



**HOMA BAY COUNTY WATER AND SANITATION CO. LTD,**  
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# **REQUEST FOR PROPOSALS FOR COMPANY SECRETARIAL SERVICES**

***TENDER NO: HBCWSC/PROC/CS/9/18***

**SEPTEMBER 2018**

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## **INTRODUCTION**

1. This standard Request for Proposals for selection of individual professional consultants has been prepared for use by public entities in Kenya. It has been found necessary for selection of individual consultants who are also regulated by their professional institutions or associations as opposed to selection of consultants who could be either individuals or body corporate.
2. This Request for proposals will be used for open tendering, restricted tendering or request for proposals.
3. The general conditions of contract in the Standard contract Form should not be modified and instead the special conditions of the contract may where necessary be modified by the procuring entity, for use, to reflect the unique circumstances of the particular assignment.

## SECTION I- LETTER OF INVITATION

To [name and address of consultant]

Date

Dear Sir/Madam,

- 1.1 The Homa-bay County Water and Sanitation Company (HOMAWASCO) invites proposals for the following consultancy services, *Company Secretarial Services*. More details of the services are provided in the terms of reference herein.
- 1.2 The request for proposal (RFP) includes the following documents;
  - Section I - Letter of invitation
  - Section II - Information to Consultants
  - Section III - Terms of reference
  - Section IV - Technical proposal
  - Section V - Financial proposal
  - Section VI - Standard Forms
- 1.3 On receipt of this RFP please inform us
  - (a) that you have received the letter of invitation; and
  - (b) whether or not you will submit a proposal for the assignment

Invitations for tender will be on **Monday 10<sup>th</sup> September 2018** and thereafter opening of tender on **Monday 24<sup>th</sup> September 2018** in the company's boardroom at the Sewerage Treatment Plant at 12 noon

Yours sincerely,

Managing Director.

## SECTION II - INFORMATION TO CONSULTANTS

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## **SECTION II - INFORMATION TO CONSULTANTS**

### **2.1 Introduction**

The Homa-Bay County Water and Sanitation Company (HOMAWASCO) will select an individual consultant among those invited to submit proposals or those who respond to the invitation for proposals in accordance with the method of selection detailed under this section and consistent with the regulations.

- 2.1.1 The consultants are invited to submit a technical proposal and a financial proposal for consulting services required for the assignment stated in the letter of invitation (Section I)
- 2.1.2 In the assignment where the procuring entity intends to apply standard conditions of engagement and scales of fees for professional services, which scale of fees will have been approved by a relevant authority, a technical proposal only may be invited and submitted by the consultants. In such a case the highest ranked individual consultant in the technical proposals shall be invited to negotiate a contract on the basis of the set scale of fees. The technical proposals will be the basis for contract negotiations and ultimately for a signed contract with the selected individual consultant.
- 2.1.3 The consultants must familiarize themselves with local conditions as regards the assignment and take them into account in preparing their proposals. To obtain adequate information on the assignment and on the local conditions, consultants are encouraged to liaise with the procuring entity regarding any information that they may require before submitting a proposal.
- 2.1.4 The client will provide the inputs and services specified in the special conditions of contract needed to assist the individual consultant to carry out the assignment.
- 2.1.5 The cost of preparing the proposal and negotiating the contract including any visit to the procuring entity are not reimbursable as a direct cost of the assignment. The procuring entity is not bound to accept any of the proposals submitted.

2.1.6 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.

## **2.2 Clarification and amendment to the RFP documents**

2.2.1 Individual consultant may request clarification of any of the RFP documents not later than Seven (7) days before the deadline for the submission of the proposals. Any request for clarification must be sent in writing by post, fax or email to the procuring entity's address indicated in the special conditions of contract. The procuring entity will respond by post, fax or email to such requests and will send written copies of the response (including an explanation of the query but without identifying the source of inquiry) to all individual consultants invited to submit proposals.

2.2.2 At any time before the deadline for submission of the proposals, the procuring entity may for any reason, either at its own initiative or in response to a clarification requested by an intended individual consultant amend the RFP. Any amendment shall be issued in writing, fax or email to all invited individual consultants and will be binding on them. The procuring entity may at its discretion extend the deadline for the submission of the proposals.

2.2.3 Clarification of tenders shall be requested by the tenderer to be received by the procuring entity not later than 7 days prior to the deadline for submission of tenders.

2.2.4 The procuring entity shall reply to and clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.

## **2.3 Preparation of proposals**

2.3.1 The individual consultant's proposal shall be written in English language.

2.3.2 In preparing the Technical proposal, the individual consultants are expected to examine the documents consisting the RFP in detail.

Material deficiencies in providing the information requested may result in rejection of a proposal.

2.3.3 While preparing the Technical proposal, the individual consultant must give particular attention to the following:

- (a) If an individual consultant considers that he/she does not have all the expertise required for the assignment he/she may suggest in the proposals other individual(s) who will assist in the assignment but they will not be party to the contract for the purpose of the performance of the assignment. An individual consultant will not propose other individual consultants invited to submit proposals for the assignment. Any individual consultant in contravention of this requirement shall automatically be disqualified.
- (b) For all the staff who will be involved in the exercise of the proposals to consultant must indicate their responsibility in the assignment and also the staff time as necessary.
- (c) The curriculum vitae (CV) of the staff proposed must be submitted with the proposal.

2.3.4 The Technical proposal shall provide the following information;

- (a) The individual consultants CV and a brief of any recent experience of assignment of a similar nature. For each assignment the brief should indicate the profiles of staff involved, contract amount and the individual consultant's involvement.
- (b) Any comments or suggestions on the Terms of Reference and a list of service and facilities requested to be provided by the procuring entity.
- (c) A description of the methodology and work plan for performing the proposed assignment.
- (d) Any additional information requested in the special conditions of contract.

2.3.5 The Technical proposal shall be separate from the Financial proposal and shall not include any Financial information.

## 2.4 **Financial proposal**

2.4.1 In preparing the financial proposal, the individual consultants are expected to take into account the time required in completing the



assignment as outlined in the RFP documents. The financial proposal will therefore be quoted in fees per day or month. The financial proposal may also include other costs as necessary, which will be considered as reimbursables.

2.4.2 The Financial proposal should include the payable taxes.

2.4.3 The fees shall be expressed in Kenya Shillings.

2.4.4 The Financial proposal must remain valid for 90 days after the submission date. During this period the individual consultant is expected to keep available at his own cost any staff proposed for the assignment. The procuring entity will make best efforts to complete negotiations within this period. If the procuring entity wishes to extend the validity period of the proposals, the consultants who do not agree, have the right not to extend the validity of their proposals.

2.4.5 The financial proposal must comply with the law governing the profession of the consultant.

## **2.5 Submission, Receipt and opening of proposals**

2.5.1 The technical proposal and the financial proposal (if required) shall be prepared in indelible ink. It shall contain no interlineations or overwriting, except as necessary to correct errors made by the individual consultants. Any such corrections must be initialed by the individual consultant.

2.5.2 For each proposal the individual consultants shall prepare the proposals in the number of copies indicated in the special conditions of contract. Each Technical proposal and Financial proposal shall be marked "ORIGINAL" or "COPY" as appropriate. If there are any discrepancies between the original and the copies of the proposal, the original shall govern.

2.5.3 The original and all copies of the Technical proposal shall be placed in a sealed envelope clearly marked "TECHNICAL PROPOSAL", and the original and all copies of the financial proposal in a sealed envelope duly marked "FINANCIAL PROPOSAL". Both envelopes shall be placed in an outer envelope and sealed. This outer envelope shall bear the procuring entities address and other information

indicated in the appendix to the instructions to consultants and clearly marked “DO NOT OPEN before **Monday 24<sup>th</sup> September 2018 at 12 noon.**

2.5.4 The completed Technical and Financial proposals must be delivered at the submission address on or before the time and date of the submission of the proposals indicated in the appendix to the instructions to consultants. Any proposals received later than the closing date for submission of proposals shall be rejected and returned to the individual consultant unopened. For this purpose, the inner envelope containing the technical and financial proposals will bear the address of the individual consultant submitting the proposals.

2.5.5 After the deadline for submission of proposals the outer envelope and the technical proposals shall be opened immediately by the opening committee. The financial proposals shall be marked with the individual consultants’ number allocated at the time of opening the outer envelope and the technical proposals but shall remain sealed and in the custody of a responsible officer of the procuring entity up to the time set for opening them.

## **2.6 Evaluation of the Proposal (General)**

2.6.1 From the time the proposals are opened to the time of the contract award, if any individual consultant wishes to contact the procuring entity on any matter relating to his/her proposal, he/ she should do so in writing at the address indicated in the appendix to the instructions to consultants. Any effort by an individual consultant to influence the procuring entity’s staff in the evaluation of proposals companion proposals or awards of contract may result in the rejection of the individual consultant proposal.

2.6.2 The proposal evaluation committee shall have no access to the Financial Proposal, which in any case will remain sealed, until the technical evaluation is concluded or finalized.

## **2.7 Evaluation of Technical Proposals**

2.7.1 The evaluation committee appointed by the procuring entity to evaluate the proposals shall carry out the evaluation of technical

proposals following the criteria set out in the terms of reference based on the following points criteria

### **Preliminary Evaluation**

All consultants must pass the following minimum qualifications to proceed to Technical Evaluation

1. Certified Public Secretary of Kenya (CPSK)
2. Member of the Institute of Certified Public Secretaries of Kenya (ICPSK)
3. An advocate of the High Court with at least 10 years experience
4. Member of the Law Society of Kenya (LSK) with a current practicing certificate.
5. An advocate with experience in corporate and Commercial Law

<u>Technical Evaluation Criteria</u>	<u>POINTS</u>
(i) CV of the individual consultant	30
(ii) Specific experience of the individual consultant Related to the assignment	30
(iii) Adequacy of methodology and work plan in response to the Terms of reference	40
<b>Total points</b>	<b>100</b>

An individual consultant must score a minimum of **70 points** to qualify for further evaluation

2.7.2 Any proposal which will be examined and found not to comply with all the requirements for submission of the proposals will be declared non responsive. All the proposals found to have complied with all the requirements for submission of proposal shall be declared responsive by the evaluation committee

2.7.3 Each responsive proposal will be given a technical score (ST). Any technical proposal which fails to achieve the total minimum score indicated in the appendix to the information to tenderers shall be rejected at this stage and will not proceed to the next stage of evaluation. The respective financial proposal will be returned to the individual consultant unopened.

## 2.8 Opening and Evaluation of Financial Proposals

2.8.1 After completion of the evaluation of Technical proposals the procuring entity shall notify the individual consultants whose proposal did not meet the minimum technical score or were declared non-responsive to the RFP and terms of reference. The notification will indicate that their financial proposals shall not be opened and will be returned to them unopened after the completion of the selection process and contract award. At the same time, the procuring entity shall simultaneously notify the consultants who have secured the minimum technical score that they have passed the technical qualifications and inform them the date and time set by the procuring entity for opening their financial proposal. They will also be invited to attend the opening ceremony if they wish to do so.

2.8.2 The financial proposals shall be opened by the procuring entity in the presence of the individual consultants who choose to attend the opening. The name of the individual consultant, the technical score and the proposed fees shall be read out aloud and recorded. The evaluation committee shall prepare minutes of the opening of the financial proposals.

2.8.3 The formulae for determining the financial score (SF) unless an alternative formula is indicated in the appendix to the information to tenderers shall be as follows:

$S_f = 100 \times f_m / f$  where  
S<sub>f</sub> is the financial score  
F<sub>m</sub> is the lowest fees quoted and  
F is the fees of the proposal under consideration.

The lowest fees quoted will be allocated the maximum score of 100

2.8.4 The individual consultants proposals will be ranked according to their combined technical score (ST) and financial score (SF) using the weights indicated in the appendix to the instructions to consultants. Unless otherwise stated in the appendix to the instructions to consultants the formulae for the combined scores shall be as follows;

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

Where

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

St is the technical score

Sf is the financial score

T is the weight given to the technical proposal and

P is the weight given to the financial proposal

Note  $P + T$  will be equal to 100%

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

## **2.9 Negotiations**

2.9.1 Negotiations will be held at the same address indicated in the appendix to the information to consultants. The purpose of the negotiations is for the procuring entity and the individual consultant to reach agreements on all points regarding the assignment and sign a contract.

2.9.2 The negotiations will include a discussion on the technical proposals, the proposed methodology and work plan, staff and any suggestions made by the individual consultant to improve the Terms of reference. The agreed work plan and Terms of reference will be incorporated in the description of the service or assignment and form part of the contract.

2.9.3 The negotiations will be concluded with a review of the draft contract. If negotiations fail, the procuring entity will invite the individual consultant whose proposal achieved the second highest score to negotiate a contract.

## **2.10 Award of Contract**

2.10.1 The contract will be awarded before commencement of negotiations. After negotiations are completed the procuring entity will promptly notify the other individual consultants that they were unsuccessful and return the financial proposals of the individual consultants who did not pass technical evaluation.

2.10.2 The selected individual consultant is expected to commence the assignment on the date indicated in the appendix to the information to consultants or any other date agreed with the procuring entity.

## **2.11 Confidentiality**

2.11.1 Information relating to evaluation of proposals and recommendations of contract award shall not be disclosed to the individual consultants who submitted the proposal or to other persons not officially concerned with the process, until the winning individual consultant has been notified that he/she has been awarded the contract.

### **SECTION III - TERMS OF REFERENCE (TOR)**

**The following are the key deliverables and scope of work for the appointed Company Secretary**

They include the following;

- 1) Providing guidance to the Board on their duties and responsibilities and on matters of governance;
- 2) Ensure compliance with the company's articles of association, company's Act and any other relevant legislation.
- 3) Maintain the company's books, records including but not limited to the register of members, directors, and secretaries.
- 4) Act as the legal custodian and use of the Company seal, legal documents, board and Board Committee minutes,
- 5) Ensure the annual returns are promptly filed with the registrar of Companies.
- 6) Provide legal advisory services to all areas of the company's business with regard to contracts, Compliance, procurement, securities regulatory and other areas of potential risk to the business.
- 7) Ensure the timely preparation and circulation of Board and Committee Papers
- 8) Ensure the timely circulation of Board and Committee minutes;
- 9) Ensure the Board Members are aware of all relevant laws affecting the organization;
- 10) Facilitate effective communication between the organization and stakeholders;
- 11) Ensure all company contracts and agreements safeguard the company's interest and protect the Company from contractual risks; Notes on the preparation of Terms of Reference

## **SECTION IV - TECHNICAL PROPOSAL (TP)**

### **Notes on the Preparation of Technical Proposal**

The technical proposal shall be prepared and submitted by the consultants.

It shall contain the following:-

- (a) Submission letter
- (b) Particulars of the consultant including Curriculum vitae (CV)
- (c) Comments and suggestions of the consultant on the terms of reference, personnel, facility and other requirements to be provided by the procuring entity.
- (d) Description of the methodology and work plan for performing the assignment
- (e) Any proposed staff to assist in the assignment
- (f) Consultancy services activities time schedule.

*(to be prepared by the consultant as appropriate)*



## **SECTION V- FINANCIAL PROPOSAL (FP)**

### **Notes on the Preparation Financial Proposal**

The financial proposal shall be prepared and submitted by the consultants. It shall contain the following.

- (a) Submission letter indicating total fees
- (b) Summary of costs
- (c) Breakdown of fees per activity
- (d) Breakdown of reimbursable costs/expenses per activity
- (e) Miscellaneous expenses

*(to be prepared by the consultant as appropriate)*

## **SECTION VI - STANDARD CONTRACT FORM**

### **INDIVIDUAL PROFESSIONAL CONSULTANTS**

The contract form shall be completed by the procuring entity after the award of the contract and negotiation of the contract. It will be signed by both parties pursuant to the information to consultant clause 2.10.2

## SECTION VI - STANDARD CONTRACT FORM

### 1. STANDARD CONTRACT FORM

#### INDIVIDUAL PROFESSIONAL CONSULTANTS

This Agreement, [hereinafter called “the Contract”] is entered into this \_\_\_\_\_  
\_\_\_\_\_ [insert starting date of assignment], by and between.

\_\_\_\_\_ [insert Client’s name] of [or whose  
registered office is situated at] \_\_\_\_\_ [insert  
Client’s address] (hereinafter called “the Client”) of the one part AND

\_\_\_\_\_ [insert Consultant’s name] of  
[or whose registered office is situated at] \_\_\_\_\_  
\_\_\_\_\_ [insert Consultants address ] (hereinafter called “the Consultant”) of  
the other part.

WHEREAS the Client wishes to have the Consultant perform the services  
[hereinafter referred to as “the Services”, and

WHEREAS the Consultant is willing to perform the said Services,

NOW THEREFORE THE PARTIES hereby agree as follows:-

1. **Services**
  - (i) The Consultant shall perform the Services specified in Appendix A, “Terms of Reference and Scope of Service, “which is made an integral part Of this Contract.
  - (ii) The Consultant shall provide the personnel listed Appendix B, “Consultant’s Personnel,” to perform the Services.
  - (iii) The Consultant shall submit to the Client the reports in the form and within the time periods specified in Appendix C, “ Consultant’s Reporting Obligations.”

*(Appendices A, B, and C to be prepared as appropriate)*

2. **Term** The Consultant shall perform the Services during the period commencing on \_\_\_\_\_ [insert starting date] and through to \_\_\_\_\_ [insert completion date], or any other period(s) as may be subsequently agreed by the parties in writing.

3. **Payment** A. **Ceiling**  
For Services rendered pursuant to Appendix A, the Client shall pay the Consultant an amount not to Exceed \_\_\_\_\_ [insert amount]. This amount has been established based on the understanding that it includes all the Consultant's costs and profits as well as any tax obligation that may be imposed on the Consultant.

B. **Schedule of Payments**  
The schedule of payments is specified below (Modify in order to reflect the output required as described in Appendix C.)

Kshs. \_\_\_\_\_ upon the Client's receipt of the Draft report, acceptable to the Client; and

Kshs. \_\_\_\_\_ upon the Client's receipt of the Final report, acceptable to the Client.

Kshs. \_\_\_\_\_ Total

C. **Payment Conditions**  
Payment shall be made in Kenya Shillings unless otherwise specified not later than thirty (30) days following submission by the Consultant of invoices in duplicate to the Coordinator designated in Clause 4 here below. If the Client has delayed payments beyond thirty (30) days after the due date hereof, simple interest shall be paid to the Consultant for each day of delay at a rate three Percentage points above the prevailing Central Bank of Kenya's average rate for base lending.

4. **Project Administration** A. **Coordinator**  
The Client designates \_\_\_\_\_  
[insert name] as Client’s Coordinator; the  
Coordinator will be responsible for the  
Coordination of activities under this Contract,  
for acceptance and approval of the reports and of  
other deliverables, by the Client and for receiving  
and approving invoices for payment.
- B. **Reports**  
The reports listed in Appendix C, “Consultant’s  
Reporting Obligations,” shall be submitted in the  
Course of the assignment and will constitute the  
basis for the payments to be made under paragraph  
3.
5. **Performance Standards** The Consultant undertakes to perform the Services  
with the highest standards of professional and  
ethical competence and integrity. The Consultant  
shall promptly replace any employees assigned  
under this Contract that the Client considers  
unsatisfactory.
6. **Confidentiality** The Consultant shall not, during the term of this  
Contract and within two years after its expiration  
Disclose any proprietary or confidential  
Information relating to the Services, this Contract  
Or the Client’s business or operations without the  
Prior written consent of the Client.
7. **Ownership of Material** Any studies, reports or other material, graphic,  
software or otherwise prepared by the Consultant  
for the Client under the Contract shall belong to  
and remain the property of the Client. The  
Consultant may retain a copy of such documents  
and software.

8. **Consultant Not to be Engaged in certain Activities** The Consultant agrees that during the term of this Contract and after its termination the Consultant and any entity affiliated with the Consultant shall be disqualified from providing goods, works or services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.
9. **Insurance** The Consultant will be responsible for taking out any appropriate insurance coverage.
10. **Assignment** The Consultant shall not assign this Contract or sub-contract any portion of it without the Client's prior written consent.
11. **Law Governing Contract and Language** The Contract shall be governed by the laws of Kenya and the language of the Contract shall be English language
12. **Dispute Resolution** Any dispute arising out of the Contract which cannot be amicably settled between the parties shall be referred by either party to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the chairman of the Chartered Institute of Arbitrators, Kenya branch, On the request of the applying party.

For the Client

For the Consultant

Full name \_\_\_\_\_

Full name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

2.

**REQUEST FOR REVIEW FORM**

**FORM RB 1**

**REPUBLIC OF KENYA  
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

APPLICATION NO.....OF.....20.....

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (*Procuring Entity*)

Request for review of the decision of the..... (*Name of the Procuring Entity*) of  
.....dated the...day of .....20.....in the matter of Tender No.....of  
.....20...

**REQUEST FOR REVIEW**

I/We.....,the above named Applicant(s), of address: Physical  
address.....Fax No.....Tel. No.....Email ....., hereby request the Public  
Procurement Administrative Review Board to review the whole/part of the above mentioned  
decision on the following grounds , namely:-

- 1.
- 2.
- etc.

By this memorandum, the Applicant requests the Board for an order/orders that: -

- 1.
- 2.
- etc

SIGNED .....(Applicant)

Dated on.....day of ...../...20...

**FOR OFFICIAL USE ONLY**

Lodged with the Secretary Public Procurement Administrative Review Board on ..... day of  
.....20.....

SIGNED  
Board Secretary