

ESTABLISHMENT OF A FRAMEWORK AGREEMENT – INVITATION TO TENDER



FRAMEWORK TITLE: **PROVISION OF CONSULTANCY SERVICES TO CONDUCT DUE DILIGENCE ON SHORTLISTED FIRMS & DELIVERY CAPABILITY ASSESSMENT (DCA) ON IMPLEMENTING PARTNERS**

FRAMEWORK NUMBER: **TMEA/FWA/R&C/2022/01**

TENDER SUBMISSION DEADLINE DATE: 22 MARCH 2022 (10.00 A.M. KENYA TIME)

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INTRODUCTION TO TRADEMARK EAST AFRICA

1.1 About TMEA

1.1.1 TradeMark East Africa (TMEA) is an aid-for-trade organisation that was established in 2010, with the aim of growing prosperity in the region through increased trade. TMEA operates on a not-for-profit basis and is funded by the development partners from: Belgium, Canada, Denmark, European Union, Finland, Ireland, Netherlands, Norway, United Kingdom and United States of America. TMEA works closely with regional inter-governmental organisations, including the African Union (AU), East Africa Community (EAC), Common Market for East and Southern Africa (COMESA), Southern African Development Community, national governments, the private sector, and civil society organisations.

1.1.2 TMEA seeks to increase trade by unlocking economic potential through three strategic objectives:

- Increasing physical access to markets;
- Enhancing trade environment; and
- Improving business competitiveness.

1.1.3 TMEA, with an annual expenditure of approx. US\$80 million, is now the leading aid-for-trade facility in the world. The first phase of TMEA (2010-2018) delivered exceptional results which contributed to substantial gains in East Africa's trade and regional integration in terms of reduced cargo transit times, improved border efficiency, and reduced barriers to trade. About 80% of TMEA's spend is on a range of infrastructure, services, and goods to deliver its objectives. As such TMEA's suppliers are a critical part of our impact and results therefore procurement activity is a core part of TMEA's business. To find out more, please visit the TMEA website at www.trademarka.com.

1.2 Important Information about Framework Agreements

1.2.1 Thank you for your interest in tendering for TMEA. During Strategy 2, procurement processes at TMEA will be efficient, flexible and preserve transparency, permitting TMEA to direct a greater focus on impact and results of projects and programmes in countries.

1.2.2 TMEA is establishing a wide variety of Frameworks to encompass the majority of TMEA's and Partners expenditure on works, services and goods during Strategy 2. A Framework is a group of a defined number of pre-qualified suppliers in a relevant market, that may be established at regional and/or country level and may incorporate 'Lots' as appropriate.

1.2.3 Frameworks, once established, will be in place for three years and will deliver the three objectives of efficiency, flexibility and transparency. They will result in the award of, fewer, larger, higher quality contracts and result in lower transaction/process costs for both TMEA and the successful suppliers.

1.2.4 Competition during the Framework Agreement period will be maintained by holding mini competitions amongst the defined number of suppliers, for each piece of work.

1.3 This Opportunity

1.3.1 TMEA is inviting tenders from interested consultancy firms/consortiums to be considered for appointment to this Framework Agreement for the **provision of consultancy services to conduct due diligence assessments on shortlisted vendors & Delivery Capability Assessment (DCA) on implementing partners** funded by TradeMark East Africa, beginning in **June 2022** under the following LOTs:

- LOT 1: Conduct due diligence assessments for infrastructure/civil works;
- LOT 2: Conduct due diligence assessments for professional and consultancy services;
- LOT 3: Conduct due diligence assessments for IT Equipment and/or Systems; and
- LOT 4: Conduct Delivery Capability Assessments (DCA) on implementing partners.

1.3.2 Eligibility

Only **consultancy firms/consortiums and joint ventures** are eligible to apply for **any LOT** under this framework. Submissions from individual consultants will be disqualified.

1.3.3 Only One Proposal per Bidder

The bidder (including the individual members of any Joint Venture) shall submit only one Proposal per LOT, either in its own name or as part of a Joint Venture in another Proposal. If a bidder, including any Joint Venture member, submits or participates in more than one proposal per LOT, all such proposals shall be disqualified and rejected. This does not, however, preclude the bidder's staff from participating as Key Experts and Non-Key Experts in more than one Proposal per LOT.

1.3.4 Please note that each LOT will have a separate proposal. **Therefore, do not submit one proposal for two or more LOTs.** Non-compliance to this may lead to disqualification.

1.3.5 The approximate estimated total value of this framework business over a period of 3 years is estimated at **United States Dollars one million and three hundred thousand only (USD \$ 1,300,000)**. The breakdown per LOT is as follows:

- LOT 1: United States Dollars Three Hundred Thousand (USD \$ 300,000);
- LOT 2: United States Dollars Three Hundred Thousand (USD \$ 300,000);
- LOT 3: United States Dollars Two Hundred Thousand (USD \$ 300,000); and
- LOT 4: United States Dollars One Hundred Thousand (USD \$ 400,000).

Note: These are current estimates and may be revised upwards or downwards.

1.3.6 At the end of this procurement exercise, only a maximum of **five (5) suppliers per LOT** will be appointed to the Framework Agreement.

1.3.7 The detail and full scope of the Framework Agreement is contained in the Framework Scope of Services in Section 2.0.

1.4 TradeMark East Africa's Partners and Stakeholders

1.4.1 TMEA works in Kenya, Uganda, Tanzania, Rwanda, Burundi, South Sudan, DRC, the Horn of Africa and Djibouti, Malawi, Zambia, and Mozambique. TMEA works closely with regional inter-

governmental organisations, including the African Union (AU), East Africa Community (EAC), Common Market for East and Southern Africa (COMESA), Southern African Development Community, national governments, the private sector, and civil society organisations. Other Partners may be added from time to time.

1.5 Instructions to Tenderers

- 1.5.1 This document is designed to help you submit a tender that is acceptable to TMEA as well as ensuring that all tenders are given equal consideration. It is essential that you provide a complete tender that contains all the information requested in the specific format and in no other format. See the Annexes for the specific format templates.
- 1.5.2 Please read the following general and specific information carefully, before submitting your application, including the Instructions to Tenderers in section 4.0 of this document.

1.6 Submission Deadline for Establishment of Framework

- 1.6.1 You are invited to submit a tender for appointment to a Framework for the **provision of consultancy services to conduct due diligence assessments on shortlisted vendors & Delivery Capability Assessment (DCA) on implementing partners**. TMEA will **ONLY** accept electronic format submissions.
- 1.6.2 Submissions must be emailed to frameworks@trademarkea.com on or before **22 March 2022** by **10.00 am. (Kenya time)**. **TMEA cannot answer any query relating to this tender seven (7) days or less prior to the submission deadline.**
- 1.6.3 All queries quoting the tender title and number should be emailed to frameworks@trademarkea.com.
- 1.6.4 TMEA reserves the right to cancel the entire procurement process without incurring any liability whatsoever.
- 1.6.5 **Late tenders, or tenders in any other format, will not be accepted.**

2.0 Framework Terms of Reference

2.1 Objectives

The main objective of this framework is to conduct pre and post award due diligence exercise on individuals and/or consultancy firms selected following procurement processes undertaken by TMEA and/or its partners. This is aimed at providing reasonable assurance that the key current and emerging risks of on-boarding new suppliers in TMEA have been identified, are effectively and efficiently managed, process efficiencies are identified in addition to providing reasonable assurance on the reliability of containing supplier risks and associated project/programme/department risk management. Other objectives of this assignment include an assessment of the:

- Risks associated with the suppliers being reviewed.; and
- Adequacy of the design and operational effectiveness of control mechanisms put in place to monitor supplier conformance and performance.

2.2 Scope of work

The scope of the assignment is to determine the physical, technical, and financial capabilities of bidders selected by TMEA to implement contracts. This review shall include an assessment of bidders' financial and physical resources available to undertake contracts, including an appraisal of their current workload. In addition, the shortlisted bidding firms will be called down to undertake due diligence procedures including but not limited to:

- Undertaking supplier due diligence in line with TMEA policies and best practice;
- Verifying supplier compliance with TMEA policy and procedure requirements as declared in the bidding documents;
- Establishing the authenticity of statements made in the suppliers' bids regarding previous experience, technical capability, key personnel, financial capability, organisational structures, key policies, relevant applicable licenses, or any other aspect, and take the necessary steps to ensure the timeliness, sufficiency, and accuracy of the disclosure of all material documents, statements and information provided;
- Reviewing the suitability, relevance, and availability of supplier capability to support successful execution of projects without delay.
- Verifying the supplier's statutory status (incorporation, tax compliance status, beneficial owners, board of directors etc.);
- Verifying and authenticating the Power of Attorney and Joint Venture Agreement documents where these are submitted by the supplier;
- Assessing the suppliers track record on past and ongoing engagements as stated in the suppliers bid including obtaining third party confirmations to verify cited supplier experience;
- Conducting field visits, as and when required in a bid to establish the accuracy of the statements contained in the bid documents, physical office location of the supplier, and suppliers' compliance with environmental and social safeguard requirements among other checks;

- Analysing current and emerging risks on suppliers' engagements including money laundering, terrorism financing, details of past or existing fraud, corruption and litigation matters, and an analysis/opinion of the potential impacts of these to the contract to be awarded;
- Checking if the supplier is listed on an exclusion or any debarred parties list (e.g., World Bank debarred suppliers list; national procurement oversight authority debarred suppliers list based on supplier country of origin etc); and
- Checking for any potential conflict of interest or collusive practice by the supplier that might impact on the contract to be awarded.

2.3 Expected deliverables

At the end of each supplier due diligence review, the consultant is expected to produce a detailed report to the TMEA Risk and Compliance Director and Head of Procurement which at a minimum shall detail the findings of the due diligence against all the agreed objectives. The report shall identify key areas that require action and include feedback on all the review's scope detailed above.

TMEA's Risk and Compliance Unit will share the reporting format to be applied in the report. In addition to providing an overall report with specific findings/recommendation, each area of improvement identified shall be rated in accordance with the provided criteria. The report shall also detail the actual and potential risks associated with the due diligence observations.

Note: The successful shortlist of bidders shall be expected to comply with applicable due diligence and international assurance standards when carrying out the various engagements that shall arise. During the engagement, the services (quality and timeliness) of the successful bidders shall periodically be evaluated.

2.4 Expected methodology

During the call-down assignments, the shortlisted bidders shall be requested to propose the approach by which the supplier due diligence will be undertaken. The methodology should aim at reviewing TMEA's existing supplier due diligence practices and recommending measures of implementation and areas of improvements.

Apart from the review of supplier compliance, the methodology should also closely examine various supplier risk management and control mechanisms. Approach should provide insight and access to proven methodologies and tools to achieve a broader integrated risk perspective.

The methodology should be designed in a manner that will lead to the identification of any potential fraud, error, misrepresentation, or collusive practice by the suppliers.

2.5 Relevant experience and qualifications per LOT

LOT 1: Conduct due diligence assessments for infrastructure/civil works

The main objective of this framework LOT is to conduct a pre and post award (due diligence) exercise on firms/consortiums selected by TMEA and/or its partners to implement infrastructure/civil works projects.

2.5.1.1 Relevant experience of the bidding firm

- The bidding firm/consortium **MUST** have a presence (registered office) in any of the Eastern Africa countries, specifically, Kenya, Uganda, Tanzania, Rwanda, Burundi and Ethiopia. Firms having no registered offices in any of these countries shall not be considered. Bidding firms are required to submit copies of certificates of registration and outline countries of operation;
- The bidding firm/consortium **MUST** provide at least four (4) examples of supplier due diligence for infrastructure/civil works projects undertaken by the firm, within the past five (5) years for local, regional, or international projects;
- The bidding firm/consortium should demonstrate knowledge and technical expertise in evaluating institutional governance, financial management, legal protection, risk management, project management as well as familiarity with conducting supplier due diligence;
- Profile of the bidding firm/consortium to include the firm's background and services provided; and
- Must be a registered entity within any of the countries of operation. Joint venture/consortium bids will require the primary partner to explicitly state the nature of partnerships/ relationship. The lead party must be registered in one of the mentioned countries of operation.

2.5.1.2 Relevant qualifications and experience of proposed key personnel

Bidding firms/consortiums **MUST** submit detailed CVs not exceeding 5 pages, for each personnel with the requisite skills and experience. CVs should contain only those references which are most relevant to the assignment. Copies of academic certificates and certificates of membership of relevant professional bodies **must** be submitted alongside the CVs. Failure to do so, no scores will be awarded.

The bidding firm's proposed team should be multi-disciplinary and will have a well-balanced set of skills and experience including but not limited to internal control systems, data analytics, enterprise risk management, monitoring and evaluation, and forensic investigation. The proposed personnel shall be involved in undertaking the actual execution of the engagement. Staff replacement after contracting must be with prior approval from TMEA.

The key personnel required for this assignment include;

- **Lead Consultant/Project Lead** with a bachelor's degree in Law, Accounting or Commerce and at least eight (8) years' experience in providing project audit and or supplier due diligence services in infrastructure/civil works projects. The lead consultant must be a senior technical expert who has experience in leading project audit and/or supplier due diligence assignments in infrastructure/civil works projects. Should be a member of a relevant professional body;
- **Civil/Mechanical Engineer** with a bachelor's degree in Civil or Mechanical Engineering and at least six (6) years' experience infrastructure/civil works and conducting due diligence exercises for infrastructure/civil works projects. Should be duly registered as an Engineer and as a member of the Engineers board or any other relevant professional body;
- **Procurement Specialist** with a bachelor's degree in Procurement, Supply Chain Management, Commerce or Business Management and at least six (6) years hands on procurement experience and conducting due diligence exercises for infrastructure/civil works projects. Should be registered as a practitioner and member of CIPS or equivalent;
- **Social and Environmental Expert** with a bachelor's degree in Sociology, Social Sciences, Environmental Science or Environmental Management. At least six (6) years' experience in the Environmental and Social review of infrastructure/civil works projects. He/she should be knowledgeable on international environmental and social management policies and procedures. Should be a member of a relevant professional body such as National Association of Environmental Professionals.
- **Auditor** with a bachelor's degree in Accounting or Finance and at least four (4) years' experience in conducting project audit/supplier due diligence exercises in infrastructure/civil works projects. Should be a member of either/ACCA, ISACA, IIA professional body or equivalent with ACCA, CIA, CISA certification or equivalent.

The proposed personnel shall be involved in undertaking the actual execution of the engagement. Staff replacement after contracting must be with prior approval negotiation and agreement from TMEA.

LOT 2: Conduct due diligence assessments for professional and consultancy services

The main objective of this framework LOT is to conduct a pre and post tender award (due diligence) exercise on individuals and/or consultancy firms selected by TMEA and/or its partners to implement professional and consultancy services assignments.

2.5.2.1 Required experience of the bidding firm

- The bidding firm/consortium **MUST** have a presence (registered office) in any of the Eastern Africa countries, specifically, Kenya, Uganda, Tanzania, Rwanda, Burundi and Ethiopia. Firms having no registered offices in any of these countries shall not be considered. Bidding firms are required to submit copies of certificates of registration and outline countries of operation;

- The bidding firm/consortium **MUST** provide at least four (4) examples of supplier due diligence for professional and consultancy services programmes undertaken by the firm, within the past five (5) years for local, regional, or international projects;
- The bidding firm/consortium should demonstrate knowledge and technical expertise in evaluating institutional governance, financial management, legal protection, risk management, project management as well as familiarity with conducting supplier due diligence for professional and consultancy service;
- Profile of the bidding firm/consortium to include the firm's background and services provided; and,
- Must be a registered entity within any of the mentioned countries of operation. Joint bids will require the primary partner to explicitly state the nature of partnerships/relationship. The lead party must be registered in one of the mentioned countries of operation.

2.5.2.2 Relevant qualifications and experience of proposed key personnel

Bidding firms/consortiums **MUST** submit detailed CVs not exceeding 5 pages, for each personnel with the requisite skills and experience. Failure, to do so, marks will not be awarded. CVs should contain only those references which are most relevant to the assignment. Copies of academic certificates and certificates of membership of relevant professional bodies **must** be submitted alongside the CVs. Failure to do so will lead to no award of marks.

The bidding firm's proposed technical team should be multi-disciplinary and have a well-balanced set of skills including but not limited to internal control systems, data analytics, enterprise risk management, monitoring and evaluation, and forensic investigation.

The key personnel required for this assignment include:

- **Lead Consultant/Project Lead** with a bachelor's degree in Law, Accounting or Commerce, and at least eight (8) years' experience in providing project audit and supplier due diligence services for professional and consultancy services. The lead consultant must be a senior technical expert who has an in-depth knowledge and extensive demonstrable experience in project audit. Should be a member of a relevant professional body;
- **Procurement Specialist** with a bachelor's degree in Procurement, Supply Chain Management, Commerce or Business Management and at least six (6) years' hands on procurement experience and conducting due diligence exercises in professional and consultancy services. Should be registered as a practitioner and member of CIPS or equivalent; and,
- **Auditors (2 people required)** each with a bachelor's degree in Accounting or Finance and at least four (4) years' experience in conducting project audit/supplier due diligence exercises. Should be a member of either CPA, ACCA, ISACA, IIA professional body or equivalent with a CPA, ACCA, CIA and CISA certification or equivalent.

The proposed personnel shall be involved in undertaking the actual execution of the engagement. Staff replacement after contracting must be with prior approval from TMEA.

LOT 3: Conduct due diligence assessments for IT Equipment and/or Systems

The main objective of the framework LOT is to conduct post qualification (due diligence) exercise on firms selected by TMEA to supply IT equipment, implement IT systems, and other capital-intensive equipment.

2.5.3.1 Required experience of the bidding firm

- The bidding firm/consortium **MUST** have a presence (registered office) in any of the Eastern Africa countries, specifically, Kenya, Uganda, Tanzania, Rwanda, Burundi and Ethiopia. Firms having no registered offices in any of these countries shall not be considered. Bidding firms are required to submit copies of certificate of registration and outline countries of operation;
- The bidding firm/consortium **MUST** provide at least four (4) examples of supplier due diligence for programmes undertaken by the firm, within the past five (5) years in IT Equipment/ Systems for local, regional or international projects;
- The bidding firm/consortium should demonstrate knowledge and technical expertise in evaluating institutional governance, financial management, legal protection, risk management, project management as well as familiarity with conducting supplier due diligence for projects IT Equipment/ Systems;
- A profile of the bidding firm/consortium to include the firm's background and services provided; and,
- Must be a registered entity within any of the mentioned countries of operation. Joint bids will require the primary partner to explicitly state the nature of partnerships/ relationship. The lead party must be registered in one of the mentioned countries of operation.

2.5.3.2 Relevant qualifications and experience of proposed key personnel

Bidding firms/consortiums **MUST** submit detailed CVs not exceeding 5 pages, for each personnel with the requisite skills and experience. Failure, to do so, marks will not be awarded. CVs should contain only those references which are most relevant to the assignment. Copies of academic certificates and certificates of membership of relevant professional bodies **must** be submitted alongside the CVs. Failure to do so will lead to no award of marks.

The bidding firm's proposed technical team should be multi-disciplinary and have a well-balanced set of skills including but not limited to internal control systems, data analytics, enterprise risk management, monitoring and evaluation, and forensic investigation.

The key personnel required for this assignment include:

- **Lead Consultant/Project Lead** with a bachelor's degree in Law, Accounting or Commerce, and at least eight (8) years' experience in providing project audit and supplier due diligence services of IT Equipment and/or Systems. The lead consultant

- must be a senior technical expert who has an in-depth knowledge and extensive demonstrable experience in project audit. Should be a member of a professional body;
- **Procurement Specialist** with a bachelor's degree in Procurement, Supply Chain Management, Commerce or Business Management and at least six (6) years hands on procurement experience and conducting due diligence exercises of IT Equipment and/or Systems. Should be registered as a practitioner and member of CIPS or equivalent;
 - **ICT Expert** with a bachelor's degree in Computer Science or ICT and at least six (6) years' experience in ICT and in providing ICT project audit and supplier due diligence services. Should be a member of a relevant professional body; and,
 - **Auditor** with a bachelor's degree in Accounting or Finance and at least four (4) years' experience in conducting project audit/supplier due diligence exercises of IT Equipment and/or Systems. Should be a member of either CPA, ACCA, ISACA or IIA professional body or equivalent with ACCA, CIA, CISA certification or equivalent.

The proposed personnel shall be involved in undertaking the actual execution of the engagement. Staff replacement after contracting must be with approval from TMEA.

LOT 4: Conduct Delivery Capability Assessments (DCA) on implementing partners

The main objective of the assignment under this LOT is to conduct Delivery Capability Assessment (DCA) on implementing partners to be awarded grants by TMEA. In delivering its programme, TMEA awards grants and financial aid to partners. However, prior to providing funding, it is imperative that a qualitative assessment of key financial and administrative policies, procedures, and practices is carried out to ensure that TMEA manages its fiduciary risk effectively. It is also important that audits are undertaken during the life of each grant and the end of each grant to ensure that resources have been used properly and fully in compliance with the grant agreement with TMEA.

TMEA is seeking bidding firms/consortiums to conduct all Delivery Capability Assessments (DCA), Expenditure Verifications (EV), and Project Close-out Audits of grants and financial aid awards. These assessments will be carried out in Kenya, Rwanda, Tanzania and Uganda. Burundi, DRC, Ethiopia, Somaliland, Malawi, South Sudan and future countries of operation in Africa as and when need arises.

The recipients of TMEA funds include:

- Civil Society Organizations (CSOs);
- Private Sector Organizations (PSOs);
- International non-governmental organizations;
- Government Ministries, Departments, and Agencies; and
- For-profit organizations.

There are four types of audits that are currently carried out on the recipients of TMEA funds:

- i. **Delivery Capability Assessments (DCA):** This is assessment of a potential recipient (whether awarded competitively or non-competitively). Must be completed before any agreement with the recipient can be concluded.
- ii. **Expenditure Verification (EV):** This audit will be undertaken for each grant/ Financial Aid at least every six months, or annually where a recipient has achieved the top score in the most recent DCA.
- iii. **Project Close-out Audits:** Project Close-out Audits are carried out at the end of each grant/Financial Aid.
- iv. **Other ad hoc audits and investigations:** TMEA may request the service provider to undertake other ad hoc audits and investigations of recipients of grants and financial aid, as well as other partners or service providers.

During the call-down assignments, the bidding firm/consortium will be required to propose the methodology to be used for each type of audit and assessment. Expected deliverables during the call-down assignments will be:

- A draft filled in methodology tool to be used for each assessment;
- A draft audit report to the recipient of TMEA funds, with a copy sent to TMEA, setting out the audit findings within three weeks after completion of audit fieldwork; and
- A final report to the recipient of TMEA funds and to TMEA including management comments, action points, and proposed timelines within four weeks after commencement of audit.

Required experience of the bidding firm

Have a presence (registered office) in any of the Eastern Africa countries, specifically, Kenya, Uganda, Tanzania, Rwanda, Burundi and Ethiopia. Firms having no registered offices in any of these countries shall not be considered. Bidding firms/consortiums **must** submit copies of certificate of registration and outline countries of operation;

The bidding firm/consortium should demonstrate knowledge and technical expertise in evaluating institutional governance, financial management, legal protection, risk management, project management as well as familiarity with conducting delivery capability assessments for donor funded projects;

A profile of the bidding firm/consortium to include the firm's background and services provided;

Must be a registered entity within any of the mentioned countries of operation. Joint bids will require the primary partner to explicitly state the nature of partnerships/ relationship. The lead party must be registered in one of the mentioned countries of operation;

Demonstrate the firm's previous experience in conducting financial audits within each country of operation i.e., Kenya, Rwanda, Tanzania, and Uganda.

Demonstrate the bidding firm/consortium's specific experience in undertaking assessments on either Private Sector Organisations (PSOs) and Civil Society Organisations (CSOs) and/ or governments agencies, departments and ministries in Kenya, Rwanda, Tanzania, Uganda and Ethiopia (a minimum of 1 assignment per country) in the last five (5) years, in any of the following categories:

- Due diligence reviews of potential recipients;
- Assessments during the life cycle of the project; and
- Close out audits.

Provide evidence of registration with a professional body to carry out audits in each country where the service provider and/or its affiliate is registered; and

Demonstrate capacity and capability to undertake the various audits (sometimes concurrently) on recipients located in Kenya, Tanzania, Uganda, and Rwanda. Burundi, DRC, Ethiopia, Malawi, Somaliland and South Sudan as and when the need arises.

Relevant qualifications and experience of proposed key personnel

The bidder's team should demonstrate experience of carrying out delivery capability assessment of local, regional, or international organisations. Bidding firms/consortiums **MUST** submit detailed CVs not exceeding 5 pages, for each personnel with the requisite skills. CVs should contain only those references which are most relevant to the assignment. Copies of academic certificates and certificates of membership of relevant professional bodies **must** be submitted alongside the CVs. Failure to do so will lead to marks being awarded.

The bidding firm/consortium's team proposed will be multi-disciplinary and will have a well-balanced set of skills and experience including but not limited to internal control systems, data analytics, enterprise risk management, monitoring and evaluation, and forensic investigation.

The key personnel required for this assignment include:

Lead Consultant/Project Lead with bachelor's degree in Law, Accounting or Commerce and at least eight (8) years' experience in providing financial audits, due diligence assessments for Grants and Financial Aid. The lead consultant must be a senior technical expert who has experience in leading grantee/funding recipient's audit. Should be a member of either CPA, ACCA, ISACA or IIA professional body or equivalent. Should demonstrate experience in leading multidisciplinary audit teams and have a current CPA, ACCA, CIA, CISA certification or equivalent; and

Auditors (4 in number) each with a bachelor's degree in Accounting or Finance and at least four (4) years' experience in conducting financial audits and Grants or Financial Aid audits. Should be a member of either CPA, ACCA, ISACA or IIA professional body or equivalent with a CPA, ACCA, CIA, CISA certification or equivalent.

The proposed personnel shall be involved in undertaking the actual execution of the engagement. Staff replacement after contracting must be with prior approval, negotiation and agreement with TMEA.

3.0 EVALUATION PROCESS AND CRITERIA

- 3.0.1 This section sets out how TMEA will evaluate your tender and explains the evaluation **selection** criteria that will apply at this **establishment of the Framework** and also **example of** evaluation **award** criteria that will apply to the call-off / mini - competition stage that will follow during the three-year life of the Framework.
- 3.0.2 Once the Framework is established, TMEA will periodically require pieces of work throughout Strategy 2. At each time, TMEA will undertake a mini competition to invite from all Framework suppliers a specific technical and financial proposals related to that assignment. Please note, that the final specific award criteria that will apply at the mini-competition/call-off stage, including the specific TORs will be **communicated at the time**. Consequently, the specific technical proposals for the relevant piece of work and the corresponding relevant price will also be sought **at that time**.
- 3.0.3 At the conclusion of this evaluation process 5 successful applicants will be (where possible) appointed to the Framework or where relevant under each LOT.

3.1 ESTABLISHING THE FRAMEWORK STAGE

- 3.2.1 The Evaluation process is made up of the stages below:

Tender Evaluation	Shortlisting	Supplier Presentation	Demonstration	Site visit to reference site	Competitive Negotiation
Yes	Yes	No	No	No	No

- 3.2.2 The evaluation process will be on compliant and non-compliant basis. Price is not evaluated at this stage. All tenders will be evaluated by an evaluation panel using the evaluation criteria in the table below.
- 3.2.3 All tenders received will first be subject to a compliance check of Part A preliminary requirements, which is based on a **Pass/Fail method**. Tenderers are required to be compliant in Part A (Table 1 below) to progress to the evaluation of Part B (Table 2 below).
- 3.2.4 Part B is an evaluation of technical capability and will be undertaken in accordance with table B below. For Part B, prospective firms/ consortiums and individual consultant must be fully compliant with the specified criteria per LOT to be shortlisted.
- 3.2.5 At the end of the evaluation process, only a defined number of suppliers, where it is possible, who comply with the specified selection criteria and achieve the highest score above the minimum pass mark shall be appointed to the framework agreement, or where relevant, the Lots, until the defined number of places on the Framework or Lots are filled at which point no more suppliers will be appointed irrespective of whether they have passed the minimum pass-mark.

- 3.2.6 TMEA reserves the right to hold a supplier presentation stage, if deemed necessary.
- 3.2.7 Tenders who are not compliant with Part A and B will be deemed to have failed and will not be appointed onto the Framework Agreement.
- 3.2.8 The proposal should be submitted as two secure PDF documents, one containing the Part A response and one containing the Part B response.

Table 1: Part A - Preliminary Requirements (Applicable to All LOTs)

A. Preliminary Requirements		Compliant/Non-compliant
a.	Audited books of account – for 2018,2019 and 2020 (<i>applicable to bidding firms and all consortium parties</i>)	Compliant/Non-compliant
b.	Copy of Certificate of Registration/Incorporation demonstrating the bidding firm/lead partner’s registration in either Kenya, Uganda, Tanzania, Rwanda, Burundi, or Ethiopia.	Compliant/Non-compliant
c.	Valid Tax Compliance Certificate from the relevant Revenue Authority or equivalent as at time of submission (<i>applicable to bidding firms and all consortium parties</i>)	Compliant/Non-compliant
d.	Signed letter of intent or joint venture agreement (<i>applicable to consortiums/joint ventures</i>)	Compliant/Non-compliant
e.	Signed Power of Attorney (<i>applicable to consortiums/joint ventures</i>)	Compliant/Non-compliant
f.	Signed Code of Ethics	Compliant/Non-compliant
g.	Signed Conflict of Interest Form	Compliant/Non-compliant
h.	Signed Confidentiality Form	Compliant/Non-compliant
i.	Signed Intellectual Property (IP) Form	Compliant/Non-compliant
j.	Signed Anti-Terrorism Policy	Compliant/Non-compliant
k.	Signed Organised Crime Policy	Compliant/Non-compliant
l.	Supplier Environmental and Social Standards Policy	Compliant/Non-compliant

TABLE 2: PART B - TECHNICAL REQUIREMENTS

LOT 1: Conduct due diligence assessments for infrastructure/civil works

Evaluation Criteria		Max Scores
A. Specific experience of the firm (40 marks)		
1.	Demonstration of having conducted four (4) supplier due diligence assignments of infrastructure/civil works projects undertaken within the past five (5) years (7 points for each assignment)	28
2.	Relevant references of at least four (4) infrastructure/civil works projects carried out in the past five (5) years (3 points for each reference). These references should be for the assignments submitted in A1 above. References of similar work MUST be provided in form of confirmation of experience letters, certificates of completion, reference letters etc. Bidders should also provide the clients' contact addresses including telephone, email, contact person and the services relevant to those required in this bid recently provided by the tendering entity to them. TMEA should be able to contact the organizations listed.	12
B. Proposed key personnel experience and qualifications (60 marks)		
1.	Lead Consultant/Project Lead <ul style="list-style-type: none"> Bachelor's degree in Law, Accounting or Commerce from an accredited University (4 points) Demonstration of membership of a relevant professional body (2 points) Demonstration of at least eight (8) years' experience in providing project audit and supplier due diligence services in Infrastructure/Civil Works (10 points) 	16
2.	Other Consultants (as outlined in the Terms of Reference) (11 points for each personnel) <ul style="list-style-type: none"> Bachelor's degree from an accredited university as outlined in the Terms of Reference (4 points) Demonstration of membership of a relevant professional body (1 point) Demonstration of the required years' experience in the relevant area as outlined in the Terms of Reference (6 points) <p>Please include a CV, not exceeding 5 pages, for each personnel with the requisite skills and experience. CVs should contain only those references which are most relevant to the assignment. Copies of academic certificates and certificates of membership of relevant professional bodies should be submitted alongside the CVs.</p>	44
Total Score		100

LOT 2: Conduct due diligence assessments for professional and consultancy services

Evaluation Criteria		Max Scores
A. Specific experience of the firm (40 marks)		
1.	Demonstration of having conducted four (4) supplier due diligence assignments in Professional and Consultancy Services undertaken within the past five (5) years (7 points for each assignment)	28
2.	Relevant references of at least four (4) supplier due diligence assignments carried out in the past five (5) years in Professional and Consultancy Services (3 points for each reference). These references should be for the assignments submitted in A1 above. References of similar work MUST be provided in form of confirmation of experience letters, certificates of completion, reference letters etc. Bidders should also provide the clients' contact addresses including telephone, email, contact person and the services relevant to those required in this bid recently provided by the tendering entity to them. TMEA should be able to contact the organizations listed.	12
B. Proposed key personnel experience and qualifications (60 marks)		
1.	Lead Consultant/Project Lead <ul style="list-style-type: none"> Bachelor's degree in Law, Accounting or Commerce from an accredited University (5 points). Demonstration of membership of a relevant professional body (3 points). Demonstration of at least eight (8) years' experience in providing project audit and supplier due diligence services in Professional and Consultancy Services (10 points). 	18
2.	Other Consultants (as outlined in the Terms of Reference) (14 points for each personnel) <ul style="list-style-type: none"> Bachelor's degree from an accredited university as outlined in the Terms of Reference (4 points) Demonstration of membership of a relevant professional body (2 points) Demonstration of the required years' experience in the relevant area as outlined in the Terms of Reference (8 points) <p>Please include a CV, not exceeding 5 pages, for each personnel with the requisite skills and experience. CVs should contain only those references which are most relevant to the assignment. Copies of academic certificates and certificates of membership of relevant professional bodies should be submitted alongside the CVs.</p>	42
Total Score		100

LOT 3: CONDUCT DUE DILIGENCE ASSESSMENTS FOR IT EQUIPMENT AND/OR SYSTEMS

Evaluation Criteria		Max Scores
A. Specific experience of the firm (40 marks)		
1.	Demonstration of having conducted four (4) supplier due diligence assignments of ICT equipment and/or systems projects undertaken within the past five (5) years (7 points for each assignment)	28
2.	Relevant references of at least four (4) assignments carried out in the past five (5) years in ICT equipment and/or systems projects (3 points for each reference). These references should be for the assignments submitted in A1 above. References of similar work MUST be provided in form of confirmation of experience letters, certificates of completion, reference letters etc. Bidders should also provide the clients' contact addresses including telephone, email, contact person and the services relevant to those required in this bid recently provided by the tendering entity to them. TMEA should be able to contact the organizations listed.	12
B. Proposed key personnel experience and qualifications (60 marks)		
1	Lead Consultant/Project Lead <ul style="list-style-type: none"> • Bachelor's degree in Law, Accounting or Commerce from an accredited University (5 points) • Demonstration of membership of a relevant professional body (3 points) • Demonstration of at least eight (8) years' experience in providing project audit and supplier due diligence services in equipment and/or systems (10 points) 	18
2	Other Consultants (as outlined in the Terms of Reference) (14 points for each personnel) <ul style="list-style-type: none"> • Bachelor's degree from an accredited university as outlined in the Terms of Reference (4 points) • Demonstration of membership of a relevant professional body (2 points) • Demonstration of the required years' experience in the relevant area as outlined in the Terms of Reference (8 points) <p>Please include a CV, not exceeding 5 pages, for each personnel with the requisite skills and experience. CVs should contain only those references which are most relevant to the assignment. Copies of academic certificates and certificates of membership of relevant professional bodies should be submitted alongside the CVs.</p>	42
Total Score		100

LOT 4: CONDUCT DELIVERY CAPABILITY ASSESSMENTS (DCA) ON IMPLEMENTING PARTNERS

Evaluation Criteria		Max Scores
A. Specific experience of the firm (40 marks)		
1.	Demonstrate the firm's specific experience in undertaking Delivery Capability Assessments (DCAs) on either PSOs/CSOs and/ or governments agencies, departments and ministries in Kenya, Rwanda, Tanzania and Uganda (a minimum of 1 assignment per country) in the last five (5) years in any of the following categories: <ul style="list-style-type: none"> • Due diligence reviews of potential recipients. • Assessments during the life cycle of the project; and • Close out audits. (5 points for each assignment, one (1) in each country)	20
2.	Relevant references of at least four (4) Delivery Capability Assessments (DCAs) assignments carried out in the past five (5) years on implementing partners (2.5 points for each reference) . These references should be for the assignments submitted in A1 above. References of similar work MUST be provided in form of confirmation of experience letters, certificates of completion, reference letters etc. Bidders should also provide the clients' contact addresses including telephone, email, contact person and the services relevant to those required in this bid recently provided by the tendering entity to them. TMEA should be able to contact the organizations listed.	10
3.	Demonstrable capacity and capability to undertake the various audits (sometimes concurrently) on recipients located in Kenya, Tanzania, Uganda, and Rwanda. Burundi, DRC, Ethiopia, Malawi, Somaliland, and South Sudan as and when the need arises. (10 points)	10
B. Proposed key personnel experience and qualifications (60 marks)		
1.	Lead Consultant/Project Lead <ul style="list-style-type: none"> • Bachelor's degree in Law, Accounting or Commerce from an accredited University (4 points) • Demonstration of membership of a relevant professional body (2 points) • CPA/ACCA/CIA/CISA certification or equivalent (2 points) • Demonstration of at least eight (8) years' experience in providing project audit and financial audits, due diligence services for Grants and Financial Aid (8 points) 	16
2.	Auditors (11 points for each personnel) <ul style="list-style-type: none"> • Bachelor's degree from an accredited university as outlined in the Terms of Reference (3 points) 	44

Evaluation Criteria	Max Scores
<ul style="list-style-type: none"> • Demonstration of membership of a relevant professional body (1 point) • CPA/ACCA/CIA/CISA certification or equivalent (2 points) • Demonstrate at least four (4) years' experience in conducting financial audits and Grants or Financial Aid audits (5 points) <p>Please include a CV, not exceeding 5 pages, for each personnel with the requisite skills and experience. CVs should contain only those references which are most relevant to the assignment. Copies of academic certificates and certificates of membership of relevant professional bodies should be submitted alongside the CVs.</p>	
Total Score	100

3.2 Calling Off from the Framework Agreement and mini competitions

PLEASE NOTE: The information below is NOT REQUIRED at this time.

- 3.2.1 Each time a piece of work is required a, mini-competitions/call-off process will be conducted over a period of several days to several weeks or months depending upon the complexity of the specific requirement at the time.
- 3.2.2 Once tenders are received, each will be evaluated in accordance with the detailed evaluation **award** criteria published at the time.
- 3.2.3 At the call-off / mini-competition stage, all tenders may be evaluated using the **example** evaluation criteria below. Each criterion will be weighted and published at the time.
- Specific methodology;
 - Specific implementation plan (timelines and milestones);
 - Specific CVs;
 - Financial proposal; and
 - Any other criteria (TMEA reserves the right to change the criteria when required).
- 3.2.4 The contract will be formed at the call-off stage. A draft contract is shown in Annex 8.
- 3.2.5 Where the value of the requirement is below **\$30,000**, TMEA reserves the right to make a direct award to a selected supplier from the Framework, without a mini competition.

4.0 Instructions to Tenderers and Bidding Data Sheet

A – General Instructions	
1. Introduction	<p>TMEA issues these Instructions to Tenderers for the requirements explained in these Procurement Documents.</p> <p>The name, identification, important contractual information and indicative budget is contained in the Procurement Documents and the Bidding Data Sheet.</p> <p>The name and address of the Financier, tender method, selection process and applicable guidelines are shown in the Bidding Data Sheet.</p> <p>The Framework will be established by inviting submissions for prospective bidders to demonstrate general technical capability. Once established and in due course, specific Technical and Financial proposals shall be invited for pieces of work via a call-off/mini-competition process, in accordance with the procurement documents. Further Procurement Documents will be issued at that time.</p>
2. Definitions	<ul style="list-style-type: none"> (a) “Affiliate(s)” means an individual or an entity that directly or indirectly controls, is controlled by, or is under common control with the Bidder. (b) “Allocated Funds” means Funds set aside in TMEA’s budget specifically towards payment directly to the service provider/s against service/s or goods or works to the beneficiary or client. (c) “Applicable Guidelines” means the policies of TradeMark East Africa as contained in TMEA’s Regulations and Procurement Policy Manual that shall govern the selection and Contract award process. (d) “Applicable Law” means the laws and any other instruments having the force of law in the beneficiary country, or in such other country as may be specified in the Bidding Data Sheet, as they may be issued and in force from time to time. (e) “Authorised Representatives” are individuals nominated by the Bidder to represent them during the procurement process. (f) “Beneficiary” means the implementing agency or agencies that will receive the benefit of the object of the contract. Beneficiary may also mean TMEA itself. (g) “Bidding Data Sheet” means an integral part of the instructions to tenderers and is used to reflect specific conditions to supplement or amend the provisions of the ITT. (h) “Bidder” means a legally established professional company or an entity that may provide or provides the Services to the beneficiary under the Contract and who is participating in the procurement process.

	<ul style="list-style-type: none"> (i) “Bid” means the Technical and Financial Proposal of the Bidder (j) “Contract” means a legally binding written agreement signed between the financier or the beneficiary and the Bidder, including all relevant appendices. (k) “Competitive Negotiation” means the act of negotiating with all shortlisted suppliers, prior to award of contract, in accordance with TMEA’s Regulations and Procurement Policy Manual. (l) “Conflict of Interest” means the conflict between professional obligations and private gain. (m) “Controlling Partner” means a separate organisation independent from the Bidder that exerts control over the activity of the Bidder in the form of management direction, capital or voting rights. (n) “Call-off” thereof means to contract, following the mini-competition, for works, services and/or goods throughout the Framework Agreement duration. (o) “Day” means a calendar day. (p) “Establishment of a Framework Agreement” means to undertake an open procurement process to appoint the defined number of suppliers onto the Framework. (q) “Experts” means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Bidder, Sub-Bidder or Joint Venture member(s). (r) “Framework Agreement” means a list of a defined number of pre-qualified suppliers in a relevant market, that may be established at regional and/or country level, for a specified period and may incorporate ‘Lots’ as appropriate. (s) “Financier” means TradeMark East Africa. (t) “In writing” means communicated in written form (e.g., by ordinary mail or e-mail) with proof of receipt; (u) “Funding Agreement” means the terms and conditions of the agreement between the Beneficiary and the TMEA. (v) “Government” means the government of the Beneficiary’s country. (w) “Joint Venture (JV)” means an association with or without a legal personality distinct from that of its members, of more than one Bidder where one member has the authority to conduct all business for and on behalf of all the members of the JV, and where the members of the JV are jointly and severally liable to the beneficiary for the performance of the Contract. (x) “Key Expert(s)” means an individual professional whose skills, qualifications, knowledge, and experience are critical to the performance of the Services under the Contract and whose CV is considered in the technical evaluation of the Bidder’s proposal.
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	<p>(y) “LOI” means the Letter of Invitation being sent by TMEA to prospective Bidders.</p> <p>(z) “Mini-competition” means the action of holding a competitive process amongst the suppliers appointed to the Framework Agreement throughout the life of the Framework Agreement, for the award of specific assignments.</p> <p>(aa) “Nominated sub-contractor, or s service provider” is one which either has been: included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that are accounted for in the evaluation of the bidder’s pre-qualification application or the bid;</p> <p>(bb) “Non-Key Expert(s)” means an individual professional provided by the Bidder or its Sub-Bidder and who is assigned to perform the Services or any part thereof under the Contract and are not part of the core team.</p> <p>(cc) “Pre-tender market engagement” means the action of pro-actively and fairly contacting a broad range of potential suppliers in the relevant market, during the programme and/or project design stage, with the intention of learning the best way to obtain value for money from the Terms of Reference, procurement process and contract management.</p> <p>(dd) “Procurement Documents” is a general term to mean all documents in this pack.</p> <p>(ee) “Recipient” means the institution gaining from the procured goods, works or services. They may include Government, Government agency or other entity that signs the Funding Agreement with the TMEA. Recipient may also mean TMEA itself.</p> <p>(ff) “Request for Market Information” means the document(s) used in Pre-tender market engagement that contains the outline of the draft requirements, project information, budget and other relevant information, that is published on the TMEA website, inviting participation and written responses in the pretender market engagement process.</p> <p>(gg) “RFP” means the Request for Proposals to be prepared by TMEA for the selection of Bidders.</p> <p>(hh) “Services” means the work to be performed by the Bidder pursuant to the Contract.</p> <p>(ii) “TMEA” means TradeMark East Africa.</p> <p>(jj) “TORs” means the Terms of Reference that explain the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of the Client and the Bidder, and expected results and deliverables of the contract and will be specific to the particular works, services or goods that are</p>
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	required and may take the form of any or all of scope of works, bill of quantities, bill of materials, statement of requirements, and/or specification.
3. Intention and Responsibility	<p>TMEA intends to appoint a supplier(s) from those Bidders who will submit bids that are found to be qualified and capable in accordance with the method of framework evaluation explained in table A and B in the procurement document.</p> <p>The Bidders should familiarize themselves with the local conditions and take them into account in preparing their Proposals. TMEA shall not be liable as a result of a Bidder not establishing local geographical context.</p>
4. Right to Accept or Reject tenders	<p>TMEA reserves the right to reject any bid, and/or to annul the bidding process entirely or in part, and reject any or all bids at any time, prior to framework contract award, without thereby incurring any liability whatsoever to Bidders.</p> <p>In case of annulment or cancellation TMEA shall notify all Bidders.</p>
5. Source of Funds	<p>The Beneficiary indicated in the Bidding Data Sheet has been identified and received a grant / allocated financing (hereinafter called “funds”) from TMEA, a proportion of which is intended to be put towards the cost of the project/assignment named in the Bidding Data Sheet.</p> <p>Payments by TMEA shall be made directly to the successful bidder only at the request of the Beneficiary (if applicable) and upon approval by TMEA in accordance with the terms and conditions of the agreement between the Beneficiary and the TMEA (hereinafter called the Funding Agreement). No party other than the Beneficiary shall derive any rights from the Funding Agreement or have any claim to the funds.</p>
6. Fraud and Corruption	<p>TMEA’s policy to require that Beneficiaries of TMEA Funds, as well as bidders, suppliers, and contractors and their agents (whether declared or not), personnel, subcontractors, and service providers under TMEA-financed contracts, observe the highest standard of ethics during the procurement and execution of contracts. Bidders are required to sign the Code of Ethics Policy, as contained in the tender documents at Annex 1.</p>
7. Conflict of Interest	<p>A Bidder shall not have a conflict of interest with TMEA or the Beneficiary. The contractor/supplier is required to offer professional, objective and impartial works, services and goods at all times holding TMEA's and the beneficiary's interest's paramount and strictly avoiding conflicts of interests with its own or a thirds party's interests. Bidders are required to adhere and sign the Conflict-of-Interest Form, as contained in the tender documents at Annex 2.</p> <p>The Bidder has an obligation to disclose to TMEA and the beneficiary any situation of actual or potential conflict that impacts its capacity to serve the best interest of TMEA and the beneficiary. Any bidder(s) found to have conflict of interest may be disqualified.</p>

	<p>Bidders may be considered to have a conflict of interest with one or more parties in this bidding process, if they:</p> <ul style="list-style-type: none"> (a) They have a controlling partner in common; or they receive or have received any direct or indirect subsidy from any controlling partner that may result in undue influence in the tender process; or (b) They have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Bid of another Bidder, or influence the decisions of TMEA regarding this bidding process; or (c) Have a conflict between a current TMEA or Beneficiary engagement and prospective related future TMEA or Beneficiary engagement such that a firm hired to provide consulting services for the preparation or implementation of a project, or any of its Affiliates, may be disqualified from subsequently providing services resulting from or directly related to the consulting services for such preparation or implementation, unless the conflict stemming from the engagements has been declared and resolved in a manner acceptable to TMEA throughout the selection process and the execution of the Contract, and measures taken to rectify the potential unfair competitive advantage. (d) A Bidder has a conflict in relationship with the Beneficiary/Client's staff: a Bidder (including its Experts and Sub-Bidders) that has a close business or family relationship with a staff member of TMEA or the Beneficiary (or of the Client, or of the implementing agency, or of a recipient of a part of the Client's financing) who are directly or indirectly involved in any part of: <ul style="list-style-type: none"> (i) the preparation of the Terms of Reference for the assignment, (ii) the selection process for the Contract, or (iii) the supervision of the Contract. <p>may not be awarded a Contract, unless the conflict stemming from this relationship has been declared and resolved in a manner acceptable to TMEA throughout the selection process and the execution of the Contract,</p> (e) A bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid shall result in the disqualification of all Bids in which the Bidder is involved. However, for subcontractors only, this does not limit the inclusion of the same subcontractor in more than one bid, each time as a subcontractor. The inclusion of the Bidder as a Bidding party and subcontractor in the same bidding process is not permitted and will result in disqualification.
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<p>8. Unfair Competitive Advantage</p>	<p>Fairness and transparency in the selection process require that the Bidders or their Affiliates competing for a specific assignment do not derive a competitive advantage from having previously provided consulting services related to the assignment in question.</p> <p>To that end, TMEA shall indicate in the Bidding Data Sheet and make available to all prospective Bidders all information that would in that respect give such a Bidder any unfair competitive advantage over other competing Bidders.</p>
<p>9. Eligibility</p>	<p>TMEA permits Bidders (individuals and firms, including Joint Ventures) from all countries to offer works, services and/or goods for TMEA-financed projects, unless the Bidder or the country is prohibited by TMEA debarment policy, the Beneficiary, donor, development partner, trade body, or as a matter of law or official regulation, or as a decision by the UN Security Council or any other relevant party's sanctions or prohibition.</p> <p>A Bidder may be a private entity, government owned entity or any combination of them in the form of a Joint Venture, under an existing agreement or with the intent to constitute a legally enforceable joint venture.</p> <p>The materials, equipment and services to be supplied under the contract shall have their origin in eligible source countries as defined on the same basis.</p> <p>Bidders shall provide such evidence of their eligibility satisfactory to TMEA, as TMEA shall reasonably request.</p> <p>Restrictions for Government-owned Enterprises</p> <p>Government-owned enterprises or institutions in the beneficiary's country shall be eligible only if they can establish that they:</p> <ul style="list-style-type: none"> (i) are legally and financially autonomous; (ii) operate under commercial law, and (iii) that they are not dependent agencies of the beneficiary. <p>To establish eligibility, the government-owned enterprise or institution should provide all relevant documents (including its charter) sufficient to demonstrate that it is a legal entity separate from the government; it does not currently receive any substantial subsidies or budget support; it is not obligated to pass on its surplus to the government; it can acquire rights and liabilities, borrow funds, and can be liable for repayment of debts and be declared bankrupt; and it is not competing for a contract to be awarded by the government department or agency which, under the applicable laws or regulations,</p>

	<p>is its reporting or supervisory authority or has the ability to exercise influence or control over it.</p> <p>Restrictions for public employees</p> <p>Government officials and civil servants of the Beneficiary’s country are not eligible to be included as Experts in the Bidder’s Proposal unless such engagement does not conflict with any employment or other laws, regulations, or policies of the Beneficiary’s country, and they:</p> <ul style="list-style-type: none"> (i) are on leave of absence without pay, or have resigned or retired; or (ii) are not being hired by the same agency they were working for before resigning or retiring (in case of resignation or retirement), for a period of at least 6 (six) months, or the period established by statutory provisions applying to civil servants or government employees in the Beneficiary’s country, whichever is longer. Experts who are employed by the government-owned universities, educational or research institutions are not eligible unless they have been full time employees of their institutions for a year or more prior to being included in Bidder’s Proposal.; and iii) their hiring would not create a conflict of interest.
10.Nationality	<p>A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, or incorporated, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related works, goods and/or services.</p>
11.Joint Venture and Sub-contracting	<p>A Bidder may be a private entity, or government-owned entity or any combination of them in the form of a joint venture, under an existing agreement, or with the intent to constitute a legally enforceable joint venture.</p> <p>If a prospective Bidder considers that it may enhance its expertise for the assignment by associating with other Bidders in the form of a Joint Venture or as sub-contractor, it may do so, and shall describe the arrangements in the Proposal.</p> <p>The Bidder shall not subcontract any part of the contract unless the arrangements are described in the Proposal.</p> <p>A Bid submitted by a Joint Venture shall be signed by the Lead Member, accompanied by the signed Joint Venture form and signed Power of Attorney, from the Lead Member to legally bind all other Members of the Joint Venture, as stated in the Bidding Data Sheet.</p>

12. Joint and Several Liability	All suppliers in a Joint Venture shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms.
13. Confidentiality	<p>Information relating to the examination, evaluation, comparison, negotiation, and post-qualification of the bids and recommendation for contract award shall not be disclosed to Bidders or any other persons not officially concerned with such process until the information on Contract award is communicated to all Bidders. This does not prevent Bidders from raising questions or clarifications with TMEA in the manner described in the Bidding Data Sheet.</p> <p>Bidders are required to sign the Confidentiality Form at Annex 3.</p>
14. Duty of Care to your staff	<p>TMEA operates in Countries that from time to time receive travel advisory notes advising degrees of caution when travelling to those Countries. The advisory notes can advise caution through to a full travel ban.</p> <p>Bidders are required to have a ‘Staff Duty of Care Policy’ or equivalent, that explains how the decision to travel to a country is made, what advice, if any, is followed, and what are the arrangements for extraction and repatriation of staff in an emergency.</p> <p>For the avoidance of doubt, TMEA shall not insist or require travel by a Bidder/suppliers staff. The safety of Bidders/suppliers staff is of paramount importance and the final decision on their travel rests solely with the Bidder/supplier.</p>
15. Sustainability, environmental and social safeguards	The Bidders shall be required to adhere to sustainable and environmentally acceptable standards, technologies and management practices in the delivery of required goods and services to TMEA.
B - Preparation of Proposals	
16. Clarification and amendment of the Bidding Documents	<p>In preparing the Proposal, the Bidder is expected to examine the procurement documents and understand the requirements in detail before responding.</p> <p>A Bidder requiring any clarification of the Procurement Documents shall contact TMEA in writing via the method explained in the Bidding Data Sheet or raise enquiries during the pre-bid meeting (if applicable).</p> <p>All clarifications raised, shall, subject to TMEA’s decision on their relevance and importance, be shared with all prospective Bidders participating in the procurement process.</p>

	TMEA, may, at its own discretion, amend the Procurement Documents at any time, for any reason, prior to the tender deadline. Any changes shall be communicated via the website and TMEA may extend the deadline for submission of bids.
17. Cost of Preparation and Bid	The Bidder shall bear all costs associated with the preparation and submission of its Bid, and TMEA shall not be responsible or liable for those costs, regardless of the conduct or outcome or annulment of the procurement process.
18. Language	The Bid, as well as all correspondence and documents relating to the Bid exchanged between the Bidder and TMEA shall be written in the language(s) specified in the Bidding Data Sheet . Where bids are invited in a language other than English, a translation into English is required. The translated copy must be endorsed by a professionally accredited translator in which case, the translated English version shall take precedence.
19. Documents Comprising the Bid	<p>The Bid shall comprise the documents and forms listed in the Bidding Data Sheet and Procurement Documents, in the specific required format.</p> <p>An authorized representative of the Bidder shall sign the original Bid submission form in the required format.</p> <p>A Bid submitted by a Joint Venture shall be signed by the Lead Member, accompanied by the signed Joint Venture form and signed Power of Attorney, from the Lead Member to legally bind all other Members of the Joint Venture.</p> <p>In the event of any discrepancy between the original and the copies, the original shall prevail. Any interlineation, erasures, or overwriting in any Bid document shall be valid only if they are signed by the person signing the Bid.</p>
20. Confirmation of Experience Letter	TMEA may seek from Bidders a 'Confirmation of Experience' letter(s) for each piece of previous experience. The Bidder may include in its response, a letter(s) from TMEA itself (where applicable) that will confirm basic details of the previous experience. Such letter(s), where requested, shall be submitted as part of the Bid.
21. Bid Validity	<p>Bids shall remain valid for the period specified in the Bidding Data Sheet.</p> <p>During this period, the Bidder shall maintain its original Bid without any change, including the availability of the Key Experts, the proposed rates and the total price.</p>
22. Extension of Validity Period	TMEA will make its best effort to complete the evaluation/ negotiations within the Bid's validity period. However, in exceptional circumstances, prior to the expiry of the bid validity period, TMEA may request Bidders who submitted Bids to extend the Bids'

	<p>validity. The request and the responses shall be made in writing. If a Bid Security had been requested, it shall also be extended for the same corresponding period.</p>
<p>23. Material deviation, reservation and omission.</p>	<p>TMEA’s determination of a Bid’s completeness is based on the contents of the bid itself.</p> <p>A complete Bid is one that conforms to all the terms, conditions, and specifications of the Bidding Documents without material deviation, reservation, or omission.</p> <p>During the opening, evaluation and award of bids, including during the bid validity period, the following definitions apply:</p> <ul style="list-style-type: none"> (i) “Deviation” is a departure from the requirements specified in the Bidding Documents (ii) “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Documents; and (iii) “Omission” is the failure to submit part or all of the information or documentation required in the Bidding Document <p>A material deviation, reservation, or omission is one that:</p> <ul style="list-style-type: none"> (i) Affects in any substantial way the scope, quality, or performance of the requirements specified in the Contract; or (ii) Limits in any substantial way TMEA’s rights or the Bidder’s obligations under the Contract; or (iii) If rectified would substantially unfairly affect the competitive position of other bidders presenting bids. <p>Where material deviation, reservation, or omission is demonstrated in the Bid or at any time prior to contract signature, it shall be rejected and may not subsequently be made complete by correction of the material deviation, reservation, or omission.</p>
<p>24. Nonmaterial non-conformities, errors, omissions.</p>	<p>During the opening, evaluation and award of bids, including during the bid validity period, TMEA may waive any non-material non-conformity in any Bid.</p> <p>Provided that a Bid is substantially complete TMEA may request that the Bidder submit the necessary supporting information or documentation, omitted supporting annexes, omitted paper or electronic copies, USB sticks or CD-ROMs within a reasonable period, to rectify non-material non-conformities in the bid related to documentation requirements.</p> <p>Failure of the Bidder to comply with the request to rectify non-material non-conformities within the stated reasonable period, shall result in the rejection of the bid.</p>

C - Sealing, Marking and Submitting of Bids	
25. Submitting Bids in electronic and paper format.	TMEA accepts Bids in paper or electronic format, and the relevant format and method is described in the Bidding Data Sheet . The Bidder shall submit their Bid in accordance with the instructions in the Bidding Data Sheet .
26. Deadline for Submission of Bids	<p>In all cases, Bids must be received on or before the tender deadline, as specified in the Bidding Data Sheet.</p> <p><u>Electronic Format Submission</u> Where the method of submission is electronic format, bids shall be received via TMEA's frameworks@trademarkea.com.</p> <p>TMEA may, at its own discretion, extend the deadline for the submission of bids and will communicate the extended deadline appropriately, to all Bidders.</p>
27. Withdrawal, Substitution or Modification of Bids	<p>A Bidder may withdraw, substitute or modify its Bid after it has been submitted, but prior to the deadline for submission, by sending written notice of its intention to do so, accompanied by the replacement Bid via the submission method stated in the Bidding Data Sheet.</p> <p>The withdraw, substitution or modification of any Bid after the deadline for submission has passed, is prohibited.</p>
28. Late Bids	<p>TMEA shall not consider any bid that is received after the deadline for submission of bids. Any bid received by TMEA after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.</p> <p>For bids submitted electronically via email, the time of bid electronic receipt by TMEA shall be deemed the bid delivery time. Bidders are requested to provide themselves sufficient time for submitting to accommodate unforeseen electronic eventualities and internet downtime.</p>
D - Opening, Evaluation of Bids	
29. General	<p>All tenders received on or before the tender deadline shall be assessed.</p> <p>TMEA will conduct the Bid evaluation based on the submitted Technical Bids.</p> <p>TMEA may undertake site visits, supplier presentations, product/service demonstration, and/or competitive negotiation during the evaluation process as specified in the Procurement Documents.</p>

30. Opening of Technical Proposals	<p><u>Electronic Format Submission (where applicable)</u></p> <p>Where the method of submission is electronic format, Technical Bids shall be downloaded from TMEA’s designated email address, and saved to a secure drive, for opening and evaluation.</p>
31. Evaluation of Technical Proposals	<p>TMEA’s evaluation panel shall evaluate the Technical Bids by applying the evaluation criteria and using the evaluation methodology, as stated in the procurement documents, objectively and transparently to each submission. Each Bid will be given a technical score.</p> <p>In the event of a tie of the total score, TMEA will first use two decimal places to determine the successful tenderer. For Frameworks, thereafter and if necessary, TMEA will use the individual scores achieved by each tenderer in the technical section that carries the greatest weighting and shall use that score to determine appointment to the Framework. In the event of a further tie, the next highest weighted technical section shall be used, and so on, until the defined number of places on the Framework are filled.</p> <p>Subject to section 23, a Bid may be rejected at this stage if it does not respond to important aspects of the TOR or if it fails to achieve the minimum technical score indicated in the Procurement Documents. Only those bids that achieve the minimum technical score shall be considered for the appointment to a Framework. For Frameworks, once the defined number of places on the Framework are filled, no further suppliers will be appointed irrespective of whether the minimum technical score was achieved.</p>
32. Clarification of Technical Bids	<p>To assist in the evaluation and comparison of the Bids, TMEA may, at its discretion, ask any Bidder for a clarification of its Technical Bid.</p> <p>Clarifications shall not result in material changes to the Technical Bid or substantially unfairly affect the competitive position of other bidders presenting bids.</p> <p>Any clarification submitted by a Bidder in respect to its Bid and that is not in response to a request by TMEA shall not be considered.</p> <p>TMEA’s request for clarification and the response shall be in writing.</p> <p>Clarification may be sought on any aspect of the Technical Bid, to allow TMEA to accurately evaluate the Technical Bids received.</p> <p>If a Bidder does not provide clarifications of its bid by the date and time set in TMEA’s request for clarification, its bid may be rejected.</p>

<p>33. Technical evaluations outcome notification and feedback</p>	<p>After the technical evaluation is complete, TMEA shall notify those Bidders whose Bids meet the minimum technical score and therefore progress to appointment to the Framework and shall inform all the bidders of their score and shall provide panellists observations of their bid.</p> <p>Until a formal Contract is prepared and executed or otherwise stated, the notification of award shall not constitute a binding Contract.</p> <p>In addition, TMEA shall simultaneously notify those Bidders whose Proposals did not meet the minimum technical score and whom therefore are deemed unsuccessful and shall therefore not progress to appointment to the Framework. For unsuccessful Bidders TMEA shall inform them of their score and provide feedback on the strengths and weaknesses of the Technical Bid.</p>
<p>34. No-action period</p>	<p>For Framework Agreements with an expected value greater than \$250,000, the unsuccessful Bidders shall be given an opportunity of 7 calendar days from the point of notification, to raise any queries regarding the evaluation outcome.</p> <p>At the expiry of the 7 days a framework agreement shall be awarded to the successful tenderer.</p>
<p>35. Contracting</p>	<p>For Framework Agreements with an expected value greater than \$250,000, the unsuccessful Bidders shall be given an opportunity of 7 calendar days from the point of notification, to raise any queries regarding the evaluation outcome.</p> <p>At the expiry of the 7 days a framework agreement shall be awarded to the successful tenderer.</p>
<p>36. Assignment start date</p>	<p>The Assignment start date shall be after both parties sign the contract and is anticipated to be the date stated in the Bidding Data Sheet.</p>
<p>37. Due Diligence</p>	<p>TMEA may commission a Due Diligence review, on any procurement process irrespective of value, for any purpose, at any time to establish the veracity of statements made in the submitted bid with regard to previous experience, capability, key personnel, organisational structures, key policies, or any other aspect of the tenderer's bid.</p> <p>If the Due Diligence confirms the veracity of statements made in the submitted bid, a contract shall be awarded.</p> <p>If the Due Diligence disputes the veracity of statements made in the submitted bid this shall result in disqualification of the bid and bidder <i>without any liability whatsoever</i>.</p>

	In such circumstances TMEA reserves the right to determine the most appropriate course of action including but not limited to proceeding to the next best evaluated bid or annulling the procurement process and starting again.
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E - Bidding Data Sheet

A. General	
ITC Clause/ Reference	
1. Introduction	<p>Name of Framework: Consultancy Services To Conduct Due Diligence On Shortlisted Firms & Delivery Capability Assessment (DCA) On Implementing Partners</p> <p>Reference number: TMEA/FWA/R&C/2022/01</p> <p>Framework length: 3 years</p> <p>Indicative total budget: \$1,300,000.00</p> <p>Name of the Financier: TradeMark East Africa</p> <p style="text-align: right;">2nd Floor, Fidelity Insurance Centre,</p> <p>Address: P. O. Box 313, 00606,</p> <p style="text-align: right;">Nairobi, Kenya</p> <p>Telephone: +254 204235200</p> <p>Email: frameworks@trademarkea.com</p> <p>Tender method: Open Competition for Framework Agreement</p> <p>Method of selection: Qualitative evaluation.</p> <p>Applicable procurement Guidelines: TMEA’s Regulations and Procurement Policy Manual.</p>
Definitions	

2. Applicable law	Call-off contract: The laws of the relevant country in which the assignment will be carried out and issued at the time.
3. Source of Funds	The Beneficiaries are national governments in the respective countries, ministries, and government departments. Other Partners may be added from time to time.
4. TMEA code of ethics	All Bidders are required to sign the Code of Ethics at Annex 2
5. Conflict of interest form	All Bidders are required to sign the conflict-of-interest form Annex 3
6. Confidentially form	All Bidders are required to sign the confidentiality form Annex 4
7. Intellectual property rights	All Bidders are required to sign the Intellectual property rights form Annex 5
8. Organised Crime	All Bidders are required to sign the Organised Crime form Annex 6
7. Antiterrorism	All Bidders are required to sign the Anti-terrorism policy Annex 7
8. Supplier environmental & social Standards	All Bidders are required to sign the Supplier Environmental & Social Standards Annex 8
9. Joint Venture and Sub-contracting	<p>Bid signed by the Lead Member: REQUIRED</p> <p>Joint Venture Agreement signed by the Lead Member: REQUIRED</p> <p>Power of Attorney from the Lead: REQUIRED</p>
10. Contract framework	Information made available all tenderers: NOT APPLICABLE

11. Draft contract Consultancy	Information made available all tenderers: NOT APPLICABLE
B. Preparation of Proposals	
8. Clarification and Amendment of the Bidding documents	<p>Clarifications may be requested from TMEA no later than 7 days prior to the submission deadline.</p> <p>The contact information for requesting clarification is:</p> <p>Attention: Head of Procurement</p> <p style="text-align: center;">TradeMark East Africa</p> <p>Email: framework@trademarkea.com</p>
9. Language	English
10. Documents Comprising the Bid Submission	<p>The Bid submission shall comprise the following:</p> <p>a) Administrative documents required for eligibility are indicate under Part A – Preliminary Requirements of the Evaluation Criteria in Section 3.0; and</p> <p>b) Technical Proposal (Where required).</p>
11. Bid Validity	Proposals must remain valid for 120 days calendar days after the proposal submission deadline – until 22nd July 2022
C/. Sealing, Marking and Submitting of Bids	
12. Submitting Bids in electronic and paper format	<p>Format of Bid Submission: EMAIL</p> <p><u>Electronic Format Submission</u></p> <p>For email submission, tender documents must be sent via frameworks@trademarkea.com. The email should be addressed to the Head of Procurement. Documents must be well labelled and include tender number and description. The technical proposal will be submitted as two separate documents (Part A and Part B) in PDF format and the maximum size must not exceed 10 MB.</p>

<p>13. Deadline for Submission of Bids</p>	<p>The Deadline for submission of bids is:</p> <p>Date: 22 March 2022</p> <p>Time: 10.00 A.M. Kenya time</p>
<p>14. Withdrawal Substitution or Modification of Bids</p>	<p>Written Notice to withdraw, substitute or modify Bids must be sent to the email address indicated in Section 25 above, depending on the method of tender submission, prior to the Deadline for Submission of Bids.</p> <p>With substitution or modification, the written notice must be accompanied by a replacement Bid.</p>
<p>D. Opening and Evaluation of Bids</p>	
<p>15. Framework start date</p>	<p>Anticipated Framework start date June 2022.</p>

ANNEXES

ANNEX 1: CURRICULUM VITAE (CV)

Position Title and No.	{e.g., K-1, TEAM LEADER}
Name of Expert:	{Insert full name}
Date of Birth:	{day/month/year}
Country of Citizenship/Residence	

Education: {List college/university or other specialized education, giving names of educational institutions, dates attended, degree(s)/diploma(s) obtained **attach valid copies of the certificates and testimonials**}

Employment record relevant to the assignment: {Starting with present position, list in reverse order. Please provide dates, name of employing organization, titles of positions held, types of activities performed and location of the assignment, and contact information of previous clients and employing organization(s) who can be contacted for references. Past employment that is not relevant to the assignment does not need to be included.}

Period	Employing organization and your title/position. Contact info for references	Country	Summary of activities performed relevant to the Assignment
[e.g., May 2005-present]	[e.g., Ministry of, advisor/consultant to... For references: Tel...../e-mail.....; Mr. Hbbbb, deputy minister]		

Membership in Professional Associations and Publications:

Language Skills (indicate only languages in which you can work ranking from 1 to 5 for speaking, writing and reading where 1 is poor and 5 is excellent): _____

ANNEX 2: TMEA CODE OF ETHICS

TMEA CODE OF ETHICS

1. Preamble

1.1 TradeMark East Africa's (TMEA) success depends on its reputation, integrity, openness and respect for others. The trust and confidence of those with whom we deal is therefore, essential. The protection of our reputation and relationships is of fundamental importance to our long-term sustainability. We recognise our obligations to all those with whom we have a direct relationship such as, donors, staff, service providers, contractors and suppliers, the private sector in general, government, civil society and the wider community.

1.2 This document covers fraud and corruption in the use of funds, as well as fraud and corruption engaged in for the purpose of influencing any decision as to the use of funds. All such fraud and corruption is deemed to occur "in connection with the use of TMEA funds". The recourse for funds mismanagement, where TMEA has enough evidence, shall lead to refund of monies by the beneficiary involved and prosecution by the authorities.

1.3 This document also covers gifts and hospitality. TMEA does not promote receiving or issuing of gifts and hospitality which might reasonably be perceived or seen to compromise any staff or service providers' judgement and integrity.

1.4 TMEA will make every attempt to ensure that its reputation is held to the highest standards and treats everyone with fairness and transparency. To that effect TMEA highlights in this documents that whistle blowing of any illegal or unethical activities by staff or service providers should be reported and it will be acted upon accordingly.

1.5 No staff member, service provider, contractors or suppliers shall be involved in any activity for personal gain. Any personal interests or interests of a member of one's immediate family in relation to the organisation's business must be disclosed.

1.6 Sustainable and Inclusive Trade, including gender mainstreaming also forms part of this document and it is obligatory for all partners to put gender equity issues into practice rather than adopting a superficial approach. This will be through continuous assessment of the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels of the project.

1.7 Finally, all partners, consultants, contractors and stakeholders shall sign the last page signifying they have read and understood and will put into practice this document, which is an integral part of the engagement/contract document with TMEA.

2. Definitions

- A “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- A “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- A “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- A “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party, and;
- An “obstructive practice” is;
 - Deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a TMEA investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
 - Acts intended to materially impede the exercise of the TMEA’s contractual rights of audit or access to information.
- “Gender mainstreaming” is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making humankind concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that both gender benefit equally and inequality is not perpetuated. The goal is to achieve gender equality.
- A “recipient” is any individual, firm, organisation, NGO, PSO or CSO or any partner that works with TMEA and/ or receives TMEA funding either through a contract or a grant.
- “Gift” is a tangible item presented to a party to impress, appreciate, solicit or manage a relationship
- “Hospitality” is an intangible item presented to a party to impress, appreciate, solicit or manage a relationship
- “Whistleblowing” is an act of reporting an activity deemed to be illegal, unethical or a misconduct with or without confidentiality while not being victimized.

3. Managing TMEA relationships

3.1 Relationship with stakeholders

3.1.1 TMEA's reputation depends on the way in which we work. It is vital that our stakeholders have confidence in our competence and professional excellence. We will treat our stakeholders with respect, honesty and fairness.

3.1.2 Confidential information relating to our relationship with all stakeholders will be respected. We respect copyright and other intellectual property rights.

3.1.3 Where consultants and other third parties are contracted by TMEA to perform duties, they will be expected to act in accordance with this code. The obligation to comply with this document forms an integral part of the engagement we have with partners or consultants who are expected to append their signature, as a confirmation of commitment to adherence.

3.1.4 Decisions to hire a consultant or source materials from a vendor or supplier are made based on objective criteria such as quality, reliability, technical excellence, price and service. Purchasing decisions must never be made based on personal relationships or the opportunity for personal financial gain.

3.1.5 The recipient shall not avoid tax. The recipient will record and report all transactions, including those where payment is made in cash. All taxable perquisites to which staffs are entitled will be listed and declared for tax purposes.

3.1.6 TMEA funds, including receipt through award of contracts shall not be used for terrorism and/or any form of organized crime or to support any form of related activities. TMEA shall rely on laws and rules, among others, from donors or country of operation that prohibits acts of terrorism and organized crimes or providing material support or resources to terrorist and/or designated terrorist and organized crime organizations. If TMEA carries out its due diligence and confirms involvement of any stakeholder including suppliers, it will terminate the contract or agreement and notify the relevant authorities immediately.

3.1.7 TMEA is committed to openness and transparency in communicating with stakeholders and seeks a constructive relationship the wider private sector/ civil society, the media, the government, non-governmental organisations and the general public.

3.2 Relationship with employees

3.2.1 TMEA aims to provide a positive, responsible, open and exemplary working environment. Relationship with staff should be based on respect, dignity and fair treatment for all. We strive to maintain an environment that is based on merit and inclusiveness. The organisation will recruit and promote staff based on their suitability for the job and organisation's needs without discrimination. Diversity of staff is central to our operations and we value it immensely.

3.2.2 TMEA expect staffs to conduct their business activities with colleagues and stakeholders with respect for all and with honesty and courtesy. We will not tolerate harassment or bullying of staff.

3.2.3 The recipient will explain the purpose of its activities and individual jobs, foster effective communication and involve employees in improving their work. As far as possible, it will provide staff with opportunities to enhance their skills and capabilities, enabling them to develop fulfilling careers and to maximise their contribution to the organisation.

3.2.4 The recipient, in recognition of the efforts of an individual, it will maintain an atmosphere of fair terms and conditions of employment and remuneration policies and structures.

3.2.5 The recipient's time, physical and intellectual property should be used for business purposes only. Electronic communication equipment and related services (including email, internet, bulletin boards, fax machines, file storage) must be protected from unauthorised external access or use. Under no circumstances should they be used for receiving illegal, offensive, obscene or otherwise inappropriate materials.

3.2.6 The recipient shall respect staff privacy. We will only collect and retain personal information that is required for effective operation of the organisation or as required by law. The information will be kept confidential and released only to those who have a legitimate need to know. Information received by staff in the course of business dealings may not be used for personal gain.

4. Fraud and corruption

4.1 The recipient shall:

Take all appropriate measures to prevent corrupt, fraudulent, collusive, coercive and obstructive practices in connection with the use of TMEA funds, including (but not limited to):

- adopting appropriate fiduciary and administrative practices and institutional arrangements to ensure that the funds are used only for the purposes for which they were intended, and;

- ensuring that all its representatives involved in/with the project, and all recipients of funds with which it enters into an agreement related to the Project, receive a copy of this document and are made aware of its contents;
 - 4.2 Immediately report to TMEA any allegations of fraud and corruption; Cooperate fully with representatives of TMEA or its appointed agent in any investigation into allegations of fraud and corruption.
- 4.3 If TMEA determines that any person or entity receiving its funds has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, it may suspend further funding/disbursement/payment.
- 4.4 TMEA reserves the right to demand a refund and may terminate the agreement in place; may also hand over the reports from any investigations to proceed with prosecution.
- 4.5 Take all necessary and appropriate action against any representative declared ineligible, as described below, from duties and responsibilities;
- If TMEA determines that a recipient is also a potential provider of goods, works or services, it shall declare the recipient ineligible;
 - TMEA shall declare a firm, consultant or individual ineligible under this code of ethics if such firm, consultant or individual has been declared ineligible under TMEA procurement guidelines or those of the respective government/partner or any other international organisation; and
 - Assist or enable TMEA to obtain a refund of any resources (assets, monies, materials among other benefits) that have been used inappropriately funds including returning any unutilised funds especially where TMEA is not content with progress.

- 4.6 TMEA will reject a proposal for award and / or will cancel the contract at any time if it determines at any time that representatives of the Recipient or of a beneficiary engaged in corrupt, fraudulent, collusive, misleading/false, coercive or obstructive practices during the procurement or the execution of that contract.
- 4.7 In the event that TMEA establishes to a reasonable degree that a Bidder(s) has misrepresented information in their bid or receives confirmation from a referee that an assignment was not undertaken satisfactory or litigation not captured in the bid submitted is discovered, TMEA shall reject the bid and/ or terminate the contract immediately at any point without incurring any liability whatsoever
- 4.8 TMEA at its own discretion, may decide to debar a supplier where there is demonstrable evidence of: (i)The supplier undertaking unethical, illegal, corrupt, or fraudulent activities in connection with a TMEA contract or a TMEA-funded contract; (ii) Persistent poor performance by the supplier under a TMEA contract or a TMEA-funded contract in terms of quality of work or goods delivered, including consistently late delivery; and (iii) Debarment of a supplier by a TMEA donor, the World Bank, or a Government with whom TMEA has a Memorandum of Understanding.

5. Gifts and Hospitality

- 5.1 Gifts and hospitality must not be solicited by any recipient, representative or staff of TMEA.
- 5.2 The receipt or acceptance of gifts and hospitality is related to the issue of conflicts of interest and can leave an organisation vulnerable to accusations of unfairness, partiality, improper inducement or deceit. Its stakeholders' relationships may be perceived to be bias and its ethical reputation will be at risk.
- 5.3 Representatives, agents and any potential bidder intending to work for/with TMEA should not be seen as using their official position to receive, agree to accept or attempt to obtain any payment or other consideration for doing, or not doing, anything or showing favour, or disfavour, to any person as this might reasonably be seen to compromise personal judgement and integrity.
- 5.4 Service providers should not put TMEA in a position to accept gifts and/or hospitality which might be perceived as a compromise to personal judgement and integrity. TMEA reserves the right to reject any gift/hospitality and declare as such.

6. Gender mainstreaming

- 6.1 The core guidelines for gender mainstreaming in TMEA funded projects shall be based on but not limited to the following:
- 6.2 Issues across all areas of activity shall be defined in such a manner that gender differences are diagnosed; 6.3 Responsibility for translating gender mainstreaming into practice is system- wide and

rests at the highest level of the recipient organisation. Accountability for outcomes needs to be monitored continuously

6.4 Gender mainstreaming also requires that every effort be made to broaden equal participation at all levels of decision-making;

6.5 Gender mainstreaming must be institutionalised through concrete steps, mechanisms and processes in all areas of TMEA funded projects;

6.6 Gender mainstreaming does not replace the need for targeted, policies and programmes or positive legislation, nor does it substitute for gender units or focal points; and

6.7 There shall be clear organisational will and the allocation of adequate human and financial resources for gender mainstreaming from all available funding for the successful translation of the concept into practice.

7. Discrimination of marginalized groups.

7.1 TMEA believes in respect and equal treatment for everyone regardless of gender, religion, and disability to help lift people out of poverty and injustice and allow them to assert their dignity and guarantee sustainable development through its campaigns for fairer trade rules within the East Africa region, and for better policies at the national level, and also improve on the capacity for local markets

7.2 TMEA, its partners and suppliers will therefore not discriminate against any group deemed to be marginalized be it women, men, disabled, religious groups, or ethnic minority and will strive to ensure that they work with partners and/or suppliers who ensure that these groups have and enjoy equal access to jobs, essential services and influence.

8. Whistle Blowing

8.1 TMEA has a zero tolerance to corruption policy, to this effect, KPMG has been engaged to provide an independent whistle-blowing hotline for reporting any malpractice involving TMEA resources or staff. This allows both employees and outsiders to report anonymously any unethical practices, including fraud, corruption, and theft. The call-centre is secure and TMEA will not be informed of the identity of any callers.

8.2 If you have concerns about unethical behaviour at TMEA, if you have been asked for a bribe in connection with TMEA business, or if you have suspicions about the theft of TMEA resources, we urge you to call the confidential whistle-blower hotline from any of the countries in which TMEA operates:

- Kenya: 0800 722 770 (toll-free)
- Uganda: 0800 113 220 (toll-free)
- Tanzania, Rwanda, South Sudan, and DRC: +254 740 023 702

8.3 Alternatively, you can send an email to: tmeaspeak-up@kpmg.com or use the web-portal www.thornhill.co.za/kpmgeaethicsportal

9. Implementing and monitoring this document

9.1 The recipient’s commitment to this document is essential to TMEA’s success and will be demonstrated through training, enforcement and accountability. Adherence to the provisions of this document is a condition of partnership.

9.2 Project Managers should ensure that all recipients receive guidance on this document and understand the values that underpin its usage. They should strive to create an environment that encourages open discussion about any concerns.

9.3 This document is a guide rather than an exhaustive description of the recipient’s ethics policies and standards. TMEA aims to create a culture in which it is normal for partners to ‘do the right thing’ and to voice genuinely held concerns about behaviour or decisions that they perceive to be unethical.

9.4 All recipients are required to sign stating that they have read this document and have taken all reasonable steps to ensure that they have conducted business responsibly and in compliance with applicable laws and regulations.

10. Miscellaneous

10.1 The provisions in this code do not limit any other rights, remedies or obligations of TMEA or the recipient under the Memorandum of Understanding/Agreement or any other document to which TMEA and the Partner are both parties.

11. Commitment to the Code of Ethics

I have read the code and hereby sign as an indication of commitment to ensure the code is incorporated and adhered to.

On behalf of Vendor:

Organisation’s name: _____

Title of Signatory: _____

Signature: _____

Date: _____

ANNEX 3: BIDDERS CONFLICT OF INTEREST FORM

Tender Number:

Tender Title:

TMEA operates procurement processes which are fair, transparent and able to withstand probity. In view of this, TMEA requires that any potential bidder who participates in its procurement processes declares any actual or potential conflicts of interest. Bidders who do not declare relevant conflicts of interest and do not sign this form will not be permitted to participate in TMEA’s procurement processes.

I. Conflict of interest declaration

Potential conflicts of interest can include the following (but the list is **not** exhaustive):-

1. Relationship/ Association with TMEA staff members and/or representatives.
2. Relationship/Association with TMEA Board Members and/or office bearers
3. Where applicable; if the bidder was involved in earlier phases of the project for which bids/proposals are now being sought.
4. Knowledge of TMEA’s terms of reference or any bidding documents before they were officially published.

If you are in any doubt about whether something is a potential conflict of interest, you are advised to declare it below.

Either:

A) I wish to declare the following conflict(s) of interest: -

1.
2.
3.

Or

B) I have no conflicts of interest to declare.

Please note that TMEA reserves the right to disqualify a bidder if an actual or potential conflict of interest that was not declared, is later discovered.

On behalf of Vendor:

Organisation's name: _____

Title of Signatory: _____

Signature: _____

Date: _____

ANNEX 4: CONFIDENTIALITY AGREEMENT

Note: This form shall be completed and submitted alongside the proposal

Background

TradeMark East Africa (TMEA) is a not-for-profit organisation funded by a range of development agencies to promote regional trade and prosperity in East Africa. Our vision is 'a united East Africa with flourishing trade, strong investment and less poverty', and our mission is 'to promote rapid advances in East Africa's integration, trade and global competitiveness for all East Africans.'

TMEA was founded in 2010 but became fully operational in 2011. TMEA has scaled up significantly in terms of expenditure and personnel during this time. TMEA works closely with business and civil society organisations, the East African Community (EAC), The Democratic Republic of Congo (DRC) national governments. TMEA has its headquarters in Kigali with branches in Arusha, Bujumbura, Dar es Salaam, Juba, Kampala and Kigali. TMEA seeks to support growth in East African trade through three strategic objectives: -

- 1) Increased market access;
- 2) Enhanced trade environment; and
- 3) Improved business competitiveness.

Further information is available on the TMEA website www.trademarkea.com.

Confidentiality Agreement

It is understood and agreed to that the below identified discloser of confidential information may provide certain information that is and must be kept confidential. To ensure the protection of such information, and to preserve any confidentiality necessary under patent and/or trade secret laws, it is agreed that

1. The Confidential Information to be disclosed can be described as and includes:

Invention description(s), technical and business information relating to proprietary ideas and inventions, ideas, patentable ideas, trade secrets, drawings and/or illustrations, patent searches, existing and/or contemplated products and services, research and development, production, costs, profit and margin information, finances and financial projections, customers, clients, marketing, and current or future business plans and models, regardless of whether such information is designated as "Confidential Information" at the time of its disclosure.

2. The Recipient agrees not to disclose the confidential information obtained from the discloser to anyone unless required to do so by law.

3. This Agreement states the entire agreement between the parties concerning the disclosure of Confidential Information. Any addition or modification to this Agreement must be made in writing and signed by the parties.

4.If any of the provisions of this Agreement are found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision(s) shall be deemed modified to the limited extent required to permit enforcement of the Agreement as a whole.

WHEREFORE, the parties acknowledge that they have read and understand this Agreement and voluntarily accept the duties and obligations set forth herein.

On Behalf of the Service provider:

Name: _____

Signature: _____

Date: _____

ANNEX 5: INTELLECTUAL PROPERTY (IP) AGREEMENT

Note: This form shall be completed and submitted alongside the proposal

Purpose

This Agreement on Intellectual property comprises Patents, Copyrights and Confidential Information. The Agreement provides guidance to TMEA, its partners, service providers and/or third parties regarding disclosing and managing inventions made at or under the auspices of TMEA in a manner consistent with TMEA's commitment to strengthening East Africa regional economic integration.

Principle

The patent, copyright and intellectual property agreement shall ensure a fair and equitable balance between creators, owners and users, and the needs of the public.

Copyright

The copyright in all drawings, documents and other materials containing data and information furnished to TMEA by the Provider/Partner shall remain vested in the Provider/Partner or, if they are furnished to the TMEA directly or through the Provider by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

Ownership of Material

Any studies, reports or other material, graphic, software or otherwise, prepared by the Provider for TMEA under any Contract shall belong to and remain the property of TMEA.

Where intellectual property rights in all material produced by the provider or the provider's personnel pursuant to the performance of the Services ("the Material") are the property of the Provider, the Provider shall grant to TMEA a worldwide, nonexclusive, irrevocable, royalty free license to use all the Material. "use" shall mean, without limitation, the reproduction, publication and sub-licence of all the Material and the intellectual property rights therein, including the reproduction and sale of the Material and products incorporating the same for use by any person or for sale or other dealing anywhere in the world.

Confidential Information

TMEA and the Provider/Partner shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party, whether such information has been furnished prior to, during or following termination of any binding engagement. Notwithstanding the above, the Provider/Partner may furnish to its Subcontractor(s) such documents, data and other information it receives from TMEA to the extent

required for the Subcontractor(s) to perform its work under any contract, in which event the Provider/Partner shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Provider/Partner under this paragraph.

TMEA shall not use such documents, data and other information received from the Provider for any purpose other than the operation and maintenance of the Supplies. Similarly, the Provider/Partner shall not use such documents, data and other information received from the TMEA for any purpose other than the design, procurement of Goods, construction or such other work and services as are required for the performance of the Contract.

The obligation of a party under the above paragraphs, however, shall not apply to that information which

- a) Now or hereafter enters the public domain through no fault of that party;
- b) Can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto; and
- c) Otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

In witness of the parties hereto append their signatures and seals on the date indicated below:

On behalf of Vendor:

Organisation's name: _____

Designation of Signatory: _____

Signature: _____

Date: _____

ANNEX 6: ORGANISED CRIME POLICY AND DECLARATION

Note: This form shall be completed and submitted alongside the proposal

Overview

1. Organised crime can be defined as serious crime planned, coordinated and conducted by people working together on a continuing basis. Their motivation is often, but not always, financial gain. Organised criminals working together for a particular criminal activity or activities are called an organised crime group.
2. Organised criminal activities that include, but not limited to, money laundering, human trafficking and smuggling, animal trafficking, drug dealing, purchase of illegal arms, cyber-crimes, child labour, kidnap and extortion, and organised crime groups will have a negative impact on the region's social and economic development, as well as damaging the reputation to TMEA's donors and stakeholders. See Annex 2 for a list of types of organised crime.
3. TMEA will take all appropriate measures to reduce the risk that TMEA resources are used for unintended purposes including those that are intended for organised criminal activities and/or their support networks.
4. Non-adherence to this policy, in itself, constitutes substantial breach of rules of engagement with TMEA and may lead to immediate termination of engagement with TMEA without need for further notice.
5. TMEA shall rely on an array of laws and rules that fight any potential threat of organised crimes. TMEA shall rely on, among others, any laws from donors or country of operation laws that prohibit financing of organised criminal activities or providing material support or resources to organised criminal groups. TMEA also has a separate Safeguards Policy which also includes measures to address some of these issues.
6. In this policy, the term "partner" shall include any supplier of goods or services, any recipient of TMEA grant funding or financial aid, and any investor making contributions to TMEA.

TMEA organised crime due diligence checks

7. As part of the usual procurement or grant-awarding process (and before a preferred bidder is recommended to the Tender Committee), the Procurement Director shall undertake to the maximum extent reasonably possible the following verification to ensure that any new partner shall substantially protect TMEA's resources from diversion to unintended purposes including financing and participating in organised criminal activities as an organisation and/or through their support networks:
 - i. TMEA shall conduct a reasonable search of publicly available information to determine whether the partner is suspected of any activity relating to organised crime, including financing or other support.

- ii. TMEA shall seek written confirmation from the partner that they are not involved and/or linked, including their employees, in any way and are not listed in their country of operation or any other as financiers of or participants in organised criminal activities whether as individuals, entities, or organisations, pursuant to national obligations arising from General Assembly resolution 55/25 of 15 November 2000 United Nations Convention against Transnational Organised Crime;
 - iii. As a pre-condition to entering into a contract or other agreement, TMEA shall require partners to certify in writing that they are in compliance with all laws and regulations restricting persons from dealing with any individuals, entities, or groups subject to country of operation sanctions or TMEA donors sanctions, or any other persons known to the partner to support organised crime or to have violated any known organised crime sanctions (see Annex 1);
 - iv. TMEA shall require partners to certify in writing that they have taken all reasonable steps to ensure that TMEA resources are not funding organised crime activities or their support networks, nor used for activities that support organised crime. Periodically, the partner shall apprise TMEA of the measures it has taken to meet this goal;
 - v. TMEA may perform routine, on-site audits of partners to the extent reasonable (consistent with the size of the resource, the cost of the audit, and the risks of diversion or abuse of resources) to ensure that the partner has taken adequate measures to protect its/ TMEA resources from diversion to, or abuse or influence by, organised crime individuals, entities or organisations.
8. The certifications submitted by partners shall be valid for three years after which the certifications shall need to be renewed.
 9. In relation to key employees and members of the Board of Directors, before any person is awarded a contract of employment or contract of service as a Director, the People Director shall consult publicly available information to ensure that the person is not reasonably suspected of activity relating to organised criminal activities.
 10. Where an employee has suspicion that a partner is breaching any aspect of this policy, they should report the matter to the Director of Audit & Assurance.

Examples of organised crime

The threats East Africa faces from organised crime include:

- Child sexual exploitation and abuse
- Counterfeit currency
- Cyber-crime - crimes committed through the use of information communication technology
- Drugs - the Class A drugs trade and the illegal drugs market
- Firearms - the use of guns by organised criminals

- Fraud
- Human trafficking - the movement of people for exploitation
- Identity crime - how criminals use false identities and documents
- Intellectual property crime - the counterfeiting and piracy of goods
- Kidnap and extortion
- Money laundering - how criminals 'clean' their dirty money
- Organised theft - commodity related criminality, armed robbery and vehicle crime
- Organised crime groups - what they are and how they are formed
- People smuggling

I confirm that I on behalf of hereby confirm that I have read and wholly understood the anti-organised crime policy provided and do hereby confirm that to the best of my knowledge and that available with the organisation thatdoes not support any organised criminal activities or has links with any organisation or individuals that support the same.

I also therefore give full endorsement that should TMEA establish that this information is inaccurate, action may be taken against (party and self) which could include availing said information to the known anti-organised crime handling unit in my country of operation or any such international unit as approved under resolution 55/25 of 15 November 2000 United Nations Convention against Transnational Organised Crime.

On behalf of Party: -

Organisation's/ consultant/ firm/ company/ JV name: _____

Title of Signatory: _____

Signature: _____

Date: _____

Stamp/ seal: _____

ANNEX 7: ANTI-TERRORISM FINANCING POLICY AND DECLARATION

Note: This form shall be completed and submitted alongside the proposal

Overview

1. The United Nations Security Council defines terrorism as “criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act.”
2. TMEA will take all appropriate measures taken to reduce the risk that TMEA resources are used for unintended purposes including exploitation by terrorist organisations and/or their support networks.
3. Non-adherence to this policy, in itself, constitutes substantial breach of rules of engagement with TMEA and may lead to immediate termination of engagement with TMEA without the need for further notice.
4. TMEA shall rely on an array of laws and rules that fight any potential threat of terrorist financing. TMEA relies on, among others, any laws from donors or country of operation laws that prohibit the financing of terrorism or providing material support or resources to terrorists and/or designated terrorist organisations.
5. In this policy, the term “partner” shall include any supplier of goods or services, any recipient of TMEA grant funding or financial aid, and any investor making contributions to TMEA.

TMEA anti-terrorism due diligence checks

6. As part of the usual procurement or grant-awarding process (and before a preferred bidder is recommended to the Tender Committee), the Procurement Director shall undertake, to the maximum extent reasonably possible, the following verification to ensure that any new partner shall substantially protect TMEA’s resources from diversion to unintended purposes including exploitation by terrorist organisations and/or their support networks:
 - i. TMEA shall conduct a reasonable search of publicly available information to determine whether the partner is suspected of any activity relating to terrorism, including terrorist financing or other support.
 - ii. TMEA shall seek confirmation that the partner does not exist on any country of operation lists of designated terrorist-related individuals, entities, or organisations, pursuant to national obligations arising from United Nations Security Council Resolution 1373;
 - iii. As a pre-condition to entering into a contract or other agreement, TMEA shall require partners to certify in writing that they are in compliance with all laws and regulations restricting persons from dealing with any individuals, entities, or groups subject to country of operation

sanctions or TMEA donors sanctions, or any other persons known to the partner to support terrorism or to have violated any known anti-terrorism sanctions (see Annex 1).

- iv. TMEA shall require partners to certify in writing that they have taken all reasonable steps to ensure that TMEA resources provided are neither distributed to terrorists or their support networks nor used for activities that support terrorism or terrorist organizations. Periodically, the partner shall apprise TMEA of the measures it has taken to meet this goal;
 - v. TMEA may perform routine, on-site audits of partners to the extent reasonable (consistent with the size of the resource, the cost of the audit, and the risks of diversion or abuse of resources) to ensure that the partner has taken adequate measures to protect its/ TMEA resources from diversion to, or abuse or influence by, terrorists or their support networks.
7. The certifications submitted by partners shall be valid for three years after which the certifications shall need to be renewed.
 8. In relation to key employees and members of the Board of Directors, before any person is awarded a contract of employment or contract of service as a Director, the People Director shall consult publicly available information to ensure that the person is not reasonably suspected of activity relating to terrorist organisations and/or their support networks.
 9. Where an employee has suspicion that a partner is breaching any aspect of this policy, they should report the matter to the Director of Audit & Assurance.

I confirm that I on behalf of hereby confirm that I have read and wholly understood the anti-terrorism policy provided and do hereby confirm that to the best of my knowledge and that available with the organisation that does not support any terrorism activities or has links with any terrorism support organisation.

I also therefore give full endorsement that should TMEA establish that this information is inaccurate, action may be taken against (party and self) which could include availing said information to the known anti-terrorism handling unit in my country of operation or any such international unit as approved under the United Nations Security Council Resolution 1373.

On behalf of Party: -

Organisation's/ consultant/ firm/ company/ JV name: _____

Title of Signatory: _____

Signature: _____

Date: _____

Stamp/ seal: _____

ANNEX 8: SUPPLIER ENVIRONMENTAL AND SOCIAL STANDARDS

Note: This form shall be completed and submitted alongside the proposal

Overview

1. These TMEA Supplier Environmental and Social Standards (SESS's) are the minimum standards expected from TMEA suppliers. These standards are part of TMEA's Environment and Social Policy, which focuses on the identification and management of environmental and social risks.
2. TMEA requires that all suppliers comply with these standards. TMEA also requires that all subcontractors engaged under the primary contract acknowledge and operate in a manner consistent with these SESS's.
3. Failure by suppliers and/or subcontractors to comply with the provisions of these standards shall disqualify the supplier and/or subcontractor from being eligible for a TMEA contract and shall result in a contract being terminated.
4. Suppliers adherence to this policy is demonstrated by the signing of the self-declaration at the end of this document.

TMEA Requirements

Below are the specific requirements that TMEA suppliers and subcontractors are expected to adhere.

1/. Forced or Compulsory Labour.

TMEA's suppliers shall not:

- a) Employ forced or compulsory labour in all its forms which consists of any work or service not voluntarily performed that is exacted from an individual under threat of force or penalty.

2/. Child Labour.

TMEA's suppliers shall not:

- a) employ children below 14 years of age or, if higher than that age, the minimum age of employment permitted by the law of the country or countries where the performance, in whole or in part of a contract takes place; and
- b) employ persons under the age of 18 for work that, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of such persons.

3/. Wages and Working Hours.

TMEA's suppliers shall not:

Permit or require any person or employee whose work relates to this Contract to work more than the maximum hours in any one work week permitted by applicable law or regulation unless such employees are paid at least the overtime rate specified by applicable law or regulation. In the event that the

applicable national laws of regulations do not prescribe the maximum hours of work and/or overtime remuneration the prevailing International Labour Organisation standards shall apply

4/. Health and Safety.

TMEA's suppliers shall provide a healthy and safe working environment that:

- a) ensures the workplaces, machinery, equipment and processes under their control are safe and without risk to health.
- b) ensures the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken.
- c) ensures where necessary, adequate protective clothing and protective equipment are provided to prevent so far as is reasonably practicable, risk of accidents or adverse effects to health.
- d) for employees, ensures that adequate occupational safety training is provided and identifies, accesses and controls potential exposure to safety hazards.

5/. Harassment and Bullying.

TMEA suppliers shall create and maintain an environment that:

- a) treats all employees and other persons with dignity and respect.
- b) is free from threats of physical violence, bullying, psychological or verbal harassment and/or sexual exploitation and abuse, perpetrated by employees and/or other contractors or person engaged by them.

6/. Sexual Exploitation, Violation and Abuse.

TMEA's suppliers shall:

- a) take all appropriate measures to prohibit their employees and/or other contractors or person engaged by them, from engaging in sexual exploitation and abuse, including but not limited to the prohibition of:
 - i) engaging in any sexual activity with any person under the age of 18, regardless of any laws of majority or consent
 - ii) engaging in any sexual activity that is exploitive or degrading to any person.

7/. Environmental.

TMEA's suppliers shall:

- a) wherever possible, support a precautionary approach to environmental matters, which is at least to have an effective environment policy and/or to comply with existing legislation and regulations regarding the protection of the environment.

b) where significant environmental and social risks are identified in the implementation of a specific assignment or project, a detailed environment and social assessment and management plan will be required and, where necessary, this will be described in the Terms of Reference.

8/. Pollution Prevention, Energy and Resource Efficiency.

TMEA suppliers shall:

- a) utilise strategies to deliver products or services that as far as possible, minimise emissions and discharge of pollutants and generation of waste.
- b) aim for the most efficient use of energy and resources in order to provide for significant opportunities in terms of competitiveness, cost reduction and improved productivity.
- c) obtain, maintain and keep current all relevant environmental permits, approvals and registrations.

TMEA Supplier Environmental and Social Standards due diligence checks

- 1 As part of the usual procurement process (and before a preferred bidder is recommended to the Tender Committee), the Procurement Director shall undertake to the maximum extent reasonably possible the following verification to ensure that any new supplier shall substantially protect employees, the environment and community in which the works and/or services shall be carried out:
 - i. As a pre-condition to entering into a contract, TMEA shall require suppliers to certify in writing via this self-certification form, that they are in compliance with the requirements of these standards.
 - ii. Suppliers acknowledge that TMEA may perform routine, on-site audits of suppliers to the extent reasonable (consistent with the size of the resource, the cost of the audit, and the risks of diversion or abuse of resources) to review documents and working practices to ensure all reasonable measures are taken to achieve compliance with these standards.
2. The self-certification submitted shall be valid for three years after which the certification shall be renewed.
3. Where an employee or other stakeholder has suspicion that a supplier is breaching any aspect of these standards, they should report the matter to the Director of Audit & Assurance.

Declaration statement

I confirm that I on behalf of hereby confirm that I have read and wholly understood the Supplier Environmental and Social Standards Framework and do hereby confirm that to the best of my knowledge and that available with the organisation that has all relevant policies and procedures to eliminate the prohibited practices and does not undertake any of the prohibited practices nor have links with any organisation or individuals that undertake such prohibited practices.

I also therefore give full endorsement that should TMEA establish that this information is inaccurate, action may be taken against which shall include disqualification of the supplier and/or subcontractor from being eligible for a TMEA contract and shall result in a contract being suspension and/or terminated.

On behalf of Party: -

Organisation's/ consultant/ firm/ company/ JV name: _____

Title of Signatory: _____

Signature: _____

Date: _____

Stamp/ seal: _____

ANNEX 9: PARTY TO JV INFORMATION SHEET

Date: _____

1. Bidder's Legal Name:
2. JV's Party legal name:
3. JV's Party Country of Registration:
4. JV's Party Year of Registration:
5. JV's Party Legal Address in Country of Registration:
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 Incorporation or Certificate of Registration/Incorporation of firm named in 1, above. <input type="checkbox"/> In case of government owned entity from the Purchaser's country, documents establishing legal and financial autonomy and compliance with the principles of commercial law.

ANNEX 10: FRAMEWORK AGREEMENT TEMPLATE

FRAMEWORK AGREEMENT

Framework Agreement with: **Insert Firm**

Framework Agreement for: **Insert Framework Title**

Contract For: **Insert Category**

I refer to the following:

1. The above-mentioned Agreement dated **Insert Date**;
2. Your proposal of **Insert Date in response to Insert Framework Title framework contract**, I confirm that TMEA shall require you to provide Services on a call down basis as under the terms and conditions of the Agreement as expressly incorporated herein.
3. **Commencement and Duration of the Framework Agreement**
 - 3.1 The framework agreement shall commence on **Insert Date** and is expected to run for **three (03) years**.
4. **Framework Contract Termination**
 - 4.1 This Framework contract may be terminated by either party to the contract with a 30 day written notice.
5. **Call down mechanism**
 - 5.1 From time to time a Contract for Service under this framework shall be issued for specific pieces of work, following a mini-competition, as described in the procurement documents. A draft Contract for Service is shown in Annex 8.
6. **Call down Contract for Service Signature**

6.1 At the time, if the original Contract for Service contract is not returned to the TMEA duly completed, signed and dated on behalf of the Consultant within 15 working days of the date of signature on behalf of TMEA, TMEA will be entitled, at its sole discretion, to declare the Contract for Service void.

For and on behalf of TradeMark East Africa

Name:

Position:

Signature:

Date:

For and on behalf of Insert Firm/ Consultant Name

Name:

Position

Signature:

Date:

ANNEX 11: CONTRACT FOR SERVICES TEMPLATE

CONTRACT FOR CONSULTANCY SERVICES

Section 1 – Form of Contract

CONTRACT FOR: [Insert Title here]

CONTRACT REFERENCE: [Insert Number here]

THIS CONTRACT is made

BETWEEN:

TradeMark East Africa (“TMEA”) having its principal place of business at Fidelity Insurance Centre, P O Box 313 00606, Nairobi, Kenya;

AND

[Insert Consultant Name] (“The Consultant”) having its principal office located in [Insert Contact Details].

WHEREAS:

TMEA has requested the Consultant to provide certain consulting services as defined in the detailed terms of reference and scope of services attached to this Contract (hereinafter called the “Services”); the Consultant, having represented to TMEA that they have the required professional skills, and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract.

IT IS HEREBY AGREED as follows:

1. Documents

This Contract from page [Insert page no] to page [Insert page no.] shall comprise the following documents:

Section 1 Form of Contract

Section 2 General Conditions

Section 3 The Services

Section 4 Special Conditions and Key Personnel

Section 5 Fees

This Contract constitutes the entire agreement between the Parties in respect of the Consultant's obligations and supersedes all previous communications between the Parties, other than as expressly provided for in Section 3 and/or Section 4.

2. Contract Signature

If the original Contract is not returned to - TMEA duly completed, signed and dated on behalf of the Consultant within 15 days of the date of signature on behalf of TMEA, TMEA will be entitled, at its sole discretion, to declare this Contract void. No payment will be made to the Consultant under this Contract until a copy of the Contract, signed on behalf of the Consultant is returned to TMEA.

3. Commencement and Duration of the Services

- a. The contract shall be effective on the date both parties sign and the services shall be completed by **[Insert end date]** (End Date") or any other period as may be subsequently agreed by the parties in writing unless this Contract is terminated earlier in accordance with its terms and conditions.
- b. If the services have not commenced in accordance with clause 3a above, TMEA may by not less than 30 days written notice to the consultant, declare the contract to be null and void, and in the event of such declaration, the consultant shall have no claim against TMEA with respect thereto.

4. Financial Limit

Payments under this Contract shall not, in any circumstances, exceed **[XXX]** for fees and **[XXX]** for expenses within a total limit of **[XXX]** inclusive of all taxes applicable ("the Financial Limit").

5. Time of the Essence

Time shall be of the essence as regards the performance by the Consultant of its obligations under this Contract.

For and on behalf of TMEA

Name: **JOSEPHA NDAMIRA**
Position: **CORPORATE RESOURCES DIRECTOR**
Signature:
Date:

For and on behalf of the consultant

Name:
Signature:
Date:

CONTRACT FOR CONSULTANCY SERVICES

Section 2 – General Conditions

1. Definitions

"The Contract" means the agreement entered into between TMEA and the consultant, as recorded in this Contract Document signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

"TMEA Project Manager" means the person nominated by TMEA who is responsible for the management of the Project.

"the Equipment" means any equipment, computer hardware or software, materials, goods and vehicles and associated services necessarily required for the implementation of the Services which are financed or provided by TMEA for use by the Consultant.

"the Financial Limit" means the amount specified in Section 1 and which represents the maximum amount payable by TMEA under this Contract.

"Fees" means the fees payable for the Services as set out in Section 5.

"the Services" means the services to be provided by the Consultant as set out in Section 3.

"the Consultant" means the natural person(s), partnership(s), or company (ies) whose bid to perform this contract has been accepted by TMEA and is named as such in this contract, and includes the legal successors or permitted assigns of the Consultant.

"the Consultant's Personnel" means any person instructed by the Consultant pursuant to this Contract to undertake any of the Consultant's obligations under this Contract, including the Consultant's employees, agents and sub-contractors.

"Subcontractor" means any natural person(s), partnership(s), or company (ies), including its legal successors or permitted assigns, to whom any part of the services to be provided is subcontracted by the Consultant.

2. Interpretation

In the event of any inconsistency between the Form of Contract (Section 1), these General Conditions (Section 2) and the Special Conditions (Section 4), the Special Conditions shall prevail.

3. Project management

TMEA designates the TMEA Project Manager as being responsible for the coordination of activities under this Contract, for the acceptance and approval on behalf of TMEA of the reports and of other deliverables produced by the Consultant, and for receiving and approving invoices for payment.

4. Obligations

- a. TMEA and the Consultant each warrant that it has all the requisite corporate power and authority to enter into this Contract and is fully capable of performing its obligations under this Contract on the terms provided for in this Contract.
- b. The Consultant shall perform the Services and all other obligations under this Contract with all necessary skill, diligence, efficiency and economy to satisfy generally accepted professional standards expected from experts.
- c. The Services shall be provided at the location set out in Section 3. Notwithstanding this, the Consultant may be required to travel to other locations from time to time in carrying out the Services.

5. Indemnification

At its own expense, the Consultant shall indemnify, protect and defend, TMEA, its agents and employees, from and against all actions, claims, losses or damage arising from any act or omission by the Consultant in the performance of the services, including any violation of any legal provisions, or rights of third parties, in respect of patents, trademarks and other forms of intellectual property such as copyrights. Should the act or omission originate from TMEA, then TMEA will indemnify the consultant.

The Consultant hereby indemnifies TMEA, its agents and employees against any legal cost, including attorney/own client costs incurred by TMEA in defending any complaints, disputes or claims lodged by any party as a result of the actions or omissions of the Consultant.

6. Consultant's Personnel

- a. The Consultant acknowledges that it and the Consultant's Personnel have no authority to create or incur any liability or obligation on behalf of TMEA, including but not limited to any liability or obligation to expend or incur capital expenditure and not to recruit, employ or dismiss any member of staff employed by TMEA.
- b. The Consultant shall not at any time, either personally or by an agent, directly or indirectly represent itself as being in any way connected with or interested in TMEA save as being engaged to perform the Services.
- c. Save for the Services agreed and set out at Section 3, TMEA is under no obligation to offer work to the Consultant and the Consultant is under no obligation to accept any work, which may be offered by TMEA.
- d. No changes or substitutions may be made to members of the Consultant's Personnel identified in Section 4, if any, of this Contract without TMEA's prior written consent.
- e. If TMEA considers any member of the Consultant's Personnel unsuitable, the Consultant shall substitute such member as quickly as reasonably possible without direct or indirect charge to TMEA with a replacement acceptable to TMEA.
- f. The Consultant is responsible for all acts and omissions of the Consultant's Personnel and for the health, safety and security of such persons and their property.

- g. TMEA is dedicated to gender equality and ensuring equitable and sustainable human development

7. Fees

- a. Subject as follows, payments shall be due to the Consultant in accordance with the Fee payment schedule set out in Section 5. In the case of Fees that are payable upon the completion of milestones as may be set out in Section 4, such fees shall not become due and payable until the completion, to TMEA's satisfaction, of the relevant milestone event or the delivery of the deliverables to TMEA's satisfaction required for the achievement of the relevant milestone satisfactorily
- b. Payment of the Fees shall be subject to TMEA being satisfied that the Consultant is or has been carrying out its duties, obligations and responsibilities under this Contract.
- c. If for any reason TMEA is dissatisfied with performance of this Contract, an appropriate sum may be withheld from payments that would otherwise be due under this Contract. In such event TMEA shall identify the particular Services with which it is dissatisfied together with the reasons for such dissatisfaction, and payment of the amount outstanding will be made upon remedy of any unsatisfactory work or resolution of outstanding queries.
- d. Fees charged and expenses incurred shall not, in aggregate, exceed the Financial Limit without the prior written consent of TMEA.
- e. No payments shall be made in respect of days not worked due to sickness or holiday or otherwise.
- f. Only the fee rates listed in Section 5 of this Contract will apply to any Services performed by the Consultant under this Contract.

8. Expenses

The Consultant shall be entitled to be reimbursed only for those expenses which have been approved and are set out in Section 5.

9. Invoicing Instructions

- a. Invoices should particularise the contract to which they relate and should be sent to the address referenced in Section 5.
- b. All invoices should contain details of the Services provided, milestones achieved and deliverables provided to which the invoice relates. Where expenses are payable, invoices should be accompanied by proof of the expense. Any invoice not presented in accordance with the above may be rejected and in any event shall be liable to query and delay in payment.
- c. TMEA may request proof of payment in respect of any item and shall be entitled to refuse to meet a claim if this cannot be provided.
- d. TMEA reserves the right to audit, or to nominate a reputable accounting firm to audit the Consultant's records relating to amounts claimed under this Contract during its term and any extension, and for a period of three months thereafter.

- e. TMEA reserves the right not to pay any amount due in respect of an invoice received by TMEA more than 60 days after the day of the Consultant becoming entitled to invoice for the payment to which it relates.
- f. TMEA will deduct withholding tax from the consultant's invoiced amounts as per Government of Kenya regulations. Consultants from countries with double tax agreements will be provided with withholding tax certificates. It is the consultant's responsibility to establish their tax status in the country where the Services will be delivered.

10. Payments

Subject to TMEA being satisfied that the Consultant is or has been carrying out their duties, obligations and responsibilities under this Contract, sums duly approved shall be paid within 30 days of receipt of a valid invoice.

11. Nature of relationship

TMEA and the Consultant agree and intend that this relationship is one of undertaking independent services and specifically is not a relationship of employer or employee agency, joint venture or partnership.

Nothing contained herein shall be construed as establishing a relation of master and servant or of principal and agent between TMEA and the Consultant and the Consultant will be solely responsible for the tax status, tax and any statutory contributions payable of and for the Consultant's Personnel and for all or any of its or the Consultant's Personnel's taxes payable in respect of Fees and reimbursements received in connection with this Contract.

12. Performance Standards

The Consultant undertakes to perform the Services with the highest standards of professional and ethical competence and integrity.

13. Termination

Either TMEA or the Consultant may terminate this Contract, by not less than 30 days written notice. In such cases, TMEA shall be liable to make payments only for work completed and delivered, of acceptable standard.

14. Confidentiality

- a. The Consultant shall not, during the term of this Contract and within two years after its expiration or termination, disclose any proprietary or confidential information relating to the Services, this Contract or TMEA's business or operations without the prior written consent of TMEA.
- b. Notwithstanding the above, the consultant may furnish to its subcontractor such documents, data, and other information it receives from TMEA to the extent required for the subcontractor to perform its

work under the contract, in which event the consultant shall obtain an undertaking of confidentiality similar to that imposed on the consultant under this contract.

15. Ownership of Material

- a. Any studies, reports or other material, graphic, software or otherwise, prepared by the Consultant for TMEA under the Contract shall belong to and remain the property of TMEA.
- b. Where intellectual property rights in all material produced by the Consultant or the Consultant's Personnel pursuant to the performance of the Services ("the Material") are the property of the Consultant, the Consultant hereby grants to TMEA a worldwide, nonexclusive, irrevocable, royalty free licence to use all the Material.
- c. "use" shall mean, without limitation, the reproduction, publication and sub-licence of all the Material and the intellectual property rights therein, including the reproduction and sale of the Material and products incorporating the same for use by any person or for sale or other dealing anywhere in the world.

16. Code of conduct

The consultant shall at all times act loyally and impartially and as a faithful adviser to TMEA in accordance with the rules and/or codes of conduct of its profession.

It shall in particular refrain from making any public statements concerning the services without prior approval of TMEA, and from engaging in any activity which conflicts with its obligations towards TMEA under this contract.

It shall not commit TMEA in any way whatsoever without its prior written consent, and shall, where appropriate, make this obligation to third parties.

17. Conflict of interest

The consultant shall refrain from any relationship which would compromise its independence or that of its personnel. If the consultant fails to maintain independence, TMEA may terminate the contract in accordance with the provisions of this contract.

18. Insurance

The Consultant and his/her/their personnel are responsible for ensuring adequate and appropriate medical, travel, Personal Accident or any other insurance cover before beginning work, under a TMEA contract for services. The Consultant's fee is deemed to include an element to cover the cost of all insurance

19. Assignment

The consultant shall not assign, in whole or in part, their obligation under this contract, except with prior written consent of TMEA.

20. Subcontracting

The consultant shall request approval in writing from TMEA for all subcontracts awarded under this contract that are not included in the contract. Subcontracting shall in no event relieve the consultant of any of its obligations, duties, responsibilities or liability under this contract.

21. Law Governing Contract and Language

The Contract shall be governed by the laws of Kenya but in the event of a conflict between Kenyan laws and any other Law, then the laws of Kenya prevail. The language of the Contract shall be English.

22. Dispute Resolution

TMEA and the Consultant agree to seek to resolve any dispute, controversy or claim arising out of or relating to this Contract or the breach, termination or invalidity thereof, by amicable settlement. Where it is not possible to reach an amicable settlement, any dispute, controversy or claim arising out of or relating to this Contract or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the applicable Arbitration Act in the country of contract execution or any statutory modifications or re-enactment thereof for the time being in force.

Notwithstanding any adjudication or arbitration proceedings no party shall commit an anticipatory breach of contract.

23. Liability

Except where there has been misconduct, gross negligence, dishonesty or fraud on behalf of the Consultant or the Consultant's Personnel, the Consultant's aggregate liability arising out of or in connection with this Contract shall be limited to the amount of the Financial Limit. The Consultant shall not be liable for any failure to perform or delay in performance of any of its obligations arising out of or in connection with this Contract where such failure or delay is caused by TMEA or any of TMEA's agents, employees or contractors.

24. Force Majeure

- a. The failure of the Consultant to fulfil any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an act, event, omission or accident beyond its reasonable control ("Force Majeure Event"), provided that the Consultant (i) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (ii) has informed TMEA as soon as

possible about the occurrence of such an event and in any event not later than 14 days after the occurrence of such event.

- b. Any period within which the Consultant shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which the Consultant was unable to perform such action as a result of the Force Majeure Event.
- c. During the period of their inability to perform the Services as a result of a Force Majeure Event, the Consultant shall be reimbursed for additional costs reasonably and necessarily incurred by it during such period for the purposes of the Services and in reactivating the Services after the end of such period.

Force Majeure shall not include:

Any event which is caused by the negligence or intentional action of the consultant, or such consultant's subcontractors or agents or employees; nor any event which a diligent party could reasonably have been expected to both: Take into account from the effective date of the contract; and avoid or overcome in the carrying out of its obligations.

25. Joint venture, consortium or association

Unless otherwise specified in this contract, if the Consultant is a joint venture, consortium or association, all of the parties shall be jointly and severally liable to TMEA for the fulfilment of the provisions of this contract.

The composition or constitution of the joint venture, consortium or association shall not be altered without the prior written consent of TMEA. Any alteration of the composition of the joint venture, consortium or association without prior written consent of TMEA shall be considered to be a breach of contract.

26. Travel

All authorized air travel must be economy class through the most direct and economical route.

CONTRACT FOR CONSULTANCY SERVICES

Section 3 – The Services

TERMS OF REFERENCE

[Insert]

CONTRACT FOR CONSULTANCY SERVICES

Section 4 – Special Conditions and Consultant’s Key Personnel

1. Special conditions

The proposal-both technical and financial-submitted for this tender forms an integral part of this contract.

2. Key Personnel

The following of the Consultant's Personnel cannot be substituted by the Consultant without TMEA's prior written consent:

[Insert]

CONTRACT FOR CONSULTANCY SERVICES

Section 5 – Fees

1. Professional fees

Consultant	Fee rate per day (\$)	Maximum number of days	Total value (\$)
TOTAL 1			

2. Reimbursable expenses

Item	Number	Cost (\$)	Total value (\$)
GRAND TOTAL (1+2)			

All expenses including accommodation must be supported by valid receipts which must be submitted with the relevant invoice. The only exception to this is the payment of subsistence allowances which are paid at TMEA standard rates and which do not need to be supported by receipts.

3. Invoicing instructions

After approval by the recipient, invoices should be sent to invoices@trademarkea.com. Invoices should clearly list the Contract Number (POXXX) and the details of the Consultant's bank account to which TMEA shall transfer payments.