debarment

I/We declare that I/We have not been debarred from any procurement process and shall not engage in any fraudulent, corrupt, coercive and obstructive acts with regard to this or any other tender by any public or private institutions.

Full Names.....

Signature.....

Dated this.....day of.....2020.

In the capacity of.....

Duly authorized to sign Tender for and on behalf of.....

Part 2(e) – Bankruptcy/Insolvency/receivership.

I/We declare that I/We have not been declared bankrupt or insolvent by the competent Authorities in Kenya and neither are we under receivership:

Full Name.....

Signature.....

Dated this.....day of.....2020.

In the capacity of.....

Duly authorized to sign Tender for and on behalf of.....

Part 2(f) – Criminal Offence I/We, (Name(s) of Director(s)):-

- a).....
- b).....

Have not been convicted of any criminal offence relating to professional conduct or the making of false statements or misrepresentations as to its qualifications to enter in to a procurement contract within a period of three (3) years preceding the commencement of procurement proceedings.

Signed.....
 For and on behalf of M/s..... In
 the capacity of.....
 Dated this.....day of2020.
 Suppliers’/Company’s Official Rubber Stamp.....

Part2(g) – Conflict of Interest

I/We, the undersigned state that I /We have no conflict of interest in relation to this procurement:

- a).....
- b).....

For and on behalf of M/s
 In the capacity of
 Dated thisday of2020
 Suppliers’/Company’s Official Rubber Stamp.....

Part2(h) – Interest in the Firm:

Is there any person/persons in Scheme or any other public institution who has interest in the Firm?
 Yes/No

.....(Delete as necessary) Institution.....

(Title) **(Signature)** **(Date)**

Part2(I) – Experience:

Please list here below similar projects accomplished or companies/clients you have supplied with similar items or materials in the last 5years.

	Company Name	Country	Contract/Order No.	Value	Contact person (Full Names)	E-mail address	Cell phone No.
1							
2							
3							
4							

**Part 2 (I or j) –
Declaration**

I/We, the undersigned state and declare that the above information is correct and that I/We give authority to seek any other references concerning my/our company from whatever sources deemed relevant, e.g. Office of the Registrar of Companies, Bankers, etc.

Full names.....

Signature.....

For and on behalf of M/s.....

In the capacity of.....

Dated this.....day

of.....2020. Suppliers'/Company's

Official Rubber Stamp.....

3.3 ANTICORRUPTION DECLARATION

We underscore the importance of a free, fair and competitive procurement process that precludes abusive practices. In this respect we have neither offered nor granted directly or indirectly any inadmissible advantages to any public servant or other person nor accepted such advantages in connection with our bid, nor will we offer or grant or accept any such incentives or conditions in the present procurement process or, in the event that we are awarded the contract, in the subsequent execution of the contract. We also declare that no conflict of interest exists in the meaning of the kind described in the Public Procurement & Disposal Act 2015

We also underscore the importance of adhering to the law in the implementation of the project.

We will inform our staff about their respective obligations and about their obligation to fulfil this declaration of undertaking and to obey the laws of the country.

We also declare that our company/sub-contractors/ all members of the consortium has/have not been debarred to engage in procurement/ included in the list of sanctions.

We acknowledge that, the client is entitled to terminate the contract immediately if the statements made in the Declaration of Undertaking were objectively false or the reason for exclusion occurs after the Declaration of Undertaking has been issued.

Dated this _____ day of _____ 20 ____

(Name of company)

(Signature(s))

3.4 RECOMMENDATION LETTERS

Our Ref:

Date.

Address

s

**CEO & Trust Secretary
KenGen Staff Retirement Benefits Scheme
KenGen Pension Plaza 2,
Kolobot Road, Parklands, P.O Box 47936 – 000100,
Nairobi, Kenya.**

REFERENCE LETTER

This is to confirm that _____ has offered consultancy services for our firm and we confirm the details as outlined below:

Assignment name:	Country:
Location within Country	Professional Staff Provided by your Firm
Name of Client	Client's contact person for the assignment
Address	Duration of Assignment
Start Date Completion date	Approx. value of services
Name of Associated consultants	
Name of Senior Staff Involved & functions performed	
Name	Role Functions
Description of Actual Services Provided:	

We are satisfied with the firms' performance has met our expectations in regard to the assignment.

We would not hesitate to recommend __ as a reliable and professional fund management company. You may reach us on the given addresses to confirm the details provided.

Yours faithfully,

3.5 COMMENTS AND SUGGESTIONS OF CONSULTANTS ON THE TERMS OF REFERENCE AND ON DATA, SERVICES AND FACILITIES TO BE PROVIDED BY SCHEME.

Provide and justify here any modifications or improvement to the Terms of Reference to improve performance in carrying out the assignment, such as deleting some activity you consider unnecessary, or adding another, or proposing a different phasing of the activities. Such suggestions should be concise and to the point and incorporated in your Proposal. Also provide comments on counterpart staff and facilities to be provided by Scheme to improve performance in carrying out the assignment. Scheme shall not be bound to any comments or suggestions provided.

On the Terms of reference:

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

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

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

3.6 .DESCRIPTION OF THE METHODOLOGY AND WORK PLAN FOR PERFORMING THE ASSIGNMENT

Provide a section on **Approach, Methodology and Work plan** for performing the assignment that should include:

- (a) Technical Approach and Methodology,
 - (a) Work Plan, and
 - (b) Organization and Staffing,
- (a) **Technical Approach and Methodology.** In this chapter the Consultant should explain his /her understanding of the objectives of the assignment, approach to the services, methodology for carrying out the activities and obtaining the expected output, and the degree of detail of such output. The Consultant should highlight the problems being addressed and their importance and explain the technical approach the Consultant would adopt to address them. The Consultant should also explain the methodologies proposed to adopt and highlight the compatibility of those methodologies with the proposed approach.
- (b) **Work Plan.** In this chapter the Consultant should propose the main activities of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by Scheme), and delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents, including reports and tables to be delivered as final output, should be included here. The work plan should be consistent with the “ACTIVITY (WORK) SCHEDULE FORM” on Paragraph 6 below.
- (c) **Organization and Staffing.** In this chapter the Consultant should propose the structure and composition of the Consultant’s team. The Consultant should list the main disciplines of the assignment, the key personnel responsible, and proposed technical and support staff. In addition to describing the structure and composition of the Consultant’s team, the Consultants shall summarize it on the **Staffing Form** below.

3.7. TEAM COMPOSITION AND TASK ASSIGNMENTS
STAFFING FORM

	Name of Key Personnel	Position	Tasks	Time required for assignment
1		Team Leader		
2		Assistant Consultant		
3		Assistant Consultant		
4				
5				
Name of Non-Key Personnel				
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

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

The Consultant shall provide a signed CV of each of the Key Personnel, this must detail the number of years, the assignments handled, qualifications both professional and academic and skills.

3.9. ACTIVITY TIME SCHEDULE FOR THE ASSIGNMENT

The Consultant will prepare an activity schedule that will take care of all phases of the assignment, i.e. document review, field work and assembling of information and writing the reports. The Consultant will organize work Teams and timetable to complete this field work, including all associated travel/field costs. To this end, the Consultant will prepare an activity that would closely follow (but not necessarily be same as) the “Activity (Work) Schedule Format” below. The Consultant should derive these activities from the TOR, e.g. sampled contracts, Inception Report, field work, monthly reports, draft report, final report, etc. in sufficient detail.

SECTION IV: ~ FINANCIAL PROPOSAL

The Consultant shall complete this form and submit it as part of the Consultant’s proposal, attaching all financial submissions as required herein and in the financial proposal forms provided.

FINANCIAL PROPOSAL SUBMISSION FORM

Date

TO:

CEO & Trust Secretary
KenGen Staff Retirement Benefits Scheme
KenGen Pension Plaza 2, Kolobot Road, Parklands
P.O. Box 47936 – 00100
Nairobi, Kenya

Dear Sir,

FINANCIAL PROPOSAL FOR BOARD EVALUATION SERVICE

TENDER NO. KenGenSRBS/T007/2020

- a) We, the undersigned, offer to provide the consulting services for **REQUEST FOR PROPOSAL FOR BOARD EVALUATION SERVICE** in accordance with your request for proposals dated *[insert date]* 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 attached Financial Proposal is in Kshs..... (In words) Kshs..... (In figures) This amount is inclusive of all taxes levied in Kenya or in other countries, which shall be identified during negotiations and shall be added to the contract price.
- (b) Our Financial Proposal shall be binding upon us subject to the modifications resulting from Contract negotiations, up to expiration of the validity period of the Proposal, i.e. Proposals must remain valid for 120 days after the submission date as indicated in the instructions to Consultants.
- (c) 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
- (d) We understand you are not bound to accept any Proposal you receive.

Yours Sincerely,

Authorized Signature _____

Name of Consultant _____

Address _____

Contact phone _____

Contact e-mail address) _____

STAMP OR SEAL _____

2.BREAKDOWN OF CONTRACT PRICE

(All costs will be as a percentage inclusive of all taxes, insurances, overheads, and profit).

- a)
- b)
- c) **Any related costs**

Total cost from above.....

Signed..... (Consultant)

Date

Stamp/Seal

SECTION V -TERMS OF REFERENCE

5.1 Background

The KenGen Staff Retirement Benefits Scheme oversees the prudent investment of members contributions in high interest yielding investments and safeguards the same investments to provide benefits to members. The organization is composed of two Schemes that is the Defined Benefits (DB) Scheme and Defined Contributions (DC) Scheme.

The two Schemes core function is to provide pension and other retirement benefits to members upon their retirement from the Sponsor's service and where applicable, provide relief for the dependents of the deceased members.

5.2 The Board

The Scheme is governed by the Board of Trustees that exercises leadership, enterprise, integrity and judgment in directing the operations so as to achieve continued prosperity and to act in the best interest of the Scheme in a manner based on transparency, accountability and responsibility.

The Board is constituted in accordance with the Trust Deed and Rule together with RBA Guidelines where the skill matrix is also taken into consideration to ensure that the Board has the necessary skill set to carry out their duties and responsibilities.

The Scheme has two types of Boards.

a) KenGen Staff Retirement Benefits Scheme (DB Scheme)

The DB Scheme was registered on 1st January 2000. It is now a closed scheme effective 31st December 2011. It is composed of nine (9) Board members. The DB Scheme has three Board Committees who handle specific areas of the Scheme and make recommendations to the Board. These are:

- a. Investment and Strategy Committee
- b. Administration and Communication Committee
- c. Audit and Risk Management Committee

b) KenGen Defined Contribution (DC) Scheme 2012 (DC Scheme)

The DC Scheme was registered with the Retirement Benefits Authority effective 1st January 2012. It is composed of eight (8) Board members. The DC Scheme has three Board Committees who handle specific areas of the Scheme and make recommendations to the Board. These are:

- a. Investment and Strategy Committee
- b. Administration and Communication Committee
- c. Audit and Risk Management Committee

5.3 Objectives of the Consultancy

In accordance to good governance, it is necessary for the Board of Trustees to carry out Board Evaluation as a requirement by the RBA. The evaluation will enable the Board of Trustees monitor performance against the objective of the Scheme in respect to the Trust deed and the Strategic Plan 2019 – 2028.

5.4 Scope of Services

The Scheme is looking for consultancy services to carry out Board evaluation focusing on the following areas:

- Review the Schemes documents relating to the Scheme Mandate & Strategy, Functions of the Board, Board Meeting Management & Procedures, Board Structure, Information & Communication, among others.
- Develop an evaluation methodology and assessment tool.
- Present the assessment tool for validation.
- Undertake the evaluation exercise.
- Analyze and present findings including individual assessments.
- Incorporate feedback and harmonize findings.
- Make recommendations.
- Submit final report.

5.5 Deliverables

- i. Evaluation Assessment Tool.
- ii. Performance Evaluation Draft Report.
- iii. Performance Evaluation Final Report.

5.6 Reporting arrangements

The Consultants will report to the CEO & TRUST SECRETARY of Scheme as the Client and principal contact for the consultancy, and from whom all necessary approvals will be obtained.

The Lead Consultant shall, in close consultation with client, arrange consultative meetings with all evaluation participants at regular intervals or whenever there is need.

5.7 Quality assurance reviews of the work

Quality Assurance of the assignment will be provided in form of regularly reporting as agreed by the parties to the Board of Trustees and adherence to schedules and timeframes.

5.8 Monitoring progress of assignment

The Scheme shall monitor and evaluate the progress of the Consultancy through the reports on the deliverables on a regular basis to be agreed upon by the parties. The committee's reports will be submitted to CEO & TRUST SECRETARY through his appointee as may be required.

5.9 Pricing

- i. A detailed cost breakdown structure must be included.
- ii. All pricing must be shown inclusive of any applicable taxes; and
- iii. All pricing must be completed on the standard template as prescribed in the tender document.

Note: Reimbursable expenses are not allowed

5.10 Essential duties and responsibilities of scheme

Scheme shall furnish the Consultant with design brief/wish list for the project. In addition, the Scheme shall:

- i. be responsible for; liaison between the Consultant and monitoring of the consultancy service.
- ii. review reports/documents submitted by the consultant and give feedback to the consultant accordingly as provided for in the TORs; and
- iii. provide the consultants with any other relevant assistance that may be required during the execution of the contract

5.11 Essential duties and responsibilities of the consultant

The consultant will:

- i. Operate from its offices other than in exceptional situations and provide own manpower, work facilities, equipment, stationery, supplies and all operational requirements to carry out the assignment and provide the services required.
- ii. Ensure that there is high quality of service rendered.
- iii. liaise with the Scheme on a regular basis in order to report progress; communicate, in writing, to Scheme any issues and/or concerns that may affect performance of the consultancy during the assignment; and
- iv. produce and submit acceptable reports to Scheme and perform activities mentioned in the TOR within the agreed timelines.

5.12 Duration of the assignment

The duration of the assignment will be based on the contract signed by the Fund and the consultant.

5.13 Ethical code and professionalism

The Consultant shall carry out the above assignment in accordance with the highest standard of ethical competence, integrity and professionalism, having due regard to the nature and purpose of the assignment. The Consultant will at all times and for all purposes, regard as strictly confidential all knowledge and information not within the public domain which may be acquired in the course of carrying out this assignment and the information shall not be directly or indirectly disclosed to any person whatsoever, except with the written permission of the Client.

The Consultants will waive all copyrights of documents, data and information prepared as part of this assignment in favor of the Scheme.

SECTION VI: FORM OF CONTRACT

CONTRACT AGREEMENT FORM

THIS AGREEMENT made this.....day of.....**20....** **BETWEEN KenGen Staff Retirement Benefits Scheme**, a retirement benefits fund licensed by Retirement Benefits Authority situated at KenGen Pension Plaza 2, Kolobot Road, Parklands, Nairobi in the Republic of **Kenya** and of Post Office Box Number *47936 - 00100*, Nairobi in the Republic aforesaid (*hereinafter referred to as the “Scheme”*) of the one part,

AND

.....a duly registered entity according to the laws ofand of Post Office Box Number..... in the Republic aforesaid, (*hereinafter referred to as the “Consultant”*) of the other part;

WHEREAS Scheme invited tenders for certain services, that is to say, for **Consultancy Services** under Tender Number.....

AND WHEREAS Scheme has accepted the Tender by the Consultant for the services in the sum of

Kshs.....VAT Inclusive say.....(hereinafter called “the Contract Price”) as outlined in the notification of award letter referred to in clause 5(g).

NOW THIS AGREEMENT WITNESSETH 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 and the Tender Document.
2. Unless the context or express provision otherwise requires:
 - a) reference to “this Agreement” includes its recitals, any schedules and documents mentioned hereunder and any reference to this Agreement or to any other document includes a reference to the other document as varied supplemented and or replaced in any manner from time to time.
 - b) any reference to any Act shall include any statutory extension, amendment, modification, re-amendment or replacement of such Act and any rule, regulation or order made thereunder.
 - c) words importing the masculine gender only, include the feminine gender or (as the case may be) the neutral gender.
 - d) words importing the singular number only include the plural number and

vice-versa and where there are two or more persons included in the expression the “*Consultant*” the covenants, agreements obligations expressed to be made or performed by the Consultant shall be deemed to be made or performed by such persons jointly and severally.

e) where there are two or more persons included in the expression the “*Consultant*” any act default or omission by the Consultant shall be deemed to be an act default or omission by any one or more of such persons.

3. In consideration of the payment to be made by Scheme to the Consultant as hereinbefore mentioned, the Consultant hereby covenants with Scheme to perform and provide the services and remedy any defects thereon in conformity in all respects with the provisions of the Contract.

4. Scheme hereby covenants to pay the Consultant in consideration of the proper performance and 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.

5. The following documents shall constitute the Contract between Scheme and the Consultant and each shall be read and construed as an integral part of the Contract: -

- a. this Contract Agreement
- b. the Special Conditions of Contract as per the Tender Document
- c. the General Conditions of Contract as per the Tender Document
- d. the Price Schedules/ Financial Proposal submitted by the Consultant and agreed upon with Scheme.
- e. the Terms of Reference as per Scheme’s Tender Document
- f. the Consultant’s obligations t Scheme
- g. Scheme Notification of Award dated
- h. the technical submission form
- i. Proposed workplan and schedule of activities

6. In the event of any ambiguity or conflict between the contract documents listed above, the order of precedence shall be the order in which the contract documents are listed in 5 above except where otherwise mutually agreed in writing.

7. The Commencement Date shall be the working day immediately following the fulfillment of all the following: -

- a) Execution of this Contract Agreement by Scheme and the Consultant.
- b) Issuance of the Performance Bond by the Consultant and confirmation of its authenticity by Scheme.
- c) Issuance of the Official Order by Scheme to the Consultant.

8. The period of contract validity shall begin from the Commencement date and end sixty (60) days after the last date of the agreed performance schedule.

Provided that the expiry period of the Warranty shall be as prescribed and further provided that the Warranty shall survive the expiry of the contract.

9. It shall be the responsibility of the Consultant to ensure that its Performance Security is valid at all times during the period of contract validity and further is in the full amount as contracted.
10. Any amendment, change, addition, deletion or variation howsoever to this Contract shall only be valid and effective where expressed in writing and signed by both parties.
11. No failure or delay to exercise any power, right or remedy by Scheme shall operate as a waiver of that right, power or remedy and no single or partial exercise of any other right, power or remedy.
12. Notwithstanding proper completion of performance or parts thereof, all the provisions of this Contract shall continue in full force and effect to the extent that any of them remain to be implemented or performed unless otherwise expressly agreed upon by both parties.
13. Any notice required to be given in writing to any Party herein shall be deemed to have been sufficiently served, if where delivered personally, one day after such delivery; notices by electronic mail and facsimile shall be deemed to be served one day after the date of such transmission and delivery respectively, notices sent by post shall be deemed served seven (7) days after posting by registered post (*and proof of posting shall be proof of service*), notices sent by courier shall be deemed served two (2) days after such receipt by the courier service for Local Suppliers and five (5) days for Foreign Suppliers.
14. For the purposes of Notices, the address of Scheme shall be CEO & Trust Secretary, KenGen DB Scheme, Pension Plaza 2, 11th floor, Kolobot Road, Post Office Box Number 47936 - 00100, Nairobi, Kenya. The address for the Consultant shall be the Consultant's address as stated by it in the Confidential Business Questionnaire provided in the Tender Document.

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

SIGNED for and on behalf
of **Scheme**

CEO & TRUST SECRETARY

SEALED with the **COMMON SEAL**
of the **CONSULTANT**
in the presence of:-

DIRECTOR

Affix Consultant's Seal here

DIRECTOR'S FULL NAMES

and in the presence of:-

DIRECTOR/ COMPANY SECRETARY

DIRECTOR/ COMPANY SECRETARY'S FULL NAMES

SECTION VII: GENERAL CONDITIONS OF CONTRACT

7.1 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 in the SC to act on their behalf in exercising all the Consultant’s rights and obligations towards Scheme under this Contract;
- (i) “Party” means Schemes or the Consultant, as the case may be and “Parties” means both of them;
- (j) “Personnel” means persons hired by the Consultant or by any Sub-consultant as employees and assigned to the performance of the Services or any part thereof;
- (k) “SC” means the Special Conditions of Contract by which the GC may be amended or supplemented;
- (l) “Services” means the work to be performed by the Consultant pursuant to this Contract, as described in the tender document ; and
- (m) “Sub consultant” means any entity to which the Consultant subcontracts any part of the

Services in accordance with the provisions of Clauses 3 & 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 specified in the SC.
- 7.1.5 Location. The Services shall be performed at such locations as are specified in the RFP and, where the location of a particular task is not so specified, at such locations, whether in the Republic of Kenya or elsewhere, as Scheme 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 Scheme or the Consultant may be taken or executed by the officials specified in the SC.
- 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 in the SC.
- 7.2.2 Commencement of Services. The Consultant shall begin carrying out the Services thirty (30) days after the date the Contract becomes effective or at such other date as may be specified in the SC.
- 7.2.3 Expiration of Contract. Unless terminated earlier pursuant to Clause 2.6, this Contract shall terminate at the end of such time period, after the Effective Date, as is specified in the SC.
- 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 in so far as such inability arises from an event of Force Majeure, provided that the

Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

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. Neither party shall incur any liability by reason of failure to perform any obligations reserved hereunder, if such failure is occasioned by a Force Majeure. Force Majeure shall mean any event or circumstance which is beyond the control of the party seeking to rely on such Force Majeure, which shall not be limited to, natural disasters, exceptionally adverse weather conditions, war and other hostilities, rebellion, revolution, insurrection, military usurpation and civil war, riot, commotion, fire, tornado, strikes, lockouts, or civil disorder, and other events, which could not reasonably have been foreseen by that party at the date of this Agreement, the consequences of which could not reasonably have been avoided by that party, and which prevents that party from performing any of its obligations under this Agreement.

7.3 TERMINATION

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

- (a) if the Consultant does not remedy a failure in the performance of his obligations under the Contract within thirty (30) days after being notified or within any further period as Scheme may have subsequently approved in writing;
- (b) if the Consultant becomes insolvent or bankrupt;
- (c) if, as a result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (d) if the Consultant, in the judgment of Scheme, 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 Scheme, 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 Scheme of the benefits of free and open competition.

(e) if Scheme 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 Scheme, such notice to be given after the occurrence of any of the following events;

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

7.4 PAYMENT UPON TERMINATION

Upon termination of this Contract pursuant to Clauses 2.6.1 or 2.6.2, Scheme shall make the following payments to the Consultant:

- (a) remuneration for Services satisfactorily performed prior to the effective date of termination;

7.5 CONSEQUENCES TERMINATION

- a. The Technical Team Leader shall immediately deliver to the Client all non-copyrighted work for which the consultants were responsible together with any files, correspondence, documents and property belonging to the Client, which may be in the Design Team possession or control.
- b. Termination or expiration of this Agreement for any reason shall be without prejudice to all accrued rights, liabilities and remedies. The parties shall continue to be bound by all the provisions of this Agreement that specifically provide or by their nature are deemed to survive the termination of this Agreement.

7.6 OBLIGATIONS OF THE CONSULTANT

7.6.1 General

- a. 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 Scheme and shall at all times support and safeguard Scheme's legitimate interests in any dealing with Sub Consultants or third The Design Team shall execute the Services as set out in Annexure B to E.
- b. The consultant shall exercise reasonable professional skill, care and diligence in the performance of their respective obligations in terms of this Agreement.
- c. Where the Services assigned to the consultant and/or a specific member of the Design Team include the obligation to certify or to exercise discretion or quasi - arbitrational functions in carrying out the Services, the Design Team shall be obliged to exercise such obligations, discretions and functions in an independent professional manner acting with reasonable skill, care and diligence with regard to all interests involved.
- d. The consultant shall not make any material alteration, or addition to, or omission from the approved design, budget or programme without the consent of the Client and except when required to do so by law or when arising from an emergency. The Design Team shall notify the Client as soon as practicable of the action taken.
- e. The consultant shall co-operate in absolute good faith, comply with and accurately and timorously adhere to all reasonable requests by the Client.
- f. The Consultant shall furnish the services of qualified personnel (named in the Schedule) that are necessary or appropriate for the carrying out and completion of the services. In the event that the Consultant needs to substitute personnel, the consultants undertakes to provide a fully qualified person(s) with similar or higher qualifications acceptable to the Client provided that:

- 7.6.2 The substitute(s) shall be under a contract with the consultants.
- 7.6.3 The Client shall not be obliged to pay any additional fees for the substitute(s).
- 7.6.4 Upon completion of selected milestones (details of which are in the Work Plan attached as Annexure G) or as and when agreed by the parties, the Technical Team Leader shall prepare and submit a report for the Client in a format approved by the Client or on a flash disc in a format usable by the Client.
- 7.6.5 The Consultants be lawfully licensed to execute the services in the Republic of Kenya and in accordance with the applicable laws, rules and regulations of their respective professional association and tax compliant in accordance with the applicable laws of the Republic of Kenya.
- 7.6.6 The Technical Team Leader shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and shall make such material available at its office during the duration of this Agreement and for the duration of six (6) years and/or until pending litigation has been completely and fully resolved, whichever occurs last. The Client shall have access during normal business hours to any and all books, documents, papers and records which are directly related to this Agreement for the purpose of carrying out audits and for checking the amount of work performed by the Design Team.

7.6.7 Conflict of Interests

Scheme's employees, committee members, board members and their relative (spouse and children) are not eligible to participate.

7.6.7.1 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 Scheme 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 Scheme 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 Scheme. Any discounts or commissions obtained by the Consultant in the exercise of such procurement shall be for the account of Scheme.

7.6.7.2 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.

7.6.7.3 Prohibition of Conflicting Activities

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

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

7.7 CONFIDENTIALITY

Confidential information means all documents, software, reports, data, records, forms and other material obtained by the consultant from the client in the course of performing the services;

- That have been marked as confidential;
- Whose confidential nature has been made known by the client to the consultant;
- That due to the character and nature, a reasonable person under like circumstances would treat as confidential.

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 Scheme's business or operations without the prior written consent of Scheme

7.8 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 Scheme, insurance against the risks and for the coverage ; and;

(b) at Scheme's request, shall provide evidence to Scheme showing that such insurance has been taken out and maintained and that the current premiums have been paid.

The Consultant will be responsible for taking out all appropriate insurance cover for Professional Liability and loss of or damage to equipment and property.

7.9 CONSULTANT'S ACTIONS REQUIRING CLIENT'S PRIOR APPROVAL

The Consultant shall obtain Scheme'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").

7.10 REPORTING OBLIGATIONS

The Consultants shall submit to Scheme the reports and documents specified in this RFP in the form, in the numbers, and within the periods set forth in the said Appendix.

7.11 Documents prepared by the Consultant to Be the Property of DB Scheme

All plans, drawings, specifications, designs, reports and other documents and software submitted by the Consultant shall become and remain the property of Scheme and the Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to Scheme 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.

7.12 CONSULTANT'S PERSONNEL

7.12.1 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 are hereby approved by Scheme.

7.12.2 Removal and/or Replacement of Personnel

- (a) Except as Scheme 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 Scheme finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) Scheme has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultant shall, at Scheme's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to Scheme.
- (c) The Consultant shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

7.13 OBLIGATIONS OF KenGen STAFF RETIREMENT BENEFITS SCHEME

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

7.13.2 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 indicated on contract or as the case may be.

7.13.3 Services and Facilities; Schemes shall make available to the Consultant the Services and Facilities needed. Scheme shall make any decisions in respect of the services or any use of the product of the services.

7.14 PAYMENTS TO THE CONSULTANT

7.14.1 Lump-Sum Remuneration The Consultant's total remuneration shall not exceed the Contract Price and shall be a fixed amount all-inclusive of VAT, all staff costs, Sub Consultants' costs, printing, communications, travel, accommodation and the like and all other costs incurred by the Consultant in carrying out the Services described. Except as provided, the Contract Price may only be increased above the amounts stated in contract if the Parties have agreed to additional payments.

7.14.2 Contract Price

Price payable in local currency is set forth in the SC.

7.14.3 Payment for Additional Services. For the purposes of determining the remuneration due for additional services as may be agreed, a breakdown of the lump-sum price is to be provided.

7.14.4 Terms and Conditions of Payment Payments will be made to the account of the Consultant and according to the payment schedule provided. Unless otherwise stated in the SC, the first payment shall be made against the provision by the Consultant of a bank guarantee for the same amount and shall be valid for the period stated in the SC. Any other payment shall be made after any conditions that may be listed in the SC for such payment have been met and the Consultant has submitted an invoice to Scheme specifying the amount due.

7.14.5 Interest on Delayed Payment shall be made within thirty (30) days of receipt of invoice and the relevant documents. If Scheme has delayed payments beyond thirty (30) days after the due date hereof, simple interest shall be paid to the Consultant for each day of delay at a **rate three percentage points above** the prevailing Central Bank of Kenya's average rate for base lending.

7.15 SETTLEMENT OF DISPUTES

7.15.1 Amicable Settlement. The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

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

SECTION VIII: SPECIAL CONDITIONS OF CONTRACT

The Special Conditions of Contract hereinafter abbreviated as SC shall form part of the Conditions of Contract. They are made in accordance with the law and Scheme's guidelines, practices, procedures and working circumstances. They shall amend, add to and vary the GC. The clauses in this section need not therefore, be completed but must be completed by Scheme if any changes to the GC provisions are deemed necessary. Whenever there is a conflict between the GC and SC, the provisions of the SC shall prevail over those in the GC.

8.1 Schedule of Payments

Payments to the consultants shall be in full amount upon submission and acceptance of the Final Report and submission of an invoice.

8.2 Payment Conditions

Payment shall be made in Kenya Shillings unless otherwise specified not later than thirty [30] days following submission by the Consultant of invoices in duplicate to Scheme and payments will be made within thirty (30) days after the due date hereof.

8.3 The Consultant shall be entitled to render invoices taking cognizance of the apportionment of fees in the Schedule.

8.4 The consultant shall be entitled to invoice on the first day of the month for Services rendered in the previous month taking cognizance of the apportionment of fees described in Clause 8.1 above.

8.5 The Client shall make payment by cheque or RTGS to the respective bank account for the consultant

8.6 The consultant shall raise all invoices and requests for reimbursements where applicable in Kenya Shillings. The Client will settle such invoices and requests in Kenya Shillings

8.7 Should the Client dispute any aspect of an invoice; the Client shall give notice with reasons before the due date for payment and shall not delay payment of the undisputed amount.

8.8 The parties hereby acknowledge that the Client is a withholding tax agent for the Kenya Revenue Authority. Pursuant to its obligations as such, the Client shall make payment of the professional fees less the withholding tax payable on the same by the Design Team/Other Consultants. Aside from this obligation, the Client shall make payment without any set-off and herewith waives all rights to

any such set-off