

# **German Financial Cooperation with Republic of Kenya**

## ***Smallholder Irrigation Program Mount Kenya Region – Phase IV***

Prequalification  
for  
Consulting Services  
for

### ***Detailed Design Services and Construction Supervision of Cooperative Owned Smallholder Irrigation Infrastructure***

**Ministry of Agriculture, Livestock, Fisheries and Irrigation  
State Department of Irrigation**

**Represented by** Project Management Unit  
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***12<sup>th</sup> February 2019***

***Tender No.: PQ/SIPMK/01/2019-BMZ 2013 67 200***

## **SECTION I. - GENERAL PROVISIONS (GP)**

### **1. GENERAL**

#### **1.1. SCOPE OF APPLICATIONS AND DEFINITIONS**

- 1.1.1. in connection with the invitation for prequalification indicated in Section II, special provisions (**SP**), the employer, as defined in the **SP**, issues this prequalification document ("prequalification document") to prospective applicants ("applicants") interested in submitting applications ("applications") for prequalification to bid for the assignment described in **SP** 1.6.
- 1.1.2. The Employer as indicated in the **SP** has applied for or received financing (hereinafter called "funds") from KfW Development Bank (hereinafter called "KfW") towards the cost of the project named in the **SP**. The Employer intends to apply a portion of the funds to eligible payments under the contract(s) resulting from the procurement process.
- 1.1.3. The following definitions apply:
- (a) "Affiliate(s)" means an entity that directly or indirectly controls, is controlled by, or is under common control with the Consultant
  - (b) "Applicable Guidelines" means the KfW Guidelines for the Assignment of Consultants in Financial Cooperation with Partner Countries available at [www.kfw-entwicklungsbank.de](http://www.kfw-entwicklungsbank.de).
  - (c) "Applicable Law" means the laws and any other instruments having the force of law in the Employer's country, or in such other country as may be specified in the **SP**, as they may be issued and in force from time to time.
  - (d) "Applicant(s)" means an entity or an association of entities (JV) that submits a set of documents as specified hereunder for being prequalified to submit a proposal.
  - (e) "Consultant" means a legally-established professional consulting firm or an entity that may provide or provides the Services to the Employer under a Contract. The term "Consultant" and "Applicant" are used in this document interchangeably
  - (f) "Contract" means a legally binding written agreement signed between the Employer and the Consultant.
  - (g) "Day" means a calendar day.
  - (h) "Employer" means the contracting party that legally concludes the Contract for the Services with the selected Consultant notwithstanding the representation by KfW in case of an agency contract<sup>1</sup>.
  - (i) "Government" means the government of the Employer's country.
  - (j) "Joint Venture (JV)" means an association with or without a legal personality distinct from that of its members, of more than one Consultant where one member has the authority to conduct all business for and on behalf of any and all the members of the

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

JV, and where the members of the JV are jointly and severally liable to the Employer for the performance of the Contract. The terms Joint Venture and Consortium can be used interchangeably.

- (k) “Services” means the work to be performed by the Consultant pursuant to the Contract.
- (l) “Sub-Consultant” means an entity to whom the Consultant intends to subcontract any part of the Services while remaining responsible to the Employer as contracting party during the performance of the Contract.
- (m) “Special Provisions (SP)” means an integral part of this Prequalification Document that is used to reflect specific country and project conditions to supplement, but not to over-write, the General Provisions.

## **1.2. SELECTION OF THE CONSULTANT AND PREQUALIFICATION PROCEDURE**

- 1.2.1. To execute the project, the Employer intends to select one or several Consultants in accordance with the procedure named in the SP. In special cases the Employer might engage a specialised consultant, called Tender Agent to conduct the selection procedure on its behalf or KfW acts under an agency contract for the Employer. The selection shall be carried out in line with the provisions of the Applicable Guidelines
- 1.2.2. This Prequalification Document sets out the prequalification procedure, including but not limited to the minimum requirements towards the experience and capabilities of the Applicants and the evaluation method. The Applicants who demonstrate to the Employer’s satisfaction that they have the experience and the capabilities to execute the project shall be shortlisted in accordance with GP 4.2.5 to participate in the subsequent tendering procedure.
- 1.2.3. The procurement process is the responsibility of the Employer. KfW shall verify that the procurement process is fair, transparent, economical, free of discrimination and according to the provisions in this document. KfW exercises its monitoring function on the basis of the contractual arrangements with the Employer and the Applicable Guidelines containing details for KfW’s approval and no objection to individual steps during the procurement process. No contractual relationship between KfW and any third party shall be deemed to exist other than with the Employer.

## **1.3. CORRUPT AND FRAUDULENT PRACTICES**

- 1.3.1. KfW requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Section IV.
- 1.3.2. In further pursuance of this policy, Applicants shall permit and shall cause its agents to provide information and permit KfW or an agent appointed by KfW to inspect on site all accounts, records and other documents relating to bid submission and contract performance (in the case of award), and to have them audited by auditors or agents appointed by KfW.

## **1.4. ELIGIBLE APPLICANTS**

- 1.4.1. An Applicant may be a firm that is a private entity, a government-owned entity — subject to Section V - or a combination of such entities in the form of a joint venture (“JV”) under an existing JV Agreement or with the intent to enter into such an

agreement supported by Declarations of Association. In the case of a JV, all members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms. The Applicant shall nominate an authorized representative who shall have the authority to conduct all business for and on behalf of the Applicant and any and all its members, if the Applicant is a JV, during the prequalification process, bidding (in the event the Applicant submits a bid) and during contract execution (in the event the Applicant is awarded the Contract). Unless specified in the SP, there is no limit on the number of members in a JV. The authorization shall be in the form of a written power of attorney attached to the Technical Proposal.

- 1.4.2. A firm may apply for prequalification both individually, and as part of a JV, or as a sub-consultant. If prequalified, it will not be permitted to submit a proposal for the same contract both as an individual firm and as a part of the joint venture. However, a firm may participate as a sub-consultant in more than one proposal, but only in that capacity. Proposals submitted in violation of this procedure will be rejected.
- 1.4.3. It is the Consultant's responsibility to ensure that its Experts, joint venture members, Sub-consultants, agents (declared or not), sub-contractors, service providers, suppliers and/or their employees meet the requirements on eligibility and conflict of interest as established hereunder.
- 1.4.4. KfW's eligibility criteria for prequalification are described in Section V, Eligibility Criteria
- 1.4.5. An Applicant shall not be under suspension from bidding by the Employer as the result of the execution of a Bid–Securing Declaration
- 1.4.6. An Applicant shall provide such evidence of eligibility satisfactory to the Employer, as the Employer shall reasonably request.
- 1.4.7. The materials, equipment and services to be supplied under the Contract and financed by KfW may have their origin in any country subject to the restrictions specified in Section V Eligibility Criteria, and all expenditures under the Contract will not contravene such restrictions

## **1.5. CONFLICT OF INTEREST**

- 1.5.1. The Consultant is required to provide professional, objective, and impartial advice, at all times holding the Employer's interests paramount, strictly avoiding conflicts with other assignments or its own corporate interests, and acting without any consideration for future work.
- 1.5.2. The Consultant has an obligation to disclose to the Employer any situation of actual or potential conflict that impacts its capacity to serve the best interest of its Employer. Failure to disclose such situations may lead to the disqualification of the Consultant or the termination of its Contract.
- 1.5.3. Without limitation on the generality of the foregoing, the Consultant shall not be hired under the circumstances set forth below:
  - (i) Conflict between consulting activities and procurement of goods, works or non-consulting services: a firm that has been engaged by the Employer to provide goods, works, or non-consulting services for a project, or any of its Affiliates, shall be disqualified from providing consulting services resulting from or directly related to those goods, works, or non-consulting services. Conversely, a firm hired to

provide consulting services for the preparation or implementation of a project, or any of its Affiliates, shall be disqualified from subsequently providing goods or works or non-consulting services resulting from or directly related to the consulting services for such preparation or implementation.

- (ii) Conflict among consulting assignments: a Consultant (including its Experts and Sub-consultants) or any of its Affiliates is or was during the last 12 months prior to publication of the invitation to tender indirectly or directly linked to the project in question through employment as a staff member or advisor to the Employer, and is or was able in this connection to influence the award of the contract for services, or the bidder is or was otherwise able to influence the award of the contract for services.
- (iii) Relationship with the Employer's staff: a Consultant (including its Experts and Sub-consultants) that has a close business or family relationship with a professional staff of the Employer who are directly or indirectly involved in any part of (i) the preparation of the Terms of Reference for the assignment, (ii) the selection process for the Contract, or (iii) the supervision of the Contract, may not be awarded a Contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to KfW throughout the selection process and the execution of the Contract.

## **1.6. REQUESTED SERVICES**

- 1.6.1. A brief description of the requested consulting services is presented in the SP.

## **2. CONTENTS AND PREPARATION OF THE APPLICATION**

### **2.1. PREQUALIFICATION DOCUMENT AND COMMUNICATION**

- 2.1.1. These prequalification documents consist of the sections indicated below, which should be read in conjunction with any addendum issued in accordance with Clause 2.6.
  - Section I – General Provisions (GP);
  - Section II – Special Provisions (SP);
  - Section III – Application Forms:
    - Form 0: Letter of Application
    - Form 1: Declaration of Undertaking
    - Form 2: Sample Declaration of Submitting a Proposal in case of being shortlisted;
    - Form 3: Sample Declaration of Association
    - Form 4: Sample Declaration on Affiliated Firms
    - Form 5: Financial Capacity Statement
    - Form 6: Project Experience
    - Form 7: List of Available Expertise and Human Resource Capacity
  - Section IV – KfW Policy – Corrupt and Fraudulent practices – Social and Environmental Responsibility;
  - Section V – KfW Eligibility Criteria
- 2.1.2. Unless obtained directly from the Employer, the Employer accepts no responsibility for the completeness of the Prequalification Documents, responses to requests for clarification, or Addenda in accordance with GP 2.6. In case of any discrepancies, documents issued directly by the Employer shall prevail.

- 2.1.3. The Applicant is expected to examine all instructions, forms, and terms in the Prequalification Documents and to furnish with its Application all information or documentation as is required by the Prequalification Documents.
- 2.1.4. The Application, as well as all correspondence and documents relating to the Application exchanged between the Applicant and the Employer shall be in the language of this document. Any official documents presented in a different language shall be accompanied by a certified translation into the language of this document. The Employer reserves the right to verify the translation. In case of discrepancies the original document shall prevail.
- 2.1.5. All communication between the Employer and Applicants shall take place in writing. For the purposes of the prequalification document in writing shall mean communicated in written form (for example by post, e-mail or facsimile) and delivered with proof of receipt.

## **2.2. DOCUMENTS COMPRISING THE APPLICATION**

2.2.1 The application submitted by the applicant shall comprise the following:

- (a) Application Letter, indicating the Applicant's name, address, telephone, fax and email. If the Applicant is an association, the Application Letter shall also describe the form of association and list the association members;
- (b) A Power of Attorney authorizing the representative of the Applicant, designated in accordance with GP 1.4.1 to submit the Application on behalf of the Applicant. If the Applicant is an association, the Power of Attorney shall be provided by the Lead Consultant nominated in the association agreement or in the Declarations of Association, submitted in accordance with GP 2.2.1(d)(ii). If the representative of the Applicant is the owner, member or director of the Applicant or the Applicant's Lead Consultant, if so nominated in accordance with GP 2.2.1(d)(ii), a Power of Attorney shall not be necessary.
- (c) Presentation of the Applicant (maximum 10 pages, no brochures). If the Applicant is a single entity, the Presentation shall describe the Applicant's type of entity, ownership structure and organisation chart, as well as its main business areas as they apply to the project. If the Applicant is an association, the Presentation shall provide this information about each association member as well as a description of the intended form of collaboration of the members within the association.
- (d) Statements and Declarations: False information provided in the following Statements and Declarations shall lead to the exclusion of the Applicant from the tender process:
- (i) Declaration of Undertaking in the format provided in Section III.
  - (ii) Declaration of Submitting a Proposal in Case of Being Shortlisted in the format provided in Section III.
  - (iii) If the Applicant is an existing association, the Applicant shall submit a proof of the existing Association Agreement, indicating the Lead Consultant. If the Applicant is an association, which the members intend to form for the purpose of executing the contract, each member of the association shall submit a Declaration of Association, indicating the Lead Consultant, in the format provided in Section III.
  - (iv) Statement on Affiliated Firms in the format provided in Section III. If the Applicant is an association, separate statements shall be provided by each member of the association.
  - (v) Financial Capacity Statement in the format provided in Section III and supported by the Applicant's Balance Sheets and Profit and Loss Statements. If the Applicant is an association, separate statements, including the supporting Balance Sheets and Profit and Loss Statements, shall be provided by each

member of the association. All Balance Sheets and Profit and Loss Statements shall be certified by a reputable auditor.

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

(vii) List of Available Expertise and Human Resource Capacity in the format provided in Section III.

(e) Any other documentation required in the SP.

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

### **2.3. COST OF BIDDING**

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

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

2.4.1 The Applicant shall prepare one original Application as described in GP 2.2 and clearly mark it "ORIGINAL". All documents comprising the original Application shall be typed or written in indelible ink and shall be signed by the Applicant's representative designated in accordance with GP 1.4.1. If the Applicant is an association, the statements and declarations submitted by the members of the association in accordance with GP 2.2.1(d)(ii) - (vii) shall be signed by duly authorized officials, such as owners or directors of the respective members.

2.4.2 The Applicant shall prepare copies of the signed original Application and clearly mark each of them "COPY". The number and type of copies of the Application shall be in accordance with the SP. In the event of any discrepancy between the original and the copies, the original shall prevail.

2.4.3. If electronic copies of the proposal are required in accordance with GP 2.4.2, they shall be presented as unalterable and printable PDF files on CD or DVD disks, marked accordingly.

### **2.5. CLARIFICATION OF PREQUALIFICATION DOCUMENT**

2.5.1 Applicants may request a clarification of the Prequalification Document until the deadline indicated in the SP. Any request for clarification shall be sent in writing by standard electronic means to the address indicated in the **SP**. Responses shall be in writing by standard electronic means and shall be sent to all prospective Applicants who have obtained the Prequalification Document directly from the Employer, including a description of the inquiry but without identifying its source, not later than seven (7) days prior to the deadline for the submission of Applications in accordance with GP 3.2.1.

2.5.2 If necessary, the Employer may send clarifications of the Prequalification Document to all prospective Applicants who have obtained the Prequalification Document directly from the Employer, not later than seven (7) days prior to the deadline for the submission of Application in accordance with GP 3.2.1.

## **2.6. AMENDMENT OF PREQUALIFICATION DOCUMENT**

- 2.6.1 At any time prior to the deadline for the submission of Applications but not later than seven (7) days before the submission date the Employer may amend the Prequalification Document by issuing an Addendum.
- 2.6.2 Any Amendment issued shall be part of the Prequalification Document and shall be communicated immediately in writing to all prospective Applicants who have obtained the Prequalification Document from the Employer.
- 2.6.3 To give Applicants reasonable time to take an Amendment into account in preparing their Applications, the Employer may, at its discretion, extend the deadline for the submission of Applications in accordance with GP 3.2.2.

## **3. SUBMISSION OF APPLICATIONS**

### **3.1. SEALING AND IDENTIFICATION OF APPLICATIONS**

- 3.1.1 The Applicant shall enclose the original and the copies of the Application in a sealed envelope that shall:
- (a) bear the name and address of the Applicant;
  - (b) be addressed to the Employer, in accordance with GP 3.2 below;
  - (c) bear the project title and/or tender number;
  - (d) bear the following words clearly visible "Not to be opened by the Postal Service - Prequalification for [*insert name of the assignment*].
- 3.1.2 The Employer shall not be responsible for misplacement, losing or premature opening of the Application if the envelope is not sealed or marked in accordance with GP 3.1.1.

### **3.2. DEADLINE FOR SUBMISSION OF APPLICATIONS, OPENING**

- 3.2.1 Applicants may submit their Applications by mail, by courier or by hand, against confirmation of receipt. Applications shall be submitted by the Applicants at the address and no later than the deadline indicated in the **SP**. Any Application received by the Employer after the deadline shall be declared late and rejected, and promptly disposed of.
- 3.2.2 The Employer may, at its discretion, extend the deadline for the submission of Applications by amending the Prequalification Document in accordance with 2.6, in which case all rights and obligations of the Employer and the Applicants subject to the previous deadline shall thereafter be subject to the deadline as extended.
- 3.2.3 The preparation and the submission of the Applications is the responsibility of the Applicant and no relief or consideration can be given for errors and omissions.
- 3.2.4 If copies of the Application shall be sent to multiple addresses in accordance with 3.2.1, the timely receipt of the original Application in compliance with GP 3.2.1 shall be decisive for the timely submission of the Application.
- 3.2.5 The Employer's evaluation committee as detailed in below shall proceed with the opening of the Applications shortly after the submission deadline as indicated in the **SP** and establish and sign an opening protocol as per GP 3.2.7.
- 3.2.6 The Employer's evaluation committee shall be composed of at least three members. One member of the Evaluation committee shall not be staff from the Employer's administration or organisation. However, if a tender agent conducts the selection procedure for the Employer the opening of proposals shall be done by the tender agent in presence of a witness and both shall sign the opening protocol as per **SP**.

- 3.2.7 At the opening of the Applications the following shall be recorded in the opening protocol: the name and business address of the Applicant or, in case of a Joint Venture, the name and business address of the Joint Venture, the name and business address of the lead member and the names and business addresses of all members; the presence or absence of the Declaration of Undertaking whether they have been received on time and sealed as per GP 3.1.1. and any other information deemed appropriate or as indicated in the SP.

#### 4. EVALUATION-PROCESS OF THE PREQUALIFICATION DOCUMENTS

##### 4.1. CONFIDENTIALITY

- 4.1.1 After the opening of the Applications and until the announcement of the prequalification results to the Applicants no communication of any type between the Applicants and the Employer, its staff or any other person involved in the evaluation is permitted except as specified under GP 4.3.
- 4.1.2 Information relating to the Applications, their evaluation and result shall not be disclosed to Applicants or any other persons not officially concerned with the prequalification procedure until the Employer notifies the Applicants of the prequalification results.

##### 4.2. EVALUATION

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

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

- 4.2.2 The Employer shall evaluate the responsive Applications in terms of the prequalification criteria indicated in the **SP** and award each responsive Application a prequalification score of up to 100 points.
- 4.2.3 For the purposes of scoring individual prequalification sub-criteria in accordance with GP 4.2.3 the Employer shall apply the following qualitative approach to each criterion:
- 100% of the max. score: Excellent, no errors or omissions at all are noted. Exhaustive, conclusive, comprehensive, precise and further leading suggestion / idea / offering with respect to the sub-criterion.
  - 75% of the max. score: Good, minimal errors or omissions noted. Exhaustive, conclusive, comprehensive and precise with respect to the sub-criterion.
  - 50% of the max. score: Satisfactory, major errors or omissions noted not comprising the fulfilment of the sub-criterion, basically meets the requirement of the respective sub-criterion.

- d) 25% of the max. score: Poor, major errors or omissions are noted comprising the fulfilment of the sub-criterion, substantially deviates from or indicates misunderstanding of the requirement of the respective sub-criterion.
- e) 0 % of the max. score: Insufficient / Fail, does not meet the requirement of the respective sub-criterion at all or does not provide any information regarding the requirement of the sub-criterion

4.2.4. The Employer shall reject an Application if,

- (a) it has determined that the Application is nonresponsive in accordance with GP 4.2.1
- (b) it has awarded the Application a prequalification score, which is lower than the minimum prequalification score of 70 points out of 100. A minimum score might be applied not only to the overall score but also to the achievement of the ESHS<sup>2</sup> minimum score, if specified so in the Special Provisions **(SP)**.

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

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

#### **4.3. EMPLOYER'S RIGHT TO ACCEPT OR REJECT APPLICATIONS**

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

4.3.2 The Employer is not bound to select any Application.

#### **4.4. NOTIFICATION OF PREQUALIFICATION**

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

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

4.4.3 Upon such a request the Employer may inform such Applicants on the major shortcomings and weaknesses of their Application.

#### **4.5. REQUEST FOR PROPOSAL**

4.5.1 After the notification of the results of the prequalification, the Employer intends to invite bids from all the Applicants that have been prequalified within a period not exceeding 6 (six) months.

<sup>2</sup> Reads as Environmental, Social, Health, and Safety

## **SECTION II - SPECIAL PROVISIONS (SP)**

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

### **1.1.1 EMPLOYER**

The Employer is the State Department of Irrigation represented by the Project Management Unit, Smallholder Irrigation Program Mount Kenya Region – Phase IV

The project name and reference number are Smallholder Irrigation Program Mount Kenya Region – Phase IV, BMZ-No: 2013 67 200

### **1.2.1 SELECTION OF THE CONSULTANT**

The Employer's evaluation commission is composed of

Director State Department of Irrigation; National Programme Coordinator SIPMK; and Irrigation Engineer SIPMK

### **1.4.3 APPLICANTS**

The following conditions shall apply to the engagement of Sub-Consultants by the Applicant: not permitted.

### **1.6.1 REQUESTED SERVICES**

#### **(1) Introduction**

- (a) Consultancy firms are invited to apply to be pre-qualified for providing consultancy services. The PMU of SIPMK on behalf of Ministry of Agriculture, Livestock, Fisheries and Irrigation will pre-qualify and shortlist consultants from among those who will have submitted applications in accordance with the pre-qualification requirements.
- (b) The Pre-qualification Document and the Applicants response thereof shall be the basis of pre-qualification. Applicants must familiarize themselves with the requirements described in this document and take them into account while preparing their responses.
- (c) Applicants will be informed in writing of the results of their applications, immediately after completion of the evaluation process.
- (d) Applicants will meet all costs associated with preparation and submission of their applications.

#### **(2) Background**

- (a) The Smallholder Irrigation Programme Mount Kenya Region (SIPMK) started operations in September 2005 with Phase I and continued uninterrupted until end of Phase III in September 2015. Thereafter the Programme remained dormant until Phase IV recommenced in August 2017. Throughout, the Programme operates exclusively within the counties of Embu, Kirinyaga, Meru and Tharaka Nithi.
- (b) Funding for SIPMK has consistently been provided for through bilateral cooperation agreements between the Government of Kenya (GoK) represented by the National Treasury (formerly Ministry of Finance) and KfW Development Bank of Germany.

- (c) The Program focuses on smallholder irrigation development by providing support for the implementation of new irrigation schemes while it is expected that related extension work will be offered by respective County Governments. Funding for the investment component of SIPMK is provided through on-lending of loan funds by partner banks of the National Treasury.
- (d) The size of SIPMK supported smallholder irrigation schemes range from 80ha to 200ha. Sustainability of investment is enhanced by cooperative-based scheme ownership. Active participation of farmers in conceptual design of irrigation scheme configuration together with the requirement to take out a loan equal to 50% of infrastructure investment cost, and the obligation to raise 10% credit security prior to construction of works, are the mechanisms promoting an increased sense of ownership.
- (e) Final selection of farmer groups for design and construction of an individual smallholder irrigation scheme with support from SIPMK is based on a competitive process by which applying farmer groups must comply with a predetermined set of technical, social, organizational, economic and financial criteria in a timely manner. Once a farmer group achieves compliance with the set of criteria it qualifies for design consideration and eventual construction.

(3) The SIPMK operates in the counties of Embu, Kirinyaga, Meru and Tharaka Nithi and is currently in the process of identifying eligible candidate farmer groups for development of gravity operated sprinkler irrigation infrastructure of up-to but not exceeding 652ha and individual scheme area of between 80 to 200 hectare each. The services requested under this assignment for below listed candidate farmer groups competing to qualify for detailed design and construction are as follows:

- (a) Identification, collection, and review of existing technical documents and maps, data collection, surveys and investigations at field level for hydraulic and detailed design of new and/or modification of existing riverside abstraction and water distribution works for irrigation; evaluation, review and potential modification of existing water infrastructure.
- (b) Preparation of hydraulic and detailed design documents and drawings suitable for construction in compliance with the FIDIC Conditions of Contract for Construction – MDB Harmonised Edition for Building and Engineering Works designed by the Employer (2010) including all necessary bills of quantities (BOQs), material lists and engineering estimates.
- (c) During the establishment of the design a conceptual exchange shall be established with the Consultant implementing the ESIA for the respective schemes.
- (d) Preparation of tender documents including general and particular technical specifications that will enable the PMU of SIPMK to successfully undertake tender procedures for procurement of works contractors.
- (e) Supervision of contractor throughout the construction and defects liability periods in compliance with FIDIC Conditions of Contract for Construction – MDB Harmonised Edition for Building and Engineering Works designed by the Employer (2010) and including regular reporting to employer and PMU.
- (f) Promoting cooperative member-based ownership of scheme infrastructure, and practising a well-documented process of regular consultations with cooperatives

during the design, construction and defects liability period as well as post-construction irrigation infrastructure operation and maintenance including provision of related scheme manual.

- (g) The information on specific sites of the individual schemes will be available before PQ qualified consultants shall be invited to submit a proposal (stage following PQ) and based on the list of Candidate Farmer Groups competing to qualify for detailed design and construction of scheme as given hereafter:

Code	Candidate Farmer Group	Nearest town	River basin	Water source	Indicative Area		Headworks Location	
					Gross ha	Irrigation ha	Latitude	Longitude
1	2	3	4	5	6	7	8	9
E02	Gatene Irrigation Water Project	Kiwe	T hiba	Nyanjara	2,549	200	S00°23'03.50"	E37°27'30.70"
K05	Kathataini Irrigation Water Project	Defather	T hiba	Nyamindi	748	166	S00°27'49.3"	E37°23'21.6"
K08	Miuka Irrigation Water Project	Embu	T hiba	Nyamindi	3,328	200	S00°31'03.5"	E37°23'31.70"
K10	Kandeki Community Self -Help Group	Mururi	T hiba	Nyamindi	768	170	S00°28'02.6"	E37°23'48.2"
K11	Wangatia Self Help Group	Kutus	T hiba	Kiringa	230	180	S00°31'53.3"	E37°19'51.5"
M39	Makutano Nkanga Water Project	Maua	T hangatha	Makutano Springs	187	100	N00°15'47.8"	E38°04'56.2"
T01	Magati Irrigation Water Project (CBO)	Mitunguu	Kathita	T hingithu	801	122	S00°05'54.7"	E37°48'45.4"
T04	Karuma Marimanti Irrigation Project	Marimanti	Kathita	Kathita	1,265	106	S00°07'12.1"	E37°58'42.0"
T11	Mutino Community Water Project	Kathwana	Mutonga	Maara	3,063	200	S00°16'29.7"	E37°47'12.9"

### 2.2.1 DOCUMENTS COMPRISING THE APPLICATION

The document of the Applicant shall be in metric A4 size and in English language and shall have the following structure and contents and shall be presented in the same sequence as shown below:

- (i) Application Letter on company letter head (Form 0)
- (ii) Power of Attorney on company letter head;

- (iii) Declaration of Undertaking on company letter head (Form 1)
  - (iv) Declaration of Submitting a Proposal on company letter head (Form 2)
  - (v) Declaration of Association if any on company letter head (Form 3)
  - (vi) Statement on Affiliated Firms on company letter head (Form 4)
  - (vii) Financial Capacity Statement (Form 5)
  - (viii) Project Experience (Form 6)
  - (ix) List of Available Expertise and Human Resources Capacity (Form 7)
- Any other material document including presentation of the applicant (GP 2.2.1 (c)) required to be completed and submitted in accordance with the Information to Applicants.

#### **2.4.2 SIGNING OF THE APPLICATION AND THE NUMBER OF COPIES**

In addition to the original Application document 2 (two) hard copies shall be submitted.

Each original and copy of the Application shall include a soft copy as unalterable and printable PDF file on a CD / DVD disk or USB flash drive, marked accordingly.

#### **2.5.1 CLARIFICATION OF PREQUALIFICATION DOCUMENT**

The address for any clarifications regarding this application is as follows:

The Programme Manager  
Attention Manfred W Steidel  
Smallholder Irrigation Program Mount Kenya Region  
Email: sipmk4@aht-group.com

The deadline for clarifications by Applicants is 14 calendar days prior to the submission date as per SP 3.2.1.

Any amendment or answer to requested clarifications will be published on the German Trade and Invest website

<<http://www.gtai.de/GTAI/Navigation/EN/Trade/search-kfw-tenders.html>>,

the Kenya Ministry of Agriculture, Livestock, Fisheries and Irrigation website

<[http://www.kilimo.go.ke/?page\\_id=17](http://www.kilimo.go.ke/?page_id=17)>,and

the Kenya Government IFMIS Portal website

<<http://supplier.treasury.go.ke/site/tenders.go/index.php/public/tenders>>.

#### **3.2.1 DEADLINE FOR SUBMISSION OF APPLICATIONS**

The original Application and 2 (two) copies of the Application shall be submitted at the following address:

The Project Manager  
Smallholder Irrigation Program Mount Kenya Region  
Tujenge Building, 2<sup>nd</sup> Floor  
Mama Ngina Street  
**Embu/ Kenya**

The original Application shall be submitted at the above address from Monday to Friday between 09:00 hrs and 17:00 hrs and at or before 12 o'clock (noon time), East Africa Time zone, on 14<sup>th</sup> March, 2019.

## 4.2 EVALUATION

4.2.1 The Applicant shall demonstrate the following financial capabilities:

Subject	Requirement	Single Entity	Joint Venture			Submission Requirements
			All Parties Combined	Each Party	One Party	
Turn Over	<i>Annual turnover during last five (5) consecutive years not less than KSh 10.0 million.</i>	Must meet req.		Must meet req.		GP 2.2.1. (d) (v)
Profitability	<i>Liquid assets and/or evidence of access to or availability of credit facilities of not less than KSh 2.0 million.</i>	Must meet req.		Must meet req.		GP 2.2.1. (d) (v)

4.2.3 The Employer shall evaluate the Applications determined to be responsive in accordance with GP 4.2.2 in accordance with the following criteria and scoring system. No additional criteria or sub-criterion than those indicated in the Prequalification Document shall be used for the evaluation of Applications.

Qualification criteria	Scoring Range
1. Applicant's Experience <b>gained during the past five years</b> ( <i>experience of the firm</i> )	<b>55</b>
1.1 Experience in implementing similar projects	35
○ Data collection and analysis, topographic surveying and technical investigations, and topographic mapping	(5)
○ Design review of existing riverside abstraction and water distribution works for irrigation in undulating terrain;	(5)
○ Hydraulic and construction design of piped water supply systems for irrigated agriculture, design documentation, design report, material list and bill of quantities, engineering estimate;	(5)
○ FIDIC compatible tender document preparation, general and particular specifications, method statement, work and time planning preferably for irrigation schemes;	(5)
○ Construction supervision of riverside water infrastructure and piped distribution systems, preferably for irrigated agriculture, inspection, scheduling and measuring of works, work reports and contractor's payment requests;	(5)
○ Appointed Engineer under FIDIC (Red Book) or FIDIC (Pink Book);	(5)

<b>Qualification criteria</b>	<b>Scoring Range</b>
○ Community-based approaches for participatory planning of design and to supervision and monitoring of construction;	(5)
1.2 Experience with working-conditions in developing and/or transition countries and evaluated based of the project references submitted in accordance with GP 2.2.1(d)(vi).	5
1.3 Experience with working-conditions in <i>Kenya, in Eastern or Central Africa and similar to Kenya and preferably in the same sector</i> , evaluated based on the project references submitted in accordance with GP 2.2.1(d)(vi).	5
1.4 Successful completion of four (4) or more irrigation and water distribution schemes of similar size and nature <i>in Kenya, in Eastern or Central Africa and similar to Kenya</i> within the last 5 years; evaluated based on the project references submitted in accordance with GP 2.2.1(d)(vi).	10
<b>2. Applicant's Capabilities</b>	<b>45</b>
2.1 Qualitative assessment of the Applicant's available Expertise	25
Assessment of available technical expertise specific to the requested services (SP 1.5.1) and evaluated based on the list submitted in accordance with GP 2.2.1(d)(vii).	(15)
Assessment of the personnel structure in regard to the tasks expected (additional personnel)	(10)
2.2 Quantitative assessment of the Applicant's Human Resources Capacity	15
Assessment of key personnel in permanent employment and always available to monitor the team and provide home office back-up services and evaluated based on the list submitted in accordance with GP 2.2.1(d)(VII).	
3. Is the Application concise and related to the project?	5
<b>Overall Total Score</b>	<b>100</b>

## **SECTION III – APPLICATION FORMS**

**Form 0 – Letter of Application****Letter of Application**

Reference name of the Application / Bid / Contract:

("Contract")

Company

("Company name")

The Programme Manager  
 Smallholder Irrigation Program Mount Kenya Region  
 Tujenge Building 2<sup>nd</sup> floor, Mama Ngina Street,  
 P.O. Box 1961 – 60100,  
 Embu/ Kenya

Dear Sir,

Being duly authorized to represent and act on behalf of <name of company> (hereinafter referred to as "the Applicant") and having reviewed and fully understood all the pre-qualification information provided, the undersigned hereby apply to be prequalified by yourselves as a bidder.

Attached to this letter are certified copies of original documents for all the requested information:

- (a) *the Applicant's legal status*
- (b) *the Certificate of Incorporation (for applicants who are corporations),*
- (c) *the Certificate of Registration (for applicants who are partnerships or individually-owned firms).*

Your agency and its authorized representatives are hereby authorized to conduct any inquiries or investigations to verify the statements, documents, and information submitted in connection with this application, and to seek clarification from our bankers and clients regarding any financial and technical aspects.

The undersigned declare that the statements made, and the information provided in the duly completed application are complete, true, and correct in every detail.

Signed:	Signed:
Name:	Name:
<i>Seal</i>	<i>Seal</i>
<i>For and on behalf of (Name of applicant or lead partner in a JV)</i>	<i>For and on behalf of (Name of partner)</i>

**Form 1– Declaration of Undertaking****Declaration of Undertaking**Reference name of the Application/Offer/Contract: ("Contract")<sup>1</sup>

To: ("Project Executing Agency")

1. We recognise and accept that KfW only finances projects of the Project Executing Agency ("PEA")<sup>2</sup> subject to its own conditions which are set out in the Funding Agreement it has entered into with the PEA. As a matter of consequence, no legal relationship exists between KfW and our company, our Joint Venture or our Subcontractors under the Contract. The PEA retains exclusive responsibility for the preparation and implementation of the Tender Process and the performance of the Contract.
2. We hereby certify that neither we nor any of our board members or legal representatives nor any other member of our Joint Venture including Subcontractors under the Contract are in any of the following situations:
  - 2.1) being bankrupt, wound up or ceasing our activities, having our activities administered by courts, having entered into receivership, reorganisation or being in any analogous situation;
  - 2.2) convicted by a final judgement or a final administrative decision or subject to financial sanctions by the United Nations, the European Union or Germany for involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings; this criterion of exclusion is also applicable to legal Persons, whose majority of shares are held or factually controlled by natural or legal Persons which themselves are subject to such convictions or sanctions;
  - 2.3) having been convicted by a final court decision or a final administrative decision by a court, the European Union, national authorities in the Partner Country or in Germany for Sanctionable Practice in connection with a Tender Process or the performance of a Contract or for an irregularity affecting the EU's financial interests (*in the event of such a conviction, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this conviction is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction*);
  - 2.4) having been subject, within the past five years to a contract termination fully settled against us for significant or persistent failure to comply with our contractual obligations during such Contract performance, unless this termination was challenged and dispute resolution is still pending or has not confirmed a full settlement against us;
  - 2.5) not having fulfilled applicable fiscal obligations regarding payments of taxes either in the country where we are constituted or the PEA's country;
  - 2.6) being subject to an exclusion decision of the World Bank or any other multilateral development bank and being listed on the website <<http://www.worldbank.org/debarr>> or respectively on the relevant list of any other

<sup>1</sup> Capitalised terms used, but not otherwise defined in this Declaration of Undertaking have the meaning given to such term in KfW's "Guidelines for the Procurement of Consulting Services, Works, Goods, Plant and Non-Consulting Services in Financial Cooperation with Partner Countries".

<sup>2</sup> The PEA means the purchaser, the employer, the client, as the case may be, for the procurement of Consulting Services, Works, Plant, Goods or Non-Consulting Services.

multilateral development bank (*in the event of such exclusion, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this exclusion is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction*); or

2.7) being guilty of misrepresentation in supplying the information required as condition to participation in this Tender Procedure.

3. We hereby certify that neither we, nor any of the members of our Joint Venture or any of our Subcontractors under the Contract are in any of the following situations of conflict of interest:

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

3.2) having a business or family relationship with a PEA's staff involved in the Tender Process or the supervision of the resulting Contract, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;

3.3) being controlled by or controlling another Applicant or Bidder, or being under common control with another Applicant or Bidder, or receiving from or granting subsidies directly or indirectly to another Applicant or Bidder, having the same legal representative as another Applicant or Bidder, maintaining direct or indirect contacts with another Applicant or Bidder which allows us to have or give access to information contained in the respective Applications or Offers, influencing them or influencing decisions of the PEA;

3.4) being engaged in a Consulting Services activity, which, by its nature, may be in conflict with the assignments that we would carry out for the PEA;

3.5) in the case of procurement of Works, Plant or Goods:

i. having prepared or having been associated with a Person who prepared specifications, drawings, calculations and other documentation to be used in the Tender Process of this Contract;

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

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

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

6. In the context of the Tender Process and performance of the corresponding Contract:

6.1) neither we nor any of the members of our Joint Venture nor any of our Subcontractors under the Contract have engaged or will engage in any Sanctionable Practice during the Tender Process and in the case of being awarded a Contract will engage in any Sanctionable Practice during the performance of the Contract;

6.2) neither we nor any of the members of our Joint Venture or any of our Subcontractors under the Contract shall acquire or supply any equipment nor operate in any sectors under an embargo of the United Nations, the European Union or Germany; and

- 6.3) we commit ourselves to complying with and ensuring that our Subcontractors and major suppliers under the Contract comply with international environmental and labour standards, consistent with laws and regulations applicable in the country of implementation of the Contract and the fundamental conventions of the International Labour Organisation<sup>1</sup> (ILO) and international environmental treaties. Moreover, we shall implement environmental and social risks mitigation measures when specified in the relevant environmental and social management plans or other similar documents provided by the PEA and, in any case, implement measures to prevent sexual exploitation and abuse and gender based violence.
7. In the case of being awarded a Contract, we, as well as all members of our Joint Venture partners and Subcontractors under the Contract will, (i) upon request, provide information relating to the Tender Process and the performance of the Contract and (ii) permit the PEA and KfW or an auditor appointed by either of them, and in the case of financing by the European Union also to European institutions having competence under European Union law, to inspect the respective accounts, records and documents, to permit on the spot checks and to ensure access to sites and the respective project.
8. In the case of being awarded a Contract, we, as well as all our Joint Venture partners and Subcontractors under the Contract undertake to preserve above mentioned records and documents in accordance with applicable law, but in any case for at least six years from the date of fulfillment or termination of the Contract. Our financial transactions and financial statements shall be subject to auditing procedures in accordance with applicable law. Furthermore, we accept that our data (including personal data) generated in connection with the preparation and implementation of the Tender Process and the performance of the Contract are stored and processed according to the applicable law by the PEA and KfW.

Name: \_\_\_\_\_ In the capacity of: \_\_\_\_\_

Duly empowered to sign in the name and on behalf of<sup>2</sup>: \_\_\_\_\_

Signature:

Dated:

<sup>1</sup> In case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant/Bidder/Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions with respect to a) workers grievances on working conditions and terms of employment, b) child labour, c) forced labour, d) worker's organisations and e) non-discrimination.

<sup>2</sup> In the case of a JV, insert the name of the JV. The person who will sign the application, bid or proposal on behalf of the Applicant/Bidder shall attach a power of attorney from the Applicant/Bidder.

**Form 2 – Sample Declaration of Submitting a Proposal in Case of Being Shortlisted**

**Declaration of Submitting a Proposal in Case of Being Shortlisted**

Project (name and country):

Tender Ref./ Project ID:

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

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

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

*[List Sub-Consultants here]*

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

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

## Form 3 - Sample Declaration of Association

### Declaration of Association

Project (name and country):

Tender Ref./ Project ID:

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

*[Insert the names of the other association members here]*

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

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

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

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

## Form 4 – Sample Declaration on Affiliated Firms

### Declaration on Affiliated Firms

Project (name and country):

Tender Ref./ Project ID:

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

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

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

## Form 5 – Financial Capacity Statement

The information supplied and entered in the below table should be equal to the amount in other currencies converted to Kenya Shilling (KSh) applying the mean rate of exchange shown on the Central Bank of Kenya website <<https://www.centralbank.go.ke/rates/forex-exchange-rates/>> on the first day of publishing the related Invitation for Prequalification.

Financial data	2 years before last year <sup>i</sup> KSh	Year before last year KSh	Last year KSh	Average <sup>ii</sup> KSh	This year KSh
Annual turnover <sup>iii</sup> , excluding this contract					
Current Assets <sup>iv</sup>					
Current Liabilities <sup>v</sup>					

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<sup>i</sup> Last year is the last accounting year for entity.

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

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

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

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

## Form 6 – Project Experience

The information supplied and entered in the below table should be equal to the amount in other currencies converted to Kenya Shilling (KSh) applying the mean rate of exchange shown on the Central Bank of Kenya website <<https://www.centralbank.go.ke/rates/forex-exchange-rates/>> on the first day of publishing the related Invitation for Prequalification.

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

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

## Form 7 – List of Available Expertise and Human Resource Capacity

### 1. Access to Expertise Required for the Assignment

Complete the list below to demonstrate the extent to which you have access (internally / externally) to expertise required for this assignment / for the project team profiles described in GP 1.6. Include home-office project management / administration and backs-stopping personnel. Include freelance personnel and sub-consultant staff, if applicable (see Declaration in Annexe I). Do not attach CVs as no detailed evaluation of candidates for the project team shall be carried out at the prequalification stage. The Applicant shall not present a potential project team. The focus is on access and availability to project relevant expertise. It is understood that prequalified Applicants are not required to include staff named below into their proposal.

Name	Project team profile / areas of required expertise as per GP / SP 1.6 <sup>1</sup>	Education/ Degree	Years of Professional Experience	Relationship with / Years within the Applicant <sup>2</sup>	Country/Regional Experience	Relevant Project References (Description of project-related experience)	Languages

<sup>1</sup> The project team profiles should be identical to the project team profiles listed in GP / SP 1.6.1. The information provided in the “Education/Degree” and “Relevant Project References) should demonstrate that the expert’s core specialization is appropriate for the respective project profile.

<sup>2</sup> For freelance experts (e.g. with retainer contracts or formal agreements) indicate “FE” and how long the expert has been associated with the Applicant. For sub-consultant staff indicate “Sub”. Staff from affiliated firms of the Applicant shall be considered as sub-consultant staff.

**Form 7 continued**

**2. Human Resource Capacity**

Complete the list below to demonstrate the permanent staff available in the areas of expertise required in this assignment as described in GP / SP 1.6 The focus here is on the Applicants human resource capacity and breadth in relation to the required expert services.

Departments / Divisions in the firm relevant to the project team profile / areas of required expertise as per GP / SP 1.6	Staff		Total staff appropriate for the specialisation
	Permanent staff in the Applicants firm	Freelance staff	

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

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

### **1) Corrupt and Fraudulent Practices**

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

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

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

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

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

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

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

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

## **2) Social and Environmental Responsibility**

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

- (a) Comply with and ensure that all their subcontractors, suppliers, in particular those for major supply items, or consultants comply with international environmental and labour

standards, consistent with applicable law and regulations in the country of implementation of the contract and the fundamental conventions of the International Labour Organisation<sup>9</sup> (ILO) and international environmental treaties;

- (b) Implement environmental and social risks mitigation measures when specified in the environmental and social management plan (ESMP) provided by the Contracting Authority.

<sup>9</sup> In case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant / Bidder / Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions with respect to a) workers grievances on working conditions and terms of employment, b) child labour, c) forced labour, d) worker's organisations and e) non-discrimination.

## **SECTION V – KfW ELIGIBILITY CRITERIA**

### **Eligibility in KfW-Financed Procurement**

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

- 2.5 have not fulfilled their fiscal obligations regarding payments of taxes in accordance with the legal provisions of either the country where they are constituted or the Contracting Authority's country;
  - 2.6 are subject to an exclusion decision of the World Bank and are listed on the website <http://www.worldbank.org/debarr>, unless they provide supporting information together with their Declaration of Undertaking (Form available as Appendix to the Application, Bid or Proposal Submission Form) which shows that this exclusion is not relevant in the context of this contract and that adequate compliance measures have been taken in reaction;
  - 2.7 have created false documents or committed misrepresentation in documentation requested by the Contracting Authority as part of the procurement process of this Contract.
3. State-owned entities may compete only if they can establish that they (i) are legally and financially autonomous, and (ii) operate under commercial law. To be eligible, a state-owned entity shall establish to KfW's satisfaction, through all relevant documents, including its Charter and other information KfW may request, that it: (i) is a legal entity separate from their state (ii) does not currently receive substantial subsidies or budget support; (iii) operates like any commercial enterprise, and, inter alia, is not obliged to pass on its surplus to their state, can acquire rights and liabilities, borrow funds and be liable for repayment of its debts, and can be declared bankrupt.