



**REQUEST FOR PROPOSAL**

**FOR PROVISION OF CATERING SERVICES FOR THE AFRICAN DEVELOPMENT BANK AT**

**THE**

**EAST AFRICA REGIONAL RESOURCE CENTER OFFICE**

**ADB/RFP/EARC/2016/0083**

## SUMMARY DESCRIPTION

### **PART I – SELECTION PROCEDURES AND REQUIREMENTS**

#### **Section 1: Letter of Invitation**

This Section is a letter from the Bank addressed to potential bidders inviting them to submit a proposal for the assignment. The letter includes references to the selection method and applicable guidelines or policies of the Bank that govern the selection and award process.

#### **Section 2: Instructions to Bidders**

This Section provides information to help potential bidders prepare their proposals. Information is also provided on the submission, opening and evaluation of proposals, contract negotiation and award of contract.

#### **Section 3: RFP Data Sheet**

“RFP Data” contains information specific to the current selection and corresponds to the clauses in “Instructions to Bidders” that call for selection-specific information to be added.

#### **Section 4: Terms of Reference**

This Section describes the scope of services, objectives, goals, specific tasks required to implement the assignment, and relevant background information; provides details on the required qualifications of the key experts.

#### **Section 5: Evaluation Criteria and Methodology**

This Section provides information on the evaluation of submissions.

#### **Section 6: Technical Proposal Questionnaire**

This Section includes the technical proposal forms that are to be completed by potential bidders and submitted in accordance with the requirements of Section 2.

#### **Section 7: Financial Proposal Questionnaire**

This Section includes the financial forms that are to be completed by potential bidders, including bidders’ costing of their technical proposal, which are to be submitted in accordance with the requirements of Section 2.

#### **Section 8: Eligibility Requirements**

This Section contains information on the Bank’s eligibility criteria and list of member countries.

### **PART II – CONDITIONS OF CONTRACT**

**Section 9:** This Section includes the General Conditions of the Bank that shall not be modified and the Special Contract Conditions.

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## SECTION I – LETTER OF INVITATION

Dear Sir/Madam,

1. The African Development Bank (the “Bank”) invites proposals for the provision of goods and services as described in this Request for Proposal (RFP). To qualify for award, a bidder shall meet the qualification criteria set out in the Section 3.
2. The proposals submitted by bidders shall be received by the Bank on or before the date and time and in the manner specified in Section 2. The Bank’s requirement is set out in Section 4.
3. The Bank is an ‘AAA’ rated regional multilateral development finance institution, established in 1963, with a mandate to further economic development and social progress of African countries, individually and collectively. 80 member countries including all the 54 African countries and 26 non-African countries in the Americas, Europe and Asia own the Bank.
4. The Bank's principal functions include: (i) using its resources for the financing of investment projects and programs relating to the economic and social development of its Regional Member Countries (RMCs); (ii) the provision of technical assistance for the preparation and execution of development projects and programs; (iii) promoting investment in Africa of public and private capital for development purposes; and (iv) to respond to requests for assistance in coordinating development policies and plans of RMCs. In its operations, the Bank is also required to give special attention to projects and programs that promote regional integration.
5. The Bank began its operations from its headquarters, in Abidjan, Côte d’Ivoire on July 1, 1966. For purposes of its operations the Bank also maintains field offices in certain of its RMCs.
6. The information contained in the RFP is designed to enable bidders complete and submit proposals. Bidders shall read the RFP carefully and ensure proposals comply with the instructions provided in the RFP. Bidders are required to complete and submit the Technical Proposal Questionnaire (Section 6) and Financial Proposal Questionnaire (Section 7) in accordance with the Instructions to Bidders (Section 2), RFP Data Sheet (Section 3), Description of Goods/Technical Specification/Terms of Reference (Section 4), Eligibility Criteria (Section 8) and General and Specific Conditions (Section 9). The Bank shall evaluate proposals in accordance with the evaluation criteria and methodology (Section 5). The Bank is not bound by any other terms and conditions unless agreed in writing by the Bank.
7. Any eligible bidder interested in doing business with the Bank shall register at: [https://eprocurement.afdb.org/sap/bc/webdynpro/sap/zsup\\_reg\\_submit#](https://eprocurement.afdb.org/sap/bc/webdynpro/sap/zsup_reg_submit#)
8. A copy of all documents referred to in the RFP can be found on the Bank’s website: <http://www.afdb.org/en/about-us/corporate-procurement/procurement-notices/current-solicitations/>
9. We look forward to receiving your proposal and thank you for your interest in doing business with the Bank.

**DIRECTOR,**  
**EAST AFRICA REGIONAL RESOURCE CENTER**



## SECTION 2 - INSTRUCTIONS TO BIDDERS

### **GENERAL**

1. **Eligibility of Bidders, Goods and Services** - Goods and services procured by the Bank shall be produced in a member country of the Bank and supplied by bidders from a member country of the Bank as defined in the Presidential Directive concerning the Rules for Corporate Procurement activities of the Bank. The Bank's eligibility criteria as defined in the Presidential Directive are set out in the RFP.
2. **Procurement Ethics, Integrity, Anti-corruption and Fairness**
  - 2.1. It is the Bank's policy that bidders/suppliers to the Bank observe the highest standard of ethics during the procurement process and execution of such contracts. In pursuance of this policy, the Bank shall reject a proposal if it determines that the bidder, or any of its personnel, agent, consultant, subcontractor or service provider, has, directly or indirectly, engaged in "Corrupt", "Fraudulent", "Collusive", "Coercive" or "Obstructive" practices in competing for the contract in question. These terms are defined in the General and Specific Conditions. The Bank may also declare the bidder ineligible for participation in future procurement and award of contracts, either indefinitely or for a stated period of time.
  - 2.2. A bidder/supplier who offers any gift of any value to Bank staff will be considered to be influencing the procurement process. The Bank will reject a proposal if it determines that any such gift has been offered.
  - 2.3. All bidders/suppliers are required to comply with the Code of Conduct for Suppliers in the General and Specific Conditions.
3. **Conflict of Interest** - A bidder shall not have a conflict of interest that would call into question its participation in the procurement process and award of contract. Bidders shall disclose any potential or actual conflict of interest in the disclosure form and during execution of any contract. All bidders found to have a conflict of interest may be disqualified.
4. **Joint Venture**
  - 4.1. Where a joint venture or any other form of partnership (JV) approach is proposed, bidders are required to provide full details of the JV and nature of relationship with other JV members. Bidders forming a JV shall nominate an authorized representative of the JV (duly evidenced by submitting a power of attorney signed by a legally authorized representative of the JV) who shall have the authority to conduct all business for and on behalf of all members and enter into the contract. Each member shall meet the eligibility criteria as defined in the Presidential Directive.
  - 4.2. A JV shall comprise no more than four partners. At least one member shall provide 40% of the contract sum and each of the other members shall provide at least 20% of the contract sum.
  - 4.3. All members shall be jointly and severally liable for the performance of any resulting contract.

### **CLARIFICATION OF THE PROCUREMENT PROCESS**

5. Bidders are solely responsible, at their own cost and risk, for obtaining information that may be necessary for preparing proposals and entering into the contract.
6. **Amendments of RFP** – The Bank reserves the right to modify any content of the RFP without incurring any liability to any bidder. Any such amendment shall be sent directly to bidders' authorized representative. It is the sole responsibility of bidders to ensure they are aware of any amendment and take the amendment into account in preparing proposals.
7. **Clarification of RFP**
  - 7.1. A bidder requiring any clarification shall notify the Bank in writing at the details provided in the **RFP Data Sheet** and within the period for clarification in the **RFP Data Sheet**. Written copies

of the Bank's response (including the questions raised without identifying the source) shall be sent directly to bidders' authorized representative.

- 7.2. If a bidder feels that any provision in the RFP will be unacceptable, such issue and any request for change to the RFP shall be raised at the earliest opportunity in writing at the details provided in the **RFP Data Sheet** and in any event no later than the deadline in the **RFP Data Sheet**. **The Bank shall not consider any request to change the General Conditions.**
- 7.3. The Bank shall determine, in its sole discretion, to accept or reject any query or request for change. Any response from the Bank shall be binding on bidders.
- 7.4. A bidder who contacts any member of staff directly or indirectly in relation to the procurement (except staff specified in the **RFP**) shall be disqualified.
- 7.5. The Bank shall not respond to any query or request received after the deadline in the **RFP Data Sheet**.

#### **8. Site Visit / Pre-Bid meeting**

- 8.1. If provided in the **RFP Data Sheet**, bidders are invited to attend a site visit and pre-bid meeting. The purpose of the meeting will be to clarify issues and answer questions on any manner relating to the Bank's requirements. The cost of the site visit and pre-bid meeting shall be at the bidder's own expense.
- 8.2. Bidders are requested to submit any questions in writing to the address in the **RFP Data Sheet**, to reach the Bank no later than one week before the meeting.
- 8.3. If provided in the **RFP Data Sheet** that attendance at the site visit and pre-bid meeting is mandatory, any bidder wishing to submit a proposal shall attend the site visit and pre-bid meeting. The Bank shall not consider a proposal from a bidder who does not attend the mandatory site visit and pre-bid meeting.
- 8.4. Minutes of the meeting (including the text of the questions raised without identifying the source together with the Bank's response) shall be sent directly to bidders' authorized representative.

#### **PREPARATION OF PROPOSALS**

9. **Cost of Bidding** - Bidders shall bear all costs associated with the preparation and submission of proposals. The Bank shall not be responsible or liable for any costs regardless of the conduct or outcome of the procurement process.
10. **Language of Proposals**
  - 10.1. The proposal and all correspondences and documents relating to the proposal exchanged by the bidder and the Bank shall be written in the language specified in the **RFP Data Sheet**. A proposal submitted in a language not specified in the **RFP Data Sheet** shall be rejected.
  - 10.2. Any printed literature furnished by the bidder written in another language other than the language specified in the **RFP Data Sheet** shall be accompanied by a certified translation in the language in the **RFP Data Sheet** of its pertinent passages in which case, for the purpose of interpretation of the proposal, the translation shall govern.
11. **Subcontractors and service providers** – Bidders shall identify any sub-contractors that will play a significant role in the bidder's performance of the contract. The Bank reserves the right to obtain the same level of information from subcontractors as from bidders.
12. **Documents comprising the Proposal** - Proposals shall comprise the following documents, completed in full and supported with evidence and information requested:
  - Technical Proposal Questionnaire; and



- Financial Proposal Questionnaire.

13. **Statement of Conformity, Bid Submission Form and Price Schedule** – Bidders shall sign the Statement of Conformity and Bid Submission Form and complete the price schedule using the forms provided. The forms shall be completed without alterations to its format and content. No other substitutes shall be accepted.
14. **Publicity Material** – Unless expressly permitted in the RFP, bidders shall not submit brochures, general marketing or promotional material with proposals. Publicity brochures shall not be accepted as answers to questions. Bidders shall respond fully to the questions in the RFP.
15. **Meeting the Bank's requirements**
- 15.1. Unless otherwise provided, bidders shall meet the Bank's requirements by the deadline for submission of proposals.
- 15.2. Bidders shall respond in sufficient detail and provide evidence and supporting documentation to enable the Bank determine whether the bidder has the required capability, experience, knowledge and expertise to satisfactorily perform the contract.
16. **Mandatory Requirements** – The RFP may include mandatory requirements. The classification of a requirement as mandatory gives an indication of its significance to the Bank. A proposal that does not meet any mandatory requirement shall be rejected as non-responsive.
17. **Samples and Inspection**
- 17.1. The Bank may request samples at any time during the procurement process. If requested, bidders shall provide samples free of charge. A bidder who fails to provide the required samples shall be disqualified. The Bank makes no guarantee that the samples will be returned or the condition of samples upon completion of evaluation. Samples shall be returned at the bidders own cost.
- 17.2. If provided in the RFP, the Bank shall conduct an inspection of the goods and services during the procurement process either at the bidder's premises or at the Bank's offices. Such inspection shall not relieve the bidder from any of its obligations under the contract. The Bank shall notify bidders in writing of the details of any inspection. The Bank shall not be responsible for the expenses incurred by the bidder for such inspection.
18. **Demonstration** – If provided in the RFP, the Bank shall require bidders to provide a live demonstration of the proposed solution. The bidder shall provide the demonstration free of charge and the Bank shall not accept any liability for any damage to or loss of bidders' property in connection with such demonstration.
19. **Sustainable Procurement (SP)** – the Bank is committed to managing its business and executing contracts in an environmentally and socially responsible manner. Bidders should set out how they will deliver the contract in a sustainable manner. The Bank's SP guideline is available on its website.
20. **Alternative Proposals** - The Bank shall not consider any variation to its requirements ("Alternative Solution") unless expressly permitted in the **RFP Data Sheet**. If an Alternative Proposal is permitted, the Alternative Proposal shall be accompanied by a fully compliant proposal, i.e. one that meets the minimum technical requirements. The bidder shall quote the price for the fully compliant proposal and then separately provide the technical specification, methodology and adjustment in price that can be offered if the Alternative Proposal is accepted. The nearest functional equivalent or closest standard



shall be offered as an alternative. Only the Alternative Proposal of the successful bidder or bidders shall be considered.

- 21. Acceptance of the General and Specific Conditions** - It shall be clearly understood that by submitting a proposal in response to the RFP, a bidder shall be deemed to have accepted the

General and Specific Conditions. A proposal that does not accept the General and Specific Conditions shall be rejected as non-responsive.

- 22. Taxes** - The prices quoted shall be net free and clear of all applicable taxes including withholding tax duties, fees, levies or indirect taxes, such as customs duties, as the Bank, by virtue of its status as an international organization, is exempt from paying any direct or indirect taxes, by virtue of Article 57 of the Agreement establishing the Bank. If the bidder is unable to quote or invoice exclusive of all applicable taxes, such taxes shall be separately set forth on the quote or invoice.

**23. Bid Prices**

23.1. The prices submitted by bidders shall, except insofar as it is otherwise provided in the contract, include all labour, supervision, materials, transportation, insurance, profit, general risks, liabilities and obligations set out or implied in the contract.

23.2. The Bank shall award the contract based on value for money that takes into account the whole life costing (i.e., life-cycle costs of the goods and services, maintenance, spare parts, warranty, training, disposal, shipment, insurance) of the requirement.

- 24. Currency of Proposal** - The prices shall be expressed in the currency in the **RFP Data Sheet**. A bidder shall express all prices in the same currency.

- 25. Lots** – If the Bank's requirement is sub-divided into separate units ("lots"), bidders can submit a proposal for one or multiple lots unless otherwise stated in the **RFP Data Sheet**.

- 26. Period of Validity of Proposals** - Proposals shall remain valid for a period not less than the period stated in the **RFP Data Sheet**. Proposals valid for a shorter period shall be rejected as non-responsive. The Bank may require bidders to extend the period of validity of proposals. If the bidder does not extend the period of validity of proposals, the bidder's proposal may be rejected. A bidder granting the request shall not be required or permitted to modify its proposal.

**27. Bid Security**

27.1. If provided in the **RFP Data Sheet**, the bidder shall furnish, as part of its proposal, the signed Bid-Securing Declaration form or bid security in the amount, form and valid for the period in the **RFP Data Sheet**.

27.2. The bid security shall be in the form of a certified cheque or a bank guarantee from a bank located in a member country of the Bank and acceptable to the Bank. Any proposal not accompanied by a substantially responsive bid security shall be rejected.

27.3. The Bank may require bidders to extend the period of validity of a bid security. If the bidder does not extend the validity of the bid security, the bidder's proposal shall be rejected unless the bidder submits a new bid security acceptable to the Bank before expiration of the bid security.





27.4. The bid security of a joint venture shall be issued in the name of the joint venture submitting the proposal and shall list all members of the joint venture.

27.5. The bid security shall be returned to bidders in the circumstances specified in the **RFP Data Sheet**.

#### **SUBMISSION AND OPENING OF PROPOSALS**

##### **28. Deadline for Submission of Proposals**

28.1. The Bank must receive proposals no later than the deadline in the **RFP Data Sheet**. It is the sole responsibility of bidders to ensure timely receipt of proposals by the Bank.

28.2. The Bank shall extend the deadline for submission of proposals at any time without incurring any liability to bidders.

29. **Late Proposals** – The Bank shall not consider any proposal received after the deadline for submission of proposals. Any proposal received by the Bank after the deadline for submissions shall be declared late and rejected by the Bank.

30. **Proposals rejected by the Bank** – Proposals rejected by the Bank shall be destroyed or returned to bidders, at its own cost, if so requested.

##### **31. Proposals submitted electronically via AfDB e-Procurement portal**

31.1. If provided in the **RFP Data Sheet**, proposals shall be submitted electronically via AfDB e-Procurement portal.

31.2. Bidders can obtain guidance on submitting proposals electronically in the user manual in AfDB e-Procurement portal.

31.3. The Bank reserves the right to request the original of any form, document or authorization submitted electronically by any bidder.

##### **32. Proposals submitted by mail, courier or hand-delivery**

32.1. If provided in the **RFP Data Sheet**, proposals shall be submitted by mail, courier or hand-delivery.

32.2. Proposals shall be submitted in a sealed envelope (**with both the technical proposal questionnaire and financial proposal questionnaire in separate sealed envelopes**) and delivered the address in the **RFP Data Sheet**.

32.3. Each bidder shall submit proposal in **one original and four copies (any attachment, appendix and annex thereto shall also be submitted in one original and four copies)**: the original proposal shall carry the mention “Original” and each of the four copies the mention “Copy”. The technical proposal (one original and four copies) and the financial proposal (one original and four copies) shall each be placed in two separate sealed envelopes (the “internal envelopes”).

32.4. The following mention shall appear on each internal envelope:

- a) the RFP reference;
- b) the mention “Technical Proposal” or “Financial Proposal” as the case may be; and
- c) The name and address of the bidder.

32.5. The internal envelopes shall be placed together in a large single envelope called “external envelope” which shall be anonymous and **carry the label in the RFP Data Sheet that should be photocopied and placed on the external envelope**.

32.6. Any alternative proposal shall be prepared, sealed, marked and dispatched as per the instructions in this paragraph and clearly be identified as “Alternative”.

32.7. All pages of the proposal shall be numbered. Each copy of the proposal shall be bound in a single volume where practical. All documentation submitted with the proposal shall be bound in a single volume.

32.8. The person or persons signing the proposals shall initial all pages of the proposal where correction has



been made.

32.9. When delivered by hand, the proposal must be delivered at the address during the working hours of the Bank from 8.00 hrs. to 12.00 hrs. and from 14.00 hrs. to 18.00 hrs., Monday through Friday except for holidays observed by the Bank. Delivery to any other office of the Bank will be at the risk of the bidder and will not constitute timely delivery.

**33. Modification / Withdrawal of Proposals** – Bidders may modify or withdraw proposals prior to the deadline for submission. Bidders shall not be permitted to modify or withdraw proposals after the deadline for submission.

**33.1. Proposals submitted electronically via AfDB e-Procurement portal** - Bidders can obtain guidance on modifying or withdrawing proposals in the user manual.

**33.2. Proposals submitted by mail, courier or hand-delivery** - The bidder's modification or withdrawal shall be prepared, sealed, marked and dispatched as per the instructions set out in Section 1 and accompanied by a written notice duly signed by an authorized representative. Any modification or withdrawal shall clearly be identified as "Modification" or "Withdrawal".

**34. Bid Opening** – Proposals shall be opened as soon as possible after the deadline for submission. The record of the bid opening shall be sent directly to bidders' authorized representative.

#### **EXAMINATION OF PROPOSALS**

**35. Confidentiality and Disclosure of Information** - The Bank is committed to make public all information in its possession unless there is a compelling reason for confidentiality in accordance with its policy on Disclosure and Access to Information. Bidders shall notify the Bank if the information provided is confidential and shall not be disclosed to the public. The Bank shall endeavor to maintain confidentiality of confidential information and evaluation of proposals. The Bank reserves the right to disclose information in accordance with its policy on Disclosure and Access to Information.

#### **36. Clarification of Proposals**

36.1. To assist in the examination and evaluation of proposals and qualification of bidders, the Bank may, at its discretion:

- 36.1.1. Require any bidder to clarify any part of its proposal;
- 36.1.2. Require any bidder to provide further information or documentation;
- 36.1.3. Undertake site visit to any bidder; or
- 36.1.4. Contact referees provided by any bidder.

36.2. Any clarification submitted by a bidder that is not in response to a request by the Bank shall not be considered. No change in the price or substance of the proposal shall be sought, offered or permitted. Where a bidder does not provide the information requested the proposal shall be evaluated as presented.

#### **37. Determination of Responsiveness**

37.1. The Bank's determination of a proposal's responsiveness is to be based on the contents of the proposal itself, as defined in the RFP. A substantially responsive proposal is one that meets the requirements of the RFP without material deviation, reservation or omissions.

37.1.1. "Deviation" is a departure from the requirements specified in the RFP;



- 37.1.2. “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the RFP; and
- 37.1.3. “Omission” is the failure to submit part or all of the information or documentation required in the RFP.
- 37.2.A material deviation, reservation or omission is one that,
- 37.2.1. If accepted, would:
- 37.2.1.1. Affect in any substantial way the scope, quality or performance of the requirements as specified in the RFP;
- 37.2.1.2. Limit in any substantial way, inconsistent with the RFP, the Bank’s rights or the bidder’s obligations under the proposed contract; or
- 37.2.1.3. If rectified, would unfairly affect the competitive position of other bidders presenting substantially responsive proposals.
- 37.3.The Bank shall examine the technical proposals to determine whether proposals are substantially responsive with the requirements.
- 37.4.If a proposal is not substantially responsive to the requirements of the RFP, it shall be rejected by the Bank and may not subsequently be made responsive by correction of the material deviation, reservation or omission.

#### **BID EVALUATION**

38. **Conversion to Single Currency** - For the purpose of evaluation, the Bank shall convert all prices into the Bank’s Units of Accounts (UA) by using the Bank’s monthly moving average rate for the applicable month (deadline for submission of proposals).
39. **Acceptance or Rejection of Proposals** – The Bank reserves the right to accept or reject any or all proposals, cancel the procurement process and/or reject all proposals at any time prior to contract award, without incurring any liability to bidders.

#### **AWARD OF CONTRACT**

##### **40. Award Methodology**

- 40.1.The Bank shall evaluate proposals in accordance with the evaluation criteria and methodology and may discuss proposals with bidders.

##### **41. Contract Award**

- 41.1.By issuing the RFP, the Bank is not committed to award a contract for all or part of the requirements.
- 41.2.The Bank reserves the right to award a contract for part of the requirements. Bidders shall indicate if they would not accept a contract for part of the requirements.
- 41.3.If the requirement is divided into lots, the Bank reserves the right to award a contract to a bidder to satisfy the entire requirement.
- 41.4.The Bank reserves the right to increase or decrease the volume of goods or services, usually not to exceed 20%, without any change in unit price or other terms and conditions.

42. **Best and Final Offer** – Following evaluation of proposals, the Bank may decide to obtain Best and Final Offers from qualified bidders whose proposals are substantially responsive with the requirements. If such a decision is made, the Bank shall notify bidders in writing of the process. The Bank may use e-Auction for this process.



43. **Notification of Award** - Following a recommendation to award the contract, the Bank shall issue a notice of consideration for award to the successful bidder and regret letters to unsuccessful bidders.
44. **Debriefing** - Unsuccessful bidders may request debrief within seven (7) days from receipt of the regret letter.
45. **Award Protest Procedure** – The Bank has a complaint procedure about the conduct of the procurement process as set out in the Presidential Directive. An unsuccessful bidder wishing to make a complaint must inform the Bank within seven (7) days of notification of the Bank's contract award decision.
46. **Contractual Relationship** - The contractual relationship shall be governed by the General and Specific Conditions and shall include the description of goods/technical specification/terms or reference, the successful bidder's technical and financial proposal. **No other terms and conditions put forward at any time by the bidder shall form part of the contract.**
47. **Performance Security**
- 47.1.If provided in the **RFP Data Sheet**, the successful bidder shall furnish the performance security within the period, amount and form stipulated in the **RFP Data Sheet**. The performance security shall be in the form of a bank guarantee from a bank located in a member country of the Bank and acceptable to the Bank.
- 47.2.The performance security shall be returned to the bidder as set out in the General and Specific Conditions.
- 47.3.Failure of the successful bidder to comply with the requirements of performance security shall constitute sufficient grounds for cancellation of the award to the bidder without any right of action against the Bank.
- 47.4.In lieu of bank guarantee, the Bank may retain 10% of the contract sum that shall be returned to the bidder as set out in the General and Specific Conditions.
48. **Advance Payment**
- 48.1.If provided in the **RFP Data Sheet**, the Bank shall provide advance payment to the successful bidder, subject to a maximum amount not to exceed 30% of the contract sum. The advance payment request shall be accompanied by an advance payment guarantee from an insurance company or bank located in a member country of the Bank and acceptable to the Bank. The advance payment guarantee shall be in the form specified in the **RFP Data Sheet**.
- 48.2.For the purpose of receiving the advance payment, the bidder shall make an estimate of, and include in its proposal, the expenses that will be incurred during the first month beginning with the date of the Bank's notice to proceed or contract signature, whichever is earliest.
- 48.3.The advance payment shall be repaid by deducting proportionate amounts from payments due to the bidder as set out in the General and Specific Conditions.
- 48.4.The advance payment guarantee shall be returned to the bidder as set out in the General and Specific Conditions.
49. **Defects Liability Period and Retention Fee** – If provided in the **RFP Data Sheet**, the Bank shall retain 10% of the contract sum until the end of the defects liability period. This is the pre-determined period after practical completion of the project when the successful bidder is responsible for making good any faults which appear and which are due to defective materials or work. The defects liability period is set out in the General and Specific Conditions. The Bank shall pay the successful bidder the retention fee as set out in the **RFP Data Sheet**.



**FURTHER ASSISTANCE**

50. **Authorized Representative** - Bidders shall provide the Bank with up to two authorized representatives. The Bank shall contact bidders through the authorized representative. The Bank shall assume that the representative is authorized to act on behalf of the bidder and bind the bidder to any response.

51. **Assistance** – For assistance on using AfDB e-Procurement portal, bidders shall refer to the user manual.

Alternatively, bidders can contact [earctender@afdb.org](mailto:earctender@afdb.org) and quote the tender reference.

### SECTION 3 – RFP DATA SHEET

The numbering below refers to the appropriate numbering of the introduction	
§ 1	The goods and services to be provided - Provision of Catering Services as outlined in Section 4.
§ 1	<p>To qualify for award, bidders (including each partner in a joint venture or partnership, subcontractors) shall meet the following pass/fail qualification criteria:</p> <p><b>Eligibility of Bidders, Goods and Services:</b> Goods and services procured by the Bank shall be procured in a member country of the Bank and supplied by bidders from a member country of the Bank.</p> <p><b>Eligibility Criteria:</b> a bidder shall not normally be eligible if any of the situations in the Presidential Directive concerning the rules for corporate procurement activities of the Bank apply.</p> <p><b>Financial Standing:</b> An average turnover of at least [KES.2, 000,000] per annum for the <b>last three years [2013, 2014, 2015 or latest]</b>. A bidder shall demonstrate current soundness of financial position and its long-term profitability.</p> <p><b>General and Specific Experience:</b> a bidder should have a minimum of <b>3 years'</b> experience and successfully or substantially implemented as a prime contractor at least <b>three projects</b> of a similar nature and complexity (the contracts cited shall be at least 70% complete) in the last <b>3 years</b>.</p> <p><b>Historical Contract Performance and Pending Litigation:</b> a bidder shall demonstrate the ability to successfully complete previous contracts and has no pending litigation to impede its ability to perform the contract.</p> <p><b>Conflict of Interest:</b> a bidder shall have no actual or potential conflict of interest that would call into question their participation in the procurement process and award of contract.</p>
The numbering below refers to the appropriate numbering of the instructions to bidders	
§ 7	Request for clarification and/or request for change to the RFP shall be sent in writing: (i) by telefax (at the fax number[+254 20 271 2938, (ii) by electronic mail: <a href="mailto:earctender@afdb.org">earctender@afdb.org</a> ; or (iii) to the question and answer section in the AfDB e Procurement portal. The request should be received by the Bank no later than: 15/08/2016 at 1700hrs
§ 8	<p>The Bank shall organize site visit and pre-bid meeting: [YES/ [10/08/2016,] 11.00 hours at the Bank's premises located along 10 Longonot road.</p> <p>Questions for the site visit and pre-bid meeting shall be submitted <a href="mailto:earctender@afdb.org">earctender@afdb.org</a></p> <p>The site visit and pre-bid meeting is a mandatory requirement: [NO]</p>
§ 10	The language of proposals and all correspondence is: English
§ 20	Alternative proposals are accepted: [NO]



§ 24	The prices shall be expressed in KES.
§ 25	The Bank's requirement is divided into lots [NO] Bidders can submit a proposal for one or multiple lots [NO]
§ 26	The minimum period of validity of proposals is one twenty (120) days from the deadline for submission of proposals.
§ 27	Bid security is required [NO]
§ 28	The deadline for submission of proposals is 24 <sup>th</sup> August 2016 at 15:00 hours
§ 32	<p>Proposals shall be submitted by courier or hand delivery: [YES]</p> <p>Proposals shall be sent to the following address and the external envelope shall bear the following information:</p> <p><b><i>African Development Bank P O BOX 4861 – 00200, Nairobi East Africa Resource Centre Off Longonot Road, Upper Hill Tel +254 20 271 2925-26-28</i></b></p> <p><b>RFP – DO NOT OPEN UNTIL BID OPENING DAY                      Reference: ADB/RFP/EARC/2016/0083-PROVISION OF CATERING SERVICES</b></p> <p><b>RFP Closing Date and Time: 24<sup>th</sup> August 2016 (15:00 hours local time)</b></p>
§ 47	Performance security is required: [NO]
§ 48	Advance payment will be provided to the successful bidder: [N/A]
§ 49	The Bank shall retain 10% of the contract sum until the end of the defects liability period: [N/A]





## SECTION 4 – DESCRIPTION OF GOODS / TECHNICAL SPECIFICATION / TERMS OF REFERENCE

### TERMS OF REFERENCE (TOR) FOR CATERING SERVICES

#### 1.0. Presentation of the Bank

The African Development Bank is a multilateral development institution, established by agreement by and among its member states, for the purpose of contributing to the sustainable economic development and social progress of its Regional Member Countries (RMCs) in Africa. The members of the Bank, currently seventy eight (80), comprise 56 African states (RMCs), and 26 non-African states (the “Non-Regional Member Countries”). The Bank was established on 4 August 1963, and began its operations from its headquarters, in Abidjan, Côte d’Ivoire on July 1, 1966.

The Bank's principal functions include: (i) using its resources for the financing of investment projects and programs relating to the economic and social development of its RMCs; (ii) the provision of technical assistance for the preparation and execution of development projects and programs; and (iii) promoting investment in Africa of public and private capital for development purposes; and (iv) to respond to requests for assistance in coordinating development policies and plans of RMCs. In its operations, the Bank is also required to give special attention to projects and programs which promote regional integration.

The Bank hereby invites experienced firms to submit information on providing catering services for a period of 2 years renewable three times automatically for one year subject to satisfactory performance. The caterer will be assessed for six months before confirmation of the Service Provider for the entire period mentioned above.

The services will be provided to staff member and visitors within the premises of the building. To do this, the Bank will avail space (lounge) located on the 2nd floor, Khushee Towers and is designed to accommodate catering activities.



## **2.0. Purpose of the request for proposals**

The purpose of the Service Provider is to provide the African Development Bank (AfDB) with Conference catering services and staff meals (optional) of continuous quality standard.

### **The service provider should be able to:**

- i. Define and develop healthy meals menu adapted to the requirements of the Bank.
- ii. Develop a "business plan" of healthy meals and catering services to meet the specific needs of the Bank (healthy meals: snacks, sandwiches, hot drinks, pastries, croissants and ... catering: coffee break, lunch box ...) and that of user expectations in terms of diversity and quality;
- iii. Manage Conference catering services and quick-service restaurant (optional) in accordance with hygiene requirements (according to national and international standards) and safety applicable to Kenya.
- iv. Have a satellite kitchen or laboratory or production plant that meets hygiene requirements (according to national and international standards in the field) for its food production.
- v. Have its own logistics for the transport and delivery of its food stuff to the AfDB. The means and method of transport must comply with the most stringent hygiene standards

### **The Bank will**

- i. Provide utilities (water and electricity) which are linked to performance of the Service Provider. A telephone line will be available in the cafeteria for internal communication.
- ii. Given the above, and given that the provider will not pay fees to the Bank, the former shall make proposals for preferential prices compared to the market price.
- iii. The Service Provider shall use the local cafeteria for service primarily (healthy meals and catering) and finishing production eventually (packaging, presentation, available on trays).
- iv. The number of staff working on the premises of the Bank in Khushee Towers is approximately 90 people. However, the Bank does not guarantee minimum service revenue under the operation of the premises to be made available.
- v. The restaurant will be for the exclusive use of members of staff. In addition, consultants, staff Service other service providing companies and visitors to the Bank will be allowed to benefit from the rates offered by the provider.
- vi. The Service Provider or shall in no case use the premises and/or the facilities made available for personal services inside and outside the Bank.
- vii. The Service Provider will be valid for a period of one year (01) renewable one-year periods with a maximum of two renewals. Service Provider renewal will tacitly and

depending on the result of the evaluation of service delivery made by the Bank. The beginning of the execution of services is planned for the month of October 2016.

### **SCOPE OF WORK**

- The Bank serves a culturally diverse population and thus the Service Provider shall provide food that is safe, nutritious and culturally appropriate to staff.
- The vendor shall be required to provide cafeteria food service at the AfDB premises- (optional) .The cafeteria shall serve AfDB staff, visitors who have clearance to access the building and freely opt to use these services.
- The food shall be prepared at an offsite facility that meets all the local regulatory and Banks Health and safety requirements and be transported to be served at the Banks premises in Upper hill. Provisions for food warming and minor pre-service preparations will be available.
- The Service Provider will provide all the following services:
  - Prepare and serve (breakfast items) for sale to staff daily
  - Coffee/tea service as needed during the day
  - Food service for special events (e.g. meetings, conferences)
  - Prepare and serve tea/coffee and light snacks to conference participants at different locations (meeting rooms) within AfDB compound as per booker's requests.
  - Prepare and serve lunch for staff members who will be interested. This is an optional service that will be paid for by staff from their own pockets.
  - Prepare and serve special lunch for conference participants based on the booker's requests.
  - Prepare and serve cocktails and dinners for conference participants based on the booker's requests.
  - Lunch venue set-up as per customer requirements.
  - Meeting room set-up as per customer requirements.
- The Service Provider will provide a variety of food and drinks in order to appeal to both local and international staff on the Bank's premises.



## **DESCRIPTION OF BANK'S PREMISES**

The AfDB is located on plot no 10 along Longonot road Upper hill in Nairobi. The kitchen facilities are located on the second floor and is equipped with a Kitchen counter space dish washing sink, 2 Refrigerators and 2 microwaves and electric kettle

The African Development Bank is housed in a 12 story building accommodating approximately 80 staff. The building is surrounded by a security wall, with secured pedestrian and vehicular access. The cafeteria space can sit up to 100 customer if seated at the cafeteria location and the open air terrace.

### **Service Schedule**

Cafeteria services will be provided five (5) days per week, (optional) *Monday through Friday* (except for holidays observed by the Country), as follows:

Breakfast: 7:00 a.m. – 10:00 a.m.

Lunch: 12:30 a.m. – 2:30 p.m.

Tea breaks (4 'o'clock) - optional

### **Holidays**

	<b>DAY</b>	<b>Date</b>
1	New Year	1 January
2	Good Friday	TBC
3	Easter Monday	TBC
4	Labour Day	01 May
5	Madaraka Day	01 June
6	Mashujaa Day	20 October
7	Jamhuri Day	12 December
8	Christmas Day	25 December
9	Boxing Day	26 December
10	Idd il Fitr ( TBA)	TBC

### **Other Services**

The Service Provider shall provide ready to eat meals, including hydrating fluids, coffee and teas as requested by the Bank.

Advance notice shall be provided when requesting special services as follows:

Coffee service delivery to conference rooms – 1 day (24 hours) advance notice

Special catered event – 5 work days advance notice

Other special events - at least 10 work days advance notice depending on the size of the event



Below is the description and estimates of existing services. These estimates are based on the current office space building with about 80 occupants only.

- Average daily number of Bank staff using breakfast service 30 buying accompaniments for tea
- Average daily number of Bank staff using lunch service 15
- Average daily number of Bank staff using coffee service 30 morning and 15 mid Afternoon
- Number of catered events held over the last twelve months 1 per week consisting of 15-50 pax (approximately 48 events in a year.)

#### **PERFORMANCE REQUIREMENTS**

- **Supplies:** Service Provider shall provide good quality reusable cups, bowls, plates, utensils as well as napkins and condiments required to serve the food and beverages to staff. The Service Provider shall be responsible for maintenance and replacement of the same in case of breakages. The Service Provider shall involve the Bank's representative on the choice of crockery.
- **Food transportation:** Transportation of food from the location where it is prepared to the Bank kitchen must be conducted in safe manner with due attention to health regulations and quality control requirements.
- **Inspections of the food preparation locations to assess the conditions shall be done as required by the Bank.**
- **Menu Selection:** Hot meals, cold sandwiches, salads, should be part but not limited to the menu. The proposed preferences are indicated on meal plan sample attached as Exhibit 1
- **Breakfast shall consist of a minimum of 2 hot main selections, breads/pastries and a variety of fruit, cereals, yogurts, milks and juices.**
- **Lunch shall consist of a minimum of 2 hot main selections plus a variety of fruits. Meat, fish or poultry shall be included at each meal**
- **The Service Provider is requested to provide sample menus with price indications for both breakfast and lunch. This should be indicated on the Price Schedule on Appendix B. ( to be included in the financial proposal in a separate envelope) In addition; The Service Provider should also provide an additional proposed menu of their own creation which should indicate the variety provided for one week (Monday to Friday).**
- **It is the responsibility of the Service Provider to collect taxes associated with food and beverage sales at the point of sale.**
- **Vegetarian requirement**
- **The Service Provider will be expected to provide a vegetarian selection containing no meat, fish or poultry at each meal.**
- **Housekeeping Requirements**

- Service Provider is responsible for daily housekeeping of the dining room and kitchen areas, including but not limited to:

Daily Cleaning Tasks	Satisfactory Performance Objective
Clean all surfaces	<ul style="list-style-type: none"> <li>▪ Remove all trays from staff dining area.</li> <li>▪ Wipe spills from the steam table serving area as soon as the spill occurs</li> <li>▪ Clean and disinfect all tables, chairs, inside the microwave and other equipment in the dining area.</li> <li>▪ Clean and disinfect all carts and dollies</li> <li>▪ Clean and disinfect the dish/flatware breakdown area.</li> <li>▪ Clean and disinfect the area where staff return eating trays</li> <li>▪ Clean and disinfect wall (tiles); remove grease from all cooking surfaces to prevent grease build-up</li> <li>▪ Sweep and damp mop kitchen floor, including refrigerator and walk-in storage areas.</li> </ul>
Clean all utensils	<ul style="list-style-type: none"> <li>▪ Clean inside the dishwasher, coffee urns, and hot and cold beverage dispensers.</li> <li>▪ Clean all carts or food trolleys</li> </ul>
Collect and Empty trash.	<ul style="list-style-type: none"> <li>▪ Empty all trash in the dining room as soon as each container is full. Full trash cans are not to be left in the dining area for any length of time.</li> <li>▪ Empty all trash into a) regular trash and b) a recycled bin.</li> <li>▪ Take all trash bins to the trash pickup site at the end of each day. Trash bins must be covered at all times.</li> </ul>
	<ul style="list-style-type: none"> <li>▪ Launder all the linen used in the cafeteria</li> </ul>

Weekly Cleaning Tasks	Satisfactory Performance Objective
Cleaning	<ul style="list-style-type: none"> <li>▪ Steam clean serving area and other stainless steel equipment.</li> <li>▪ Full cleaning of the cooking area.</li> </ul>
	<ul style="list-style-type: none"> <li>▪ Empty and thorough cleaning of the food storage areas and refrigerators</li> </ul>



**The Service Provider will:**

- a) Ensure that hot food on the serving table is heated to a temperature that prevents bacteria growth.
- b) Ensure all food being served is kept at optimum temperatures at all times, including during transportation, to maximize product quality.
- c) Ensure that other foods are stored at proper temperature and in appropriate storage containers.
- d) Properly label all foods, paying special attention to accommodating religious and dietary preferences by labeling meats, dairy products and common allergens.
- e) Ensure that dirty dishes, utensils and serving equipment are not left out after use and all items are properly cleaned and stored.
- f) Report to Bank within 12 hours all facility and equipment issues so that the Bank can conduct take appropriate response and conduct preventative maintenance/repairs of Bank bought equipment.
- g) Maintain the cafeteria according to the specifications that will be given as part of the Service Provider.
- h) Ensure that to inspect and report any existence of pest, rodents and vermin control in the cafeteria and dining areas.
- The Bank will monitor performance under this Service Provider using surveys, quality inspections, audits and food testing. Where deficiencies are found by the Bank, the Service Provider shall rectify such deficiencies on the same day, unless otherwise agreed by the Bank's Service Provider Manager. The tools used will be such as:
  - Surveys of staff that use the breakfast and lunch service [quality of the food, menu options, service, etc.]
  - Survey of staff using the coffee/tea service.
  - Survey of coordinators arranging food and beverage service for special events [responsiveness to requests, quality of food, timeliness of service at the intended place and time required, appeal of appearance, set-up, display, etc.]

**SERVICE PROVIDER OBLIGATIONS TO BANK**

- The Service Provider shall supply Bank on request with up-to-date latest copies of health certificates issued by local government for the premises.



- The Service Provider shall be solely responsible for the supervision, attendance, timeliness and work of its personnel.
- The Service Provider shall assign an employee as the “site in charge” to supervise and coordinate all work between the Service Provider and Bank.
- The Service Provider shall be solely responsible for the labor relation and obligations with their personnel and sub-Service Providers, releasing to the Bank of all responsibility in this sense. Further, the Service Provider shall ensure an “arms-length” relationship is maintained between their employees and the Bank at all times.
- Service Provider will maintain adequate backup staff of their employees assigned to the Bank’s premises to substitute for Service Provider Employees in all designated categories during illness, vacation, and temporary leave of more than two (2) continuous days. The backup Service Provider Employees will be required to have the same technical, communication, customer service, and problem-solving skills, as primary assigned Service Provider Employees. Such substitute employees cannot be viewed as staff of the Bank under local labor laws.
- The Service Provider shall provide two (2) weeks in advance written notification to the Bank’s Service Provider Manager of all proposed permanent staff changes and other key personnel changes.
- The Service Provider must report all workplace injuries or accidents to the Bank’s staff responsible for the contract.
- The Service Provider must take all precautions to prevent interference or harm to the Bank’s property, Building, systems and equipment at all times and will be responsible for all costs arising from the lack of such preventative care.

**SUSTAINABLE PROCUREMENT CONSIDERATIONS MAY INCLUDE THE FOLLOWING:**

**Social Aspect**

- Provide evidence of statutory benefits paid by the company for its employees e.g. NHIF
- Illustrate on the minimum wage for the employees
- Training opportunities available for the employees
- Demonstrate how the disadvantaged persons in the society e.g. women, single mothers have been accommodated within the company
- Certificate of good conduct and Clean health records for the employees
- Demonstrate how organic foods can be incorporated in daily menus to ensure provision of healthy meals for staff

**Environmental Aspect**

- Give status of transport and food preservation facilities while the food is being delivered to the Bank

- Provide evidence that the detergents used are environmental friendly
- Give details of the cutlery being used. Should be re-usable
- Explain how you intend to treat left overs
- Illustrate on use of biodegradable materials
- Suggest ways of saving on water and electricity consumption

### **Economic Aspect**

- The Value the Bank would get if awarded the contract
- How affordable are the meals to the staff

**NB: Kindly share with us your policies that you may have on e.g. Environment management Policy, Quality Control, Sustainability Policy, Occupation Health and Safety Policy etc.**

### **MENU SAMPLE- Exhibit 1**

Meal Plan: These are some of some of the current staff preferences for breakfast, lunch and snacks.

<b>BREAKFAST</b>	<b>LUNCH</b>
<ul style="list-style-type: none"> <li>- Cereals</li> <li>- Porridge</li> <li>- Fresh Juices</li> <li>- Tea/coffee/drinking chocolate, cappuccino</li> <li>- Toast; Sandwiches</li> <li>- Egg Dishes (made to order with a selection of ingredients)</li> <li>- Pastries (breads, muffins, doughnuts, cake slices)</li> <li>- Snacks (samosas, spring rolls, mandazis, croissants, crepes)</li> <li>- Roots and Tubers (sweet potatoes, arrow roots, cassava)</li> <li>- Freshly-cut Fruit Salad</li> </ul>	<p>Appetizers and Snacks :</p> <ul style="list-style-type: none"> <li>- Chicken wings</li> <li>- Fish Fingers</li> <li>- Soups</li> <li>- Salads</li> <li>- Chips</li> </ul> <p>Main Meal :</p> <ul style="list-style-type: none"> <li>- Grilled Chicken</li> <li>- Beef</li> <li>- Fish</li> <li>- Starch: Potatoes, Rice, Chapati, Macaroni, etc.)</li> <li>- Seasoned fresh veggies</li> <li>- Vegetarian Options</li> </ul> <p>Cold Options</p> <ul style="list-style-type: none"> <li>- Sandwiches (toasted options as well)</li> <li>- Wraps</li> </ul> <p>Salad Bar with dressings</p> <p>Desert/Coffee &amp; Drinks :</p> <ul style="list-style-type: none"> <li>- Cakes/pies/ Ice cream</li> <li>- Coffee &amp; Espresso</li> <li>- Kenyan Tea</li> <li>- Sodas</li> </ul>





	<ul style="list-style-type: none"> <li>- Shakes</li> <li>- Fresh Juices</li> <li>- Freshly-cut Fruit Salad</li> </ul>
<b>PRICES: (Prices not required at this point ) KES</b> <ul style="list-style-type: none"> <li>- Light breakfast -</li> <li>- Full breakfast -</li> </ul>	<b>PRICES: Not required at this point) KES</b> <ul style="list-style-type: none"> <li>- Light lunch/small plate- (1 starch, 1 protein, veggie, a fruit)</li> <li>- Full course meal -</li> </ul>

**Service Provider to provide own One week (5 day) meal plan with variety of creative menus to be provided for and indicate the prices**

#### **Transition of the new contractor**

Immediately after award of the Contract and prior to the Contractor's performance at the work site(s), the Bank shall notify the Contractor, and the Contracting Officer's Technical Representative (COTR) to schedule a pre-performance meeting that includes an in-depth review of the total Contract requirements and a review of the Contractor's Transition Plan.

During the performance of the Contract, the CO, COTR, and the Contractor shall meet annually or on an as-needed basis to discuss all relevant Contract issues. A mutual effort will be made to resolve all problems identified. The Contractor and the CO shall sign the written minutes of these meetings, which will be prepared by the Contractor and incorporated into the Contract file.

#### **Permits, licenses and adherence to the law**

The Contractor bears the sole burden for ensuring that all legally required licenses and permits are obtained and renewed as specified by the regulating agency. The Contractor shall possess ALL licenses required to perform services in Nairobi, Kenya

## SECTION 5 – EVALUATION CRITERIA AND METHODOLOGY

- 1) A qualification (pass/fail) assessment will be carried out to determine whether proposals meet the eligibility and qualification criteria. Proposals determined to meet the eligibility and qualification criteria shall be considered for the next stage. Proposals not meeting the eligibility and qualification criteria shall be rejected. The qualification (pass/fail) questionnaire is set out in Section 6.
- 2) A one-stage process will be adopted in evaluating proposals. The selection of bidders will be based on technical quality only. Following evaluation of the pass/fail assessment, responsive offers will be subject to a technical analysis.
- 3) Bidders shall obtain a minimum of [70] points following evaluation of technical proposals to be invited for Site visit and Food sampling. Technical proposals shall account for [80%] and Site visit and Food sampling shall account for [20%] of technical evaluation. Bidders shall obtain a minimum of [75] points following technical evaluation (“Qualifying Technical Score”) to be considered for financial analysis. Bidders obtaining less than the Qualifying Technical Score shall be rejected.
- 4) The responsive proposals shall be attributed a technical score:

Description	Maximum Points	Marks
Provide a brief description of the company profile, including names of company principals, total number of employees, years in business and local office address.	15	
Outline qualifications and level of competency of staff to be assigned	10	
Describe how your company trains its employees to ensure high quality services required under this solicitation.	10	
Provide a brief description of your food preparation facility. Indicate the location and capacity and how you will ensure that fresh food is delivered	15	
Describe the Storage equipment and means for transport your company will use to transfer the food from the off site location of preparation to the service area at the clients building.	10	
Describe how your company meets health and safety regulations. Provide records that show health & safety training for staff	10	
Describe how your company will creatively provide menu that caters for a wide range of prices.	15	
Sustainable Procurement considerations	15	
	100	

**The offer declared highly qualified will be considered for the opening and price negotiation**

**TABLE 1: EVALUATION OF SUSTAINABLE PROCUREMENT**

Sustainability Criteria	Verification	Points
Benefits paid by the company e.g. NHIF and Illustrate on the minimum wage for the employees	Provide evidence	10
Training opportunities available for the employees	Evidence of training done	10
Opportunities for disadvantaged persons in the society e.g. single mothers, youth, disabled persons	Each category of persons will earn 3.3 points	10
Certificate of good conduct and Clean health records for the employees	Give records	10
Organic foods can be incorporated in daily menus	Menu samples	10
Food preservation and handling during transportation.	Give records and status	10
Cleaning detergents	Provide evidence that they are environmental friendly	10
Cutlery being used and biodegradable materials	State whether re-usable and biodegradable materials provided	10
Left overs	Management of left overs-describe	10
Value of the service to the Bank and affordability of meals	Demonstrate on both	10
		<b>100</b>

**TABLE 2: EVALUATION OF SITE VISIT AND FOOD SAMPLING**

Sustainability Criteria	Verification	Points
Accessibility to the facility	How accessible is the facility	10
Convenience of location	How far is the facility from the bank	10



Cleanliness of the facility	Cleanliness state	10
Waste management in place (both food and packaging waste)	Check out how waste is managed	10
Equipment used for food production & storage	Check equipment in place	10
Food display and presentation	Confirm display and food presentation	10
Appropriate protective clothing	Check on dressing of staff	10
Quality of food	Taste	10
Food portion	Check portion size	10
Food variety	Food variety that reflects the diverse culture	10
		<b>100</b>



### **FINAL RANKING**

- 5) The bidder obtaining the highest Qualifying Technical Score will be ranked first and eligible for further consideration.
- 6) The financial proposals shall be opened and checked for completeness and corrected for computational errors.

### **FINANCIAL NEGOTIATION**

- 7) The bidder with the highest Qualifying Technical Score shall be invited for financial negotiation.
- 8) The negotiation shall examine the financial proposal, methodology of service delivery, proposal personnel and suggestions to improve service delivery. Special attention shall be paid to optimizing the required outputs from the bidder and to defining the inputs required from the Bank to ensure satisfactory implementation of the assignment. Any agreed changes will be reflected in the revised financial proposal which will form part of the contract. The negotiation shall be concluded with a review of the draft form of contract. The Bank and bidder shall finalize the contract to conclude the negotiation.
- 9) If the negotiation fails, the Bank may invite the bidder with the second highest Qualifying Technical Score for opening of the financial proposal and to negotiate the financial offer and so on.
- 10) The contract shall be awarded to the qualified bidder whose proposal is the most responsive to the requirements in the RFP and with whom satisfactory price, terms and conditions have been agreed.

### **POST-QUALIFICATION**

- 11) Prior to award of the contract, the Bank may undertake site visit to any prospective bidder's office and carry out due diligence review in order to validate the information provided in the RFP response. The Bank also reserves the right to contact references provided by bidders in order to validate information provided in the RFP response.
- 12) The selected Bidder will be required to provide an Insurance certificate for professional liability of the bidder.



## **SECTION 6 – TECHNICAL PROPOSAL QUESTIONNAIRE**



Appendix 6A  
STATEMENT OF CONFORMITY

The African Development Bank  
**East African Regional Resource Center**  
**P. O. Box. 4861- 00200**  
**Nairobi,**  
**KENYA**

Dear Sir/Madam,

We, the undersigned, declare that:

- (a) We have examined the Request for Proposal (RFP) No **ADB/RFP/EARC/2016/0083- PROVISION OF CATERING SERVICES** and have no reservations to the RFP including addendum issued;
- (b) We have read and understood the general and specific conditions and accept to be bound by the general and specific conditions;
- (c) We offer to provide the goods and services in conformity with the RFP;
- (d) We agree that any other terms or conditions or any general reservation that may be provided on any correspondence emanating from us in connection with the RFP shall not be applicable to any resulting contract;
- (e) Our proposal shall be valid for the period indicated in the RFP and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (f) We, including any subcontractors or suppliers for any part of the contract, do not have any conflict of interest which will call into question our participation in the procurement process and award of contract;
- (g) We understand that the Bank's policy requires bidders and suppliers to observe the highest standard of ethics, as such we have not offered any gift to Bank staff;
- (h) We understand that if we withdraw our proposal after the deadline for submission, the Bank may decide to exclude us from future procurements;
- (i) We, including our subcontractors or suppliers for any part of the contract, have nationalities from member countries of the Bank;
- (j) Our firm, its affiliates or subsidiaries (including any subcontractors or suppliers for any part of the contract) has not been declared ineligible by the Bank;
- (k) We are not under sanction by the World Bank, Asian Development Bank, Inter-American Development Bank or European Bank for Reconstruction and Development.

We undertake that, in competing for (and, if the award is made to us, in executing) the contract, we will strictly observe the laws in our country of registration and the country where the contract is performed.

We understand that you are not bound to accept the most advantageous proposal or any other proposal that you may receive.

We confirm that the undersigned are authorized to commit the bidder(s) to the obligations contained in the RFP and the contract.

Name \_\_\_\_\_ in the capacity of \_\_\_\_\_ Signature \_\_\_\_\_

Email \_\_\_\_\_ Duly authorized to sign this proposal for and on behalf of:

\_\_\_\_\_ Dated on \_\_\_\_\_ Official Stamp



**Appendix 6B**

**BIDDER INFORMATION SHEET**

1. Bidder's Legal Name:
2. In case of joint venture or any other form of partnership (JV), legal name of each party:
3. Bidder's actual or intended Country of Registration, Constitution or Incorporation:
4. Bidder's actual or intended Year of Registration, Constitution or Incorporation:
5. Bidder's legal address in Country of Registration, Constitution or Incorporation:
6. Bidder's Authorized Representative Information: Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of: <input type="checkbox"/> Articles of Incorporation or Registration of firm named and information on the capital structure. <input type="checkbox"/> In case of JV, letter of intent to form a legally enforceable JV including a draft agreement, or JV agreement <input type="checkbox"/> In case of government owned entity from the Bank's member country, documents establishing legal and financial autonomy and compliance with the principles of commercial law. <input type="checkbox"/> Organizational chart of the company and list of current staff





**Appendix 6C**

**PARTY TO JOINT VENTURE INFORMATION SHEET**

1. Bidder's Legal Name:
2. JV's Party legal name:
3. JV's Party Country of Registration, Constitution or Incorporation:
4. JV's Party Year of constitution or registration into a legally enforceable JV:
5. JV's Party Legal address in Country of Registration, Constitution or Incorporation:
6. JV's Party Authorized Representative Information: Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of: <input type="checkbox"/> Articles of Registration, Constitution or Incorporation of firm named and information on the capital structure. <input type="checkbox"/> A letter of intent to form a legally enforceable JV including a draft agreement, or JV agreement and power of attorney nominating an authorized representative of the JV <input type="checkbox"/> In case of government owned entity from the Bank's member country, documents establishing legal and financial autonomy and compliance with the principles of commercial law <input type="checkbox"/> Organizational chart of the company and list of current staff





### QUALIFICATION (PASS/FAIL) ASSESSMENT

Bidders shall complete all sections in the questionnaire in sufficient detail and provide evidence and supporting documentation to demonstrate compliance. Bidders shall meet each criterion by the deadline for submission of proposals.

PASS/FAIL CRITERIA	Bidders Compliance Requirements				Bidders Response		Comments / Evidence provided
	Single Entity	Joint venture or any other form of partnership (JV)			Yes	No	
		All partners combined	Each partner	At least one partner			
<b>STATEMENT OF CONFORMITY AND BID SUBMISSION FORM</b>	Must meet requirement	Existing or intended JV must meet requirement	Must meet requirement	N/A			
A person or persons duly authorized to bind the bidder to the price and contract has completed and signed the statement of conformity and bid submission form in the format provided.  A power of attorney shall be attached, if applicable.							
<b>The bidder shall sign and return the documents in the format provided for a PASS.</b>							
<b>ELIGIBILITY CRITERIA</b>	Must meet requirement	Existing or intended JV must meet requirement	Must meet requirement	N/A			



PASS/FAIL CRITERIA	Bidders Compliance Requirements				Bidders Response		Comments / Evidence provided
	Single Entity	Joint venture or any other form of partnership (JV)			Yes	No	
		All partners combined	Each partner	At least one partner			
The bidder is from a member country of the Bank.  If yes, provide evidence, such as, articles of incorporation or registration of firm, memorandum of association (if available), information on the capital structure and legal status of the bidder.							
The goods and services offered are produced in a member country of the Bank.  If yes, provide evidence, such as, operating license, information on origin of goods and services.							
<b>A bidder, goods and services offered shall meet the eligibility criteria on the basis of nationality for a PASS.</b>							
The bidder has become bankrupt, is insolvent or is in the process of winding-up; is being administered by an administrator appointed by a competent court of law that has entered into an arrangement with creditors; has suspended business activities; or is in any analogous situation arising from a similar							



PASS/FAIL CRITERIA	Bidders Compliance Requirements				Bidders Response		Comments / Evidence provided
	Single Entity	Joint venture or any other form of partnership (JV)			Yes	No	
		All partners combined	Each partner	At least one partner			
procedure provided for in the relevant national legislation or regulation.							
The bidder has not fulfilled obligations relating to the payment of social security contributions, pension fund premiums, payment of taxes or similar legal statutory payments under the law of the country in which the bidder is established or where the contract is to be performed.							
The bidder has been convicted of a criminal offence relating to the conduct of its business of profession in the last ten (10) years?							
The bidder has been subject of a judgment for professional misconduct, fraud, corruption, involvement in a criminal organization or any other illegal activity.							
The bidder has been debarred or cross-debarred by the Bank on the basis of corrupt, fraudulent, collusive, coercive and obstructive practices.							
The bidder has been evaluated as having provided unsatisfactory performance							



PASS/FAIL CRITERIA	Bidders Compliance Requirements				Bidders Response		Comments / Evidence provided
	Single Entity	Joint venture or any other form of partnership (JV)			Yes	No	
		All partners combined	Each partner	At least one partner			
under a previous contract with the Bank within the last 3 years.							
The bidder, or any of its affiliates, has been engaged to provide consulting services for the preparation or implementation of the procurement.							
<b>The bidder shall not be subject to any of the situations above for a PASS.</b>							
<b>JV (if applicable)</b>	N/A	Existing or intended JV must meet requirement	Must meet requirement	N/A			
The bidder has included a JV agreement, or letter of intent to form a legally enforceable JV including a draft agreement.							
The bidder has nominated an authorized representative of the JV who has the authority to conduct all business for and on behalf of all partners and enter into the contract.  Provide contact details of authorized representative of the JV and power of							



PASS/FAIL CRITERIA	Bidders Compliance Requirements				Bidders Response		Comments / Evidence provided
	Single Entity	Joint venture or any other form of partnership (JV)			Yes	No	
		All partners combined	Each partner	At least one partner			
attorney signed by a legally authorized representative of the JV.							
<b>The bidder must provide a JV agreement or letter of intent to form a legally enforceable JV and draft agreement, contact details of the authorized representative of the JV and power of attorney for a PASS.</b>							
<b>FINANCIAL STANDING</b>	See below						
The bidder has a minimum turnover of at least [Kes.2, 000,000] for the last three years [2013, 2014, 2015].	Must meet requirement	Existing or intended JV must meet requirement	Must meet at least 20% of the requirement	Must meet 40% of the requirement			
The bidder can demonstrate sound financial performance?  If yes, provide evidence, such as audited balance sheets (including notes and income statements), copies of financial statements or other documents to demonstrate financial performance for the past three years [2013, 2014, 2015],  If the laws of the bidder's country of establishment do not require audits,	Must meet requirement	Existing or intended JV must meet requirement	Must meet requirement	N/A			



PASS/FAIL CRITERIA	Bidders Compliance Requirements				Bidders Response		Comments / Evidence provided
	Single Entity	Joint venture or any other form of partnership (JV)			Yes	No	
		All partners combined	Each partner	At least one partner			
bidders may submit their balance sheets certified by a registered accountant and supported by copies of tax returns for the past three years [2013, 2014, 2015].							
<p>The bidder can demonstrate access to and availability of financial resources to meet the overall cash flow requirements for the contract and its current work commitments?</p> <p>If yes, provide evidence, such as, liquid assets, unencumbered real assets, lines of credit and other financial means, other than contractual advance payments or other documents to demonstrate financial resources.</p>	Must meet requirement	Existing or intended JV must meet requirement	Must meet requirement	N/A			
<b>The bidder shall demonstrate current soundness of its financial position and its long-term profitability for a PASS.</b>							
<b>GENERAL AND SPECIFIC EXPERIENCE</b>	See below						





PASS/FAIL CRITERIA	Bidders Compliance Requirements				Bidders Response		Comments / Evidence provided
	Single Entity	Joint venture or any other form of partnership (JV)			Yes	No	
		All partners combined	Each partner	At least one partner			
<p>The bidder has been in business for the past [three (3) years]</p> <p>If yes, provide evidence, such as, information on the bidder's company (description, including a short history, business plan, services offered, organizational chart, number of staff and list of current staff, number of years in business).</p>	Must meet requirement	Existing or intended JV must meet requirement	Must meet requirement	N/A			
<p>The bidder has experience in at least [three (3)] similar contracts as a prime contractor within the last [three (3)] years, which have been successfully or substantially completed (the contract shall be at least 70%) completed). The similarity shall be based on the physical size, complexity, methods/technology or other characteristics as described in the RFP.</p> <p>If yes, provide description of similar contracts undertaken as a prime</p>	Must meet requirement	Existing or intended JV must meet requirement	Must meet requirement	Must meet requirement for one specialism			



PASS/FAIL CRITERIA	Bidders Compliance Requirements				Bidders Response		Comments / Evidence provided
	Single Entity	Joint venture or any other form of partnership (JV)			Yes	No	
		All partners combined	Each partner	At least one partner			
contractor (including name of customer) in the last 3 years.							
<b>The bidder shall have been in business for the last three (3) years and has the experience and capability to provide the goods and services required for a PASS.</b>							
<b>HISTORICAL CONTRACT PERFORMANCE AND PENDING LITIGATION</b>	Must meet requirement	Existing or intended JV must meet requirement	Must meet requirement	N/A			
The bidder has had a contract(s) terminated in the last [three (3) years] for unsatisfactory performance or default.  Bidders shall complete the litigation history form.							
The bidder is involved in litigation that represents more than 50% percent of the bidder's net worth. Bidders shall complete the litigation history form.							
<b>The bidder shall demonstrate ability to successfully complete previous contracts and has no pending litigation to impede its ability to provide the contract for a PASS.</b>							
<b>CONFLICT OF INTEREST</b>	Must meet requirement	Existing or intended JV must meet requirement	Must meet requirement	N/A			



PASS/FAIL CRITERIA	Bidders Compliance Requirements				Bidders Response		Comments / Evidence provided
	Single Entity	Joint venture or any other form of partnership (JV)			Yes	No	
		All partners combined	Each partner	At least one partner			
The bidder has declared any actual or potential conflict of interest in the conflict of interest declaration form.							
<b>The bidder shall have no actual or potential conflict of interest to call into question its participation in the procurement process and award of contract for a PASS.</b>							
<b>A bidder must PASS all above criteria to be considered for the next stage.</b>							
Remarks (Accept/Reject for the next stage)							



**Appendix 6E**

**LITIGATION HISTORY**

Name of Bidder:

RFP Reference:

Bidders shall provide information on any history of litigation or arbitration resulting from contracts executed in the last [three years] or currently under execution. A separate sheet should be used for each partner of a joint venture.

Non-Performing Contracts – contracts terminated in the past three (3) years for unsatisfactory performance or default			
Contract non-performance during the stipulated period			
Year	Outcome as Percent of Total Assets	Contract Identification	Total Contract Amount (current value, US\$ equivalent)
		Name of Purchaser: Address of Purchaser: Contract description: Contract award date: Termination date: Reason for termination:	
		Name of Purchaser: Address of Purchaser: Contract description: Contract award date: Termination date: Reason for termination:	
Pending Litigation			
<input type="checkbox"/> No pending litigation <input type="checkbox"/> Pending litigation			
Year	Outcome as Percent of Total Assets	Contract Identification	Total Contract Amount (current value, US\$ equivalent)
_____	_____	Name of Purchaser: Contract description: Address of Purchaser: Contract award date: Matter in dispute:	_____
_____	_____	Name of Purchaser: Contract description: Address of Purchaser: Contract award date: Matter in dispute:	_____



**Appendix 6F**

<b>CONFLICT OF INTEREST DISCLOSURE FORM</b>			
Name of Bidder:		RFP Reference:	
It is the Bank's policy to ensure fairness and integrity in its procurement process. All bidders (including affiliates, partners in joint venture, suppliers and subcontractors) are required to disclose any actual or potential conflict of interest. Bidders shall respond to the questions below and provide further information pertaining to any relationship/connection with the Bank.			
	Bidders Response		Comments /Information provided
	Yes	No	
Are you connected to a person employed by the Bank who is involved in the procurement process? This could be a personal or business relationship.			
Have you been engaged in providing consulting services for the preparation or implementation of an assignment relating to the procurement?			
Are you an employee or stakeholder of the Bank?			
Has the Bank offered you a contract of employment in the last 12 months?			
Are you participating in more than one proposal in the procurement process?			
Have you hired any Bank staff involved in the preparation or implementation of the assignment relating to the procurement in the last 12 months?			
Have you held a position in government in the last 3 years? For example, a ministerial position			
Has a member of your family held a position in government in the last three years? This			



includes your spouse, parent, brother, sister or child.

We hereby certify that: a) we have read and understood the contents of this disclosure form; and  
b) we have disclosed all actual or potential conflict of interest.

We understand that the Bank will determine, in its sole discretion, whether any conflict of interest disclosed shall result in rejection of our proposal from the procurement process.

Name: \_\_\_\_\_ In the capacity of: \_\_\_\_\_

Signed: \_\_\_\_\_

Duly authorized to sign this proposal for and on behalf of: \_\_\_\_\_

Dated on: \_\_\_\_\_



**Appendix 6G**

**PROPOSAL / METHODOLOGY / DESCRIPTION OF THE APPROACH / SOLUTION**

In this section, the Bidder should provide a comprehensive description of how it will provide the required Services in accordance with the Terms of Reference (TOR) included in this RFP. Information provided must be sufficient to convey to the Bank that the bidder has an understanding of the challenges in performing the required Services and that it has an approach, methodology and work plan to overcome those challenges.



Appendix 6H

PERFORMANCE EVALUATION OF SERVICE PROVIDER

SERVICE PROVIDER	
PURPOSE OF CONTRACT	
REFERENCE OF CONTRACT	
EFFECTIVENESS DATE	
EXPIRY DATE	
EVALUATION PERIOD	
OVERALL EVALUATION RATING	
TOTAL MARK	
OVERALL RATING IN %	
PERFORMANCE LEVEL	
EVALUATED BY	
APPROVED BY	
ENDORSED BY CGSP.2	

EVALUATION CRITERIA	COEFFICIENT (1-3)	RATING (1-10)	TOTAL (Coef. x Rating)	COMMENT
<b>I. CAPACITY OF SERVICE PROVIDER</b>				
1. QUALITY OF CONTRACT SUPERVISION				
2. COMPLIANCE WITH REGULATIONS				





3. COMPLIANCE WITH TIME LINES				
4. SUPPLY				
5. HUMAN RESOURCES				
6. TECHNICAL RESOURCES				
7. MATERIAL RESOURCES				
8. APPROPRIATE MEASURES PROPOSED				
9. PROACTIVE HANDLING OF PROBLEMS				
10. PLANNING				
11. COMPLIANCE WITH LOCAL LAWS				
12. COMPLIANCE OF SERVICES				
13. IDENTIFICATION OF SERVICE PROVIDER (uniform, badge, etc.)				
14. MANAGERIAL EFFECTIVENESS				
15. COST CONTROL				
16. COMPLIANCE WITH STANDARDS				
17. UPDATE CAPACITY OF INSTALLED SYSTEM				
18. FLEXIBLE HOURS				
19. COMPLIANCE WITH CONTRACT CLAUSES				
20. COMPLIANCE WITH TOR/ TECHNICAL SPECIFICATIONS				
21. RESPECT FOR ENVIRONMENT				
22. INNOVATION OF SERVICES				
23. SKILLS TRANSFER, TRAINING				



II. STAFF				
1. AVAILABILITY OF CONTACT PERSON				
2. NAME OF CONTACT PERSON (INTERFACE)				
3. PERFORMANCE, QUALIFICATION, COMPETENCE OF WORKER				
4. PUNCTUALITY				
5. PROFESSIONALISM				
6. ADJUSTMENT CAPACITY				
7. RESPONSIVENESS				
8. COMPLIANCE WITH INSTRUCTIONS				
9. CONFIDENTIALITY				
10. TIMELINESS				
11. RESPECT FOR WORK ENVIRONMENT				
12. QUALITY OF COLLABORATION				
13. MASTERY OF WORKING SOFTWARE				
14. CONDUCT / BEHAVIOUR				
15. WORKING LANGUAGE				
III. SERVICES				
1. QUALITY OF SERVICE				
2. AVAILABILITY OF SERVICE				
3. CLEANLINESS				
4. QUANTITY				
5. VARIETY				



## **SECTION 7 – FINANCIAL PROPOSAL QUESTIONNAIRE**



Appendix A

BID SUBMISSION FORM

To the African Development Bank  
East African Regional Resource Center  
P. O. Box: 4861- 00200  
Nairobi, Kenya  
Dear Sir/Madam,

We, the undersigned, declare that:

- (a) We have examined the Request for Proposal (RFP) No **ADB/RFP/EARC/2016/0083 PROVISION OF CATERING SERVICES** and have no reservation to the RFP including addendum issued;
- (b) We offer to provide the goods and services in the amount indicated in the Price Schedule form included in our proposal;
- (c) If provided in the RFP, the prices quoted will remain fixed for the duration of the contract;
- (d) Our proposal shall be valid for the period indicated in the RFP and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

We understand that you are not bound to accept the most advantageous proposal or any other proposal that you may receive.

We confirm that the under signed are authorized to commit the bidder(s) to the contractual obligations contained in the RFP and the contract.

Name \_\_\_\_\_

In the capacity of \_\_\_\_\_

Signature \_\_\_\_\_

Duly authorized to sign this proposal for and on behalf of: \_\_\_\_\_

Dated on \_\_\_\_\_

Official Stamp \_\_\_\_\_

## Appendix B

PRICE SCHEDULE FORM *(To be submitted as a financial proposal in a separate envelope)*

### PRICE SCHEDULE FORM

	CATERING SERVICES-AFRICAN DEVELOPMENT BANK			
	COMPONENTS			
1	Breakfast sample menu	QTY	UNIT PRICE	REMARKS
A	Light Breakfast ( Please indicate the detailed food options for this meal )	1		
B	Full breakfast ( Please indicate the detailed food options for this meal)	1		
2	Lunch Sample Menu			
A	Light lunch ( Please indicate the detailed food options for this meal)	1		
B	Full Lunch( Please indicate the detailed food options for this meal)	1		
C	Sandwich ( Please indicate the detailed food options for this meal)	1		
3	Snacks and Soft Drinks Menu	1		
	(Please indicate the options available)			

PLEASE ATTACH OTHER CREATIVE MENU OPTIONS THAT YOU PROPOSE AND INDICATE THE PRICE FOR EACH

No.		Price	
1			
2			
3			
4			



Please indicate the breakdown of the salary paid to the catering personnel including but not limited to the items indicated below.

ITEM	UNIT	Amount per waiter
BASIC SALARY		
PENSION (insert %)		
MEDICAL (insert %)		
OTHER STATUTORY REQUIRMENTS (insert %)		
PAYE (TAX) (insert %)		
GROSS SALARY		
<b>GRAND TOTAL</b>		

#### **PAYMENT SCHEDULE**

<u>Description</u>	<u>Terms of payment</u>
Payment for conference catering services provided	30 days after invoice receipt by the Bank

## SECTION 8 – PRESIDENTIAL DIRECTIVE CONCERNING THE RULES FOR CORPORATE PROCUREMENT ACTIVITIES OF THE BANK

### ARTICLE 3: ELIGIBILITY

- 3.1 Goods, Services, Real Estate and Works procured by the Bank shall be produced in a Member Country and supplied by Contractors from a Member Country, as described in paragraphs 3.2 and 3.3, unless a waiver of Article 17(1)(d) of the Agreement establishing the Bank is granted by the Board of Directors.
- 3.2 The eligibility of a Bidder or Contractor on the basis of nationality shall be determined in accordance with the following rules:
- a) Natural Person: a Natural Person is eligible if he or she is a national of a Member Country of the Bank. Where a person has more than one nationality, such a person shall be eligible if the nationality indicated in his or her submission is that of a Member Country of the Bank.
- b) Business: a Business is eligible if it satisfies the following criteria:
- It has its registered office or has its principal place of business in a country that is a member of the Bank;
  - Its legal existence is recognized and is in accordance with the laws of a country that is a member of the Bank; and
  - The majority of its capital is held by nationals from a Member Country of the Bank or, if the Business has no capital, more than half of the value of the members contributions to the Business has been contributed by nationals from a Member Country of the Bank.
- 3.3 In order to be eligible:
- a) Goods to be procured must have a value of which more than half is attributable to production or to originating materials and inputs from one or more eligible Member Countries of the Bank;
- b) Works must be performed where more than half of the value of the labour is supplied from one or more eligible Member Country of the Bank, and where the equipment and materials needed for carrying out the Works have a value of which more than half is attributable to production or to originating materials and inputs from one or more Member Countries of the Bank.
- 3.4 A Natural Person or Business shall not normally be eligible at any stage of a competitive procurement process and contract execution if any of the following situations apply and have been declared or should have been declared by the Bidder:
- a) The Natural Person or Business has become bankrupt, is insolvent or, in the case of a Business, is in the process of winding-up; is being administered by an administrator appointed by a competent court of law that has entered into an arrangement with creditors; has



suspended business activities; or is in any analogous situation arising from a similar procedure provided for in the relevant national legislation or regulation;

b) The Natural Person or Business has not fulfilled obligations relating to the payment of social security contributions, pension fund premiums, payment of taxes or similar legal statutory payments under the law of the country in which the Natural Person or Business is established or where the contract is to be performed;

c) The Natural Person or Business has been convicted of a criminal offence relating to the conduct of its business or profession in the last 10 years;

d) The Natural Person or Business has been the subject of a judgment for professional misconduct, fraud, corruption, involvement in a criminal organization or any other illegal activity;

e) The Natural Person or Business has been debarred or cross-debarred by the Bank on the basis of corrupt, fraudulent, collusive, coercive and obstructive practices;

f) The Natural Person or Business has been evaluated as having provided unsatisfactory performance under a previous contract with the Bank within the last 3 years.

3.5 A Natural Person or Business, or any of its affiliates, that has been engaged to provide Consulting Services for the preparation or implementation of an assignment shall be disqualified from subsequently providing Goods, Services, Real Estate or Works (other than a continuation of earlier Consulting Services) for the same assignment.

3.6 In addition to the foregoing paragraphs, Vendors of a particular country or Goods and Work materials manufactured in a particular country may be declared ineligible if:

a) as a matter of law or official regulation, the country where the contract is to be performed prohibits commercial relations with that particular country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the supply of Goods, Services, Real Estate and Works, or

b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the country where the contract is to be performed prohibits any import of Goods from, or payments to, that particular country or Vendor.

## **DEFINITIONS**

Bank means the African Development Bank, the African Development Fund and the Nigerian Trust Fund collectively, or any of them individually, as the case may be.

Bidder means a Vendor that has responded to a solicitation document issued by the Bank.

Business means any incorporated or unincorporated organization recognized by the laws of a Member Country of the Bank that has the capacity of entering into contracts and of offering Goods, Services, Real Estate and Works.





Contractor means a Vendor who has entered into a contract with the Bank for the provision of Goods, Services, Real Estate or Works.

Goods means tangible items, including assets and expendable items that are purchased, hired, leased or rented by the Bank, A 'Good' may include related Services, such as transportation, insurance, installation, commissioning, training and initial maintenance, provided that the value of those Services is less than the value of the Goods acquired.

Natural Person means an individual authorized by the laws of a Member Country of the Bank to offer Goods, Services, Real Estate and Works.

Real Estate, also known as real property, means land, buildings and premises that are purchased, built or leased by the Bank.

Services means all services except consulting services. For the purposes of this Directive "Consulting Services" refers to expert intellectual or advisory services.

Vendor means any Natural Person or Business that is in the business of selling or otherwise providing Goods, Services, Real Estate or Works.

Works means the construction, reconstruction, demolition, outfitting, repair or renovation of premises or related infrastructures. Such contracts may include related Services where the value of those Services does not exceed the value of the Works.



## LIST OF MEMBER COUNTRIES OF THE BANK

REGIONAL COUNTRIES			
1. Algeria	2. Angola	3. Benin	4. Botswana
5. Burkina Faso	6. Burundi	7. Cameroon	8. Cape Verde
9. Central African Rep.	10. Chad	11. Comoros	12. Congo
13. Côte d'Ivoire (HQ)	14. Democratic Rep of Congo	15. Djibouti	16. Egypt
17. Equatorial Guinea	18. Eritrea	19. Ethiopia	20. Gabon
21. Gambia	22. Ghana	23. Guinea	24. Guinea Bissau
25. Kenya	26. Lesotho	27. Liberia	28. Libya
29. Madagascar	30. Malawi	31. Mali	32. Mauritania
33. Mauritius	34. Morocco	35. Mozambique	36. Namibia
37. Niger	38. Nigeria	39. Republic of South Africa	40. Rwanda
41. Sao Tome & Principe	42. Senegal	43. Seychelles	44. Sierra Leone
45. Somalia	46. South Sudan	47. Sudan	48. Swaziland
49. Tanzania	50. Togo	51. Tunisia	52. Uganda
53. Zambia	54. Zimbabwe		
NON REGIONAL COUNTRIES			
1. Argentina	2. Austria	3. Belgium	4. Brazil
5. Canada	6. China	7. Denmark	8. Finland
9. France	10. Germany	11. India	12. Italy
13. Japan	14. Korea	15. Kuwait	16. Luxembourg
17. Netherlands	18. Norway	19. Portugal	20. Saudi Arabia
21. Spain	22. Sweden	23. Switzerland	24. Turkey
25. United Kingdom	26. United States of America		

## PART II – GENERAL AND SPECIFIC CONDITIONS

### AFRICAN DEVELOPMENT BANK CORPORATE PROCUREMENT DIVISION CODE OF CONDUCT FOR THE BANK'S SERVICE PROVIDERS, SUPPLIERS AND CONTRACTORS

The purpose of this Code of Conduct (the "Code") is to outline the key principles of conduct expected from all suppliers, service providers, contractors ("You", "Your") awarded a contract with the Bank ("Us", "We", "Our").

You and us agree to respect the spirit of the code. You are aware that any violation of the Code may be considered as poor performance of your contract that could result in actions being invoked against you, including termination of the contract without notice and/or without compensation at your own risk and expense.

In the performance of your obligations under the contract, you commit to observing the highest ethical and professional standards and maintain the highest standards of integrity and utmost discretion in all matters relating to our staff, business and activities. You should be aware that it is our policy that our suppliers do not offer gift of any value to our staff.

The principles in the Code also apply to your suppliers, subcontractors, employees and any other third party ("They", "Them") with whom you assign any part of the contract. It is your responsibility to ensure that the Code is communicated to them and they comply with the principles and spirit of the Code.

Our expectation

You will:

**1) Act in good faith by:**

- a. Conducting your business in accordance with the highest ethical and professional standards; b. Executing the contracts to the industry customs and practices in which you operate;
- c. Complying fully with the terms and conditions of your contract, during the contract period and after its conclusion;
- d. Refraining from any action that may represent reputational risk to Us, for example, by paying your subcontractors assigned to Our contract on time, by complying with all applicable laws in your country of origin and where the contract is performed;
- e. Not offering any gift of any value to our staff.

**2) Fulfil an advisory and partnership role by:**

- a. Providing expert advice, when required, on implementation and provision of the goods, services and/or works under the contract;

**3) Maintain Confidentiality and Security of Our Information by:**

- a. Taking appropriate steps to safeguard and maintain confidentiality of our confidential information, including maintaining it in confidence and in a secure location and not disclosing



it to third parties (not assigned to the contract) without our prior written consent, during the contract period and after its conclusion;

b. Not using our name and logo for any purpose without our prior written consent.

**4) Take appropriate steps to manage any of conflict of interest by:**

a. Disclosing to us any situation that may appear as a conflict of interest;

b. Disclosing to us any interest that our staff or agents may have in your business or any other economic ties with you;

c. Not offering employment or employ any of our staff directly involved in the procurement process resulting in the contract, during the life of the contract or within one year after its conclusion.

**5) Demonstrate transparency by:**

a. Implementing an open book approach;

b. Providing any information and/or documentation we require, in a timely manner, relating to the contract;

c. Place at Our disposal any accounting or financial information upon request;

d. Fully cooperate and provide assistance in any investigation (including audits or investigation relating to possible corruption practices) relating to the contract that we commission or conduct.

**6) Ensure the probity and integrity of staff working on our contracts by:**

a. Employing staff who meet minimum vetting requirements in relation to criminal convictions, security clearance and educational achievements;

b. Employing staff with regard to honesty, morality and integrity;

c. Employing staff who have the qualification and experience, as specified by us, to undertake the work under the contract;

d. Replacing any staff, as soon as possible, who We deem unsuitable to carry out the services under the contract;

e. Ensuring that your staff, whilst on our premises, are aware of Our Code of Conduct for Our staff and conduct themselves in the same manner as our staff are expected to conduct themselves.

**7) Not partake in corruption and fraudulent practices by:**

a. Not accepting from a legal entity or natural person, any gift, favor or compensation that could influence the impartial performance of your duties under the contracts;

b. Not offering any gift, favor, compensation or any other inducement that could influence the actions of any person or entity, including Us, Our services and staff;

c. Not acting or misrepresenting the facts deliberately or recklessly or attempt to induce us in error in order to gain any form of advantage;

d. Not colluding with two or more persons in order to achieve an improper purpose, to influence improperly the actions of any other person or entity, including Us, Our services and staff;

e. Not obstructing Our investigation into bribery, fraudulent or collusive activities by not destroying, altering or deliberately concealing evidence, and not make false statements to investigators or prosecutors;

f. Not threatening, harassing or intimidating a person with the intention to prevent him or her from sharing information relating to an investigation or willfully obstruct us to exercise our right of review.



**8) Submit to Audit by:**

- a. Permitting us to inspect your accounts and records relating to the performance of the contract and have them audited by auditors appointed by us.

**9) Comply strictly with all relevant laws, in your country of registration and the country where the contract is performed by:**

- a. Complying with all applicable laws and regulations relating to the protection of the environment;
- b. Undertaking initiatives to promote greater environmental responsibility;
- c. Complying with all applicable labour laws and regulations in particular those pertaining to minimum wages and working hours;
- d. Ensuring that you pay taxes and social security contributions as required by applicable laws and regulations;
- e. Complying with all applicable laws and regulations that provide for humane conditions of work, protection of occupational health and safety;
- f. Continuously seeking to improve the workplace conditions of your employees.

**10) Endeavour to improve services and deliver value for money in the contract by:**

- a. Actively seeking to optimize service delivery under the contract through savings and efficient cost management through the life of the contract;
- b. Proactively pursuing continuous improvement of services to reduce waste and improve efficiency across our organization;
- c. Notifying us of any savings and cost management under the contract and your continuous improvement plan;
- d. Supporting Our “Green Bank” initiatives.



**ANNEX 9A– DRAFT CONTRACT**

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**ADB/RFP/EARC/2016/0083**

**FOR**

**CATERING SERVICES**

**BETWEEN**

**THE AFRICAN DEVELOPMENT BANK  
EAST AFRICA REGIONAL RESOURCE CENTER (EARC)**

**AND**

**THE CONTRACTOR**

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This Contract is entered into & between the East African Regional Resource Center of the African Development Bank (hereinafter referred to as the "Bank"), having its offices on the second floor of the Khushee Towers on 10 Longonot Road, P. O. Box: 4861 Code 00200, Nairobi Kenya of the one part and \_\_\_\_\_ (hereinafter referred to as "the Contractor"), having its principal office in .....& whose address is P. O. Box: \_\_\_\_\_ on the second part.

**WHEREAS** the Bank desires to engage a contractor to perform and provide certain Services as set out in this Contract;

**WHEREAS**, the Contractor represents that it has the necessary capacity and knowledge and is prepared to perform and provide such Services;

**NOW, THEREFORE**, the Parties hereto mutually agree as follows:

#### **ARTICLE 1. Definitions**

**1.1** In this Contract the following words and expressions shall have the meanings hereby assigned to them:

- (i) "Contractor" means the legal firm whose proposal has been selected by the Bank and the legal successors in title of such person, but not any assignee of such person.
- (ii) "Contract" means this Contract, including the Terms of Reference (Annex A), the List and Description of the Premises (Annex B) and Names of Key Personnel (Annex C).
- (iii) "Terms of Reference" means a detailed description and concise specification of the Services, including methodology and time frame for their performance, prepared by the Bank.
- (v) "Proposal" means the Contractor's proposal to the Bank for the performance of the Services.
- (vi) "Contract Price" means the amount stated in paragraph 4.01 of the Contract as payable by the Bank to the Contractor for the full and proper performance and provision of the Services in accordance with this Contract.
- (vii) "Cost" means all expenditure properly incurred or to be incurred, including overhead charges and a reasonable allowance for profit.

**1.2** The Parties agree that words and abbreviations, not specifically defined herein above, but which have well known technical or trade meanings, are used in this Contract in accordance with such recognized meanings.

#### **ARTICLE 2. Order of Precedence of Contract Documents**

Annexes A, B and C constitute integral parts of this Contract. In the event of any discrepancy or conflict between or among this main Contract Document, and the Annexes, then the document to prevail shall be given precedence in the following order:



(a) Main Contract Document

- (b) List and description of the premises (Annex A)
- (c) Contractor's Proposal (Annex B)
- (d) Names of key personnel (Annex C)

**ARTICLE 3. Purpose of Contract**

The purpose of this Contract is to provide Catering Services to the country office and residences of international Bank Staff as stated in Annex A.

**ARTICLE 4. Statement of Work**

**4.1** In performing the Services, the Contractor shall conform to the description; criteria, methodology, approach and work plan set forth in his Proposal.

**4.2 Scope of Work**

1. The catering services will be required five days (5) per week, 10 hours per day, for the sites stated in Annex B. The Bank reserves the right to make changes with regard to the work of the Contractor, including but not limited to increase or decrease the number of services, change the hour of replacement of catering, in accordance with its needs. If as a consequence of such modifications, the scope of the services is significantly changed, the Contract price may be equitably adjusted by written agreement of the Parties.
2. The Contractor shall not do any work, provide or perform any services, which may result in an additional charge to the Bank over and above the Total Contract Price referred to in Article 9, without the prior written consent of the Bank.
3. The Contractor serves a culturally diverse population and thus the Contractor shall provide food that is safe, nutritious and culturally appropriate to staff.
4. The Contractor shall be required to provide cafeteria food service in the African Development Bank (AfDB) premises at Khushee Towers, on Longonot Rd in Upper hill. The cafeteria shall serve AfDB bank staff, visitors who have clearance to access the building and freely opt to use these services.
5. The food shall be prepared at an offsite facility that meets all the local regulatory and Banks Health and safety requirements and be transported to be served at the Banks premises in Upper hill. Provisions for food warming and minor pre-service preparations will be provided.
6. The Contractor will provide all the following services:
  - i. Prepare and serve (breakfast items) for sale to staff daily
  - ii. Coffee/tea service as needed during the day
  - iii. Food service for special events (e.g. meetings, conferences)





- iv. Prepare and serve tea/coffee and light snacks to conference participants at different locations (meeting rooms) within World Bank compound as per booker's requests.
  - v. Prepare and serve Lunch
  - vi. Prepare and serve special lunch for conference participants based on the booker's requests.
  - vii. Prepare and serve cocktails and dinners for conference participants based on the booker's requests.
  - viii. Lunch venue set-up as per customer requirements.
  - ix. Meeting room set-up as per customer requirements.
7. The Contractor will provide a variety of food and drink in order to appeal to both local and international staff on the Purchaser's premises.

#### **4.3 General Responsibilities of the Contractor**

- i. Ensure that a manager/supervisor is on site at all times and that on-site Contractor employees are sufficient to maintain efficient operation during business hours, including proper staffing of the tables.
- ii. Ensure that Contractor employees who look ill (e.g. rashes, coughs, etc.) be temporarily excluded from food preparation and serving.
- iii. Ensure that Contractor employees and sub-contractors will be competent and fully trained to perform their work, inclusive of food safety and hygiene, the use of equipment, supplies and materials.
- iv. Ensure Contractor post hand washing signs in strategic areas and that Contractor employees cover their heads during preparation of food and while serving staff.
- v. Ensure Contractor employees and sub-contractors will be duly trained on the security procedures required by the Purchaser.
- vi. Ensure that all Contractor personnel observe and comply with all applicable safety rules associated with their work.
- vii. Ensure that any areas where work is performed by the Contractor are maintained in optimal conditions of cleanliness and presentation at all times clean and remain free of hazards.
- viii. Provide a menu that is extensive in variety and price, which will be reviewed periodically in consultation with World Bank's representative(s).
- ix. Supply and use High quality food supplies and ingredients
- x. Maintain acceptable quality and quantity in respect to the menu served at all service points



- xi. Exercise reasonable creativity and good taste in planning, preparation and service of meals in accordance with customer desires regarding quality, taste appearance nutritional value and variety.
- xii. The contractor shall directly dispose any garbage generated from this exercise. Disposal of the garbage shall be done as per the instructions given by the Purchaser.
- xiii. The Contractor must not operate or install any personal electrical equipment or remove any Purchaser owned equipment from the premises, except for the purpose of repair.
- xiv. Provide their own point of sale equipment that will be able to capture number of covers served.
- xv. Provide a monthly report on volumes served to the World Bank representative Provide a monthly invoice for services and products provided that are payable by World Bank in the required format with supporting documents (order request form and signed bill).

#### **4.4 Work Hours**

The Services shall be performed ten (10) hours per day and five (5) days per week. The Bank should immediately be notified of shift change in case of any.

#### **4.5 Contractor Personnel**

- i. The Contractor shall supply Purchaser on request with up-to-date latest copies of health certificates issued by local government for the premises.
- ii. The Contractor shall be solely responsible for the supervision, attendance, timeliness and work of its personnel.
- iii. The Contractor shall assign an employee as the “site in charge” to supervise and coordinate all work between the Contractor and Purchaser.
- iv. The Contractor shall be solely responsible for the labor relation and contractual obligations with their personnel and sub-contractors, releasing to the purchaser of all responsibility in this sense. Further, the Contractor shall ensure an “arms-length” relationship is maintained between their employees and the purchaser at all times.
- v. Contractor will maintain adequate backup staff of their employees assigned to the Purchaser’s premises to substitute for Contractor Employees in all designated categories during illness, vacation, and temporary leave of more than two (2) continuous days. The backup Contractor Employees will be required to have the same technical, communication, customer service, and problem-solving skills, as primary assigned Contractor Employees. Such substitute employees cannot be viewed as staff of the Purchaser under local labor laws.

- vi. The Contractor shall provide two (2) weeks in advance written notification to the Purchaser's Contract Manager of all proposed permanent staff changes and other key personnel changes.
- vii. The Contractor must report all workplace injuries or accidents to the Purchaser's Contract Manager
- viii. The Contractor must take all precautions to prevent interference or harm to the Purchaser's property, Building, systems and equipment at all times and will be responsible for all costs arising from the lack of such preventative care.
- ix. Contractor personnel and sub-contractors will be competent and fully trained to perform their work. Training shall include appropriate refresher training.
- x. The Contractor shall ensure that all employees assigned to this contract meet the following minimum standards:
  - Be able to effectively understand and carry out rules, orders, and instructions.
  - Possess sound physical, stamina and health to perform duties assigned by the Contractor.
  - Be healthy and free from all communicable diseases.
  - Be at least 18 years of age.
  - Have the required regulatory certificates for food handling
- xi. All Contractor employees assigned to the purchaser's premises shall wear proper clean uniform and have a company ID while on duty. The Contractor shall ensure that their personnel possess a sufficient number of uniforms so as to result in a professional appearance
- xii. To be inconspicuous and discreet as far as possible, and respectful of the work that is being carried out in the Purchaser's Facilities

#### **4.6 Contractor Obligations to their Employees**

- i. The Contractor shall ensure all payments required will be paid on time to their employees and sub-contractors. The Contractor will ensure that payments shall be fully inclusive of salary and all legal labor and social benefits as required under law.
- ii. The Contractor shall effect payment of all costs (including, but not limited to salaries, benefits, allowances, et.) to their employees and sub-contractors, on time, irrespective of payment received from the Purchaser
- iii. The Contractor will ensure safety of their personnel. The Contractor shall provide the necessary life, disability, and health insurance coverage for their personnel, as well as civil responsibility by damages or accidents that may be caused by the Contractor's personnel.
- iv. The Contractor shall be solely responsible for its employees and ensure all applicable labor laws and any legal benefits are provided and fulfilled.

#### **4.7 CONTRACTOR PERSONNEL**

- i. Contractor personnel and sub-contractors will be competent and fully trained to perform their work. Training shall include appropriate refresher training.
- ii. The Contractor shall ensure that all employees assigned to this contract meet the following minimum standards:
  - Be able to effectively understand and carry out rules, orders, and instructions.
  - Possess sound physical, stamina and health to perform duties assigned by the Contractor.
  - Be healthy and free from all communicable diseases.
  - Be at least 18 years of age.
  - Have the required regulatory certificates for food handling
- iii. All Contractor employees assigned to the purchaser's premises shall wear proper clean uniform and have a company ID while on duty. The Contractor shall ensure that their personnel possess a sufficient number of uniforms so as to result in a professional appearance.
- iv. To be inconspicuous and discreet as far as possible, and respectful of the work that is being carried out in the Purchasers Facilities.

#### **ARTICLE 5. Duration of the Contract**

The duration of this Contract is one (1) year, with effect on \_\_\_\_\_. This contract may be extended for one or more period (s) of all or part of one (1) year with the aggregate time period of the original contract plus all combined extensions not to exceed three (3) years.

#### **ARTICLE 6. Contractor's Key Personnel**

**6.1** The Contractor shall assign 3 key personnel to offer the services at the Bank's premises (names of the personnel plus their resume to be provided in Annex C);

**6.2** During the first thirty (30) days of performance, the Contractor shall make no substitutions of key personnel unless the substitution is necessitated by illness, death, or termination of employment. The Contractor shall notify the Bank/EARC immediately of the need for substitution.

**6.3** The Contractor shall provide a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the Bank/EARC. Proposed substitutes should have comparable qualifications to those of the persons being replaced. The Bank will notify the Contractor within fifteen (15) calendar days after receipt of all required information of whether the proposed substitutes are satisfactory.



**ARTICLE 7. Standards of Performance**

**7.1** The Contractor shall perform the Services with all due care, diligence and efficiency, in accordance with the highest standards of professional competence and skill, and shall, in performing the Services, accept, promptly act upon, and comply with, such instructions and directions as may be issued by the Bank from time to time.

**7.2** The Contractor, by signing the Contract, covenants that neither itself nor any of its employees or agents has any public or private interest, direct or indirect, nor shall acquire directly or indirectly any such interest which does nor may conflict in any manner with the performance of the Contractor's obligations under this contract. The Contractor also agrees to excuse or else disqualify itself from any business or other arrangement which conflicts with the Contractor's performance under this Contract.

**7.3** Without limiting the responsibility of the Contractor for the proper conduct of the personnel and the provision of the services, the conduct of the personnel shall be guided by a set of standard written rules as agreed upon between the Bank and the Contractor, and such other special written instructions as may be agreed upon between the Bank and the Contractor from time to time.

**7.4** The Contractor shall provide the proper supervision for each personnel assigned to duty. The specific number of personnel, their principal post, and hours of duty shall be mutually agreed upon between the parties.

**7.5** The Contractor shall comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Services. If the Contractor observes that the Services required under this Contract are no more in accordance with applicable laws, statutes, codes, rules and regulations or with environmental, technical or safety standards, it shall promptly notify the Bank thereof in writing and take the appropriate measures. At the same time, if the Bank discovers that the Contractor does not comply with the laws, the Bank will give notice of this to the Contractor who shall immediately take the appropriate steps.

**ARTICLE 8. Indemnification**

**8.1** Nothing contained in this Contract shall be construed as establishing or creating any relationship between the Bank and the Contractor other than that of independent contractor. Accordingly, the Contractor hereby agrees that the Bank shall accept no liability in contract or in tort or any responsibility for the acts, omissions, errors or negligence of the Contractor, or the Contractors Associates.

**8.2** The Contractor hereby undertakes that it will indemnify and hold harmless the Bank from and against any action and all losses, liabilities, costs, claims, damages and expenses ("Losses") (including, without limitation reasonable attorney's fees) which the Bank may incur in relations to, arising out of, or otherwise in respect of any act, omission, error or negligence of the Contractor or any of the Contractor's Associates including without limitation



all third party claims, and the Contractor will reimburse the Bank for all costs, charges and expenses which the Bank may pay or incur in connection with investigating, disputing or defending against any such action or Losses. The Contractor shall indemnify the Bank against all third-party claims of infringement of patent, trademark, intellectual property or industrial design rights arising from the performance of the Services of the Contractor and any of the Contractor's associates.

**8.3** The provisions set out in the Article shall survive the expiration or termination of the Contract.

**ARTICLE 9. Contract Price and Terms of Payment: \_\_\_\_\_ KES**

**9.1** For the full and proper performance of all of Contractor's obligations under this Contract, the Bank shall pay the Contractor the Total Contract Price of \_\_\_\_\_ KES \_\_\_\_\_ **Kenyan shillings** per year which shall consist of the fixed unit price for each type of service or personnel multiply by the number effectively retained by the Bank.

**9.2** The Total Contract Price shall cover all expenses incurred by the Contractor including, charges for overhead and profit and to the cost of the remuneration and all other compensation of the Contractor's personnel, including insurance premiums and social charges including the cost of transport of the Contractor's personnel in connection with this Contract.

**9.3** The Total Contract Price includes all the taxes, assessments, fees, duties, liens and charges, which have been or will be incurred by the Contractor due to the conclusion or implementation of this Contract.

**ARTICLE 10 Payment for Services**

**10.1** The unit prices set forth in the Contractor's Proposal are fixed and firm and not subject to escalation.

**10.2** The currency of payment shall be the Kenyan Shillings

**10.3** The Bank may withhold any payment to the Contractor or, on account of subsequently discovered evidence, nullify the whole or part of any payment approval theretofore given, to such an extent as may be necessary to protect the Bank from loss under this Contract on account of:

- 1) the Contractor's failure to perform the Services, or to make adequate progress in the performance, except for failure arising out of Force Majeure;
- 2) the Contractor's failure to correct and remedy defective and/or unsatisfactory Service, when such failure has been drawn to its attention by the Bank;
- 3) the Contractor's failure to submit on time the reports required hereunder; or



4) the existence of damage claims against the Contractor presented by the Bank, or of reasonable evidence indicating the probable basis on which damage claims may be presented by the Bank.

5) The withholding by the Bank of any payment shall not affect the Contractor's obligation to continue performance under this Contract. No interest shall accrue on payments eventually withheld by the Bank in application of this paragraph.

**10.4** Each payment shall be made by the Bank on the basis of an invoice submitted by the Contractor in one (1) original and three (3) copies. Each invoice shall contain the Bank contract number as well as detailed banking instructions either requesting a check to be issued to the Contractor or stating – whenever an electronic transfer is required – the name and address of the Contractor's bank, account number.

**ARTICLE 11: Insurance**

The Contractor shall provide and maintain insurance for an appropriate amount against public or third party liabilities for bodily injury or death or property damage arising from any operations or work carried out by the Contractor in order to comply with its obligations under the contract.

**ARTICLE 12: Confidentiality**

**12.1** Each Party acknowledges that all knowledge and information concerning the other Party, that may be acquired in connection with the performance of its obligations under this Contract, including, but not limited to, any information relating to its operations and procedures, are confidential and proprietary information of the other Party and it shall receive such confidential and proprietary information in confidence and shall not disclose or permit disclosure of any such knowledge or information to any person, firm or corporation without the prior written consent of the other Party.

**12.2** Each Party shall take all lawful measures available to it to prevent any other person and/or entity employed by it or within its control from disclosing or using any confidential or proprietary information of the other Party, to which it becomes privy, regardless of whether same was generated pursuant to this Contract. Each Party shall use its best efforts and take all reasonable steps necessary, including the execution of a confidentiality and non-disclosure agreement by its employees, consultants, agents, and subcontractors to ensure that its employees, consultants, agents, and subcontractors fully comply with this paragraph.

**12.3** Each Party shall be liable for any disclosure of confidential or proprietary information in breach of articles 17.1 and 17.2 by its directors, officers, consultants, agents, employees or subcontractors. Each Party acknowledges that any breach or threatened breach of articles 17.1 and 17.2 could cause irreparable injury to the other Party within a short period of time entitling the other Party to preliminary injunctive relief against any such action, which relief shall be in addition to and in no way in limitation of any and all other remedies, to which the other Party may be entitled.

**12.4** The restrictions referred to in article 12.1 and 12.2 shall not apply to the information which:





- 1) presently is in the public domain;
- 2) hereafter becomes part of the public domain without any fault of the

disclosing Party;

3) was in the possession of the disclosing Party at the time of signature of this Contract, as shown by written evidence; and/or is disclosed to the disclosing Party by a third Party at any time after conclusion of this Contract.

#### **ARTICLE 13. Suspension of Contract**

**13.1** The Bank may at any time suspend the performance of the Contract or any part thereof, even for its convenience, by a written notice specifying the part to be suspended, the effective date and the anticipated period of suspension. The Bank shall not be responsible for the cost of the Contractor's further performance of the suspended part after the Contractor has been directed to suspend performance.

**13.2** Suspension of the Contract shall not prejudice or affect the accrued rights or claims and liabilities of either Party to this Contract.

#### **ARTICLE 14. Force Majeure**

**14.1** Neither Party shall be liable for a failure to perform any of its obligations under this Contract, if the Party concerned proves such failure was due to any impediment beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of this Contract or to have avoided or overcome it or its consequences.

**14.2** The term "impediment", as used herein shall include unforeseeable events, not within the control of either Party, such as, in particular, acts of God, laws or regulations, strikes, lock-outs or other industrial disturbances, acts of the public enemy, wars whether declared or not, blockades, embargoes, civil disturbances insurrections, riots., epidemics, landslides, earthquakes, storms, lighting, floods, washouts and explosions.

**14.3** If a Party considers that any such impediment has occurred, which affects performance of its obligations, it shall promptly notify the other Party giving full particulars in writing of such impediment, including its probable duration and its effect on the Party's ability to perform. In the event the delay or failure subject of this clause extends for more than thirty (30) days after the notification, the Party able to perform shall have the right, by giving written notice to the non-performing Party, to terminate this contract.

#### **ARTICLE 15. Termination of Contract**

**15.1** The Bank may terminate this Contract, and at any time, upon giving a notice in writing to the Contractor, after the occurrence of any of the events specified below:

- a) if the Contractor does not remedy a failure in the performance of its obligations under the Contract, within the appropriate time period specified in the notice of failure of performance;
- b) if the Contractor becomes insolvent or bankrupt;
- c) if, as a result of Force Majeure, the Contractor is unable to perform a material portion of the Services for a period of not less than thirty (30) days;
- d) if the Bank, in its sole discretion, decides to terminate the Contract.





**15.2** The Contractor may terminate this Contract, by not less than thirty (30) days' written notice to the Bank, in case of failure by the Bank to perform any of its obligations.

**15.3** The Bank and the Contractor may terminate this Contract by mutual agreement in writing.

**15.4** Payment upon termination

1. Upon termination of this Contract, the Contractor shall : (a) take immediate steps to end the performance of the Services in a prompt and orderly manner, mitigating any losses and keeping further expenditures to a minimum; and (b) promptly return all Bank equipment and, all documents, reports, statistics, data and other information provided, or made available to, or created, obtained, compiled or prepared by, the Contractor in the course of carrying out the Services.
2. If this Contract is terminated under Article 15.1, the Bank shall be liable only for payment, in accordance with payment provisions of this Contract, for the part of the Services actually performed and expenses reasonably incurred prior to the effective date of termination.

#### **ARTICLE 16. General Provisions**

**16.1** The date of entry into force of this Contract is \_\_\_\_\_

**16.2** Any notice given by either of the Parties hereunder to the other party shall be sent in writing, or by facsimile confirmed in writing send the day after. The notices shall include the contract number.

Unless otherwise stipulated in this Contract, instructions, manuals, reports, invoices, notices and documents required to be submitted by the Contractor shall be addressed to:

The Regional Director  
African Development Bank Group  
East African Regional Resource Center  
10 Longonot Road  
Khushee Towers  
P. O. Box: 4861 -00200 Nairobi

Notices to the Contractor shall be addressed to: \_\_\_\_\_

**16.3** The Contractor may not assign, transfer, pledge, subcontract or make other disposition of this Contract or any part thereof or of any of the Contractor's rights, claims or obligations under this Contract, except with the prior written consent of the Purchaser.

#### **ARTICLE 17. Corruption**

**17.1** The Contractor warrants that no employee of the Bank involved in the attribution of this Contract has received or will receive directly or indirectly any kind of benefit or advantage from, or influence in another way by, Contractor or its affiliates for the award of the Contract or its implementation. :



**17.2** Any breach of this statement could result in a termination of the Contract and a prohibition to participate in any Bank's contract whether for the Bank itself or the Bank's funded projects.

**ARTICLE 18. Modification**

No changes, modifications or amendments shall be made to this Contract except as may be mutually agreed upon in writing by both Parties.

**ARTICLE 19. Settlement of disputes**

**19.1** Any dispute, controversy or claim arising out of or in relation to this Contract or the breach, termination or invalidity thereof, that cannot be settled amicably, may be submitted to arbitration by either party, in accordance with the UNCITRAL Arbitration Rules as at present in force.

**19.2** The number of arbitrators shall be three. The appointing authority shall be the International Chamber of Commerce. The place of arbitration shall be Abidjan, Ivory Coast, and the language to be used in the arbitration proceedings shall be English. Either Party shall bear its own cost arising in connection with the arbitration and shall evenly share the cost for the arbitrator(s) and other common arbitration cost.

**19.3** The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute.

**19.4** Nothing in this article or in or relating to this Contract shall be deemed to constitute a waiver of any of the privileges and immunities of the Bank.

**ARTICLE 20. Governing Law**

This Contract shall be governed by and construed in accordance with the laws of England.

**ARTICLE 21. Severability**

The invalidity, unenforceability or illegality of any provision (or part of a provision) of this Contract shall in no way affect the validity, enforceability or legality of the other provisions.

**IN WITNESS WHEREOF**, the duly authorized representatives of the Parties hereto have executed this Contract

**For the:**  
**CONTRACTOR**

**For the:**  
**AFRICAN DEVELOPMENT BANK**

.....

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.....

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Date: .....

Date: .....

Place:.....

Place:.....