



**TENDER NAME:
REQUEST FOR PROPOSAL (RFP) FOR ESTABLISHMENT OF
GEOTHERMAL DIRECT-USE POWERED INVESTMENTS AT
THE MENENGAI GEOTHERMAL FIELD, KENYA.**

INVITATION TO SUBMIT THE PROPOSAL (RFP) NO:

GDC/DU/RFP/067/2022:2023

TENDER CLOSING DATE AND TIME: 3rd JULY 2023 AT 11.00AM

**Geothermal Development Company Ltd
P.O. Box 100746-00101
NAIROBI
Tel: +254 719 037000; 020 2427516
Email: procurement@gdc.co.ke
Website: www.gdc.co.ke**

Contents

GENERAL	3
SECTION 1 (A) - REQUEST FOR PROPOSAL (RFP)	3
PART 1 TENDERING PROCEDURE.....	4
SECTION 1. INSTRUCTIONS TO INVESTORS	4
A. GENERALPROVISIONS	4
B. PREPARATION OF PROPOSALS	7
C. SUBMISSION, OPENING AND EVALUATION	8
D. NEGOTIATIONS AND AWARD	10
SECTION II. DATA SHEET	12
SECTION 3. EVALUATION AND QUALIFICATION	14
SECTION 4. TENDERING FORMS	19
Technical Requirements	19
Avail Draft Project Management Plans	21
Indicative Timelines for investment.....	21
Financial Status of the Company.....	21
Local community empowerments (job creation).....	21
Regulatory and Statutory Requirements.....	21
PART 2–PROCUREMENT ENTITY'S REQUIREMENTS.....	27
SECTION V – REQUIRED TECHNICAL DRAWINGS AND LAYOUTS	27
PART 3 – CONDITIONS OF CONTRACT AND CONTRACT FORMS	28
SECTION VI - GENERAL CONDITIONS OF CONTRACT	28
SECTION VII - SPECIAL CONDITIONS OF CONTRACT	47
SECTION VIII - CONTRACT FORMS	50
APPENDIX 1: MAP OF MENENGAJ SHOWING LOCATIONS OF RESOURCE PARKS..	58

GENERAL

SECTION 1 (A) - REQUEST FOR PROPOSAL (RFP)

Date: 30th May 2023

Reference No.: GDC/DU/RFP/067/2022-2023

NAME OF ASSIGNMENT: REQUEST FOR PROPOSAL (RFP) FOR ESTABLISHMENT OF GEOTHERMAL DIRECT-USE POWERED INVESTMENTS AT THE MENENGAI GEOTHERMAL FIELD, KENYA.

Geothermal Development Company (GDC) advertised for Request for Proposal (RFP) entitled “*Request for Proposal (RFP) for Establishment of Geothermal Direct-Use Powered Investments at the Menengai Geothermal Field, Kenya*”. Mandatory, Technical and financial requirements are contained in Section 2B and Section 3

1. This Request for Proposals (RFP) has been advertised through open tendering method advertised on Local Dailies and approved government website.
2. If an Investor is in a Joint Venture (JV), the full name of the JV shall be used. The name and role of each firm in the JV shall be stated clearly.
3. This document contains **confidential information**. It is **NOT permissible to share** any information contained herein with any other person or entity NOT involved in this process. Sharing any information therefore **strictly prohibited**.
4. This document has five (5) sections

Section 1: Letter of Request for Proposals
Section 2: Instructions to Investors and Data Sheet
Section 3: Investors Data and Information Sheet
Section 4: Terms of Reference
Section 5: Proposal Standard Forms of Contract
5. Completed tenders are to be enclosed in plain sealed envelopes marked with tender name and tender reference number and be deposited in the Tender Box at GDC Kawi House Office Ground Floor, located at South C Bellevue ,Off Mombasa Road, Red Cross Road, or be addressed to;

**THE MANAGING DIRECTOR,
GEOTHERMAL DEVELOPMENT COMPANY LTD
P.O. BOX 100746 – 00101
NAIROBI, KENYA**

So as to be received on or before **3rd July 2023 at 11.00am.**

6. Tenders will be opened immediately after the deadline date and time specified above

MANAGER, SUPPLY CHAIN

PART 1 TENDERING PROCEDURE

SECTION 1. INSTRUCTIONS TO INVESTORS

A. GENERAL PROVISIONS

1. Meanings/Definitions

- a) “Affiliate(s)” means an individual or an entity that directly or indirectly controls, is controlled by, or is under common control with the Investor.
- b) “Applicable Law” means the laws and any other instruments having the force of law in Kenya.
- c) “GDC” means the entity that is carrying out the Investment selection process and signs the Contract for the investment with the selected Investor.
- d) “Investor” means a legally-established firm/company or an entity that will respond to this RFP, hence the recipient of this RFP.
- e) “Contract” means a legally binding written agreement signed between the GDC and the Investor and includes all the attached documents listed in its Clause 1 (the General Conditions of Contract (GCC), the Special Conditions of Contract (SCC), and the Appendices).
- f) “Data Sheet” means an integral part of the Instructions to Investors (ITI) Section 2 that is used to reflect specific conditions to supplement, but not to over-write, the provisions of the ITI.
- g) “Investor Information and Data Sheet” Technical Information from the Investor which will be used to establish the actual requirements of the investor.
- h) “Day” means a calendar day unless otherwise specified as "Business Day". A Business Day is any day that is an official working day in Kenya and excludes official public holidays.
- i) “Government” means the Government of the Republic of Kenya.
- j) “In writing” means communicated in written form such as by mail, e-mail, fax, including, if specified in the Data Sheet, distributed or received through the electronic-procurement system used by the GDC with proof of receipt.
- k) “Joint Venture (JV)” means an association with or without a legal personality distinct from that of its members, of more than one Investor where one member has the authority to conduct all business for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the GDC for the performance of the Contract.
- l) “ITI” (this Section 2 of the RFP) means the Instructions to Investors that provides the Investors with all information needed to prepare their Proposals.
- m) “Letter of RFP” means this document inviting being sent by GDC to the Investors.
- n) “Proposal” means the Technical Proposal and the Financial Proposal of the Investor.
- o) “Public Procurement Regulatory Authority (PPRA)” means the statutory authority of the Government of Kenya that mandated with the role of regulating and monitoring compliance with the public procurement law and regulations.
- p) “RFP” means the Request for Proposals to be prepared by GDC to get information about the potential investment to be used to select the Investors.
- q) “Sub-Investor” means an entity to whom the Investor intends to subcontract any part of the investment while the Investor remains responsible to the GDC during the whole performance of the Contract.
- v) “Terms of Reference (TORs)” means the write-up that explains the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of the GDC and the Investor, and expected results and deliverables and timelines.

2. Introduction

- 2.1 The GDC intends to engage the Investors who are interested in Direct-Use Investments. The Investors are required to give detailed information about their intended investment at the Menengai Geothermal project. The information required is contained in this Request for Proposals (RFP), Section 3 in accordance with the method of selection specified in the Data Sheet.
- 2.2 The Investors are invited to submit their detailed proposal for investing in Direct-Use powered investments as per the Investor Information sheet (Section 3). The Proposal will be the basis for evaluating the potential capability of the investor to undertake the investment.
- 2.3 The Investors should familiarize themselves with the local conditions and take them into account in preparing their Proposals, including attending a pre-proposal site visit and investor conference as specified in the Data Sheet. Attending any such field visit and conference will be open to all pre-qualified investors and will be at the investor's cost.
- 2.4 The GDC will timely provide, at no cost to the Investors, the inputs, relevant project data, and information required for the preparation of the Proposal as specified in the Data Sheet.

3. Conflict of Interest

- 3.1 The Investor is required to provide professional, objective, and impartial communication, always holding the GDC's interest's paramount, strictly avoiding conflicts with other assignments or its own corporate interests.
- 3.2 The Investor has an obligation to disclose to the GDC any situation of actual or potential conflict that impacts its capacity to undertake the works satisfactorily for the best interest of the GDC. Failure to disclose such situations may lead to termination of its Contract.
- 3.3 Without limitation on the generality of the foregoing, and unless stated otherwise in the Data Sheet, the Investors shall not be engaged under the circumstances set forth below:
 - i) *Conflicting Activities*
Conflict between investment and procurement of goods, works or non-consulting services: a firm that has been engaged by the GDC to provide goods, works, or consulting services for a project, or any of its Affiliates, shall be disqualified from providing 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) *Conflicting Assignments*
Conflict among assignments: An Investor (including its Experts and Sub-Investors) or any of its Affiliates shall not be hired for any assignment that, by its nature, may conflict with another assignment of the Investor for the same or for another GDC.
 - iv) *Others*
Any other types of conflicting relationships as indicated in the Data Sheet.

4. Unfair Competitive Advantage

- 4.1 Fairness and transparency in the selection process requires that the Investors or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided services related to the assignment in question. To that end, the GDC shall indicate in the Data Sheet and make available to all Investors together with this RFP all information that would in that respect give such Investor any unfair competitive advantage over competing Investors.

5. Corrupt and Fraudulent Practices

- 5.1 Investor firms or any of its members shall not be involved in corrupt, coercive, obstructive, collusive or fraudulent practice. Investor firms or any of its members that are proven to have been involved in any of these practices shall be automatically disqualified from this process.

6. Collusive practices

- 6.1 The GDC requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any Investor found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Investors shall be required to complete and sign the "Certificate of Independent Proposal Determination" annexed to the Proposal Form.
- 6.2 In further pursuance of this policy, Investors shall permit and shall cause their agents (where declared or not), subcontractors, sub-Investors, service providers, suppliers, and their personnel, to permit the Government and its agencies to inspect all accounts, records and other documents relating to any short-listing process, Proposal submission, and contract performance (in the case of award), and to have them audited by auditors, investigators or compliance officers.

7. Eligibility

- 7.1 The Investors will be selected through a RFP process.
- 7.2 Unless otherwise specified in the Data Sheet, the GDC permits Investors including proposed experts, joint ventures and individual members from all countries and categories to undertake the investment.
- 7.3 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services and investment are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for submission of proposals, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website www.cak.go.ke
- 7.4 It is the Investor's responsibility to ensure that it's Experts, joint venture members, Sub-Investors, agents (declared or not), sub-contractors, service providers, suppliers and/or their employees meet the eligibility requirements.
- 7.5 As an exception to the foregoing ITI 7.3 and 7.4 above:
- a) Sanctions-A firm or an individual that has been debarred from participating in public procurement shall be ineligible to be awarded a contract, or to benefit from the contract, financially or otherwise, during the debarment period. The list of debarred firms and individuals is available from the website of PPRA www.ppra.go.ke.
 - b) Prohibitions-Firms and individuals of a country or goods in a country maybe ineligible if:
 - i) As a matter of law or official regulations, Kenya prohibits commercial relations with that country;
 - ii) By an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or services from that country or any payments to any country, person, or entity in that country.
 - c) Restrictions for Government-owned Enterprises, or institutions in Kenya shall be eligible only if they can establish that they:
 - i) Are legally and financially autonomous,

- ii) Operate under commercial law, and
- iii) That they are not dependent agencies of the GDC.

7.6 Margin of Preference and Reservations: - No margin of preference will be allowed in the selection of investors.

8 Non-disclosure

- 8.1 This document contains confidential information. It is **NOT permissible to share** any information contained herein with any other person or entity NOT involved in this process. Sharing any information therefore **strictly prohibited**.
- 8.2 The Shortlisted firms should clearly share this clause with the members of their joint venture

B. PREPARATION OF PROPOSALS

9 General Considerations

- 9.1 In preparing the Proposal, the Investor is expected to examine the RFP in detail. Material deficiencies in providing the information requested in the RFP may result in rejection of the Proposal.

10 Cost of Preparation of Proposal

- 10.1 The Investor shall bear all costs associated with the preparation and submission of its Proposal, and the GDC shall not be responsible or liable for those costs, regardless of the conduct or outcome of the process. The GDC is not bound to accept any proposal and reserves the right to annul the process at any time prior to Contract award, without there-by incurring any liability to the Investor.

11 Language

- 11.1 The Proposal, as well as all correspondence and documents relating to the Proposal exchanged between the Investor and the GDC shall be written in the English language.

12 Documents Comprising the Proposal

- 12.1 The Proposal shall comprise the documents and forms listed in the Data Sheet, Information Sheet and Proposal Forms of Contract.
- 12.2 The Investor shall declare in the Financial Proposal Submission Form, that in submitting the proposal, they shall undertake to observe the laws of Kenya against fraud and corruption including bribery, as well as against anti-competitive practices.

13 Only One Proposal

- 13.1 The Investor (including the individual members of any Joint Venture) shall submit only one Proposal, either in its own name or as part of a Joint Venture in another Proposal. If an Investor, including any Joint Venture member, submits or participates in more than one proposal, all such proposals shall be disqualified and rejected. This does not, however, preclude Sub-Investor, or the Investor's staff from participating as Key Experts and Non-Key Experts in more than one Proposal when circumstances justify and if stated in the Data Sheet.
- 13.2 Members of a joint venture may not also make an individual Proposal, be a subcontractor in a separate proposal or be part of another joint venture for the purposes of the same Contract.

14 Proposal Validity

- 14.1 The Data Sheet indicates the period during which the Investor's Proposal must remain valid after the Proposal submission deadline.
- 14.2 During this period, the Investor shall maintain its original Proposal without any change.
- 14.3 The GDC will make its best effort to complete the process within the proposal's validity period. However, should the need arise, GDC may request, in writing, all Investors who submitted Proposals prior to the submission deadline to extend the Proposals' validity.

- 14.4 If the Investor agrees to extend the validity of its Proposal, it shall be done without any change in the original Proposal
- 14.5 The Investor has the right to refuse to extend the validity of its Proposal in which case such Proposal will not be further evaluated.

15 Clarification and Amendment of RFP

- 15.1 The Investor may request a clarification of any part of the RFP during the period indicated in the Data Sheet before the Proposals' submission deadline. Any request for clarification must be sent in writing, or by standard electronic means, to GDC's address indicated in the Data Sheet. GDC will respond in writing, or by standard electronic means, and will send written copies of the response (including an explanation of the query but without identifying its source) to all Investors. Should GDC deem it necessary to amend the RFP as a result of a clarification, it shall do so following the procedure described below:
- 15.2 At any time before the proposal submission deadline, GDC may amend the RFP by issuing an amendment in writing or by standard electronic means. The amendment shall be sent to all invited Investors and will be binding on them. The Investors shall acknowledge receipt of all amendments in writing.
- 15.3 If the amendment is substantial, GDC may extend the proposal submission deadline to give the Investors reasonable time to take an amendment in to account in their Proposals.
- 15.4 The Investor may submit a modified Proposal or a modification to any part of it at any time prior to the proposal submission deadline. No modifications to the Technical or Financial Proposal shall be accepted after the deadline.

16 Preparation of Proposals–Specific Considerations

- 16.1 While preparing the Proposal, the Investor must give particular attention to the following:
- 16.2 If an Investor considers that it may enhance their expertise in the investment by associating with other Investors in the form of a Joint Venture or as Sub-investments, they may do so but only one Proposal is submitted, in accordance with ITI 12. Above. An Investor cannot associate with shortlisted Investor(s). When associating with non-shortlisted/non-invited firms in the form of a joint venture or a sub-investment, the shortlisted/invited Investor shall be a lead member. If shortlisted/invited Investors associates with each other, any of them can be a lead member.
- 16.3 Technical Proposal Format and Content
- 16.4 The Technical Proposal shall be prepared using the Standard forms provided in Section 3 of the RFP and shall comprise the documents listed under Section 1(A) clause 4.

17 Financial Proposal

- 17.1 The financial proposal will be submitted after the technical proposal is concluded. Only those bidders that qualify from the technical evaluation will proceed to the financial proposal.

18 Taxes

- 18.1 The Investor and its Sub-Investors and Experts are responsible for meeting all tax liabilities arising out of the Contract unless stated otherwise in the Data Sheet. Information on taxes in Kenya is provided in the Data Sheet.

19 Currency of Proposal

- 19.1 The Investor may express the price in the currency or currencies as stated in the Data Sheet. If indicated in the Data Sheet, the portion of the price representing local cost shall be stated in Kenya Shillings.

20 Currency of Payment

- 20.1 Payment under the Contract shall be made in the currency or currencies in which the payment is requested in the Proposal.

C. SUBMISSION, OPENING AND EVALUATION

21 Submission, Sealing, and Marking of Proposals

- 21.1 The Investor shall submit a signed and complete Proposal comprising the documents and forms in accordance with ITI 11 (Documents Comprising Proposal). Investors shall mark as “CONFIDENTIAL” information in their Proposals which is confidential to their business. This may include proprietary information, trade secrets or commercial or financially sensitive information. The submission can be done by mail or by hand. If specified in the Data Sheet, the Investor has the option of submitting its Proposals electronically.
- 21.2 An authorized representative of the Investor shall sign the original submission letters in the required format. The authorization shall be in the form of a written power of attorney attached to the Technical Proposal.
- 21.3 A Proposal submitted by a Joint Venture shall be signed by all members so as to be legally binding on all members, or by an authorized representative who has a written power of attorney signed by each member's authorized representative.
- 21.4 Any modifications, revisions, interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Proposal.
- 21.5 The signed Proposal shall be marked “ORIGINAL”, and its copies marked “COPY” as appropriate. The number of copies is indicated in the Data Sheet. All copies shall be made from the signed original. If there are discrepancies between the original and the copies, the original shall prevail.

22 Sealing and Marking of Proposals

- 22.1 The firm shall deliver the Proposals in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the assignment, addressed to the GDC and a warning “DO NOT OPEN BEFORE..... (The time and date for proposal opening date”. Within the single envelope, package or container.
- 22.2 In the single sealed envelope, or in a single sealed package, or in a single sealed container the following documents shall be closed and shall be addressed as follows:
 - i) in an envelope or package or container marked “ORIGINAL”, all documents comprising the Technical Proposal, as described in ITI 11;
 - ii) in an envelope or package or container marked “COPIES”, all required copies of the Technical Proposal;
- 22.3 The envelopes or packages or containers shall:
 - i) Bear the name and address of the GDC.
 - ii) Bear the name and address of the Firm; and
 - iii) Bear the name and Reference number of the Assignment.
- 22.4 If an envelope or package or container is not sealed and marked as required, GDC will assume no responsibility for the misplacement or premature opening of the proposal. Proposals that are misplaced or opened prematurely will not be accepted.
- 22.5 The Proposal or its modifications must be sent to the address indicated in the Data Sheet and received by GDC no later than the deadline indicated in the Data Sheet, or any extension to this deadline. Any Proposal or its modification received by the GDC after the deadline shall be declared late and rejected, and promptly returned unopened.

23 Confidentiality/Canvassing

- 23.1 From the time the Proposals are opened to the time the Contract is awarded, the Investor should not contact the GDC on any matter related to the Proposal. Information relating to the evaluation of Proposals and award recommendations shall not be disclosed to the Investors who submitted the Proposals or to any other party not officially concerned with the process, until the publication of the Contract award information.
- 23.2 Any attempt by Investors or any one on behalf of the Investor to influence improperly the GDC in the evaluation of the Proposals or Contract award decisions may result in the rejection of its Proposal and may be subject to the application of prevailing PPRA's debarment procedures.
- 23.3 Notwithstanding the above provisions, from the time of the Proposals' opening to the time of Contract award publication, if an Investor wishes to contact the GDC on any matter related to the selection process, it should do so only in writing.

24 Opening of Proposals

24.1 GDC's opening committee shall conduct the opening of the Proposals in the presence of the Investors' authorized representatives who choose to attend (in person, or online if this option is offered in the Data Sheet). The opening date, time and the address are stated in the Data Sheet.

24.2 At the opening of the Technical Proposals the following shall be read out: (i) the name and the country of the Investor or, in case of a Joint Venture, the name of the Joint Venture, the name of the lead member and the names and the countries of all members; (ii) any modifications to the Proposal submitted prior to proposal submission deadline; and (iii) any other information deemed appropriate or as indicated in the Data Sheet.

25 Proposals Evaluation

25.1 The Investor is not permitted to alter or modify its Proposal in anyway after the proposal submission deadline except as permitted under ITI 14.1. While evaluating the Proposals, the Evaluation Committee will conduct the evaluation solely on the basis of the submitted information.

25.2 The GDC's evaluation committee shall evaluate the Proposals as per the Investor Information and Data Sheet (Section 3).

26 Taxes

26.1 The investor is deemed to have considered all Taxes in their investment financial model.

27 Conversion to Single Currency

27.1 For the evaluation purposes, prices shall be converted to a single currency using the selling rates of exchange, source and date indicated in the Data Sheet.

28 Inability to perform the investment

28.1 If the GDC determines that the firm has failed to demonstrate its capability to perform the investment, the GDC shall reject the firm's proposal.

29 Standstill Period

29.1 The Standstill Period shall be the number of days stated in the Data Sheet. The Standstill Period commences the day after the date GDC has transmitted to each Investor (that has not already been notified that it has been unsuccessful) the Notification of Intention to Award the Contract. The Contract shall not be signed earlier than the expiry of the Standstill Period. This period shall be allowed for aggrieved Investors to lodge an appeal. The procedure for appeal and the authority to determine the appeal or complaint is as indicated in the Data Sheet.

D. NEGOTIATIONS AND AWARD

30 Negotiations

30.1 The negotiations will be held at the date and address indicated in the Data Sheet with the Investor's representative(s) who must have written power of attorney to negotiate and sign a Contract on behalf of the Investor.

30.2 The evaluation committee shall prepare minutes of negotiations that are signed by the Accounting Officer and the Investor's authorized representative.

31 Technical negotiations

31.1 The technical negotiations shall not substantially alter the original scope of investment but will be intended to clarify technical issues between GDC and the Investor

32 Financial negotiations

32.1 The financial negotiations include financial liability of GDC and the Investor, Tariff Agreements as well as other financial services will be discussed during contract negotiations after the award.

33 Conclusion of Negotiations

- 33.1 The negotiations are concluded with a review of the finalized draft Contract, which then shall be initialed by the Accounting Officer and the Investor's authorized representative and minutes prepared to record the outcome of the negotiations.
- 33.2 If the negotiations fail, GDC shall inform the Investor in writing of all pending issues and disagreements and provide a final opportunity to the Investor to respond. If disagreement persists, GDC shall terminate the negotiations informing the Investor of the reasons for doing so.

34 Letter of Award

- 34.1 Upon expiry of the Standstill Period, specified in ITI 29.1, after satisfactorily addressing any appeal that has been filed within the Standstill Period, and upon successful negotiations, the GDC shall send a Letter of Award to Investors. The letter shall confirm the GDC's award of Contract to the Investor and requesting the Investor to sign and return the draft negotiated Contract within Twenty-One (21) Days from the date of the Letter of Award.

35 Signing of Contract

- 35.1 The Contract shall be signed prior to the expiration of the Proposal Validity Period and promptly after expiry of the Standstill Period, specified in ITI 29.1 and upon satisfactorily addressing any complaint that has been filed within the Standstill Period.
- 35.2 The Investor is expected to commence the assignment on the date and at the location specified in the Data Sheet and/or Investor Information and Data Sheet (section 3).

SECTION 2. DATA SHEET

Table 1: Data Sheet

Reference to ITI	A. General
2.1	Electronic Procurement System shall be used: NO
2.1	The name of GDC: Geothermal Development Company (GDC) The Investor Selection Method is: Quality Based as captured in “Section 5, Evaluation Criteria” of this document The reference number of the Invitation for Proposal is: GDC/DU/RFP/067/2022-2023
6.1	A list of debarred firms and individuals is available on the PPRA’s website: www.ppra.go.ke
7	The maximum number of members in the joint ventures (JV) is: N/A
	B. Preparation of Proposals
13.1	Proposals must remain valid for 180 days after the Proposal submission deadline.
17.1	The bidders who are successful (meet the cut off score) after technical proposal evaluation will be invited to submit the financial proposal after signing the NDA agreement.
18.1	Information on the Investors tax obligations in the GDC’s country can be found on the Kenya Revenue Authority website: www.kra.go.ke
	C. Submission, Opening & Evaluation
21.1	The Investor shall NOT have the option of submitting their proposal electronically.
21.2	The Proposal shall comprise the following; ONLY ONE (1) Envelope i. Power of Attorney to Sign the Proposal ii. Pre-Proposal Submission Form
21 & 22	The Investors Must submit; One (1) original and two (2) copies of the proposal marked “ Do Not Open, Except in Presence of the Opening Committee. ” (a) To be addressed to the Employer at the following address: Managing Director & CEO Geothermal Development Company Limited Kawi House, South C, Bellevue, Off Mombasa Road, Red Cross Road P. O. Box 100746-00101 NAIROBI, KENYA. The completed tenders shall be deposited in the tender box located at GDC Kawi House, Ground Floor. Marked, “ ■ and the words: “ Do Not Open Before <u>Monday 3rd July 2023</u>” at 11.00am. NB: The Proposal shall be placed in a sealed envelopes clearly marked as indicated above. The Proposal shall be opened in the opening/closing day.

22.5	<p>The Proposal must be submitted not later than: Monday 3rd July 2023 at 11.00am.</p> <p>The Proposal Submission Address is:</p> <p style="text-align: center;">Geothermal Development Company Limited Kawi House, South C, Bellevue, Off Mombasa Road, Red Cross Road P. O. Box 100746-00101 NAIROBI, KENYA.</p> <p>Proposals to be dropped at Tender Box at GDC Kawi House Office Ground Floor, located at South C Bellevue, Off Mombasa Road, Red Cross Road on or before closing time.</p>
24.1	<p>The Opening shall take place at: GDC Kawi House Office Ground Floor Boardroom located at South C Bellevue, Off Mombasa Road, Red Cross Road on Monday 3rd July 2023 at 11.00am</p>
25	<p>Evaluation Criteria. As stipulated in Section 5</p>
30	<p>The bidders who are successful (meet the cut off score) after technical proposal evaluation will be invited to submit the financial proposal after signing the NDA agreement.</p>
30	<p>AWARD CRITERIA NB: The bidders who are successful (meet the cut off score) after technical proposal evaluation will be invited to submit the financial proposal after signing the NDA agreement.</p>

SECTION 3. EVALUATION AND QUALIFICATION

The investor must clearly read this section which comprises of three parts

- i. Terms of reference
- ii. Evaluation criteria

i. Terms of Reference

Objective

The Direct-Use commercialization is about using geothermal energy directly to power commercial size investments. GDC has been researching and demonstrating Direct-Uses since 2010. To-date, GDC has undertaken many prefeasibility studies which resulted to setting up five (5) demonstration project. With the observed benefits, GDC is in the journey of commercializing Direct-Use investments in Menengai Geothermal Field.

To kick-off commercialization process, GDC is sending out Requests for Proposal (RFP) for establishment of Geothermal Direct-Use Powered Investments. The bidders are expected to respond to the requirements of this RFP for establishing Direct-Use investments at Menengai Geothermal Field by availing all the required documents, filling up the forms as indicated in Section I (A) clause 4.

Structure and key descriptions

GDC and the Investor(s) will work together to commercialize the geothermal Direct-Use technology where GDC will generate revenue from sale of geothermal energy contained in the geothermal fluids (As shown in the detailed description Attached to this RFP) and the Investor will access cheap, reliable and environmentally friendly form of energy for their processes.

All investments will be located at Menengai geothermal project at the already identified location (Appendix 1) depending on the investment category. GDC will identify the investment location based on the energy availability of the investment category.

The investor will be required to raise all the finances associated to the projects implementation as per (4.1.1) and (4.1.2) below

4.1.1 Cost associated with putting up their own investments.

4.1.2 Cost associated with design, installation and commissioning of the Energy supply infrastructure from the wellhead to their investment. The arrangement will be that:

- i. The investor will recoup their financial investment for the ESI as per the negotiated agreement signed during the contract negotiations.
- ii. GDC will approve all the designs for the ESI before implementation
- iii. GDC will own and maintain the energy supply infrastructure
- iv. Table ** shows the approximate costs of setting up the ESI

Table 3: Approximate costs of setting up Energy Supply Infrastructure

S/No	Category	Some common examples	Approximate costs (USD)
1	Agriculture enhancement	greenhouse heating, aquaculture	1,000,000
2	Agriculture products value addition	drying of agricultural products and milk pasteurization	2,000,000
3	Industrial manufacturing requiring Heat and Electricity	Heavy and energy intensive processes	5,000,000

GDC'S Role

During Proposal submission and negotiations

- i. Identify the resource park area depending on availability of land and energy and ease of access.
- ii. Share the map of the resource park area with the investors.
- iii. Communicate approved tariffs to bidders who passes the technical evaluation.
- iv. Clarify all concerns by bidders in good time.

During Investment and project operations

- i. Avail Energy to the Investors at the wellhead in the required form and parameters as per the contract.
- ii. Provide a standard marram road to the Investor's site as per the agreement.
- iii. Provide the required water to the Investor at a pre-determined tariff (Tariff to be shared with the bidders who qualify at the technical evaluation stage), and as per the As per the Data Sheet- Section 2B.
- iv. Provide the sub-lease of the required land at the agreed fee
- v. Reinjection of the waste geothermal fluids after energy extraction. The geothermal water should not be contaminated with other effluent from the investment.
- vi. Monthly Energy metering, billing and invoicing (as per the signed contract)
- vii. Quarterly meetings with the Investor throughout the life of the investment
- viii. Maintenance of the energy supply systems and geothermal fluid disposal system

Investors Role

During Proposal submission

- i. Fill in the Investor Information and data sheet comprehensively. This will help GDC in technical review of the RFP.
- ii. Prove of financial liquidity as per Section 3 and Section 4 ((Investor Information and Data Sheet)
- iii. Sign a **Non-Disclosure Agreement (NDA)** among other Standard forms in Section 5
- iv. Demonstrate local community empowerment.

During Investment and project operations

- i. Compliance with all Statutory regulations and guidelines
- ii. Set up the investments within the required timelines and agreements.
- iii. Consumption of the availed energy as per the agreements
- iv. Timely payment of invoices as per the contract terms
- v. Monthly verification of the energy metering process
- vi. Local community empowerment through job creation and CSR activities

- vii. Quarterly meetings with GDC throughout the life of the investment
- viii. Compliance with KFS regulations

ii. **Evaluation Criteria**

1. Mandatory	Tax Compliance	
	Certificate of Incorporation	
	Physical Address	
	Directors	
	Fill Section 4: Investor Information Data Sheet (as applicable)	
	Filling of Compulsory technical evaluation forms (Section 6)	
	Form 1: TECH-1: PROPOSAL SUBMISSION FORM	
	Form 2: TECH-2: INVESTOR'S ORGANIZATION AND EXPERIENCE	
	Form 3: TECH-3: COMMENTS AND SUGGESTIONS	
	Form 4: TECH -4: DESCRIPTION OF INVESTMENT APPROACH AND TIMELINES	
	Form 5: TECH- 5: JOINT VENTURE COMPOSITION (If applicable)	
	Form 6: TECH- 6: NON-DISCLOSURE AGREEMENT FORM	
	Form 7: Duly filled and Signed Non-Disclosure Agreement (NDA)	
	Filling of Compulsory Self Declaration Forms	
	FORM SD1: SELF DECLARATION THAT THE COMPANY/FIRM/ IS NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015	
	FORM SD2: SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE	
	FORM SD3: DECLARATION AND COMMITMENT TO THE CODE OF ETHICS	
	FORM SD4: CERTIFICATE OF INDEPENDENT PROPOSAL DETERMINATION	
	Responsive firms at the preliminary stage will proceed to the technical evaluation stage	
	2. Technical Evaluation	Technical evaluation will be based on the seven (7) factors below and will be weighted as shown. The pass-mark in this section is 70%
1. Fully, clearly and correctly filled Investor Information sheet		15
2. Thermal energy requirement within same investment category (as per Table 3)		20
- Above 500 KWh		20
- 301-500 KWh		15
- 100—300 KWh		10
- Below 100 KWh	5	

3. Clarity of the proposal – Documentation and presentation	25
– Detailed technical drawings	-
i. Heat and Mass diagrams for all processes	10
ii. Conceptual plant layout	5
iii. Electrical single line diagram	5
– Clear plans for the effluent disposal from the investment	5
4. Investment financing	20
– Documented evidence of funding the investment and Energy Supply Infrastructure is clearly demonstrated	20
– Documented evidence of funding the investment and Energy Supply Infrastructure NOT clearly demonstrated	0
5. Proposed timelines for set-up (within the same Investment sector)	10
– 1-2 years	10
– 2-3 years	5
– Over 3 years	2
6. Community Empowerment through direct and indirect Job creating (Demonstrate clearly the category of jobs and where such categories will be used in the investment project)	5
More than 200 jobs created directly	5
100-200 jobs directly	3
< 100 jobs directly	2
7. Use of locally available materials	5
– Raw materials Locally available within Nakuru county	5
– Raw materials sourced within the country	3
– Raw materials sourced outside the country	1
Total score	100

SECTION 4. TENDERING FORMS

1. Investor Information Sheet

The Investor MUST clearly fill in the table 2 below. This table forms a critical part of the RFP evaluation.

Table 2: Detailed Investor information

Technical Requirements		
<i>Current sources energy (for the existing utilization and for new ones, alternatives if not geothermal)</i>		
- Electricity power		
- Thermal energy		
- Temperature range (for steam if applicable)		°C
- Temperature range (for water if applicable)	-	- °C
- Pressure range		bar-a
- Daily energy usage		KWh
<i>Geothermal steam requirements</i>		
- Inlet Temperature range		°C
- Outlet Temperature range		°C
- Pressure range		bar-a
- Flow rate for the entire investment/project		t/hr.
- Conversion rate		t/hr./MW
- Dryness		%
- Non condensable gases (NCG)		%
- Chemistry of steam		
<i>Geothermal Water (Brine) requirements</i>		
- Inlet Temperature range		°C
- Outlet Temperature range		°C
- Pressure range		bar-a
- Flow rate for the entire investment/project		t/hr.
- Chemistry of hot brine		
<i>Hot fresh water requirements</i>		
- Inlet Temperature range		°C
- Outlet Temperature		°C
- Pressure		bar-a
- Flow rate for the entire investment/project		t/hr.
- Volume		m ³ /day
- Chemistry of hot water		

Provide Heat Exchange Concept Description and Process Diagram where applicable		
Electricity demand		
Will the Investor generate electricity for own consumption using geothermal fluids supplied by GDC? If YES, indicate ALL the requirements		YES/NO
- Off-take Voltage		
- Consumption		
- KVA		
- kWh		KVA and kWh
Raw water requirements		
- Flow rate		t/hr.
- Volume		m ³ /day
- Temperature range		°C
- Chemistry of raw water	-	
Technical Drawings		
- Heat and Mass Balance	-	-
- Conceptual plant layout	-	-
- Electrical single line diagram	-	-
Total size of land required for investment		Acres
Physical size of the actual project (footprint)		m ²
Will the Investor require ground levelling/any other earth works?		YES/NO
Will the investor require to use GDC machinery? If YES list them		YES/NO
-	-	-
-	-	-
-	-	-
Other infrastructural requirements (list them and quantify)		
-	-	-
-	-	-
-	-	-
-	-	-
Raw materials		
- Type of raw material		
- Quantity		
- Source		
Final products		

- Type	-	-
- Quantity	-	-
- Market	-	-
Waste generation and Management		
- Type	-	-
- Nature of waste (solid, liquid, gaseous, sludge)	-	-
- Quantity	-	-
- Disposal method	-	-
- Nature of waste (solid, liquid, gaseous, sludge)	-	-
- Quantity	-	- tons/day
Avail Draft Project Management Plans		
- Preparations	-	-
- Construction plan	-	-
- Induction/ training plan	-	-
- Operation and maintenance plan	-	-
- List of contractors/ consultants	-	-
Indicative Timelines for investment		
- Preparation time		
- Commencement of the Investment		dd/mm/yyyy
- Duration of construction/set up		Days
- Testing and commissioning		Days
- Start of operation		dd/mm/yyyy
- Design life of the investment/project		Years
- Project life cycle		
Financial Status of the Company		
- A 6 months financial statement for an existing venture		
- For a new venture, support document to demonstrate availability of capital		
- Estimated total cost of investment		
Local community empowerments (job creation)		
How many direct jobs will this project create		
- Skilled		
- Non-skilled		
How many indirect jobs will this project create		
- Skilled		
- Non-skilled		
Regulatory and Statutory Requirements		
- The company to provide evidence(s) of compliance with all applicable regulatory and statutory requirements for setting up a Business Venture in Kenya.		

2. Mandatory Forms for the Technical Proposal

Filling forms in this section is Mandatory. The forms give GDC extra information about the investor, their commitment and ability to undertake the investment as well as their compliance and commitment to legal and regulatory requirements.

FORM TECH-1: INVESTOR'S ORGANIZATION AND EXPERIENCE

Form TECH-2: a brief description of the Investor's organization and an outline of the recent experience of the Investor in the proposed industry. In the case of a joint venture, information on similar investment shall be provided for each partner.

NB: For start-up investment, a proposal of the company structure shall be provided and at least 2-credible referees on the ability of the Start-up to undertake the investment. One of the Reference should be from a reputable Bank.

Investor's Organization

Provide here a brief description of the background and organization of your company, and-in case of a joint venture-of each member for this assignment.

FORM - TECH-2: COMMENTS AND SUGGESTIONS

Form TECH-3: The Investor to provide comments and suggestions Information Sheet (Section 3) that could improve the quality/effectiveness of the investment proposal.

FORM TECH -3: DESCRIPTION OF INVESTMENT APPROACH AND TIMELINES

Form TECH-4: a description of the investment approach and timelines including deliverable timelines. This to include facilitation required from GDC and other key parties/partners. The information provided here will be useful information to in ensuring that GDC meets their obligations to the investors.

FORM TECH- 4: JOINT VENTURE COMPOSITION (If applicable)

PART 2–PROCUREMENT ENTITY'S REQUIREMENTS

SECTION V – REQUIRED TECHNICAL DRAWINGS AND LAYOUTS

The investor requires the bidder to provide the following

1. Well demonstrated and detailed drawings of Heat and Mass Balance
2. Conceptual plant layout
3. Electrical single line diagram

PART 3 – CONDITIONS OF CONTRACT AND CONTRACT FORMS

SECTION VI - GENERAL CONDITIONS OF CONTRACT

A. General

1.1 Provisions Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- a) The Adjudicator is the person appointed jointly by the Procuring Entity and the Service Provider to resolve disputes in the first instance, as provided for in Sub-Clause 8.2 hereunder.
- b) “Activity Schedule” is the priced and completed list of items of Services to be performed by the Service Provider forming part of his Tender;
- c) “Completion Date” means the date of completion of the Services by the Service Provider as certified by the Procuring Entity
- d) “Contract” means the Contract signed by the Parties, to which these General Conditions of Contract (GCC) are attached, together with all the documents listed in Clause 1 of such signed Contract;
- e) “Contract Price” means the price to be paid for the performance of the Services, in accordance with Clause 6;
- f) “Day works” means varied work inputs subject to payment on a time basis for the Service Provider's employees and equipment, in addition to payments for associated materials and administration.
- g) “Procuring Entity” means the Procuring Entity or party who employs the Service Provider
- h) “Foreign Currency” means any currency other than the currency of Kenya;
- i) “GCC” means these General Conditions of Contract;
- j) “Government ” means the Government of Kenya;
- k) “Local Currency ” means Kenya shilling;
- l) “Member,” in case the Service Provider consist of a joint venture of more than one entity, means any of these entities; “Members” means all these entities, and “Member in Charge” means the entity specified in the SC to act on their behalf in exercising all the Service Provider' rights and obligations towards the Procuring Entity under this Contract;
- m) “Party” means the Procuring Entity or the Service Provider, as the case maybe, and “Parties” means both of them;
- n) “Personnel” means persons hired by the Service Provider or by any Subcontractor as employees and assigned to the performance of the Services or any part there of;
- o) “Service Provider” is a person or corporate body whose Tender to provide the Services has been accepted by the Procuring Entity;
- p) “Service Provider's Tender” means the completed Tendering Document submitted by the Service Provider to the Procuring Entity
- q) “SCC” means the Special Conditions of Contract by which the GCC may be amended or supplemented;
- r) “Specifications” means the specifications of the service included in the Tendering Document submitted by the Service Provider to the Procuring Entity

- s) “Services” means the work to be performed by the Service Provider pursuant to this Contract, as described in Appendix A; and in the Specifications and Schedule of Activities included in the Service Provider's Tender.
- t) “Subcontractor” means any entity to which the Service Provider subcontracts any part of the Services in accordance with the provisions of Sub-Clauses 3.5 and 4;
- u) “Public Procurement Regulatory Authority (PPRA)” shall mean the Government Agency responsible for oversight of public procurement.
- v) “Project Manager” shall be the person appointed by the Procuring Entity to act as the Project Manager for the purposes of the Contract and named in the Particular Conditions of Contract, or other person appointed from time to time by the Procuring Entity and notified to the Contractor
- w) “Notice of Dissatisfaction” means the notice given by either Party to the other indicating its dissatisfaction and intention to commence arbitration
- x) “Investment life” This is the period to which the contract shall be in effect and shall vary depending on the investment category, as specified in the SCC

1.2 Applicable Law

The Contract shall be interpreted in accordance with the laws of Kenya.

1.3 Language

This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

1.4 Notices

Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, hand delivery, or email to such Party at the address **specified in the SCC**.

1.5 Location

The Services shall be performed at such locations as are specified in Appendix A, in the specifications and, where the location of a particular task is not so specified, at such locations, whether in Kenya or elsewhere, as the Procuring Entity may approve.

1.6 Authorized Representatives

Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Procuring Entity or the Service Provider may be taken or executed by the officials **specified in the SCC**.

1.7 Inspection and Audit by the PPRA

Pursuant to paragraph 2.2 e. of Attachment 1 to the General Conditions, the Service Provider shall permit and shall cause its sub contract or sub-consultants to permit, PPRA and/or persons appointed by PPRA to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by PPRA. The Service Provider's and its Subcontractors' and sub-consultants' attention is drawn to Sub-Clause 3.10 which provides, inter alia, that acts intended to materially impede the exercise of PPRA's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to PPRA's prevailing sanctions procedures).

1.8 Taxes and Duties

The Service Provider, Subcontractors, and their Personnel shall pay such taxes, duties, fees, and other impositions as may be levied under the Applicable Law, the amount of which is deemed to have been included in the Contract Price.

2 Commencement, Completion, Modification, and Termination of Contract

2.1 Effectiveness of Contract

This Contract shall come into effect on the date the Contract is signed by both parties or such other later date as maybe **stated in the SCC**.

2.2 Commencement of Services

2.2.1 Program

Before commencement of the Services, the Service Provider shall submit to the Procuring Entity for approval a Program showing the general methods, arrangements order and timing for all activities. The Services shall be carried out in accordance with the approved Program as updated.

2.2.2 Starting Date

The Service Provider shall start carrying out the Services thirty (30) days after the date the Contract becomes effective, or at such other date as may be **specified in the SCC**.

2.3 Intended Completion Date

Unless terminated earlier pursuant to Sub-Clause 2.6, the Service Provider shall complete the activities by the Intended Completion Date, as is **specified in the SCC**. If the Service Provider does not complete the activities by the Intended Completion Date, it shall be liable to pay liquidated damage as per Sub-Clause 3.8. In this case, the Completion Date will be the date of completion of all activities.

2.4 Modification

Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written agreement between the Parties.

2.4.1 Value Engineering

The Service Provider may prepare, at its own cost, a value engineering proposal at any time during the performance of the contract. The value engineering proposal shall, at a minimum, include the following;

- a) The proposed change(s), and a description of the difference to the existing contract requirements;
- b) A full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (including life cycle costs, if applicable) the Procuring Entity may incur in implementing the value engineering proposal; and
- c) A description of any effect(s) of the change on performance/functionality.

The Procuring Entity may accept the value engineering proposal if the proposal demonstrates benefits that:

- a) accelerates the delivery period; or
- b) reduces the Contract Price or the lifecycle costs to the Procuring Entity; or

- c) improves the quality, efficiency, safety or sustainability of the services; or
- d) yields any other benefits to the Procuring Entity, without compromising the necessary functions of the Facilities.

If the value engineering proposal is approved by the Procuring Entity and results in:

- a) a reduction of the Contract Price; the amount to be paid to the Service Provider shall be the percentage specified in the SCC of the reduction in the Contract Price; or
- b) an increase in the Contract Price; but results in a reduction in lifecycle costs due to any benefit described in
 - (a) to (d) above, the amount to be paid to the Service Provider shall be the full increase in the Contract Price.

2.5 Force Majeure

2.5.1 Definition

For the purposes of this Contract, “Force Majeure” means an event which is beyond the control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

2.5.2 No Breach of Contract

The failure of a Party to fulfill any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

2.5.3 Extension of Time

Any period with in which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

2.5.4 Payments

During the period of their inability to perform the Services as a result of an event of Force Majeure, the Service Provider shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Service after the end of such period.

2.6 Termination

2.6.1 By the Procuring Entity

The Procuring Entity may terminate this Contract, by not less than thirty(30) days' written notice of termination to the Service Provider, to be given after the occurrence of any of the events specified in paragraphs(a)through (d) of this Sub-Clause 2.6.1:

- a) If the Service Provider does not remedy a failure in the performance of its obligations under the Contract, within thirty (30) days after being notified or within any further period as the Procuring Entity may have subsequently approved in writing;
- b) if the Service Provider become insolvent or bankrupt;
- c) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- d) if the Service Provider, in the judgment of the Procuring Entity has engaged in Fraud and Corruption, as defined in paragraph2.2a. of Attachment1 to the GCC, in competing for or in executing the Contract

2.6.2 By the Service Provider

The Service Provider may terminate this Contract, by not less than thirty (30) days' written notice to the Procuring Entity, such notice to be given after the occurrence of any of the events specified in paragraphs (a) and (b) of this Sub-Clause 2.6.2:

- a) If the Procuring Entity fails to pay any monies due to the Service Provider pursuant to this Contract and not subject to dispute pursuant to Clause 7 within forty-five (45) days after receiving written notice from the Service Provider that such payment is overdue; or
- b) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

2.6.3 Payment up on Termination

Upon termination of this Contract pursuant to Sub-Clauses 2.6.1 or 2.6.2, the Procuring Entity shall make the following payments to the Service Provider:

- a) remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination;
- b) except in the case of termination pursuant to paragraphs (a), (b), (d) of Sub-Clause 2.6.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel.

3 Obligations of the Service Provider

3.1 General

The Service Provider shall perform the Services in accordance with the Specifications and the Activity Schedule, and carry out its obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Service Provider shall always act, in respect of any matter relating to this Contractor to the Services, as faithful adviser to the Procuring Entity, and shall at all times support and safeguard the Procuring Entity's legitimate interests in any dealings with Subcontractors or third parties.

3.2 Conflict of Interests

3.2.1 Service Provider Not to Benefit from Commissions and Discounts.

The remuneration of the Service Provider pursuant to Clause 6 shall constitute the Service Provider's sole remuneration in connection with this Contractor to the Services, and the Service Provider shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contractor to the Services or in the discharge of their obligations under the Contract, and the Service Provider shall use their best efforts to ensure that the Personnel, any Subcontractors, and agents of either of them similarly shall not receive any such additional remuneration.

3.2.2 Service Provider and Affiliates Not to be Otherwise Interested in Project

The Service Provider agree that, during the term of this Contract and after its termination, the Service Provider and its affiliates, as well as any Subcontractor and any of its affiliates, shall be disqualified from providing goods, works, or Services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.

3.2.3 Prohibition of Conflicting Activities

Neither the Service Provider nor its Subcontractors nor the Personnel shall engage, either directly or indirectly, in any of the following activities:

- a) During the term of this Contract, any business or professional activities in Kenya which would conflict with the activities assigned to them under this Contract;
- b) during the term of this Contract, neither the Service Provider nor their Subcontractors shall hire public employees' inactive duty or on any type of leave, to perform any activity under this Contract;
- c) After the termination of this Contract, such other activities as may be **specified in the SCC**.

3.3 Confidentiality

The Service Provider, its Subcontractors, and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the Procuring Entity's business or operations without the prior written consent of the Procuring Entity.

3.4 **The Service Provider** (a) shall take out and maintain, and shall cause any Subcontractors to take out and maintain, at its (or the Subcontractors', as the case may be) own cost but on terms and conditions approved by the Procuring Entity, insurance against the risks, and for the coverage, as shall be **specified in the SCC**; and (b) at the Procuring Entity's request, shall provide evidence to the Procuring Entity showing that such insurance has been taken out and maintained and that the current premiums have been paid.

3.5 Service Provider's Actions Requiring Procuring Entity's Prior Approval

The Service Provider shall obtain the Procuring Entity's prior approval in writing before taking any of the following actions:

- a) Entering into a subcontract for the performance of any part of the Services,
- b) appointing such members of the Personnel not listed by name in Appendix C (“Key Personnel and Subcontractors”),
- c) changing the Program of activities; and
- d) Any other action that may be **specified in the SCC**.

3.6 Reporting Obligations

The Service Provider shall submit to the Procuring Entity the reports and documents specified in Appendix B in the form, in the numbers, and within the periods set forth in the said Appendix.

3.7 Documents Prepared by the Service Provider to Be the Property of the Procuring Entity

All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Service Provider in accordance with Sub-Clause 3.6 shall become and remain the property of the Procuring Entity, and the Service Provider shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Procuring Entity, together with a detailed inventory thereof. The Service Provider may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be **specified in the SCC**.

3.8 Liquidated Damages

3.8.1 Payments of Liquidated Damages

The Service Provider shall pay liquidated damages to the Procuring Entity at the rate per day **stated in the SCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the SCC**. The Procuring Entity may deduct liquidated damages from payments due to the Service Provider. Payment of liquidated damages shall not affect the Service Provider's liabilities.

3.8.2 Correction for Over-payment

If the Intended Completion Date is extended after liquidated damages have been paid, the Procuring Entity shall correct any overpayment of liquidated damages by the Service Provider by adjusting the next payment certificate. The Service Provider shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 6.5.

3.8.3 Lack of performance penalty

If the Service Provider has not corrected a Defect within the time specified in the Procuring Entity's notice, a penalty for Lack of performance will be paid by the Service Provider. The amount to be paid will be calculated as a percentage of the cost of having the Defect corrected, assessed as described in Sub-Clause 7.2 and **specified in the SCC**.

3.9 Performance Security

The Service Provider shall provide the Performance Security to the Procuring Entity no later than the date specified in the Form of acceptance. The Performance Security shall be issued in an amount and form and by a bank or surety acceptable to the Procuring Entity, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The performance Security shall be valid until a date 28 day from the Completion Date of the Contract in case of a bank guarantee, and until one year from the Completion Date of the Contract in the case of a Performance Bond.

3.10 Fraud and Corruption

The Procuring Entity requires compliance with the Government's Anti-Corruption laws and its prevailing sanctions. The Procuring Entity requires the Service Provider to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the tendering process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

3.11 Sustainable Procurement

The Service Provider shall conform to the sustainable procurement contractual provisions, if and as specified in the **SCC**.

4 Service Provider's Personnel

4.1 Description of Personnel

The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Service Provider's Key Personnel are described in Appendix C. The Key Personnel and Subcontractors listed by title as well as by name in Appendix C are hereby approved by the Procuring Entity.

4.2 Removal and/or Replacement of Personnel

- a) Except as the Procuring Entity may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Service Provider, it becomes necessary to replace any of the Key Personnel, the Service Provider shall provide as a replacement a person of equivalent or better qualifications.
- b) If the Procuring Entity finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Service Provider shall, at the Procuring Entity's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Procuring Entity.
- c) The Service Provider shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

5 Obligations of the Procuring Entity

5.1 Assistance and Exemptions

The Procuring Entity shall use its best efforts to ensure that the Government shall provide the Service Provider such assistance and exemptions as **specified in the SCC**.

5.2 Change in the Applicable Law

If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Service Provider, then the remuneration and reimbursable expenses otherwise payable to the Service Provider under this Contract shall be increased or decreased accordingly by agreement between the Parties, and corresponding adjustments shall be made to the amounts referred to in Sub-Clauses 6.2(a) or (b), as the case may be.

5.3 Services and Facilities

The Procuring Entity shall make available to the Service Provider the Services and Facilities listed under Appendix F.

6 Payments to the Service Provider

6.1 Lump-Sum Remuneration

The Service Provider's remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all Subcontractors' costs, and all other costs incurred by the Service Provider in carrying out the Services described in Appendix A. Except as provided in Sub-Clause 5.2, the Contract Price may only be increased above the amounts stated in Sub-Clause 6.2 if the Parties have agreed to additional payments in accordance with Sub-Clauses 2.4 and 6.3.

6.2 Contract Price

- a) The price payable is **set forth in the SCC**.

b) Price may be payable in foreign currency, if so allowed in this document.

6.3 Payment for Additional Services, and Performance Incentive Compensation

6.3.1 For the purpose of determining the remuneration due for additional Services as may be agreed under Sub-Clause 2.4, a breakdown of the lump-sum price is provided in Appendices D and E.

6.3.2 **If the SCC so specify**, the service provider shall be paid performance incentive compensation asset out in the Performance Incentive Compensation appendix.

6.3.3 Where the contract price is different from the corrected tender price, in order to ensure the contractor is not paid less or more relative to the contract price (*which would be the tender price*), payment valuation certificates and variation orders on omissions and additions valued based on rates in the schedule of rates in the Tender, will be adjusted by a plus or minus percentage. The percentage already worked out during tender evaluation is worked out as follows: $(\text{corrected tender price} - \text{tender price}) / \text{tender price} \times 100$.

6.4 Terms and Conditions of Payment

Payments will be made to the Service Provider according to the payment schedule **stated in the SCC**. **Unless otherwise stated in the SCC**, the advance payment (Advance for Mobilization, Materials and Supplies) shall be made against the provision by the Service Provider of a bank guarantee for the same amount, and shall be valid for the period **stated in the SCC**. Any other payment shall be made after the conditions **listed in the SCC** for such payment have been met, and the Service Provider have submitted an invoice to the Procuring Entity specifying the amount due.

6.5 Interest on Delayed Payments

If the Procuring Entity has delayed payments beyond thirty (30) days after the due date stated in the **SCC**, interest shall be paid to the Service Provider for each day of delay at the rate stated in **the SCC**.

6.6 Price Adjustment

6.6.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC**. If so provided, the amounts certified in each payment certificate, after deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

$$P_c = A_c + B_c L_{mc} / L_{oc} + C_c I_{mc} / I_{oc}$$

Where:

P_c is the adjustment factor for the portion of the Contract Price payable in a specific currency “c”.

A_c , B_c and C_c are coefficients specified in the **SCC**, representing: A_c the non-adjustable portion; B_c the adjustable portion relative to labor costs and C_c the adjustable portion for other inputs, of the Contract Price payable in that specific currency “c”; and

L_{mc} is the index prevailing at the first day of the month of the corresponding invoiced date and L_{oc} is the index prevailing 28 days before Tender opening for labor; both in the specific currency “c”.

I_{mc} is the index prevailing at the first day of the month of the corresponding invoice date and I_{oc} is the index prevailing 28 days before Tender opening for other inputs payable; both in the specific currency “c”.

If a price adjustment factor is applied to payments made in a currency other than the currency of the source of the index for a particular indexed input, a correction factor Z_o/Z_n will be applied to the respective component factor of p_n for the formula of the relevant currency. Z_o is the number of units of Kenya Shillings of the index, equivalent to one unit of the currency payment on the date of the base index, and Z_n is the corresponding number of such currency units on the date of the current index.

6.6.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account to fall changes in cost due to fluctuations in costs.

6.7 Day works

6.7.1 If applicable, the Day work rates in the Service Provider's Tender shall be used for small additional amounts of Services only when the Procuring Entity has given written instructions in advance for additional services to be paid in that way.

6.7.2 All work to be paid for as Day works shall be recorded by the Service Provider on forms approved by the Procuring Entity. Each completed form shall be verified and signed by the Procuring Entity representative as indicated in Sub-Clause 1.6 within two days of the Services being performed.

6.7.3 The Service Provider shall be paid for Day works subject to obtaining signed Day works forms as indicated in Sub-Clause 6.7.2

7 Quality Control

7.1 Identifying Defects

The principle and modalities of Inspection of the Services by the Procuring Entity shall be as **indicated in the SCC**. The Procuring Entity shall check the Service Provider's performance and notify him of any Defects that are found. Such checking shall not affect the Service Provider's responsibilities. The Procuring Entity may instruct the Service Provider to search for a Defect and to uncover and test any service that the Procuring Entity considers may have a Defect. Defect Liability Period is as **defined in the SCC**.

1. Correction of Defects, and Lack of Performance Penalty

- a) The Procuring Entity shall give notice to the Service Provider of any Defects before the end of the Contract. The Defects liability period shall be extended for as long as Defects remain to be corrected.
- b) Every time notice a Defect is given, the Service Provider shall correct the notified Defect within the length of time specified by the Procuring Entity's notice.
- c) If the Service Provider has not corrected a Defect within the time specified in the Procuring Entity's notice, the Procuring Entity will assess the cost of having the Defect corrected, the Service Provider will pay this amount and a Penalty for Lack of Performance calculated as described in Sub-Clause 3.8.

8 Settlement of Disputes

8.1 Contractor's Claims

8.1.1 If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

8.1.2 If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Procuring Entity shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clauses shall apply.

8.1.3 The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all relevant to such event or circumstance.

8.1.4 The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting the Procuring Entity's liability, the Project Manager may, after receiving any notice under this Sub-Clause, monitor the record-keeping and /or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.

8.1.5 Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the

Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and /or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

8.1.5.1 This fully detailed claim shall be considered as interim;

- a) The Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and /or amount claimed, and such further particulars as the Project Manager may reasonably require; and

- b) The Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Project Manager.

8.1.6 Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the Project Manager shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within the above defined time period.

8.1.7 Within the above defined period of 42 days, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

8.1.8 Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

8.1.9 If the Project Manager does not respond within the time framed in this Clause, either Party may consider that the claim is rejected by the Project Manager and any of the Parties may refer to Arbitration in accordance with Sub-Clause 8.2 [Matters that may be referred to arbitration].

8.1.10 The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.

8.2 Matters that may be referred to arbitration

8.2.1 Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Services or abandonment of the Services or termination of the Contract by either party:

- a) The appointment of a replacement Project Manager upon the said person ceasing to act.
- b) Whether or not the issue of an instruction by the Project Manager is empowered by these Conditions
- c) Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.
- e) Any dispute arising in respect of war risks or war damage.
- f) All other matters shall only be referred to arbitration after the completion or alleged completion of the Services or termination or alleged termination of the Contract, unless the Procuring Entity and the Contractor agree otherwise in writing.

8.3 Amicable Settlement

8.3.1 Where a Notice of Dissatisfaction has been given, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a Notice of Dissatisfaction in accordance with Sub-Clause 8.1 above should move to commence arbitration after the fifty-sixth day from the day on which a Notice of Dissatisfaction was given, even if no attempt at an amicable settlement has been made.

8.4 Arbitration

8.4.1 Any claim or dispute between the Parties arising out of or in connection with the Contract not settled

amicably in accordance with Sub-Clause 8.3 shall be finally settled by arbitration. Arbitration shall be conducted in accordance with the Arbitration Laws of Kenya.

8.4.2 The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Project Manager from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

8.4.3 Neither Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction.

8.4.4 Arbitration may be commenced prior to or after completion of the services. The obligations of the Parties, and the Project Manager shall not be altered by reason of any arbitration being conducted during the progress of the services.

8.4.5 The terms of the remuneration of each or all the members of Arbitration shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

8.5 Arbitration with proceedings

8.5.1 In case of any claim or dispute, such claim or dispute shall be notified in writing by either party to the other with a request to submit to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred 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, on the request of the applying party, by the Chairman or Vice Chairman of any of the following professional institutions;

a) Law Society of Kenya or

b) Chartered Institute of Arbitrators (Kenya Branch)

8.5.2 The institution written to first by the aggrieved party shall take precedence over all other institutions.

8.5.3 The arbitration maybe on the construction of this Contractor on any matter or thing of what so ever nature arising there under or in connection there with, including any matter or thing left by this Contract to the discretion of the Project Manager, or the withholding by the Project Manager of any certificate to which the Contractor may claim to been titled to or the measurement and valuation referred to in clause 23.0 of these conditions, or the rights and liabilities of the parties subsequent to the termination of Contract.

8.5.4 Provided that no arbitration proceedings shall be commenced on any claim or dispute where notice of a claim or dispute has not been given by the applying party within ninety days of the occurrence or discovery of the matter or issue giving rise to the dispute.

8.5.5 Notwithstanding the issue of a notice as stated above, the arbitration of such a claim or dispute shall not commence unless an attempt has in the first instance been made by the parties to settle such claim or dispute amicably with or without the assistance of third parties. Proof of such attempt shall be required.

8.5.6 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.

8.5.7 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision requirement or notice had been given.

8.5.8 The award of such Arbitrator shall be final and binding upon the parties.

8.6 Failure to Comply with Arbitrator's Decision

8.6.1 In the event that a Party fails to comply with a final and binding Arbitrator's decision, then the other Party may, without prejudice to any other rights it may have, refer the matter to a competent court of law.

9.1 The Adjudicator

- 9.1.1 Should the Adjudicator resign or die, or should the Procuring Entity and the Service Provider agree that the Adjudicator is not functioning in accordance with the provisions of the Contract; a new Adjudicator will be jointly appointed by the Procuring Entity and the Service Provider. In case of disagreement between the Procuring Entity and the Service Provider, within 30 days, the Adjudicator shall be designated by the Appointing Authority **designated in the SCC** at the request of either party, within 14 days of receipt of such request.
- 9.2 The Adjudicator shall be paid by the hour at the rate **specified in the TDS and SCC**, together with reimbursable expenses of the type's **specified in the SCC**, and the cost shall be divided equally between the Procuring Entity and the Service Provider, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.

SECTION VII - SPECIAL CONDITIONS OF CONTRACT

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(a)	The Adjudicator is _____ <i>To be appointed by parties.</i> _____
1.1(v)	Project Manager is _to be appointed in writing by GDC. _____
1.1(d)	The contract name is _____
1.1(g)	The Procuring Entity is _____ <i>GDC</i> _____
1.1(l)	The Member in Charge is _____
1.1(o)	The Service Provider is _____ <i>As to be awarded.</i> _____
1.1(x)	Investment life shall be: <ul style="list-style-type: none"> - 10 years for agriculture enhancement (10 years) - 15 years for Value addition projects (15 years) - Manufacturing and heavy industries (20years)
1.4	<p>The addresses are:</p> <p>Procuring Entity: Geothermal development Company Ltd</p> <p>Attention: <u>Manager Supply Chain</u></p> <p>Email <u>info@gdc.co.ke</u></p> <p>Service Provider: _____</p> <p>Attention: _____</p> <p>Email address _____</p>
1.6	<p>The Authorized Representatives are:</p> <p>For the Procuring Entity:</p> <p style="text-align: center;">_____ <u>Managing Director & CEO</u></p> <p>For the Service Provider: To be provided after award _____</p>
2.1	The date on which this Contract shall come into effect is ____ <i>on the date it is signed by both parties</i> _____.
2.2.2	The Starting Date for the commencement of Services is ____ <i>as will be agreed by the parties following negotiations.</i> _____.
2.3	The Intended Completion Date is ____ <i>subject to the award and negotiations</i> _____.
2.4.1	If the value engineering proposal is approved by the Procuring Entity the amount to be paid to the Service Provider shall be N/A__% (insert appropriate percentage. The percentage is normally up to 50%) of the reduction in the Contract Price.
3.2.3	Activities prohibited after termination of this Contract are: _____ _____ <u>N/A</u> _____

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	—
3.4	<p>The risks and coverage by insurance shall be: values of the insurance to be negotiated by parties upon award.</p> <p>(i) Third Party motor vehicle _____</p> <p>(ii) Third Party liability _____</p> <p>(iii) Procuring Entity’s liability and workers’ compensation _</p> <p>(iv) Professional liability _____</p> <p>(v) Loss or damage to equipment and property _____</p>
3.5(d)	The other actions are _____.]
3.7	<p>Restrictions on the use of documents prepared by the Service Provider are:</p> <p>_____ N/A _____</p> <p>_____</p>
3.8.1	<p>The liquidated damages rate is ____ <i>To be negotiated following award</i> _____ per day</p> <p>The maximum amount of liquidated damages for the whole contract is _____ <i>10%</i> _____ percent of the final Contract Price.</p>
3.8.3	The percentage _____ <i>N/A</i> _____ to be used for the calculation of Lack of performance Penalty(ies) is _____.
5.1	<p>The assistance and exemptions provided to the Service Provider are:</p> <p>_____ N/A _____</p>
6.2(a)	The amount in Kenya Shillings _____ <i>N/A</i> _____.
6.3.2	<p>The performance incentive paid to the Service Provider shall be:</p> <p>_____ N/A _____</p> <p>_____</p>
6.4	<p>Payments shall be made according to the following schedule:</p> <ul style="list-style-type: none"> • Advance for Mobilization, Materials and Supplies: _____ percent of the Contract Price shall be paid on the commencement date against the submission of a bank guarantee for the same. • Progress payments in accordance with the milestones established as follows, subject to certification by the Procuring Entity, that the Services have been rendered satisfactorily, pursuant to the performance indicators: <ul style="list-style-type: none"> _____ (indicate milestone and/or percentage) _____ _____ (indicate milestone and/or percentage) _____ <p>and</p> <p>_____ (indicate milestone and/or percentage) _____</p> <p>Should the certification not be provided, or refused in writing by the Procuring Entity within one month of the date of the milestone, or of the date of receipt of the corresponding invoice, the certification will be deemed to have been provided, and the progress payment will be released</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>at such date.</p> <ul style="list-style-type: none"> • The amortization of the Advance mentioned above shall commence when the progress payments have reached 25% of the contract price and be completed when the progress payments have reached 75%. • Advance payment should not be applicable as the funding for the project(s) will be done by the investors. <p>To be negotiated by parties.</p>
6.5	<p>Payment shall be made within <u>30 days</u>. _____ days of receipt of the invoice and the relevant documents specified in Sub-Clause 6.4, and within _____ days in the case of the final payment – N/A</p> <p>The interest rate is <u>N/A</u>.</p>
6.6.1	<p>Price adjustment is <u>N/A</u> in accordance with Sub-Clause 6.6.</p> <p>The coefficients for adjustment of prices are _____:</p> <p>(a) For local currency:</p> <p style="padding-left: 40px;">A_L is _____</p> <p style="padding-left: 40px;">B_L is _____</p> <p style="padding-left: 40px;">C_L is _____</p> <p style="padding-left: 40px;">L_{mc} and L_{oc} are the index for Labor from _____</p> <p style="padding-left: 40px;">I_{mc} and I_{oc} are the index for _____ from _____</p> <p>(b) For foreign currency</p> <p style="padding-left: 40px;">A_F is _____</p> <p style="padding-left: 40px;">B_F is _____</p> <p style="padding-left: 40px;">C_F is _____</p> <p style="padding-left: 40px;">L_{mc} and L_{oc} are the index for Labor from _____</p> <p style="padding-left: 40px;">I_{mc} and I_{oc} are the index for _____ from _____</p>
7.1	<p>The principle and modalities of inspection of the Services by the Procuring Entity are as follows: _____</p> <p>The Defects Liability Period is <u>N/A</u>.</p>
9.1	<p>The designated Appointing Authority for a new Adjudicator is _____ <i>both parties</i>.</p>
9.2	<p>The Adjudicator is <u>be appointed jointly by the parties</u>. Who will be paid a rate of <u>to be agreed upon once appointed</u> per hour of work? The following reimbursable expenses are recognized: _____</p>

SECTION VIII - CONTRACT FORMS

PROPOSAL SUBMISSION FORM

{Location, Date}

To: *[Name and address of GDC]*

Dear Sirs:

We, the undersigned, offer to undertake an investment on *[Insert title of]* in accordance with your RFP dated *[Insert Date]* and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal.

{If the Investor is a joint venture, insert the following: We are submitting our Proposal in association/as a consortium/as a joint venture with: {Insert a list with full name and the legal address of each member, and indicate the lead member}. We have attached a copy {insert: "of our letter of intent to form a joint venture" or, if a JV is already formed, "of the JV agreement"} signed by every participating member, which details the likely legal structure of and the confirmation of joint and severable liability of the members of the said joint venture.

OR

{If the Investor's Proposal includes Sub-Investors, insert the following :} We are submitting our Proposal with the following firms as Sub-Investors: {insert a list with full name and address of each Sub-Investor.}

We hereby declare that:

- a) All the information and statements made in this Proposal are true and we accept that any misinterpretation or misrepresentation contained in this Proposal may lead to our disqualification by the GDC or maybe sanctioned by the PPRA.
- b) Our Proposal shall be valid and remain binding upon us for the period of time specified in the Data Sheet, ITI-13.
- c) We have no conflict of interest in accordance with ITI-3.
- d) We meet the eligibility requirements as stated in ITI-7, and we confirm our understanding of our obligation to abide by the Government's policy in regard to corrupt, fraudulent and prohibited practices as per ITI-5.
- e) In competing for (and, if the award is made to us, in executing) the Contract, we undertake to observe the laws against fraud and corruption, including bribery, as well as laws against anti-competitive practices, including bid rigging in force in Kenya; we hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption or anti-competitive practices.
- f) We confirm that we are not insolvent, in receivership, bankrupt or on the process of being of being wound up.
- g) The Investor shall declare in the Technical Proposal Submission Form, that in competing for and executing a contract, it shall undertake to observe the laws of Kenya against fraud and corruption including bribery, as well as against anti-competitive practices including bid-rigging.
- h) We are not guilty of any serious violation of fair employment laws and practices. We undertake to observe the laws of Kenya against fraud and corruption including bribery, as well as against collusive and anti-competitive practices, including bid rigging. To this effect we have signed the "Certificate of Independent Proposal Determination" attached below. We also undertake to adhere by the Code of Ethics for persons participating in Public Procurement and Asset Disposal Activities in Kenya, copy available from _____ (*specify website*) during the procurement process and the execution of any resulting contract.

- (l) We, along with any of our sub-Investors are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the PPRA.
- (e) Except as stated in the ITI30 and Data Sheet, we undertake to negotiate a Contract on the basis of the proposed Tariffs and other agreed terms related to this investment.
- (j) Our Proposal is binding upon us and subject to any modifications resulting from the Contract negotiations.
- (k) We understand that the GDC is not bound to accept any Proposal that it receives.

We undertake, if our Proposal is accepted and the Contract is signed, to initiate the Services related to the assignment as stated and agreed on negotiations.

We remain,

Yours sincerely,

Authorized Signature *{In full and initials}*: Name and Title of Signatory:
Name of Investor *(company's name or JV's name)*:
Contact information *(phone and e-mail)*:

{For a joint venture, either all members shall sign or only the lead member, in which case the power of attorney to sign on behalf of all members shall be attached}

SELF-DECLARATIONFORMS

FORM SD1

SELF DECLARATION THAT THE COMPANY/FIRM/ IS NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015.

I, of Post Office Box being a resident of in the Republic of do hereby make a statement as follows: -

1. THAT I am the Company Secretary/Chief Executive/Managing Director/Principal Officer/Director of (Insert name of the Company) who is a Bidder in respect of **RFP No.** for..... (Insert tender title/description) for..... (*Insert name of the GDC*) and duly authorized and competent to make this statement.

2. THAT the aforesaid Firm/Company, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.

3. THAT what is deponed to here in above is true to the best of my knowledge, information and belief.

.....
(Title) (Signature) (Date)

Bidder Official Stamp

FORM SD2

SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE.

I,..... of P. O. Box.....being a resident of in the Republic of do hereby make a statement as follows: -

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Directer of.....
..... (*insert name of the Company*) who is a Bidder in respect of **Tender No.**
..... for (*insert tender title/description*)
for (*insert name of the GDC*) and duly authorized and competent to make this statement.
2. THAT the aforesaid Firm/Company, its servants and/or agents /subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/ or agents of..... (*insert name of the GDC*) which is the GDC.
3. THAT the aforesaid Firm/Company, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of..... (*name of the GDC*).
4. THAT the aforesaid Firm/Company will not engage /has not engaged in any corrosive practice with other bidders participating in the subject tender.
5. THAT what is deponed to herein above is true to the best of my knowledge information and belief.

.....
(Title)

.....
(Signature)

.....
(Date)

Bidder's Official Stamp

FORM SD3

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

I (person) on behalf of (*Name of the Business/ Company/Firm*) declare that I have read and fully understood the contents of the Public Procurement & Asset Disposal Act,2015, Regulations and the Code of Ethics for persons participating in Public Procurement and Asset Disposal Activities in Kenya and my responsibilities under the Code.

I do here by commit to abide by the provisions of the Code of Ethics for persons participating in Public Procurement and Asset Disposal.

Name of Authorized signatory.....

Sign.....

Position.....

Office address..... Telephone.....

E-mail.....

Name of the Firm/Company.....

Date.....

2. (Company Seal/ Rubber Stamp where applicable)

Witness

Name

Sign.....

Date.....

CERTIFICATE OF INDEPENDENT PROPOSAL DETERMINATION

I, the undersigned, in submitting the accompanying PROPOSAL SUBMISSION FORM to the _____ [Name of GDC]

for: _____ [Name and number of tender] in response to the request for tenders made by: _____ [Name of Tenderer] do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of _____ [Name of Tenderer] that:

- 1 I have read and I understand the contents of this Certificate;
- 2 I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;
- 3 I am the authorized representative of the Investor with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;
- 4 For the purposes of this Certificate and the Tender, I understand that the word “competitor” shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:
 - Has been requested to submit a Tender in response to this request for tenders;
 - could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;
- 5 **The Tenderer discloses that [check one of the following, as applicable]:**
 - a. The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
 - b. The Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements;
- 6 In particular, without limiting the generality of paragraphs(5)(a) or (5) (b)above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - prices;
 - methods, factors or formulas used to calculate prices;
 - the intention or decision to submit, or not to submit, a proposal; or
 - the submission of a proposal which does not meet the specifications of the request for proposals; except as specifically disclosed pursuant to paragraph(5)(b) above;
- 7 In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this RFP relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph(5)(b) above;
- 8 The terms of the RFP have not been, and will not be, knowingly disclosed by the Investor, directly or indirectly, to any competitor, prior to the date and time of the official proposed opening, or of the awarding of the Contract, which ever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph(5)(b) above.

Name _____

Title _____

Date _____

[Name, title and signature of authorized agent of Investor and Date]

(Appendix shall not be modified)

3. Purpose

the government of Kenya's Anti-Corruption and Economic Crime laws and their sanction's policies and procedures, Public Procurement and Asset Disposal Act (*no. 33 of 2015*) and its Regulation, and any other Kenya's Acts or Regulations related to Fraud and Corruption, and similar offences, shall apply with respect to Public Procurement Processes and Contracts that are governed by the laws of Kenya.

4. Requirements

The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Investors, Contractors and Suppliers; any Sub-contractors, Sub-Investors, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts ,and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1 above.

Kenya's public procurement and asset disposal act (*no.33 of 2015*) under Section 66 describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted below highlight Kenya's policy of no tolerance for such practices and behavior:

- (1) a person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
- (2) A person referred to under sub section (1) who contravenes the provisions of that sub-section commits an offence;
- (3) Without limiting the generality of the subsection (1) and (2), the person shall be: -
 - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
 - b) if a contract has already been entered into with the person, the contract shall be avoidable;
- (4) The voiding of a contract by the GDC under subsection (7) does not limit any legal remedy the GDC may have;
- (5) An employee or agent of the GDC or a member of the Board or committee of the GDC who has a conflict of interest with respect to a procurement—
 - i) Shall not take part in the procurement proceedings;
 - ii) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
 - iii) Shall not be a sub-contractor for the tender to whom was awarded contract, or a member of the group of tenderers to whom the contract was awarded, but the sub-contractor appointed shall meet all the requirements of this Act.
- (6) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the GDC;
- (7) If a person contravenes sub section (1) with respect to a conflict of interest described in subsection (5)(a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer.
- (8) Incompliance with Kenya's laws, regulations and policies mentioned above, the GDC:
 - a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
 - i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - ii) “fraudulent practice” is any act or omission, including misrepresentation, that knowingly or

recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;

- iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - v) “obstructive practice” is:
 - i) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
 - ii) Acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3e. below.
- b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:
- "fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tenders submission designed to establish tender prices at artificial non-competitive levels and to deprive the GDC of the benefits of free and open competition.
- c) Rejects a proposal or award¹ of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-Investors, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
 - d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or debar or recommend to appropriate authority (ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;
 - e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Investors, Contractors, and Suppliers and their Sub-contractors, Sub- Investors, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect² all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and
 - f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a “Self-Declaration Form” as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

APPENDIX 1: MAP OF MENENGAI SHOWING LOCATIONS OF RESOURCE PARKS



