



**THE EXPORT PROCESSING ZONES AUTHORITY**

# **REQUEST FOR PROPOSAL**

**FOR**

**THE PROVISION OF TRANSACTION ADVISORY  
SERVICES IN THE STRUCTURING OF INVESTMENT  
PROJECTS TO BE UNDERTAKEN BY THE EXPORT  
PROCESSING ZONES AUTHORITY THROUGH  
PUBLIC-PRIVATE PARTNERSHIP**

**RFP No. EPZA/1/2021 - 2022**

**JULY 2021**

## **BACKGROUND**

The Export Processing Zones Authority (EPZA) is a State Corporation under the Ministry of Industrialization, Trade and Enterprise Development, established in 1990 by the EPZA Act CAP 517, Laws of Kenya. EPZA's mandate is to promote and facilitate export-oriented investments and to develop an enabling environment for such investments. EPZA under the (Export Processing Zones) EPZA program offers a range of attractive fiscal, physical and procedural incentives to ensure low-cost operations, fast set up and smooth operations for export-oriented businesses. In line with this mandate, the Authority intends to implement several investment projects around the country in view of promoting and facilitating export-oriented investments and to develop an enabling environment for such investments. Owing to the complexity of the intended projects, the Authority hereby seeks to engage the services of a Legal Consultant with proven experience in the structuring of investment projects. The Consultant will be crucial in the structuring of the projects, to ensure that the various implementation models adopted are practical and financially sound.

## SECTION 1 – LETTER OF INVITATION

TO:

Dear Sir,

**RE: RFP No. EPZA/1/2021 - 2022: REQUEST FOR PROPOSAL FOR THE PROVISION OF TRANSACTION ADVISORY SERVICES IN RELATION TO THE STRUCTURING OF INVESTMENT PROJECTS TO BE UNDERTAKEN BY THE EXPORT PROCESSING ZONES AUTHORITY WITHIN THE REPUBLIC OF KENYA**

the provision of Transaction Advisory services in the structuring of investment projects to be undertaken by The Export Processing Zones Authority through Public-Private Partnership.

The request for proposals (RFP) includes the following documents:

- Section I - Letter of invitation
- Section II - Information to consultants: Appendix to Consultants information
- Section III - Terms of Reference
- Section IV - Technical proposals
- Section V - Financial proposal
- Section VI - Standard Contract Form

Upon receipt, please inform us;

- (a) That you have received the letter of invitation
- (b) Whether or not you will submit a proposal for the assignment

Yours sincerely,

**Ag. Chief Executive Officer**

## **SECTION II: - INFORMATION TO CONSULTANTS (ITC)**

### **2.1 Introduction**

- 2.1.1 The EPZA will select a firm among those invited to submit a proposal, in accordance with the method of selection detailed in the appendix. The method of selection shall be as indicated by the EPZA in the Appendix.
- 2.1.2 The consultants are invited to submit a Technical Proposal as specified in the Appendix "ITC" for consulting services required for the assignment named in the said Appendix. The highest ranked firm of the technical proposal shall be invited to negotiate a contract. The proposal will be the basis for Contract negotiations and ultimately for a signed Contract with the selected firm.
- 2.1.3 The EPZA will provide the inputs specified in the Appendix "ITC", assist the firm in obtaining licenses and permits needed to carry out the services and make available relevant project data and reports.
- 2.1.4 Please note that the costs of preparing the proposal and of negotiating the Contract, including any visit to the EPZA are not reimbursable as a direct cost of the assignment.
- 2.1.5 The EPZA's employees, committee members, board members and their relative (spouse and children) are not eligible to participate.
- 2.1.6 The tender document shall be obtained free of charge.

### **2.2 Clarification and Amendment of RFP Documents**

- 2.2.1 Consultants may request a clarification of any of the RFP documents only up to three [3] days before the proposal submission date. Any request for clarification must be sent in writing by paper mail, cable, telex, facsimile or electronic mail to the EPZA's address indicated in the Appendix "ITC".
- 2.2.2 At any time before the submission of proposals, the EPZA may for any reason, whether at his own initiative or in response to a clarification requested by an invited firm, amend the RFP. Any amendment shall be issued in writing through addenda. Addenda shall be sent by mail, cable, telex or facsimile to all invited consultants and will be binding on them. The EPZA may at his discretion extend the deadline for the submission of proposals.

### **2.3 Preparation of Technical Proposal**

- 2.3.1 The Consultants proposal shall be written in English language.
- 2.3.2 In preparing the Technical Proposal, consultants are expected to examine the documents constituting this RFP in detail. Material deficiencies in providing the information requested may result in rejection of a proposal.
- 2.3.3 While preparing the Technical Proposal, consultants must give particular attention to the following:
  - (i) Proof of assignments of a similar nature and magnitude, which have been implemented successfully.

- (ii) 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. Consultants shall not associate with the other consultants invited for this assignment. Any firms associating in contravention of this requirement shall automatically be disqualified.
- (iii) For assignments on a staff-time basis, the estimated number of professional staff-time is given in the Appendix. The proposal shall however be based on the number of professional staff-time estimated by the firm.
- (iv) It is desirable that the majority of the key professional staff proposed be permanent employees of the firm or has an extended and stable working relationship with it.
- (v) Proposed professional staff must as a minimum, have the experience indicated in Appendix, preferably working under conditions similar to those prevailing in Kenya.
- (vi) Alternative professional staff shall not be proposed and only one Curriculum Vitae (CV) may be submitted for each position.

2.3.4 The Technical 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) Proof of assignment(s) of a similar nature and magnitude, which have been implemented successfully.
- (iii) Any comments or suggestions on the Terms of Reference, a list of services and facilities to be provided by the EPZA.
- (iv) A description of the methodology and work plan for performing the assignment.
- (v) The list of the proposed staff team by specialty, the tasks that would be assigned to each staff team member and their timing.
- (vi) CVs recently signed by the proposed professional staff and the authorized representative submitting the proposal.
- (vii) A detailed description of the proposed methodology, staffing and monitoring of training, if Appendix "A" specifies training as a major component of the assignment.
- (viii) Any additional information requested in Appendix "A".

2.4 The EPZA will make his best effort to complete negotiations within 30 days of receiving the Proposal. If the EPZA wishes to extend the validity period of the proposals, the consultants shall agree to the extension.

**2.5 Submission, Receipt, and Opening of Proposals**

2.5.1 The original proposal (Technical Proposal) shall be prepared in indelible ink.

2.5.2 For each proposal, the consultants shall prepare the number of copies indicated in Appendix "A". Each Technical Proposal shall be marked "**ORIGINAL**" or "**COPY**" as appropriate. If there are any discrepancies between the original and the copies of the proposal, the original shall govern.

**2.5.3** The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked "**TECHNICAL PROPOSAL,**" and shall bear the submission address and other information indicated in the Appendix "ITC" and be clearly marked, "**DO NOT OPEN, EXCEPT IN PRESENCE OF THE OPENING COMMITTEE.**"

2.5.4 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 Technical Proposal shall be opened immediately by the opening committee.

**2.6 Proposal Evaluation General**

2.6.1 Any effort by the firm to influence the EPZA in the proposal evaluation, proposal comparison or Contract award decisions may result in the rejection of the consultant's proposal.

**2.7 Evaluation of Technical Proposal**

2.7.1 The evaluation committee appointed by the EPZA shall evaluate the proposals on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria as outlined in the following table;

<b>Assessment criteria</b>	<b>Criteria specifics</b>	<b>TOTAL SCORES</b>
1. Specific experience of consultant(s) related to the assignment	<ul style="list-style-type: none"> <li>• Extensive experience in structuring of Joint Venture and Public Private Partnership projects in the public sector</li> <li>• Evidence of related assignments undertaken in the past.</li> </ul>	<b>50</b>
2. Work Plan	<ul style="list-style-type: none"> <li>• <b>Adequacy of proposed work plan</b> <ul style="list-style-type: none"> <li>▪ Covers all TORs</li> <li>▪ Realistic time frame.</li> </ul> </li> <li>• <b>Appropriateness of proposed methodology</b> <ul style="list-style-type: none"> <li>▪ Duties assigned</li> <li>▪ Application of appropriate data collection methods.</li> <li>▪ Application of appropriate data analysis method.</li> </ul> </li> </ul>	<b>30</b>
3. Qualifications and competence of key staff:	Relevant qualifications <ul style="list-style-type: none"> <li>▪ Master's degree in Law or holds a relevant building or Engineering degree at masters level.</li> </ul>	<b>20</b>

<ul style="list-style-type: none"> <li>• Lead consultant</li> <li>• Others</li> </ul>	Bachelor's degree in the above related disciplines.	
<b>TOTAL</b>		<b>100</b>

A proposal shall be rejected if it does not respond to important aspects of the Terms of Reference or if it fails to achieve the minimum technical score by obtaining **70%** and above technical scores and shall be considered for financial evaluation.

## **2.8 Public Opening and Evaluation of Financial Proposal**

2.8.1 After Technical Proposal evaluation, the EPZA shall notify those consultants whose proposals did not meet the minimum qualifying mark or were considered

2.8.2 The highest ranked Proposals shall be opened publicly in the presence of the consultants' representatives who choose to attend.

2.8.3 While comparing proposal prices between local and foreign firms participating in a selection process in financial evaluation of Proposals, firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias in proposal prices.

2.8.4 The formulae for determining the Financial Score (Sf) shall, unless an alternative formulae is indicated in the Appendix "ITC", be as follows:-

$Sf = 100 \times \frac{Fm}{F}$  where Sf is the financial score; Fm is the lowest priced financial proposal and F is the price of the proposal under consideration. Proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weights (T=the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + p = 1) indicated in the Appendix. The combined technical and financial score, S, is calculated as follows:-  $S = St \times T \% + Sf \times P \%$ . The firm achieving the highest combined technical and financial score will be invited for negotiations.

2.8.5 The tender evaluation committee shall evaluate the tender within **30 days** of from the date of opening the tender.

2.8.6 Price variation requests shall be processed by the EPZA within **30 days** of receiving the request.

## **2.9 Negotiations**

2.9.1 Negotiations will be held at the same address as "address to send information to the EPZA" indicated in the Appendix "ITC". The aim is to reach agreement on all points and sign a contract.

2.9.2 Negotiations will include a discussion of the Technical Proposal, the proposed methodology (work plan), staffing and any suggestions made by the firm to improve the Terms of Reference. The EPZA 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 the EPZA to ensure satisfactory implementation of the assignment.

- 2.9.3 Unless there are exceptional reasons, the financial negotiations will not involve the remuneration rates for staff (no breakdown of fees).
- 2.9.4 Having selected the firm based on, among other things, an evaluation of proposed key professional staff, the EPZA expects to negotiate a contract based on the experts named in the proposal. Before contract negotiations, the EPZA will require assurances that the experts will be actually available. The EPZA 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.
- 2.9.5 The negotiations will conclude with a review of the draft form of the Contract. To complete negotiations the EPZA and the selected firm will initial the agreed Contract. If negotiations fail, the EPZA will invite the firm whose proposal received the second highest score to negotiate a contract.
- 2.9.6 The EPZA shall appoint a team for the purpose of the negotiations.

## **2.10 Award of Contract**

- 2.10.1 The Contract will be awarded following negotiations.
- 2.10.2 The selected firm is expected to commence the assignment on the date and at the location specified in Appendix "A".
- 2.10.3 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.
- 2.10.4 The EPZA may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 2.10.5 The EPZA 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.
- 2.10.6 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.

## **2.11 Confidentiality**

- 2.11.1 Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants 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.

## **2.12 Corrupt or fraudulent practices**

- 2.12.1 The EPZA requires that the consultants observe the highest standards of ethics during the selection and award of the consultancy contract. The tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.
- 2.12.2 The EPZA 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.
- 2.12.3 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 CONSULTANTS**

### **Note on the Appendix to Information to Consultants**

1. The Appendix to information to consultant is intended to assist the EPZA in providing specific information in relation to corresponding claims in the information to consultants included in Section II and the appendix has to be prepared for each specific consultancy.
2. The EPZA should specify in the appendix information and requirements specific to the circumstances of the EPZA, the assignment of the consultancy and the proposals evaluation criteria that will apply to the RFP Consultancy.
3. In preparing the appendix, the following aspects should be taken into consideration.
  - (a) The information that specifies or complements provisions of Section II to be incorporated.
  - (b) Amendments of Section II as necessitated by the circumstances of the specific consultancy to be also incorporated
  - (c) Section II should remain unchanged and any changes or amendments should be introduced through the appendix.

### **Appendix to Information to Consultants**

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

## **Clause Reference**

- 2.1 The name of the EPZA is: **Export Processing Zones Authority.**
- 2.1.1 The method of selection is: **Request for Proposals.**
- 2.1.2 A pre-proposal conference will be held: **No**
- 2.1.3 The EPZA will provide the following inputs: **All documents containing information relating to the assignment**

2.1.4 The minimum required experience of proposed professional Lead consultant is: **Master Degree in the related field.**

2.1.5 Consultants must submit original and 1 additional copy of each proposal.

**2.1.6** Completed tender documents are to be enclosed in plain sealed envelopes, marked with the tender number and name and be deposited **28<sup>th</sup> July 2021 at 11:30 a.m** in the **Tender Box situated at the** Tender Box situated at **Ground Floor, Administration Building, Viwanda Road, off Nairobi (Athi-River) – Namanga Highway, Export Processing Zones Authority, P O Box 50563-00200, NAIROBI**

2.1.7 Information on the outer envelope should also include: **TENDER NAME AND TENDER NUMBER.**

2.6.3 The minimum technical score required to pass: **70%**

2.7.1 The formulae for determining the scores is the following:

The weights given to the Technical and Financial Proposals are:

T= \_\_\_\_\_ (0.70 )

P= \_\_\_\_\_ (0.30)

**2.9.2** The assignment is expected to commence on **August 2021.**

### SECTION III: - TECHNICAL PROPOSAL

#### Notes on the preparation of the Technical Proposals

- 3.1 In preparing the technical proposals the consultant is expected to examine all terms and information included in the RFP. Failure to provide all requested information shall be at the consultants own risk and may result in rejection of the consultant's proposal.
- 3.2 The technical proposal shall provide all required information and any necessary additional information and shall be prepared using the standard forms provided in this Section.
- 3.3 The Technical proposal shall not include any financial information unless it is allowed in the Appendix to information to the consultants or the Special Conditions of contract.

#### 1. TECHNICAL PROPOSAL SUBMISSION FORM

To: \_\_\_\_\_ [Name and address of EPZA] [\_\_\_\_\_ Date]

Ladies/Gentlemen:

We, the undersigned, offer to provide the transaction advisory services for **(project name)**..... ,in accordance with your Request for Proposal dated \_\_\_\_\_ [Date] and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal.

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):
Address:	No of Staff-Months; Duration of Assignment:
Start Date (Month/Year):	Approx. Value of Services (Kshs)
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 CONSULTANTS ON THE TERMS OF REFERENCE AND ON DATA, SERVICES AND FACILITIES TO BE PROVIDED BY THE EPZA.**

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On the Terms of Reference:

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

On the data, services and facilities to be provided EPZA

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

**14. DESCRIPTION OF THE METHODOLOGY AND WORK PLAN FOR PERFORMING THE ASSIGNMENT**

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**5. TEAM COMPOSITION AND TASK ASSIGNMENTS**

**1. Technical/Managerial Staff**

Name	Position	Task

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**2. Support 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.]*

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**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: \_\_\_\_\_

**7. TIME SCHEDULE FOR PROFESSIONAL PERSONNEL**

Months (in the Form of a Bar Chart)

Name	Position	Reports Due/ Activities	1	2	3	4	5	6	7	8	9	10	11	12	Number of months

Reports Due: \_\_\_\_\_

Activities Duration: \_\_\_\_\_

Signature: \_\_\_\_\_  
(Authorized representative)

Full Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

## 8. ACTIVITY (WORK) SCHEDULE

### (a). Field Investigation and Study Items

*[1<sup>st</sup>, 2<sup>nd</sup>, etc, are months from the start of assignment)*

	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	5 <sup>th</sup>	6 <sup>th</sup>	7 <sup>th</sup>	8 <sup>th</sup>	9 <sup>th</sup>	10 <sup>th</sup>	11 <sup>th</sup>	12 <sup>th</sup>
Activity (Work)												
_____												
_____												
_____												
_____												

### (b). Completion and Submission of Reports

Reports	Date
1. Inception Report	
2. Interim Progress Report (a) First Status Report (b) Second Status Report	
3. Draft Report	
4. Final Report	

## SECTION IV: - FINANCIAL PROPOSAL

Now that the Consultant is to play a critical role in the structuring of the various projects to be undertaken by the EPZA, the Consultant's financial proposal should be pegged on a percentage of each individual project. The percentage proposed by the Consultant shall cover costs such as reimbursable and miscellaneous expenses.

### 1. FINANCIAL PROPOSAL SUBMISSION FORM

\_\_\_\_\_ [ Date]

To: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Name and address of EPZA]

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for (\_\_\_\_\_) [Title of consulting services] in accordance with your Request for Proposal dated (\_\_\_\_\_) [Date] and our Proposal. Our attached Financial Proposal is for the sum of (\_\_\_\_\_) inclusive of the taxes.

We remain,

Yours sincerely,

\_\_\_\_\_ [Authorized Signature]

:

\_\_\_\_\_ [Name and Title of Signatory]:

\_\_\_\_\_ [Name of Firm]

\_\_\_\_\_ [Address.

## **SECTION V: - TERMS OF REFERENCE**

### **RFP No. EPZA/1/2021 – 2022: REQUEST FOR PROPOSALS (RFP) FOR THE STRUCTURING OF INVESTMENT PROJECTS TO BE UNDERTAKEN BY THE EXPORT PROCESSING ZONES AUTHORITY**

#### **Introduction**

The Export Processing Zones Authority invites Request for Proposal (RFP) from eligible and Prequalified Legal firms to offer transaction advisory services in the investment projects to be undertaken by the EPZA within the Republic of Kenya.

The Export Processing Zones Authority (EPZA) is a State Corporation under the Ministry of Industrialization, Trade and Enterprise Development, established in 1990 by the EPZA Act CAP 517, Laws of Kenya. EPZA's mandate is to promote and facilitate export-oriented investments and to develop an enabling environment for such investments. EPZA under the (Export Processing Zone) EPZA program offers a range of attractive fiscal, physical and procedural incentives to ensure low-cost operations, fast set up and smooth operations for export-oriented businesses. In line with this mandate, the Authority intends to implement several investment projects around the country in view of promoting and facilitating export-oriented investments and to develop an enabling environment for such investments. Owing to the complexity of the intended projects, the Authority hereby seeks to engage the services of a Legal Consultant with proven experience in the structuring of investment projects. The Consultant will be crucial in the structuring of the projects, to ensure that the various implementation models adopted are practical and financially sound.

#### **Time Frame**

The Consultancy services are to be given within a period of 36 Months

## **THE SERVICES TO BE RENDERED**

The objective of this Assignment is to provide Consultancy Services to the EPZA for the Structuring of Investment projects to be undertaken by the Export Processing Zones Authority through public-private partnership.

### **A. Scope of Work**

The scope of services includes the following:

- i. Pre-feasibility study
- ii. Feasibility study
- iii. Legal due diligence
- iv. Preparation of Bid Documents
- v. Negotiation with potential Development Partners
- vi. Provision of Transaction Advisory Services including the structuring of the PPP projects to be undertaken by the EPZA

#### **1. Introduction**

- i. Project background:
- ii. Rationale and genesis
- iii. Project objectives
- iv. Approach and methodology of the Feasibility Study

#### **2. Needs analysis**

- i. Project's conformance to sectorial diagnostics and Master plans
- ii. Demand forecasting and projections
- iii. Institutional settings
- iv. Scope of the project

#### **3. Technical solution options analysis**

- i. Alternative phasing options
- ii. Recommended phasing solutions
- iii. Proposed project specifications
- iv. Estimated CAPEX costs

#### **4. Project due diligence**

- i. Legal aspects

- ii. Use and user rights
- iii. Relevant financial laws and regulations
- iv. Relevant environmental and heritage laws, if applicable
- v. Tax legislations
- vi. Labour legislations
- vii. Foreign exchange legislations
- viii. Competition legislation
- ix. Building and fire codes, as applicable
- x. Zoning rights and land use regulations
- xi. List of likely project agreements
- xii. Dispute settlement mechanism and legal jurisdiction
- xiii. Site enablement
- xiv. Land requirements
- xv. Land valuation
- xvi. Land availability and title deed endorsements
- xvii. Resettlement needs, if applicable
- xviii. Relocation of utilities
- xix. Sector Legislation

## **5. Economic and social cost benefit analysis (ESCBA)**

- i. Identified economic benefits
- ii. Identified economic costs
- iii. Economic evaluation and sensitivity analysis

## **6. Identified environmental and disaster risks concerns**

- i. Environmental impact assessment (EIA) and social risk assessment
- ii. Climate and disaster risk vulnerability assessment
- iii. Preliminary environmental and social impact assessment (PESIA) report

## **7. Gender and other social concerns**

## **8. Project implementation schedule**

## **9. Risk analysis and risk allocation**

Risk matrix for all identified project risks

## **10. Funding options analysis**

Options for developing and financing the Project.

## **11. Financial modeling**

With output financial statements (profit & loss, balance sheet and cash flow statements conforming to IFRS standards and including the following:

- i. Financing costs
- ii. Projected revenue and its assumptions
- iii. Sensitivity analysis

**B.** Transaction Advisory support to the implementation of the Project and Procurement of Development Partners, including inter alia:

- Tender Process Design
- Preparation of Prequalification and Bid Documents
- Preparation of JV Agreements and related agreements and schedules
- Development of performance standards and output specifications
- Support to the Prequalification process including prequalification evaluation
- Support to the Bid process including bidder communications and Bid evaluation
- Amendments to Bid documents and contracts/agreements throughout the process
- Financial Modeling
- Support to negotiations
- Support to legal and financial close processes
- Advice on institutional framework and capacity needs for post-procurement contract management.

## **Eligibility and Qualifications**

The Consultant legal firm and its team member(s) should, as a minimum, meet the following Mandatory requirements for pre-qualification:

- Proof that they have undertaken a PPP or JV Project and obtained approval of the Feasibility Study from the PPP Committee or Contracting Authority respectively.
- Proof that they have undertaken the tendering process of a PPP or JV Project up to negotiation stage with financiers (Lender).
- Proof that they have undertaken PPP or JV Projects for at least two public institutions.

- Proof that they have undertaken a Public Private Partnership or Joint Venture Project of USD 500 Million.

### 1. Statutory/Mandatory requirements

A bidder must provide certified copies of the following documents

#### a) Statutory requirements

- The bid is paginated (Serialized) and in the correct format (including number of copies).
- A valid tax compliance certificate of the lead consultants and of the associates.
- Valid Business Permit
- Valid NSSF Compliance Certificate
- Valid NHIF Compliance Certificate

#### b) Mandatory requirements

- Power of Attorney General (mandatory for consortiums/joint ventures tenders/partners, Updated CR12 form/Partnership deed/ID copies and other relevant documents
- Litigation history (Both court & Arbitration). Attach duly signed self-sworn statement
- Statement of verification that the firm is not debarred in the Matter of Public Procurement and Disposal Act 2015
- Must submit copies of Audited accounts for three years (2018, 2019 & 2020 where applicable)
- Attached a certified copy of a valid Professional Indemnity Insurance Cover.
- Proof that they have undertaken a PPP or JV Project and obtained approval of the Feasibility Study from the PPP Committee or Contracting Authority respectively.
- Proof that they have undertaken the tendering process of a PPP or JV Project up to negotiation stage with financiers (Lender).
- Proof that they have undertaken PPP or JV Projects for at least two public institutions.
- Proof that they have undertaken a Public Private Partnership or Joint Venture Project of USD 500 Million.
- Duly filled, Signed and stamped Confidential Business Questionnaire.

Breakdown for ie.

Assessment criteria	Criteria specifics	TOTAL SCORES
4. Specific experience of consultant(s) related to the assignment	<ul style="list-style-type: none"> <li>• Extensive experience in structuring of Joint Venture and Public Private Partnership projects in the public sector (20 Marks)</li> <li>• Evidence of related assignments undertaken in the past.(30 marks)</li> </ul>	50
5. Work Plan	<ul style="list-style-type: none"> <li>• <b>Adequacy of proposed work plan</b> <ul style="list-style-type: none"> <li>▪ Covers all TORs (10 Marks)</li> <li>▪ Realistic time frame.(10 Marks)</li> </ul> </li> <li>• <b>Appropriateness of proposed methodology</b> <ul style="list-style-type: none"> <li>▪ Duties assigned (10 marks)</li> <li>▪ Application of appropriate data collection methods. (10 Marks)</li> </ul> </li> </ul>	30

	<ul style="list-style-type: none"> <li>▪ Application of appropriate data analysis method. (10 Marks)</li> </ul>	
6. Qualifications and competence of key staff: <ul style="list-style-type: none"> <li>• Lead consultant</li> <li>• Others</li> </ul>	Relevant qualifications <ul style="list-style-type: none"> <li>▪ Master's degree in Law or holds a relevant building or Engineering degree at Masters level. (12 Marks)</li> <li>▪ Bachelor's degree in the above related disciplines. (8 Marks)</li> </ul>	<b>20</b>
<b>TOTAL</b>		<b>100</b>

### **Cost of Request preparation & submission of Proposal (RFP) document**

The applicant shall bear all costs associated with the preparation and submission of the RFP and the EPZA will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the submission.

### **Terms of payment**

The Consultancy Fee shall be paid in phases upon submission of acceptable reports to the EPZA as shall be agreed upon with the successful consultant.

### **Submission of proposals**

- a. Interested consultants shall prepare a proposal detailing how they intend to carry out the assignment based on the requirements of this request. All procurement requirements as spelt out in the bid documents must be complied with;
- b. The bidder's signature on the bid documents indicates acceptance of the terms and conditions set out herein.
- c. The bidder must ensure that the signatory has authority to commit the organization to the contractual offer and that the details in the proposal include a contract name, address and phone number.

Bidders are required to submit one big envelope containing a sealed technical proposal marked ("technical proposal") and a financial proposal marked ("financial proposal") with prescribed copies as detailed in this Request for proposal.

Bids shall be valid for a period of 90 days after bid opening.

Completed RFP tender documents each in original and a copy in a plain sealed envelope and clearly marked with the tender number and name, be addressed to:

**The Ag. Chief Executive Officer**  
**Export Processing Zones Authority**  
**P.O Box 50563-00200, Nairobi, Kenya**

Tenders will be publicly opened immediately thereafter, in the presence of participating bidders or their representatives who choose to attend. Tenders delivered after closing date and time shall not be accepted.

**SAMPLE CONTRACT FOR TRANSACTION ADVISORY SERVICES**

**CONTRACT**

This Agreement, [hereinafter called "the Contract"] is entered into this \_\_\_\_\_ [Insert starting date of assignment], by and between \_\_\_\_\_ [Insert EPZA's name] of \_\_\_\_\_ [or whose registered office is situated at] \_\_\_\_\_ [insert EPZA's address](hereinafter called "the EPZA") 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 EPZA 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 EPZA 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 EPZA shall pay the Consultant an amount not to ..... percent of the project cost.
  
  - B. Schedule of Payments

The schedule of payments is specified below (Modify in order to reflect the output required as described in Appendix C.)

Kshs \_\_\_\_\_ upon the EPZA's receipt of a copy of this Contract signed by the Consultant;

Kshs \_\_\_\_\_ upon the EPZA's receipt of the draft report, acceptable to the EPZA; and

Kshs \_\_\_\_\_ upon the EPZA's receipt of the final report, acceptable to the EPZA.

Kshs \_\_\_\_\_ Total

C. 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 here below. If the EPZA has delayed payments beyond thirty (30) days after the due date hereof, simple interest shall be paid to the Consultant for each day of delay at a rate three percentage points above the prevailing Central Bank of Kenya's average rate for base lending.

**4. Project Administration**

A. Coordinator.

The EPZA designates \_\_\_\_\_ [insert name] as EPZA'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 EPZA 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 EPZA considers unsatisfactory.

(ii)

**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 EPZA's business or operations without the prior written consent of the EPZA.

**7. Ownership of Material**

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

**8. Consultant Not to be Engaged in certain**

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

**Activities**

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.

**10. Assignment**

The Consultant shall not assign this Contract or sub-contract any portion of it without the EPZA'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 EPZA

FOR THE CONSULTANT

Full name; \_\_\_\_\_

Full name; \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Signature; \_\_\_\_\_

Signature; \_\_\_\_\_

Date; \_\_\_\_\_

Date; \_\_\_\_\_

LETTER OF NOTIFICATION OF AWARD

Address of EPZA

\_\_\_\_\_

\_\_\_\_\_

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

**FORM RB 1**

**REPUBLIC OF KENYA  
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

APPLICATION NO.....OF.....20.....

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (EPZA)

Request for review of the decision of the..... (Name of the EPZA) of .....dated the...day of .....20.....in the matter of Tender No.....of .....20...

**REQUEST FOR REVIEW**

I/We.....,the above named Applicant(s), of address: Physical address.....Fax No.....Tel. No.....Email ....., hereby request the Public Procurement Administrative Review Board to review the whole/part of the above mentioned decision on the following grounds , namely:-

1.

2.

Etc.

By this memorandum, the Applicant requests the Board for an order/orders that: -

1.

2.

Etc

SIGNED .....(Applicant)

Dated on.....day of ...../...20...

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**FOR OFFICIAL USE ONLY**

Lodged with the Secretary Public Procurement Administrative Review Board on ..... day of .....20.....

SIGNED by Board Secretary

**CONFIDENTIAL BUSINESS QUESTIONNAIRE**

You are requested to give the particulars indicated in Part 1 and either Part 2 (a), 2 (b) or 2(c) and (2d) whichever applies 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: Country/Town.....

Plot No..... Street/Road .....

Postal Address..... Tel No.....

Nature of Business.....

Current Trade Licence No..... Expiring date.....

Maximum value of business which you can handle at any time:  
Kenya Shillings.....

Name of your bankers.....

Branch.....

**Part 2 (a) – Sole Proprietor**

Your name in full..... Age.....

Nationality..... Country of Origin.....

Citizenship details .....

**Part 2 (b) – Partnership**

Give details of partners as follows:

	<i>Name in full</i>	<i>Nationality</i>	<i>Citizenship Details</i>	<i>Shares</i>
1.	.....	.....	.....	.....
2.	.....	.....	.....	.....
3.	.....	.....	.....	.....
4.	.....	.....	.....	.....

**Part 2(c) – Registered Company**

Private or Public .....

State the nominal and issued capita of the company:

Nominal KShs. ....

Issued KShs. ....

Give details of all directors as follows:

<i>Name in full</i>	<i>Nationality</i>	<i>Citizenship Details*</i>	<i>Shares</i>
1. ....	.....	.....	.....
2. ....	.....	.....	.....
3. ....	.....	.....	.....
4. ....	.....	.....	.....

**Part 2(d) Interest in the Firm:**

Is there any person/persons in the employment of the Government of Kenya WHO has interest in this firm? Yes/No (Delete as necessary)

I certify that the above information is correct.

.....  
Title

.....  
Signature

.....  
Date

\* *Attach proof of citizenship*