

NEPAD PLANNING AND COORDINATING AGENCY (NPCA)

**Procurement for Services Consultancy
by Open Tender**

**FEASIBILITY STUDY AND BUSINESS PLAN FOR THE WEST AFRICAN TERRESTRIAL SEGMENT
OF AU-NEPAD ICT BROADBAND INFRASTRUCTURE NETWORK**

Procurement Number: PCA/EAP/002/2012

Date of Issue: 15 February 2012

Table of Contents

Section I. Invitation for Bids	<u>31</u>
Section II. Instructions to Bidders.....	4
Table of Clauses.....	4
Section III. Bidding Data.....	<u>2020</u>
ITB Clause 9.1	<u>2124</u>
Section IV. Forms of Bid, Qualification Information, Letter of Acceptance and Agreement	<u>2323</u>
Contractor’s Bid.....	<u>2323</u>
Qualification Information	<u>2525</u>
Letter of Acceptance	28
Agreement.....	29
Section V. Conditions of Contract	<u>3030</u>
Table of Clauses.....	<u>3030</u>
Section VI. Contract Data	49
Section VII. Specifications.....	53
Section VIII. Drawings	59
Section IX. Activities Scheduled	59
Section X. Security Forms	59
Notes on Forms of Securities	60
Annex A Form: Bid Security (Bank Guarantee).....	61
Annex B Form : Performance Security - Unconditional Bank Guarantee.....	62
Annex C Form: Bank Guarantee for Advance Payment.....	63
Annex D Form: Format of Power-of-Attorney	64

Section I. Invitation for Bids

Invitation for Bids (IFB)

[NEPAD Planning and Coordinating Agency]

[FEASIBILITY STUDY AND BUSINESS PLAN FOR THE WEST AFRICAN TERRESTRIAL SEGMENT OF AU-NEPAD ICT BROADBAND INFRASTRUCTURE NETWORK]

Procurement Number: NPCA/EAP/002/2012

The **NEPAD Planning and Coordinating Agency** has received funds the IFT for the procurement of a Feasibility Study and Business Plan for the West African Terrestrial Segment of AU-NEPAD ICT Broadband Infrastructure Network and now invite sealed bids from eligible bidders for the supply of:

A detailed study that determines the feasibility of developing a terrestrial cross-border broadband network across 14 West African countries, and a business plan for development of the same.

The AU-NEPAD ICT Broadband Infrastructure Programme aims to connect all African countries to one another and to the rest of the world through existing and planned submarine cable systems. The end result of the programme is to integrate the continent and enable trade, social and cultural interchange to take place with ease and affordability. In order to facilitate investment in terrestrial segment of the AU-NEPAD ICT Broadband Infrastructure Network, detailed feasibility studies are being carried out in different regions of Africa to determine the status, ownership and suitability of existing optical fiber links between capital cities. The studies will also develop business plans for the roll-out of UMOJANET in these regions of the continent. This particular tender process is for 14 countries in West Africa.

Bidding is open to all contractors who can demonstrate that they meet the eligibility criteria and have the qualifications detailed in Sub-Section A3 and A4 of the Instructions to Bidders.

Interested bidders may obtain further information and inspect the bidding document at the address below between 09:00AM and 03:00PM.

Bids must be delivered to the address below on or before **April the 16th, 2012** at 03:00 pm. All bids must be accompanied by:

- bid security of **USD10,000 (Ten thousand United States Dollars)**;
- a valid tax certificate;
- Company registration certificate

Bids will be opened on **April the 23rd, 2012**. Late bids will be rejected and returned unopened to bidders.

NEPAD Planning and Coordinating Agency
Block B, Gateway Park, Corner Challenger & Columbia Avenues, Midridge office
Park, Midrand Private Bag218, Midrand, Gauteng,
South Africa
Phone : 27 11 256 3600/3642
Website: <http://nepad.org/crosscuttingissues/ict>
E-mail : corinem@nepad.org

Section II. Instructions to Bidders

Table of Contents

A. General	54
1. Scope of Bid.....	54
2. Source of Funds	54
3. Eligible Bidders	54
4. Qualification of the Bidder	54
5. One Bid per Bidder	7
6. Cost of Bidding.....	7
7. Site Visit	7
B. Bidding Documents	7
8. Content of Bidding Documents	7
9. Clarification of Bidding Documents.....	87
10. Amendment of Bidding Documents	87
C. Preparation of Bids	8
11. Language of Bid.....	8
12. Documents Comprising the Bid.....	8
13. Bid Prices.....	98
14. Currencies of Bid and Payment	9
15. Bid Validity.....	109
16. Bid Security	10
17. Alternative Proposals by Bidders.....	11
18. Format and Signing of Bid.....	11
D. Submission of Bids	11
19. Sealing and Marking of Bids	1244
20. Deadline for Submission of Bids	12
21. Late Bids.....	12
22. Modification and Withdrawal of Bids	12
E. Bid Opening and Evaluation	13
23. Bid Opening.....	13
24. Process to Be Confidential.....	13
25. Clarification of Bids and Contacting the Employer.....	13
26. Examination of Bids and Determination of Responsiveness	14
27. Correction of Errors	14
28. Currency for Bid Evaluation	1415
29. Evaluation and Comparison of Bids	1415
30. Margin of Preference	1546
F. Award of Contract	1647
31. Award Criteria	1647
32. Employer's Right to Accept any Bid and to Reject any or all Bids.....	1647
33. Notification of Award and Signing of Agreement.....	1647
34. Performance Security.....	1748
35. Advance Payment and Security	1748
36. Adjudicator	1748
37. Corrupt or Fraudulent Practices	18

Instructions to Bidders

A. General

- 1. Scope of Bid**
 - 1.1 The Employer as defined in the Bidding and Contract Data, invites bids for the Services consultation, as described in the Bidding and Contract Data. The name and procurement number of the Contract is provided in the Bidding and Contract Data.
 - 1.2 The successful Bidder will be expected to complete the consultancy by the Intended Completion Date which will be fixed during negotiation with the successful bidder.
- 2. Source of Funds**
 - 2.1 The NEPAD Planning And Coordinating Agency(NPCA) (hereinafter called “the Employer”) has an awarded grant for the cost of the Services specified in the Bidding Data, and intends to apply a portion of the funding to eligible payments under a contract for which this Invitation for Bids is issued. Details of funding provided to cover eligible payments under the Contract are given in the Bidding Data.
- 3. Eligible Bidders**
 - 3.1 This Invitation for Bids is open to all bidders from eligible countries as defined in the Bidding Data. Any materials, equipment, and services to be used in the performance of the Contract shall have their origin in eligible source countries.
 - 3.2 All bidders shall provide in Section IV, Forms of Bid and Qualification Information, a statement that the Bidder (including all members of a joint venture and subcontractors) is not associated, nor has been associated in the past, directly or indirectly, with the consultant or any other entity that has prepared the design, specifications, and other documents for the Project or being proposed as Project Manager for the Contract. A firm that has been engaged by the Employer to provide consulting services for the preparation or supervision of the Services, and any of its affiliates, shall not be eligible to bid.
 - 3.3 Bidders must not be under a declaration of suspension for corrupt, fraudulent, collusive, coercive or obstructive practices issued by the African Union in accordance with ITB Clause 37.1.
- 4. Qualification of Bidders**
 - 4.1 All bidders shall provide in Section IV, Forms of Bid and Qualification Information, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.
 - 4.2 If a formal prequalification of potential bidders has been undertaken, only bids from prequalified bidders will be considered for award of Contract. These qualified bidders should submit with their bids any information updating their original prequalification applications or, alternatively, confirm in their bids that the originally submitted prequalification information remains essentially correct as of the date of bid submission. The update or confirmation should be provided in Section IV.
 - 4.3 If the Employer has not undertaken prequalification of potential bidders, all bidders shall include the following information and documents with their bids in Section IV, unless otherwise stated in the

Bidding Data:

- (a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the Bid to commit the Bidder;
- (b) total monetary value of construction work performed for each of the last five years;
- (c) experience in Services of a similar nature and size for each of the last five years, and details of work under way or contractually committed; and clients who may be contacted for further information on those contracts;
- (d) Qualifications and experience of technical personnel proposed for the Contract;
- (e) Reports on the financial standing of the Bidder, such as profit and loss statements and auditor's reports for the past 2 years;
- (f) Authority to seek references from the Bidder's bankers;
- (i) Information regarding any litigation, current or during the last five years, in which the Bidder is involved, the parties concerned and disputed amount.
- (j) Proposals for subcontracting components of the Services amounting to more than 10 percent of the Contract.

4.4 Bids submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated in the Bidding Data:

- (a) the Bid shall include all the information listed in ITB Clause 4.3 above for each joint venture partner;
- (b) the Bid shall be signed so as to be legally binding on all partners;
- (c) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
- (d) one of the partners will be nominated as being in charge, authorised to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and
- (e) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

4.5 To qualify for award of the Contract, bidders shall meet the following minimum qualifying criteria:

- (a) experience as prime contractor in the construction of at least two Services of a nature and complexity equivalent to the Services over the last 10 years (to comply with this requirement, Services cited should be at least 70 percent complete);
- (b) key personnel required for the performance of the contract with the qualifications and experience detailed in the Bidding Data; and
- (e) Liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract. of no less than the amount specified in the Bidding Data.

A consistent history of litigation or arbitration awards against the Applicant or any partner of a Joint Venture may result in disqualification.

4.6 The figures for each of the partners of a joint venture shall be added together to determine the Bidder's compliance with the minimum qualifying criteria of ITB Clause 4.5(a) and (e); however, for a joint venture to qualify, each of its partners must meet at least 25 percent of minimum criteria 4.5(a), (b), and (e) for an individual Bidder, and the partner in charge at least 40 percent of those minimum criteria. Failure to comply with this requirement will result in rejection of the joint venture's Bid. Subcontractors' experience and resources will not be taken into account in determining the Bidder's compliance with the qualifying criteria, unless otherwise stated in the Bidding Data.

4.7 African Union bidders and joint ventures of African Union and foreign bidders applying for eligibility for any margin of preference in bid evaluation as stated in the Bidding Data, shall supply all information to satisfy the criteria for eligibility as described in ITB Clause 30.

5. One Bid per Bidder

5.1 Each Bidder shall submit only one Bid, either individually or as a partner in a joint venture. A Bidder who submits or participates in more than one Bid (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the proposals with the Bidder's participation to be disqualified.

6. Cost of Bidding

6.1 The Bidder shall bear all costs associated with the preparation and submission of his Bid, and the Employer will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

7. Bid preparation

7.1 The Bidder, at the Bidder's own responsibility and risk, is encouraged to visit the NPCA website to obtain all information that may be necessary for the bid preparation. The costs of all activities related to the bid preparation shall be at the Bidder's own expense.

B. Bidding Documents

8. Content of Bidding Documents

8.1 The set of bidding documents comprises the documents listed in the table below, and addenda issued in accordance with Clause 10:

Section I	Invitation to Bid
II	Instructions to Bidders
III	Bidding Data
IV	Forms of Bid and Qualification Information
V	Conditions of Contract
VI	Contract Data
VII	Specifications
VIII	Drawings
IX	Forms of Securities
X	Format of Power-of-Attorney

8.2 The documents to be completed by the bidder as part of the bid are contained in Sections IV, and X, and the number of copies of the bid required to be submitted by the bidder is defined in the Bidding Data.

9. Clarification of Bidding Documents

9.1 A prospective Bidder requiring any clarification of the bidding documents may notify the Employer in writing, e-mail or facsimile at the Employer's address indicated in the Bidding Data. The Employer will respond to any request for clarification received earlier than 14 days prior to the deadline for submission of bids. Written copies of the Employer's response will be sent to all prospective bidders that have received the bidding documents including a description of the inquiry, but without identifying its source.

10. Amendment of Bidding Documents

10.1 At any time prior to the deadline for submission of bids, the Employer may modify the bidding documents by issuing addenda.

10.2 Any addendum thus issued shall be part of the bidding documents and shall be communicated in writing to all prospective bidders that have received the bidding documents. Prospective bidders shall acknowledge receipt of each addendum in writing to the Employer.

10.3 To give prospective bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer may extend, as necessary, the deadline for submission of bids, in accordance with ITB Clause 20.2 below.

C. Preparation of Bids

11. Language of Bid

11.1 All documents relating to the Bid shall be in the English language unless otherwise specified in the Bidding Data.

12. Documents Comprising the Bid

12.1 The Bid submitted by the Bidder shall comprise the following:

- (a) The Bid (in the format indicated in Section IV);
- (b) Bid Security;
- (c) Priced Activity Schedule;¹
- (d) Qualification Information Form and Documents;
- (e) Alternative offers where invited;

And any other activities required to be completed and submitted by bidders, as specified in the Bidding Data.

¹ In lump sum contracts, delete "priced Bill of Quantities" and replace with "priced Activity Schedule".

13. Bid Prices

- 13.1 The Contract shall be for the whole Services, as described in Sub-Clause 1.1, based on the priced Activity Schedule submitted by the Bidder.
- 13.2 The Bidder shall price Activities Schedule for the Services. Activities for which no price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the cost of other activities.
- 13.3 In completing the Bid Form, the Bidder shall note in particular the provisions of Clause 45 of the Conditions of Contract in respect of Taxes and Duties. Prices should be quoted net of duties and taxes already payable on major equipment, materials, fittings and fixtures that are subject to the African Union exemption on payment of duties and taxes. All other duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 14 days prior to the deadline for submission of bids, shall be included in activities pricing, and total Bid amount submitted by the Bidder.
- 13.4 The activities costs quoted by the Bidder shall not be subject to adjustment during the performance of the Contract unless provided for in the Bidding and Contract Data and the provisions of Clause 47 of the Conditions of Contract. The Bidder shall submit with the Bid all the information required under the Contract Data and Clause 47 of the Conditions of Contract.

14. Currencies of Bid and Payment

- 14.1 The unit rates and prices² shall be quoted by the Bidder in US Dollars, unless otherwise stated in the Bidding Data. Where indicated in the Bidding Data, payment may be partially made in foreign currencies. Foreign currency requirements shall be indicated as a percentage of the Bid price (excluding provisional sums) and shall be payable at the option of the Bidder in foreign currencies in accordance with the limitations stated in the Bidding Data.
- 14.2 Where applicable, the rates of exchange to be used by the Bidder in arriving at the US Dollar equivalent and the percentage(s) mentioned in ITB Clause 14.1 above, shall be the selling rates established by the authority specified in the Contract Data prevailing on the date 14 days prior to the deadline for submission of bids. These exchange rates shall apply for all payments so that no exchange risk will be borne by the Bidder. If the Bidder uses other rates of exchange, the provisions of ITB Clause 28.1 shall apply. In any case, payments will be computed using the rates quoted in the Bid.
- 14.3 Where applicable, Bidders shall indicate details of their expected foreign currency requirements in the Bid.
- 14.4 Where applicable, Bidders may be required by the Employer to clarify their foreign currency requirements and to substantiate that the

² In lump sum contracts, delete “unit rates and prices” and replace with “lump sum price”.

amounts included in the rates and prices³ and in the Contract Data are reasonable and responsive to ITB Clause 14.1.

15. Bid Validity

- 15.1 Bids shall remain valid for the period specified in the Bidding Data after the date of bid submission prescribed by the Employer. A bid valid for a shorter period shall be rejected by the Employer as non-responsive.
- 15.2 In exceptional circumstances, the Employer may request that the bidders extend the period of validity for a specified additional period. The request and the bidders' responses shall be made in writing. A Bidder may refuse the request without forfeiting the Bid Security. A Bidder agreeing to the request will not be required or permitted to otherwise modify the Bid, but will be required to extend the validity of Bid Security for the period of the extension, and in compliance with Clause 16 in all respects.
- 15.3 In the case of fixed price contracts, if the award is delayed by a period exceeding sixty (60) days beyond the expiry of the initial bid validity, the contract price may be increased by a factor specified in the request for extension. Bid evaluation will be based on the Bid prices without taking the above correction into consideration.

16. Bid Security

- 16.1 The Bidder shall furnish, as part of the Bid, a Bid Security in US Dollars or in a freely convertible currency, in the amount or the equivalent amount specified in the Bidding Data.
- 16.2 The Bid Security shall, at the Bidder's option, be in the form of a certified banker's cheque or a bank guarantee from a reputable bank. Bank guarantees issued by foreign banks shall only be acceptable if endorsed by a correspondent bank in the Country specified for performance of the Services. The format of the Bid Security should be in accordance with the form of Bid Security included in Section X. Bid Security shall be valid for a minimum of thirty (30) days beyond the validity of the Bid.
- 16.3 Any bid not accompanied by an acceptable Bid Security shall be rejected by the Employer. The Bid Security of a joint venture must define as "bidder" all joint venture partners and list them in the following manner: a joint venture consisting of "_____", "_____", and "_____".
- 16.4 The Bid Security of unsuccessful bidders will be returned within thirty (30) days of the end of the Bid validity period specified in ITB Clause 15.1.
- 16.5 The Bid Security of the successful Bidder will be discharged when the Bidder has signed the Agreement and furnished the required Performance Security.
- 16.6 The Bid Security may be forfeited

³ For lump sum contracts, delete "rates and prices" and replace with "Lump Sum".

- (a) if the Bidder withdraws the Bid after Bid opening during the period of Bid validity;
- (b) if the Bidder does not accept the correction of the Bid price, pursuant to ITB Clause 27; or
- (c) in the case of a successful Bidder, if the Bidder fails within the specified time limit to
 - (i) sign the contract; or
 - (ii) furnish the required Performance Security.

17. Alternative Proposals by Bidders

- 17.1 Bidders shall submit offers that comply with the requirements of the bidding documents, including the basic technical design as indicated in the drawings and specifications. Alternatives will not be considered, unless specifically allowed in the Bidding Data. If so allowed, ITB Clause 17.2 below shall govern.
- 17.2 If so allowed in the Bidding Data, bidders wishing to offer technical alternatives to the requirements of the bidding documents must also submit a Bid that complies with the requirements of the bidding documents, including the basic technical design as indicated in the drawings and specifications. In addition to submitting the basic Bid, the Bidder shall provide all information necessary for a complete evaluation of the alternative by the Employer, including design calculations, technical specifications, breakdown of prices, proposed construction methods and other relevant details. Only the technical alternatives, if any, of the lowest evaluated cost Bidder conforming to the basic technical requirements shall be considered by the Employer.

18. Format and Signing of Bid

- 18.1 The Bidder shall prepare an original and the number of copies of the bid indicated in the Bidding Data, clearly marking each “ORIGINAL BID” and “COPY OF BID,” as appropriate. In the event of any discrepancy between them, the original shall govern.
- 18.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorised to sign on behalf of the Bidder, pursuant to ITB Clauses 4.3(a) or 4.4(b), as the case may be. All pages of the Bid where entries or amendments have been made shall be initialled by the person or persons signing the Bid.
- 18.3 The Bid shall contain no alterations or additions, except those to comply with instructions issued by the Employer, or as necessary to correct errors made by the Bidder, in which case such corrections shall be initialled by the person or persons signing the Bid.
- 18.4 The Bidder shall furnish information as described in the Form of Bid on commissions or gratuities, if any, paid or to be paid to agents relating to this Bid, and to contract execution if the Bidder is awarded the contract.

D. Submission of Bids

19. Sealing and Marking of Bids

- 19.1 The Bidder shall seal the original and all copies of the Bid in two inner envelopes, and one outer envelope sealed with red wax, duly marking the inner envelopes as “ORIGINAL” and “COPIES”.
- 19.2 The inner and outer envelopes shall
- (a) be addressed to the Employer at the address provided in the Bidding Data;
 - (b) bear the name and procurement number of the Contract as defined in the Bidding Data; and
 - (c) provide a warning not to open before the specified time and date for Bid opening as defined in the Bidding Data.
- 19.3 In addition to the identification required in ITB Clause 19.2, the inner envelopes shall indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared late, pursuant to ITB Clause 21.
- 19.4 If the outer envelope is not sealed and marked as above, the Employer will assume no responsibility for the misplacement or premature opening of the Bid.

20. Deadline for Submission of Bids

- 20.1 Bids shall be delivered to the Employer at the address specified above no later than the time and date specified in the Bidding Data.
- 20.2 The Employer may, at its discretion, extend the deadline for submission of bids by issuing an amendment in accordance with ITB Clause 10, in which case all rights and obligations of the Employer and the bidders previously subject to the original deadline will then be subject to the new deadline as extended.

21. Late Bids

- 21.1 Any Bid received by the Employer after the deadline for submission of bids prescribed by the Employer pursuant to ITB Clause 20 will be rejected and returned unopened to the Bidder.

22. Modification and Withdrawal of Bids

- 22.1 Bidders may modify, substitute or withdraw their bids by giving notice in writing to the Employer before the deadline prescribed for submission of bids in ITB Clause 20.
- 22.2 Any modification or withdrawal notices shall be prepared, sealed, marked, and delivered in accordance with ITB Clauses 18 and 19, with the outer and inner envelopes additionally marked “MODIFICATION”, “WITHDRAWAL,” or “REPLACEMENT BID” as appropriate. A withdrawal notice may also be sent by fax or E-mail, but followed by a signed confirmation copy, postmarked not later than the deadline for submission of bids.
- 22.3 No Bid may be modified after the deadline for submission of Bids.
- 22.4 Withdrawal of a Bid between the deadline for submission of bids and the expiration of the period of Bid validity specified in the Bidding

Data or as extended pursuant to ITB Clause 15.2 may result in the forfeiture of the Bid Security pursuant to ITB Clause 16.

- 22.5 Bidders may only offer discounts to, or otherwise modify the prices of their bids by inclusion in the original Bid submission or by submitting Bid modifications in accordance with this clause.

E. Bid Opening and Evaluation

23. Bid Opening

- 23.1 The Employer will open the bids in the presence of all the members of the tender bureau composed by representatives of the beneficiary region, the funder, and technical and financial team of NPCA and the bidders or bidders' representatives who choose to attend at the time, on the date and at the place specified in the Bidding Data. The bidders or bidders' representatives who are present shall sign an attendance sheet. In the event of the specified date of Bid opening being declared a holiday for the employer, the Bid shall be opened at the appointed time and location on the next working day.
- 23.2 Envelopes marked "WITHDRAWAL" shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted pursuant to Clause 22 shall be returned un-opened to the Bidder.
- 23.3 The bidders' names, the Bid prices, the total amount of each Bid and of any alternative Bid (if alternatives have been requested or permitted), any discounts, Bid modifications and withdrawals, the presence or absence of Bid Security, and such other details as the Employer may consider appropriate, will be announced by the Employer at the opening.
- 23.4 The Employer will prepare minutes of the Bid opening, including the information disclosed to those present in accordance with ITB Clause 23.

24. Process to Be Confidential

- 24.1 Information relating to the examination, clarification, evaluation, and comparison of bids and recommendations for the award of a contract shall not be disclosed to bidders or any other persons not officially concerned with such process until the award to the successful Bidder has been announced.

25. Clarification of Bids and Contacting the Employer

- 25.1 To assist in the examination, evaluation, and comparison of bids, the Employer may ask any Bidder for clarification of its Bid, including breakdowns of the prices in the Activity Schedule. Requests for clarification and the response shall be in writing, but no change in the price or substance of the Bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids in accordance with ITB Clause 27.
- 25.2 From the time of bid opening to the time of contract award, if any bidder wishes to contact the Employer on any matter related to the bid, it should do so in writing.

- 25.3 Any effort by the Bidder to influence the Employer in the Employer's bid evaluation, bid comparison or contract award decisions may result in the rejection of the Bidders' bid.
- 26. Examination of Bids and Determination of Responsiveness**
- 26.1 Prior to the detailed evaluation of bids, the Employer will determine whether each Bid (a) meets the eligibility criteria defined in ITB Clause 3; (b) has been properly signed; (c) is accompanied by the required Bid Security; and (d) is substantially responsive to the requirements of the bidding documents.
- 26.2 A substantially responsive bid is one which conforms to all the terms, conditions, and specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the Services; (b) which limits in any substantial way, inconsistent with the bidding documents, the Employer's rights or the Bidder's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.
- 26.3 If a Bid is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by correction or withdrawal of the non-conforming deviation or reservation.
- 27. Correction of Errors**
- 27.1 Bids determined to be substantially responsive will be checked by the Employer for any arithmetic errors. Errors will be corrected by the Employer as follows:
- (a) where there is a discrepancy between the amounts in figures and in words, the amount in words will govern; and
 - (b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will govern, unless in the opinion of the Employer there is an obviously gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted will govern, and the unit rate will be corrected.
- 27.2 The amount stated in the Bid will be adjusted by the Employer in accordance with the above procedure for the correction of errors and shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount, the Bid will be rejected, and the Bid Security may be forfeited in accordance with ITB Clause 16.6(b).
- 28. Currency for Bid Evaluation**
- 28.1 Bids will be evaluated as quoted in US Dollars in accordance with ITB Clause 14.1, unless a Bidder has used different exchange rates than those prescribed in ITB Clause 14.2, in which case the Bid will be first converted into the amounts payable in different currencies using the rates quoted in the Bid and then reconverted to US Dollars using the exchange rates prescribed in ITB Clause 14.2.
- 29. Evaluation and Comparison of Bids**
- 29.1 The Employer will evaluate and compare only the bids determined to be substantially responsive in accordance with ITB Clause 26.

29.2 In evaluating the bids, the Employer will determine for each Bid the evaluated Bid price by adjusting the Bid price as follows:

- (a) making any correction for errors pursuant to ITB Clause 27;
- (b) excluding provisional sums and the provision, if any, for contingencies in the Activity Schedule, but including Day Services, where priced competitively;
- (c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with ITB Clause 17;
- (d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with ITB Clause 22.5; and
- (e) duties and taxes already payable on major equipment, materials, fittings and fixtures that are subject to the African Union exemption on payment of duties and taxes.

29.3 The Employer reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors which are in excess of the requirements of the bidding documents or otherwise result in unsolicited benefits for the Employer will not be taken into account in Bid evaluation.

29.4 The estimated effect of any price adjustment conditions under ITB Clause 47 of the Conditions of Contract, during the period of implementation of the Contract, will not be taken into account in Bid evaluation.

29.5 If bids are invited for individual lots and award of multiple contracts to individual bidders is permitted pursuant to ITB Clause 29.2(d), the methodology of evaluation and the application of any conditional discounts to determine the award of contracts shall be specified in the Bidding Data.

30. Margin of Preference

30.1 If so indicated in the Bidding Data, contractors from African Union Member States may receive a margin of preference in Bid evaluation, for which this clause shall apply.

30.2 African Union bidders shall provide all evidence necessary to prove that they meet the following criteria to be eligible for a margin of preference in the comparison of their bids with those of bidders who do not qualify for the preference. They should

- (a) be registered within a Member State of the African Union;
- (b) have majority ownership by nationals of Member States of the African Union;
- (c) not subcontract more than ten (10) percent of the Contract Price including provisional sums to foreign contractors; and

- (d) Satisfy any other criteria specified for the purpose of eligibility for the margin of preference, as specified in the Bidding Data.
- 30.3 Joint ventures of African Union Member State firms may be eligible for the margin of preference provided that:
- (a) individual partners satisfy the criteria of eligibility of ITB Clauses 30.2 (a) and (b);
 - (b) the joint venture is registered in the Country specified for performance of the Services;
 - (c) the joint venture shall not subcontract more than ten (10) percent of the Contract Price, excluding provisional sums, to foreign firms; and
 - (d) satisfy any other criteria specified for the purpose of margin of preference eligibility, as specified in the Bidding Data.
- 30.4 The following procedure will be used to apply the margin of preference:
- (a) Responsive bids will be classified into the following groups:
 - (i) Group A: bids offered by African Union Member State bidders and joint ventures meeting the respective criteria of ITB Clauses 30.2 and 30.3 above; and
 - (ii) Group B: all other bids.
 - (b) For the purpose of evaluation and comparison of bids only, an amount equal to the percentage stated in the Bidding Data of the evaluated Bid prices determined in accordance with ITB Clause 29.2(a), (b), and (d), will be added to all bids classified in Group B.

F. Award of Contract

- 31. Award Criteria** 31.1 Subject to ITB Clause 32, the Employer will award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the bidding documents and who has offered the lowest evaluated cost Bid price, provided that such Bidder has been determined to be (a) eligible in accordance with the provisions of ITB Clause 3, and (b) qualified in accordance with the provisions of ITB Clause 4.
- 32. Employer's Right to Accept any Bid and to Reject any or all Bids** 32.1 The Employer reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the Employer's action.
- 33. Notification of** 33.1 The Bidder who's Bid has been accepted will be notified of the award

**Award and
Signing of
Agreement**

by the Employer prior to expiration of the Bid validity period by e-mail, facsimile and confirmed by registered letter or courier service. This letter (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") will state the sum that the Employer will pay the Contractor in consideration of the execution, completion of the Services by the Contractor as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price").

33.2 The notification of award will constitute the formation of the Contract, subject to the Bidder furnishing the Performance Security in accordance with ITB Clause 34, and signing the Agreement in accordance with ITB Clause 33.3.

33.3 The Agreement will incorporate all agreements between the Employer and the successful Bidder. It will be signed by the Employer and sent to the successful Bidder, within 14 days following the notification of award along with the Letter of Acceptance. Within 14 days of receipt, the successful Bidder will sign the Agreement and deliver it to the Employer.

33.4 Upon the furnishing by the successful Bidder of the Performance Security, the Employer will promptly notify the other bidders that their bids have been unsuccessful.

**34. Performance
Security**

34.1 Within 14 days after receipt of the Letter of Acceptance, the successful Bidder shall deliver to the Employer a Performance Security in the amount stipulated in the Contract Data in the form of a Bank Guarantee, denominated in the type and proportions of currencies in the Letter of Acceptance and in accordance with the Conditions of Contract.

34.2 The Bank Guarantee shall be issued either (a) at the Bidder's option, by a bank located in a Member State of the African Union or a foreign bank through a correspondent bank located in the Country specified for the performance of the Services, or (b) with the agreement of the Employer directly by a foreign bank acceptable to the Employer.

34.3 Failure of the successful Bidder to comply with the requirements of ITB Clause 34.1 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Bid Security.

**35. Advance
Payment and
Security**

35.1 The Employer may provide an Advance Payment on the Contract Price as stipulated in the Conditions of Contract, subject to a maximum amount of 25% against a bank guarantee.

36. Adjudicator

36.1 The Employer proposes the person named in the Bidding Data to be appointed as Adjudicator under the Contract, at a fee rate specified in the Bidding Data, plus reimbursable expenses. If the Bidder disagrees with this proposal, the Bidder should so state in the Bid. If, in the Letter of Acceptance, the Employer has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Contract Data at the request of either party.

37. Corrupt or Fraudulent Practices

37.1 The African Union requires that Officers of the AU, as well as Bidders/Suppliers/Contractors, observe the highest standard of ethics during the procurement and execution of such contracts.⁴ In pursuance of this policy the AU:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) “corrupt practice”⁵ 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”⁶ is any act or omission including a misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
 - (iii) “collusive practice”⁷ 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”⁸ 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 deliberately destroying, falsifying, altering or concealing of evidence material to any investigation or making false statements to investigators in order to materially impede any investigation 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;
- (b) will reject a recommendation for award of contract if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;
- (c) will declare a firm ineligible, either indefinitely or for a stated

⁴ *In this context, any action taken by a bidder, supplier, contractor, or a sub-contractor to influence the procurement process or contract execution for undue advantage is improper.*

⁵ *“another party” refers to an officer of the AU acting in relation to the procurement process or contract execution. In this context, “officer of the AU” includes staff and employees of other organisations taking or reviewing procurement decisions.*

⁶ *a “party” refers to any officer of the AU; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.*

⁷ *“parties” refers to any participants in the procurement process (including officers of the AU) attempting to establish bid prices at artificial, non competitive levels.*

⁸ *a “party” refers to any participant in the procurement process or contract execution.*

period of time, to be awarded an African Union financed contract if it at any time determines that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, an African Union financed contract.

37.2 Furthermore, Bidders shall be aware of the provisions stated in Clause 23.2 and Clause 59.2 of the Conditions of Contract.

Section III. Bidding Data

The following specific data for the Services to be procured shall complement, supplement, or amend the provisions in the Instructions to Bidders (ITB). Whenever there is a conflict, the provisions herein shall prevail over those in the ITB.

**Instructions to
Bidders Clause
Reference****ITB Clause 1**

ITB Clause 1.1 Name of Employer: **NEPAD PLANNING AND COORDINATING
AGENCY**

ITB Clause 1.2 The Project Title/Name of Contract:

**Feasibility Study and Business Plan for the West African Terrestrial
Segment of AU-NEPAD ICT Broadband Infrastructure Network**

ITB Clause 1.3 The Procurement Number is: **NPCA/EAP/002/2012**

ITB Clause 2.1 **Funding for the Contract is provided by EU- Infrastructure Trust Fund (EU-ITF) and delegated to AFD (French Development Agency)**

ITB Clause 3.1 **All countries and territories which are member states of the United Nations are eligible except the Republic of Sudan.**

ITB Clause 4.5a **The minimum required annual turnover for the successful Bidder in any of the last five years is US\$700,000.**

ITB Clause 4.5d The key personnel required for the performance of the contract and their qualifications and experience are specified in Contract Data Clause 9.1.

ITB Clause 4.5e **The required minimum amount of net liquid assets and/or credit facilities is US\$500,000.**

**ITB Clause 8.2
(and 18.1)** The number of copies of the Bid to be submitted is **3** in addition to the original of the Bid.

- ITB Clause 9.1** The Employer's address, and contact information are:
- NEPAD Planning and Coordinating Agency**
Block B, Gateway Park, Corner Challenger & Columbia Avenues, Midridge office Park, Midrand Private Bag218, Midrand, Gauteng, South Africa
Phone : +27 12 841 46 61
Fax : +27 12 84129 96
Website : <http://nepad.org/crosscuttingissues/ict>
E-mail : florek@nepad.org
- ITB Clause 11.1** The Language of the Bid is English
- ITB Clause 12.1** Other documents to be submitted by the bidder are:
- *Power of Attorney*
 - *CV of consultants who will perform the consultancy.*
- ITB Clause 13.4** The Contract is not subject to price adjustment in accordance with Clause 47 of the Conditions of Contract.
- ITB Clause 14.1** Bids shall be denominated in US Dollars.
- ITB Clause 15.1** The period of Bid validity shall be 90 days after the deadline for submission of bids.
- ITB Clause 16.1** The amount of Bid Security shall be **\$ 10000**.
- ITB Clause 17.1** Alternative proposals to the requirements of the bidding documents will not be permitted.
- ITB Clause 19.2(a)** The address for the submission of bids is :
- NEPAD Planning and Coordinating Agency**
Block B, Gateway Park, Corner Challenger & Columbia Avenues, Midridge office Park, Midrand Private Bag218, Midrand, Gauteng, South Africa
Phone : +27 11 256 3600/3642
Website : <http://nepad.org/crosscuttingissues/ict>
E-mail : Corinem@nepad.org
Only the selected consulting firm will be contacted
- ITB Clause 19.2(b)** The Name and Procurement Number of the Contract is **NPCA/EAP/002/2012**.
- ITB Clause 19.2(c)** **The time and date for bid opening is 10H00 on April the 23rd, 2012**
- ITB Clause 20.1** **The deadline for submission of bids is 15H00 on April the 16th, 2012**
- ITB Clause 29.5** A two-stage process will be applied for evaluation of proposals, with the technical evaluation being completed before the financial one. Bids will be evaluated using the following criteria:

S.No	EVALUATION CRITERIA	Marks
1.	Experience in execution of similar projects	15
2.	Technical skills and experience of the proposed team	25
3.	Brief Summary of the methodology to be used	10
4.	Time schedule for work completion	10
5.	Financial cost	40
	Total	100

The financial bids of only those bidders who have scored a minimum of 75% of the total marks (i.e. 65) at the end of technical bid evaluation process will be considered for financial bid evaluation.

ITB Clause 36.1

The Adjudicator proposed by the Employer is ???*[insert name and address]*.

The fee rate for this proposed Adjudicator shall not exceed US\$500 per day

The biographical data of the proposed Adjudicator is as follows: *[provide relevant information, such as education, experience, age, nationality, and present position; attach additional pages as necessary]*.

In the event of disagreement between the Employer and the Contractor on an Adjudicator, the Adjudicator will be appointed by the NEPAD Planning and Coordinating Agency

**Section IV. Forms of Bid, Qualification Information, Letter of Acceptance and Agreement
Contractor’s Bid**

Notes on Form of Contractor’s Bid

The Bidder shall fill in and submit this Bid form with the Bid. Additional details on the price should be inserted if the Bid is in various currencies. If the Bidder objects to the Adjudicator proposed by the Employer in the bidding documents, he should so state in his Bid, and present an alternative candidate, together with the candidate’s fee rates and biographical data, in accordance with Clause 36 of the Instructions to Bidders.

{letterhead paper of the bidder}

{date}

To: *{name and address of Employer}*

We offer to execute the *{name and procurement number of Contract}* in accordance with the Conditions of Contract accompanying this Bid for the Contract Price of *{amount in numbers}*, *{amount in words}* *{name of currency}*.

The Contract shall be paid in the following currencies:

Currency	Percentage payable in currency	Rate of exchange: one foreign equals [rate] US Dollar	Inputs for which foreign currency is required
(a)			
(b)			
(c)			

The advance payment required is:

Amount	Currency
(a)	
(b)	
(c)	

We accept the appointment of *{name proposed in bidding Data}* as the Adjudicator.

[or]

We do not accept the appointment of *{name proposed in Bidding Data}* as the Adjudicator, and propose instead that *{name}* be appointed as Adjudicator, whose fee rates and biographical data are attached.

This Bid and your written acceptance of it shall constitute a binding Contract between us. We understand that you are not bound to accept the lowest or any Bid you receive.

Commissions or gratuities, if any, paid or to be paid by us to agents relating to this Bid, and to contract execution if we are awarded the contract, are listed below:

Name and address of agent	Amount and Currency	Purpose of Commission or gratuity
_____	_____	_____
_____	_____	_____
_____	_____	_____

(if none, state “none”).”

We hereby confirm that this Bid complies with the Bid Validity and Bid Security required by the bidding documents and specified in the Bidding Data.

Authorised Signature: _____

Name and Title of Signatory: _____

Name of Bidder: _____

Address: _____

Qualification Information

Notes on Form of Qualification Information

The information to be filled in by bidders in the following pages will be used for purposes of post-qualification or for verification of prequalification as provided for in Clause 4 of the Instructions to Bidders. This information will not be incorporated in the Contract. Attach additional pages as necessary. Pertinent sections of attached documents should be translated into the language of the Bid. If used for prequalification verification, the Bidder should fill in updated information only.

1. Individual Bidders or Individual Members of Joint Ventures

- 1.1 Constitution or legal status of Bidder: *{attach copy}*
 Place of registration: *{insert}*
 Principal place of business: *{insert}*
 Power of attorney of signatory of Bid: *{attach}*
- 1.2 Total annual volume of construction work performed in five years: *{insert figure in US Dollars or an equivalent in a freely convertible foreign currency}*
- 1.3 Work performed as prime Contractor on Services of a similar nature and volume over the last five years. The values should be indicated in the same currency used for Item 1.2 above. Also list details of work under way or committed, including expected completion date.

Project name and country	Name of client and contact person	Type of work performed and year of completion	Value of contract
(a)			
(b)			
(c)			

- 1.4 Major items of Contractor’s Equipment proposed for carrying out the Services. List all information requested below. Refer also to Clause 4.3(d) of the Instructions to Bidders.

Item of equipment	Description, make, and age (years)	Condition (new, good, poor) and number available	Owned, leased (from whom?), or to be purchased (from whom?)
(a)			
(b)			
(c)			

- 1.5 Qualifications and experience of key personnel proposed for

administration and execution of the Contract. Attach biographical data. Refer also to Clause 4.3(e) of the Instructions to Bidders and Clause 9.1 of the Conditions of Contract.

Position	Name	Years of experience (general)	Years of experience in proposed position
(a)			
(b)			
(c)			

1.6 Proposed subcontracts and firms involved. Refer to Clause 7 of Conditions of Contract.

Sections of the Services	Value of subcontract	Subcontractor (name and address)	Experience in similar work
(a)			
(b)			
(c)			

1.7 Financial reports for the last five years: balance sheets, profit and loss statements, auditors' reports, etc. List below and attach copies.

1.8 Evidence of access to financial resources to meet the qualification requirements: cash in hand, lines of credit, etc. List below and attach copies of support documents.

1.9 Name, address, and telephone, and facsimile numbers of banks that may provide references if contacted by the Employer.

1.10 Information on current litigation in which the Bidder is involved.

Other party(ies)	Cause of dispute	Amount involved
(a)		
(b)		
(c)		

1.11 Statement of compliance with the requirements of Clause 3.2 of the Instructions to Bidders.

1.12 Proposed Program (work method and schedule). Descriptions, drawings, and charts, as necessary, to comply with the requirements of the bidding documents.

2. Joint Ventures

2.1 The information listed in 1.1 - 1.11 above shall be provided for each partner of the joint venture.

-
- 2.2 The information in 1.12 above shall be provided for the joint venture.
 - 2.3 Attach the power of attorney of the signatory (ies) of Bid authorising signature of the Bid on behalf of the joint venture.
 - 2.4 Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners), which shows that:
 - (a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
 - (b) one of the partners will be nominated as being in charge, authorised to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and
 - (c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.
- 3. Additional Requirements**
- 3.1 Bidders should provide any additional information required in the Bidding Data or to fulfil the requirements of Clause 4.1 and Clause 30 of the Instructions to Bidders, if applicable.

Letter of Acceptance
[letterhead paper of the Employer]

Notes on Standard Form of Letter of Acceptance

The Letter of Acceptance will be the basis for formation of the Contract as described in Clauses 33 and 34 of the Instructions to Bidders. This Standard Form of Letter of Acceptance should be filled in and sent to the successful Bidder only after evaluation of bids has been completed and Tender Board approval to the evaluation report and award of contract is granted.

[date]

To: *[name and address of the Contractor]*

This is to notify you that your Bid dated *[date]* for execution of the *[name of the Contract and Procurement Number, as given in the Contract Data]* for the Contract Price of *[amount in numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Bidders is hereby accepted.

- (a) We accept that *[name proposed by bidder]* be appointed as the Adjudicator.⁹
or
 (b) We do not accept that *[name proposed by bidder]* be appointed as adjudicator, and by sending a copy of this letter of acceptance to *[insert the name of the Appointing Authority]*, we are hereby requesting *[name]*, the Appointing Authority, to appoint the Adjudicator in accordance with Clause 36.1 of the Instructions to Bidders.¹⁰

You are requested to submit the Performance Security of *[amount in numbers and in words]* US Dollars *[or other agreed currency]* and attend at *[address]* on *[date]* at *[time]* hours for signature of the Contract.

Authorised Signature: _____

Name and Title of Signatory: _____

Name of Employer: _____

Attachment: Agreement

⁹ To be used only if the Contractor disagrees in the Bid with the Adjudicator proposed by the Employer in the Instructions to Bidders, and has accordingly offered another candidate. If the Employer does not accept the counterproposal, the sentence should so state, and be followed by an additional sentence: "We therefore shall request the *[name of Appointing Authority as named in the Contract Data]* to appoint the Adjudicator in accordance with Clause 36 of the Instructions to Bidders."

¹⁰ To be used only if the Contractor disagrees in the Bid with the Adjudicator proposed by the Employer in the Instructions to Bidders, and has accordingly offered another candidate. If the Employer does not accept the counterproposal, the sentence should so state, and be followed by an additional sentence: "We therefore shall request the *[name of Appointing Authority as named in the Contract Data]* to appoint the Adjudicator in accordance with Clause 36 of the Instructions to Bidders."

Agreement

This Agreement, made the *[day]* day of *[month]*, *[year]* between *[name and address of Employer]* (hereinafter called “the Employer”) and *[name and address of Contractor]* (hereinafter called “the Contractor”) of the other part.

Whereas the Employer is desirous that the Contractor execute *[name and Procurement Number of Contract]* (hereinafter called “the Services”) and the Employer has accepted the Bid by the Contractor for the execution and completion of such Services and the remedying of any defects therein for the sum of *[Contract Price in numbers and words]*, (hereinafter called “the Contract Price”).

Now this Agreement witnesseth as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to, and they shall be deemed to form and be read and construed as part of this Agreement.
2. The following documents shall be deemed to form and be read and construed as part of this agreement, in the following order of priority, viz:
 - (a) Agreement;
 - (b) Contract Data;
 - (c) Conditions of Contract;
 - (d) Specifications;
 - (e) Drawings;
 - (f) Contractor’s Bid, including the Priced Activity Schedule;
 - (g) Letter of Acceptance; and
 - (h) any other document listed in the Contract Data as forming part of the Contract.
3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the Services and remedy any defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Services and the remedying of defects wherein the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

In Witness whereof the parties thereto have caused this Agreement to be executed the day and year first before written.

The Common Seal of _____
was hereunto affixed in the presence of: _____

Signed, Sealed, and Delivered by the said _____
in the presence of: _____

Name, Title and Signature of Employer _____

Name and Signature of Contractor _____

Section V. Conditions of Contract**Table of Clauses**

A. General.....	<u>3234</u>
1. Definitions	<u>3234</u>
2. Interpretation.....	<u>3436</u>
3. Language and Law.....	<u>3436</u>
4. Project Manager's Decisions	<u>3436</u>
5. Delegation.....	<u>3437</u>
6. Communications	<u>3437</u>
7. Subcontracting	<u>3537</u>
9. Personnel.....	<u>3537</u>
10. Employer's and Contractor's Risks	<u>3537</u>
11. Employer's Risks.....	<u>3537</u>
12. Contractor's Risks.....	<u>3638</u>
13. Insurance.....	<u>3638</u>
14. Site Investigation Reports.....	<u>3639</u>
15. Queries about the Contract Data.....	<u>3639</u>
16. Contractor For Service providing	<u>3639</u>
17. The Services to Be Completed by the Intended Completion Date.....	<u>3739</u>
18. Approval by the Project Manager.....	<u>3739</u>
19. Safety	<u>3740</u>
20. Discoveries.....	<u>3740</u>
21. Possession of the Site.....	<u>3740</u>
22. Access to the Site.....	<u>3740</u>
23. Instructions Inspection and Audits.....	<u>3740</u>
24. Disputes	<u>3840</u>
25. Procedure for Disputes.....	<u>3840</u>
26. Replacement of Adjudicator	<u>3841</u>
B. Time Control.....	<u>3841</u>
27. Program.....	<u>3841</u>
28. Extension of the Intended Completion Date.....	<u>3941</u>
29. Acceleration.....	<u>3942</u>
30. Delays Ordered by the Project Manager	<u>3942</u>
31. Management Meetings.....	<u>3942</u>
32. Early Warning.....	<u>3942</u>
C. Quality Control	<u>4043</u>
33. Identifying Defects	<u>4043</u>
34. Tests	<u>4043</u>
35. Correction of Defects.....	<u>4043</u>
36. Uncorrected Defects	<u>4043</u>
D. Cost Control.....	<u>4043</u>
37. Activity Schedule.....	<u>4043</u>
38. Changes in the Activity Schedule	<u>4144</u>
39. Variations.....	<u>4144</u>
40. Payments for Variations.....	<u>4144</u>
41. Cash Flow Forecasts	<u>4144</u>
42. Payment Certificates	<u>4145</u>
43. Payments.....	<u>4245</u>
44. Compensation Events	<u>4246</u>
45. Taxes and Duties.....	<u>4347</u>

46.	Currencies	<u>4448</u>
47.	Price Adjustment.....	<u>4448</u>
48.	Retention.....	<u>4448</u>
49.	Liquidated Damages	<u>4448</u>
50.	Bonus	<u>4548</u>
51.	Advance Payment	<u>4548</u>
52.	Securities.....	<u>4549</u>
53.	DayServices	<u>4549</u>
54.	Cost of Repairs.....	<u>4649</u>
E.	Finishing the Contract	<u>4650</u>
55.	Completion.....	<u>4650</u>
56.	Taking Over	<u>4650</u>
57.	Final Account.....	<u>4650</u>
58.	Operating and Maintenance Manuals	<u>4650</u>
59.	Termination.....	<u>4650</u>
60.	Payment upon Termination.....	<u>4852</u>
61.	Property.....	<u>4853</u>
62.	Release from Performance.....	<u>4853</u>

Conditions of Contract

A. General

1. Definitions

1.1 Boldface type is used to identify defined terms.

The **Adjudicator** is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in Clauses 24 and 25 hereunder.

Activity Schedule means the priced and completed Activity Schedule forming part of the Bid for an Ad measurement (Unit Price) Contract.

Activity Schedule means the priced and completed Activity Schedule forming part of the Bid for a Lump Sum Contract

Compensation Events are those defined in Clause 44.

The **Completion Date** is the date of completion of the Services as certified by the Project Manager, in accordance with Clause 55.1.

The **Contract** is the Contract between the Employer and the Contractor to execute, complete, and maintain the Services. It consists of the documents listed in Clause 2.3.

The **Contractor** is a person or corporate body that's Bid to carry out the Services has been accepted by the Employer.

The **Contractor's Bid** is the completed bidding document submitted by the Contractor to the Employer.

The **Contract Price** is the price stated in the Letter of agreement and thereafter as adjusted in accordance with the provisions of the Contract.

The **Country specified for the performance of the Services** is the Country specified in the Contract Data.

Days are calendar days; months are calendar months.

Day Services are varied Services inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.

A **Defect** is any part of the Services not completed in accordance with the Contract.

The **Defects Liability Certificate** is the certificate issued by Project Manager upon correction of defects by the Contractor.

The **Defects Liability Period** is the period named in the Contract Data and calculated from the Completion Date.

Drawings include calculations and other information provided or approved by the Project Manager for the execution of the Contract.

The **Employer** is the party who employs the Contractor to carry out the Services.

Equipment is the Contractor's machinery and vehicles brought temporarily to the Site or rented to construct the Services.

The **Initial Contract Price** is the Contract Price listed in the Employer's Letter of Acceptance.

The **Intended Completion Date** is the date on which it is intended that the Contractor shall complete the Services. The Intended Completion Date is specified in the Contract Data. The Intended Completion Date may be revised only by the Project Manager, following approval of the Employer, by issuing an approved extension of time or an acceleration order.

Materials are all supplies, including consumables, used by the Contractor for incorporation in the Services.

The **Project Manager** is the person named in the Contract Data (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Services and administering the day-to-day operation of the Contract.

The **Site** is the area defined as such in the Contract Data.

Site Investigation Reports are those that were included in the bidding documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.

Specification means the Specification of the Services included in the Contract and any modification or addition made or approved by the Project Manager.

The **Start Date** is given in the Contract Data. It is the latest date when the Contractor shall commence execution of the Services. It does not necessarily coincide with any availability of documents mentioned in the contract data Possession.

A **Subcontractor** is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.

Temporary Services are Services designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Services.

A **Variation** is an instruction given by the Project Manager which varies the Services.

The **Services** are what the Contract requires the Contractor to carry on and handover outcomes and finding to the Employer, as defined in the Contract Data.

- 2. Interpretation**
- 2.1 In interpreting these Conditions of Contract, singular also means plural, male also means female, and the other way around. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager will provide instructions clarifying queries about these Conditions of Contract.
- 2.2 If sectional completion is specified in the Contract Data, references in the Conditions of Contract to the Services, the Completion Date, and the Intended Completion Date apply to any Section of the Services (other than references to the Completion Date and Intended Completion Date for the whole of the Services).
- 2.3 The documents forming the Contract shall be interpreted in the following order of priority:
- (1) Agreement;
 - (2) Contract Data;
 - (3) Conditions of Contract;
 - (4) Technical Specifications;
 - (5) Drawings;
 - (6) Contractor's Bid, including the Priced Activity Schedule;
 - (7) Letter of Acceptance; and
 - (8) any other document listed in the Contract Data as forming part of the Contract.
- 3. Language and Law**
- 3.1 The languages of the Contract are English and French and the law governing the Contract is International Law unless otherwise stated in the Contract Data.
- 4. Project Manager's Decisions**
- 4.1 Except where otherwise specifically stated, the Project Manager will decide contractual matters between the Employer and the Contractor in the role representing the Employer.
- 4.2 The Project Manager shall obtain specific approval from the Employer before carrying out any of his duties under the Contract which in the Project Manager's opinion will cause the total amount finally due under the Contract to exceed the Contract Price or will give entitlement to an extension of time. This requirement shall be waived in an emergency affecting safety of personnel or the Services or adjacent property.
- 5. Delegation**
- 5.1 The Project Manager may delegate any of his duties and responsibilities to other people except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.
- 6. Communications**
- 6.1 Communications between parties that are referred to in the Conditions

shall be effective only when in writing. A notice shall be effective only when it is delivered.

- 7. Subcontracting** 7.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations.
- 9. Personnel** 9.1 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the Contract Data, to carry out the functions stated in the Schedule or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule.
- 9.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating valid reasons, the Contractor shall ensure that the person leaves the consultancy team within seven days and has no further connection with the work in the Contract.
- 10. Employer's and Contractor's Risks** 10.1 The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.
- 11. Employer's Risks** 11.1 From the Start Date until the Defects Correction Certificate has been issued, the following are Employer's risks:
- (a) The risk of personal injury, death, or loss of or damage to property (excluding the Services, Plant, Materials, and Equipment), which are due to:
 - (i) be used by the consultancy team to accomplish this Work, which is the unavoidable result of the Services; or
 - (ii) negligence, breach of statutory duty, or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.
 - (b) The risk of damage to the Services and Equipment to the extent that it is due to a fault of the Employer or in the Employer's design, or due to war or radioactive contamination directly affecting the Country specified for performance of the Services.
- 11.2 From the Completion Date until the Defects Correction Certificate has been issued, the risk of loss of or damage to the Services and Materials is an Employer's risk except loss or damage due to
- (a) a Defect which existed on the Completion Date,

- (b) an event occurring before the Completion Date, which was not itself an Employer's risk, or
 - (c) the activities of the Contractor on region after the Completion Date.
- 12. Contractor's Risks**
 - 12.1 From the Starting Date until the Defects Correction Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the services and Equipment) which are not Employer's risks are Contractor's risks.
- 13. Insurance**
 - 13.1 The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts stated in the Contract Data for the following events which are due to the Contractor's risks:
 - (a) loss of or damage of the of the consultancy Services reports;
 - (b) loss of or damage to Equipments;
 - (c) loss of or damage to property (except the Services, Materials, and Equipment) in connection with the Contract;
 - (d) personal injury or death, and
 - (e) any other insurance as specified in the Contract Data.
 - 13.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.
 - 13.3 If the Contractor does not provide any of the policies and certificates required, the Employer may affect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due to the Employer.
 - 13.4 Alterations to the terms of insurance shall not be made without the approval of the Project Manager.
 - 13.5 Both parties shall comply with any conditions of the insurance policies.
- 14. Site Investigation Reports**
 - 14.1 The Contractor, in preparing the Bid, shall rely on any information and Reports referred to in the Contract Data, supplemented by any information available to the Bidder.
- 15. Queries about the Contract Data**
 - 15.1 The Project Manager will clarify queries on the Contract Data.
- 16. Contractor to**
 - 16.1 The Contractor shall construct and install the Services in accordance

Construct the Services	with the Specifications and Drawings.
17. The Services to Be Completed by the Intended Completion Date	17.1 The Contractor may commence execution of the Services on the Start Date and shall carry out the Services in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.
18. Approval by the Project Manager	18.1 The Contractor shall submit Specifications and Drawings showing proposed Temporary Services to the Project Manager, who is to approve them if they comply with the Specifications and Drawings. 18.2 The Contractor shall be responsible for design of Temporary Services. 18.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of Temporary Services. 18.4 The Contractor shall obtain approval of third parties to the design of Temporary Services, where required. 18.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Services, are subject to prior approval by the Project Manager before this use.
19. Safety	19.1 The Contractor shall be responsible for the safety of all activities during the consultancy.
20. Discoveries	20.1 Anything of historical or other interest or of significant value unexpectedly discovered the work shall be the property of the Employer. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.
21. Possession of the Site	21.1 The Employer shall give possession of all information referred in the Contract Data to the Contractor. If possession of such information is not given by the date stated in the Contract Data, the Employer will be deemed to have delayed the start of the relevant activities, and this will be a Compensation Event.
22. Access to the Site	22.1 The Contractor shall allow the Project Manager and any person authorised by the Project Manager access to information already collected and to any place where work in connection with the Contract is being carried out or is intended to be carried out.
23. Instructions Inspection and Audits	23.1 The Contractor shall carry out all instructions of the Project Manager providing they comply with the applicable laws of the Country specified for performance of the Services. 23.2 The Contractor shall permit the NEPAD PLANNING AND COORDINATING AGENCY (NPCA) to inspect the Contractor's accounts and records relating to the performance of the Contract and to have them audited by auditors appointed by the Commission, if so

required by the NPCA.

- 24. Disputes**
- 24.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the issue shall be referred to the NPCA Head of ICT Division. If an agreed resolution is not achieved within 14 days of the complaint by the Contractor, the issue shall be referred to the Adjudicator for decision.
- 25. Procedure for Disputes**
- 25.1 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute, providing he has been timely provided with all the relevant information.
- 25.2 The Adjudicator shall be paid at the rate specified in the Bidding Data and Contract Data, together with reimbursable expenses of the types specified in the Contract Data, and the cost shall be divided equally between the Employer and the Contractor, 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.
- 25.3 The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place shown in the Contract Data.
- 26. Replacement of Adjudicator**
- 26.1 Should the Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract; a new Adjudicator will be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority designated in the Contract Data at the request of either party, within 14 days of receipt of such request.

B. Time Control

- 27. Program**
- 27.1 Within the time stated in the Contract Data, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Services.
- 27.2 An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.
- 27.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period stated in the Contract Data. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount stated in the Contract Data from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted.

- 27.4 The Project Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events.
- 28. Extension of the Intended Completion Date**
- 28.1 The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost. Approval of any such extension of time is subject to the provisions of Clause 4.2.
- 28.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to co-operate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.
- 29. Acceleration**
- 29.1 When the Employer wants the Contractor to finish before the Intended Completion Date, the Project Manager will obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date will be adjusted accordingly and confirmed by both the Employer and the Contractor.
- 29.2 If the Contractor's priced proposals for acceleration are accepted by the Employer, they are incorporated in the Contract Price and treated as a Variation.
- 30. Delays Ordered by the Project Manager**
- 30.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Services.
- 31. Management Meetings**
- 31.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- 31.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.
- 32. Early Warning**
- 32.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Services. The Project Manager may require

the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.

- 32.2 The Contractor shall co-operate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

C. Quality Control

33. Identifying Defects

- 33.1 The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.

34. Tests

- 34.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.

35. Correction of Defects

- 35.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the Contract Data. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.
- 35.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.

36. Uncorrected Defects

- 36.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager will assess the cost of having the Defect corrected, and the Contractor will pay this amount.

D. Cost Control

37. Bill of Quantities¹¹

- 37.1 The Contractor shall provide updated Activity Schedules within 14 days of being instructed to by the Project Manager. The activities on the Activity Schedule shall be coordinated with the activities on the Program.
- 37.2 The Contractor shall show delivery of Materials to the Site separately on the Activity Schedule if payment for Materials on Site shall be made separately

¹¹

- 38. Changes in the Quantities¹²**
- 38.1 The Activity Schedule shall be amended by the Contractor to accommodate changes of Program or method of working made at the Contractor's own discretion. Prices in the Activity Schedule shall not be altered when the Contractor makes such changes to the Activity Schedule.
- 38.2 The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 10 percent, except with the prior written approval of the Employer.
- 38.3 If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.
- 39. Variations**
- 39.1 All Variations shall be included in updated Programs and Activity Schedules produced by the Contractor.
- 40. Payments for Variations**
- 40.1 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.
- 40.3 If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and recommend to the Employer a change to the Contract Price, which shall be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.
- 40.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.
- 40.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
- 41. Cash Flow Forecasts**
- 41.1 When the Program¹³ is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.
- 42. Payment Certificates**
- 42.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
- 42.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.
- 42.3 The value of work executed shall be determined by the Project

¹³ In lump sum contracts, add "or Activity Schedule" after "Program".

Manager.

- 42.4 The value of work executed shall comprise the value of completed activities in the Activity Schedule.
- 42.5 The value of work executed shall include the valuation of Variations and Compensation Events.
- 42.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

43. Payments

- 43.1 Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 45 days of the date of each certificate. If the Employer makes a late payment, the Contractor shall be entitled to claim interest on the late payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made calculated using the following formula:

$$\frac{\text{Value of the Payment Certificate} \times 15\% \times \text{No. of days delay}}{365}$$

- 43.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be entitled to claim interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
- 43.3 Unless otherwise stated, all payments and deductions will be paid or charged in the proportions of currencies comprising the Contract Price.
- 43.4 Items of the Services for which no rate or price has been entered in will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

44. Compensation Events

- 44.1 The following shall be Compensation Events:
- (a) The Employer does not give access to a part of the Site by the Site Possession Date stated in the Contract Data.
 - (b) The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.
 - (c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Services on time.
 - (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
 - (e) The Project Manager unreasonably does not approve a

subcontract to be let.

- (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issue of the Letter of Acceptance from the information issued to bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.
- (g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
- (h) Other contractors, public authorities, utilities, or the Employer do not perform work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- (i) The advance payment is delayed.
- (j) The effects on the Contractor of any of the Employer's Risks.
- (k) The Project Manager or Employer unreasonably delays issuing a Certificate of Completion.
- (l) Other Compensation Events described in the Contract Data or determined by the Project Manager shall apply.

44.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.

44.3 As soon as information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly following approval by the Employer. If the Contractor's forecast is deemed unreasonable, the Project Manager shall recommend adjustment of the Contract Price based on the Project Manager's own forecast. The Project Manager will assume that the Contractor will react competently and promptly to the event.

44.4 The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor's not having given early warning or not having co-operated with the Project Manager.

45. Taxes and Duties

45.1 The African Union is exempted from all direct taxes, and are exempted from customs duties in respect of articles imported or exported for its official use in conformity with the General Convention on Privileges and Immunities. Accordingly, the Contractor authorises the Commission of the African Union (AUC) to deduct from payments any

amount representing such taxes or duties charged to the African Union by the Contractor. In the event that any taxing authority refuses to accept the African Union's exemption from such taxes or duties, the Contractor shall immediately consult with the AUC.

45.2 A Contractor shall be entirely responsible for obtaining exemption for the African Union of all such taxes, duties, license fees, etc., incurred, unless otherwise agreed in writing by the AUC.

45.3 The Employer may adjust the Contract Price on the recommendation of the Project Manager if taxes, duties, and other relevant levies are changed within the country specified for performance of the Services, between the date 28 days before the submission of bids for the Contract and the date of the final Completion certificate. Taxes, duties and other levies that are reclaimable under the general exemption of the African Union from taxes and duties shall not give rise to any adjustment. Any adjustment to the Contract Price shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of Clause 47.

46. Currencies

46.1 Where payments are made in currencies other than US Dollars, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor's Bid.

47. Price Adjustment

47.1 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for and in the manner detailed in the Contract Data. If so provided, the amounts certified in each payment certificate shall be adjusted in accordance with the price adjustment provisions given in the Contract Data.

48. Retention

48.1 The Employer shall retain from each payment due to the Contractor the retention percentage stated in the Contract Data until Completion of the whole of the Services.

48.2 On completion of the whole of the Services, half of the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected.

48.3 On completion of the whole Services, the Contractor may substitute retention money with an "on demand" Bank guarantee.

49. Liquidated Damages

49.1 The Contractor shall pay liquidated damages to the Employer at the rate per day stated in the Contract Data 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 Contract Data. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

49.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of

liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Clause 43.1.

- 50. Bonus** 50.1 Unless otherwise stated in the Contract Data, the Contractor shall not be paid a bonus for early completion of the Services.
- 51. Advance Payment**
- 51.1 The Employer shall make advance payment to the Contractor of the amounts stated in the Contract Data by the date stated in the Contract Data, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest will not be charged on the advance payment.
- 51.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilisation expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.
- 51.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Services on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.
- 52. Securities** 52.1 The Performance Security in the form of an unconditional Bank Guarantee given in the bidding documents shall be provided to the Employer no later than the date specified in the Letter of Acceptance. The Bank Guarantee shall be issued either (a) by a bank located in a Member State of the African Union, or a foreign bank through a correspondent bank located in the Country specified for performance of the Services, or (b), with the agreement of the Employer directly by a foreign bank acceptable to the Employer. The Guarantee shall be 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 days after the date of issue of the Certificate of Completion.
- 53. Day Services** 53.1 If applicable, the Day Services rates in the Contractor's Bid shall be used for small additional amounts of work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.
- 53.2 All work to be paid for as Day Services shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.

53.3 The Contractor shall be paid for Day Services subject to obtaining signed Day Services forms.

54. Cost of Repairs 54.1 Loss or damage to the Services or Materials to be incorporated in the Services between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

E. Finishing the Contract

55. Completion 55.1 The Contractor shall request the Project Manager to issue a certificate of Completion of the Services, and the Project Manager will do so upon both the Project Manager and the Employer deciding that the work is completed.

56. Taking Over 56.1 The Employer shall take over the Site and the Services within the period specified in the contract data after the issuance of a Certificate of Completion.

57. Final Account 57.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

58. Operating and Maintenance Manuals 58.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the Contract Data.

58.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the Contract Data, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount stated in the Contract Data from payments due to the Contractor.

59. Termination 59.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

59.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:

(a) the Contractor stops the consultancy for 28 days when no stoppage of consultancy is shown on the current Program and the stoppage has not been authorised by the Project Manager;

(b) the Project Manager instructs the Contractor to delay the progress of the Services, and the instruction is not withdrawn within 28 days;

- (c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 90 days of the date of the Project Manager's certificate;
- (e) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
- (f) the Contractor does not maintain a Security, which is required; and
- (g) at any time during the Contract, the Contractor has delayed the completion of the Services, as measured by the Program, by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the Contract Data.
- (h) if the Contractor, in the judgement of the Employer has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for or in executing the Contract.

For the purpose of this paragraph:

“corrupt practice”¹⁴ is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

“fraudulent practice”¹⁵ is any act or omission including a misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

“collusive practice”¹⁶ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

“coercive practice”¹⁷ 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;

¹⁴ “another party” refers to an officer of the AU acting in relation to the procurement process or contract execution. In this context, “officer of the AU” includes staff and employees of other organizations taking or reviewing procurement decisions.

¹⁵ a “party” refers to any officer of the AU; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

¹⁶ “parties” refers to any participants in the procurement process (including officers of the AU) attempting to establish bid prices at artificial, non competitive levels.

¹⁷ a “party” refers to any participant in the procurement process or contract execution.

“obstructive practice” is deliberately destroying, falsifying, altering or concealing of evidence material to any investigation or making false statements to investigators in order to materially impede any investigation 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;

59.3 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under Clause 59.2 above, the Project Manager shall decide whether the breach is fundamental or not.

59.4 Notwithstanding the above, the Employer may terminate the Contract for convenience.

59.5 If the Contract is terminated, the Contractor shall stop work immediately, handover all information collected so far.

60. Payment upon Termination

60.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the Contract Data. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.

60.2 If the Contract is terminated for the Employer’s convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the consultancy done, the reasonable cost of repatriation of the Contractor’s personnel employed solely on the Services, and the Contractor’s costs of protecting and securing the Services, and less advance payments received up to the date of the certificate.

61. Property

61.1 All information, maps and contacts collected during the study and the outcomes of the study and business case shall be deemed to be the property of the Employer if the Contract is terminated because of the Contractor’s default. The contractor shall transfer all the founding and information to the employer.

62. Release from Performance

62.1 If the Contract is frustrated by the outbreak of war or by any other event of force majeure entirely outside the control of either the Employer or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall stop the consultancy as quickly as possible on the area concerned after receiving this certificate and shall be paid for all consultancy carried out before receiving it and for any work carried out afterwards to which a commitment was made.

Section VI. Contract Data**CC Clause 1.1**

Contract: The name and Procurement Number of the Contract are **Feasibility Study and Business Plan for Central African Terrestrial Segment of AU-NEPAD ICT Broadband Infrastructure Network**.

Contractor: The Contractor is **NPCA**.

Country specified for the performance of the Services: *The work covers West African Countries listed below :*

1. *Benin*
2. *Burkina Faso*
3. *Cote d'Ivoire*
4. *Ghana*
5. *Guinea (Conakry)*
6. *Guinea Bissau*
7. *Liberia*
8. *Mali*
9. *Niger*
10. *Nigeria*
11. *Senegal*
12. *Sierra Leone*
13. *The Gambia*
14. *Togo*

Employer: The Employer is :

*NEPAD Planning and Coordinating Agency
Block B, Gateway Park, Corner Challenger & Columbia Avenues,
Midridge office Park, Midrand Private Bag218, Midrand, Gauteng,
South Africa
Phone : 27 11 256 3600/3642
Website: <http://nepad.org/crosscuttingissues/ict>
E-mail : corinem@nepad.org*

Intended Completion Date: The Intended Completion Date for the whole o Services shall be **January the 31st, 2013 latest.**

Project Manager: The Project Manager is :

*Lazare Edzogo
NEPAD Planning and Coordinating
e_Africa Programme
CSIR Building 43B,
Meiring Naude Road
Pretoria 0001*

Gauteng South Africa
Tel: +27 12 841 4990
Fax: +27 12 841 29 96
Website : <http://www.nepad.org/crosscuttingissues/ict>
E-mail : lazaree@nepad.org

Site: The study will be carried out in West Africa region

Start Date: *The Start Date shall be the date of the signing of the contract.*

Work: The work consist of carrying out a feasibility study and develop a business plan for the West Africa terrestrial segment of the AU-NEPAD ICT Broadband Infrastructure Network. The main outcomes expected are resumed below:

- Inventory of all existing , under construction and planned fibre optic links in West Africa region shown in a GID .
- Propose a seamless broadband network (IP based) with a complete design and associated cost estimation.
- Business plan which shows the profitability of proposed network
- Assess the nature of the potential investors and recommend the different possible legal and financial PPP structures to be retained for the SPV(s) to be created
- Determine the Gap between regional economic policy , regulatory acts, guideline, directive, etc and the Kigali Protocol under Review which can be downloaded directly from NEPAD website (www.nepad.org/crosscuttingissues/ict)

CC Clause 2.3(9) The following documents also form part of the Contract: *See CC Clause 9; The Schedule of Key Personnel - CC Clause 14: documentation of important program under implementation, additional documentation to be downloaded on the website specified previously.*

CC Clause 3.1 *Language of the contract is English and the governing law is AU Court of Justice.*

CC Clause 9.1 The Schedule of Key Personnel below shall form part of the Contract:
The consulting firm must have broad-based expertise in, or extensive knowledge on:

1. Broadband Optical Fibre (OF) systems and technologies.
2. OF network planning, engineering, and project management.
3. Transmission and IP (Internet Protocol) technologies.
4. Opto-electronic switching and routing systems.
5. OF infrastructure construction and implementation methods.
6. Broadband network monitoring, control, operations and maintenance.
7. Network economics.
8. OF system and cable suppliers.
9. Traffic forecasting and data analysis.
10. Regional and International traffic routing.
11. Internet Protocol (IP) technology.
12. IP peering and interconnection.

13. Proven experience on elaboration of business plans in African markets.
14. Good knowledge on policy and regulatory issues in the region and on the continent as a whole,
15. Knowledge of social and environmental impact assessment.
16. The consulting team must be proficient in French and English and must have experience of travel and working in the region.

CC Clause 13.1

The minimum insurance cover shall be:

- (a) The minimum insurance cover for the loss of or damage to the Services shall be 110% of the Contract Sum.
- (c) The minimum insurance cover for personal injury or death is US\$5,000,000 with no deductible
- (d) In addition the Contractor shall be required to provide all insurance cover as required by the laws and regulations of the Country specified for the performance of the Services.

CC Clause 14.1

The following documentation on West Africa ICT Infrastructure shall form part of the Contract:

- ECOWAS Broadband Draft Network
- WAPP FO Network MAP
- Nigeria Fiber optic infrastructure Draft network

CC Clause 25.3

Arbitration will be conducted under the rules and regulations of the *Africa Union Arbitration shall take place at NPCA Headquarter in Midrand*

CC Clause 26.1

The appointment of the Adjudicator will be effective after the designation of the successful Bidder.

CC Clause 27.1

The Contractor shall submit a revised actions plan for the Services within 15 days of delivery of the Letter of Acceptance.

CC Clause 27.3

The period between Program updates shall be 30 days.

The amount to be withheld for late submission of an updated Program will be discussed with the successful Bidder.

CC Clause 35.1

The Defects Liability Period is 60 days.

CC Clause 47.1

The Contract *will not be subject* to price adjustment in accordance with Clause 47 of the Conditions of Contract.

CC Clause 48.1

The proportion of payments retained is 15 percent.

CC Clause 49.1

The liquidated Damages for the whole of the Services shall be 20% of the final Contract Price per day.

The maximum amount of liquidated damages for the whole of the Services shall be 20% of the final Contract Price.

- CC Clause 51.1** The payment will be made accordingly with the payments schedule being the result of negotiations between the Employer and the successful Bidder.
- CC Clause 52.1** The Performance Security shall be for a minimum amount equivalent to 10% percent of the Contract Price:
- CC Clause 56.1** The Employer shall take over the Services after the delivery of the final report and databases of contacts, projects and existing links in the region and after the issuance of a Certificate of Completion.
- CC 60.1** The percentage to apply to the value of the work not completed, representing the Employer's additional cost for completing the Services, is 0%.

Section VII. Specifications

SCOPE OF WORK

The study shall identify gaps / missing links in the building of a seamless ICT cross-border regional Network which will take in consideration existing links, national backbones and ongoing and planned regional projects, including alternative infrastructures: along power lines and railway and gas pipelines, etc. **A particular attention will be paid to the following projects : WAPP(West African Power Pool) project, Phase 3 Project, Intelcom II links , trans-Saharan project, Finetis project)**

The feasibility study and the business plan should cover West Africa region encompassing the following countries :

1. Benin
2. Burkina Faso
3. Cote d'Ivoire
4. Ghana
5. Guinea (Conakry)
6. Guinea Bissau
7. Liberia
8. Mali
9. Niger
10. Nigeria
11. Senegal
12. Sierra Leone
13. The Gambia
14. Togo

With the outcomes of the study, the consulting firm should provide several (at least two) design options of a seamless regional carrier-of-carrier IP Network with clear indications for connectivity with neighbour regions (Central Africa and North Africa). It should also take in consideration the specificities of the region :

- Energy issue,
- Supply difficulties
- Redundancy of international gateways for all countries (Several undersea cables are landing in the region (SAT-3, , Glo-1, Main-one, WACS, ACE).

The consultant firm will develop business cases for the chosen design options., The development of the business plan will take in consideration the specificities of the regions as summarized below :

- Informal economy which represents a great part of the business in African countries in general and West Africa countries in particular.
- Make predictions in terms of number of customers
- Segmentation based on customer types and level of purchasing power : e.g. Corporate, private, and all others types of segmentation the Consulting firm might think suitable.
- Condition of leasing capacity on existing links.
- Telecom operators

Responsibilities of the
Consulting Firm

- Determine the feasibility of developing, within the specified region, a segment of the cross-border terrestrial component of the AU-NEPAD ICT Broadband Infrastructure Network (AU-NEPAD Network). The objective of the AU-NEPAD Network is to ensure that every capital city of each and every African country has at least two separate routes connecting it to at least two submarine cable landing stations.
- Develop a Business Plan(s), based on the consultants design options, for developing such a network in the specified region.
- Assess the nature of the potential investors and recommend the different possible legal and financial **PPP** structures to be retained for the **SPV(s)** to be created.
- Within the 14 countries of West Africa, ascertain the presence and technical details of all optical fiber (OF) backbone infrastructure that may exist or which is planned or being developed : OF infrastructure owned by telecommunications network operators , **governments and service providers: electricity**, oil and gas pipeline operators; and railway operators, amongst others, shall be included in the survey.
- For each existing, planned or missing link the following information shall be provided (where relevant):
 - Ownership,
 - Maximum capacity,
 - Capacity available for renting,
 - Technical specification of that link (Technology used),
 - Quality of the link,
 - State if upgrade is required according to traffic projection,
 - Accurate measure of distance of the link,
 - Estimation of commercial value of each link for future negotiations
- Identify gaps (i.e. unsuitable, inadequate or no OF infrastructure) that may exist along the routes or links within the AU-NEPAD Network, and ascertain which initiatives or plans might be in place to close these gaps and what the associated Ready-For-Service (RFS) dates are. Additionally, estimate the costs of upgrading the existing infrastructure where relevant
- Determine the costs of purchasing OF cable or leasing broadband capacity from OF infrastructure owners. For these purposes, the costs shall be based on a requirement for 12 fibers' pairs minimum along each link in the network, with one

The principal responsibilities of the consulting firm shall include, but shall not be limited to, the following :

of the pairs initially equipped for one STM-4 system (or any latest equipment) between nodal points within the proposed regional network

- On a link by link basis, estimate the costs of building the AU-NEPAD Network in the 14 countries, regardless of whether OF infrastructure exists or not. The costs shall be based on a requirement for a 24-pairs OF cables installed between each nodal point within the proposed network (AU-NEPAD Network). The cables will be buried or suspended as appropriate
- Estimate the costs of establishing and operating a Regional Operations Centre (ROC) and data centre from where the entire network will be monitored, managed, and controlled. The costs of the ROC shall include all structures and facilities required in a typical network operating centre. These will include, amongst other things, buildings; electrical power, emergency (back-up) power systems; network management, monitoring and remote control applications and systems; work and operating stations; security; appropriate personnel facilities; etc.
- Estimate the costs of establishing and equipping the nodal points (switching hubs) in each country. The costs must include all structures and facilities required in a typical network switching node. These will include, amongst other things, buildings; electric power with back-up systems; network management, monitoring and remote control systems; work and operating stations; security; appropriate personnel facilities; etc.
 - Based on various infrastructure options as may be determined during the study, propose an optimum network in terms of network economics, configuration (network design), location of a Regional Operations Centre (ROC) and data centre, nodal switching points (hubs) in each country, reliability, infrastructure, costs, and implementation. The study shall take into account connections to the submarine cable landing stations (ACE, Main one, WACS, SAT3, Glo-1 etc...).
 - Finally determine whether the owners of optical fiber links are willing to lease pairs of dark fiber to the operator of the regional carrier-of carrier IP Network
- Undertake a detailed study of traffic flowing through the network. The study shall forecast the growth of cross-border, regional and international traffic over a 15 years period. The impact of competing net Services,

terrestrial as well as submarine, should be taken into account.

- Where applicable, estimate the costs of:
 - Route surveys.
 - Securing Rights of Way.
 - Environmental impact studies.
- Estimate the costs of operating and maintaining the network in terms of management and personnel costs, technical training, maintenance spares and other operating costs.
- Recommend options which may accelerate the implementation of the terrestrial segment of the AU-NEPAD Network and the broad technical, operational and economic requirements of each option. More than one scenario shall be proposed.
- Determine the Gap between regional economic policy and regulatory acts, guidelines, directives, etc and the Kigali protocol under review, which can be downloaded directly from NEPAD website (<http://www.nepad.org/crosscuttingissues/ict>)
- Propose an interconnection model for the region preferably base on usage bearing in mind land locked countries.

Deliverables

- The consultant firm should provide a detailed proposal of how the work will be undertaken, a schedule of work and evidence of the resources available to complete the task within the given timeframe.
- The consultant firm will be required to provide detailed monthly progress reports, including data gathered and the consultant's analysis thereof. All reports shall be submitted in English (Hard and soft copies) to the Project Manager, by email at the end of each month.
- The consultant firm will be required to provide a draft final report in English for review and acceptance by the NEPAD e-Africa Programme and should contain:
 - Feasibility study report,
 - Network design report
 - Business plans based on chosen design option
 - Assess the nature of the potential investors and recommend the different possible legal and financial **PPP** structures to be retained for the **SPV(s)** to be created.
 - A GIS reflecting the situation of broadband infrastructure in the region with a clear differentiation between : existing, under construction and planned links and all submarine landing in Africa west coast
 - A report of outcomes of the assessment of the gap between the regional economic policies and regulatory acts and the Kigali Protocol under Review.
- The final accepted report shall be translated in French and the consulting firm will be required to provide 10 copies of it (5 in English and 5 in French), including all data gathered and references accessed during the work, maps, results of the studies, network implementation action plans, etc. within one month of acceptance of the final report. The final report shall be in Microsoft applications format, on CD or DVD, as appropriate, as well as in hardcopy.
- All the details of cost estimations in the final report should be provided as well as all the references of equipments proposed to the level of detail that will facilitate procurement.

All activities will be monitored using the following indicators:

- Tangible data from the data base collection
 - Documented travel activities
 - Agendas / Minutes of meetings /List of participants
 - Location
 - Comparison with others sources
- Interconnection and right of the way model for the sub-region of West Africa .

Section IX. Schedule of Activities

- Inventory of all existing , under construction and planned fibre optic links in West Africa region shown in a GIS which will have links information update possibility.
- Propose a seamless broadband network (IP based) with a complete design and associated cost estimation.
- Business plan which shows the profitability of proposed network
- Determine the Gap between regional economic policy , regulatory acts, guideline, directive, etc and the Kigali Protocol under Review which can be downloaded directly from NEPAD website (<http://www.nepad.org/crosscuttingissues/ict>)
- Propose an interconnection and right of the way model for the region preferably base on usage bearing in mind land locked countries.
- Assessment of the nature of potential investors and recommend the different possible legal and financial **PPP** structures to be retained for the **SPV(s)** to be created.

Section X. Security Forms

Notes on Forms of Securities

Samples of acceptable forms of Bid, Performance, and Advance Payment Securities are annexed. Bidders should not complete the Performance and Advance Payment Security forms at this time. Only the successful Bidder will be required to provide Performance and Advance Payment Securities in accordance with the form acceptable to the Employer.

Annex A Form: Bid Security (Bank Guarantee)

Whereas, *[name of Bidder]* (hereinafter called “the Bidder”) has submitted his Bid dated *[date]* for the construction of *[name of Contract and procurement Number]* (hereinafter called “the Bid”).

Know all people by these presents that We *[name of Bank]* of *[name of country]* having our registered office at *[address]* (hereinafter called “the Bank”) are bound unto name of Employer] (hereinafter called “the Employer”) in the sum of *[amount]*¹⁸ for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors, and assigns by these presents.

Sealed with the Common Seal of the said Bank this *[day]* day of *[month]*, *[year]*.

The conditions of this obligation are:

- (1) If, after Bid opening, the Bidder withdraws his Bid during the period of Bid validity specified in the Form of Bid; or
- (2) If the Bidder having been notified of the acceptance of his Bid by the Employer during the period of Bid validity:
 - (a) fails or refuses to execute the Form of Agreement in accordance with the Instructions to Bidders, if required; or
 - (b) fails or refuses to furnish the Performance Security, in accordance with the Instruction to Bidders; or
 - (c) does not accept the correction of the Bid Price pursuant to Clause 27,

we undertake to pay to the Employer up to the above amount upon receipt of his first written demand, without the Employer’s having to substantiate his demand, provided that in his demand the Employer will note that the amount claimed by him is due to him owing to the occurrence of one or any of the three conditions, specifying the occurred condition or conditions.

This Guarantee will remain in force up to and including *[date]* the date 28 days after the deadline for submission of bids as stated in the Instructions to Bidders or as it may be extended by the Employer, notice of which extension(s) to the Bank is hereby waived. Any demand in respect of this Guarantee should reach the Bank not later than the above date.

Date _____ Signature and seal of the Bank _____

Name and Title of authorised signatory

¹⁸ The Bidder should insert the amount of the Guarantee in words and figures denominated in the currency of the Bid. This figure should be the same as shown in Clause 16.1 of the Instructions to Bidders.

Annex B Form : Performance Security - Unconditional Bank Guarantee

To: *[name and address of Employer]*

Whereas *[name and address of Contractor]* (hereinafter called “the Contractor”) has undertaken, in pursuance of Contract No. *[procurement number]* dated *[date]* to execute *[name and Procurement Number of Contract and brief description of Services]* (hereinafter called “the Contract”);

And whereas it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a recognised bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

And whereas we have agreed to give the Contractor such a Bank Guarantee;

Now therefore we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of *[amount of Guarantee] [amount in words]*,¹⁹ such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of *[amount of Guarantee]* as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Contractor before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Services to be performed thereunder or of any of the Contract documents which may be made between you and the Contractor shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition, or modification.

This Guarantee shall be valid until a date 90 days from the date of issue of the Certificate of Completion.

Signature and seal of the Guarantor _____

Name of Bank _____

Address _____

Date _____

¹⁹ An amount is to be inserted by the Guarantor, representing the percentage of the Contract Price specified in the Contract, and denominated either in the currency (ies) of the Contract or in a freely convertible currency acceptable to the Employer.

Annex C Form: Bank Guarantee for Advance Payment

To: *[name and address of Employer]*

[name and Procurement Number of Contract]

Sir / Madam:

In accordance with the provisions of the Conditions of Contract, Clause 51 (“Advance Payment”) of the above-mentioned Contract, *[name and address of Contractor]* (hereinafter called “the Contractor”) shall deposit with *[name of Employer]* a Bank Guarantee to guarantee his proper and faithful performance under the said Clause of the Contract in an amount of *[amount of Guarantee]* *[amount in words]*.²⁰

We, the *[Bank or Financial Institution]*, as instructed by the Contractor, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to *[name of Employer]* on his first demand without whatsoever right of objection on our part and without his first claim to the Contractor, in the amount not exceeding *[amount of Guarantee]* *[amount in words]*.²¹

We further agree that no change or addition to or other modification of the terms of the Contract or of Services to be performed thereunder or of any of the Contract documents which may be made between *[name of Employer]* and the Contractor, shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition, or modification.

This Guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until *[name of Employer]* receives full repayment of the same amount from the Contractor.

Yours truly,

Signature and seal: _____

Name of Bank: _____

Address: _____

Date: _____

²⁰ An amount is to be inserted by the Bank or Financial Institution representing the amount of the Advance Payment, and denominated either in the currency(ies) of the Advance Payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer.

²¹ An amount is to be inserted by the Bank or Financial Institution representing the amount of the Advance Payment, and denominated either in the currency(ies) of the Advance Payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer.

Format of Power-of-Attorney

POWER OF ATTORNEY

(On Stamp Paper of relevant
value)

Know all men by these presents, we _____ (name of
the company and

address of the registered office) do hereby appoint and authorize Mr.

_____ (full name and residential address) who is presently
employed with us and holding the position of _____
as our attorney, to do in our name and on our behalf, all such acts, deeds and things
necessary in connection with or incidental to our proposal for FESABILITY STUDY FOR
THE TERRESTRIAL SEGMENT OF NEPAD ICT BROADBAND INFRASTRUCTURE
NETWORK AND BUSINESS CASE FOR WEST AFRICA in response to the tenders
invited by the NPCA including signing and submission of all documents and providing
information/responses to NPCA in all matters in connection with our Bid.

We hereby agree to ratify all acts, deeds and things lawfully done by our said attorney
pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid
attorney shall and shall always be deemed to have been done by us.

Dated this _____ day of _____ 2011

For

(Signature)

(Name, Designation and Address)

Accepted

(Signature)

(Name, Title and Address of the Attorney) Date:

Note:

To be executed by an authorized representative of the bidder.

The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executants and when it is so required the same should be under common seal affixed in accordance with the required procedure.

Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/power of attorney in favour of the Person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.

In case the Application is signed by an authorized Director / Partner or Proprietor of the Applicant, a certified copy of the appropriate resolution / document conveying such authority may be enclosed in lieu of the Power of Attorney.