



**Republic of Uganda**  
**Privatization Unit (PU)**  
**Ministry of Finance Planning & Economic Development**

**Bidding Document**  
**for**  
**Procurement of Consultancy services for Legal, Reputational**  
**Technical and Financial Investigative Due Diligence Studies**

**Procurement Reference Number:** PUSRP/SRVCS/13-14/00014

**Procurement Method:** Open International Bidding

**Date of Issue:** October 31, 2013

# Standard Bidding Document

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**BID NOTICE UNDER OPEN BIDDING**

**October 31, 2013**

**Consultancy services to carry out legal, reputational, technical and financial investigative due diligence studies.**

**PUSRP/SRVCS/2013-14/00014**

The Privatization Unit (PU) has allocated funds to be used for the acquisition of consultancy services to carry out legal, reputational, technical and financial investigative due diligence studies. These investigative due diligence studies are to advise the Government of Uganda on the risks associated with potential investors and/or service providers in the specific areas of legal, reputation, operations and financial status of the firms. Consultants may associate to enhance their qualifications.

The Privatization Unit now invites sealed bids from eligible bidders for the provision of the above-mentioned services. Bidding will be conducted in accordance with the open international bidding procedures contained in the Government of Uganda's Public Procurement and Disposal of Public Assets Act, 2003, and is open to all bidders from eligible source countries. Interested eligible bidders may obtain further information from the Privatization Unit – Procurement Office and inspect the bidding documents at their offices on 2<sup>nd</sup> Floor Communications House, Plot 1 Colville Street, Kampala Uganda, between the hours 9:00am to 4:00pm. The bidding documents may also be viewed on the PU website – [www.perds.go.ug](http://www.perds.go.ug)

A complete set of Bidding Documents in ENGLISH may be purchased by interested bidders upon payment of a non-refundable fee of UGX 260,000 (Uganda Shillings Two Hundred and Sixty Thousand) or US\$ 150 (United States Dollars One hundred and Fifty). The method of payment will be CASH PAYMENTS at the PU Accounts Office on 2<sup>nd</sup> Floor Communications House, Kampala or wire transfer directly into the PU Accounts. The document will be available for pick-up by the bidder's representative once payment is accepted. No liability will be accepted for loss or late delivery.

Bids must be delivered to the PU Registry/ Mailroom, on 2<sup>nd</sup> Floor, Communications House, Kampala at or before December 31, 2013, at 2:00pm, EAST AFRICAN TIME. Late bids shall be rejected. Bids will be opened in the presence of the bidders' representatives who choose to attend at the PU Procurement Office (address above) at 2:20pm on December 31, 2013.

**PART 2 – Bidding Procedures**

Section 1 – Instructions to Bidders

Section 2 – Bid Data Sheet

Section 3 – Evaluation Methodology and  
Criteria

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## Section 1. Instructions to Bidders

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## **Section 1. Instructions to Bidders**

### **A. General**

#### **1. Scope of Bid**

- 1.1 The Procuring and Disposing Entity indicated in the Bid Data Sheet (BDS), invites bids for the provision of the Services specified in Section 6, Statement of Requirements to commence on the date indicated on the SOR.
- 1.2 The Instructions to Bidders (ITB) should be read in conjunction with the BDS. The subject and procurement reference number, and where applicable the number of lots of this Bidding Document are provided in the BDS.
- 1.4 Throughout this Bidding Document:
  - (a) the term “in writing” means communicated in written form with proof of receipt;
  - (b) if the context so requires, singular means plural and vice versa;
  - (c) “day” means working day, and “month” means working month
  - (d) the term “Provider” means “Consultant” and vice versa.

#### **2. Source of Funds**

- 2.1 The Procuring and Disposing Entity has an approved budget from Government funds towards the cost of the procurement described in the BDS. The Procuring and Disposing Entity intends to use these funds to place a contract for which this Bidding Document is issued. The allocated budget is stated in the BDS.
- 2.2 Payments will be made directly by the Procuring and Disposing Entity and will be subject in all respects to the terms and conditions of the resulting contract placed by the Procuring and Disposing Entity.

#### **3. Corrupt Practices**

- 3.1 It is the Government of Uganda’s policy to require that Procuring and Disposing Entities, as well as Bidders and Providers, observe the highest standards of ethics during procurement and the execution of contracts. In pursuit of this policy, the Government of Uganda represented by the Public Procurement and Disposal of Public Assets Authority (herein referred to as the Authority);
  - (a) defines, for the purposes of this provision, the terms set forth below as follows:
    - (i) “corrupt practice” includes the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and
    - (ii) “fraudulent practice” includes a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring and Disposing Entity, and includes collusive practices among Bidders prior to or after bid submission designed to establish bid prices at artificial, non competitive levels and to deprive the Procuring and Disposing Entity of the benefits of free and open competition;
  - (b) will reject a recommendation for award if it determines that the Bidder

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- recommended for award has engaged in corrupt or fraudulent practices in competing for the Contract;
- (c) will suspend a Provider from engaging in any public procurement proceeding for a stated period of time, if it at any time determines that the Provider has engaged in corrupt or fraudulent practices in competing for, or in executing, a Government contract.
- 3.2 Furthermore, Bidders shall be aware of the provision stated in Clause 2.2 of the General Conditions of Contract.
- 3.3 In pursuit of the policy defined in Sub-Clause 3.1, the Procuring and Disposing Entity may terminate a contract for services if it at any time determines that corrupt or fraudulent practices were engaged in by representatives of the Procuring and Disposing Entity or of a Bidder or Provider during the procurement or the execution of that contract, without the Procuring and Disposing Entity having taken timely and appropriate action satisfactory to the Government to remedy the situation.
- 3.4 In pursuit of the policy defined in Sub-clause 3.1, the Government of Uganda requires representatives of both the Procuring and Disposing Entities and of Bidders and Providers to adhere to the relevant codes of ethical conduct. Bidders are required to indicate their acceptance of the Code of Ethical Conduct for Bidders and Providers by signing the Bid Submission Sheet.
- 3.4 Any communications between a Bidder and the Procuring and Disposing Entity related to matters of alleged fraud or corruption must be made in writing and addressed to the Accounting Officer of the Procuring and Disposing Entity.
- 4. Eligible Bidders**
- 4.1 A Bidder, and all parties constituting the Bidder, shall meet the following criteria to be eligible to participate in public procurement:
- (a) the bidder has the legal capacity to enter into a contract;
- (b) the bidder is not:
- (i) insolvent;
- (ii) in receivership;
- (iii) bankrupt; or
- (iv) being wound up
- (c) the bidder's business activities have not been suspended;
- (d) the bidder is not the subject of legal proceedings for any of the circumstances in (b); and
- (e) the bidder has fulfilled his or her obligations to pay taxes and social security contributions.
- 4.2 A Bidder may be a natural person, private entity, government-owned entity, subject to ITB Sub-Clause 4.6 or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a joint venture, consortium, or association. In the case of a joint venture, consortium, or association, unless otherwise specified in the BDS, all parties shall be jointly and severally liable.
- 4.3 A Bidder, and all parties constituting the Bidder including sub-contractors and



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key professional staff, shall have the nationality of an eligible country, in accordance with Section 5, Eligible Countries. A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors for any part of the Contract including related works or supplies.

- 4.4 A Bidder shall not have a conflict of interest, as defined in ITB 5. All Bidders found to be in conflict of interest shall be disqualified.
- 4.5 A firm that is under a declaration of suspension by the Authority in accordance with ITB Clause 3.1 (c), at the date of the deadline for bid submission or thereafter, shall be disqualified.
- 4.6 Government-owned enterprises shall be eligible only if they can establish that they are legally and financially autonomous and operate under commercial law.
- 4.7 Bidders shall provide such evidence of their continued eligibility satisfactory to the Procuring and Disposing Entity, as the Procuring and Disposing Entity shall reasonably request.

### **5. Conflict of Interest**

- 5.1 Government policy requires that Consultants provide professional, objective, and impartial advice and at all times hold the Procuring and Disposing Entity's interests paramount, without any consideration for future work, and strictly avoid conflicts with other assignments or their own corporate interests. Consultants shall not be hired for any assignment that would be in conflict with their prior or current obligations to other Procuring and Disposing Entities, or that may place them in a position of not being able to carry out the assignment in the best interests of the Procuring and Disposing Entity.
- 5.2 A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if they:
  - (a) have controlling shareholders in common; or
  - (b) receive or have received any direct or indirect subsidy from any of them; or
  - (c) have the same legal representative for purposes of this bid; or
  - (d) have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder, or influence the decisions of the Procuring and Disposing Entity regarding this bidding process; or
  - (e) submit more than one bid in this bidding process. However, this does not limit the participation of subcontractors in more than one bid, or as Bidders and subcontractors simultaneously.
  - (f) have been engaged, or any of their affiliates have been engaged, by the Procuring and Disposing Entity to provide supplies or works for the same project.
  - (g) may be in conflict with another of their, or their affiliates' assignments by performing this assignment.
- 5.3 Bidders hired to provide consultancy services for the preparation or

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implementation of a project, and any of their affiliates, shall be disqualified from subsequently providing supplies, works or services related to the initial assignment (other than a continuation of the Bidder's earlier consulting services) for the same project.

- 5.4 Consultants may be hired for downstream work, when continuity is essential, in which case this possibility shall be indicated in the BDS and the factors used for the selection of the consultant will take the likelihood of continuation into account. It will be the exclusive decision of the Procuring and Disposing Entity whether or not to have the downstream assignment carried out, and if it is carried out, which consultant will be hired for the purpose.
- 5.5 Any previous or ongoing participation in relation to the assignment by the Bidder, its professional staff, or its affiliates or associates under a contract with the Procuring and Disposing Entity or the Government of Uganda may result in rejection of the bid. Consultants should clarify their situation in that respect with the Procuring and Disposing Entity before preparing the bid.

### **B. Bidding Document**

#### **6. Contents of Bidding Document**

- 6.1 The Bidding Document consists of Parts 1, 2, and 3, which include all the Sections indicated below, and should be read in conjunction with any addenda issued in accordance with ITB Clause 8.

##### **PART 1 Bidding Procedures**

- Section 1. Instructions to Bidders (ITB)
- Section 2. Bid Data Sheet (BDS)
- Section 3. Evaluation Methodology and Criteria
- Section 4. Bidding Forms
- Section 5. Eligible Countries

##### **PART 2 Statement of Requirements**

- Section 6. Statement of Requirements

##### **PART 3 Contract**

- Section 7. General Conditions of Contract (GCC) for the Procurement of Consultancy Services
- Section 8. Special Conditions of Contract (SCC)
- Section 9. Contract Forms

- 6.2 The Bid Notice or any Pre-qualification Notice is not part of the Bidding Document.
- 6.3 Bidders who did not obtain the Bidding Document directly from the Procuring and Disposing Entity will be rejected during evaluation. Where the Bidding Document is obtained from the Procuring and Disposing Entity on a Bidder's behalf, the Bidder's name must be registered with the Procuring and Disposing Entity at the time of sale and issue.
- 6.4 The Bidder is expected to examine all instructions, forms, terms, and requirements in the Bidding Document. Failure to furnish all information or documentation required by the Bidding Document may result in the rejection of

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the bid.

### **7. Clarification of Bidding Document**

- 7.1 A prospective Bidder requiring any clarification of the Bidding Document shall contact the Procuring and Disposing Entity in writing at the Procuring and Disposing Entity's address indicated in the BDS. The Procuring and Disposing Entity will respond in writing to any request for clarification, provided that such request is received no later than the number of days prior to the deadline for bid submission indicated in the BDS. The Procuring and Disposing Entity shall forward copies of its response to all Bidders who have acquired the Bidding Document directly from it, including a description of the inquiry but without identifying its source. Should the Procuring and Disposing Entity deem it necessary to amend the Bidding Document as a result of a clarification, it shall do so following the procedure under ITB Clause 8 and Sub-Clause 24.2.

### **8. Amendment of Bidding Document**

- 8.1 At any time prior to the deadline for submission of bids, the Procuring and Disposing Entity may amend the Bidding Document by issuing addenda.
- 8.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document directly from the Procuring and Disposing Entity.
- 8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Procuring and Disposing Entity may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB Sub-Clause 24.2.

## **C. Preparation of Bids**

### **9. Cost of Bidding**

- 9.1 The Bidder shall bear all costs associated with the preparation and submission of its bid, including any negotiations with or visits to the Procuring and Disposing Entity, and the Procuring and Disposing Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

### **10. Language of Bid**

- 10.1 The medium of communication shall be in writing unless otherwise specified in the BDS.
- 10.2 The bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Procuring and Disposing Entity, shall be written in English unless otherwise specified in the BDS.
- 10.3 Supporting documents and printed literature that are part of the bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in ITB Sub-Clause 10.2, in which case, for purposes of interpretation of the bid, such translation shall govern.

### **11. Preparation of Bids**

- 11.1 Bidders are required to prepare and submit separate technical and financial bids. The bid submission method shall be a one stage-two envelope method. The one stage- two envelope submission method requires a Bidder to submit a single

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envelope containing two separately sealed envelopes, labelled technical and financial bids which are opened on different dates at separate bid openings. A one stage two envelope method shall be used unless otherwise specified in the BDS.

- 11.2 A pre-bid meeting will be held where indicated in the BDS. Attendance at the pre-bid meeting is optional.

### **12. Joint Ventures, Associations and Sub-contracting**

- 12.1 If a Bidder 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) or other Consultants or entities in a joint venture or by sub-contracting as appropriate, unless otherwise specified in the BDS.
- 12.2 Where a pre-qualification was conducted, or this is restricted bidding, Bidders must obtain the approval of the Procuring and Disposing Entity to enter into a joint venture with Consultants not invited for this assignment or other short-listed Bidders.
- 12.3 International Bidders for large contracts are encouraged to seek the participation of national Consultants by entering into a joint venture with, or subcontracting part of the assignment to national Consultants.

### **13. Professional Staff**

- 13.1 For assignments on a staff-time basis, the estimated number of professional staff-months is given in the BDS. The bid shall, however, be based on the number of professional staff-months estimated by the Bidder.
- 13.2 It is desirable that the majority of the key professional staff proposed are permanent employees of the Bidder or have an extended and stable working relationship with the Bidder.
- 13.3 Proposed professional staff must, as a minimum, have the experience indicated in the BDS, preferably working under conditions similar to those prevailing in Uganda.
- 13.4 Alternative professional staff shall not be proposed, and only one curriculum vitae (CV) may be submitted for each position.
- 13.5 As the determination of the Best Evaluated Bid will be based, among other factors, on an evaluation of proposed key professional staff, the Procuring and Disposing Entity expects to award a contract on the basis of the experts and specialists named in the bid. Before any contract negotiations or contract award, the Procuring and Disposing Entity will require assurances that the experts will be actually available.
- 13.6 The Procuring and Disposing Entity will not consider substitutions unless both parties agree that undue delay in the procurement 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 bid without confirming their availability, the bid may be rejected.

### **14. Technical Bid**

- 14.1 The technical bid shall provide the following information using the standard forms contained in Section 4, Bidding Forms:

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- (a) The declarations included in the Technical Bid Submission Sheet (Section 4.1.1);
- (b) A brief description of the Bidder's organisation and an outline of recent experience on assignments of a similar nature (Section 4.1.2). For each assignment, the outline should indicate, inter alia, the profiles of the staff proposed, the duration of the assignment, the contract amount and the Bidder's involvement;
- (c) Any comments or suggestions on the Terms of Reference (Section 4.1.3);
- (d) A description of the methodology for performing the assignment (Section 4.1.4);
- (e) The list of the proposed staff team by specialism, the proposed assignment of tasks for each staff team member and their timing (Section 4.1.5);
- (f) CVs of the proposed professional staff, signed by both the staff member and the authorised representative submitting the proposal (Section 4.1.6). Key information should include the number of years working for the Bidder and the degree of responsibility held in various assignments during the last ten years;
- (g) 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 (Section 4.1.7);
- (h) A description of the Work or Activity Plan for performing the assignment (Section 4.1.8)
- (i) A Bid Security, if required by the ITB Clause 21 (Section 4.1.9);
- (j) Written confirmation authorising the signatory of the bid to commit the Bidder, in accordance with ITB Sub-Clause 22.2;
- (k) Documentary evidence in accordance with ITB Clause 18 establishing the Bidder's eligibility to bid;
- (l) Documentary evidence in accordance with ITB Clause 19 establishing the Bidder's qualifications to perform the contract if its bid is accepted;
- (m) Any additional information requested in the BDS.

14.2 The technical bid shall not include any financial information.

### 15. Financial Bid

15.1 The financial bid shall list all costs associated with the assignment, using the following standard forms contained in Section 4, Bidding Forms:

- (a) Financial Bid Submission Sheet (Section 4.2.1);
- (b) Summary of Bid Price Breakdown of Lump Sum (Section 4.2.2);
- (c) Breakdown of Fees (Section 4.2.3);
- (d) Breakdown of Reimbursables (Section 4.2.4) for staff (foreign and national in the field and at headquarters); such as subsistence (per diem, housing), transportation (international and local for mobilisation and demobilisation), services and equipment (vehicles, office equipment, furniture, and supplies), office rent, insurance;
- (e) Breakdown of Miscellaneous Expenses (Section 4.2.5), printing of

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- documents, etc;
- (f) Any additional information requested in the BDS.
- 15.2 The total bid price shall be broken down into the following cost components using the appropriate forms:
- (a) Fees
  - (b) Reimbursable expenditure
  - (c) Miscellaneous expenses
- 15.3 Where indicated in the BDS, the total bid price shall be broken down into the separate activities indicated in Section 6, Statement of Requirements with the cost elements in ITB Sub Clause 15.2 expressed for each activity.
- 15.4 The financial bid should clearly estimate, as a separate amount, the local taxes (including social security), duties, fees, levies, and other charges imposed under the applicable law, on the Bidder and their personnel (other than nationals of or permanent residents in Uganda), unless the BDS specifies otherwise.
- 15.5 The completed financial bid forms will be used to compile the Breakdown of Contract Price in any resulting Agreement as adjusted if necessary during evaluation or negotiation. The Breakdown of Contract Price will determine prices for any additional Services or costs.
- 15.6 Where commissions and gratuities have or shall be paid by the Bidder in relation to the assignment these shall be listed in the Financial Bid Submission Sheet.

### **16. Bid Prices**

- 16.1 Prices quoted by the Bidder shall be fixed during the Bidder's performance of the Contract and not subject to variation on any account, unless otherwise specified in the BDS. A bid submitted with an adjustable price quotation shall be treated as non responsive and shall be rejected, pursuant to ITB Clause 30. However, if in accordance with the BDS, prices quoted by the Bidder shall be subject to adjustment during the performance of the Contract, a bid submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.

### **17. Currencies of Bid**

- 17.1 Unless otherwise specified in the BDS, bid prices shall be quoted in the following currencies:
- (a) for Services originating in Uganda, the bid prices shall be quoted in Uganda Shillings, unless otherwise specified in the BDS; and
  - (b) for Services originating from outside Uganda, the bid prices shall be quoted in the currency of the expense or in the currency of the Bidder's country.
- 17.2 If a Bidder wishes to be paid in a currency or a combination of currencies different from the one in which it was requested to express its quotation, it shall as part of its offer:
- (a) indicate its requirement to be paid in other currencies, including the amount in each currency or the percentage of the quoted price corresponding to each currency;
  - (b) justify, to the Procuring and Disposing Entity's satisfaction, the requirement to be paid in the currencies requested; and

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- (c) utilise the rate of exchange specified by the Procuring and Disposing Entity to express its offer in the currency required by the Procuring and Disposing Entity. The source, date, and type of exchange rate to be used is indicated in ITB Clause 35.

### **18. Documents Establishing the Eligibility of the Bidder**

18.1 To establish their eligibility in accordance with ITB Clause 4, Bidders shall complete the eligibility declarations in the Technical Bid Submission Sheet, included in Section 4, Bidding Forms and submit the documents required in Section 3, Evaluation Methodology and Criteria.

### **19. Documents Establishing the Qualifications of the Bidder**

19.1 To establish its qualifications to perform the Contract, the Bidder shall submit any evidence specified in Section 3, Evaluation Methodology and Criteria.

### **20. Period of Validity of Bids**

20.1 Bids shall remain valid for the period specified in the BDS after the date of the bid submission deadline prescribed by the Procuring and Disposing Entity. A bid valid for a shorter period shall be rejected by the Procuring and Disposing Entity as non-compliant.

20.2 During this period, the Bidder is expected to keep available the professional staff proposed for the assignment. The Procuring and Disposing Entity will make its best effort to complete the procurement process within this period.

20.3 In exceptional circumstances, prior to the expiration of the bid validity period, the Procuring and Disposing Entity may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a Bid Security is requested in accordance with ITB Clause 21, it shall also be extended for a corresponding period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its bid.

### **21. Bid Security**

21.1 If so stated in the BDS, the Bidder shall furnish as part of its bid, a Bid Security in original form and in the amount and currency specified in the BDS.

21.2 The Bid Security shall be, at the Bidder's option, in any of the following forms:

- (a) a demand guarantee;
- (b) an irrevocable letter of credit;
- (c) a cashier's or certified check; or
- (d) another security indicated in the BDS,

from a reputable source from an eligible country. The Bid Security shall be submitted either using the Bid Security Form included in Section 4, Bidding Forms, or in another substantially similar format. In either case, the form must include the complete name of the Bidder. The Bid Security shall be valid for twenty-eight days (28) beyond the end of the validity period of the bid. This shall also apply if the period for bid validity is extended.

21.3 Any bid not accompanied by a substantially responsive Bid Security, if one is required in accordance with ITB Sub-Clause 21.1 shall be rejected by the

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Procuring and Disposing Entity as non-compliant.

- 21.4 The Bid Security of all Bidders shall be returned as promptly as possible once the successful Bidder has signed the Contract and provided the required Performance Security.
- 21.5 The Bid Security may be forfeited:
- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Bid Submission Sheet, except as provided in ITB Sub-Clause 20.3; or
  - (b) if the successful Bidder fails to:
    - (i) sign the Contract in accordance with ITB Clause 44;
    - (ii) furnish any Performance Security required in accordance with ITB Clause 45; or
    - (iii) accept the correction of its bid price pursuant to ITB Sub-Clause 31.5.

### **22. Format and Signing of Bid**

- 22.1 The Bidder shall prepare one original of each of the documents comprising the technical and the financial bid as described in ITB Clauses 14 and 15 and clearly mark both "ORIGINAL". In addition, the Bidder shall submit copies of both the technical and financial bids, in the number specified in the BDS and clearly mark each of them "COPY". In the event of any discrepancy between the original and the copies, the original shall prevail.
- 22.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorised to sign on behalf of the Bidder. This authorisation shall consist of a written confirmation as specified in the BDS and shall be attached to the bid. The name and position held by each person signing the authorisation must be typed or printed below the signature. All pages of the bid, except for unamended printed literature, shall be signed or initialled by the person signing the bid.
- 22.3 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialled by the person signing the bid.

## **D Submission and Opening of Bids**

### **23. Sealing and Marking of Bids**

- 23.1 The original and all copies of the technical bid shall be placed in a sealed envelope clearly marked "Technical Bid," and the original and all copies of the financial bid in a separate sealed envelope clearly marked "Financial Bid". The envelopes shall be securely sealed in such a manner that opening and resealing cannot be achieved undetected.
- 23.2 The envelopes containing the technical and financial bids shall:
- (a) bear the name and address of the Bidder;
  - (b) be addressed to the Procuring and Disposing Entity in accordance with ITB Clause 24.1; and
  - (c) bear the Procurement Reference Number of this bidding process.
- 23.3 The financial bid shall also bear a warning "Do Not Open with the technical bid".



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- 23.4 The two envelopes shall be placed in an outer envelope which shall be securely sealed in such a manner that opening and resealing cannot be achieved undetected.
- 23.5 The outer envelope shall:
- (a) bear the name and address of the Bidder;
  - (b) be addressed to the Procuring and Disposing Entity in accordance with ITB Sub-Clause 24.1;
  - (c) bear the Procurement Reference number of this bidding process; and
  - (d) bear a warning not to open before the time and date for bid opening, in accordance with ITB Sub-Clause 24.1.
- 23.6 If all envelopes are not sealed and marked as required, the Procuring and Disposing Entity will assume no responsibility for the misplacement or premature opening of the bid.

### **24. Deadline for Submission of Bids**

- 24.1 Bids must be received by the Procuring and Disposing Entity at the address and no later than the date and time indicated in the BDS.
- 24.2 The Procuring and Disposing Entity may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Document in accordance with ITB Clause 8, in which case all rights and obligations of the Procuring and Disposing Entity and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

### **25. Late Bids**

- 25.1 The Procuring and Disposing Entity shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB Clause 24. Any bid received by the Procuring and Disposing Entity after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.

### **26. Withdrawal and Replacement of Bids**

- 26.1 A Bidder may withdraw or replace its bid after it has been submitted at any time before the deadline for submission of bids by sending a written notice, duly signed by an authorised representative, which shall include a copy of the authorisation in accordance with ITB Sub-Clause 22.2. Any corresponding replacement of the bid must accompany the respective written notice. All notices must be:
- (a) submitted in accordance with ITB Clauses 22 and 23 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL” or “REPLACEMENT”; and
  - (b) received by the Procuring and Disposing Entity prior to the deadline prescribed for submission of bids, in accordance with ITB Clause 24.
- 26.2 Bids requested to be withdrawn in accordance with ITB Sub-Clause 26.1 shall be returned unopened to the Bidder.
- 26.3 No bid may be withdrawn or replaced in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the

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Bidder on the Bid Submission Sheet or any extension thereof.

- 26.4 Bids may only be modified by withdrawal of the original bid and submission of a replacement bid in accordance with ITB Sub-Clause 26.1. Modifications submitted in any other way shall not be taken into account in the evaluation of bids.

### **27. Bid Opening**

- 27.1 The Procuring and Disposing Entity shall conduct the bid opening in the presence of Bidders' designated representatives who choose to attend, at the address, date and time specified in the BDS.
- 27.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorisation to request the withdrawal and is read out at the bid opening.
- 27.3 All other outer envelopes including those marked "REPLACEMENT" shall be opened and the technical bids within them opened. Replacement bids shall be recorded as such on the record of the bid opening.
- 27.4 All technical bids shall be opened one at a time, reading out: the name of the Bidder; the presence of a Bid Security, if required; and any other details as the Procuring and Disposing Entity may consider appropriate. No bid shall be rejected at the bid opening except for late bids, in accordance with ITB Sub-Clause 25.1.
- 27.5 Only envelopes that are opened and read out at the bid opening shall be considered further.
- 27.6 The financial bids shall remain sealed until the time and date notified for the opening of the financial bids. Evaluators of technical bids shall have no access to the financial bids until the detailed evaluation is concluded and the result established.
- 27.7 The Procuring and Disposing Entity shall prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder, whether there is a withdrawal and/or replacement and the presence or absence of a Bid Security, where required. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to Bidders upon payment of a fee and displayed on the Procuring and Disposing Entity's Notice Board within one working day from the date of the bid opening.

## **E. Evaluation of Bids**

### **28. Confidentiality**

- 28.1 Information relating to the examination, evaluation, comparison, and post-qualification of bids, and recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with such process until information detailing the Best Evaluated Bidder is communicated to all Bidders.

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28.2 Any effort by a Bidder to influence the Procuring and Disposing Entity in the examination, evaluation, comparison, and post-qualification of the bids or contract award decisions may result in the rejection of its bid.

28.3 Notwithstanding ITB Clause 28.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Procuring and Disposing Entity on any matter related to the bidding process, it should do so in writing.

### **29. Clarification of Bids**

29.1 To assist in the examination, evaluation, comparison and post-qualification of the bids, the Procuring and Disposing Entity may, at its discretion, ask any Bidder for a clarification of its bid. Any clarification submitted by a Bidder that is not in response to a request by the Procuring and Disposing Entity shall not be considered. The Procuring and Disposing Entity's request for clarification and the response shall be in writing. The request for clarification shall be copied to all bidders for information purposes. No change in the price or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring and Disposing Entity in the evaluation of the financial bids, in accordance with ITB Clause 31.4.

### **30. Compliance and Responsiveness of Bids**

30.1 The Procuring and Disposing Entity's determination of a bid's compliance and responsiveness shall be based on the contents of the bid itself.

30.2 A substantially compliant and responsive bid is one that conforms to all the terms, conditions, and requirements of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:

- (a) affects in any substantial way the scope, quality, or performance of the Services specified in the Bidding Document; or
- (b) limits in any substantial way, inconsistent with the Bidding Document, the Procuring and Disposing Entity's rights or the Bidder's obligations under any resulting Contract; or
- (c) if rectified would unfairly affect the competitive position of other Bidders presenting substantially compliant and responsive bids.

30.3 If a bid is not substantially compliant and responsive to the Bidding Document, it shall be rejected by the Procuring and Disposing Entity and may not subsequently be made compliant and responsive by the Bidder by correction of the material deviation, reservation, or omission.

### **31. Nonconformities, Errors, and Omissions**

31.1 Provided that a bid is substantially compliant and responsive, the Procuring and Disposing Entity may waive any non-conformity or omission in the bid that does not constitute a material deviation.

31.2 Provided that a bid is substantially compliant and responsive, the Procuring and Disposing Entity may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the bid related to documentation requirements. Such omission shall not be related to any aspect of the price of the bid. Failure of

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the Bidder to comply with the request may result in the rejection of its bid.

- 31.3 Provided that a bid is substantially compliant and responsive, the Procuring and Disposing Entity shall rectify nonmaterial nonconformities or omissions. To this effect, the bid Price may be adjusted, for comparison purposes only, to reflect the price of the missing or non-conforming item or component.
- 31.4 Provided that the bid is substantially compliant and responsive, the Procuring and Disposing Entity shall correct arithmetic errors on the following basis:
- (a) if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Procuring and Disposing Entity there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;
  - (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
  - (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.
- 31.5 If the Bidder that submitted the best evaluated bid does not accept the correction of errors, its bid shall be rejected and its Bid Security may be forfeited.

### **32. Preliminary Examination of Bids – Eligibility and Administrative Compliance**

- 32.1 The Procuring and Disposing Entity shall examine the legal documentation and other information submitted by Bidders to verify the eligibility of Bidders in accordance with ITB Clause 4.
- 32.2 If after the examination of eligibility, the Procuring and Disposing Entity determines that the Bidder is not eligible, it shall reject the bid.
- 32.3 The Procuring and Disposing Entity shall examine the technical bids to confirm that all documents and technical documentation requested in ITB Clause 14 has been provided, and to determine the completeness of each document submitted.
- 32.4 The Procuring and Disposing Entity shall confirm that the following documents and information have been provided in the technical bid. If any of these documents or information is missing, the offer shall be rejected.
- (a) Technical Bid Submission Sheet, including:
    - (i) a brief description of the services offered; and
    - (ii) the bid validity period;
  - (b) separately sealed financial bid;
  - (c) written confirmation of authorisation to commit the Bidder; and
  - (d) a Bid Security, if applicable.

### **33. Detailed Commercial and Technical Evaluation**

- 33.1 The Procuring and Disposing Entity shall examine the bid to confirm that all terms and conditions specified in the GCC and the SCC have been accepted by

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the Bidder without any material deviation or reservation.

- 33.2 If, after the examination of the terms and conditions, the Procuring and Disposing Entity determines that the bid is not substantially responsive in accordance with ITB Clause 30, it shall reject the bid.
- 33.3 The Procuring and Disposing Entity shall technically evaluate the bids on the basis of the Bidder's responsiveness to the Terms of Reference, applying the evaluation criteria, sub-criteria, and methodology specified in Section 3. A bid 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 any minimum technical score indicated in Section 3.
- 33.4 The bids proceeding to the financial Evaluation shall be determined in accordance with the methodology and criteria specified in Section 3.

### **34. Opening of Financial Bids**

- 34.1 After the detailed evaluation is completed, the Procuring and Disposing Entity shall notify those Bidders whose bids will not pass to the financial comparison, indicating that their financial bids will be returned unopened after completing the evaluation process. The Procuring and Disposing Entity shall simultaneously notify the Bidder(s) whose bids will proceed to the financial comparison indicating the date and time set for opening the financial bid(s). The opening date shall not be sooner than one week after the notification date. The notification will be sent in writing.
- 34.2 The financial bid(s) shall be opened in the presence of the Bidders' representatives who choose to attend. The name of the Bidder, the quality score, and the bid price(s) shall be read aloud and recorded when the financial bid(s) are opened. The Procuring and Disposing Entity shall prepare minutes of the public opening.

### **35. Conversion to Single Currency**

- 35.1 For evaluation and comparison purposes, the Procuring and Disposing Entity shall convert all bid prices expressed in the amounts in various currencies into a single currency, using the selling exchange rate established by the source and on the date twenty eight days prior to the deadline for closing of bids. Should this date be a non working day the selling exchange rate on the date prior to this non working day shall be used for currency conversion or as otherwise specified in the BDS.

### **36. Margin of Preference**

- 36.1 Unless otherwise specified in the BDS, a margin of preference shall not apply. Where a Margin of Preference applies, its application and detail shall be specified in Section 3, Evaluation Methodology and Criteria.

### **37. Financial Comparison of Bids**

- 37.1 The Procuring and Disposing Entity shall financially compare each financial bid that has been opened.
- 37.2 To financially evaluate a bid, the Procuring and Disposing Entity shall only use the criteria and methodologies defined in this Clause and in Section 3, Evaluation Methodology and Criteria. No other criteria or methodology shall be permitted.

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- 37.3 In the calculation of the evaluated price of each bid, the Procuring and Disposing Entity shall include the costs stated in Section 3, Evaluation Methodology and Criteria.
- 37.4 To determine the evaluated price, the Procuring and Disposing Entity shall consider the following:
- (a) the bid price;
  - (b) price adjustment for correction of arithmetic errors in accordance with ITB Sub-Clause 31.4;
  - (c) adjustment for nonconformities and omissions in accordance with ITB Sub-Clause 31.3;
  - (d) adjustments due to the application of a margin of preference, in accordance with ITB Clause 36.

### **38. Determination of Best Evaluated Bid**

- 38.1 The Procuring and Disposing Entity shall compare all substantially compliant and responsive bids to determine the best evaluated bid, in accordance with Section 3, Evaluation Methodology and Criteria.

### **39. Post-qualification of the Bidder**

- 39.1 If so stated in Section 3, the Procuring and Disposing Entity shall determine to its satisfaction whether the Bidder that is selected as having submitted the best evaluated bid is qualified to perform the Contract satisfactorily.
- 39.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB Clause 19, to clarifications in accordance with ITB Clause 29 and the qualification criteria indicated in Section 3, Evaluation Methodology and Criteria. Factors not included in Section 3 shall not be used in the evaluation of the Bidder's qualifications.
- 39.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Procuring and Disposing Entity shall proceed to the next best evaluated bid to make a similar determination of that Bidder's capabilities to perform satisfactorily.
- 39.4 If pre-qualification has been conducted, no post-qualification will be conducted but pre-qualification information shall be verified.

### **40. Negotiations**

- 40.1 Negotiations may be undertaken with the best evaluated Bidder following the evaluation of bids to finalise minor issues of the bid or the logistical arrangements for the assignment. The cost of any negotiations shall be borne by the respective parties themselves.
- 40.2 Negotiations shall not be conducted;
- (a) to substantially change the technical quality or details of the requirement, including the tasks or responsibilities of the Bidder;
  - (b) to materially alter the terms and conditions of contract stated in the solicitation documents;

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- (c) primarily for the purposes of reducing prices; or
- (d) to substantially alter anything which formed a crucial or deciding factor in the evaluation of the bids.

40.3 Unless there are exceptional reasons, the financial negotiations will involve neither the remuneration rates for staff nor other proposed unit rates except in the case of the Quality Based Selection (QBS) evaluation methodology, where the Bidder will be required to provide the information on fee rates stated in Section 3, of the Bidding Document under Breakdown of Fixed Rates.

### **41. Procuring and Disposing Entity's Right to Accept or Reject Any or All Bids**

41.1 The Procuring and Disposing Entity reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders.

## **F. Award of Contract**

### **42. Award Procedure**

42.1 The Procuring Entity shall issue a Notice of Best Evaluated Bidder, place such a Notice on public display for a prescribed period and copy the Notice to all Bidders prior to proceeding with contract award.

42.2 The Procuring and Disposing Entity shall award the Contract to the Bidder whose offer has been determined to be the best evaluated bid, provided that the Bidder is determined to be qualified to perform the Contract satisfactorily and subject to satisfactory negotiations.

### **43. Notification of Award and Letter of Bid Acceptance**

43.1 Prior to the expiration of the period of bid validity, the Procuring and Disposing Entity shall notify the successful Bidder, in writing, that its bid has been accepted by issue of a Letter of Bid Acceptance.

43.2 Until a formal contract is prepared and executed, the Letter of Bid Acceptance shall constitute a binding Contract.

### **44. Signing of Contract**

44.1 Promptly after notification of contract award by the issue of a Letter of Bid Acceptance, the Procuring and Disposing Entity shall send the successful Bidder the Agreement and the Special Conditions of Contract.

44.2 Within twenty-eight (28) days of receipt of the Agreement, the successful Bidder shall sign, date and return it to the Procuring and Disposing Entity.

### **45. Performance Security**

45.1 Within twenty-eight (28) days of the receipt of the Letter of Award of Contract from the Procuring and Disposing Entity, the successful Bidder shall furnish any Performance Security required in accordance with the GCC, using for that purpose the Performance Security Form included in Section 9, Contract Forms, or another form acceptable to the Procuring and Disposing Entity.

45.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the contract award and forfeiture of any Bid Security. In that event, the

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Procuring and Disposing Entity may award the Contract to the next best evaluated Bidder who is determined by the Procuring and Disposing Entity to be qualified to perform the Contract satisfactorily.

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## Section 2 Bid Data Sheet

Instructions to Bidders Reference	Data relevant to the ITB
<b>A. General</b>	
ITB 1.1	The Procuring and Disposing Entity is: <b>Privatization Unit</b>
ITB 1.2	<b>Subject:</b> The subject of the procurement is: <b>Consultancy services to carry out legal, reputational, technical and financial investigative due diligence studies</b>
ITB 1.2	<b>Reference:</b> The Procurement Reference Number is: <b>PUSRP/SRVCS/2013-14/00014</b>
ITB 1.2	<b>Lots:</b> The number and identification of lots comprising this Bidding Document is: <b>N/A</b>
ITB 4.2	<b>Joint Ventures:</b> The individuals or firms in a joint venture, consortium or association will be jointly and severally liable.
ITB 5.4	<b>Downstream work:</b> The Procuring and Disposing Entity does envisage the need for continuity for downstream work.
<b>B. Bidding Document</b>	
ITB 7.1	<p><b>Clarification:</b> For clarification purposes only the Procuring and Disposing Entity's address is:</p> <p>Attention: <b>The Director – Privatization Unit</b>  Street Address: <b>Communications House, Plot 1 Colville Str.</b>  Floor: <b>2<sup>nd</sup> &amp; 11<sup>th</sup> Floor</b>  City: <b>Kampala</b>  PO Box No: <b>10944</b>  Country: <b>Uganda</b>  Telephone: <b>+256 414 705600/20</b>  Facsimile number: <b>+256 414 342403</b>  Email: <b>procure@perds.go.ug</b></p> <p>The Procuring and Disposing Entity will respond to any request for clarification provided that such request is received no later than 10 days prior to the deadline for submission of Bids.</p>
<b>C. Preparation of Bids</b>	
ITB 10.1	<b>Medium:</b> The medium of communications shall be in writing.
ITB 10.2	<b>Language:</b> The language for the bid is English.
ITB 11.1	<b>Submission Method:</b> The bid submission method shall be: a one stage-two envelope submission.
ITB 11.2	<b>Pre-bid meeting:</b> A pre-bid meeting will not be held.

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Instructions to Bidders Reference	Data relevant to the ITB
ITB 12.1	<b>Association:</b> Short-listed Bidders be permitted to associate with other short-listed Bidders: N/A
ITB 13.1	<b>Estimated Man Months:</b> The estimated number of professional staff-months required for the assignment shall be determined on a case-by-case basis.
ITB 13.3	<b>Minimum Experience:</b> Proposed professional staff must have the following minimum experience: <ul style="list-style-type: none"> <li>• <b>At least 5 years work experience in the specialized field (Accounting/ Finance, Legal, Investigations e.t.c)</b></li> <li>• <b>A Bachelor’s Degree in the relevant profession</b></li> <li>• <b>At least 5 years experience in carrying out similar investigative due diligence assignments</b></li> </ul>
ITB 14.1(m)	<b>Additional information in Technical Proposal:</b> Additional information required in the Technical Proposal includes:
ITB 15.1 (f)	<b>Additional information in Financial Proposal:</b> Additional information required in the Financial Proposal includes: <ul style="list-style-type: none"> <li>• <b>Professional fees breakdown for each professional team member proposed</b></li> </ul>
ITB 15.2	<b>Price Breakdown:</b> The Financial Bid must be broken down into the price for each Activity.
ITB 15.3	<b>Taxes:</b> The financial bid should indicate taxes and miscellaneous expenses as a separate amount.
ITB 16.1	<b>Prices:</b> The prices quoted by the Bidder shall be: <b>FIXED for the duration of a given assignment.</b>
ITB 17.1 (a)	<b>Currency:</b> For Services originating in Uganda the currency of the bid shall be: <b>Uganda Shillings</b>
ITB 17.1 (b)	<b>Currency:</b> For Services originating from outside of Uganda the currency of the bid shall be: <b>United States Dollars</b>
ITB 20.1	<b>Validity Period:</b> The bid validity period shall be 180 working days.
ITB 21.1	<b>Bid Security:</b> A Bid Security shall not be required.
ITB 21.2 (d)	<b>Acceptable Securities:</b> Other types of acceptable securities are: <b>N/A</b>
ITB 22.1	<b>Number of Copies:</b> In addition to the Original of the technical and financial bid, the number of copies of each required is: <b>Three (3)</b>
ITB 22.2	<b>Form of Authorisation:</b> The written confirmation of authorisation to sign on behalf of the Bidder shall consist of: <ul style="list-style-type: none"> <li>• <b>For bids originating from outside Uganda – notarised powers of attorney</b></li> <li>• <b>For bids originating from inside of Uganda – registered powers of</b></li> </ul>

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Instructions to Bidders Reference	Data relevant to the ITB
	<b>attorney</b>
<b>D. Submission and Opening of Bids</b>	
<b>ITB 24.1</b>	<b>Bid Submission:</b> For bid submission purposes only, the Procuring and Disposing Entity's address is : Street Address: <b>Communications House, Plot 1 Colville Str.</b> Floor: <b>Mail Registry – 2<sup>nd</sup> Floor,</b> City: <b>Kampala</b> P. O. Box: <b>10944</b> Country: <b>Uganda</b> The deadline for bid submission is: Date: <b>December 31, 2013</b> Time (local time): <b>2:00pm</b>
<b>ITB 27.1</b>	<b>Bid Opening:</b> The bid opening for the technical bid shall take place at: Street Address: <b>Communications House, Plot 1 Colville Str.</b> Floor: <b>Procurement Office – 2<sup>nd</sup> Floor,</b> City: <b>Kampala</b> P. O. Box: <b>10944</b> Country: <b>Uganda</b> The deadline for bid submission is: Date: <b>December 31, 2013</b> Time (local time): <b>2:20pm</b>
<b>E. Evaluation of Bids</b>	
<b>ITB 35.1</b>	<b>Exchange Rate:</b> The currency that shall be used for financial comparison purposes to convert all bid prices expressed in various currencies into a single currency is: <b>Uganda Shillings</b> The source of exchange rate shall be: Bank of Uganda. The date for the exchange rate shall be: <b>December 31, 2013</b>
<b>ITB 36.1</b>	<b>Margin of Preference:</b> A margin of preference shall not apply.

## Section 3. Evaluation Methodology and Criteria

### A Evaluation Methodology

The evaluation methodology to be used shall be Quality and Cost Based Selection methodology. This methodology uses quality as the primary factor and the technical proposals are evaluated without access to the financial bids. The financial comparison is only undertaken once the technical evaluation is concluded.

Quality and Cost Based Selection methodology shall use the following three stages: Preliminary examination, detailed technical and financial comparison as detailed below:

### B Preliminary Examination Criteria

The preliminary examination is to determine whether the bidders are eligible and determine their administrative compliance to the basic instructions and requirements of the solicitation document. The eligibility documents required include:

- (a) a copy of the Bidder's Trading licence or equivalent;
- (b) a copy of the Bidder's Certificate of Registration or equivalent;
- (c) a copy of the Bidders VAT registration or proof of fulfilment of tax obligations or an equivalent document;
- (d) a declaration in the Bid Submission Sheet of nationality of the Bidder;
- (e) statement in the Bid Submission Sheet that the Bidder has no conflict of interest;
- (f) a declaration in the Bid Submission Sheet that the Bidder is not under suspension by the Public Procurement and Disposal of Public Assets Authority (if applicable);
- (g) a copy of the certificate of approval of chambers for the firm (for legal firms)
- (h) Copies of the practicing certificates for any bidding lawyers

The evaluation of Administrative Compliance shall be conducted in accordance with ITB Sub-Clauses 32.3 and 32.4.

### C Detailed Evaluation Criteria

The detailed evaluation assesses the bidder's responsiveness to the terms and conditions of the solicitation documents and the technical quality of the bid against set criteria on a merit point system, to determine the score of each technical bid and determine the best technical bidders. The pass mark for this stage is 70 points.

Please note that surpassing the maximum requirement shall not be awarded extra points.

Technical criteria:	Minimum Requirement:	Maximum requirement	Score:
Years of experience in conducting investigative legal/ technical/ financial due diligence	At least 4 years (for each)	10 years	20 – 30 points
Team members' experience in similar assignments:	At least 4 similar assignments	8 assignments	25 - 35 points
Experience in complex	At least 5	8 negotiations	5 - 10 points

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negotiations on behalf of clients	negotiations		
Adequacy of proposed methodology:	Fair	Good	10 - 20 points
Work experience in the region (East Africa)	No	Yes	5 points (full points awarded on the yes-no basis)

### D Financial Comparison Criteria

This stage shall compare the financial bids of those bids that passed the technical stage. The financial bids are expected to provide a breakdown of their fixed and varying costs for the duration of this framework contract according to Section 4. For evaluation purposes, the fixed costs that shall be assessed will be the professional fees and any other fees that are not reimbursable or miscellaneous expenses.

The lowest bid shall be weighted 30 points and all bids compared as a percentage of the lowest bid. The technical and financial bids shall be combined and ranked and the bidder with the highest marks shall be determined as the best evaluated bidder.

#### Determination of Financial Score

The financial evaluation shall be concluded in accordance with ITB Clause 37.

To determine financial scores for each bid, the lowest priced bid shall be given a financial score of 100, and other bids shall, by application of the following formulae be given a score proportionate to this:

$$Sf = 100 \times Fm/F \quad \text{in which:}$$

$Sf$  denotes the financial score of the bid under consideration;

$Fm$  is the price of the lowest price bid that passed the technical evaluation;

$F$  denotes the price of the bid under consideration.

#### Determination of Combined Technical and Financial Scores

Bids will be ranked according to their combined technical ( $St$ ) and financial ( $Sf$ ) scores using the weightings.

$$S = (St \times T\%) + (Sf \times P\%) \quad \text{where } S \text{ is the combined technical and financial score}$$

The weights given to the scores of the Technical and Financial Bids are:

T = 70 denotes the weight given to the Technical Bid; and

P = 30 denotes the weight given to the Financial Bid;

## **Section 4 Bidding Forms**

### **Table of Contents**

#### **4.1 Technical Bid – Standard Forms**

- 4.1.1 Technical Bid Submission Sheet.
- 4.1.2 Bidder's References.
- 4.1.3 Comments and Suggestions on the Terms of Reference.
- 4.1.4 Description of the Methodology for performing the Assignment.
- 4.1.5 Team Composition and Task Assignments.
- 4.1.6 Format of Curriculum Vitae for Proposed Professional Staff.
- 4.1.7 Estimated Time Schedule for Professional Staff.
- 4.1.8 Activity (Work) Schedule.

#### **4.2 Financial Bid - Standard Forms**

- 4.2.1 Financial Bid Submission Sheet.
- 4.2.2 Summary of Bid Price (Breakdown of Lump Sum).
- 4.2.3 Breakdown of Fees.
- 4.2.4 Breakdown of Reimbursables.
- 4.2.5 Breakdown of Miscellaneous Expenses.

Website copy

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*[This Bid Submission Sheet should be on the letterhead of the Bidder and should be signed by a person with the proper authority to sign documents that are binding on the Bidder. It should be included by the Bidder in its bid]*

### 4.1.1 Technical Bid Submission Sheet

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

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

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

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Document, including Addenda No.: *[insert the number and issuing date of each Addenda]*;
- (b) We offer to provide the services in conformity with the Bidding Document for the *[insert a brief description of the Services]*;
- (c) We hereby submit our bid which includes this technical bid, and a financial bid sealed under a separate envelope;
- (d) Our bid shall be valid for a period of *[specify the number of workingr days]* days from the date fixed for the bid submission deadline in accordance with the Bidding Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (e) If our bid is accepted, we commit to obtain a Performance Security in accordance with the Bidding Document in the amount of *[insert amount and currency in words and figures of the performance security]* for the due performance of the Contract *[Delete if no Performance Security is required]*;
- (f) We, including any associates, Joint Venture partners or Sub contractors for any part of the contract, have nationals from eligible countries *[insert the nationality of the Bidder, including that of all parties that comprise the Bidder, if the Bidder is a Joint Venture, consortium or association, and the nationality of each subcontractor]*;
- (g) We undertake to abide by the Code of Ethical Conduct for Bidders and Providers during the procurement process and the execution of any resulting contract;
- (h) We are not participating, as Bidders, in more than one bid in this bidding process;
- (i) We do not have any conflict of interest and have not participated in the preparation of the original project for the Procuring and Disposing Entity;
- (j) We, our affiliates or subsidiaries—including any subcontractors or Providers for any part of the contract—have not been suspended by the Public Procurement and Disposal of Public Assets Authority in Uganda from participating in public procurement;
- (k) Our Proposal is binding upon us, subject to modifications agreed during any contract negotiations, and we undertake to negotiate on the basis of the staff proposed in our Bid;
- (l) We understand that this Bid, together with your written acceptance thereof included in your Letter of Bid Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- (m) We understand that you are not bound to accept the lowest bid or any other bid that you may receive;
- (n) We, including any subcontractors or providers for any part of the contract resulting from

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this procurement process, are eligible to participate in public procurement in accordance with ITB Clause 4.1

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

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

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

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

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing]*

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*[The information requested is required in the format provided below and should be included by the Bidder in its bid]*

### 4.1.2 Bidder's References

#### Relevant Services Carried Out in the Last Five Years That Best Illustrate Experience

Using the format below, provide information on each assignment for which the Bidder, either individually as a corporate entity or as one of the major companies within an association, was legally contracted.

Bidder's Name: \_\_\_\_\_

Assignment Name:		Country:
Location within Country:		Professional Staff Provided by Bidder (profiles):
Name of Client:		Nº of Staff:
Address:		Nº of Staff-Months; Duration of Assignment:
Start Date (Month/Year):	Completion Date (Month/Year):	Approx. Value of Services (in Current US\$):
Name of Associated Consultants, If Any:		Nº of Months of Professional Staff Provided by Associated Consultants:
Name of Senior Staff (Project Director/Coordinator, Team Leader) Involved and Functions Performed:		
Narrative Description of Project:		
Description of Actual Services Provided by Your Staff:		

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*[The information requested is required in the format provided below and should be included by the Bidder in its bid. If none, include form and state "None"]*

### **4.1.3 Comments and Suggestions on the Terms of Reference**

*[The information requested is required in the format provided below and should be included by the Bidder in its bid]*

### **4.1.4 Description of the Methodology for performing the Assignment**

*[The information requested is required in the format provided below and should be included by the Bidder in its bid]*

### **4.1.5. Team Composition and Task Assignments**

<b>1. Technical/Managerial Staff</b>		
<b>Name</b>	<b>Position</b>	<b>Task(s)</b>

<b>2. Support Staff</b>		
<b>Name</b>	<b>Position</b>	<b>Task(s)</b>

## Part 2

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*[The information requested is required in the format provided below and should be included by the Bidder in its bid]*

### **4.1.6 Format of Curriculum Vitae for Proposed Professional Staff**

Proposed Position: \_\_\_\_\_

Name of Bidder: \_\_\_\_\_

Name of Staff: \_\_\_\_\_

Profession: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Years with Firm: \_\_\_\_\_ Nationality: \_\_\_\_\_

Membership in Professional Societies: \_\_\_\_\_

Detailed Tasks Assigned: \_\_\_\_\_

**Key Qualifications: *(Relevant to the Assignment)***

**Education: *(& Professional Qualifications)***

**Employment Record:**

**Languages:**

## Part 2

**Certification:**

I, the undersigned, certify that to the best of my knowledge and belief, these data correctly describe me, my qualifications, and my experience.

\_\_\_\_\_ Date: \_\_\_\_\_  
*[Signature of staff member]* *Day/Month/Year*  
 Full name of staff member: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_  
*[Authorised representative of the firm]* *Day/Month/Year*  
 Full name of authorised representative: \_\_\_\_\_

*[The information requested is required in the format provided below and should be included by the Bidder in its bid. Bidders may reproduce this format in landscape format if more practical but are responsible for its accurate reproduction.]*

### 4.1.7 Estimated Time Schedule for Professional Staff

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

Full-time: \_\_\_\_\_ Part-time: \_\_\_\_\_

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Signature: \_\_\_\_\_  
(Authorised Representative)  
Full Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Bidder: \_\_\_\_\_

*[The information requested is required in the format provided below and should be included by the Bidder in its bid. Bidders may reproduce this format in landscape format if more practical but are responsible for its accurate reproduction]*

### 4.1.8 Activity (Work) Schedule

#### A. Technical Input

	<i>[1st, 2nd, etc. are months from the start of assignment.]</i>											
	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	5 <sup>th</sup>	6 <sup>th</sup>	7 <sup>th</sup>	8 <sup>th</sup>	9 <sup>th</sup>	10 <sup>th</sup>	11 <sup>th</sup>	12 <sup>th</sup>
Activity (Work)												

#### B. Completion and Submission of Reports and other Deliverables

Reports	Date
1. Inception Report	
2. Interim Progress Reports	
(a) First Status Report	
(b) Second Status Report	
(c)	

## Part 2

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3.	Draft Final Report	
4.	Final Report	
5.	Other Deliverables	

### 4.2.1 Financial Bid Submission Sheet

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

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

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

We, the undersigned, declare that:

- (a) The total price of our Bid is: *[insert the total bid price in words and figures, indicating the various amounts and the respective currencies]*, inclusive of local taxes;
- (b) The following commissions, gratuities, or fees have been paid or are to be paid with respect to the bidding process or execution of the Contract: *[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity. If none has been paid or is to be paid, indicate "none"]*;

Name and address of Recipient	Purpose Reason	Currency and Amount

Name: \_\_\_\_\_ *[insert complete name of person signing the bid]*

In the capacity of \_\_\_\_\_ *[insert legal capacity of person signing the bid]*

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

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

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing]*

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*[Bidders may reproduce this sheet in landscape format if more practical but are responsible for its accurate reproduction. State currency or currencies of bid. If three currencies are not used state "nil" as appropriate. If the BDS requires the bid price to be quoted separately for different Activities, complete this form as a "Summary of Bid Price" for each activity and complete one overall Summary of prices.]*

### 4.2.2 Summary of Bid Price (Breakdown of Lump Sum)

Cost item	Currency	Amount(s)
Fees – currency 1		
Fees – currency 2		
Fees – currency 3		
Reimbursables – currency 1		
Reimbursables – currency 2		
Reimbursables – currency 3		
Miscellaneous Expenses –currency 1		
Miscellaneous Expenses –currency 2		
Miscellaneous Expenses –currency 3		
Local taxes		
Total Lump Sum/Cost Estimate – currency 1		
Total Lump Sum/Cost Estimate – currency 2		
Total Lump Sum/Cost Estimate – currency 3		

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### 4.2.3 Breakdown of Fees

*[Bidders may reproduce this sheet in landscape format if more practical but are responsible for its accurate reproduction. The Bidder should complete a separate form for each currency or add currency columns and show up to three totals. Complete this form for the total bid or for each activity as indicated in the ITB]*

**State activity name or total bid:** \_\_\_\_\_

Name	Position	Input Qty	Unit (Days/months etc)	Rate	Total
<b>Grand Total</b>					

### 4.2.4 Breakdown of Reimbursables

*[Bidders may reproduce this sheet in landscape format if more practical but are responsible for its accurate reproduction. The Bidder should complete a separate form for each currency or add currency column and show up to three totals. Complete this form for the total bid or for each activity as indicated in the ITB]*

**State activity name or total bid:** \_\_\_\_\_ **Currency:** \_\_\_\_\_

Description of Cost	Quantity	Unit of Measure	Unit Price	Total Price



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<b>Grand Total</b>				

Notes Local transportation costs are not to be included if local transportation is being made available by the Procuring and Disposing Entity. Similarly, the project site, office rent/accommodations/clerical assistance costs are not to be included if being made available by the Procuring and Disposing Entity.

**4.2.5 Breakdown of Miscellaneous Expenses**

*[Bidders may reproduce this sheet in landscape format if more practical but are responsible for its accurate reproduction. The Bidder should complete a separate form for each currency or add currency column and show up to three totals. Complete this form for the total bid or for each activity as indicated in the ITB].*

State activity name or total bid: \_\_\_\_\_ Currency: \_\_\_\_\_

Description of Cost	Quantity	Unit of Measure	Unit Price	Total Price
<b>Grand Total</b>				

## **Section 5. Eligible Countries**

All countries are eligible except countries subject to the following provisions.

A country shall not be eligible if:

- (a) as a matter of law or official regulation, the Government of Uganda prohibits commercial relations with that country, provided that the Government of Uganda is satisfied that such exclusion does not preclude effective competition for the provision of services required; or
- (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Government of Uganda prohibits the provision of Services from that country or any payments to persons or entities in that country.

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**PART 3 - Statement of Requirements**

Section 6 – Statement of Requirements

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## **Section 6 - Statement of Requirements**

### **Provision of Investigative Due Diligence Services**

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#### **1.0 BACKGROUND:**

The Government of the Republic of Uganda (“GOU” or the “Government”) contracts numerous investors and/or service providers (entities) to support its various activities. GOU needs to vet or verify such entities using the scanty information Government would have received from the potential providers’ expressions of interest.

GOU, therefore, wishes to procure the services of an experienced firm (under a framework contract) to carry out discreet investigative due diligence on investors/service providers who will have responded to the invitations or submitted unsolicited proposals for projects for which the GOU is desirous of engaging with the private sector. These investigative assignments will be contracted out to the winning firm as and when need arises.

#### **2.0 OBJECTIVES OF THE PROCURING A DUE DILIGENCE CONSULTANT:**

- 2.1 To secure a strategic partner on a framework contract with technical and financial capacity to undertake the requisite Discreet Investigative Due Diligence studies;
- 2.2 To ensure that prior to conclusion of any sale, investment and/ or other agreements, GOU has established the credibility, reputation, financial standing and experience of the applicants/proposers and their shareholders and promoters.
- 2.3 Minimize the risk of GOU contracting investors, consultants and/or any other party, without credibility and requisite skills.

#### **3.0 SCOPE OF THE DUE DILIGENCE SERVICES:**

The Consultant shall be required to undertake Discreet investigative due diligence covering the following major aspects: reputational, legal, technical and financial standing and associated risks about the entities and advise GOU. Being an investigation, the GOU shall not be expected to provide information about the entity to be investigated other than the basics (name and address). The Consultant is required to apply its own resources and skills to collect the information necessary to guide the GOU make informed decisions vis-à-vis risks identified. This investigation shall involve a search of information available in the public domain as well as inquiries from private sources with knowledge of the entity.

The detailed scope of work to be covered under the various areas is described below:

##### **3.1 Investigative Reputational/Legal Due Diligence:**

Investigate and establish the reputational standing of the entity, their principals/major shareholders, associates and or partners that are being fronted to undertake the investments. More specifically, this background investigation should provide information on:

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- a) The registered company name, business name (if different), place of registration and registration number, and address of registered office, certificate of incorporation, Articles & Memorandum of Association/Constitution;
- b) Names and addresses of the entity's shareholders holding in excess of 10% of its issued share capital, stating in each case the number and class of shares held;
- c) A list of the stock exchange(s) where the entity's shares are traded;
- d) Names and addresses of all the entity's directors, stating in each case job title (if any) and other directorships and business interests;
- e) Names of all the entity's subsidiaries, stating in each case shareholders (including the number and class of shares held), place of incorporation, main address, names and addresses of directors, and principal business and countries of activity;
- f) A list of countries in which the entity currently operates, have investments or raises funds (or has done so within the last three years);
- g) Details of any material litigation in which the entity has been involved during the last five years;
- h) Details of any sanctions imposed on the entity by governments and/or agencies during the last three years;
- i) Details of any bankruptcy proceedings, re-organizations for the benefit of creditors or similar proceedings in the last three years; and
- j) Names and addresses of the entity's ultimate beneficial owners (i.e., individuals and/or publicly owned corporations), stating in the case of each owner beneficially owning 10% or more of the firm/company;
  - (i) (if a corporation) its place of incorporation, main address, names and addresses of directors, and principal business and countries of activity; and
  - (ii) each entity which the owner controls or in which the owner directly or indirectly has a majority interest, its place of incorporation, main address, names and addresses of directors, and principal business and countries of activity.
- k) Details of tax compliance in countries of operations, including any indications of illicit activities.

### 3.2 Investigative Technical Due Diligence:

The Consultant shall undertake a technical investigative due diligence on the entity and its business operations to the extent that will enable reasonable identification of strengths and weaknesses. The services shall cover the following among others:

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- (a) Review their operations in order to identify the key and essential managerial, technical and operational expertise and give an opinion whether the entity has the capacity to undertake the envisaged assignment;
- (b) The entity's current involvement in similar projects and whether the company has owned or managed a similar project in the last five years.
- (c) Identify, classify and describe major risks, consequences, and potential impacts associated with the gaps above.
- (d) Critically examine the entity's governance, management and organization structures, and assess the entity's adequacy and ability to undertake the task under consideration by the GOU.

### 3.3 Investigative Financial Due Diligence:

The Consultant shall undertake discreet background searches on the financial status of the entity and shareholders of the subject entity to determine its financial standing:

- a) Assess the financial condition of the company and whether it is able to pay the purchase price/entry fees and meet its investment proposals.
- b) Assess the financial standing of the shareholders of the entity and its capability based on discreetly researched reports for the last three years.
- c) Assess any risk facing the entity that could substantially affect its successful implementation and conclusion of the project.
- d) Assess the financial standing of the shareholders of the entity and its capability based on discreetly researched reports for the last three years.
- e) Investigate and report whether there are any undisclosed matters relating to:
  - Hidden ownership interests
  - Undisclosed capital investments
  - Unpaid settlements or liens
  - Reputation, credit profile and credibility in the marketplace
  - Ethical issues and conduct in the last five years

### 4.0 REPORTING SCHEDULE AND DELIVERABLES

The Consultant will report to the Director of Privatization Unit who shall coordinate all assignments under this contract on behalf of GOU. All information, inquiries and reports emanating from the Consultant shall be presented to Director PU for onward transmission to the relevant GOU agencies. The validity, authenticity and accuracy of information and reports so generated shall remain the responsibility of the Consultant.

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In executing this framework contract, the Consultant will be called upon from time to time to make specific quotations for a task at hand but the costing of the tasks shall be based on the fixed rates that will have been agreed to in the source framework contract. These fixed rates should apply to the professional fees for the proposed team. However, the reimbursable and miscellaneous expenses may be varied according to the assignments.

The Consultant shall submit the following reports within the prescribed timeframe:

<b>Report</b>	<b>Delivery Period</b>
1. Draft Findings of the Legal, Technical and Financial aspects described in the Scope of Work.	Fifteen (15) working days from date of contracting for a specific assignment.
2. Draft Final Report on Findings on the Legal, Technical and Financial aspects of the Due Diligence on the entities and shareholders	Seven (7) working days from date of approval of the Draft Report
3. Final Report	Within five (5) days after approval of the Draft Final report

### **5.0 KEY PERSONNEL:**

The Consultant shall provide a list of appropriate key personnel in the format presented below and attach the relevant CVs. In addition, the Consultant should provide information on the professional accreditation and technical competency of the proposed team. This team composition should be such that it underscores the core competencies of each member both in knowledge and experience and relevance to this contract. The team should be diverse enough to cover the major aspects of the investigative due diligence.

<i>Name</i>	<i>Proposed Position</i>	<i>Job Specification</i>	<i>Experience</i>
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**PART 4 – Contract Forms**

Section 7 – General Conditions of Contract for the  
Procurement of Supplies

Section 8 – Special Conditions of Contract

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## Section 7: General Conditions of Contract for the Procurement of Consultancy Services

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## **Section 7: General Conditions of Contract for the Procurement of Consultancy Services (June 2003)**

### **A General Provisions**

#### **1 Definitions**

- 1.1 The headings and titles of these General Conditions of Contract shall not limit, alter or affect the meaning of the Contract.
- 1.2 Unless the context otherwise requires, the following words and terms shall have the meanings assigned to them:
- (a) “Contract” means the Agreement entered into between the Parties and includes the Contract Documents.
  - (b) “Contract Documents” means the documents listed in GCC 4.1, including all attachments, appendices, and all documents incorporated by reference therein, and shall include any amendments thereto.
  - (c) “Contract Price” means the sum stated in the Agreement representing the maximum, total or estimated amount payable for the provision of the Services.
  - (d) “Day” means working day. “Month” means calendar month.
  - (e) “Eligible Countries” means the countries and territories eligible as listed in the SCC.
  - (f) “Foreign Currency” means any currency other than Uganda Shillings.
  - (g) “GCC” means the General Conditions of Contract.
  - (h) “Local Currency” means Uganda Shillings.
  - (i) “Lump sum contract” means a contract under which the Services are performed for an all inclusive fixed total amount.
  - (j) “Member,” where the Provider 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 authorised to act on all the Members behalf in exercising all the Providers’ rights and obligations towards the Procuring and Disposing Entity under the Contract and named in the SCC.
  - (k) “Party” means the Procuring and Disposing Entity or the Provider, as the case may be, and “Parties” means both of them.
  - (l) “Personnel” means persons engaged by the Provider or by any Sub-contractor as employees and assigned to the performance of the Services or any part thereof; “Foreign Personnel” means such persons who at the time of being so engaged had their domicile outside Uganda; “Local Personnel” means such persons who at the time of being so engaged had their domicile inside Uganda; and “Key Personnel” means those Personnel that are regarded by the Provider as essential to the successful completion of the Services and related tasks.
  - (m) “Procuring and Disposing Entity” means the entity purchasing the Services, as specified in the Agreement.
  - (n) “Provider” means the natural person, private or government entity, or a combination of the above, whose bid to perform the Contract has been accepted by the Procuring and Disposing Entity and is named as such in the Agreement, and includes the legal successors or permitted assigns of the Provider.

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- (o) “SCC” means the Special Conditions of Contract.
  - (p) “Services” means the professional or specialised Services to be performed by the Provider as described in the contract and shall include consultancy Services.
  - (q) “Subcontractor” means any natural person, private or government entity, or a combination of the above, including its legal successors or permitted assigns, to whom any part of the Services to be provided is subcontracted by the Provider.
  - (r) “Time based contract” means a contract under which the Services are provided on the basis of fixed fee rates and payments are made on the basis of time actually spent.
- 1.3 The word “Government” shall mean the Government of the Republic of Uganda.
- 1.4 If the context so requires it, singular means plural and vice versa.
- 1.5 Nothing contained herein shall be construed as establishing a relation of master and servant or of principal and agent between the Procuring and Disposing Entity and the Provider.

## 2 Corrupt Practices

- 2.1 It is the Government of Uganda’s policy to require that Procuring and Disposing Entities, as well as Bidders and Providers under Government financed contracts, observe the highest standards of ethics during the procurement and execution of such contracts. In pursuit of this policy, the Government of Uganda:
- a) defines, for the purposes of this provision, the terms set forth below as follows:
    - (i) “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and
    - (ii) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring and Disposing Entity, and includes collusive practices among Bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the Procuring and Disposing Entity of the benefits of free and open competition;
  - b) will suspend a firm, either indefinitely or for a stated period of time, from being awarded a Government funded contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a Government funded Contract.
- 2.2 The Provider shall permit the Government of Uganda to inspect the Provider’s accounts and records relating to the performance of the Provider and to have them audited by auditors appointed by the Government of Uganda, if so required by the Government.
- 2.3 In pursuit of the policy defined in GCC Clause 2.1, the Procuring and Disposing Entity may terminate a Contract in accordance with GCC Clause 15 if it at any time determines that corrupt or fraudulent practices were engaged in by representatives of the Procuring and Disposing Entity or of a Provider, during the procurement or the execution of that contract.

## 3 Confidential Information

- 3.1 The Procuring and Disposing Entity and the Provider shall keep confidential and shall not without the written consent of the other party hereto, divulge to any third

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party any reports or data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Provider may furnish to its Subcontractor such documents, data, and other information it receives from the Procuring and Disposing Entity to the extent required for the Subcontractor to perform its work under the Contract, in which event the Provider shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Provider under the Contract.

- 3.2 The Procuring and Disposing Entity shall not use such documents, data, and other information received from the Provider for any purposes unrelated to the contract. Similarly, the Provider shall not use such documents, data, and other information received from the Procuring and Disposing Entity for any purpose other than the design, procurement, or other work and Services required for the performance of the Contract.
- 3.3 The obligations of a party under GCC Clauses 3.1 and 3.2 shall however not apply to information that:
- (a) the Procuring and Disposing Entity or Provider need to share with any institution participating in the financing of the Contract;
  - (b) now or hereafter enters the public domain through no fault of that party;
  - (c) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
  - (d) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
- 3.4 The provisions of GCC Clauses 3.1 and 3.2 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Services or any part thereof.
- 3.5 The provisions of GCC Clauses 3.1 and 3.2 shall survive for a period of two years from completion or termination, for whatever reason, of the Contract.

### **B The Contract**

#### **4 Contract Documents**

- 4.1 The documents forming the Contract shall be interpreted in the following order of priority:
- (a) Agreement,
  - (b) any Letter of Bid Acceptance,
  - (c) Provider's Bid as amended by clarifications,
  - (d) Special Conditions of Contract,
  - (e) General Conditions of Contract,
  - (f) Statement of Requirements,
  - (g) any other document listed in the SCC as forming part of the Contract.
- All documents forming the Contract are intended to be correlative, complementary, and mutually explanatory.
- 4.2 No amendment, modification or other variation of the Contract shall be valid unless an Amendment to Contract is made in writing, is dated, expressly refers to the

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- Contract, and is signed by a duly authorised representative of each party thereto.
- 4.3 If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.
- 4.4 Any action required or permitted to be taken, and any document required or permitted to be executed, under the Contract by the Procuring and Disposing Entity or the Provider may be taken or executed by the authorised representatives specified in the SCC.
- 4.5 The Contract constitutes the entire agreement between the Procuring and Disposing Entity and the Provider and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

### **5 Governing Law**

- 5.1 The Contract shall be governed by and interpreted in accordance with the laws of Uganda unless otherwise stated in the SCC.

### **6 Language**

- 6.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Provider and the Procuring and Disposing Entity, shall be written in English unless specified otherwise in the SCC. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified, in which case, for purposes of interpretation of the Contract, this translation shall govern.
- 6.2 The Provider shall bear all costs of translation to the governing language and all risks of the accuracy of such translation.

### **7 Notices**

- 7.1 Any notice, request or consent required or permitted to be given or made pursuant to the Contract shall be in writing. Any such notice shall be deemed to have been given when delivered to the authorised representative of the Party at the address specified in the SCC.
- 7.2 A Party may change its address for notice hereunder by giving the other Party notice of such change.

### **8 Commencement of Services**

- 8.1 The Provider shall commence the Services within the time period specified in the SCC, after the date of the Letter of Bid Acceptance or the date of the Agreement whichever is the earlier.
- 8.2 If the Services have not commenced in accordance with GCC Sub-Clause 8.1 either Party may, by not less than four weeks' written notice to the other Party, declare the Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.

### **9 Assignment**

- 9.1 The Procuring and Disposing Entity or the Provider shall not assign, in whole or in part, their obligations under this Contract, except with the prior written consent of the other party.

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### **10 Subcontracting**

- 10.1 The Provider shall request approval in writing from the Procuring and Disposing Entity for all subcontracts awarded under the Contract that are not included in the Contract. Subcontracting shall in no event relieve the Provider of any of its obligations, duties, responsibilities or liability under the Contract.
- 10.2 Subcontracts shall comply with the provisions of GCC Clauses 2 and 34.

### **11 Contract Amendments**

- 11.1 The Procuring and Disposing Entity may at any time request the Provider through notice in accordance with GCC Clause 7, to make changes to the Contract by agreement to an Amendment of Contract.
- 11.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Provider's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Completion Date, or both, and the Contract shall accordingly be amended. Any claims by the Provider for adjustment must be asserted within twenty-eight days from the date of the Provider's receipt of the Procuring and Disposing Entity's notice.
- 11.3 Prices to be charged by the Provider for any related or additional Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties.
- 11.4 An Amendment to Contract shall be signed by both Parties following agreement to the proposed changes required and shall make adjustments for the impact on the Contract Price, completion period or any other condition.

### **12 Change in Laws**

- 12.1 Unless otherwise specified in the Contract, if after the date of the Bidding Document, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in Uganda or where the Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Completion Date and/or the Contract Price, then such Completion Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Provider has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for by a contracts amendment or a price adjustment in accordance with GCC Clause 31.

### **13 Force Majeure**

- 13.1 For the purposes of the Contract, "Force Majeure" shall mean an event or events which are beyond the reasonable control of a Party, and which makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.
- 13.2 Force Majeure shall not include:
- (a) any event which is caused by the negligence or intentional action of a Party or such Party's Sub-contractors or agents or employees; nor

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- (b) any event which a diligent Party could reasonably have been expected to both:
    - (i) take into account from the effective date of the Contract; and
    - (ii) avoid or overcome in the carrying out of its obligations.
  - (c) insufficiency of funds or failure to make any payment required hereunder.
- 13.3 The failure of a Party to fulfil any of its obligations hereunder shall not be considered to be a breach of, or default under, the Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of the Contract.
- 13.4 A Party affected by an event of Force Majeure shall take all reasonable measures to:
- (a) remove such Party's inability to fulfil its obligations hereunder with a minimum of delay; and
  - (b) minimise the consequences of any event of Force Majeure.
- 13.5 A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- 13.6 During the period of their inability to perform the Services as a result of an event of Force Majeure, the Provider shall be entitled to continue to be paid under the terms of the Contract as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Services after the end of such period.
- 13.7 Not later than thirty (30) days after the Provider, as the result of an event of Force Majeure, has become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing appropriate measures to be taken in the circumstances.

## 14 Suspension of Assignment

- 14.1 The Procuring and Disposing Entity may, by written notice of suspension of the assignment to the Provider, suspend all payments to the Provider hereunder if the Provider fails to perform any of its obligations under the Contract, including the carrying out of the Services, provided that such notice of suspension shall:
- (a) specify the nature of the failure; and
  - (b) request the Provider to remedy such failure within a period not exceeding thirty days
- after receipt by the Provider of such notice of suspension.

## 15 Termination

- 15.1 The Procuring and Disposing Entity may, by not less than thirty days written notice of termination to the Provider (except in the event listed in paragraph (f) below, for which there shall be a written notice of not less than sixty days), such notice to be given after the occurrence of any of the events specified in GCC Clause 15.1 (a) to (g), terminate the Contract if:
- (a) the Provider fails to remedy a failure in the performance of its obligations as specified in a notice of suspension of assignment pursuant to GCC Clause 14 within thirty days of receipt of such notice of suspension of assignment or



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- within such other period agreed between the Parties in writing;
- (b) the Provider becomes, or if any of the Provider's Members becomes, insolvent or bankrupt or enters into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary other than for a reconstruction or amalgamation;
  - (c) the Provider fails to comply with any final decision reached as a result of arbitration proceedings pursuant to GCC Clause 17 hereof;
  - (d) the Provider submits to the Procuring and Disposing Entity a statement which has a material effect on the rights, obligations or interests of the Procuring and Disposing Entity and which the Procuring and Disposing Entity knows to be false;
  - (e) the Provider is unable as the result of Force Majeure, to perform a material portion of the Services for a period of not less than sixty days;
  - (f) the Procuring and Disposing Entity, in its sole discretion and for any reason whatsoever, decides to terminate the Contract; or
  - (g) the Provider, in the judgment of the Procuring and Disposing Entity, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.
- 15.2 The Provider may, by not less than thirty days written notice to the Procuring and Disposing Entity, such notice to be given after the occurrence of any of the events specified in GCC Clause 15.2 (a) to (d) terminate the Contract if:
- (a) the Procuring and Disposing Entity fails to pay any money due to the Provider pursuant to the Contract and not subject to dispute pursuant to GCC Sub-Clause 26.1 within forty-five days after receiving written notice from the Provider that such payment is overdue;
  - (b) the Procuring and Disposing Entity is in material breach of its obligations pursuant to the Contract and has not remedied the same within forty-five days (or such longer period as the Provider may have subsequently approved in writing) following the receipt by the Procuring and Disposing Entity of the Provider's notice specifying such breach;
  - (c) the Provider is unable as the result of Force Majeure, to perform a material portion of the Services for a period of not less than sixty days; or
  - (d) the Procuring and Disposing Entity fails to comply with any final decision reached as a result of arbitration pursuant to GCC Clause 19 hereof.
- 15.3 If either Party disputes whether an event specified GCC Clauses 15.1 or GCC Clause 15.2 has occurred, such Party may, within forty-five days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to GCC Clause 17 and the Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.
- 16 Cessation of Rights and Obligations or Services**
- 16.1 Upon termination of the Contract pursuant to GCC Clause 15, or upon completion of the Services pursuant to GCC Clause 18 hereof, all rights and obligations of the Parties hereunder shall cease, except:
- (a) such rights and obligations as may have accrued on the date of termination or completion;

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- (b) the obligation of confidentiality set forth in GCC Clause 3;
  - (b) the Provider's obligation to permit inspection, copying and auditing of their accounts and records set forth in GCC Sub-Clause 2.2; and
  - (c) any right which a Party may have under the Governing Laws.
- 16.2 Upon termination of the Contract by notice of either Party to the other pursuant to GCC Clause 7, the Provider shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Provider and equipment and materials furnished by the Procuring and Disposing Entity, the Provider shall proceed as provided, by GCC Clause 43.

### 17 Settlement of Disputes

- 17.1 The Procuring and Disposing Entity and the Provider shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract or interpretation thereof.
- 17.2 If the parties fail to resolve such a dispute or difference by mutual consultation within twenty-eight days from the commencement of such consultation, either party may require that the dispute be referred for resolution in accordance with the Arbitration Law of Uganda or such other formal mechanism specified in the SCC.

### 18 Completion Period of the Services

- 18.1 The period for the completion of the Services shall be specified in the SCC. The completion period shall be counted from the date of the commencement of the Services.

## C Obligations of the Procuring and Disposing Entity

### 19 Provision of Information and Assistance

- 19.1 The Procuring and Disposing Entity shall supply the Provider with any information or documentation at its disposal which may be relevant to the performance of the contract. Such documents shall be returned to the Procuring and Disposing Entity at the end of the period of the Contract.
- 19.2 The Provider may request the assistance of the Procuring and Disposing Entity to obtain copies of laws, regulations, and information on local customs, orders or bylaws of Uganda, which may affect the Provider in the performance of its obligations under the contract. The Procuring and Disposing Entity may charge the Provider for such assistance.
- 19.3 Subject to the provisions of the laws and regulations on foreign labour in Uganda, the Procuring and Disposing Entity shall make every effort to facilitate the Provider in obtaining all required visas and permits, including work and residence permits, for the personnel whose services the Provider and the Procuring and Disposing Entity consider necessary as well as residence permits for their families.
- 19.4 The Procuring and Disposing Entity shall issue to its employees, agents and representatives all such instructions as may be necessary or appropriate to facilitate the prompt and effective performance of the Services.
- 19.5 The Procuring and Disposing Entity shall use its best efforts to ensure that the Government shall:
- (a) facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Personnel and their eligible

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dependents;

- (b) exempt the Provider and the Personnel from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity according to the Laws of Uganda;
  - (c) provide to the Provider, Sub-contractors and Personnel any such other assistance as may be specified in the SCC.
- 19.6 The Procuring and Disposing Entity shall make available to the Provider and the Personnel, for the purposes of the Services and free of any charge, the services, facilities and property described in the Statement of Requirements at the times and in the manner specified in the Statement of Requirement.

### **20 Provision of Counterpart Staff**

- 20.1 If so provided in the SCC, the Procuring and Disposing Entity shall make available to the Provider, as and when provided in the Contract, and free of charge, such counterpart Personnel to be selected by the Procuring and Disposing Entity, with the Provider's advice, as shall be specified in the Contract. Counterpart Personnel shall work under the exclusive direction of the Provider. If any member of the counterpart Personnel fails to perform adequately any work assigned to such member by the Provider which is consistent with the position occupied by such member, the Provider may request the replacement of such member, and the Procuring and Disposing Entity shall not unreasonably refuse to act upon such request.
- 20.2 If counterpart Personnel are not provided by the Procuring and Disposing Entity to the Provider where specified in the Contract, the Procuring and Disposing Entity and the Provider shall agree:
- (a) how the affected part of the Services shall be carried out; and
  - (b) the additional payments or time, if any, to be granted by the Procuring and Disposing Entity to the Provider as a result thereof.
- 20.3 Counterpart personnel are not liable for the poor performance of the service provider.

## **D Payment**

### **21 Contract Price and Currency**

- 21.1 The Contract Price shall be expressed as a specific amount or amounts in the Agreement representing:
- (a) the total amount payable for a Lump Sum contract; or
  - (b) the maximum amount for a Time Based contract.
- 21.2 Payments shall be made in the currency or currencies of the contract price, unless otherwise specified in the SCC.
- 21.3 The Contract Price may only be changed as provided for in GCC Clause 11.

### **22 General Payment Procedure**

- 22.1 The provisions of this Clause apply to all contracts subject to these GCC. Additional provisions at GCC Clause 29 or 30 shall apply as follows:
- (a) the provisions of GCC Clause 29, Option 1 shall apply to Lump Sum contracts;
  - (b) the provisions of GCC Clause 30, Option 2 shall apply to Time Based contracts.
- The type of contract applicable is stated in the SCC.
- 22.2 In consideration of the Services performed by the Provider under the Contract, the Procuring and Disposing Entity shall make to the Provider such payments in such

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manner as is provided by the Contract.

### **23 Invoice Procedure**

- 23.1 The Procuring and Disposing Entity shall receive payment requests made by submission of invoices and all supporting documents and shall certify such invoices for payment. The Procuring and Disposing Entity shall certify or reject such requests for payment within five days from receipt.
- 23.2 Where such payment requests are rejected, the Procuring and Disposing Entity shall promptly advise the Provider of the reasons for rejection.
- 23.2 The Procuring and Disposing Entity shall not unreasonably withhold any undisputed portion of a request for payment. The Procuring and Disposing Entity shall notify the Provider of the inadmissibility of a request for payment due to an error, discrepancy, omission or any other reason so that the Parties may resolve such error, discrepancy, omission or other fault and agree a solution to enable payment of the corrected request for payment. Only such portion of the request for payment that is inadmissible may be withheld from payment. Should any discrepancy be found to exist between actual payment made and costs authorised to be incurred by the Provider, the Procuring and Disposing Entity may add or subtract the difference from any subsequent payments.

### **24 Documentation to Support Invoices**

- 24.1 Invoices shall be accompanied by the documentary requirements specified in the SCC.

### **25 Payment Schedule**

- 25.1 All payments under the Contract shall be made in accordance with the payment schedule specified in the SCC.
- 25.2 Unless otherwise stated in the SCC, where any payment is made in advance of any deliverables as an advance payment, the payment shall be made against the provision by the Provider of a bank guarantee for the same amount, and shall be valid for the period stated in the SCC.
- 25.3 Should the advance payment guarantee cease to be valid and the Provider fails to re-validate it, a deduction equal to the amount of the advance payment may be made by the Procuring and Disposing Entity from future payments due to the Provider under the contract.
- 25.4 If a Contract is terminated for any reason, the guarantee securing the advance may be invoked in order to recover the balance of the advance still owed by the Provider.

### **26 Payment Terms**

- 26.1 Unless otherwise specified in the SCC, payments shall be made by the Procuring and Disposing Entity, no later than thirty days after submission and certification of a request for payment by the Provider.

### **27 Final Statement and Payment**

- 27.1 A final payment shall be made against submission by the Provider of a final statement, identified as such and approved by the Procuring and Disposing Entity. The final statement shall be deemed approved by the Procuring and Disposing Entity ninety working days after receipt by the Procuring and Disposing Entity unless the Procuring and Disposing Entity, within this period, gives written notice to the Provider specifying in detail deficiencies in the Services, the deliverables or the final statement.
- 27.2 Any amount which the Procuring and Disposing Entity has paid or caused to be paid which is in excess of the amounts actually payable in accordance with the provisions of the Contract, shall be reimbursed by the Provider to the Procuring and Disposing Entity

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within thirty days after receipt by the Provider of a notice thereof. Any such claim by the Procuring and Disposing Entity for reimbursement must be made within twelve months after receipt by the Procuring and Disposing Entity of a final statement approved by the Procuring and Disposing Entity.

- 27.3 Upon termination of the Contract pursuant to GCC Clauses 15, the Procuring and Disposing Entity shall make the following payments to the Provider:
- (a) fees for Services satisfactorily performed prior to the effective date of termination;
  - (b) except in the case of termination pursuant to GCC Clauses 15.1(a) to 15.2(b) reimbursement of any reasonable cost incidental to the prompt and orderly termination of the Contract including the cost of the return travel of the Personnel and their eligible dependents.

### **28 Accounts**

- 28.1 All payments under the Contract shall be made to the accounts of the Provider specified in the Invoice.

### **29 Option 1 - Payments in respect of Lump Sum remunerated Contracts**

- 29.1 The Contract Price shall be a fixed total lump-sum including all Personnel costs, Sub-contractors' costs, printing, communications, travel, accommodation, and all other costs to be incurred by the Provider in carrying out the Services described in the Contract.
- 29.2 Separate invoices shall be submitted for fees and for reimbursable expenditure.
- 29.3 Fees for the Personnel shall be claimed in accordance with the documentary requirement stated in GC Clause 24.
- 29.4 Reimbursable expenditures shall include costs actually and reasonably incurred by the Provider in the performance of the Services as specified in the Contract.

### **30 Option 2 - Payments in respect of Time Based remunerated Contracts**

- 30.1 The Provider's total remuneration shall not exceed the Contract Price stated in the Agreement.
- 30.2 The Provider shall notify the Procuring and Disposing Entity as soon as cumulative charges incurred for the Services have reached 80% of the Contract Price.
- 30.3 Separate invoices shall be submitted for fees and for reimbursable expenditure.
- 30.4 Fees for the Personnel shall be claimed in accordance with the documentary requirement stated in GC Clause 24.
- 30.5 Fees for the Personnel shall be determined on the basis of time actually spent by the Personnel in the performance of the Services after the date determined in accordance with the Commencement Date of the Services or such other date as the Parties may agree in writing. Personnel time spent in the performance of the Services shall include time for necessary travel via the most direct route, at the rates detailed in the Contract and subject to such additional provisions as are set forth, in the SCC.
- 30.6 Reimbursable expenditures shall include costs actually and reasonably incurred by the Provider in the performance of the Services and are specified in the Contract.

### **31 Price Adjustments**

- 31.1 Prices charged by the Provider for the Services performed under the Contract shall not vary from the prices quoted in the Contract, with the exception of any price adjustments authorised in the SCC.

### **32 Taxes and Duties**

- 32.1 Except as otherwise specifically provided in the SCC, the Provider shall bear and pay all

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taxes, duties, and levies imposed on the Provider, by all municipal, state or national government authorities, both within and outside Uganda, in connection with the provision of the Services to be supplied under the Contract.

- 32.2 If any tax exemptions, reductions, allowances or privileges may be available to the Provider in Uganda, the Procuring and Disposing Entity shall use its best efforts to enable the Provider to benefit from any such tax savings to the maximum allowable extent.
- 32.3 For the purpose of the Contract, it is agreed that the Contract Price specified in the Agreement is based on the taxes, duties, levies, and charges prevailing at the date twenty-eight (28) days prior to the date of bid submission in Uganda (called “tax” in this clause). If any tax rates are increased or decreased, a new tax is introduced, an existing tax is abolished, or any change in interpretation or application of any tax occurs in the course of the performance of the Contract, which was or will be assessed on the Provider, its Subcontractors, or their employees in connection with performance of the Contract, an equitable adjustment to the Contract Price shall be made to fully take into account any such change by addition to or reduction from the Contract Price, as the case may be.

### **E Obligations of the Provider**

#### **33 Obligations of the Provider**

- 33.1 The Provider shall perform the Services under the contract with due care, efficiency and diligence, in accordance with best professional practices.
- 33.2 The Provider shall submit to the Procuring and Disposing Entity the reports and other deliverables, specified in the Contract.
- 33.3 The Provider shall respect and abide by all laws and regulations in force and shall ensure that its personnel, their dependants, and its local employees also respect and abide by all such laws and regulations. The Provider shall indemnify the Procuring and Disposing Entity against any claims and proceedings arising from any infringement by the Provider, its employees and their dependants of such laws and regulations.
- 33.4 The Provider shall treat all documents and information received in connection with the contract as confidential in accordance with GCC Clause 3.
- 33.5 The Provider shall obtain the Procuring and Disposing Entity’s prior approval in writing before taking any of the following actions:
- a) appointing any member of the Personnel that are not named in the Contract;
  - b) entering into a subcontract that is not specified in the Contract, for the performance of any part of the Services, it being understood that the Provider shall remain fully liable for the performance of the Services by the Sub-contractor and its Personnel pursuant to the Contract;
  - (c) any other action that may be specified in the SCC.

#### **34 Eligibility**

- 34.1 The Provider and its Subcontractors shall have the nationality of an eligible country. A Provider or Subcontractor shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.
- 34.2 The Provider and its Sub-contractors shall provide Personnel who shall be citizens of eligible countries.

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### 35 Joint Venture, Consortium or Association

- 35.1 Unless otherwise specified in the SCC, if the Provider is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Procuring and Disposing Entity for the fulfilment of the provisions of the Contract. The joint venture, consortium, or association shall designate one party to act as the Member in Charge with authority to bind the joint venture, consortium, or association and to act on their behalf in exercising all the Provider's rights and obligations towards the Procuring and Disposing Entity under the Contract, including without limitation the receiving of instructions and payments from the Procuring and Disposing Entity.
- 35.2 The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Procuring and Disposing Entity. Any alteration of the composition of the joint venture, consortium or association without the prior written consent of the Procuring and Disposing Entity shall be considered to be a breach of contract.

### 36 Code of Conduct

- 36.1 The Provider shall at all times act loyally and impartially and as a faithful adviser to the Procuring and Disposing Entity in accordance with the rules and/or codes of conduct of its profession. It shall, in particular, refrain from making any public statements concerning the Services without the prior approval of the Procuring and Disposing Entity, and from engaging in any activity which conflicts with its obligations towards the Procuring and Disposing Entity under the contract. It shall not commit the Procuring and Disposing Entity in any way whatsoever without its prior written consent, and shall, where appropriate, make this obligation clear to third parties.
- 36.2 For the period of execution of the contract, the Provider and its personnel shall respect human rights and undertake not to offend the political, cultural and religious practices prevailing in Uganda.

### 37 Conflict of Interests

- 37.1 The Provider shall refrain from any relationship which would compromise its independence or that of its Personnel. If the Provider fails to maintain such independence the Procuring and Disposing Entity may terminate the contract in accordance with the provision contained in the GCC Clause 15.
- 37.2 The Provider shall after the conclusion or termination of the Contract, be limited in its role in connection with the project and shall not be permitted any further involvement in the provision or procurement of works, supplies or further Services other than a continuation of the Services, for any project resulting from or closely related to the Services.
- 37.3 The Provider shall not engage, and shall cause their Personnel and Subcontractors not to engage, either directly or indirectly, in any of the following activities:
- a) during the term of the Contract, any business or professional activities in Uganda which would conflict with the activities assigned to them under the Contract; and
  - b) after the termination of the Contract, such other activities as may be specified in the SCC.
- 37.4 The payments to the Provider under the contract shall constitute the only income or benefit it may derive in connection with the contract and neither it nor its personnel shall accept any commission, discount, allowance, indirect payment or other consideration in connection with, or in relation to, or in discharge of, its obligations

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under the contract.

- 37.5 The Provider shall not have the benefit, whether directly or indirectly, of any royalty, gratuity or commission in respect of any patented or protected article or process used in or for the purposes of the contract or the project, without the prior written approval of the Procuring and Disposing Entity.

### **38 Indemnification**

- 38.1 At its own expense, the Provider shall indemnify, protect and defend, the Procuring and Disposing Entity, its agents and employees, from and against all actions, claims, losses or damage arising from any act or omission by the Provider in the performance of the Services, including any violation of any legal provisions, or rights of third parties, in respect of patents, trade marks and other forms of intellectual property such as copyrights.
- 38.2 At its own expense, the Provider shall indemnify, protect and defend the Procuring and Disposing Entity, its agents and employees, from and against all actions, claims, losses or damages arising out of the Provider's failure to perform its obligations provided that:
- (a) the Provider is notified of such actions, claims, losses or damages not later than 30 days after the Procuring and Disposing Entity becomes aware of them;
  - (b) the ceiling on the Provider's liability shall be limited to an amount equal to the contract value, but such ceiling shall not apply to actions, claims, losses or damages caused by the Provider's wilful misconduct;
  - (c) the Provider's liability shall be limited to actions, claims, losses or damages directly caused by such failure to perform its obligations under the contract and shall not include liability arising from unforeseeable occurrences incidental or indirectly consequential to such failure.
- 38.3 The aggregate liability of the Provider to the Procuring and Disposing Entity shall not exceed the total contract value or such other amount specified in the SCC.
- 38.4 The Provider shall have no liability whatsoever for actions, claims, losses or damages occasioned by:
- a) the Procuring and Disposing Entity omitting to act on any recommendation, or overriding any act, decision or recommendation, of the Provider, or requiring the Provider to implement a decision or recommendation with which the Provider disagrees or on which it expresses a serious reservation; or
  - b) the improper execution of the Provider's instructions by agents, employees or independent contractors of the Procuring and Disposing Entity.
- 38.5 The Provider shall remain responsible for any breach of its obligations under the contract for such period after the Services have been performed as may be determined by the law governing the contract.

### **39 Insurance to be Taken Out by the Provider**

- 39.1 The Provider shall take out, maintain and shall cause any Sub-contractors to take out and maintain, at their own cost insurance coverage against the risks and on terms and conditions approved by the Procuring and Disposing Entity as shall be specified in the SCC.
- 39.2 The Provider shall at the Procuring and Disposing Entity's request, provide evidence to the Procuring and Disposing Entity showing that such insurance has been taken out and maintained.



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### **40 Accounting, Inspection and Auditing**

- 40.1 The Provider shall keep accurate and systematic accounts and records in respect of the Services hereunder, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time charges and costs.

## **F Performance of the Services**

### **41 Scope of Services**

- 41.1 The Services to be provided shall be as specified in the Statement of Requirements in the Contract.
- 41.2 The Services shall be performed at such locations as are specified in the Contract and, where the location of a particular task is not so specified, at such locations, whether in Uganda or elsewhere, as the Procuring and Disposing Entity may approve.

### **42 Specifications and Designs**

- 42.1 The Consultant shall prepare all specifications and designs using accepted and generally recognised systems acceptable to the Procuring and Disposing Entity and taking into account the latest design criteria.
- 42.2 The Consultant shall ensure that any specifications and designs and all documentation relating to procurement of Works, Supplies and Services are prepared on an impartial basis so as to promote competitive tendering.

### **43 Property of Deliverables**

- 43.1 All reports and data such as maps, diagrams, drawings, plans, designs, specifications, calculations and software containing data and information compiled, prepared and furnished by the Provider for the Procuring and Disposing Entity under the Contract shall become and remain the absolute property of the Procuring and Disposing Entity. The Provider shall deliver all such documents to the Procuring and Disposing Entity on completion or termination of the Contract. The Provider may retain a copy of such reports, data and software and any restrictions about the future use of such reports, data or software shall be specified in the SCC.
- 43.2 Equipment and materials made available to the Provider, or purchased by the Provider with funds provided by the Procuring and Disposing Entity, shall be the property of the Procuring and Disposing Entity. Upon completion of the Contract, the Provider shall make available an inventory of such items and shall dispose of such equipment and materials in accordance with the Procuring and Disposing Entity's instructions. While in possession of such equipment and materials, the Provider shall ensure the items are insured at the expense of the Procuring and Disposing Entity in an amount equal to their full replacement value.

### **44 Extensions of Time**

- 44.1 If at any time during performance of the Contract, the Provider or its subcontractors should encounter conditions impeding timely completion of Services pursuant to GCC Clause 13, the Provider shall promptly notify the Procuring and Disposing Entity in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Provider's notice, the Procuring and Disposing Entity may at its discretion extend the Provider's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.

### **45 Performance Security**

- 45.1 If so stated in the SCC, the Provider shall, within twenty eight days of the notification of

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contract award, provide a Performance Security for the due performance of the Contract in the amount and currency specified in the SCC or in a freely convertible currency acceptable to the Procuring and Disposing Entity.

- 45.2 The proceeds of the Performance Security shall be payable to the Procuring and Disposing Entity as compensation for any loss resulting from the Provider's failure to complete its obligations under the Contract.
- 45.3 The Performance Security shall be in one of the forms stipulated by the Procuring and Disposing Entity in the SCC.
- 45.4 The Performance Security shall be discharged by the Procuring and Disposing Entity and returned to the Provider not later than twenty-eight days following the date of completion of the Provider's performance obligations under the Contract.

### **46 Provider's Personnel**

- 46.1 The Provider shall employ and provide such qualified and experienced Personnel and Sub-contractors as are required to carry out the Services. The Provider shall be responsible for the quality of the Personnel.
- 46.2 If required by the Contract, the Provider shall ensure that a resident project manager, acceptable to the Procuring and Disposing Entity, takes charge of the performance of the Services.
- 46.3 The Services shall be carried out by the Personnel specified in the Contract for the period of time indicated therein. The title, job description, and estimated period of engagement of each of the Provider's Key Personnel shall be listed in the Contract.
- 46.4 The Key Personnel and Sub-contractors listed by title/position and by name in the Contract are hereby approved by the Procuring and Disposing Entity. In respect of other Key Personnel which the Provider proposes to use in the carrying out of the Services, the Provider shall submit to the Procuring and Disposing Entity for review and approval a copy of their biographical data. If the Procuring and Disposing Entity does not object in writing stating the reasons for the objection, within twenty-one days from the date of receipt of such biographical data, such Key Personnel shall be deemed to have been approved by the Procuring and Disposing Entity.
- 46.5 The Provider may with the prior approval of the Procuring and Disposing Entity make minor adjustments to the periods of input for Key Personnel as may be appropriate to ensure the efficient performance of the Services, provided that such adjustments do not cause the payments made under the contract to exceed the Contract Price.
- 46.6 Adjustments with respect to the periods of engagement of Key Personnel which shall cause the total contract payments to exceed the Contract Price shall only be made with the Procuring and Disposing Entity's written approval.
- 46.7 If additional work is required beyond the Statement of Requirements specified in the Contract, the estimated periods of engagement of Key Personnel set forth in the Contract may be increased by agreement in writing between the Procuring and Disposing Entity and the Provider, provided that any such increase shall not, except as otherwise agreed in writing, cause payments under the Contract to exceed the Contract Price specified in the Agreement.

### **47 Working Hours of the Personnel**

- 47.1 Working hours and holidays for Key Personnel are set forth in the Contract. To account for travel time, foreign Personnel carrying out Services inside Uganda shall be deemed to have commenced or finished work in respect of the Services such number of days before their arrival in or after their departure from Uganda.

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47.2 The Key Personnel shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave unless otherwise specified in the SCC. Except as specified in the Contract, the Provider's remuneration shall be deemed to cover these items. All leave to be allowed to the Personnel is included in the staff-months of service set forth in the Contract. Any taking of leave by Personnel shall be subject to the prior approval by the Provider who shall ensure that absence for leave purposes will not delay the progress and adequate supervision of the Services.

### **48 Replacement of Personnel**

48.1 The Provider shall not make changes in the Personnel without the prior written approval of the Procuring and Disposing Entity. The Provider must on its own initiative propose a replacement in the following cases:

- a) in the event of death, illness for an extended period or in the event of accident of a member of Personnel.
- b) if it becomes necessary to replace a member of Personnel for any other reasons beyond the Provider's control (e.g. resignation, etc.).

48.2 The Procuring and Disposing Entity may request a replacement with a written and justified request if in the course of performance, it considers that a member of the Personnel does not perform its duties satisfactorily under the contract.

48.3 Where a member of Personnel must be replaced, the replacement must possess at least equivalent qualifications and experience, and the remuneration to be paid for the replacement cannot exceed that paid for the member of Personnel who has been replaced. Where the Provider is unable to provide a replacement with equivalent qualifications and/or experience, the Procuring and Disposing Entity may either decide to terminate the contract, if the proper performance of it is jeopardised, or, if it considers that this is not the case, accept a replacement with lesser qualifications, provided that the fees of the latter are reduced to reflect the appropriate remuneration level.

48.4 Additional costs incurred in the replacement of Personnel are the responsibility of the Provider. Where the expert is not replaced immediately and it is some time before the new expert takes up its functions, the Procuring and Disposing Entity may ask the Provider to assign to the project temporary personnel pending the arrival of the new personnel, or to take other measures to compensate for the temporary absence of the missing personnel. The Procuring and Disposing Entity shall make no payment for the period associated with the Personnel's absence while the position is not filled.

### **49 Medical and Insurance arrangements**

49.1 For the period of execution of the contract, the Provider shall obtain medical insurance for its Personnel. The Procuring and Disposing Entity shall be under no liability in respect of the medical expenses of the Provider.

## Section 8 Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

GCC clause reference	Special Conditions of Contract
	The Procurement Reference Number is: <b>PUSRP/SRVCS/2013-14/00014</b>
<b>GCC 1.2 (e)</b>	The Eligible Countries are those listed in Section 5 of the Bidding Document.
<b>GCC 1.2(j)</b>	<b>Member in Charge:</b> The Member in Charge is:
<b>GCC 4.1(g)</b>	<b>Contract Documents:</b> Other documents forming part of the contract are: <ul style="list-style-type: none"> <li>• <b>The best-evaluated bid</b></li> <li>• <b>Any other documents deemed relevant by the procuring entity</b></li> </ul>
<b>GCC 4.4</b>	<b>Authorised Representatives:</b> The Authorised Representatives are: for the Procuring and Disposing Entity: <b>The Director, Privatization Unit</b> for the Provider:
<b>GCC 5.1</b>	<b>Law:</b> The Contract shall be governed by the laws of Uganda.
<b>GCC 6.1</b>	<b>Language:</b> The language of the contract shall be English.
<b>GCC 7.1</b>	<b>Notices:</b> The addresses for Notices are: for the Procuring and Disposing Entity: Street Address: <b>Communications House, Plot 1 Colville Str.</b> Floor: <b>11<sup>th</sup> Floor</b> City: <b>Kampala</b> PO Box No: <b>10944</b> Country: <b>Uganda</b> Telephone: <b>+256 312 325600/ 414 705600/1</b> Facsimile number: <b>+ 256 414 342403/4</b> Email: <b>procure@perds.go.ug</b> For the Provider Street Address: Floor/Room number: Town/City: Postal Code/PO Box No: Country: Telephone: Facsimile number:

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GCC clause reference	Special Conditions of Contract
	Email:
GCC 8.1	<b>Commencement:</b> The Period within which the Services shall have commenced is immediately after the framework contract is signed.
GCC 17.2	<b>Dispute settlement:</b> The formal mechanism for the resolution of disputes shall be <b>amicable Settlement of the Dispute using and exhausting all available possibilities, failure which the matter shall be submitted to an Arbitrator chosen by the Head of the Commercial Court of Uganda, at Kampala. Arbitration shall be under the Arbitration Act of Uganda</b>
GCC 18.1	<b>Completion of the Services:</b> The Services shall be performed for a period of <b>twelve (12) months</b> but may be renewable upon satisfactory performance after every twelve months, for a maximum period of thirty-six (36) months. This will be subject to confirmation of funding by the Accounting Officer, before the actual renewal.
GCC 19.5(c)	<b>Further Assistance:</b> The Procuring and Disposing Entity shall provide the following further assistance: <b>N/A</b>
GCC 20.1	<b>Counterpart Staff:</b> Counter Staff will not be provided
GCC 21.2	<b>Payment currencies:</b> Payments shall be made in the currency or currencies of the contract price.
GCC 22.1	<b>The Contract is</b> a framework contract.
GCC 24.1	<b>Documentation for Payment:</b> The following documentation shall be required to support invoices requesting payments: <ul style="list-style-type: none"> <li>• <b>A copy of the approved final report</b></li> <li>• <b>For all reimbursable expenses, evidence of the spend (e.g. receipts or boarding passes for travel e.t.c)</b></li> </ul>
GCC 25.1	<b>Payment Schedule:</b> The payment schedule shall be: <b>100% upon clearance from the contract manager.</b>
GCC 25.2	<b>Advance Payment Guarantee:</b> An Advance Payment Guarantee is not required.
GCC 26.1	<b>Payment Period:</b> Payment shall be made by the Procuring and Disposing Entity within 45 days of receipt and certification of the invoice accompanied by supporting documents.
GCC 30.5	<b>Additional provisions:</b> The additional provisions for Personnel time are:
GCC 31.1	<b>Price variation:</b> The Contract Price including the professional rates is not subject to price variation for fluctuations in market, commodity or other variable rates.
GCC 32.1	<b>Taxes and duties:</b> The Provider shall bear and pay all taxes, duties, and levies imposed on the Provider, by all municipal, state or national

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GCC clause reference	Special Conditions of Contract
	government authorities:
<b>GCC 33.5(c)</b>	<b>The Procuring and Disposing Entity's prior approval:</b> The Procuring and Disposing Entity's prior approval is also required for varying the execution of the terms of reference.
<b>GCC 35.1</b>	<b>Joint Venture requirements:</b> The individuals or firms in a joint venture, consortium or association shall be jointly and severally liable.
<b>GCC 37.3(b)</b>	<b>Additional activities prohibited:</b> The following activities are prohibited: N/A
<b>GCC 38.3</b>	<b>Total Liability:</b> The total liability under the Contract shall be the total contract value.
<b>GCC 39.1</b>	<b>Insurance taken out by Provider:</b> The risks and coverage shall be: (i) Employer's liability and workers' compensation (ii) Professional liability (iii) Other
<b>GCC 43.1</b>	<b>Restrictions on the use of Deliverables:</b> The Consultant shall not use the documents used/arising from this assignment for purposes unrelated to the contract without prior approval of the client. The reports shall remain as property of the PU.
<b>GCC 45.1</b>	<b>Performance Security:</b> A Performance Security will not be required.
<b>GCC 45.3</b>	<b>Form of Performance Security:</b> The forms of acceptable Performance Security are: N/A
<b>GCC 47.2</b>	<b>Personnel entitlements:</b> The Key Personnel shall be entitled to payment for: N/A