



TECHNICAL UNIVERSITY OF MOMBASA

TENDER NO TUM/GL/2017/2019

**PROVISION OF CONSULTANCY SERVICES ON
GOVERNANCE AND LEGAL AUDIT**

OPENING DATE 29TH AUGUST 2017
CLOSING DATE 12TH SEPTEMBER 2017 10.00A.M

Serial No.....
Receipt No.....

VISION

A University of Global Excellence in advancing Knowledge, Science and Technology

MISSION

To provide Leadership and outstanding programmes by engaging in scholarly reflection, cultivating critical thinking and advancing creative problem-solving skills in the field of Engineering, Sciences, business and related areas that benefit society

VALUES

The Management, staff and students of the TUM will endeavor to institutionalize, and inculcate values that foster a strong corporate culture that promotes excellence, cohesion and achievement. TUM espouses the following value in the conduct of all its functions:

- 1. Professionalism**
- 2. Equity and Social Justice**
- 3. Efficiency and Efficacy**
- 4. Commitment**
- 5. Service Delivery**
- 6. Team work**
- 7. Creativity and Innovativeness**
- 8. Integrity**
- 9. Environmental sustainability**

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TUM/CL/2017/2019

INTRODUCTION

1.1 This Standard Tender Document has been prepared for use by Central Government, Local Authorities, State Corporations and other Public Institutions in Kenya in the procurement of goods.

1.2 The following general directions should be observed when using the document.

1.2.1 Specific details, such as the “name of the Procuring entity” and “address for tender submission,” should be furnished in the Invitation for Tenders, and in the Special Conditions of Contract. The final document should contain neither blank spaces nor options.

1.2.2 Amendments, if any, to the Instructions to Tenderers and to the General Conditions of Contract should be made through the Special Conditions of Contract, respectively.

- (a) Information contained in the invitation for tender shall conform to the data and
- (b) information in the tender documents to enable potential tenderers to decide whether to
- (c) participate and shall indicate any important tender requirements and shall be issued as:-
- (d) an advertisement in at least two national newspapers of wide circulation;

1.3. A letter of invitation addressed to interested tenderers who, following the advertisement, have expressed interest in tendering for the goods for which the invitation is issued.

SECTION A: TENDER NOTICE

29th August 2017

TENDER NO. TUM/GL/2017/2019: PROVISION OF CONSULTANCY SERVICES ON GOVERNANCE AND LEGAL AUDIT

The Vice Chancellor now invites sealed tenders from eligible candidates for the **Provision of Consultancy Services on Governance and Legal Audit for the financial year ending 30th June 2019**. Interested eligible candidates may obtain further information from and inspect the tender documents at the Technical University Website. www.tum.ac.ke

1. A complete set of tender documents may be obtained by interested candidates from the university website for free.
2. Tenders must be accompanied by a security in the form and amount specified in the tender documents, and must be delivered in the Tender Box situated at the entrance of the Supply Chain Office or mailed to The Vice Chancellor P.O Box 90420 Mombasa so as to reach on or before **12th September 2017 at 10.00 am**
3. Tenders will be opened immediately thereafter in the presence of candidates' representatives who choose to attend at 10.00am at the University Main Conference hall situated at Administration block at the Main Campus Mombasa.

4. SECTION B. INVITATION FOR TENDERS

Date _____

To: _____

Dear Sir/Madam:

REF: TENDER NO. TUM/GL/2017/2019: PROVISION OF CONSULTANCY SERVICES ON GOVERNANCE AND LEGAL AUDIT

We hereby invite you among other prequalified tenderers to submit sealed tenders for the execution and completion of the above tender.

You may purchase a complete set of Tender documents from the University Website for free

All Tenders must be accompanied by a security in the form and must be delivered to in the tender box **situated at the Supply Chain Office** on or before **12th September 2017 10.00 am**. Tenders will be opened immediately thereafter, in the presence of tenderers 'representatives who chooses to attend.

FOR

Ag. Procurement Manager

FOR: The Vice Chancellor

SECTION C. GENERAL INFORMATION

Introduction

1. Eligible Tenderers

- 1.1 This Invitation for Tenders is open to all tenderers eligible as described in the tender documents. Successful tenderers shall complete the supply of goods by the date specified in the tender documents.
- 1.2 Tenderers shall provide the qualification information statement that the tenderers (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Vice Chancellor to provide services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods under this Invitation for tenders.
- 1.3 Tenderers shall not be debarred from participating in Public Procurement.

2. Eligible Goods

- 2.1 All goods to be supplied under the contract shall have their origin in eligible source countries.
- 2.2 For purposes of this clause, “origin” means the place where the goods are mined, grown, or produced. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially-recognized product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 2.3 The origin of goods is distinct from the nationality of the tenderers.

3. Cost of Tendering

- 3.1 The Tenderers shall bear all costs associated with the preparation and submission of its tender, and the Vice Chancellor, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

The Tender Document

4 Contents

- 4.1 The tender document comprises the documents listed below and agenda issued in accordance with clause 6 of these instructions to tenders.
 - (i) Invitation for Tenders
 - (ii) General information
 - (iii) General Conditions of Contract
 - (iv) Special Conditions of Contract
 - (v) Schedule of Requirements
 - (vi) Technical Specifications
 - (vii) Tender Form and Price Schedules
 - (viii) Tender Security Form

(ix) Contract Form

4.2 The Tenderers is expected to examine all instructions, forms, terms, and specifications in the tender documents. Failure to furnish all information required by the tender documents or to submit a tender not substantially responsive to the tender documents in every respect will be at the tenderers risk and may result in the rejection of its tender.

5. Clarification of Documents

5.1 A prospective tenderers requiring any clarification of the tender document may notify the Vice Chancellor in writing or by cable (hereinafter, the term *cable* is deemed to include telex and facsimile) at the entity's address indicated in the Invitation for tenders. The Vice Chancellor will respond in writing to any request for clarification of the tender documents, which it receives not later than thirty (15) days prior to the deadline for the submission of tenders, prescribed by the Vice Chancellor. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers that have received the tender document.

6. Amendment of Documents

- 6.1 At any time prior to the deadline for submission of tenders, the Vice Chancellor, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderers, may modify the tender documents by amendment.
- 6.2 All prospective candidates that have received the tender documents will be notified of the amendment in writing or by cable, and will be binding on them.
- 6.3 In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, the Vice Chancellor, at its discretion, may extend the deadline for the submission of tenders.

Preparation of Tenders

7. Language of Tender

7.1 The tender prepared by the tenderers, as well as all correspondence and documents relating to the tender exchanged by the tenderers and the Vice Chancellor, shall be written in English language, provided that any printed literature furnished by the tenderers may be written in another language provided they are accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the tender, the English translation shall govern.

8. Documents Comprising the Tender

- 8.1 The tender prepared by the tenderers shall comprise the following components:
- (a) Tender Form and a Price Schedule completed in accordance with paragraph 9, 10 and 11 below.
 - (b) documentary evidence established in accordance with paragraph 12 that the tenderers is eligible to tender and is qualified to perform the contract if its tender is accepted;
 - (c) documentary evidence established in accordance with paragraph 13 that the goods and ancillary services to be supplied by the tenderers are eligible goods and services and conform to the tender documents; and

- (d) tender security furnished in accordance with paragraph 1

9.Tender Form

- 9.1 The tenderers shall complete the Tender Form and the appropriate Price Schedule furnished in the tender documents, indicating the goods to be supplied, a brief description of the goods, quantity, and prices.

10.Tender Prices

- 10.1 The tenderers shall indicate on the appropriate Price Schedule the unit prices and total tender price of the goods it proposes to supply under the contract.
- 10.2 Prices indicated on the Price Schedule shall be entered separately in the following manner:
- (i) the price of the goods quoted EXW (ex-works, ex-factory, ex warehouse, ex showroom, or off-the-shelf, as applicable), including all customs duties and sales and other taxes already paid or payable:
 - (ii) charges for inland transportation, insurance, and other local costs incidental to delivery of the goods to their final destination; and
- 10.3 Prices quoted by the tenderers shall be fixed during the validity of tender and during the performance of the contract and not subject to variation on any account. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 22.

11.Tender Currencies

- 11.1 Prices shall be quoted in Kenya shillings.

12. Tenderers Eligibility and Qualifications.

- 12.1 Pursuant to paragraph 1 of section III, the tenderers shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.
- 12.2 The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall establish to the evaluation committee's satisfaction:
- (a) that the tenderers has the financial, technical, and production capability necessary to perform the contract;
 - (b) that, in the case of a tenderers not doing business within Kenya, the tenderers is or will be (if awarded the contract) represented by an Agent in Kenya equipped, and able to carry out

the Tenderers maintenance, repair, and spare parts stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.

13. Goods' Eligibility and Conformity to Tender Document.

- 13.1 Pursuant paragraph 2 of this section, the tenderers shall furnish, as part of its tender, documents establishing the eligibility and conformity to the tender documents of all goods which the tenderers proposes to supply under the contract.
- 13.2 The documentary evidence of the eligibility of the goods shall consist of a statement in the Price Schedule of the country of origin of the goods and services offered which shall be confirmed by a certificate of origin issued at the time of shipment.
- 13.3 The documentary evidence of conformity of the goods to the tender documents may be in the form of literature, drawings, and data, or samples and shall consist of:
 - (a) a detailed description of the essential technical and performance characteristics of the goods;
 - (b) a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the goods for a period of two (2) years, following commencement of the use of the goods; and
 - (c) A clause-by-clause commentary on the Technical Specifications demonstrating substantial responsiveness of the goods and services to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.
 - (d) Where a sample is used, conformance to the sample.
- 13.4 For purposes of the commentary to be furnished pursuant to paragraph 13.3(c) above, the tenderers shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by the Vice Chancellor in its Technical Specifications, are intended to be descriptive only and not restrictive. The tenderers may substitute alternative standards, brand names, and/or catalogue numbers in its tender, provided that it demonstrates to the evaluation committee's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

14. Tender Security

- 14.1 The tenderers may furnish, as part of its tender, a tender security for the amount specified in the Invitation to tender.
- 14.2 The tender security is required to protect the Vice Chancellor against the risk of Tenderers conduct which would warrant the security's forfeiture, pursuant to paragraph 14.7
- 14.3 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form of a bank guarantee or a bank draft issued by a reputable bank located in Kenya or abroad, in the form provided in the tender documents or another form acceptable to the Vice Chancellor and valid for thirty (30) days beyond the validity of the tender.
- 14.4 Any tender not secured in accordance with paragraph 14.1 and 14.3 will be rejected by the Vice Chancellor as non-responsive, pursuant to paragraph 22.
- 14.5 Unsuccessful tenderers tender security will be discharged or returned as promptly as possible as but not later than thirty (30) days after the expiration of the period of tender validity prescribed by the Vice Chancellor.
- 14.6 The successful tenderers tender security will be discharged upon the tenderers signing the contract, pursuant to paragraph 30, and furnishing the performance security, pursuant to paragraph 31.
- 14.7 The tender security may be forfeited:
 - (a) if a tenderers withdraws its tender during the period of tender validity specified by the Vice Chancellor on the Tender Form; or
 - (b) in the case of a successful tenderers, if the tenderers fails:
 - (i) To sign the contract in accordance with paragraph 30
or
 - (ii) To furnish performance security in accordance with paragraph 31.

15. Validity of Tenders

- 15.1 Tenders shall remain valid for 90 days after date of tender opening prescribed by the Vice Chancellor, pursuant to paragraph 18. A tender valid for a shorter period shall be rejected as non-responsive.
- 15.2 In exceptional circumstances, the Vice Chancellor may solicit the Tenderers consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 14 shall also be suitably extended. Tenderers may refuse the request without forfeiting its tender security. A tenderers granting the request will not be required nor permitted to modify its tender.

16. Format and Signing of Tender

- 16.1 The tenderers shall prepare two copies of the tender, clearly marking each “**ORIGINAL TENDER**” and “**COPY OF TENDER,**” as appropriate. In the event of any discrepancy between them, the original shall govern.
- 16.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderers or a person or persons duly authorized to bind the tenderers to the contract. The letter of authorization, where tenderers is represented by an agent, shall be indicated by written power-of-attorney accompanying the tender. All pages of the tender, except for un amended printed literature, shall be initialled by the person or persons signing the tender.
- 16.3 The tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the tenderers, in which case such corrections shall be initialled by the person or persons signing the tender.

17. Submission of Tenders

17. Sealing and Marking of Tenders

- 17.1 The tenderers shall seal the original and each copy of the tender in separate envelopes, duly marking the envelopes as “ORIGINAL” and “COPY.” The envelopes shall then be sealed in an outer envelope.
- 17.2 The inner and outer envelopes shall :
- (a) be addressed to the Chief Administrator at the following address:

**THE VICE CHANCELLOR,
TECHNICAL UNIVERSITY OF MOMBASA
P.O BOX 90420
MOMBASA.**

Bear **Tender No**

**TUM/GL/2017/2019: PROVISION OF CONSULTANCY SERVICES ON GOVERNANCE
AND LEGAL AUDIT**

and the words: “DO NOT OPEN BEFORE,” **12th September 2017 at 10.00 am**

- 17.3 The inner envelopes shall also indicate the name and address of the tenderers to enable the tender to be returned unopened in case it is declared “late”.
- 17.4 If the outer envelope is not sealed and marked as required by paragraph 17.2, the Vice Chancellor will assume no responsibility for the tender’s misplacement or premature opening.

18. Deadline for Submission of Tenders

- 18.1 Tenders must be received by the Vice Chancellor at the address specified under paragraph 17.2 no later than **12th September 2017 at 10.00 am.**
- 18.2 The Vice Chancellor may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 6, in which case all rights and obligations of the Vice Chancellor and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

19. Modification and Withdrawal of Tenders

- 19.1 The tenderer may modify or withdraw its tender after the tender's submission, provided that written notice of the modification, including substitution or withdrawal of the tenders, is received by the Vice Chancellor prior to the deadline prescribed for submission of tenders.
- 19.2 The Tenderer's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 17. A withdrawal notice may also be sent by cable, but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.
- 19.3 No tender may be modified after the deadline for submission of tenders.
- 19.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the Tenderer's forfeiture of its tender security, pursuant to paragraph 14.7.

20. Opening and Evaluation of Tenders

20. Opening of Tenders

- 20.1 A committee appointed by the Vice Chancellor will open all tenders in the presence of tenderers' representatives who choose to attend, on 12th September, 2017 at 10.00 am the tenderers' representatives who are present shall sign a register evidencing their attendance.
- 20.2 The tenderers' names, tender modifications or withdrawals, tender prices, discounts, and the presence or absence of requisite tender security and such other details as the Tender Opening committee, at its discretion, may consider appropriate, will be announced at the opening.
- 20.3 The tender opening committee will prepare minutes of the tender opening.

21. Clarification of Tenders

- 21.1 To assist in the examination, evaluation and comparison of tenders the evaluation committee may, at its discretion, ask the tenderer for a clarification of its tender. The request for clarification and the response shall be in writing, and no change in the prices or substance of the tender shall be sought, offered, or permitted.
- 21.2 Any effort by the tenderer to influence the evaluation committee or any representative of the Vice Chancellor during tender evaluation, tender comparison or any decision leading to the award of the tender may result in the rejection of the tenderers' tender.

22.Preliminary Examination

22.1 The evaluation committee will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order.

22.2 Arithmetical errors will be rectified on the following basis.

- i) If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected.
- ii) Where any correction is made, the tenderer evaluation committee shall promptly inform the tenderer of the correction in writing.
- iii) If the tenderer does not accept the correction of the errors, its tender will be rejected, and where a tender security is required, its tender security shall be forfeited.
- iv) If there is a discrepancy between words and figures, the amount in words will prevail.

22.3 The evaluation committee may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any tenderer.

22.4 Prior to the detailed evaluation, pursuant to paragraph 23, the evaluation committee will determine the substantial responsiveness of each tender to the tender documents.

For purposes of this paragraph, a substantially responsive tender is one which conforms to all the terms and conditions of the tender documents without material deviations. The evaluation committee's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

22.5 If a tender is not substantially responsive, it will be rejected by the Vice Chancellor and may not subsequently be made responsive by the tenderer by correction of the nonconformity.

23.Evaluation and Comparison of Tenders

23.1 The evaluation committee will evaluate and compare the tenders which have been Determined to be substantially responsive, pursuant to paragraph 22.

23.2 The comparison shall be of the ex-factory/ex-warehouse/off-the-shelf price of the goods offered from within Kenya, Such price shall include all costs, as well as duties and taxes paid or payable on components and raw material incorporated or to be incorporated in the goods.

24.Contactting the Procuring entity

24.1 Subject to paragraph 21, no tenderer shall contact the Vice Chancellor on any matter relating to its tender, from the time of the tender opening to the time the contract is awarded.

24.2 Any effort by a tenderer to influence the Vice Chancellor in its decisions on tender evaluation, tender comparison, or contract award may result in the rejection of the Tenderer's tender.

Award of Contract

25.Post-qualification

25.1 In the absence of pre-qualification, the Vice Chancellor will determine to its satisfaction whether

the tenderers that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.

- 25.2 The determination will take into account the tenderers financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderers, pursuant to paragraph 12.3, as well as such other information as the Vice Chancellor deems necessary and appropriate.
- 25.3 An affirmative determination will be a prerequisite for award of the contract to the tenderers. A negative determination will result in rejection of the Tenderers tender, in which event the Vice Chancellor will proceed to the next lowest evaluated tender to make a similar determination of that Tenderers capabilities to perform satisfactorily.

26. Award Criteria

- 26.1 Subject to paragraph 10,23 and 28 the Vice Chancellor will award the contract to the successful tenderers whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderers is determined to be qualified to perform the contract satisfactorily.

27. Vice Chancellor Right to Vary quantities

- 27.1 The Vice Chancellor reserves the right at the time of contract award to increase or decrease the quantity of goods originally specified in the Schedule of requirements without any change in unit price or other terms and conditions.

28. Vice Chancellor's Right to Accept or Reject Any or All Tenders

- 28.1 The Vice Chancellor reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected tenderers or tenderers or any obligation to inform the affected tenderers or tenderers of the grounds for the action.

29. Notification of Award

Prior to the expiration of the period of tender validity, the Vice Chancellor will notify the successful tenderers in writing that its tender has been accepted and shall simultaneously notify the other tenderers of the fact. The notification of award to the successful tenderers shall specify the time, not less than twenty one days, within which the contract must be signed.

30. Signing of Contract

- 30.1 At the same time as the Vice Chancellor notifies the successful tenderer that its tender has been accepted, it shall send the tenderer the Contract Form provided in the tender documents, incorporating all agreements between the parties.
- 30.2 The Contract form shall be signed by the successful tenderer no less than 21 days from the date when the tenderer was notified of the award.
- 30.2 Within thirty (30) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Vice Chancellor.
- 29.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 31, the Vice Chancellor and discharge the tender securities of the unsuccessful tenderers, pursuant to paragraph 14.

31. Performance Security

- 31.1 Where a performance security is required, within thirty (30) days of the receipt of notification of award, the successful tenderer shall furnish the performance security in accordance with the Conditions of Contract, in the Performance Security Form provided in the tender documents, or in another form acceptable to the Vice Chancellor.
- 31.2 Failure of the successful tenderer to comply with the requirement of paragraph 30 or paragraph 31 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Vice Chancellor may make the award to the next lowest evaluated Candidate or call for new tenders.

32. Corrupt Fraudulent Practices

- 32.1 The Vice Chancellor requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts. In pursuance of this policy, the Vice Chancellor:-
- (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and
 - (ii) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Vice Chancellor, and includes collusive practice among tenderers (prior to or after tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive the Vice Chancellor of the benefits of free and open competition;
 - (b) will reject a proposal for award if it determines that the tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;
 - (c) will seek approval of the Public Procurement Directorate to declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded any contract if it at any time it determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a contract.
- 32.2 Furthermore, tenderers shall be aware of the provision stated in the General Conditions of Contract.

SECTION D. SPECIAL CONDITIONS OF CONTRACT

1. Special Conditions of Contract shall supplement the General Conditions of Contract Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract.
2. A bid security of Kshs N/A Will be required for this tender.
3. Any Brand names used in describing the items are intended to be descriptive only and not restrictive. The tenderer may at its discretion substitute alternative brand names in its tender provided that it demonstrates to the evaluation committee's satisfaction that the substitutes ensure substantial equivalence to those intended in the item description. Where the tenderer offers an alternative brand name, the tenderer shall specify the alternative brand name.
4. The tenderer will have to establish that it has the necessary professional, technical and financial capability and competence to participate in the tender. The tenderer shall provide copies of the current trading license, PIN number, and VAT registration, certificate of incorporation and/or Dealers License. Failure to provide the said documents may lead to disqualification.
5. Tenderer must provide all the relevant certificates should tender as per the tender document list on the tender document provided

SECTION E. SCHEDULE OF REQUIREMENTS

TENDER NO. TUM/GL/2017/2019:

ITEM: PROVISION OF CONSULTANCY SERVICES ON GOVERNANCE AND LEGAL AUDIT

1. BACKGROUND INFORMATION

The Technical University of Mombasa (procuring entity) is established under the Universities Act 2012 and the Technical University of Mombasa Charter 2013 as a body corporate with perpetual succession and a common seal. Its core mandate is to provide higher education.

The Procuring Entity wishes to engage the services of a Consultant to review and establish the extent of conformity to the highest standards of governance and compliance with the framework of the laws, regulations and policies under which the Procuring Entity operates.

2. JUSTIFICATION

Compliance with statutory obligations is a performance indicator in the Performance Contract for the Financial Year 2017/2018 between the Government of Kenya and the Procuring Entity, and it entails compliance with and enforcement of all relevant legislation and regulations and carrying out of a legal audit to establish the extent of compliance and enforcement.

On the other hand, conformity with governance parameters as set out in the Constitution, applicable laws and best practices is a requirement under the Code of Governance of State Corporations (Mwongozo) which sets out modalities of compliance on governance matters within State Corporations. A Governance Audit therefore entails a review of structures, policies and practices to ensure they are in conformity with highest standards of good governance and where they are not, suggestions on change.

The exercise will enable the Procuring Entity minimize risks, as well as ensure it conducts its operations in accordance with all relevant laws and best regulatory practices anchored in principles of good governance, accountability and transparency.

3. THE TERMS OF REFERENCE (ToR) FOR THE CONSULTANT

Scope of Services

The Consultant will be required to provide the professional services necessary to undertake a comprehensive Governance and Legal audit.

The Consultant will work within the ToR and contract agreement to deliver quality output in accordance with the objectives of this assignment, which will include to:

A. Governance Audit

- (i) Identify and analyse governance parameters, which the Procuring Entity is required to operate under the Constitution of Kenya, 2010, attendant Statutes and best practices. These parameters shall include:
 - Leadership and strategic management;
 - Transparency and disclosure;
 - Compliance with laws and regulations;
 - Communication with stakeholders;
 - Board independence and governance;
 - Board systems and procedures;
 - Corporate social responsibility and investment.
- (ii) Evaluate the Procuring Entity's existing structures, policies and procedures and assess the extent of their compliance with these governance parameters.
- (iii) Create a Board Charter;
- (iv) Prepare and submit to the Procuring entity a final report of the audit findings and recommendations, and a Board Charter.

B. Legal Audit

- (i) Liaise with the Procuring Entity personnel so as to familiarize with its operations;
- (ii) Peruse all relevant legislations;
- (iii) Identify the statutes that the bank is required to comply with and make a schedule of the same;
- (iv) For each of the statutes identified, analyse the sections that the procuring entity needs to adhere to in order to achieve compliance;
- (v) Initiate and conduct research on various Government policy pronouncements/circulars that need compliance by State Corporations;
- (vi) Evaluate the Procuring Entity's manuals that support the legal and compliance functions to assess the extent of their compliance with the legal framework;
- (vii) Identify any specific deficiencies or areas of weakness in the internal and external compliance that compromise potential legal risk and liability;
- (viii) Advise the Procuring entity on the best practices of legal compliance and risk management;
- (ix) Hold a session with the Management board of the Procuring entity to brief them on the pertinent issues emerging from the legal audit exercise.
 - a) Analyse collected information and data on compliance.
 - b) Identify gaps of compliance of legal frameworks and recommend intervention programs to be applied.
- (x) Submit legal audit report to the procuring entity.

4. QUALIFICATIONS

Consultants who meet the requisite qualifications for undertaking the study must provide the following information;

- a) Company profile
- b) Qualification and capacity to undertake assignment
- c) Details of similar assignments undertaken elsewhere.

5. REPORTS AND TIME SCHEDULE

- (i) The duration of the audit shall be 4 weeks from the date of the commencement of the work.

Delays/ Penalties

- (ii) The Procuring Entity will charge for damages on delays in completion of the services at a rate of Kes Ten Thousand (Kes. 10,000) per week up to a maximum of four weeks.

6. TERMS OF PAYMENT

Payment of the consultancy shall be made after submission of an approved report.

7. EVALUATION CRITERIA FOR GOVERNANCE AND LEGAL AUDIT CONSULTANCY

The tender for Governance and Legal Audit services shall be evaluated in three stages namely:

- Mandatory – Pass/Fail
- Technical – 70%
- Financial – 30%

(i) Mandatory Evaluation

The bidders must submit the following:-

- i. Certificate of incorporation/registration of the firm or its equivalent. Provide a list of shareholders and the directors with their contact details.
- ii. A valid tax compliance certificate.
- iii. A copy of the firm's professional indemnity.
- iv. Valid practicing certificates issued by the Institute of Certified Public Secretaries of Kenya (ICPSK) and Law Society of Kenya respectively for the Team Leader.

Failure to submit any of the above documents, the firm shall be disqualified at this stage.

(ii) Technical Evaluation

Only bidders who have been found responsive in the mandatory state will be evaluated on the following parameters;

	CRITERIA	MARKS
1.	RELEVANT EXPERIENCE OF THE CONSULTANCY AND TECHNICAL CAPABILITIES TO CARRY OUT THE ASSIGNMENT	
a.	Brief description of the following: Description of consultancy/organisational profile indicating suitability to carry out the specific assignment – 2 marks Description of technical capabilities and resources to carry out this specific assignment – 2 marks Experience to carry out this assignment – 1 mark	5
b.	Number of actual legal audits undertaken in the last five years. List the names of the organisations where the relevant assignments were carried out and provide the contact persons. (3 marks for each up to a maximum of 5) Evidence of actual work carried out is required (attach LSO/Contract)	15
c.	Provide recommendation letters from 5 reputable institutions/ clients in the clients letterhead (3 marks each)	15
2.	APPROACH AND METHODOLOGY	
a.	Understanding of and conformity of the TOR – 5 marks	5
b.	Consultants additional suggestions and proposals on the TORs – 5 marks	5
c.	Proposed work plan and methodology and survey schedule and the completeness of the description of the same in relation to the ToRs, particularly with respect to the outlined objectives – 10 marks	10
d.	Proposed data collection approach and data analysis methodology – 5 marks	5
3.	HUMAN RESOURCE CAPACITY	
a	Lead Consultant: The lead consultant shall be an Advocate of the High Court of Kenya with current valid practicing certificate (5 marks) Attach current copy of certificate.	5
	Have at least 10 years post admission experience (0.5 marks for each year)	5

	A certified Public Secretary of good standing (5 marks)	5
	Completed assignments on legal audits. (1 mark per assignment up to 5) Attach documentary evidence i.e LSO/Contract	5
b	Two other Key staff to undertake the survey: Should also be Advocates of the High Court of Kenya with current valid practicing certificates. (2.5 marks each) Attach copies of the certificates.	5
	Have at least 3 years' experience post admission (1 mark per year)	10
	Completed assignments on legal audits. (1 mark per assignment up to 5) Attach documentary evidence i.e LSO/Contract	5
	GRAND TOTAL	100

NB: To qualify for financial evaluation the bidder must score a minimum of 70% percent. Only applicants that meet the minimum score will have their financial proposal evaluated.

III Financial Evaluation

The firm that is technically responsive and has provided the lowest cost will be considered for award.

NB:

The firm that is technically responsive and has provided the lowest cost will be considered for award. The selected firm shall be submit a performance bond in the form of bank guarantee 5 days within notice of the contract award and commencement of services.

Work Description	Amount (Kshs)
Consultancy fees	
Disbursements (if any)	
Total (inclusive of tax)	

Form of Tender

Date: _____

TENDER NO. TUM/GL/2017/2019:

**ITEM: PROVISION OF CONSULTANCY SERVICES ON GOVERNANCE AND
LEGAL AUDIT**

TO VICE CHANCELLOR

TECHNICAL UNIVERSITY OF MOMBASA

P.O.BOX 90420

MOMBASA

Gentlemen and/or Ladies:

1. Having examined the tender documents including Agenda Nos..... *[Insert numbers]*, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to supply and deliver..... *[description of goods]* in conformity with the said tender documents for the sum of.....*[total tender amount in words and figures]* or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.
2. We undertake, if our Tender is accepted, to deliver the goods in accordance with the order issued to us under the contract by an officer authorized to do so, and that failure on our part to meet the requirements of the order shall constitute a breach in accordance with the general conditions of contract.
3. We agree to abide by this Tender for a period of 90 days from the date fixed for tender opening of the Instructions to tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
4. Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.
5. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this _____ day of _____ 20_____.

 [Signature]

SECTION F: Confidential Business Questionnaire Form

You are requested to give the particulars indicated in Part 1 and either Part 2 (a), 2 (b) or 2 (c) whichever applies to your type of business.

You are advised that it is a serious offence to give false information on this form

<p>Part 1 – General</p> <p>Business Name</p> <p>Location of business Premises</p> <p>Plot No. Street/Road</p> <p>Postal Address Tel No.</p> <p>Nature of business</p> <p>Current Trade License No. Expiring date</p> <p>Maximum value of business which you can handle at any one time Kshs</p> <p>Name of your bankers Branch</p>

	<p>Part 2 (a) – Sole Proprietor</p> <p>Your Name in full Age</p> <p>Nationality Country of origin</p> <p>* Citizenship details</p>																														
	<p style="text-align: center;">Part 2 (b) Partnership</p> <p>Given details of partners as follows:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 30%;">Name</th> <th style="width: 20%;">Nationality</th> <th style="width: 25%;">Citizenship Details</th> <th style="width: 20%;">Shares</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>1</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>		Name	Nationality	Citizenship Details	Shares	1.	1	2	3					
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3																											
	<p style="text-align: center;">Part 2 (c) – Registered Company</p> <p>Private or Public</p> <p>State the nominal and issued capital of company –</p> <p style="padding-left: 20px;">Nominal Kshs.</p> <p style="padding-left: 20px;">Issued Kshs.</p> <p>Given details of all directors as follows</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 30%;">Name</th> <th style="width: 20%;">Nationality</th> <th style="width: 25%;">Citizenship Details</th> <th style="width: 20%;">Shares</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>5.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>		Name	Nationality	Citizenship Details	Shares	1.	2.	3.	4.	5.
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5.																											

Date Seal/Signature of Candidate.....	

TUM/CL/2017-2019