



KENYA PETROLEUM REFINERIES LIMITED

REQUEST FOR PROPOSAL

**KPRL/OT/019.028/2019-2020
PROVISION OF LEGAL COMPLIANCE AUDIT &
GOVERNANCE AUDIT**

**Kenya Petroleum Refineries Limited,
Refinery Road, Changanwe,
P.O. Box 90401- 80100
Mombasa, Kenya
Website: www.kprl.co.ke**

NOVEMBER 2019

TABLE OF CONTENTS

		Page
SECTION I.	Letter of Invitation.....	3
SECTION II.	Information to Bidders.....	4
	Appendix to information to Bidders.....	13
SECTION III	Technical Proposal	14
SECTION IV	Financial Proposal	21
SECTION V	Terms of Reference.....	25
SECTION VI	Standard Forms	30

SECTION I - LETTER OF INVITATION

26TH NOVEMBER 2019

TENDER NO: KPRL/OT/019.028/2019-2020

TENDER NAME: PROVISION OF LEGAL COMPLIANCE AUDIT & GOVERNANCE AUDIT

TO: Interested Bidder,

KENYA PETROLEUM REFINERIES LIMITED (KPRL) invites proposals for the PROVISION OF LEGAL COMPLIANCE AUDIT & GOVERNANCE AUDIT in accordance with the attached terms of reference.

The Bidder **MUST** meet the following minimum criteria: (These documents must be placed in a separate envelope marked "**MANDATORY REQUIREMENTS**").

1. Registration/incorporation certificate
2. CR12 or Partnership deed (of minimum 3 partners)
3. Valid Tax Compliance Certificate
4. Original Tender Security of KES 100,000.00 from a bank Registered in Kenya or from an Insurance Company Approved by PPOA or equivalent in foreign currency. Valid for 180 days from the date of tender opening
5. Valid Membership of the relevant professional body
6. Current year's practicing license from the professional body
7. Certification/accreditation with ICS as Governance Auditor
8. Current year's practicing license as Governance Auditor
9. Duly completed Confidential Business Questionnaire
10. Duly completed Declaration Form
11. Professional Indemnity cover of Ksh 5 Million
12. Pagination and continuous numbering of all pages of Bidder's submission

KPRL reserves the right to confirm the authenticity of all documents submitted by Tenderers. Any attempt by bidders to misrepresent themselves by submitting documents that are not genuine will amount to automatic disqualification.

Completed Tender documents in plain sealed envelopes bearing the reference number **KPRL/OT/019.028/2019-20120** and the remarks "**PROVISION OF LEGAL COMPLIANCE AUDIT & GOVERNANCE AUDIT**" indicated **DO NOT OPEN BEFORE 10.00 A.M ON WEDNESDAY 18TH DECEMBER 2019** should be addressed to:

**Ag. Chief Executive Officer,
KENYA PETROLEUM REFINERIES LIMITED,
Off Refinery Rd, Changamwe,
P.O Box 90401 - 80100
Mombasa - Kenya**

And be deposited in the Tender Box provided at the main Reception, located at KPRL, Off Refinery Rd, Changamwe, Mombasa **on or before WEDNESDAY 18TH DECEMBER 2019 at 10.00 A.M.** Tenders submitted later than the indicated closing date and time shall be disqualified whatever the circumstance.

Prices quoted should be inclusive of all taxes and levies and shall remain valid for at least 150 days from the closing date of the tender.

Tenders will be opened immediately thereafter at KPRL Board Room in the presence of Tenderers' representatives who choose to attend at **10:00 a.m. on WEDNESDAY 18TH DECEMBER 2019**

Enquiries regarding this tender should be forwarded to tenders@kprl.co.ke

Yours faithfully
For **KENYA PETROLEUM REFINERIES LIMITED**

Contracting & Procurement Manager
FOR: Ag. CHIEF EXECUTIVE OFFICER

SECTION II – INFORMATION TO BIDDERS (ITB)

Table of Contents

- 2.1 Introduction
- 2.2 Clarification and amendment of tender document
- 2.3 Preparation of Technical Proposal
- 2.4 Preparation of Financial Proposal
- 2.5 Submission, Receipt and opening of proposals
- 2.6 Proposal evaluation general
- 2.7 Evaluation Criteria
- 2.8 Negotiations
- 2.9 Award of Contract
- 2.10 Confidentiality
- 2.11 Corrupt or fraudulent practices

SECTION II: - INFORMATION TO BIDDERS (ITB)

2.1 Introduction

- 2.1.1 KPRL will select a firm among those who respond to this invitation to submit a proposal, in accordance with the method of selection detailed in this document. The method of selection shall be as indicated in the Appendix "ITB".
- 2.1.2 Firms are invited to submit a complete Proposal with an indicative Term Sheet. The proposal will be the basis for Contract negotiations and ultimately for a signed Contract with the selected firm.
- 2.1.3 The firms must familiarize themselves with KPRL's conditions and take them into account in preparing their proposals. To obtain firsthand information on the assignment and on the local conditions, Bidders are encouraged to liaise with KPRL regarding any information that they may require before submitting a proposal and to attend a pre-proposal conference where applicable. Bidders should contact the officials named in the Appendix "ITB" to arrange for any visit or to obtain additional information on the pre-proposal conference. Bidders should ensure that these officials are advised of the visit in adequate time to allow them to make appropriate arrangements.
- 2.1.4 KPRL will provide the inputs specified in the Appendix "ITB", assist the firm in obtaining licenses and permits needed to carry out the services and make available relevant project data and reports. The firm remains responsible for obtaining the relevant licenses and permits.
- 2.1.5 Please note that (i) the costs of preparing the proposal and of negotiating the Contract, including any visit to KPRL are not reimbursable as a direct cost of the assignment; and (ii) KPRL is not bound to accept any of the proposals submitted.

2.2 Clarification and Amendment of Tender Document

- 2.2.1 Bidders may request a clarification on the tender document only up to seven (7) days before the stated submission date. Any request for clarification must be sent in writing by electronic mail to KPRL's address tenders@kpri.co.ke. KPRL will respond by electronic mail to such requests and will send written copies of the response (including an explanation of the query but without identifying the source of inquiry) to all invited Bidders who intend to submit proposals.
- 2.2.2 At any time before the submission of proposals, KPRL may for any reason, whether at his own initiative or in response to a clarification requested by an invited firm, amend the tender document. Any amendment shall be issued in writing through addenda. Addenda shall be sent by email-to all invited Bidders and will be binding on them. KPRL may at his discretion extend the deadline for the submission of proposals.

2.3 Preparation of Technical Proposal

2.3.1 The Bidders proposal shall be written in English language

2.3.2 In preparing the Technical Proposal, Bidders are expected to examine the documents constituting this tender in detail. Material deficiencies in providing the information requested may result in rejection of a proposal.

2.3.3 While preparing the Proposal, Bidders must give particular attention to the following:

- (i) If a firm considers that it does not have all the expertise for the assignment, it may obtain a full range of expertise by associating with individual consultant(s) and/or other firms or entities in a joint venture or sub-consultancy as appropriate. Bidders shall not associate with the other Bidders participating in this assignment. Any firms associating in contravention of this requirement shall automatically be disqualified.
- (ii) It is desirable that the key professional staff proposed be permanent employees of the firm or have an extended and stable working relationship with it.
- (iii) Proposed professional staff must as a minimum, have the experience indicated in Appendix, preferably working under conditions similar to those prevailing in Kenya.
- (iv) Alternative professional staff shall not be proposed and only one Curriculum Vitae (CV) shall be submitted.

2.3.4 The Proposal shall provide the following information using the attached Standard Forms;

- (i) A brief description of the firm's organization and an outline of recent experience on assignments of a similar nature. For each assignment the outline should indicate *inter alia*, the profiles of the staff proposed, duration of the assignment, contract amount and firm's involvement.
- (ii) Any comments or suggestions on the Terms of Reference, a list of services and facilities to be provided by KPRL.
- (iii) A description of the methodology and work plan for performing the assignment.
- (iv) The names of the proposed staff team.
- (v) A detailed description of the proposed methodology, staffing and monitoring of training, if ToR's specifies training as a major component of the assignment.
- (vi) Any additional information requested in Appendix "ITB".

2.4 Preparation of Financial Proposal

- 2.4.1 In preparing the Financial Proposal, Bidders are expected to take into account the requirements and conditions outlined in the tender document. The Financial Proposal should follow Standard Forms (Section VII). It shall include all costs associated with the assignment including; (a) remuneration for staff (in the field and at headquarters), and; (b) reimbursable expenses such as subsistence (per diem, housing), transportation (international and local, for mobilization and demobilization), services and equipment (vehicles, office equipment, furniture, and supplies), office rent, insurance, printing of documents, surveys, and training, if it is a major component of the assignment
- 2.4.2 The Financial Proposal should clearly identify as a separate amount, the local taxes, imposed under the law on the Bidders.
- 2.4.3 Bidder shall express the price of their services in Kenya Shillings.
- 2.4.4 The Proposal must remain valid for 150 days after the submission date. KPRL will make his best effort to complete negotiations within this period. If KPRL wishes to extend the validity period of the proposals, the Bidders shall agree to the extension.

2.5 Submission, Receipt, and Opening of Proposals

- 2.5.1 The Technical Proposal and Financial Proposal shall be prepared in indelible ink. It shall contain no interlineation or overwriting, except as necessary to correct errors made by the firm itself. Any such corrections must be initialed by the persons or person authorised to sign the proposals.
- 2.5.2 The Technical Proposal and Financial Proposal shall be forwarded to the address stated in the Appendix "ITB".
- 2.5.3 The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked "**TECHNICAL PROPOSAL,**" and the original and all copies of the Financial Proposal in a sealed envelope clearly marked "**FINANCIAL PROPOSAL**". Both envelopes shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address and other information indicated in the Appendix "ITB" and be clearly marked, "**DO NOT OPEN, EXCEPT IN PRESENCE OF THE OPENING COMMITTEE.**"
- 2.5.4 The completed Technical and Financial Proposals must be delivered at the submission address on or before the time and date stated in the Appendix "ITB". Any proposal received after the closing time for submission of proposals shall be returned to the respective consultant unopened.

2.5.5 After the deadline for submission of proposals, the Proposals shall be opened immediately by the opening committee and bidders representatives who chose to attend.

2.6 Proposal Evaluation

2.6.1 From the time the bids are opened to the time the Contract is awarded, if any consultant wishes to contact KPRL on any matter related to his proposal, he should do so in writing at the address indicated in the Appendix "ITB". Any effort by the firm to influence KPRL in the proposal evaluation, proposal comparison or Contract award decisions may result in the rejection of the consultant's proposal.

2.6.2 The evaluation shall comprise the mandatory requirements, technical and financial proposals.

2.6.3 Bidders who fail the mandatory requirements shall not proceed to the Technical evaluation.

2.7 Evaluation Criteria

2.7.1 The evaluation committee appointed by KPRL shall evaluate the proposals on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria as follows

A: MANDATORY REQUIREMENTS

The following requirements must be met notwithstanding any other instructions in the tender documents.

MANDATORY REQUIREMENTS	
1.	Registration/incorporation certificate
2.	CR12 or Partnership deed (of minimum 3 partners)
3.	Valid Tax Compliance Certificate
4.	Original Tender Security of KES 100,000.00
5.	Valid Membership of the relevant professional body
6.	Current year's practicing license from the professional body
7.	Certification/accreditation with ICS as Governance Auditor
8.	Current year's practicing license as Governance Auditor
9.	Duly completed Confidential Business Questionnaire
10.	Duly completed Declaration Form
11.	Professional Indemnity cover of Ksh 5 Million
12.	Pagination and continuous numbering of all pages of Bidder's submission

B: TECHNICAL EVALUATION

	Category		Max
1.	Bidder's relevant experience related to the assignment. (Bidder to include in the firm's profile/CV (format provided) detailed information of undertaking similar assignments)		30
	Experience in carry out legal compliance audits & governance audits as per Mwongozo guidelines.		
	<ul style="list-style-type: none"> 10 years and above 	20	

	<ul style="list-style-type: none"> • 5 – 9 years 	10	
	<ul style="list-style-type: none"> • Below 5 years 	5	
	Submit proof in form of Four (4) reference letters from clients indicating nature of audit assignment & number of years offered (2.5 points for each, max 10). The letters MUST be addressed to KPRL.	10	
2.	Adequacy of the proposed Work Plan, Methodology and Timelines in responding to the terms of reference as per Mwongozo Guidelines; information to be provided		35
	<ul style="list-style-type: none"> • Activity schedules 	5	
	<ul style="list-style-type: none"> • Reporting schedules 	5	
	<ul style="list-style-type: none"> • Detailed data gathering processes 	10	
	<ul style="list-style-type: none"> • Detailed work methodology 	10	
	<ul style="list-style-type: none"> • Gantt chart fitting KPRL work scheduled timelines 	5	
3.	Comments and suggestions for improvement of ToR's and data, facilities to be offered by KPRL		20
	<ul style="list-style-type: none"> • Issues/observations and recommendations raised by bidders (2 points each, max 20) 	20	
4.	Key personnel (Necessary staff with adequate competence and experience to undertake the assignment). Staff Information to be provided in CV format indicating competence academic qualification and years of experience No. of years working experience of Team leader		15
	<ul style="list-style-type: none"> • 10 years and above 	15	
	<ul style="list-style-type: none"> • 5 – 9 years 	10	
	<ul style="list-style-type: none"> • Below 5 years 	5	
5.	Key personnel (Necessary staff with adequate competence and experience to undertake the assignment). Staff Information to be provided in CV format indicating competence academic qualification and years of experience No. of similar audits undertaken		20
	<ul style="list-style-type: none"> • Above 5 audits 	20	
	<ul style="list-style-type: none"> • 3 – 5 audits 	10	
	<ul style="list-style-type: none"> • Below 3 audits 	5	
	Total Score		120

Note: Total score obtained shall be converted into %age score. Pass mark – 75%overall

Each responsive proposal will be given a technical score. A proposal shall be rejected at this stage if it does not respond to important aspects of the Terms of Reference or if it fails to achieve the minimum technical score of 75% overall.

C: FINANCIAL EVALUATION OF BIDS

Applicable formula is: $S_f = 100 \times F_m/F$

where S_f = financial score awarded

F_m = lowest bid received

F = bidder's proposal

	Lowest
Fees chargeable	
TOTAL FINANCIAL SCORE (S_f)	100

D: COMBINED TOTAL TECHNICAL & FINANCIAL SCORE (S)

100

Applicable formula is: $S = (S_t \times T) + (S_f \times P) = 100 \times F_m/F$

where S_t = technical score awarded

S_f = financial score awarded

T = the weight given to the Technical Proposal = **0.6**

P = the weight given to the Financial Proposal = **0.4**

2.8 Negotiations

- 2.8.1 Negotiations will be held at **KPRL OFFICES, MOMBASA**. The aim is to reach agreement on all points and sign a contract.
- 2.8.2 Negotiations will include a discussion of the submitted Proposal, the proposed methodology (work plan), staffing and any suggestions made by the firm to improve the Terms of Reference. KPRL and firm will then work out final Terms of Reference, staffing and bar charts indicating activities, staff periods in the field and in the head office, staff-months, logistics and reporting. The agreed work plan and final Terms of Reference will then be incorporated in the "Description of Services" and form part of the Contract. Special attention will be paid to getting the most the firm can offer within the available budget and to clearly defining the inputs required from KPRL to ensure satisfactory implementation of the assignment.
- 2.8.3 Having selected the firm on the basis of, among other things, an evaluation of proposed key professional staff, KPRL expects to negotiate a contract on the basis of the experts named in the proposal. Before contract negotiations, KPRL will require assurances that the experts will be actually available. KPRL will not consider substitutions during contract negotiations unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were

offered in the proposal without confirming their availability, the firm may be disqualified.

2.8.4 The negotiations will conclude with a review of the draft form of the Contract. To complete negotiations KPRL and the selected firm will initial the agreed Contract. If negotiations fail, KPRL will invite the firm whose proposal received the second highest score to negotiate a contract.

2.8.5 KPRL shall appoint a team for the purpose of the negotiations.

2.9 Award of Contract

2.9.1 The Contract will be awarded following negotiations. After negotiations are completed.

2.9.2 The selected firm is expected to commence the assignment on the date and at the location specified in Appendix "ITB".

2.9.3 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

2.9.4 KPRL may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

2.9.5 KPRL shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

2.9.6 To qualify for contract awards, the tenderer shall have the following:

- (a) Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.
- (b) Legal capacity to enter into a contract for procurement
- (c) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
- (d) Shall not be debarred from participating in public procurement.

2.10 Confidentiality

2.10.1 Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the Bidders who submitted the proposals or to other persons not officially concerned with the process, until the winning firm has been notified that it has been awarded the Contract.

2.11 Corrupt or fraudulent practices

2.11.1 KPRL requires that the Bidders observe the highest standards of ethics during the selection and award of the consultancy contract and also during the

performance of the assignment. The tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.

2.11.2 KPRL will reject a proposal for award if it determines that the consultant recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.

2.11.3 Further a consultant who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

Appendix to Information to Bidders – “ITB”

The following information for procurement of consultancy services and selection of Bidders shall complement or amend the provisions of the information to Bidders, wherever there is a conflict between the provisions of the information and to Bidders and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the information to Bidders.

Clause Reference

- 2.1.1 The method of selection is: ***Quality & Cost Based Selection (QCBS)***
- 2.1.3 A pre-proposal conference will be held: ***upon request by bidders***
The contact details of KPRL’s official(s) are:
CONTRACTING & PROCUREMENT MANAGER
TEL: 041-3433511
EMAIL: tenders@kpri.co.ke
- 2.1.4 KPRL will provide the following inputs: ***plse refer to ToR’s***
- 2.2.3 The minimum required experience of proposed professional staff is: ***At least ten years professional experience with an understanding of state corporations.***
- 2.5.3 The proposal submission address is: ***ref Section I – Letter of Invitation***
- 2.5.5 Proposals must be submitted no later than the following date and time:
1000hrs on Friday, 20th December 2019.
- 2.6.1 The address to send information to KPRL is: ***ref Section I – Letter of Invitation***
- 2.7.1 The minimum technical score required to pass: **75%**
- 2.9.2 The assignment is expected to commence on: ***immediately upon award***

SECTION III - TECHNICAL PROPOSAL

Table of Contents

	Page
1. Technical proposal submission form	15
2. Firms references	16
3. Comments and suggestions of Bidders on the Terms of reference and on data, services and facilities to be provided by the procuring entity	17
4. Description of the methodology and work plan for performing the assignment	18
5. Team Composition	19
6. Format of curriculum vitae (CV) for proposed Professional staff	20

1. TECHNICAL PROPOSAL SUBMISSION FORM

[_____ *Date*]

To: _____ [*Name and address of Client*]

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for _____
_____ [*Title of consulting services*] in accordance
with your Invitation Letter dated _____ [*Date*] and our Proposal.
We are hereby submitting our Proposal, which includes this Technical Proposal and a
Financial Proposal/Term Sheet.

We understand you are not bound to accept any Proposal that you receive.

We remain,

Yours sincerely,

[*Authorized Signature*]: _____

[*Name and Title of Signatory*]: _____

[*Name of Firm*]: _____

[*Address*]: _____

2. FIRM'S REFERENCES

Relevant Services Carried Out in the Last Five Years That Best Illustrate Qualifications

Using the format below, provide information on each assignment for which your firm either individually, as a corporate entity or in association, was legally contracted.

Assignment Name:		Country
Location within Country:		Professional Staff provided by Your Firm/Entity(profiles):
Name of Client:		Clients contact person for the assignment.
Address:		No of Staff-Months; Duration of Assignment:
Start Date (Month/Year):	Completion Date (Month/Year):	Approx. Value of Services (Kshs)
Name of Associated Bidders. If any:		No of Months of Professional Staff provided by Associated Bidders:
Name of Senior Staff (Project Director/Coordinator, Team Leader) Involved and Functions Performed:		
Narrative Description of project:		
Description of Actual Services Provided by Your Staff:		

Firm's Name: _____

Name and title of signatory; _____

(May be amended as necessary)

3. COMMENTS AND SUGGESTIONS OF BIDDERS ON THE TERMS OF REFERENCE AND ON DATA, SERVICES AND FACILITIES TO BE PROVIDED BY KPRL.

On the Terms of Reference:

- 1.
- 2.
- 3.
- 4.
- 5.

On the data, services and facilities to be provided by KPRL:

- 1.
- 2.
- 3.
- 4.
- 5.

4. DESCRIPTION OF THE METHODOLOGY, WORK PLAN AND TIMELINES FOR PERFORMING THE ASSIGNMENT

5. TEAM COMPOSITION AND TASK ASSIGNMENTS

Technical/Managerial

Staff Name	Position	Task

6. FORMAT OF CURRICULUM VITAE (CV) FOR PROPOSED PROFESSIONAL STAFF

Proposed Position: _____

Name of Firm: _____

Name of Staff: _____

Profession: _____

Date of Birth: _____

Years with Firm: _____ Nationality: _____

Membership in Professional Societies: _____

Detailed Tasks Assigned: _____

Key Qualifications: *[Give an outline of staff member's experience and training most pertinent to tasks on assignment. Describe degree of responsibility held by staff member on relevant previous assignments and give dates and locations].*

Education: *[Summarize college/university and other specialized education of staff member, giving names of schools, dates attended and degree[s] obtained.]*

Employment Record: *[Starting with present position, list in reverse order every employment held. List all positions held by staff member since graduation, giving dates, names of employing organizations, titles of positions held, and locations of assignments.]*

Certification:

I, the undersigned, certify that these data correctly describe me, my qualifications, and my experience.

_____ Date:

[Signature of staff member]

_____ Date;

[Signature of authorised representative of the firm]

Full name of staff member: _____

Full name of authorized representative: _____

SECTION IV - FINANCIAL PROPOSAL

Table of Contents		Page
1.	Financial proposal submission form	22
2.	Pricing Schedule	23
3.	Form of Tender	24

A. FINANCIAL PROPOSAL SUBMISSION FORM

[Date]

To:
Kenya Petroleum Refineries Limited
P. O. Box 90401 - 80100
Mombasa, Kenya

Dear Sir,

We, the undersigned, offer to provide PROVISION OF LEGAL COMPLIANCE AUDIT & GOVERNANCE AUDIT in accordance with your Request for Proposal dated {insert date} and our Technical and Financial Proposals. Our attached Financial Proposal is for the sum of {Amount in words and figures} inclusive of the taxes on the basis of the initial assets to be allocated to us and on the assumption(s) that {state your assumptions, if any}.

We understand that the procuring entity is not bound to accept any Proposal they receive.

We remain,

Yours Truly,

{Authorized Signature}
{Name and Title of Signatory}

B. PRICING SCHEDULE

TENDER FOR PROVISION OF LEGAL COMPLIANCE AUDIT & GOVERNANCE AUDIT

ITEM NO.	DESCRIPTION	TOTAL (KSHS.)
1.	PROVISION OF LEGAL COMPLIANCE AUDIT & GOVERNANCE AUDIT	
	TOTAL (inclusive of all taxes)	

SIGNATURE:

DATE & STAMP:

C. FORM OF TENDER

To:

Date

Name and address of procuring entity

Tender No.

Tender Name

Gentlemen and/or Ladies:-

1. Having examined the Tender documents including Addenda No. (Insert numbers) the receipt of which is hereby duly acknowledged, we the undersigned, offer to provide LEGAL COMPLIANCE AUDIT & GOVERNANCE AUDIT under this tender in conformity with the said Tender document for the sum of
.....
..... [Total Tender amount in words and figures]
or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.
2. We undertake, if our Tender is accepted, to provide the LEGAL COMPLIANCE AUDIT & GOVERNANCE AUDIT in accordance with the conditions of the tender.
3. We agree to abide by this Tender for a period of[number] days from the date fixed for Tender opening of the Instructions to Tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
4. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this _____ day of _____ 2019

[Signature]

[In the capacity of]

Duly authorized to sign tender for and on behalf of _____

SECTION V: - TERMS OF REFERENCE AND SCOPE OF WORK

A. BACKGROUND INFORMATION

1. KENYA PETROLEUM REFINERIES LIMITED (KPRL)

The company is incorporated as a limited company in Kenya under the Companies Act Number 17 of the Laws of Kenya and is domiciled in Kenya. On 24th June 2016, the Government of Kenya (GoK) entered into an agreement with Essar Energy Overseas Limited (Essar), Essar Energy Holdings Limited (EEHL) and Kenya Petroleum Refineries Limited (KPRL) for the transfer of the legal and beneficial interest in all of the shares owned by Essar in KPRL to GoK. The agreement and the disposal of the shares converted Kenya Petroleum Refineries Limited to become 100% wholly owned by GoK. The company converted from a private limited liability company (reg no. C.4676) whose core business was crude petroleum refining.

Kenya Petroleum Refineries Limited (KPRL) became a 100% Government of Kenya-owned entity effective 24th June 2016. The company has currently leased its non-refining assets to Kenya Pipeline Company Limited (KPC) under a three year operating lease agreement effective from 7th March 2017. Discussions are underway to extend the lease for a further five years.

The entity is represented by the Cabinet Secretary of the Ministry of Petroleum and Mining. The company's registered office and principal location is along Refinery Road, Changamwe, Mombasa. The current Board consists of five (5) government-appointed members.

i. MANDATE

The company's principal business activity was to refine crude oil into various petroleum products for sale to the oil marketing companies in Kenya. The company's business changed from toll refinery to merchant refining with effect from 1st July, 2012. The Government of Kenya (GoK) published Legal Notices No. 24, 25 and 26 dated 12th April 2012 to amend the energy regulations under the Energy Act to give legal effect to the company's merchant refining business.

However, the company's refining operations stopped on 4th September 2013. The main reason for the shutdown was that the prices of the products produced by the refinery were marginally higher than those of imported products. This was caused by lack of secondary refining capabilities that would optimise the production of fuel oil. The fuel oil accounted for more yields up to 30% prior to the shut down and conversion of Tops yield to petrol. The company has continued operating by rendering storage of imported petroleum products services and leasing its storage tanks and pipelines.

ii. CURRENT ACTIVITIES

On 7th March 2017, KPRL under the direction of the Government through the line ministry, entered into a three (3) years term non-commercial lease agreement with Kenya Pipeline Company Limited (KPC) which allowed KPC to utilise the KPRL assets for receiving storage and transport of fuels from KOT. The objectives of the lease are:

- Reduce ships' demurrage thus reduce petroleum prices,
- Extend Global Entitlement Program to products stored at KPRL,
- Utilize fully the KPRL assets which were idle following stoppage of refining operations with effect from 4th September, 2013
- Provide security necessary for KPC to fund KPRL scope of the Early Oil Pilot Scheme (EOPS) project; and
- Implement EOPS to allow receipt, storage and export of Kenya crude oil from Turkana as from June 2017.

By virtue of the aforementioned, during the tenure of the agreement, all the KPRL staff shall be usefully engaged in the new operations without loss of employment by any cadre of staff, subject to their respective terms and conditions of employment; with all the operational expenses and financial costs adequately provided for by KPC.

2. KENYA PETROLEUM REFINERIES PENSION TRUST LIMITED (KPRPTL)

Kenya Petroleum Refineries Pension Trust Limited is the corporate Trustee to the Kenya Petroleum Refineries Pension Fund (the Scheme), which schemes has a defined benefit (DB) pension fund and a provident fund (PF) established under irrevocable trust with effect from 1st January 2008 by Kenya Petroleum Refineries Limited (the Sponsor). It is also the corporate trustee of the Kenya Petroleum Refineries Defined Contribution Pension Fund.

The main obligation of the Trustee is to administrate the Scheme with the aid of professional service providers geared towards meeting the objectives of the scheme. The main purpose of the Scheme is the provision of pensions to members upon their retirement at specified age and to widows, children and nominated beneficiaries.

In June 2016 the Sponsor, resolved to convert the fund from the defined benefit to a defined contribution arrangement, to conform with the requirements on state owned pension funds. Consequently, the Kenya Petroleum Refineries Defined Contribution Pension Fund was registered by the Retirement Benefits Authority (RBA) on 21st October, 2016 and the accrued benefits of all the active and deferred members of the DB Fund were transferred to the DC fund with effect from 1st January 2017. The Pensioners and any other dependants were all externalised vide the Bulk Annuity Agreement between ICEA LION Life Assurance Company Limited and the Trustee. The actuarial surplus of the DB Fund was apportioned and distributed to the Sponsor and the Members as guided by the scheme actuary and approved by RBA.

There are currently no members or beneficiaries in the DB fund and the same is in the process of liquidation.

B. OBJECTIVE OF THE ASSIGNMENT

KPRL expects the award winner to undertake a legal compliance audit and a governance audit of **KPRL** and its subsidiary, **KPRPTL** as provided for under Clause 8.4 and 1.13 of the Code of Governance for Corporate State Entities (Mwongozo). The assignment aims at ensuring compliance with laid down statutory requirements.

C. SCOPE OF WORK

The scope for the audit shall entail the following;

1. Review of the applicable laws, regulations, government policies and circulars, directives, internal polies and procedures, contracts etc that impact the organization
2. Review of the legal and compliance structures within the organization
3. Review of titles property owned/used by the organization
4. Review of any aspects of intellectual property affecting the organization
5. Review of legal case management and processes
6. Identification of risk areas
7. Citing the cause of non-compliance and measures to address the same.
8. Carry out interviews with the staff members tasked with the legal and compliance in the organization and /or its subsidiaries
9. Ascertain the Board's overall adherence to good corporate governance in relation to its mandate. The governance audit should among other areas cover the governance practices of the organization and its subsidiary in the following parameters:
 - a. Leadership and Strategic Management
 - b. Transparency and Disclosure
 - c. Compliance with Laws are Regulations
 - d. Communication with Stakeholders
 - e. Board Independence and Governance
 - f. Board Systems and Procedures
 - g. Consistent shareholder and Stakeholder' Value Enhancement
 - h. Corporate Social Responsibility
 - i. Investment
10. Report on the actual performance, recommendations on improvement areas and best practice
11. Develop guidelines for dealing with regulatory issues and internal compliance reporting mechanisms (compliance matrix and tracker) for the company.
12. Develop a compliance risk management policy and implementation that will ensure compliance with all regulatory and reporting requirements in line with best practices and in tandem with the company's strategic plan and overall mandate;

13. Develop a mechanism that will allow the organization to continuously monitor and audit the improved compliance, self-assessments, management, representation letters and compliance checklists.
14. Preliminary discussions on report: relevant board committee
15. Preparation of a legal and compliance audit reports on:
 - a) Level of compliance of KPRL/KPRPTL with the existing laws.
 - b) Interim report of the legal audit findings and recommendations
 - c) Final legal audit report and with recommendations
16. Final report to be presented to the Boards of the TWO entities

D. TRAINING & KNOWLEDGE TRANSFER

Training and knowledge transfer requirements of the assignment include assisting KPRL contact person to develop competence to effectively implement the audit recommendations. Proposal on the no. of Training hours and the recommended trainers should be included.

E. REPORTS

- One set of reports, 3 No. originals for KPRL.
- One set of reports, 3 No. originals for KPRPTL.

F. REPORTING TIMELINES

The following proposed timetable shall be adopted.

	Reporting	Date
1.	Kick –off meeting	3 days after contract signing
2.	Audit commencement	1 week after contract signing
3.	Interim report submission	End of 3 rd week
4.	Final report	End of 5 th week
5.	KPRL response to final report	End of 6 th week
6.	Signed audit report presentation	End of 7 th week

G. DATA/SERVICES/PERSONNEL & FACILITIES

The assignment shall be conducted at KPRL site/premises.

KPRL shall appoint a liaison person who shall be the Manager Internal Audit who shall be responsible for availing all the necessary data and arranging for the necessary services and facilities as required for the assignment.

H. PAYMENTS

The following proposed payment milestones shall be adopted.

	Milestone	Progress fees
1.	At mobilization/Audit commencement	10%
2.	Interim report submission	30%
3.	Final report	40%
4.	Signed audit report submission	20%

All reimburseable expenses in relation to the Audit process are to be prior approved by KPRL/ KPRPTL before being incurred.

I. DURATION

The assignment shall be undertaken and completed within a period of 8 running weeks.

KPRL desires to enter into a contract for a period of THREE (3) years from commencement date unless terminated earlier or extended.

J. CONFIDENTIALITY

The winning bidder will be required to sign a confidentiality agreement, in the form of the format provided.

K. PROFESSIONAL INDEMNITY

The winning bidder will be required to have a professional indemnity cover from a reputable insurance company for the amount of KES FIVE MILLION.

SECTION VI : STANDARD FORMS

A. DRAFT CONTRACT (Note: a more suitable document version may be adopted)

This Agreement, [hereinafter called "the Contract"] is entered into this _____ [Insert starting date of assignment], by and between _____ [Insert Client's name] of [or whose registered office is situated at] _____ [insert Client's address] (hereinafter called "the Client") of the one part AND _____ [Insert Consultant's name] of [or whose registered office is situated at] _____ [insert Consultant's address] (hereinafter called "the Consultant") of the other part.

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

WHEREAS the Consultant is willing to perform the said Services,

NOW THEREFORE THE PARTIES hereby agree as follows:

- 1. Services** (i) The Consultant shall perform the Services specified in Appendix A, "Terms of Reference and Scope of Services," which is made an integral part of this Contract.
(ii) The Consultant shall provide the personnel listed in Appendix B, "Consultant's Personnel," to perform the Services.
(iii) The Consultant shall submit to the Client the reports in the form and within the time periods specified in Appendix C, "Consultant's Reporting Obligations."
- 2. Term** The Consultant shall perform the Services during the period commencing on _____ [Insert starting date] and continuing through to _____ [Insert completion date], or any other period(s) as may be subsequently agreed by the parties in writing.
- 3. Payment**
 - A. Ceiling
For Services rendered pursuant to Appendix A, the Client shall pay the Consultant a MONTHLY RETAINER of KSHS _____ [Insert amount]. This amount has been established based on the understanding that it includes all

of the Consultant's costs and profits as well as any tax obligation that may be imposed on the Consultant.

B. Payment Conditions

Payment shall be made in Kenya Shillings unless otherwise specified not later than thirty [30] days following submission by the Consultant of invoices in duplicate to the Coordinator designated in Clause 4 herebelow.

4. Project Administration

A. Coordinator.

The Client designates _____ *[insert name]* as Client's Coordinator; the Coordinator will be responsible for the coordination of activities under this Contract, for acceptance and approval of the reports and of other deliverables by the Client and for receiving and approving invoices for payment.

B. Reports.

The reports listed in Appendix C, "Consultant's Reporting Obligations," shall be submitted in the course of the assignment and will constitute the basis for the payments to be made under paragraph 3.

5. Performance Standards

The Consultant undertakes to perform the Services with the highest standards of professional and ethical competence and integrity. The Consultant shall promptly replace any employees assigned under this Contract that the Client considers unsatisfactory.

6. Confidentiality

The Consultant shall not, during the term of this Contract and within two years after its expiration, disclose any proprietary or confidential information relating to the Services, this Contract or the Client's business or operations without the prior written consent of the Client.

7. Ownership of Material

Any studies, reports or other material, graphic, software or otherwise prepared by the Consultant for the Client under the Contract shall belong to and remain the property of the Client. The Consultant may retain a copy of such documents and software.

8. Consultant Not to be Engaged in certain Activities

The Consultant agrees that during the term of this Contract and after its termination the Consultant and any entity affiliated with the Consultant shall be disqualified from providing goods, works or services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.

9. Insurance

The Consultant will be responsible for taking out any appropriate insurance coverage including professional indemnity cover.

10. Assignment

The Consultant shall not assign this Contract or sub-contract any portion of it without the Client’s prior written consent.

11. Law Governing Contract and Language

The Contract shall be governed by the laws of Kenya and the language of the Contract shall be English Language.

12. Dispute Resolution

Any dispute arising out of the Contract which cannot be amicably settled between the parties shall be referred by either party to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the chairman of the Chartered Institute of Arbitrators, Kenya branch, on the request of the applying party.

FOR THE CLIENT

FOR THE CONSULTANT

Full name; _____ Full name;_____

Title: _____ Title: _____

Signature;_____ Signature;_____

Date;_____ Date;_____

B. TENDER SECURITY FORM
(On the Bank's letterhead)

Whereas[name of the tenderer]

(hereinafter called "the tenderer") has submitted its tender dated.....[date of submission of tender] for the provision of

[name and/or description of the services]

(hereinafter called "the Tenderer").....

KNOW ALL PEOPLE by these presents that WE.....

Of.....having registered office at

[name of Kenya Petroleum Refineries Ltd] (hereinafter called "the Bank") are bound unto.....

[name of Kenya Petroleum Refineries Ltd] (hereinafter called "the Kenya Petroleum Refineries Ltd") in the sum of

for which payment well and truly to be made to the said Kenya Petroleum Refineries Ltd, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this_____ day of 20_____.

THE CONDITIONS of this obligation are:

1. If the tenderer withdraws its Tender during the period of tender validity specified by the tenderer on the Tender Form; or
2. If the tenderer, having been notified of the acceptance of its Tender by the Kenya Petroleum Refineries Ltd during the period of tender validity:

- (a) fails or refuses to execute the Contract Form, if required; or
- (b) fails or refuses to furnish the performance security, in accordance with the instructions to tenderers;

We undertake to pay to the Kenya Petroleum Refineries Ltd up to the above amount upon receipt of its first written demand, without the Kenya Petroleum Refineries Ltd having to substantiate its demand, provided that in its demand the Kenya Petroleum Refineries Ltd will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

This guarantee will remain in force up to and including thirty (30) days after the period of tender validity, and any demand in respect thereof should reach the Bank not later than the above date.

[signature of the bank] _____
(Amend accordingly if provided by Insurance Company)

C. MANDATORY CONFIDENTIAL BUSINESS QUESTIONNAIRE

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

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

Part 1 General

Business Name

Location of Business Premises

Plot No,Street/Road

Postal addressTel No.Fax Email

.....

Nature of Business

Registration Certificate No.

Maximum value of business which you can handle at any one time – Kshs.

Name of your bankers.....

.....

Branch

	<p>Part 2 (a) – Sole Proprietor</p> <p>Your name in full.....Age.....</p> <p>Nationality.....Country of Origin.....</p> <p>Citizenship details</p> <p>.....</p>																							
	<p>Part 2 (b) – Partnership</p> <p>Given details of partners as follows</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">Name</th> <th style="width: 35%;">Nationality</th> <th style="width: 40%;">Citizenship details</th> <th style="width: 10%;">Shares</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td></td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td></td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td></td> </tr> <tr> <td>4.</td> <td>.....</td> <td>.....</td> <td></td> </tr> </tbody> </table>				Name	Nationality	Citizenship details	Shares	1.		2.		3.		4.	
Name	Nationality	Citizenship details	Shares																					
1.																						
2.																						
3.																						
4.																						
	<p>Part 2 (c) – Registered Company</p> <p>Private or Public</p> <p>State the nominal and issued capital of company</p> <p>Nominal Kshs.</p> <p>Issued Kshs.</p> <p>Given details of all directors as follows</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">Name</th> <th style="width: 35%;">Nationality</th> <th style="width: 40%;">Citizenship details</th> <th style="width: 10%;">Shares</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td></td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td></td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td></td> </tr> <tr> <td>4.</td> <td>.....</td> <td>.....</td> <td></td> </tr> </tbody> </table>				Name	Nationality	Citizenship details	Shares	1.		2.		3.		4.	
Name	Nationality	Citizenship details	Shares																					
1.																						
2.																						
3.																						
4.																						
	<p>Date.....Signature of Candidate.....</p>																							

D. DECLARATION FORM

(to be submitted on the tenderer's letterhead)

To:

Date:

.....

The Chief Executive Officer,
Kenya Petroleum Refineries Ltd,
P. O. Box 90401 - 80100
Mombasa, Kenya.

The tenderer i.e. (name and address)

.....

.....

.....

declare the following:

1. Has not been debarred from participating in public procurement.
2. Has not been convicted or involved in and will not be involved in corrupt and fraudulent practices.
3. Has not been insolvent, in receivership, bankrupt or is not in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
4. Is not guilty of any serious violation of fair employment Laws and practices.

.....

Name

Signature

Date

(To be signed by authorized representative and officially stamped)

E. LETTER OF NOTIFICATION OF AWARD

Address of Procuring Entity

To: _____

RE: Tender No. _____

Tender Name _____

This is to notify that the contract/s stated below under the above mentioned tender have been awarded to you.

1. Please acknowledge receipt of this letter of notification signifying your acceptance.
2. The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.
3. You may contact the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.

(FULL PARTICULARS) _____

SIGNED FOR ACCOUNTING OFFICER

F. PERFORMANCE SECURITY FORM

To:

[name of the Kenya Petroleum Refineries Ltd]

WHEREAS.....[name of tenderer]

(hereinafter called "the tenderer") has undertaken, in pursuance of Contract No. _____ [reference number of the contract] dated _____ 20____ to

supply.....

[Description services] (Hereinafter called "the contract")

AND WHEREAS it has been stipulated by you in the said Contract that the tenderer shall furnish you with a bank guarantee by a reputable bank for the sum specified therein as security for compliance with the Tenderer's performance obligations in accordance with the Contract.

AND WHEREAS we have agreed to give the tenderer a guarantee:

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the tenderer, up to a total of [amount of the guarantee in words and figures], and we undertake to pay you, upon your first written demand declaring the tenderer to be in default under the Contract 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 or the sum specified therein.

This **guarantee is valid until issue of certificate of completion** by KENYA PETROLEUM REFINERIES LIMITED.

Signature and seal of the Guarantors

[name of bank or financial institution]

[address]

[date]

(Amend accordingly if provided by Insurance Company)