THE TRANS-KALAHARI RAILWAY

(TKR) PROJECT

Republic of Namibia

Republic of Botswana

Request for Proposal (RFP)

For

The Selection of a Consultant for the Development of a Comprehensive RFP Document for the Trans-Kalahari Railway Project

Procurement No: TKR-PMO/SC/RFP-01/24-25

BID CLOSING DATE:

26 June 2024 AT 10:00 AM (GMT+2)

Trans-Kalahari Railway Project Management Office (TKR-PMO)

Email: procurement@tkrpmo.com

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Section 1: Invitation To Tender

Procurement Reference No: TKR-PMO/SC/RFP-01/24-25
Date: 10 May 2024

1. The Trans-Kalahari Railway Project Management Office (TKR-PMO), invites proposals to provide the following consulting services: The Provision of Consultancy Services for the Development of a Comprehensive RFP Document for the Trans-Kalahari Railway Project. More details on the services are provided in the Terms of Reference.

2. A firm will be selected under Quality and Cost Based Selection (QCBS) and procedures described in this RFP, in accordance with the policies and procedures for procurement of the TKR-PMO.

4. The RFP includes the following documents:

   Section 1 – Invitation To Tender
   Section 2 - Instructions to Consultants (including Data Sheet)
   Section 3 - Technical Proposal - Standard Forms
   Section 4 - Financial Proposal - Standard Forms
   Section 5 - Terms of Reference
   Section 6 - Standard Form of Contract

5. The response to this bid will be in writing and submitted to the following physical address on or before the date and time of closing:

Closing Date: 26 June 2024
Closing Time: 10h00 GMT+2 (Namibian Time)

Trans Kalahari Railway – Project Management Office
16 Prof Mburumba Kerina Street
First Floor, East Wing
TransNamib Holdings Ltd Building
Windhoek
Namibia

Yours sincerely,

_____
Willem Kazekondjo
Procurement Manager

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Section 2 - Instructions to Consultants

Definitions

(a) "Client" means the Trans-Kalahari Railway Project Management Office (TKR-PMO) with which the selected Consultant signs the Contract for the Services.

(b) "Consultant" means any entity or person that may provide or provides the Services to the Client under the Contract.

(c) "Contract" means the Contract signed by the Parties and all the attached documents listed in its Clause 1 that is the General Conditions (GC), the Special Conditions (SC), and the Appendices.

(d) "**Data Sheet**" means such part of the Instructions to Consultants used to reflect specific country and assignment conditions.

(e) "Day" means calendar day.

(f) "Instructions to Consultants" (Section 2 of the RFP) means the document which provides Consultants with all information needed to prepare their Proposals.

(g) "ITT" (Section 1 of the RFP) means the Invitation To Tender being published by the Client.

(h) "Member States" means the Governments of the Republics of Botswana and Namibia.

(i) "Personnel" means professionals and support staff provided by the Consultant or by any Sub-Consultant and assigned to perform the Services or any part thereof; "Foreign Personnel" means such professionals and support staff who at the time of being so provided had their domicile outside the Republic of Namibia; "Local Personnel" means such professionals and support staff who at the time of being so provided had their domicile in the Republic of Namibia.

(j) "Proposal" means the Technical Proposal and the Financial Proposal.

(k) "RFP" means the Request For Proposal to be prepared by the Client for the selection of Consultants.

(l) "Services" means the work to be performed by the Consultant pursuant to the Contract.

(m) "Sub-Consultant" means any person or entity with whom the Consultant subcontracts any part of the Services.

(n) "Terms of Reference" (TOR) means the document included in the RFP as Section 5 which explains the objectives, scope of work, activities, tasks to be performed, respective responsibilities of the Client and the Consultant, and expected results and deliverables of the assignment.

1. Introduction

1.1 The Client named in the **Bidding Data Sheet** will select a consulting firm/organization (the Consultant) from those responding the Invitation To Tender, in accordance with the method of selection specified in the **Bidding Data Sheet**.

1.2 The Consultants are invited to submit a Technical Proposal and a Financial Proposal, or a Technical Proposal only, as specified in the **Bidding Data Sheet**, for consulting services required for the assignment named in the **Bidding Data Sheet**. The Proposal will be the basis for contract negotiations and ultimately for a signed Contract with the selected Consultant.

1.3 Consultants should familiarize themselves with local conditions and take them into account in preparing their Proposals. To obtain first-hand information on the assignment and local conditions, Consultants are encouraged to attend a pre-proposal conference if one is specified in the **Bidding Data Sheet**. Attending the pre-proposal conference is optional. Consultants should contact the Client's representative named in the **Bidding Data Sheet** for additional information on the pre-proposal conference (If there is one arranged).

1.4 The Client will timely provide at no cost to the Consultants the inputs and facilities specified in the **Bidding Data Sheet**, assist the firm in obtaining licenses and permits needed to carry out the services, and make available relevant project data and reports.

1.5 Consultants shall bear all costs associated with the preparation and submission of their proposals and contract negotiation. The Client is not bound to accept any proposal, and reserves the right to annul the selection process at any time prior to Contract award, without thereby incurring any liability to the Consultants.

Conflict of Interest

1.6 The TKR-PMO requires that Consultants provide professional, objective, and impartial advice and at all times hold the client's interests' paramount, strictly avoid conflicts with other

assignments or their own corporate interests and act without any consideration for future work.

1.6.1 Without limitation on the generality of the foregoing, Consultants, and any of their affiliates, shall be considered to have a conflict of interest and shall not be recruited, under any of the circumstances set forth below:

Conflicting activities

(i) A firm that has been engaged by the Client to provide goods, works or services other than consulting services for a project, and any of its affiliates, shall be disqualified from providing consulting services related to those goods, works or services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing goods or works or services other than consulting services resulting from or directly related to the firm's consulting services for such preparation or implementation. For the purpose of this paragraph, services other than consulting services are defined as those leading to a measurable physical output, for example surveys, exploratory drilling, aerial photography, and satellite imagery.

Conflicting assignments

(ii) A Consultant (including its Personnel and Sub-Consultants) or any of its affiliates shall not be hired for any assignment that, by its nature, may be in conflict with another assignment of the Consultant to be executed for the same or for another Client. For example, a Consultant hired to prepare engineering design for an infrastructure project shall not be engaged to prepare an independent environmental assessment for the same project, and a Consultant assisting a Client in the privatization of public assets shall not purchase, nor advise purchasers of, such assets. Similarly, a Consultant hired to prepare Terms of Reference for an assignment should not be hired for the assignment in question.

Conflicting relationships

(iii) A Consultant (including its Personnel and Sub-Consultants) that has a business or family relationship with a member of the Client's staff who is directly or indirectly involved in any part of (i) the preparation of the Terms of Reference of the assignment, (ii) the selection process for such assignment, or (iii) supervision of the Contract, shall not be awarded a Contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the Client throughout the selection process and the execution of the Contract.

1.6.2 Consultants have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Client, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Consultant or the termination of its Contract.

1.6.3 No agency or current employees of the Client shall work as Consultants under their own Entity(s). Recruiting former employees of the Governments of the Republics of Botswana and Namibia who had exposure of the TKR-PMO Project having worked for their former ministries, departments or agencies of Member States is acceptable provided no conflict of interest exists. When the Consultant nominates any government employee (of Member States) as Personnel in their technical proposal, such Personnel must have written certification from their government or employer confirming that they are on leave without pay from their official position and allowed to work full-time outside of their previous official position. Such certification shall be provided to the Client by the Consultant as part of his technical proposal.

Unfair Advantage

1.6.4 If a Consultant could derive a competitive advantage for having provided consulting services related to the assignment in question, the Client shall make available to all Consultants together with this RFP all information that would in that respect give such Consultant any competitive advantage over competing Consultants.

Fraud and Corruption

1.7 It is the policy of the TKR-PMO to require consultants and their agents (whether declared or not), personnel, sub-contractors, sub-consultants, service providers and suppliers observe the highest standard of ethics during the selection and execution of contracts.[1] In pursuance of this policy, the Client:

(a) defines, for the purposes of this provision, the terms set forth below as follows:

(i) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party[2];

(ii) "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation[3];

(iii) "collusive practices" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party[4];

(iv) "coercive practices" 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[5];

(v) "obstructive practice" is

(aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede the Client's investigation into allegations of a corrupt, fraudulent, coercive, or collusive

[1] In this context, any action taken by a consultant or a sub-consultant to influence the selection process or contract execution for undue advantage is improper.
[2] "Another party" refers to an official acting in relation to the selection process or contract execution. In this context "an official" includes staff of Member States and employees of other organizations taking or reviewing selection decisions.
[3] A "party" refers to an official; the terms "benefit" and "obligation" relate to the selection process or contract execution; and the "act or omission" is intended to influence the selection process or contract execution.
[4] "Parties" refers to participants in the procurement or selection process (including officials) attempting to establish contract prices at artificial, non competitive levels.
[5] "Party" refers to a participant in the selection process or contract execution.

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

(bb) acts intended to materially impede the exercise of the Client's inspection and audit rights provided for under paragraph 1.7.1 below.

(b) will reject a proposal for award if it determines that the consultant recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;

(c) will sanction a firm or an individual at any time, in accordance with prevailing procedures, including by publicly declaring such firm or individual ineligible for a stated period of time: (i) to be awarded a contract, and (ii) to be a nominated sub-consultant, sub-contractor, supplier, or service provider of an otherwise eligible firm being awarded a contract.

1.7.1. In further pursuance of this policy, Consultants shall permit the Client to inspect their accounts and records and other documents relating to the submission of proposals and contract performance, and to have them audited by auditors appointed by the Client.

1.7.2 Consultants shall furnish information on commissions and gratuities, if any, paid or to be paid to agents relating to this proposal and during execution of the assignment if the Consultant is awarded the Contract, as requested in the Financial Proposal submission form (Section 4).

Eligibility

1.8 (a) A firm or individual that has been sanctioned by either Member State in accordance with the above clause 1.7 shall be ineligible to be awarded a contract, or benefit from a contract during such period of time as determined.

(b)A consultant that is under a declaration of ineligibility by the either Member State in accordance with applicable laws at the date of the deadline for bid submission and thereafter shall be disqualified.

(c)Proposal from consultants appearing on the ineligibility lists of African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank Group and World Bank Group shall be rejected.

(d) Furthermore, the Consultants shall be aware of the provisions on fraud and corruption stated in the specific clauses in the General Conditions of Contract.

Eligibility of Sub-Consultants 1.9 In case a participating Consultant intends to associate with Consultants who have not shown interest to participate in the bid, and/or individual expert(s), such other Consultants and/or individual expert(s) shall be subject to the eligibility policy of the Client.

Origin of Goods and Consulting Services 1.10 Goods supplied and Consulting Services provided under the Contract may originate from any country except if:

(i) as a matter of law or official regulation, from either Member State, prohibits commercial relations with that country; or

(ii) by an act of compliance with a decision of the United nations Security Council taken under Chapter VII of the Charter of the United Nations, either Member State prohibits any imports of goods from that country or any payments to persons or entities in that country.

Only one Proposal 1.11 Consultants shall submit only one proposal. If a Consultant submits or participates in more than one proposal, such proposals shall be disqualified. However, this does not limit the participation of the same Sub-Consultant, including individual experts, to only one proposal.

Proposal Validity 1.12 The **Bidding Data Sheet** indicates how long Consultants' Proposals must remain valid after the submission date. During this period, Consultants shall maintain the availability of Professional staff nominated in the Proposal. The Client will make its best effort to complete negotiations within this period. However should the need arise; the Client may request Consultants to extend the validity period of their proposals. Consultants who agree to such extension shall confirm that they maintain the availability of the Professional staff nominated in the Proposal, or, in their confirmation of extension of validity of the Proposal, Consultants could submit new staff in replacement, which would be considered in the final evaluation

for contract award. Consultants who do not agree have the right to refuse to extend the validity of their Proposals.

2. Clarification and Amendment of RFP Documents

2.1 Consultants may request a clarification of any of the RFP documents up to the number of days indicated in the **Bidding Data Sheet** before the proposal submission date. Any request for clarification must be sent in writing, or by standard electronic means to the Client's address indicated in the **Bidding Data Sheet**. The Client will respond in writing, or by standard electronic means and will send written copies of the response (including an explanation of the query but without identifying the source of inquiry) to all Consultants. Should the Client deem it necessary to amend the RFP as a result of a clarification, it shall do so following the procedure under para. 2.2.

2.2 At any time before the submission of Proposals, the Client may amend the RFP by issuing an addendum in writing or by standard electronic means. The addendum shall be sent to all Consultants and will be binding on them. Consultants shall acknowledge receipt of all amendments. To give Consultants reasonable time in which to take an amendment into account in their Proposals the Client may, if the amendment is substantial, extend the deadline for the submission of Proposals.

2.3 In preparing their Proposal, Consultants are expected to examine in detail the documents comprising the RFP. Material deficiencies in providing the information requested may result in rejection of a Proposal.

2.4 While preparing the Technical Proposal, Consultants must give particular attention to the following:

(a) If a Consultant considers that it may enhance its expertise for the assignment by associating with other Consultants in a joint venture or sub-consultancy. In case of a joint venture, all partners shall be jointly and severally liable and shall indicate who will act as the leader of the joint venture.

(b) The estimated number of Professional staff-months or the budget for executing the assignment shall be shown in the **Bidding Data Sheet**, but not both. However, the Proposal shall be based on the number of Professional staff-months or budget estimated by the Consultants.

For fixed-budget-based assignments, the available budget is given in the **Bidding Data Sheet**, and the Financial Proposal shall not exceed this budget, while the estimated number of Professional staff-months shall not be disclosed.

(c) Alternative professional staff shall not be proposed, and only one curriculum vitae (CV) may be submitted for each position.

(d) Documents to be issued by the Consultants as part of this assignment must be in English. It is desirable that the firm's Personnel have a working knowledge of English.

(e) Bid Security

(i) The Bidder shall either furnish as part of its bid, a Bid Security or subscribe to a Bid Securing Declaration in the Bid Submission Form **as specified in the BDS**.

(ii) The Bid Securing Declaration shall be in the form of a signed subscription in the Bid Submission Form.

(iii) The Bid Security shall be in the amount/percentage **specified in the BDS** and denominated in Namibian dollars, and shall:

(a) be issued by a commercial bank operating in Namibia.

(b) be substantially in accordance with the forms of Bid Security included in Section 3, Technical Proposal Standard Forms;

(c) be payable promptly upon written demand by the Purchaser in case the conditions listed in ITC Clause 2.4 (e)(vi) are invoked;

(d) be submitted in its original form; copies will not be accepted;

(e) remain valid for a period of 30 days beyond the validity period of the bids, as extended, if applicable, in accordance with ITC Clause 1.12;

(iv) Any bid not accompanied by an enforceable and substantially compliant Bid Security or not containing a subscription to a Bid Securing Declaration in the Bid Submission Form, if required, in

accordance with ITC 2.4(e), shall be rejected by the Purchaser as nonresponsive.

(v) The Bid Security of unsuccessful bidders shall be returned as promptly as possible upon the successful Bidder signing of contract.

(vi) The Bid Security shall be forfeited or the Bid Securing Declaration executed:

(a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Technical Proposal Submission Form; or

(b) if a Bidder refuses to accept a correction of an error appearing on the face of the Bid; or

(vii) if the successful Bidder fails to: sign the Contract The Bid Security or Bid-Securing Declaration of a Joint Venture (JV) must be in the name of the JV that submits the bid. If the JV has not been legally constituted at the time of bidding, the Bid Security or Bid-Securing Declaration shall be in the names of all future partners as named in the Technical Proposal Submission Form mentioned in Section 3 "Technical Proposal Standard Forms," when submitting in association.

(viii) If a bid securing declaration is **required in the BDS**, and

(a) a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Technical Proposal Submission Form, except as provided in ITC 20.2;

(b) a Bidder refuses to accept a correction of an error appearing on the face of the Bid; or

(c) the successful Bidder fails to: sign the Contract

the bidder may be blacklisted by the TKR-PMO to be awarded any future contract in relation to the TKR Project for a period of time.

Technical Proposal Format and Content

2.5 Depending on the nature of the assignment, Consultants are required to submit a Full Technical Proposal (FTP), or a Simplified Technical Proposal (STP). The **Bidding Data Sheet** indicates the format of the Technical Proposal to be submitted. Submission of the wrong type of Technical Proposal will result in the Proposal being deemed non-responsive. The following mandatory documentary evidence is required to accompany the Technical Proposal;

(i) have a valid company Registration Certificate;

(ii) have an original valid good Standing Tax Certificate;

(iii) A valid original or certified copy of a Good Standing Certificate issued by the Social Security Commission, Certified Or Similar document or Equivalent in Country of Origin.

(iv) A valid certified copy of an Affirmative Action Compliance Certificate or in its absence, a proof issued by the Employment Equity Commissioner stating that the Bidder is not a relevant employer, or exemption issued in terms of Section 42 of the Affirmative Action Act, 1998 Certified by or Similar document or Equivalent in Country of Origin.

An undertaking on the part of the Bidder that the salaries and wages payable to its personnel in respect of this proposal are compliant to the relevant laws, Remuneration Order, and Award, where applicable

The Technical Proposal shall further provide the information indicated in the following paras from (a) to (g) using the attached Standard Forms (Section 3). Paragraph (c) (ii) indicates the recommended number of pages for the description of the approach, methodology and work plan of the STP. A page is considered to be one printed side of A4 or letter size paper.

(a) (i) For the FTP only: a brief description of the Consultants' organization and an outline of recent experience of the Consultants and, in the case of joint venture, for each partner, on assignments of a similar nature is required in Form TECH-2 of Section 3. For each assignment, the outline should indicate the names of Sub-Consultants/ Professional staff who participated, duration of the assignment, contract amount, and Consultant's involvement. Information should be provided only for those assignments for which the Consultant was legally contracted by the Client as a corporation or as one of the major firms within a joint venture. Assignments completed by individual Professional staff working privately or through other consulting firms cannot be claimed as the experience of the Consultant, or that of the Consultant's associates, but can be claimed by the Professional staff

themselves in their CVs. Consultants should be prepared to substantiate the claimed experience if so requested by the Client.

(ii) For the STP the above information is not required and Form TECH-2 of Section 3 shall not be used.

(b) (i) For the FTP only: comments and suggestions on the Terms of Reference including workable suggestions that could improve the quality/ effectiveness of the assignment; and on requirements for counterpart staff and facilities including: administrative support, office space, local transportation, equipment, data, etc. to be provided by the Client (Form TECH-3 of Section 3).

(ii) For the STP Form TECH-3 of Section 3 shall not be used; the above comments and suggestions, if any, should be incorporated into the description of the approach and methodology (refer to following sub-para. 3.4 (c) (ii)).

(c) (i) For the FTP, and STP: a description of the approach, methodology and work plan for performing the assignment covering the following subjects: technical approach and methodology, work plan, and organization and staffing schedule. Guidance on the content of this section of the Technical Proposals is provided under Form TECH-4 of Section 3. The work plan should be consistent with the Work Schedule (Form TECH-8 of Section 3) which will show in the form of a bar chart the timing proposed for each activity.

(ii) For the STP only: the description of the approach, methodology and work plan should normally consist of 10 pages, including charts, diagrams, and comments and suggestions, if any, on Terms of Reference and counterpart staff and facilities.

(d) The list of the proposed Professional staff team by area of expertise, the position that would be assigned to each staff team member, and their tasks (Form TECH-5 of Section 3).

(e) Estimates of the staff input (staff-months of foreign and local professionals) needed to carry out the assignment (Form TECH-7 of Section 3). The staff-months input

should be indicated separately for home office and field activities, and for foreign and local Professional staff.

(f) CVs of the Professional staff signed by the staff themselves or by the authorized representative of the Professional Staff (Form TECH-6 of Section 3).

(g) For the FTP only: a detailed description of the proposed methodology and staffing for training, if the **Bidding Data Sheet** specifies training as a specific component of the assignment.

(h) the Bid Security or Bid-Securing Declaration, in accordance with ITC Clause 2.4 (e), as specified in the **Bidding Data Sheet**;

2.6 The Technical Proposal shall not include any financial information. A Technical Proposal containing financial information may be declared non responsive.

Financial Proposals

2.7 The Financial Proposal shall be prepared using the attached Standard Forms (Section 4). It shall list all costs associated with the assignment, including (a) remuneration for staff (foreign and local, in the field and at the Consultants' home office), and (b) reimbursable expenses indicated in the **Bidding Data Sheet**. If appropriate, these costs should be broken down by activity and, if appropriate, into local expenditures. All activities and items described in the Technical Proposal must be priced separately; activities and items described in the Technical Proposal but not priced, shall be assumed to be included in the prices of other activities or items.

Taxes

2.8 The Consultant, other than Namibian nationals, may be subject to local taxes (such as: value added tax, social charges or income taxes on non-resident Foreign Personnel, duties, fees, levies) on amounts payable by the Client under the Contract. The Client will state in the **Bidding Data Sheet** if the Consultant is subject to payment of any local taxes. Any such amounts shall not be included in the Financial Proposal as they will not be evaluated, but they will be discussed at contract negotiations, and applicable amounts will be included in the Contract.

2.9 Consultants must only express the price of their services in Namibian Dollars only.

2.10 Commissions and gratuities, if any, paid or to be paid by Consultants and related to the assignment will be listed in the Financial Proposal Form FIN-1 of Section 4.

3. Submission, Receipt, and Opening of Proposals

3.1 The original proposal (Technical Proposal and, if required, Financial Proposal; see para. 1.2) shall contain no interlineations or overwriting, except as necessary to correct errors made by the Consultants themselves. The person who signed the proposal must initial such corrections. Submission letters for both Technical and Financial Proposals should respectively be in the format of TECH-1 of Section 3, and FIN-1 of Section 4.

3.2 An authorized representative of the Consultants, **as specified in the Bidding Data Sheet** shall initial all pages of the original Technical and Financial Proposals. The signed Technical and Financial Proposals shall be marked "ORIGINAL".

3.3 The Technical Proposal shall be marked "ORIGINAL" or "COPY" as appropriate. The Technical Proposals shall be sent to the addresses referred to in para. 3.5 and in the number of copies indicated in the **Bidding Data Sheet**. All required copies of the Technical Proposal are to be made from the original. If there is any discrepancy between the original and the copies of the Technical Proposal, the original governs.

3.4 The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked "TECHNICAL PROPOSAL" Similarly, the original Financial Proposal (if required under the selection method indicated in the **Bidding Data Sheet**) shall be placed in a sealed envelope clearly marked "FINANCIAL PROPOSAL" followed by the Procurement reference number and the name of the assignment, and with a warning "**DO NOT OPEN WITH THE TECHNICAL PROPOSAL.**" The envelopes containing the Technical and Financial Proposals shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address and reference number, and be clearly marked "**DO NOT OPEN, EXCEPT IN PRESENCE OF THE OFFICIAL APPOINTED, BEFORE 26 June 2024 @ 10h00".** The Client shall not be responsible for misplacement, loss or premature opening if the outer envelope is not sealed and/or marked as stipulated. This circumstance may be case for Proposal rejection. If the Financial Proposal is not submitted in a separate sealed envelope duly marked as indicated above, this will constitute grounds for declaring the Proposal non-responsive.

3.5 The Proposals must be sent to the address/addresses indicated in the **Bidding Data Sheet** and received by the Client no later than the time and the date indicated in the **Bidding Data Sheet**, or any extension to this date in accordance with para. 2.2. Any proposal received by the Client after the deadline for submission shall be returned unopened.

3.6 The Client shall open the Technical Proposal immediately after the deadline for their submission. The envelopes with the Financial Proposal shall remain sealed and securely stored.

4. Proposal Evaluation

4.1 From the time the Proposals are opened to the time the Contract is awarded, the Consultants should not contact the Client on any matter related to its Technical and/or Financial Proposal. Any effort by Consultants to influence the Client in the examination, evaluation, ranking of Proposals, and recommendation for award of Contract may result in the rejection of the Consultants' Proposal.

Evaluators of Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded.

Evaluation of Technical Proposals

4.2 The Evaluation Committee shall evaluate the Technical Proposals on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria, sub-criteria, and point system specified in the **Bidding Data Sheet**. Each responsive Proposal will be given a technical score (St). A Proposal shall be rejected at this stage if it does not respond to important aspects of the RFP, and particularly the Terms of Reference or if it fails to achieve the minimum technical score indicated in the **Bidding Data Sheet**.

Financial Proposals for QBS

4.3 Following the ranking of technical Proposals, when selection is based on quality only (QBS), the first ranked Consultant is invited to negotiate its proposal and the Contract in accordance with the instructions given under para. 6 of these Instructions.

Public Opening and Evaluation of Financial Proposals (only for QCBS, FBS, and LCS)

4.4 After the technical evaluation is completed the Client shall inform the Consultants who have submitted proposals the technical scores obtained by their Technical Proposals, and shall notify those Consultants whose Proposals did not meet the minimum qualifying mark or were considered non responsive to the RFP and TOR, that their Financial Proposals will be returned unopened after completing the selection process. The Client shall simultaneously notify in writing Consultants that have secured the minimum qualifying mark, the date, time and location for opening the Financial Proposals. The opening date

should allow Consultants sufficient time to make arrangements for attending the opening. Consultants' attendance at the opening of Financial Proposals is optional.

4.5 Financial Proposals shall be opened in the presence of the Consultants' representatives who choose to attend. The name of the consultants and the technical scores of the consultants shall be read aloud. The Financial Proposal of the Consultants who met the minimum qualifying mark will then be inspected to confirm that they have remained sealed and unopened. These Financial Proposals shall be then opened, and the total prices read aloud and recorded. Copy of the record shall be sent to all Consultants, upon request.

4.6 The Client will correct any computational error. When correcting computational errors, in case of discrepancy between a partial amount and the total amount, or between word and figures the formers will prevail. In addition to the above corrections, as indicated under para. 3.6, activities and items described in the Technical Proposal but not priced, shall be assumed to be included in the prices of other activities or items. In case an activity or line item is quantified in the Financial Proposal differently from the Technical Proposal the Evaluation Committee shall correct the quantification indicated in the Financial Proposal so as to make it consistent with that indicated in the Technical Proposal, apply the relevant unit price included in the Financial Proposal to the corrected quantity and correct the total Proposal cost. Prices shall be evaluated as quoted in Namibian Dollars.

4.7 In case of QCBS, the lowest evaluated Financial Proposal (Fm) will be given the maximum financial score (Sf) of 100 points. The financial scores (Sf) of the other Financial Proposals will be computed as indicated in the **Bidding Data Sheet**. Proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) indicated in the **Data Sheet**: S = St x T% + Sf x P%. The firm achieving the highest combined technical and financial score will be invited for negotiations.

4.8 In the case of Fixed-Budget Selection, the Client will select the firm that submitted the highest ranked Technical Proposal within the budget. Proposals that exceed the indicated budget will be rejected. In the case of the Least-Cost Selection, the Client will select the lowest proposal among those that passed the minimum technical score. In both cases the evaluated

proposal price according to para. 5.3 shall be considered, and the selected firm is invited for negotiations.

5. Negotiations

5.1 Negotiations will be held on the date and at the address indicated in the **Bidding Data Sheet**. The invited Consultant will, as a pre-requisite for attendance at the negotiations, confirm availability of all Professional staff. Failure in satisfying such requirements may result in the Client proceeding to negotiate with the next-ranked Consultant. Representatives conducting negotiations on behalf of the Consultant must have written authority to negotiate and conclude a Contract.

Technical negotiations

5.2 Negotiations will include a discussion of the Technical Proposal, the proposed technical approach and methodology, work plan, and organization and staffing, and any suggestions made by the Consultant to improve the Terms of Reference. The Client and the Consultants will finalize the Terms of Reference, staffing schedule, work schedule, logistics, and reporting. These documents will then be incorporated in the Contract as "Description of Services". Special attention will be paid to clearly defining the inputs and facilities required from the Client to ensure satisfactory implementation of the assignment. The Client shall prepare minutes of negotiations which will be signed by the Client and the Consultant.

Financial negotiations

5.3 If applicable, it is the responsibility of the Consultant, before starting financial negotiations, to contact the local tax authorities to determine the local tax amount to be paid by the Consultant under the Contract. The financial negotiations will include a clarification (if any) of the firm's tax liability in the Republic of Namibia, and the manner in which it will be reflected in the Contract; and will reflect the agreed technical modifications in the cost of the services. In case of Quality and Cost Based Selection, Fixed-Budget Selection, or the Least-Cost Selection methods, unless there are exceptional reasons, the financial negotiations will involve neither the remuneration rates for staff nor other proposed unit rates. For other methods, Consultants will provide the Client with the information on remuneration rates described in the Appendix attached to Section 4 - Financial Proposal - Standard Forms of this RFP.

Availability of Professional staff/experts

5.4 Having selected the Consultant on the basis of, among other things, an evaluation of proposed Professional staff, the Client expects to negotiate a Contract on the basis of the Professional staff named in the Proposal. Before contract negotiations, the Client will require assurances that the Professional staff will be

actually available. The Client will not consider substitutions during contract negotiations unless both parties agree that undue delay in the selection process makes such substitution unavoidable or for reasons such as death or medical incapacity. If this is not the case and if it is established that Professional staff were offered in the proposal without confirming their availability, the Consultant may be disqualified. Any proposed substitute shall have equivalent or better qualifications and experience than the original candidate and shall be submitted by the Consultant within the period of time specified in the letter of invitation to negotiate.

Conclusion of the negotiations

5.5 Negotiations will conclude with a review of the draft Contract. The contract negotiations are expected to be concluded within 30 days. To complete negotiations the Client and the Consultant will initial the Contract. If negotiations fail, the Client will invite the Consultant whose Proposal received the second highest score to negotiate a Contract.

6. Award of Contract

6.1 The Consultant whose bid attains the highest score, in accordance with the criteria and selection method set forth in the request for proposals, or the one with the least cost in the case of the Least Cost method of selection, shall be selected for award, subject to satisfactory conclusion of negotiation.

6.2 The Client shall notify the selected Consultant of its intention to award the contract and shall simultaneously notify all other bidders of its decision.

6.3 The outcome of the evaluation will be communicated to all bidders, prior to the issuance of the Letter of Award.

6.4 In the absence of an application for review by any other consultant within 7 days of the notice under section 6.2, the contract shall be awarded to the selected Consultant.

6.5 Within seven days from the issue of Letter of Award, the Client shall publish on the Client's website, the results of the RFP process identifying the:

(i) name of the successful Consultant, and the price it offered, as well as the duration and summary scope of the assignment; and

(ii) an executive summary of the RFP Evaluation Report.

6.6 After Contract signature, the Client shall return the unopened Financial Proposals to the unsuccessful Consultants.

6.7 The Consultant is expected to commence the assignment on the date and at the location specified in the **Bidding Data Sheet**.

7. Confidentiality

7.1 Information relating to evaluation of Proposals and recommendations concerning awards shall not be disclosed to the Consultants who submitted the Proposals or to other persons not officially concerned with the process until the publication of the award. The undue use by any Consultant of confidential information related to the process may result in the rejection of its Proposal.

8. Debriefing

8.1 The client shall promptly attend to all requests for debriefing within 3 days from the date of receipt of request from the unsuccessful bidders.

Instructions to Consultants – **Bidding** Data Sheet

Paragraph Reference	
1.1	Name of the Client: Trans-Kalahari Railway Project Management Office (TKR-PMO) Method of selection: **Quality and Cost Based Selection (QCBS),**
1.2	Bidders are to submit a Technical Proposal and a Financial Proposal. Name of the assignment is: The Provision of Consultancy Services for the Development of a Comprehensive RFP Document for the Trans-Kalahari Railway Project.
1.3	A pre-proposal conference will be held: No
1.4	The Client will not provide staff, office space, equipment, and/or local transportation. The Client will provide the information at its disposal to assist with the assignment.
1.6	The Client does not envisage the need for continuity for downstream work.
1.12	Proposals must remain valid **180** days after the submission date.

2.1	Clarifications may be requested not later than **14 days** prior to closing date. The address for requesting clarifications is: procurement@tkrpmo.com
2.4 (b)	The Consultant shall provide the estimated number of professional staff-months required for the assignment is.
2.4 (e)(ii)	Bid Securing Declaration **shall** be required.

2.5	The format of the Technical Proposal to be submitted is: Full Technical Proposal.
2.5 (g)	A detailed description of the proposed methodology for training as provided for in the scope of work.(Section 5)
2.5 (h)	Bid security **shall not** be required.
2.7	List the applicable Reimbursable expenses in local currency. (1) a per diem allowance in respect of Personnel of the Consultant for every day in which the Personnel shall be absent from the home office and, as applicable, outside the Client's country for purposes of the Services; (2) cost of necessary travel, including transportation of the Personnel by the most appropriate means of transport and the most direct practicable route; (3) cost of office accommodation, investigations and surveys; (4) cost of applicable international or local communications such as the use of telephone and facsimile required for the purpose of the Services; (5) cost, rental and freight of any instruments or equipment required to be provided by the Consultants for the purposes of the Services; (6) cost of printing and dispatching of the reports to be produced for the Services; (7) other allowances where applicable and provisional or fixed sums (if any); and (8) cost of such further items required for purposes of the Services not covered in the foregoing.
2.8	Amounts payable by the Client to the Consultant under the contract shall be subject to local taxation.

	The Client will withhold tax payable on an invoice and shall pay such taxes on behalf of the Consultant to the Namibia Revenue Authority. ***Note: Local Consultants will be subject to all taxes payable and should therefore submit their financial proposals inclusive of taxes***.
3.2	(a)This authorization shall consist of written confirmation and shall be attached to the bid. It may include a delegation of power by resolution of the Board of a company or from the CEO, himself holding power from the Board or from a Director being a shareholder of a company or through a Power of Attorney. The name and position held by each person signing the authorization must be typed or printed below the signature. ***Note: The power of Attorney or other written authorization to sign may be for a determined period or limited to a specific purpose.***
3.3	Consultant must submit **one (1)** original and **five (5) copies** each of both the Technical and Financial Proposals and an electronic copy.
3.4	The Proposals, clearly marked, must be submitted not later than: Date: 26 June 2024 Time:10h00 am (Namibian Time)
3.5	The Proposal submission address is: The Procurement Office Trans Kalahari Railway – Project Management Office 16 Prof. Mburumba Kerina Street TransNamib Holdings Ltd Building First Floor, East Wing Windhoek Namibia
	Stage 1: Administrative Compliance The following evaluation criteria shall be applied, notwithstanding any other requirement in the bidding documents. The bidder must meet the following mandatory requirements: **Administrative Compliance Evaluation Criteria**

Document Description	**Yes/No**

	1. A certified copy of the company registration documents issued in the country of origin.(Clearly indicating all shareholders and directors)	
	2. A valid original or certified copy of a Good Standing Tax Certificate/Clearance Or similar document from country of origin.	
	3. A valid original or certified copy of a Good Standing Certificate issued by the Social Security Commission, **Certified Or Similar document or Equivalent in Country of Origin. ***	
	4. A valid certified copy of an Affirmative Action Compliance Certificate or in its absence, a proof issued by the Employment Equity Commissioner stating that the Bidder is not a relevant employer, or exemption issued in terms of Section 42 of the Affirmative Action Act, 1998 **Certified by or Similar document or Equivalent in Country of Origin.***	
	5. An undertaking on the part of the Bidder that the salaries and wages payable to its personnel in respect of this proposal are compliant to the relevant laws, Remuneration Order, and Award, where applicable and that it will abide to ITC clause 2.5 (v) of the Instructions to Consultants if it is awarded the contract or part thereof;	
	6. A duly completed and signed Bid Securing Declaration form (ITC 2.4 (e) (ii).	
	7. Duly completed, initialled and signed Joint Venture Agreement (if applicable);	
	8. Duly signed and completed Technical and Financial Submission Forms	
	9. State the Bid Validity period (ITC 1.12)	
	10. All pages of the bid must be initialled and the bid signed by the person duly authorized through a Power of Attorney	

*This will NOT form part of the evaluation criteria however; the successful bidder will be required to comply with the Namibian laws.

NB: Only a certified copy of an original document will be accepted.

At this stage, the bidder's submission will either be responsive or non-responsive. Non-responsive submissions will be disqualified.

4.2				
	Summary Technical Evaluation Sheet			
	Consultant			
	Evaluation Criteria			**Points (P)**
	I.	**Firm: Specific experience of the Consultants relevant to the assignment:**		**5**
		a) Bidder's Legal experience in the Rail industry, completed in the last fifteen (15) years (April 2009 - March 2024) minimum three(3) Projects.		5
		b) Bidder's Financial and Commercial structuring experience, completed in the last fifteen (15) years (April 2009 - March 2024) minimum three(3) Projects.		5
		c) Bidder's experience in developing financial models for similar types of projects, completed in the last fifteen (15) years (April 2009 - March 2024) minimum three(3) Projects.		5
	II.	**Proposal: Adequacy of the proposed methodology and work plan in responding to the Terms of Reference:**		**40**
		a) **Understanding of the assignment** - Understanding of the objectives of the assignment, approach to the services, methodology for carrying out the activities and obtaining the expected output, and the degree of detail of such output. Explanation of the problems being addressed and their importance, and the technical approach the Consultant would adopt to address them. Explanation of the methodologies it proposes to adopt and the compatibility of those methodologies with the proposed approach		15
		b) **Suitability of the proposed organizational arrangements and resources** - Proposal of the structure and composition of its team, main disciplines of the assignment, the Key Experts and Non-Key Experts, and proposed technical and administrative support staff		15

			c) **Detailed programming, phasing of activities and inputs;** Proposal of the main activities of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Client), and delivery dates of the reports including a list of the final documents, including reports, drawings, and tables to be delivered as final output Its consistency with the technical approach and methodology, showing understanding of the TOR and ability to translate them into a feasible working plan		10	
	III.	**Key Personnel**			**40**	
		1. PPP Specialist/ Team Leader	**A Master's Degree in Business Administration, Economics, Law or other relevant Science, Business or Social Sciences fields or relevant Master's Degree from an accredited University/College**. (Master's Degree=5, Degree=2)	5	20	
			PPP Professional qualification (marks= 3)	3		
			The incumbent must have sound knowledge of project structuring; project economic analysis; risk analysis, allocation and management; PPP procurement and bid process management; and able to lead and manage PPP negotiations. (CVs to be verified with reference letters) **Should have at least ten (10) years of demonstrable experience in providing PPP transaction advisory services/development of infrastructure projects on PPP basis.** **Must have participated in at least five (5) PPP transactions. Must have Led at least three (3) PPP transactions** (10 yrs = 3 marks; 15 yrs = 7 marks, 20 yrs and above = 12 marks) (CVs to be verified with reference letters)	12		

		2.International Legal Expert	**A Masters Degree in Law or equivalent from a recognised University** (Master's Degree=5, Degree=2) **PPP Professional qualification** (marks= 3)	8		20	
			At least ten (10) years of demonstrated experience in drafting commercial agreements involving infrastructure development and refurbishment through PPP and related documents; in procurement and managing bidding processes; in PPP policy and institutional assessment; and in supporting resolution of legal matters throughout the private party procurement process. Must have participated in at least five (5) PPP transactions. (10 yrs = 3 marks; 15 yrs = 7 marks, 20 yrs and above = 12 marks) (CVs to be verified with reference letters)	12			
		3.Local Legal Expert	**A Masters Degree in Law or equivalent from a recognised University** (Master's Degree=5, Degree=2) **PPP Professional qualification** (marks= 3)	8		20	
			At least ten (10) years of demonstrated experience in drafting complex commercial agreements, rendition of legal counsel and negotiation support in projects involving infrastructure, legal risk assessment and mitigation and resolving all legal issues. (10 yrs = 3 marks; 15 yrs = 7 marks, 20 yrs and above = 12 marks) (CVs to be verified with reference letters)	12			

		4.Project Finance Specialist	**Masters Degree in Commerce, Finance, Business Administration or related field from a recognised University.** (Master's Degree=5, Degree=2) **PPP Professional qualification** (marks= 3) **At least ten (10) years of demonstrated experience in financial modelling/structuring of large infrastructure projects, value for money analysis, project costing and revenue forecasting, development of financing plans, insurance and guarantee products. Must have participated in at least three (3) PPP transactions.** (10 yrs = 3 marks; 15 yrs = 7 marks, 20 yrs and above = 12 marks) (CVs to be verified with reference letters)	8 12	20	
		5. Sector Specialist	A Masters degree in Engineering in Mechanical, Civil, Structural, or other relevant fields from recognised from a recognised University (Master's Degree=5, Degree=2) **PPP Professional qualification** (marks= 3) The incumbent must have sound knowledge of project structuring, especially railway related infrastructure development PPP projects, risk analysis, PPP procurement and bid process management; and able to lead and manage PPP negotiations. (CVs to be verified with reference letters) Should have at least ten (10) years of demonstrable experience in providing PPP transaction advisory	8 12	20	

			services/development of infrastructure projects on PPP basis. Must have participated in at least five (5) PPP transactions. (10 yrs = 3 marks; 15 yrs = 7 marks, 20 yrs and above = 12 marks) (CVs to be verified with reference letters)			
		6. Civil & Structural Engineer	**Minimum qualification shall be a bachelor's degree in Civil/Structural engineering, or related field**. (Degree = 1) **Professional Membership** (Mark = 1) **Experience** **Minimum of 10 years' professional experience in understanding of civil and structural design in the implementation of major transport infrastructure development projects.** **Minimum 5 years of professional engineering experience in providing civil engineering and/or structural engineering services to major infrastructure projects, especially in railway projects.** (10 yrs = 1, 15 yrs = 2, 20 yrs and above = 3)	1 1 3		5
		8. Signaling & Telecommunications Engineer	**Minimum qualification shall be a bachelor's degree in Electrical, Electronics/ Computer engineering, or related field**. (Degree = 1) **Professional Membership** (Mark = 1) **Experience**	1 1 3		5

			Minimum of 10 years' professional experience in understanding of railway signalling and telecommunications systems and design parameters in the implementation of major transport infrastructure development projects. **Minimum 5 years of professional engineering experience in providing signalling and telecommunications engineering services to major infrastructure projects, especially in railway projects.** (10 yrs = 1, 15 yrs = 2, 20 yrs and above = 3)			
		9. Mechanical Engineer	**Minimum qualification shall be a bachelor's degree in Mechanical engineering, or related field**. (Degree = 1) **Professional Membership** (Mark = 1) **Experience** **Minimum of 10 years' professional experience in understanding of mechanical engineering design in the implementation of major transport infrastructure development projects.** **Minimum 5 years of professional engineering experience in providing mechanical engineering services to major infrastructure projects, especially in railway projects.** (10 yrs = 1, 15 yrs = 2, 20 yrs and above = 3)	1 1 3	5	
		10. Railway Engineer	**Minimum qualification shall be a bachelor's degree in Mechanical, Civil, Electrical engineering, or related field**. (Degree = 1)	1 1	5	

			Professional Membership (Mark = 1) **Experience** **Minimum of 10 years' professional experience in understanding of railway engineering designs and operations in the implementation of major transport infrastructure development projects.** **Minimum 5 years of professional engineering experience in providing railway engineering services to major infrastructure projects.** (10 yrs = 1, 15 yrs = 2, 20 yrs and above = 3)	3		
		11.Environmentalist	**Minimum qualification shall be a bachelor's degree in natural science, environmental engineering, or related field**. (Degree = 1) **Professional Membership** (Mark = 1) **Experience** **Minimum of 10 years' professional experience in environment assessment and impact evaluation of transport infrastructure development.** **Minimum 5 years of professional experience in providing environmental assessments regarding major infrastructure projects.** (10 yrs = 1, 15 yrs = 2, 20 yrs and above = 3)	1 1 3	5	
		12.Quantity Surveyor	**Minimum qualification shall be a bachelor's degree in Quantity Surveying, or related field**. (Degree = 1) **Professional Membership**	1 1	5	

			(Mark = 1)			
			Experience **Minimum of 10 years' professional experience in understanding of quantity surveying requirements in the implementation of major transport infrastructure development projects.** **Minimum 5 years of professional engineering experience in providing quantity surveying services to major infrastructure projects, especially in railway projects.** (10 yrs = 1, 15 yrs = 2, 20 yrs and above = 3)	3		
		13.Procurement Specialist	**Minimum qualification shall be a bachelor's degree in Procurement, Supply Chain Management, or related field**. (Degree = 1)	1	5	
			Professional Membership (Mark = 1)	1		
			Experience **Minimum of 10 years' professional experience in understanding of procurement and supply chain management in the implementation of major transport infrastructure development projects.** **Minimum 5 years of professional engineering experience in providing procurement/supply chain management services to major infrastructure projects, especially in railway projects.** (10 yrs = 1, 15 yrs = 2, 20 yrs and above = 3)	3		
		14.Port Specialist	**Minimum qualification shall be a bachelor's degree in Marine engineering, or related field**. (Degree = 1)	1	5	

			Professional Membership (Mark = 1) **Experience** **Minimum of 10 years' professional experience in understanding of port infrastructure design and operations in the implementation of major transport infrastructure development projects.** **Minimum 5 years of professional engineering experience in providing port/marine engineering services to major infrastructure projects, especially in railway projects.** (10 yrs = 1, 15 yrs = 2, 20 yrs and above = 3)	1 3		
		15.Hydrologist / Hydraulic Engineer	**Minimum qualification shall be a bachelor's degree in Hydrology, or related field**. (Degree = 1) **Professional Membership** (Mark = 1) **Experience** **Minimum of 10 years' professional experience in understanding of hydrology design and strategies in the implementation of major transport infrastructure development projects.** **Minimum 5 years of professional engineering experience in providing hydrology design and services to major infrastructure projects, especially in railway projects.** (10 yrs = 1, 15 yrs = 2, 20 yrs and above = 3)	1 1 3	5	
		16. Construction Planner	**Minimum qualification shall be a bachelor's degree in Construction, Project Management, Civil engineering or related field**.	1	5	

		(Degree = 1) **Professional Membership** (Mark = 1) **Experience** **Minimum of 10 years' professional experience in understanding of construction planning in the implementation of major transport infrastructure development projects.** **Minimum 5 years of professional engineering experience in providing construction planning requirements and services to major infrastructure projects, especially in railway projects.** (10 yrs = 1, 15 yrs = 2, 20 yrs and above = 3) NB: The evaluation scores for the Key Personnel is maximum 40 marks of the entire evaluation matrix. Please note the key personnel will be marked out of 160 marks which equates to the maximum 40 marks of the evaluation matrix.	1 3	
	IV.	**Suitability of the transfer of knowledge (training) program**		**5**
		a) Relevance of training program		2
		b) Training approach and methodology		2
		c) Qualifications of trainers		1
		Total (Minimum Technical Score is 80 points)		**100**
		(i) Bidders that do not meet the minimum score shall not proceed to the next stage of evaluation. AND (ii) Bidders that do not meet a minimum score of 50% in each category, (i-iv) shall not proceed to the next stage of evaluation.		

4.7	The formula for determining the financial scores is the following: Sf = 100 x Fm / F, in which Sf is the financial score, Fm is the lowest price and F the price of the proposal under consideration. The weights given to the Technical and Financial Proposals are: T = 0.8, and P = 0.2
5.1	The expected date and address for contract negotiations, (In Namibia), will be communicated to the selected bidder.
6.7	The exact date for the commencement of consulting services will be determined following conclusion of negotiations.

Section 3. Technical Proposal - Standard Forms

Refer to Reference Paragraph 2.5 of the Instructions to Consultants (ITC) for the format of Technical Proposal to be submitted as well as the Standard Forms (Section 3).

Form TECH-1: Technical Proposal Submission Form 40

Form TECH-2: Consultant's Organization and Experience 41

A - Consultant's Organization 41

B - Consultant's Experience 42

Form TECH-3: Comments and Suggestions on the Terms of Reference and on Counterpart Staff and Facilities to be Provided by the TKR-PMO 43

A - On the Terms of Reference 43

B - On Counterpart Staff and Facilities 44

Form TECH-4: Description of Approach, Methodology and Work Plan for Performing the Assignment 45

Form TECH-5: Team Composition and Task Assignments 46

Form TECH-6: Curriculum Vitae (CV) for Proposed Professional Staff 47

Form TECH-7: Staffing Schedule 49

Form TECH-8 Work Schedule 50

Form TECH-1: Technical Proposal Submission Form

[*Location, Date*]

To: [*Name and address of Client*]

Dear Sirs:

We, the undersigned, offer to provide the consulting services for [*Insert title of assignment*] in accordance with your Request for Proposal dated [*Insert Date*] and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal, and a Financial Proposal sealed under a separate envelope[1].

We are submitting our Proposal in association with: [*Insert a list with full name and address of each associated Consultant*][2]

We hereby declare that all the information and statements made in this Proposal are true and accept that any misinterpretation contained in it may lead to our disqualification.

We hereby declare that we are the exact same team that presented during the Expression of Interest stage and no consultants are added or removed.

If negotiations are held during the period of validity of the Proposal, i.e., before the date indicated in Paragraph Reference 1.12 of the Data Sheet, we undertake to negotiate on the basis of the proposed staff. Our Proposal is binding upon us and subject to the modifications resulting from Contract negotiations.

We undertake, if our Proposal is accepted, to initiate the consulting services related to the assignment not later than the date indicated in Paragraph Reference 6.7 of the Data Sheet.

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

We remain,

Yours sincerely,

Authorized Signature and initials: _____
Full Name(s) of Signatory: _____
Designation: _____
Name of Firm: _____
Address: _____

1 [*In case Paragraph Reference 1.2 of the Bidding Data Sheet requires to submit a Technical Proposal only, replace this sentence with:* "We are hereby submitting our Proposal, which includes this Technical Proposal only."]

2 [*Delete in case no association is foreseen.*]

Form TECH-2: Consultant's Organization and Experience

A - Consultant's Organization

[*Provide here a brief (around two pages) description of the background and organization of your firm/entity and each associate for this assignment.*]

B - Consultant's Experience

[*Using the format below, provide information on each assignment for which your firm, and each associate for this assignment, was legally contracted either individually as a corporate entity or as one of the major companies within an association, for carrying out consulting services similar to the ones requested under this assignment. Use around 20 pages.*]

Assignment name:	Approx. value of the contract (in current N$ equivalent):
Country: Location within country:	Duration of assignment (months):
Name of Client:	Total Nº of staff-months of the assignment:
Address:	Approx. value of the services provided by your firm under the contract (in current N$ equivalent):
Start date (month/year): Completion date (month/year):	Nº of professional staff-months provided by associated Consultants:
Name of associated Consultants, if any:	Name of senior professional staff of your firm involved and functions performed (indicate most significant profiles such as Project Director/Coordinator, Team Leader):
Narrative description of Project:	
Description of actual services provided by your staff within the assignment:	

Firm's Name: _____

Form TECH-3: Comments and Suggestions on the Terms of Reference and on Counterpart Staff and Facilities to be Provided by the Client

A - On the Terms of Reference

[*Present and justify here any modifications or improvement to the Terms of Reference you are proposing to improve performance in carrying out the assignment (such as deleting some activity you consider unnecessary, or adding another, or proposing a different phasing of the activities). Such suggestions should be concise and to the point, and incorporated in your Proposal.*]

B - On Counterpart Staff and Facilities

[*Comment here on counterpart staff and facilities to be provided by the Client according to Paragraph Reference 1.4 of the Bidding Data Sheet including: administrative support, office space, local transportation, equipment, data, etc.*]

Form TECH-4: Description of Approach, Methodology and Work Plan for Performing the Assignment

[*Technical approach, methodology and work plan are key components of the Technical Proposal. You are suggested to present your Technical Proposal (inclusive of charts and diagrams) divided into the following three chapters:*

a) Technical Approach and Methodology,
b) Work Plan, and
c) Organization and Staffing,

a) Technical Approach and Methodology. In this chapter you should explain your understanding of the objectives of the assignment, approach to the services, methodology for carrying out the activities and obtaining the expected output, and the degree of detail of such output. You should highlight the problems being addressed and their importance, and explain the technical approach you would adopt to address them. You should also explain the methodologies you propose to adopt and highlight the compatibility of those methodologies with the proposed approach.

b) Work Plan. In this chapter you should propose the main activities of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Client), and delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents, including reports, drawings, and tables to be delivered as final output, should be included here. The work plan should be consistent with the Work Schedule of Form TECH-8.

c) Organization and Staffing. In this chapter you should propose the structure and composition of your team. You should list the main disciplines of the assignment, the key expert responsible, and proposed technical and support staff.]

Form TECH-5: Team Composition and Task Assignments

Professional Staff				
Name of Staff	Firm	Area of Expertise	Position Assigned	Task Assigned

Form TECH-6: Curriculum Vitae (CV) for Proposed Professional Staff

1. **Proposed Position** [*only one candidate shall be nominated for each position*]: _____

2. **Name of Firm** [*Insert name of firm proposing the staff*]: _____

_____

3. **Name of Staff** [*Insert full name*]: _____

4. **Date of Birth**: _____ **Nationality**: _____

5. **Education** [*Indicate college/university and other specialized education of staff member, giving names of institutions, degrees obtained, and dates of obtainment*]: _____

_____

6. **Membership of Professional Associations**: _____

_____

7. **Other Training** [*Indicate significant training since degrees under 5 - Education were obtained*]: ____

_____

8. **Countries of Work Experience**: [*List countries where staff has worked in the last ten years*]:_____

_____

9. **Languages** [*For each language indicate proficiency: good, fair, or poor in speaking, reading, and writing*]: _____

_____

10. **Employment Record** [*Starting with present position, list in reverse order every employment held by staff member since graduation, giving for each employment (see format here below): dates of employment, name of employing organization, positions held.*]:

From [*Year*]: ____ To [*Year*]: _____

Employer: _____

Positions held: _____

11. Detailed Tasks Assigned	**12. Work Undertaken that Best Illustrates Capability to Handle the Tasks Assigned**
[*List all tasks to be performed under this assignment*]	[*Among the assignments in which the staff has been involved, indicate the following information for those assignments that best illustrate staff capability to handle the tasks listed under point 11.*] Name of assignment or project: _____ Year: _____ Location: _____ Client: _____ Main project features: _____ Positions held: _____ Activities performed: _____

13. Certification:

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications, and my experience. I understand that any wilful misstatement described herein may lead to my disqualification or dismissal, if engaged.

_____ Date: _____

[Signature of staff member or authorized representative of the staff] *Day/Month/Year*

Full name of authorized representative: _____

Form TECH-7: Staffing Schedule[1]

N°	Name of Staff	Staff input (in the form of a bar chart)[2]													Total staff-month input		
		1	2	3	4	5	6	7	8	9	10	11	12	n	Home	Field[3]	Total
Foreign																	
1		[*Home*]															
		[*Field*]															
2																	
3																	
n																	
											Subtotal						
Local																	
1		[*Home*]															
		[*Field*]															
2																	
n																	
											Subtotal						
											Total						

1 For Professional Staff the input should be indicated individually; for Support Staff it should be indicated by category (e.g.: draftsmen, clerical staff, etc.).
2 Months are counted from the start of the assignment. For each staff indicate separately staff input for home and field work.
3 Field work means work carried out at a place other than the Consultant's home office.

Full time input
Part time input

Form TECH-8 Work Schedule

N°	Activity[1]	Months[2]												
		1	2	3	4	5	6	7	8	9	10	11	12	n
1														
2														
3														
4														
5														
n														

1 Indicate all main activities of the assignment, including delivery of reports (e.g.: inception, interim, and final reports), and other benchmarks such as Client approvals. For phased assignments indicate activities, delivery of reports, and benchmarks separately for each phase.

2 Duration of activities shall be indicated in the form of a bar chart.

Appendix to Bid Submission Form

BID SECURING DECLARATION

Date: .....*[Day|month|year]*.....

Procurement Ref No.: .....

To: .....

I/We* undertake to submit this Bid Securing Declaration as an alternative form of bid security.

I/We* accept that I/we* may be suspended or disqualified in the event of either of the following;

(a) a modification or withdrawal of a bid after the deadline for submission of bids during the period of validity;

(b) refusal by a bidder to accept a correction of an error appearing on the face of a bid;

(c) failure to sign a procurement contract in accordance with the terms and conditions set forth in the bidding document, should I/We* be successful bidder; or

(d) failure to provide security for the performance of the procurement contract if required to do so by the bidding document.

I/We* understand this bid securing declaration ceases to be valid if I am/We are* not the successful Bidder

Signed: .....
[*insert signature of person whose name and capacity are shown*]

Capacity of:
[indicate legal capacity of person(s) signing the Bid Securing Declaration]

Name: .....
[insert complete name of person signing the Bid Securing Declaration]

Duly authorized to sign the bid for and on behalf of: [insert complete name of Bidder]

Dated on _____ day of _____, _____
[*insert date of signing]*

Corporate Seal (where appropriate)
[Note*: In case of a joint venture, the bid securing declaration must be in the name of all partners to the joint venture that submits the bid.]
delete if not applicable / appropriate

Republic Of Namibia

Ministry of Labour, Industrial Relations and Employment Creation

Written undertaking in terms of section 138 of the Labour Act, 2015 and section 50(2)(D) of the Public Procurement Act, 2015

1. EMPLOYERS DETAILS

Company Trade Name:……

Registration Number :...……...

Vat Number: ……

Industry/Sector: ……

Place of Business:……..

Physical Address:……..

Tell No.:……

Fax No.:…….

Email Address:……..

Postal Address:……..

Full name of Owner/Accounting Officer:……..……...

Email Address:……..

2. PROCUREMENT DETAILS

Procurement Reference No.:……..

Procurement Description: ……..

……

Anticipated Contract Duration: …….

Location where work will be done, good/services will be delivered: ……..

……

3. UNDERTAKING

I ……*[insert full name]*, owner/representative

of ……*[insert full name of company]*

hereby undertake in writing that my company will at all relevant times comply fully with the relevant provisions of the Labour Act and the Terms and Conditions of Collective Agreements as applicable.

I am fully aware that failure to abide to such shall lead to the action as stipulated in section 138 of the labour Act, 2007, which include but not limited to the cancellation of the contract/licence/grant/permit or concession.

Signature: ……..

Date: ……..

Seal:…….

Please take note:

1. *A labour inspector may conduct unannounced inspections to assess the level of compliance*
2. *This undertaking must be displayed at the workplace where it will be readily accessible and visible by the employees rendering service(s) in relations to the goods and services being procured under this contract.*

Section 4. Financial Proposal - Standard Forms

[*Comments in brackets* [ ] *provide guidance to the shortlisted Consultants for the preparation of their Financial Proposals; they should not appear on the Financial Proposals to be submitted.*]

Financial Proposal Standard Forms shall be used for the preparation of the Financial Proposal according to the instructions provided under para. 2.7 of Section 2. Such Forms are to be used whichever is the selection method indicated in para. 4 of the Invitation To Tender.

[*The Appendix "Financial Negotiations - Breakdown of Remuneration Rates" is to be only used for financial negotiations when Quality-Based Selection, Selection Based on Qualifications, or Single-Source Selection method is adopted, according to the indications provided under para. 5.3 of Section 2.*]

Form FIN-1: Financial Proposal Submission Form.....55
Form FIN-2: Summary of Costs.....56
Form FIN-3: Breakdown of Costs by Activity.....57
Form FIN-4: Breakdown of Remuneration (Time-Based).....57
Form FIN-5: Breakdown of Reimbursable Expenses (Time-Based).....58
Appendix: Financial Negotiations - Breakdown of Remuneration Rates.....59

Form FIN-1: Financial Proposal Submission Form

[*Location, Date*]

To: [*Name and address of Client*]

Dear Sir/Madam:

We, the undersigned, offer to provide the consulting services for [*Insert title of assignment*] in accordance with your Request for Proposal dated [*Insert Date*] and our Technical Proposal. Our attached Financial Proposal is for the sum of [*Insert amount(s) in words and figures*[1]]. This amount is exclusive of the local taxes *(applicable only to consultants other than Namibian nationals)*, which shall be identified during negotiations and shall be added to the above amount.

Our Financial Proposal shall be binding upon us subject to the modifications resulting from Contract negotiations, up to expiration of the validity period of the Proposal, i.e. before the date indicated in Paragraph Reference 1.12 of the Data Sheet.

Commissions and gratuities paid or to be paid by us to agents relating to this Proposal and Contract execution, if we are awarded the Contract, are listed below[2]:

Name and Address of Agents	Amount in Namibian Dollars	Purpose of Commission or Gratuity

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

We remain,

Yours sincerely,

Authorized Signature and initials: _____
Full Name(s) of Signatory: _____
Designation: _____
Name of Firm: _____
Address: _____

1 Amounts must coincide with the ones indicated under Total Cost of Financial proposal in Form FIN-2.
2 If applicable, replace this paragraph with: "No commissions or gratuities have been or are to paid by us to agents relating to this Proposal and Contract execution."

Form FIN-2: Summary of Costs

Item	Costs [In Namibian Dollars]
Total Costs of Financial Proposal [1]	

1 Indicate the total costs, net of local taxes, to be paid by the Client in each currency. Such total costs must coincide with the sum of the relevant Subtotals indicated in all Forms FIN-3 provided with the Proposal.

Form FIN-3: Breakdown of Costs by Activity[1]

Group of Activities (Phase):[2] _____ _____	**Description:**[3] _____ _____
Cost component	**Costs**
	In Namibian Dollars (N$)[4]
Remuneration[5]	
Reimbursable Expenses [5]	
Subtotals	

1 Form FIN-3 shall be filled at least for the whole assignment. In case some of the activities require different modes of billing and payment (e.g.: the assignment is phased, and each phase has a different payment schedule), the Consultant shall fill a separate Form FIN-3 for each group of activities. The sum of the relevant Subtotals of all Forms FIN-3 provided must coincide with the Total Costs of Financial Proposal indicated in Form FIN-2.
2 Names of activities (phase) should be the same as, or correspond to the ones indicated in the second column of Form TECH-8.
3 Short description of the activities whose cost breakdown is provided in this Form.
4 Use the same columns and currency of Form FIN-2.
5 Remuneration and Reimbursable Expenses must respectively coincide with relevant Total Costs indicated in Forms FIN-4, and FIN-5.

Form FIN-4: Breakdown of Remuneration[1] (Time-Based)

(***This Form FIN-4 shall be used when the Time-Based Form of Contract has been included in the RFP)***

Name[2]	**Position**[3]	**Staff-month Rate**[4]	**Input**[5] (Staff-months)	[*Namibian Dollars*][6]
Foreign Staff				
		[*Home*]		
		[*Field*]		
Local Staff				
		[*Home*]		
		[*Field*]		
			Total Costs	

1 Form FIN-4 shall be filled for each of the Forms FIN-3 provided.
2 Professional Staff should be indicated individually; Support Staff should be indicated per category (e.g.: draftsmen, clerical staff).
3 Positions of Professional Staff shall coincide with the ones indicated in Form TECH-5.
4 Indicate separately staff-month rate and currency for home and field work.
5 Indicate, separately for home and field work, the total expected input of staff for carrying out the group of activities or phase indicated in the Form.
6 Use the same columns and currency of Form FIN-2. For each staff indicate the remuneration in the column of the currency, separately for home and field work. Remuneration = Staff-month Rate x Input.

Form FIN-5: Breakdown of Reimbursable Expenses[1] (Time-Based)

(***This Form FIN-5 shall only be used when the Time-Based Form of Contract has been included in the*** RFP)

N°	**Description**[2]	**Unit**	**Unit Cost**[3]	**Quantity**	**Cost** [*Namibian Dollars*][4]
	Per diem allowances	Day			
	International flights[5]	Trip			
	Miscellaneous travel expenses	Trip			
	Communication costs between [*Insert place*] and [*Insert place*]				
	Drafting, reproduction of reports				
	Equipment, instruments, materials, supplies, etc.				
	Shipment of personal effects	Trip			
	Use of computers, software				
	Laboratory tests.				
	Subcontracts				
	Local transportation costs				
	Office rent, clerical assistance				
	Training of the Client's personnel [6]				
Total Costs					

1 Form FIN-5 should be filled for each of the Forms FIN-3 provided, if needed.
2 Delete items that are not applicable or add other items according to Paragraph Reference 2.7 of the Data Sheet.
3 Indicate unit cost and currency.
4 Use the same columns and currency of Form FIN-2. Indicate the cost of each reimbursable item in the column of the currency. Cost = Unit Cost x Quantity.
5 Indicate route of each flight, and if the trip is one- or two-ways.
6 Only if the training is a major component of the assignment, defined as such in the TOR.

Appendix: Financial Negotiations - Breakdown of Remuneration Rates

1. Review of Remuneration Rates

1.1 The remuneration rates for staff are made up of salary, social costs, overheads, fee that is profit, and any premium or allowance paid for assignments away from headquarters. To assist the firm in preparing financial negotiations, a Sample Form giving a breakdown of rates is attached (no financial information should be included in the Technical Proposal). Agreed breakdown sheets shall form part of the negotiated contract.

1.2 The Client is charged with the custody of government funds and is expected to exercise prudence in the expenditure of these funds. The Client is, therefore, concerned with the reasonableness of the firm's Financial Proposal, and, during negotiations, it expects to be able to review audited financial statements backing up the firm's remuneration rates, certified by an independent auditor. The firm shall be prepared to disclose such audited financial statements for the last three years, to substantiate its rates, and accept that its proposed rates and other financial matters are subject to scrutiny. Rate details are discussed below.

(i) Salary
This is the gross regular cash salary paid to the individual in the firm's home office. It shall not contain any premium for work away from headquarters or bonus (except where these are included by law or government regulations).

(ii) Bonus
Bonuses are normally paid out of profits. Because the Client does not wish to make double payments for the same item, staff bonuses shall not normally be included in the rates. Where the Consultant's accounting system is such that the percentages of social costs and overheads are based on total revenue, including bonuses, those percentages shall be adjusted downward accordingly. Where national policy requires that 13 months' pay be given for 12 months' work, the profit element need not be adjusted downward. Any discussions on bonuses shall be supported by audited documentation, which shall be treated as confidential.

(iii) Social Costs
Social costs are the costs to the firm of staff's non-monetary benefits. These items include, *inter alia*, social security including pension, medical and life insurance costs, and the cost of a staff member being sick or on vacation. In this regard, the cost of leave for public holidays is not an acceptable social cost nor is the cost of leave taken during an assignment if no additional staff replacement has been provided. Additional leave taken at the end of an assignment in accordance with the firm's leave policy is acceptable as a social cost.

(iv) Cost of Leave

The principles of calculating the cost of total days leave per annum as a percentage of basic salary shall normally be as follows:

$$\text{Leave cost as percentage of salary } [1] = \frac{total\ days\ leave \times 100}{[365 - w - ph - v - s]}$$

Or

Leave Cost = *[(salary + bonus + housing subsidy + transport)/260 X leave credit days]*

It is important to note that leave can be considered a social cost only if the Client is not charged for the leave taken.

(v) Overheads

Overhead expenses are the firm's business costs that are not directly related to the execution of the assignment and shall not be reimbursed as separate items under the contract. Typical items are home office costs (partner's time, no billable time, time of senior staff monitoring the project, rent, support staff, research, staff training, marketing, etc.), the cost of staff not currently employed on revenue-earning projects, taxes on business activities and business promotion costs. During negotiations, audited financial statements, certified as correct by an independent auditor and supporting the last three years' overheads, shall be available for discussion, together with detailed lists of items making up the overheads and the percentage by which each relates to basic salary. The Client does not accept an add-on margin for social charges, overhead expenses, etc., for staff who are not permanent employees of the firm. In such case, the firm shall be entitled only to administrative costs and fee on the monthly payments charged for subcontracted staff.

(vi) Fee or Profit

The fee or profit shall be based on the sum of the salary, social costs, and overhead. If any bonuses paid on a regular basis are listed, a corresponding reduction in the profit element shall be expected. Fee or profit shall not be allowed on travel or other reimbursable expenses, unless in the latter case an unusually large amount of procurement of equipment is required. The firm shall note that payments shall be made against an agreed estimated payment schedule as described in the draft form of the contract.

[1] Where *w* = weekends, *ph* = public holidays, *v* = vacation, and *s* = sick leave.

(vii) Away from Headquarters Allowance or Per Diem

Some Consultants pay allowances to staff working away from headquarters. Such allowances are calculated as a percentage of salary and shall not draw overheads or profit. Sometimes, by law, such allowances may draw social costs. In this case, the amount of this social cost shall still be shown under social costs, with the net allowance shown separately. For concerned staff, this allowance, where paid, shall cover home education, etc.; these and similar items shall not be considered as reimbursable costs.

(viii) Subsistence Allowances

Subsistence allowances are not included in the rates, but are paid separately and in local currency. No additional subsistence is payable for dependents—the subsistence rate shall be the same for married and single team members.

Government DSA standard rates may be used as reference to determine subsistence allowances.

2. Reimbursable expenses

2.1 The financial negotiations shall further focus on such items as out-of-pocket expenses and other reimbursable expenses. These costs may include, but are not restricted to, cost of surveys, equipment, office rent, supplies, international and local travel, computer rental, mobilization and demobilization, insurance, and printing. These costs may be either unit rates or reimbursable on the presentation of invoices, in foreign or local currency.

3. Bank Guarantee

3.1 Payments to the firm, including payment of any advance based on cash flow projections covered by a bank guarantee, shall be made according to an agreed estimated schedule ensuring the firm regular payments in local currency, as long as the services proceed as planned.

Consultant's Representations Regarding Costs and Charges - Declaration

Consulting Firm: Country:
Assignment: Date:

We hereby confirm that:

(a) the basic salaries indicated in the attached table are taken from the firm's payroll records and reflect the current salaries of the staff members listed which have not been raised other than within the normal annual salary increase policy as applied to all the firm's staff;

(b) attached are true copies of the latest salary slips of the staff members listed;

(c) the away from headquarters allowances indicated below are those that the Consultants have agreed to pay for this assignment to the staff members listed;

(d) the factors listed in the attached table for social charges and overhead are based on the firm's average cost experiences for the latest three years as represented by the firm's financial statements; and

(e) said factors for overhead and social charges do not include any bonuses or other means of profit-sharing.

Authorized Signature and initials: _____
Full Name(s) of Signatory: _____
Designation: _____
Name of Firm: _____
Address: _____

Consultant's Representations Regarding Costs and Charges - Breakdown

(Expressed in Namibian Dollars)

Personnel		1	2	3	4	5	6	7	8
Name	Position	Basic Salary per Working Month/Day/Year	Social Charges[1]	Overhead[1]	Subtotal	Fee[2]	Away from Headquarters Allowance	Proposed Fixed Rate per Working Month/Day/Hour	Proposed Fixed Rate per Working Month/Day/Hour[1]
Home Office									
Field									

1. Expressed as percentage of 1
2. Expressed as percentage of 4

Section 5. Terms of Reference

1. Introduction

The Trans-Kalahari Railway Project (TKR) is a Bilateral project between the Governments of the Republics of Botswana and Namibia.
The initial objective of this Project was to construct a railway line (heavy haul) linkage between the Republics of Botswana and Namibia to transport coal and other commodities to the overseas market, through Ports in the Republic of Namibia.
The Governments of the Republics of Botswana and Namibia commenced the discussions in 2010 as signified by the Memorandum of Understanding (MOU).
A Prefeasibility Study, regarding this Project, was undertaken by CPCS Transcom International Limited (Canada) in 2009 and was completed in 2011.
The anchor commodity at the time of the Prefeasibility Study was coal.
The Pre-feasibility study concluded that the Project was feasible (ceteris paribus), subject to findings a detailed feasibility study.
In view of the above, Member States concluded to progress the project to the development stage as signified by the Bilateral Agreement on the Project. That was signed in 2014.
Key components of the TKR Project were;

1. To construct a railway line from the port around Walvis Bay in the Republic of Namibia to the coalfields at Mmamabula in the Republic of Botswana, complete with rolling stock (i.e., locomotives and wagons) and maintenance facilities.
2. To construct a terminal where trains will be off-loading coal to enable loading on ships at the Port (including construction of a Conveyor Belt system) near Walvis Bay area.
3. To construct a conveyor-belt system to connect the coal terminal and the new port (to enable conveyance of coal from the terminal for loading into ships in the port.
4. To construct Loading facilities at the Port, drenching of the Port (to allow large vessels to dock) and other necessary port infrastructure developments as well as equipment.
5. To construct coal loading facilities around Mmamabula area, catering for products (i.e., coal) from the Mines, and
6. To construct Loading Areas to unlock other economic sectors en-route and/or at terminals.

The railway route alignment was agreed by the Member States and is captures in the Bilateral Agreement as follows;

In Botswana

To start at Mmamabula coal fields, thereafter, connecting to and following the existing Railway alignment up to Rasesa, where it deviates to the west, passing North of Molepolole and South of Letlhakeng, and joining the Molepolole - Kang Road at Maboane, thereafter aligning to the Molepolole - Kang Road until Morwamosu, where it connects to the Trans-Kalahari Corridor through the Border to Mamuno Border.

In Namibia

It shall follow the Trans-Kalahari Corridor past Gobabis, through Omitara where it deviates to the West, and realigns to the Trans-Kalahari Corridor at Okahandja onwards to Walvis Bay.

The Member States had agreed to construct a Cape Gauge Railway Line. Notwithstanding, the Member States may (subject to full technical feasibility study findings) reconsider the choice of the railway gauge.
In September 2023, an Expression of Interest (EOI), was floated to the public, which closed on 08 November 2023.
Subsequently, an evaluation, adjudication and shortlisting of the EOI respondents' submissions were concluded and the shortlisted respondents are expected to be issued with a Request for Proposal (RFP) for the next stage of the project implementation.

2. Background Documentation

The Consultant shall familiarize themselves with all background documentation and preparatory work conducted to date, to enable for diligent execution of the assignment.

(i) The following studies were undertaken regarding the TKR Project.

(a) Pre-Feasibility Study, completed in 2011, by CPCS Transcom Limited (Canada);

(b) Trans Kalahari Railway Development Study, completed in 2016, by Aurecon;

(c) Detailed Scoping Study (DSS) – of Vision 2063 Africa Integrated High Speed Railway Network and Master Plan, completed in 2020, by CPCS Transcom Limited.

(ii) The following document regarding the Project is also available.

(a) Expression of Interest (EOI)

3. Scope of Work

Overview of the Scope

The Consultant shall be responsible for the preparation of the RFP bid document in compliance with best industry practices as well as considering applicable legislation and regulations. The RFP must set out the Terms of Reference, on behalf of the TKR-PMO, to be issued the shortlisted respondents. In addition, the RFP will provide the Evaluation Criteria for the respondents to comply with.

Furthermore, the Consultant should include high-level requirements for the Funding, Design, Build, Own, Operate and Transfer of the Project, which will be used as a basis in the final

agreement dependent on the outcome of the Feasibility Study and choice of investment model, railway gauge, final railway line route alignment, etc.

The Consultant shall form part of the TKR-PMO Bid Evaluation Committee, as an expert, and provide the requisite support to facilitate the efficient and professional management of the RFP process. This will include assistance with written clarifications for respondents and clarification submissions, administration (minute taking, communication, etc.) through efficient and effective clarifications, during the floating of the RFP.

Furthermore, the Consultant shall:

(i) Review and advise the TKR-PMO on the Engineering, Procurement and Construction (EPC) and Operations and Maintenance (O&M) contracts.
(ii) Review and advise TKR-PMO on the PPP Agreement, including regulations pertaining to acquiring of licenses and permissions, ensure the required establishment of the Joint Operating Company (JOC) and the Railway Project Authority, and the implementation of commercial requirements for the performance of the Project.
(iii) Review and assist the TKR-PMO in the development of the contractual agreement that will protect the interest of the Member States.

The scope of work for the Consultant is categorized as follows;

3.1 Task 1: Development of Comprehensive RFP for Shortlisted Respondents

The Consultant will be required to work together with the Client to manage the procurement process for securing contracts with a private party. All this needs to be in accordance with the Procurement Policies of the Client and should include inter alia the following;

(a) Review and analyze all documentation related to the TKR Project and develop the Request for Proposal (RFP) document that includes the following amongst others;

General information to bidders, essential minimum requirements, service standard specifications, payment mechanisms and penalty regime, draft PPP agreement, commitment required from bidders, evaluation criteria and bid formalities, Joint Operating Company (JOC) Agreement.

(b) Assist the TKR-PMO in managing the procurement process for the appointment of the PPP partner.
(c) Assist the TKR-PMO to evaluate the RFP.
(d) Advise during Contract Negotiations.

3.2 Task 2: Undertake Feasibility Study by the Successful Respondents

The Consultant will provide the necessary technical, legal, environmental, and financial advisory support to the Client and provide recommendations including but not limited to the following:

(a) Assist in delivering and Interpretation of the Feasibility Study findings.

(b) Full project cycle costs

(c) Technical and financial viability

(d) Investment Model

(e) Validity of information

(f) Methods of delivery

If project is found to be feasible, proceed to the next stage of the project.

4. Consultant Deliverables

The Consultant must prepare a complete set of procurement documents, complying with the Client's Policies and/or international best practices.
The Consultant must also provide to the Client all the necessary drafting, bidder communication and administrative support necessary for the entire procurement process to be conducted in accordance with best practice and to the highest standards of efficiency, quality and integrity.

a) Inception report and Procurement plan

The Consultant will design a summary of the project objectives, scope, stakeholders and a complete procurement plan and process.

b) Bidding Process

The Consultant shall provide all the necessary administrative support to the TKR_PMO for the professional management of the bidding process This includes managing a data room, facilitating structured engagement between the TKR-PMO, bidders and stakeholders and helping the TKR-PMO to communicate effectively with bidders. The consultant shall also advice on mechanisms to maximize competition while avoiding unrealistic bids and project vulnerability from overly aggressive bidding and review information to be provided to bidders to manage liabilities.

c) Request for Proposal

The Consultant will prepare a Request for Proposal (RFP) document in accordance with best industry practice. The RFP is to clearly set out the output specifications, evaluation criteria, the draft PPP agreement and payment mechanism, among others.

(iii) Bid evaluation criteria and bid process design**.**

The Consultant must propose:

(a) a bid evaluation system and criteria;

(b) a suitable bid process that will ensure comparable bids;

(c) effective systems for communicating with bidders; and

(d) strategies to inspire market confidence.

(ii) Technical review, including(a) review of general functional/technical solutions,(b) assessment of the estimated capital and operating costs(c) review the proposals and compare them with current best practice, highlighting areas where the proposed solutions will increase risk (and therefore price) and making suggestions for changes in current proposals.(d) Capacity of the site, and appropriateness for the technology and performance required of the Project,(e) weather conditions, status of land availability, status of permissions and permits, traffic.(f) Management and construction management contraints etc. (g) service levels and operating costs(h) preparation of all alignment drawings and specifications (to the extent not provided in the working documents) (i) review of project data, including ground conditions and geotechnics.(j) review of capital cost estimates, benchmarking against out-turn costs /published cost estimate data on other projects.(k) review of operability of scheme in relation to technical specification, infrastructure, off-take demand and required levels of output, availability and safety.(l) commentary on integration with - and linkages to network(m) environmental impact assessments and proposed mitigation measures.

(iii) Designing qualification and bidding procedures

(a) Designing key aspects of the tender procedure, for example deciding whether and to what extent to accept variant and non-conforming bids, what rules to set in relation to the assessment of bids (scoring regimes, timing of bids and rejecting of excessively low bids) and how to maximize competition without sacrificing quality of bids.

(b) Outlining tender documentation

(c) Outlining the PPP contract (including all annexes) that implements the chosen PPP approach: (i) applying the risk matrix developed during the project preparation stage, but updated to address all project issues and market context, (ii) developing and implementing a detailed financial model and developing the contract to fit the requirements of the model, (iii) advice the Client whether and to what extent certain provisions could be amended without disturbing the key risk allocation goals of the project,(iv) The Parties may need to obtain debt or provide a loan to the project company or to provide some other financial instrument (e.g. guarantee or subsidy) to make the PPP project financially viable or more cost effective. The Consultant

will provide advice on structuring of such instruments, their drafting, negotiation and implementation.

(d) All advice rendered to be in compliant with applicable law and considering any constraints or opportunities associated with applicable law.

(e) Advice on policy decisions and risk transfer issues.

iv) A draft PPP agreement

The Consultant must prepare a draft PPP agreement, in close liaison with the Client, implementing the risk allocation regime and using best practice to maximize competition and keep pricing low, while protecting the Client's interests with a view to project implementation and manageability over the term of the project. The agreement will include all necessary annexes and subsidiary documentation, e.g. performance specification, project scope, client's requirements, technical specification, Project performance monitoring regime, code of construction practice, requirements for network integration, etc.

d) Bid Evaluation

The Consultant will assist TKR-PMO in the evaluation of bids. The Consultant will design bid evaluation tool that will ensure comparable bids, devise effective systems for communicating with bidders and inspiring market confidence. If appropriate, a system that allows for variant bids may be designed.

e) The value-for-money report

The results of the bidding and evaluation of bids will be presented in a single Value-for-Money Report that clearly demonstrates how value-for-money and risk transfer will be achieved with the preferred bidder within the affordability limits. The report will clearly motivate and indicate the preferred bidder and second-ranked bidder and confirm compliance with applicable legal requirements.

f) PPP agreement negotiations, PPP agreement management plan

The Consultant must assist the Client in final negotiations with the preferred bidder. This will involve:

(i) preparing suitable negotiations teams,

(ii) categorizing issues appropriately, developing timelines for completion,

(iii) planning negotiation tactics,

(iv) reviewing proposed sub-contracts, in particular with the construction contractor and operator, to the extent forms of these contracts have not been included in the PPP contract or the tender documents,

(v) advising on proposed changes to the agreed form sub-contracts,

(vi) review of preferred bidder satisfaction of the condition's precedent to the PPP contract, often including the validity of licenses and permissions obtained by the preferred bidder, formation of corporate vehicles in the form required, financial close of the project financing, and implementation of the commercial requirements for performance of the project,

(vii) relationship with second and third place bidders, including managing bid bonds and on-going discussions to prepare for the eventual withdrawal of the preferred bidder,

(viii) processes for commercial close,

(ix) review and advice of the financial documentation which will often have a direct effect on the rights and obligations of the Client,

(x) legal opinion that transaction is binding on its terms,

(xi) legal opinion on security and financial management structure, and

(xii) legal opinion on revenue structure and current regulatory mechanism.

The Consultant must ensure that all agreements reached are incorporated into all the financial, commercial and legal documentation, and must assist with drafting the necessary and related correspondence.

The final terms of the agreement, each as negotiated with the preferred bidder, must be submitted by the Client to their respective PPP Units, along with the PPP agreement management plan for the Project, for approval. The Consultant is responsible for compiling the necessary submissions for the Client to obtain this approval, including a comprehensive legal due diligence has been completed. This will relate to amongst others, legal compliance, competence and capacity to enter into the PPP agreement.

g) Training

The Consultant will train the Project Team and selected staff of Member States in respect of the negotiations with the private party and in managing the delivery of the services to ensure that the private party delivers the Project in accordance with the Project agreements.

5. PPP Agreement Signature, Close-out report, and Financial Close

The Consultant must:

(a) assist the Client with all functions related to signing the final agreement through to financial close. Financial closure signifies that all the procurement deliverables have been successfully completed.

(b) compile a comprehensive close-out report for Client's approval. The close-out report will be a confidential document of the Client.

(c) in liaison with the Client shall draft a comprehensive PPP management plan, in accordance with best practice.

Table 1: PPP Procurement

Deliverable – Submission and Approval of:	% payable	Time frame (from the agreed commencement date)
Inception report including Procurement Plan	10%	4 weeks
Request for Proposal Documentation	35%	14 weeks
Evaluation (Preferred Bidder)	30 %	34 weeks
Negotiations	25 %	46 weeks
Financial Close		58 weeks
Total	100%	58 weeks

Note: Timeframe does not include duration for approvals.

Table 2: Review of the Feasibility Study (To be funded by the Preferred Bidder)

Deliverable– Review and Approval of:	**% payable**	**Timeframe**
Inception Report	10%	2 weeks
Needs Assessment and Solutions Options Assessment	15%	3 weeks
Project Due Diligence Report	15%	3 weeks
Value Assessment, including Economic Valuation	20%	4 weeks
Feasibility Study Report (including disbursement and presentations)	20%	6 weeks
Close out report and Case Study (Including Procurement Plan and Feasibility Study)	20%	2 weeks
Total	100%	20 weeks

Section 6. Standard Forms of Contract

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Preface

1. The Standard Contract consists of four parts: the Form of Contract to be signed by the Client and the Consultant, the General Conditions of Contract, the Special Conditions of Contract, and the Appendices. The client using this Standard Contract NOT alter the General Conditions. Any adjustment to meet project features should be made only in the Special Conditions.

2. Time-based contracts are recommended when the scope of the services cannot be established with sufficient precision, or the duration and quantity of services depends on variables that are beyond the control of the Consultant. In time-based contracts the Consultant provides services on a timed basis according to quality specifications, and Consultant's remuneration is based on (i) agreed upon unit rates for Consultant staff multiplied by the actual time spent by the staff in executing the assignment, and (ii) reimbursable expenses using actual expenses and/or agreed unit prices. This type of contract requires the Client to closely supervise Consultant and to be involved in the daily execution of the assignment.

CONTRACT FOR CONSULTANTS' SERVICES

Time-Based

between

[name of the Client]

and

[name of the Consultant]

For the development of a comprehensive RFP document for the Trans-Kalahari Railway Project

Procurement No: TKR-PMO/SC/RFP-01/24-25

I. Form of Contract

TIME-BASED

This CONTRACT (hereinafter called the "Contract") is made the *[day]* day of the month of *[month]*, *[year]*, between, on the one hand, *Trans-Kalahari Railway Project Management Office* (hereinafter called the "Client") and, on the other hand, *[name of Consultant]* (hereinafter called the "Consultant").

[***Note**: If the Consultant consist of more than one entity, the above should be partially amended to read as follows:* "…(hereinafter called the "Client") and, on the other hand, a joint venture/consortium/association consisting of the following entities, each of which will be jointly and severally liable to the Client for all the Consultant's obligations under this Contract, namely, *[name of Consultant]* and *[name of Consultant]* (hereinafter called the "Consultant").]

WHEREAS

(a) the Client has requested the Consultant to provide certain consulting services as defined in this Contract (hereinafter called the "Services");

(b) the Consultant, having represented to the Client that he has the required professional skills, and personnel and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract;

NOW THEREFORE the Parties hereto hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:

   (a) The General Conditions of Contract;
   (b) The Special Conditions of Contract;
   (c) The following Appendices:

   Appendix A: Description of Services
   Appendix B: Reporting Requirements
   Appendix C: Personnel and Sub-Consultants – Hours of Work for Key Personnel
   Appendix D: Cost Estimates in Local Currency
   Appendix E: Duties of the Client
   Appendix F: Form of Advance Payments Guarantee

2. The mutual rights and obligations of the Client and the Consultant shall be as set forth in the Contract, in particular:

(a) the Consultants shall carry out the Services in accordance with the provisions of the Contract; and
(b) the Client shall make payments to the Consultant accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf of *[name of Client]*

_____
[Authorized Representative]

For and on behalf of *[name of Consultant]*

_____
[Authorized Representative]

[***Note**: If the Consultant consists of more than one entity, all these entities should appear as signatories, e.g., in the following manner*:]

For and on behalf of each of the Members of the Consultant

[name of member]

_____
[Authorized Representative]

[name of member]

_____
[Authorized Representative]

II. General Conditions of Contract

1. General Provisions

1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

(a) "Applicable Law" means the laws and any other instruments having the force of law in the Republic of Namibia.

(b) "Consultant" means any private or public entity that will provide the Services to the Client under the Contract.

(c) "Contract" means the Contract signed by the Parties and all the attached documents listed in its Clause 1, that is the General Conditions (GC), the Special Conditions (SC), and the Appendices.

(d) "Day" means calendar day.

(e) "Effective Date" means the date on which this Contract comes into force and pursuant to Clause GC 2.1.

(f) "Foreign Currency" means any currency other than the Namibian Dollars.

(g) "GC" means the General Conditions of Contract.

(h) "Local Currency" means the Namibian Dollars.

(i) "Member" means any of the entities that make up the joint venture/consortium/association; and "Members" means all these entities.

(j) "Member States" means the Governments of the republics of Botswana and Namibia

(k) "Party" means the Client or the Consultant, as the case may be, and "Parties" means both of them.

(l) "Personnel" means professionals and support staff provided by the Consultants or by any Sub-Consultants and assigned to perform the Services or any part thereof; "Foreign Personnel" means such professionals and support staff who at the time of being so provided had their domicile outside the Republic of Namibia; "Local Personnel" means such professionals and support staff who at the time of being so provided had their

domicile inside the Republic of Namibia; and "Key Personnel" means the Personnel referred to in Clause GC 4.2(a).

(m) "Reimbursable expenses" means all assignment-related costs other than Consultant's remuneration.

(n) "Dollars" means Namibian Dollars.

(o) "SC" means the Special Conditions of Contract by which the GC may be amended or supplemented.

(p) "Services" means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A hereto.

(q) "Sub-Consultants" means any person or entity to whom/which the Consultant subcontracts any part of the Services.

(r) "Third Party" means any person or entity other than the Member States, the Client, the Consultant or a Sub-Consultant.

(s) "In writing" means communicated in written form with proof of receipt.

1.2 Relationship Between the Parties Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the Client and the Consultant. The Consultant, subject to this Contract, has complete charge of Personnel and Sub-Consultants, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

1.3 Law Governing Contract This Contract shall be governed by the laws of the Republic of Namibia.

1.4 Language This Contract has been executed in English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

1.5 Headings The headings shall not limit, alter or affect the meaning of this Contract.

1.6 Notices

1.6.1 Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address **specified in the SC.**

1.6.2 A Party may change its address for notice hereunder by giving the other Party notice in writing of such change to the address **specified in the SC.**

1.7 Location The Services shall be performed at such locations as are specified in Appendix A hereto and, where the location of a particular task is not so specified, at such locations, whether in the Republic of Namibia or elsewhere, as the Client may approve.

1.8 Authority of Member in Charge In case the Consultant consists of a joint venture/consortium/ association of more than one entity, the Members hereby authorize the entity **specified in the SC** to act on their behalf in exercising all the Consultant's rights and obligations towards the Client under this Contract, including without limitation the receiving of instructions and payments from the Client.

1.9 Authorized Representatives Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Client or the Consultant may be taken or executed by the officials **specified in the SC.**

1.10 Taxes and Duties The Consultant, Sub-Consultants and Personnel shall pay such indirect taxes, duties, fees and other impositions levied under the Applicable Law as **specified in the SC**.

1.11 Fraud and Corruption If the Client determines that the Consultant and/or its Personnel, sub-contractors, sub-consultants, services providers and suppliers has engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices, in competing for or in executing the Contract, then the Client may, after giving 14 days' notice to the Consultant, terminate the Consultant's employment under the Contract, and the provisions of Clause 2 shall apply as if such expulsion had been made under Sub-Clause 2.9.1(d).

Should any Personnel of the Consultant be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the Contract, then that Personnel shall be removed in accordance with Sub-Clause 4.5.

1.11.1 Definitions For the purposes of this Sub-Clause, the terms set-forth below are defined as follows:

(i) "corrupt practice"[6] is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

[6] "Another party" refers to a public official acting in relation to the selection process or contract execution.

(ii) "fraudulent practice"[7] is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

(iii) "collusive practice"[8] is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

(iv) "coercive practice"[9] is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

(v) "obstructive practice" is

(aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an 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

(bb) acts intended to materially impede the exercise of the Client's inspection and audit rights provided for under Clause 3.6.

1.11.2 Commissions and Fees The Client will require the successful Consultants to disclose any commissions or fees that may have been paid or are to be paid to agents, representatives, or commission agents with respect to the selection process or execution of the contract. The information disclosed must include at least the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee.

2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

2.1 Effectiveness of Contract This Contract shall come into force and effect on the date (the "Effective Date") of the Client's notice to the Consultant instructing the Consultant to begin carrying out the Services. This notice shall

[7] A "party" refers to a public official; the terms "benefit" and "obligation" relate to the selection process or contract execution; and the "act or omission" is intended to influence the selection process or contract execution.

[8] "Parties" refers to participants in the selection process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

[9] A "party" refers to a participant in the selection process or contract execution.

confirm that the effectiveness conditions, if any, **listed in the SC** have been met.

2.2 Termination of Contract for Failure to Become Effective

If this Contract has not become effective within such time period after the date of the Contract signed by the Parties as **specified in the SC,** either Party may, by not less than twenty one (21) days written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.

2.3 Commencement of Services

The Consultant shall begin carrying out the Services not later than the number of days after the Effective Date **specified in the SC.**

2.4 Expiration of Contract

Unless terminated earlier pursuant to Clause GC 2.9 hereof, this Contract shall expire at the end of such time period after the Effective Date **as specified in the SC.**

2.5 Entire Agreement

This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

2.6 Modifications or Variations

Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. Pursuant to Clause GC 7.2 here of, however, each Party shall give due consideration to any proposal for modification or variation made by the other Party.

2.7 Force Majeure

2.7.1 Definition

(a) For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and which makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by Government agencies.

(b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's Sub-Consultants or agents or employees, nor (ii) any event

which a diligent Party could reasonably have been expected both to take into account at the time of the conclusion of this Contract, and avoid or overcome in the carrying out of its obligations hereunder.

(c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

2.7.2 No Breach of Contract

The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

2.7.3 Measures to be Taken

(a) A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

(b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.

(c) Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

(d) During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the Client, shall either:

(i) demobilize, in which case the Consultant shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the Client, in reactivating the Services; or

(ii) continue with the Services to the extent possible, in which case the Consultant shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred.

(e) In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clause GC 8.

2.8 Suspension

The Client may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Consultant to remedy such failure within a period not exceeding thirty (30) days after receipt by the Consultant of such notice of suspension.

2.9 Termination

2.9.1 By the Client

The Client may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (g) of this Clause GC 2.9.1. In such an occurrence the Client shall give a not less than thirty (30) days' written notice of termination to the Consultants, and sixty (60) days' in case of the event referred to in (g).

(a) If the Consultant fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause GC 2.8 hereinabove, within thirty (30) days of receipt of such notice of suspension or within such further period as the Client may have subsequently approved in writing.

(b) If the Consultant becomes (or, if the Consultant consists of more than one entity, if any of its Members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary.

(c) If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GC 8 hereof.

(d) If the Consultant, in the judgment of the Client, has engaged in corrupt or fraudulent practices in competing for or in executing this Contract.

(e) If the Consultant submits to the Client a false statement which has a material effect on the rights, obligations or interests of the Client.

(f) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

(g) If the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

2.9.2 By the Consultant

The Consultant may terminate this Contract, by not less than thirty (30) days' written notice to the Client, in case of the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause GC 2.9.2.

(a) If the Client fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause GC 8 hereof within sixty (60) days after receiving written notice from the Consultant that such payment is overdue.

(b) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

(c) If the Client fails to comply with any final decision reached as a result of arbitration pursuant to Clause GC 8 hereof.

(d) If the Client is in material breach of its obligations pursuant to this Contract and has not remedied the same within sixty (60) days (or such longer period as the Consultant may have subsequently approved in writing) following the receipt by the Client of the Consultant's notice specifying such breach.

2.9.3 Cessation of Rights and Obligations

Upon termination of this Contract pursuant to Clauses GC 2.2 or GC 2.9 hereof, or upon expiration of this Contract pursuant to Clause GC 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause GC 3.3 hereof, (iii) the Consultant's obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause GC 3.6 hereof, and (iv) any right which a Party may have under the Applicable Law.

2.9.4 Cessation of Services

Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GC 2.9.1 or GC 2.9.2 hereof, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the

Client, the Consultant shall proceed as provided, respectively, by Clauses GC 3.9 or GC 3.10 hereof.

2.9.5 Payment upon Termination Upon termination of this Contract pursuant to Clauses GC 2.9.1 or GC 2.9.2 hereof, the Client shall make the following payments to the Consultant:

(a) remuneration pursuant to Clause GC 6 hereof for Services satisfactorily performed prior to the effective date of termination, and reimbursable expenditures pursuant to Clause GC 6 hereof for expenditures actually incurred prior to the effective date of termination; and

(b) except in the case of termination pursuant to paragraphs (a) through (e) of Clause GC 2.9.1 hereof, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract including the cost of the return travel of the Personnel and their eligible dependents.

2.9.6 Disputes about Events of Termination If either Party disputes whether an event specified in paragraphs (a) through (f) of Clause GC 2.9.1 or in Clause GC 2.9.2 hereof has occurred, such Party may, within sixty (60) days after receipt of notice of termination from the other Party, refer the matter to Clause GC 8 hereof, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

3. OBLIGATIONS OF THE CONSULTANT

3.1 General

3.1.1 Standard of Performance The Consultant shall perform the Services and carry out its obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the Client, and shall at all times support and safeguard the Client's legitimate interests in any dealings with Sub-Consultants or Third Parties.

3.1.2 Law Governing Services The Consultant shall perform the Services in accordance with the Applicable Law and shall take all practicable steps to ensure that any Sub-Consultants, as well as the Personnel of the Consultant and any

Sub-Consultants, comply with the Applicable Law. The Client shall notify the Consultant in writing of relevant local customs, and the Consultant shall, after such notification, respect such customs.

3.2 Conflict of Interests

The Consultant shall hold the Client's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.

3.2.1 Consultant Not to Benefit from Commissions, Discounts, etc.

(a) The payment to the Consultant pursuant to Clause GC 6 shall constitute the Consultant's only payment in connection with this Contract and, subject to Clause GC 3.2.2 hereof, the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that any Sub-Consultants, as well as the Personnel and agents of either of them, similarly shall not receive any such additional payment.

(b) Furthermore, if the Consultant, as part of the Services, has the responsibility of advising the Client on the procurement of goods, works or services, the Consultant shall comply with the Client's applicable procurement policies and guidelines, and shall at all times exercise such responsibility in the best interest of the Client. Any discounts or commissions obtained by the Consultant in the exercise of such procurement responsibility shall be for the account of the Client.

3.2.2 Consultant and Affiliates Not to Engage in Certain Activities

The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-Consultant and any entity affiliated with such Sub-Consultant, shall be disqualified from providing goods, works or services (other than consulting services) resulting from or directly related to the Consultant's Services for the preparation or implementation of the project.

3.2.3 Prohibition of Conflicting Activities

The Consultant shall not engage, and shall cause its Personnel as well as its Sub-Consultants and their Personnel not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.

3.3 Confidentiality

Except with the prior written consent of the Client, the Consultant and the Personnel shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant and the Personnel make public the

recommendations formulated in the course of, or as a result of, the Services.

3.4 Liability of the Consultant

Subject to additional provisions, if any, **set forth in the SC,** the Consultants' liability under this Contract shall be provided by the Applicable Law.

3.5 Insurance to be Taken out by the Consultant

The Consultant (i) shall take out and maintain, and shall cause any Sub-Consultant to take out and maintain, at (or the Sub-Consultants', as the case may be) own cost but on terms and conditions approved by the Client, insurance against the risks, and for the coverages **specified in the SC**, and (ii) at the Client's request, shall provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid.

3.6 Accounting, Inspection and Auditing

3.6.1 The Consultant shall keep, and shall cause its Sub-consultants to keep, accurate and systematic accounts and records in respect of the Contract, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify relevant time changes and costs.

3.6.2 The Consultant shall permit, and shall cause its Sub-consultants to permit, the Client and/or persons appointed by the Client to inspect its accounts and records relating to the performance of the Contract and the submission of the Proposal to provide the Services, and to have such accounts and records audited by auditors appointed by the Client, if requested by the Client. The Consultant's attention is drawn to Clause 1.11.1 which provides, inter alia, that acts intended to materially impede the exercise of the inspection and audit rights provided for under Clause 3.6 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the prevailing sanctions procedures.)

3.7 Consultant's Actions Requiring Client's Prior Approval

The Consultant shall obtain the Client's prior approval in writing before taking any of the following actions:

(a) Any change or addition to the Personnel listed in Appendix C.

(b) Subcontracts: the Consultant may subcontract work relating to the Services to an extent and with such experts and entities as may be approved in advance by the Client. Notwithstanding such approval, the Consultant shall retain full responsibility for the Services. In the event that any Sub-Consultants are found by the Client to be incompetent or incapable in discharging assigned duties, the Client may request the Consultant to provide a

replacement, with qualifications and experience acceptable to the Client, or to resume the performance of the Services itself.

(c) Any other action that may be **specified in the SC**.

3.8 Reporting Obligations

The Consultant shall submit to the Client the reports and documents specified in Appendix B hereto, in the form, in the numbers and within the time periods set forth in the said Appendix. Final reports shall be delivered in Electronic and/or Digital Data Storage Format.

3.9 Documents Prepared by the Consultant to be the Property of the Client

All plans, drawings, specifications, designs, reports, other documents and software prepared by the Consultant for the Client under this Contract shall become and remain the property of the Client, and the Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Client, together with a detailed inventory thereof. The Consultant may retain a copy of such documents and software, and use such software for their own use with prior written approval of the Client. If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of any such computer programs, the Consultant shall obtain the Client's prior written approval to such agreements, and the Client shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned. Other restrictions about the future use of these documents and software, if any, shall be **specified in the SC.**

3.10 Equipment, Vehicles and Materials Furnished by the Client

Equipment, vehicles and materials made available to the Consultant by the Client, or purchased by the Consultant wholly or partly with funds provided by the Client, shall be the property of the Client and shall be marked accordingly. Upon termination or expiration of this Contract, the Consultant shall make available to the Client an inventory of such equipment, vehicles and materials and shall dispose of such equipment and materials in accordance with the Client's instructions. While in possession of such equipment, vehicles and materials, the Consultant, unless otherwise instructed by the Client in writing, shall insure them at the expense of the Client in an amount equal to their full replacement value.

3.11 Equipment and Materials Provided by the Consultants

Equipment or materials brought into the Republic of Namibia by the Consultant and the Personnel and used either for the Project or personal use shall remain the property of the Consultant or the Personnel concerned, as applicable.

4. CONSULTANTS' PERSONNEL AND SUB-CONSULTANTS

4.1 General

The Consultant shall employ and provide such qualified and experienced Personnel and Sub-Consultants as are required to carry out the Services.

4.2 Description of Personnel

(a) The title, agreed job description, minimum qualification and estimated period of engagement in the carrying out of the Services of each of the Consultant's Key Personnel are described in Appendix C. If any of the Key Personnel has already been approved by the Client, his/her name is listed as well.

(b) If required to comply with the provisions of Clause GC 3.1.1 hereof, adjustments with respect to the estimated periods of engagement of Key Personnel set forth in Appendix C may be made by the Consultant by written notice to the Client, provided (i) that such adjustments shall not alter the originally estimated period of engagement of any individual by more than 10% or one week, whichever is larger, and (ii) that the aggregate of such adjustments shall not cause payments under this Contract to exceed the ceilings set forth in Clause GC 6.1(b) of this Contract. Any other such adjustments shall only be made with the Client's written approval.

(c) If additional work is required beyond the scope of the Services specified in Appendix A, the estimated periods of engagement of Key Personnel set forth in Appendix C may be increased by agreement in writing between the Client and the Consultant. In case where payments under this Contract exceed the ceilings set forth in Clause GC 6.1(b) of this Contract, this will be explicitly mentioned in the agreement.

4.3 Approval of Personnel

The Key Personnel and Sub-Consultants listed by title as well as by name in Appendix C are hereby approved by the Client. In respect of other Personnel which the Consultant proposes to use in the carrying out of the Services, the Consultant shall submit to the Client for review and approval a copy of their Curricula Vitae (CVs). If the Client does not object in writing (stating the reasons for the objection) within twenty-one (21) days from the date of receipt of such CVs, such Personnel shall be deemed to have been approved by the Client.

4.4 Working Hours, Overtime, Leave, etc.

(a) Working hours and holidays for Key Personnel are set forth in Appendix C hereto. To account for travel time, Foreign Personnel carrying out Services inside the Client's country shall be deemed to have commenced, or finished work in respect of the Services such number of days before their arrival

in, or after their departure from the Republic of Namibia as is specified in Appendix C hereto.

(b) The Key Personnel shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in Appendix C hereto, and except as specified in such Appendix, the Consultant's remuneration shall be deemed to cover these items. All leave to be allowed to the Personnel is included in the staff-months of service set forth in Appendix C. Any taking of leave by Personnel shall be subject to the prior approval by the Consultant who shall ensure that absence for leave purposes will not delay the progress and adequate supervision of the Services.

4.5 Removal and/or Replacement of Personnel

(a) Except as the Client may otherwise agree, no changes shall be made in the Personnel. If, for any reason beyond the reasonable control of the Consultant, such as retirement, death, medical incapacity, among others, it becomes necessary to replace any of the Personnel, the Consultant shall forthwith provide as a replacement a person of equivalent or better qualifications.

(b) If the Client (i) finds that any of the Personnel has committed serious misconduct or has been charged with having committed a criminal action, or (ii) has reasonable cause to be dissatisfied with the performance of any of the Personnel, the Consultant shall, at the Client's written request specifying the grounds therefore, forthwith provide as a replacement a person with qualifications and experience acceptable to the Client.

(c) Any of the Personnel provided as a replacement under Clauses (a) and (b) above, as well as any reimbursable expenditures (including expenditures due to the number of eligible dependents) the Consultants may wish to claim as a result of such replacement, shall be subject to the prior written approval by the Client. The rate of remuneration applicable to a replacement person will be obtained by multiplying the rate of remuneration applicable to the replaced person by the ratio between the monthly salary to be effectively paid to the replacement person and the average salary effectively paid to the replaced person in the period of six months prior to the date of replacement. Except as the Client may otherwise agree, (i) the Consultant shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and (ii) the remuneration to be paid for any of the Personnel provided as a replacement shall not exceed the remuneration which would have been payable to the Personnel replaced.

4.6 Resident Project Manager

If **required by the SC,** the Consultant shall ensure that at all times during the Consultant's performance of the Services in the Clients country a resident project manager, acceptable to the Client, shall take charge of the performance of such Services.

5. OBLIGATIONS OF THE CLIENT

5.1 Assistance and Exemptions

Unless otherwise **specified in the SC,** the Client shall use its best efforts to ensure that the Member States shall:

(a) Provide the Consultant, Sub-Consultants and Personnel with work permits and such other documents as shall be necessary to enable the Consultant, Sub-Consultants or Personnel to perform the Services.

(b) Arrange for the Personnel and, if appropriate, their eligible dependents to be provided promptly with all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in the Republic of Namibia.

(c) Facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Personnel and their eligible dependents.

(d) Issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.

(e) Exempt the Consultant and the Personnel and any Sub-Consultants employed by the Consultant for the Services from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity according to the Applicable Law.

(f) Grant to the Consultant, any Sub-Consultants and the Personnel of either of them the privilege, pursuant to the Applicable Law, of bringing into the Republic of Namibia reasonable amounts of foreign currency for the purposes of the Services or for the personal use of the Personnel and their dependents and of withdrawing any such amounts as may be earned therein by the Personnel in the execution of the Services.

(g) Provide to the Consultant, Sub-Consultants and Personnel any such other assistance as may be **specified in the SC.**

5.2 Access to Land

The Client warrants that the Consultant shall have, free of charge, unimpeded access to all land in the Member States in respect of which access is required for the performance of the Services. The Client will be responsible for any damage to such land or any property thereon resulting from such access and will indemnify the Consultant and each of the Personnel in respect of liability for any such damage, unless such damage is caused by the default or negligence of the Consultant or any Sub-Consultants or the Personnel of either of them.

5.3 Change in the Applicable Law Related to Taxes and Duties

If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Clause GC 6.1(b).

5.4 Services, Facilities and Property of the Client

(a) The Client shall make available to the Consultant and the Personnel, for the purposes of the Services and free of any charge, the services, facilities and property described in Appendix E at the times and in the manner specified in the said Appendix E.

(b) In case that such services, facilities and property shall not be made available to the Consultant as and when specified in Appendix E, the Parties shall agree on (i) any time extension that it may be appropriate to grant to the Consultant for the performance of the Services, (ii) the manner in which the Consultant shall procure any such services, facilities and property from other sources, and (iii) the additional payments, if any, to be made to the Consultant as a result thereof pursuant to Clause GC 6.1(c) hereinafter.

5.5 Payment

In consideration of the Services performed by the Consultant under this Contract, the Client shall make to the Consultant such payments and in such manner as is provided by Clause GC 6 of this Contract.

5.6 Counterpart Personnel

(a) The Client shall make available to the Consultant free of charge such professional and support counterpart personnel, to be nominated by the Client with the Consultant's advice, if specified in Appendix E.

(b) If counterpart personnel are not provided by the Client to the Consultant as and when specified in Appendix E, the Client and the Consultant shall agree on (i) how the affected part of the Services shall be carried out, and (ii) the additional payments,

if any, to be made by the Client to the Consultant as a result thereof pursuant to Clause GC 6.1(c) hereof.

(c) Professional and support counterpart personnel, excluding Client's liaison personnel, shall work under the exclusive direction of the Consultant. If any member of the counterpart personnel fails to perform adequately any work assigned to such member by the Consultant that is consistent with the position occupied by such member, the Consultant may request the replacement of such member, and the Client shall not unreasonably refuse to act upon such request.

6. PAYMENTS TO THE CONSULTANT

6.1 Cost Estimates; Ceiling Amount

(a) An estimate of the cost of the Services payable in Namibian Dollars is set forth in Appendix D.

(b) Except as may be otherwise agreed under Clause GC 2.6 and subject to Clause GC 6.1(c), payments under this Contract shall not exceed the ceilings in Namibian Dollars specified in the SC.

(c) Notwithstanding Clause GC 6.1(b) hereof, if pursuant to any of the Clauses GC 5.3, 5.4 or 5.6 hereof, the Parties shall agree that additional payments in Namibian Dollars, as the case may be, shall be made to the Consultant in order to cover any necessary additional expenditures not envisaged in the cost estimates referred to in Clause GC 6.1(a) above, the ceiling or ceilings, as the case may be, set forth in Clause GC 6.1(b) above shall be increased by the amount or amounts, as the case may be, of any such additional payments.

6.2 Remuneration and Reimbursable Expenses

(a) Subject to the ceilings specified in Clause GC 6.1(b) hereof, the Client shall pay to the Consultant (i) remuneration as set forth in Clause GC 6.2(b) hereunder, and (ii) reimbursable expenses as set forth in Clause GC 6.2(c) hereunder. Unless otherwise specified in the SC, said remuneration shall be fixed for the duration of the Contract.

(b) Payment for the Personnel shall be determined on the basis of time actually spent by such Personnel in the performance of the Services after the date determined in accordance with Clause GC 2.3 and Clause SC 2.3 (or such other date as the Parties shall agree in writing), at the rates referred to in Clause SC 6.2(b), and subject to price adjustment, if any, specified in Clause SC 6.2(a).

(c) Reimbursable expenses actually and reasonably incurred by the Consultant in the performance of the Services, as specified in Clause SC 6.2(c).

(d) The remuneration rates referred to under paragraph (b) here above shall cover: (i) such salaries and allowances as the Consultant shall have agreed to pay to the Personnel as well as factors for social charges and overhead (bonuses or other means of profit-sharing shall not be allowed as an element of overhead), (ii) the cost of backstopping by home office staff not included in the Personnel listed in Appendix C, and (iii) the Consultant's fee.

(e) Any rates specified for Personnel not yet appointed shall be provisional and shall be subject to revision, with the written approval of the Client, once the applicable salaries and allowances are known.

(f) Payments for periods of less than one month shall be calculated on an hourly basis for actual time spent in the Consultant's home office and directly attributable to the Services (one hour being equivalent to $1/176^{th}$ of a month) and on a calendar-day basis for time spent away from home office (one day being equivalent to $1/30^{th}$ of a month).

6.3 Currency of Payment Payments shall be made in Namibian Dollars.

6.4 Mode of Billing and Payment Billings and payments in respect of the Services shall be made as follows:

(a) Within the number of days after the Effective Date specified in the SC, the Client shall cause to be paid to the Consultant advance payments in Namibian dollars as specified in the SC. When the SC indicate advance payment, this will be due after provision by the Consultant to the Client of an advance payment guarantee acceptable to the Client in an amount (or amounts) and in a currency (or currencies) specified in the SC. Such guarantee (i) to remain effective until the advance payment has been fully set off, and (ii) to be in the form set forth in Appendix F hereto, or in such other form as the Client shall have approved in writing. The advance payments will be set off by the Client in equal installments against the statements for the number of months of the Services specified in the SC until said advance payments have been fully set off.

(b) As soon as practicable and not later than fifteen (15) days after the end of each calendar month during the period of the

Services, or after the end of each time intervals otherwise indicated in the SC, the Consultant shall submit to the Client, in duplicate, itemized statements, accompanied by copies of invoices, vouchers and other appropriate supporting materials, of the amounts payable pursuant to Clauses GC 6.3 and GC 6.4 for such month, or any other period indicated in the SC. Separate statements shall be submitted in respect of amounts payable in foreign currency and in local currency. Each statement shall distinguish that portion of the total eligible costs which pertains to remuneration from that portion which pertains to reimbursable expenses.

(c) The Client shall pay the Consultant's statements within sixty (60) days after the receipt by the Client of such statements with supporting documents. Only such portion of a statement that is not satisfactorily supported may be withheld from payment. Should any discrepancy be found to exist between actual payment and costs authorized to be incurred by the Consultant, the Client may add or subtract the difference from any subsequent payments. Interest at the annual rate specified in the SC shall become payable as from the above due date on any amount due by, but not paid on, such due date.

(d) The final payment under this Clause shall be made only after the final report and a final statement, identified as such, shall have been submitted by the Consultant and approved as satisfactory by the Client. The Services shall be deemed completed and finally accepted by the Client and the final report and final statement shall be deemed approved by the Client as satisfactory ninety (90) calendar days after receipt of the final report and final statement by the Client unless the Client, within such ninety (90) day period, gives written notice to the Consultant specifying in detail deficiencies in the Services, the final report or final statement. The Consultant shall thereupon promptly make any necessary corrections, and thereafter the foregoing process shall be repeated. Any amount, which the Client has paid or caused to be paid in accordance with this Clause in excess of the amounts actually payable in accordance with the provisions of this Contract, shall be reimbursed by the Consultant to the Client within thirty (30) days after receipt by the Consultant of notice thereof. Any such claim by the Client for reimbursement must be made within twelve (12) calendar months after receipt by the Client of a final report and a final statement approved by the Client in accordance with the above.

(e) All payments under this Contract shall be made to the accounts of the Consultant specified in the SC.

(f) Payments in respect of remuneration or reimbursable expenses, which exceed the cost estimates for these items as set forth in Appendices D, may be charged to the respective contingencies provided for in Namibian Dollars only if such expenditures were approved by the Client prior to being incurred.

(g) With the exception of the final payment under (d) above, payments do not constitute acceptance of the Services nor relieve the Consultant of any obligations hereunder.

7. FAIRNESS AND GOOD FAITH

7.1 Good Faith

The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

7.2 Operation of the Contract

The Parties recognize that it is impractical in this Contract to provide for every contingency which may arise during the life of the Contract, and the Parties hereby agree that it is their intention that this Contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Contract either Party believes that this Contract is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but no failure to agree on any action pursuant to this Clause shall give rise to a dispute subject to arbitration in accordance with Clause GC 8 hereof.

8. SETTLEMENT OF DISPUTES

8.1 Amicable Settlement

If either Party objects to any action or inaction of the other Party, the objecting Party may file a written Notice of Dispute to the other Party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within 14 days after receipt. If that Party fails to respond within 14 days, or the dispute cannot be amicably settled within 14 days following the response of that Party, Clause GC 8.2 shall apply.

8.2 Dispute Resolution

Any dispute between the Parties as to matters arising pursuant to this Contract that cannot be settled amicably according to Clause GC 8.1 may be submitted by either Party for settlement in accordance with the provisions **specified in the SC**.

III. Special Conditions of Contract

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.6	The addresses are: Client: Trans Kalahari Railway – Project Management Office Attention: Procurement Office Address : 16 Prof. Mburumba Kerina Street TransNamib Holdings Ltd Building First Floor East Wing Windhoek Namibia Consultant: _____ _____ Attention: _____ Address : _____
1.8	The Member in Charge is…… *[insert name of member]* ***Note**: If the Consultant consists of a joint venture/ consortium/ association of more than one entity, the name of the entity whose address is specified in Clause SC 1.6 should be inserted here. If the Consultant consists only of one entity, this Clause SC 1.8 should be deleted from the SC.*
1.9	The Authorized Representatives are: **For the Client**: Head of the TKR-PMO **For the Consultant**: _____
1.10	The Client and the Consultant, Sub-Consultants and Personnel must comply with the laws of the Republic of Namibia..
2.1	The effectiveness conditions are the following: a. The Client must approve the Consultant's proposals for appointment of specified key staff members.

	b. The Client must receive an Advance Payment Guarantee from the Consultant and thereafter make Advance Payment.
2.2	The time period shall be: **TBA**
2.3	The time period shall be thirty (30) Days
2.4	The time period shall be: **TBA**
3.4	Additional provisions for the liability of the Consultant towards the Client are set out below
	(a) Except in case of gross negligence or willful misconduct on the part of the Consultants or on the part of any person or firm acting on behalf of the Consultants in carrying out the Services, the Consultants, with respect to damage caused by the Consultants to the Client's property, shall not be liable to the Client: (i) for any indirect or consequential loss or damage; and (ii) for any direct loss or damage that exceeds the total value of the Contract. (b) This limitation of liability shall not affect the Consultants' liability, if any, for damage to Third Parties caused by the Consultants or any person or firm acting on behalf of the Consultants in carrying out the Services."
3.5	The risks and the coverage shall be as follows: (a) Third Party motor vehicle liability insurance in respect of motor vehicles operated in the Republic of Namibia by the Consultant or its Personnel or any Sub-Consultants or their Personnel, with a minimum coverage of *[insert amount and currency]*; **TBA** (b) Third Party liability insurance, with a minimum coverage of *[insert amount and currency]*; **TBA** (c) professional liability insurance, with a minimum coverage of *[insert amount and currency]*; **TBA**

	(d) employer's liability and workers' compensation insurance in respect of the Personnel of the Consultant and of any Sub-Consultants, in accordance with the relevant provisions of the Applicable Law, as well as, with respect to such Personnel, any such life, health, accident, travel or other insurance as may be appropriate; (e) insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the Consultant's property used in the performance of the Services, and (iii) any documents prepared by the Consultant in the performance of the Services; and (f) any other insurance policies as required by the Applicable Law.
3.7 (c)	**TBA**
3.9	The Consultant shall not use these documents and software for purposes unrelated to this Contract without the prior written approval of the Client.
4.6	The person designated as resident project manager in Appendix C shall serve in that capacity, as specified in Clause GC 4.6. **TBA**
5.1	**TBA**
5.1(g)	**TBA**
6.1(b)	The ceiling in Namibian Dollars is: **TBA**
6.2(a)	**TBA**
6.2(b)	The rates for Foreign Personnel are set forth in Appendix D, and the rates for Local Personnel are set forth in Appendix E.
6.2(c)	The Reimbursable expenses to be paid in foreign currency are set forth in Appendix D, and the Reimbursable expenses to be paid in local currency are set forth in Appendix E.
6.4(a)	The following provisions shall apply to the advance payment and the advance payment guarantee:

	(1) An advance payment *of no more than 10% of the Contract Amount* in Namibian Dollars shall be made within *[TBA]* days after the Effective Date. The advance payment will be set off by the Client in equal installments against the statements for the first *[TBA]* months of the Services until the advance payment has been fully set off. (2) The advance payment guarantee shall be equal to the amount of the advance payment.
6.4(b)	**{**The Consultant shall submit to the Client itemized statements at time intervals of *[insert number of months]*.**}** ***Note**: Delete this Clause SC 6.4(b) if the Consultant shall have to submit its itemized statements monthly.* **TBA**
6.4(c)	The interest rate is: *[insert rate]*. **TBA**
6.4(e)	The Consultant's accounts are: for Namibian Dollars: *[insert account]*.**TBA**
8.2	Disputes shall be settled by arbitration in accordance with the following provisions: 1. Selection of Arbitrators. Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three arbitrators, in accordance with the following provisions: (a) Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to *the Engineering Council of Namibia* a list of not fewer than five nominees and, on receipt of such list, the Parties shall alternately strike names there from, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within thirty (30) days of the date of the list, *the Engineering Council of Namibia* shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute.

	(b) Where the Parties do not agree that the dispute concerns a technical matter, the Client and the Consultant shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by *The Law Society of Namibia*
	(c) If, in a dispute subject to Clause SC 8.2 1.(b), one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the *Law Society of Namibia* to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute. 2. Rules of Procedure. Except as stated herein, arbitration proceedings shall be conducted in accordance with the Arbitration Act 42 of 1965. 3. Substitute Arbitrators. If for any reason an arbitrator is unable to perform his function, a substitute shall be appointed in the same manner as the original arbitrator. 4. Qualifications of Arbitrators. The sole arbitrator or the third arbitrator appointed pursuant to paragraphs (a) through (c) of Clause SC 8.2 1 hereof shall be a legal or technical expert with extensive experience in relation to the matter in dispute. 5. Miscellaneous. In any arbitration proceeding hereunder: (a) proceedings shall, unless otherwise agreed by the Parties, be held in *Namibia.* (b) the *English* language shall be the official language for all purposes; and (c) the decision of the sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.

MODEL FORM I

See Note to Form on Clause SC 6.2(b)(ii)

Breakdown of Agreed Fixed Rates in Consultant's Contract

We hereby confirm that we have agreed to pay to the staff members listed, who will be involved in this assignment, the basic salaries and away from headquarters allowances (if applicable) indicated below:

(Expressed in Namibian Dollars)

Personnel		1	2	3	4	5	6	7	8
Name	Position	Basic Salary per Working Month/Day/Year	Social Charges[1]	Overhead[1]	Subtotal	Fee[2]	Away from Headquarters Allowance	Agreed Fixed Rate per Working Month/Day/Hour	Agreed Fixed Rate per Working Month/Day/Hour[1]
Home Office									
Field									

1 Expressed as percentage of 1
2 Expressed as percentage of 4

_____ _____

Signature Date

Name: _____

Title: _____

IV. Appendices

APPENDIX A – DESCRIPTION OF SERVICES

Note: *This Appendix will include the final Terms of Reference worked out by the Client and the Consultants during technical negotiations, dates for completion of various tasks, place of performance for different tasks, specific tasks to be approved by Client, etc.*

APPENDIX B - REPORTING REQUIREMENTS

Note: *List format, frequency, and contents of reports; persons to receive them; dates of submission; etc. If no reports are to be submitted, state here "Not applicable."*

APPENDIX C - KEY PERSONNEL AND SUB-CONSULTANTS - HOURS OF WORK FOR KEY PERSONNEL

Note: *List under:*

C-1 Titles [and names, if already available], detailed job descriptions and minimum qualifications of Key foreign Personnel to be assigned to work in the Government's country, and staff-months for each.

C-2 Same information as C-1 for Key local Personnel.

C-3 Same as C-1 for Key Personnel to be assigned to work outside the Government's country.

C-4 List of approved Sub-Consultants (if already available); same information with respect to their Personnel as in C-1 through C-3.

List here the hours of work for Key Personnel; travel time to and from the country of the Government for Foreign Personnel (Clause GC 4.4(a)); entitlement, if any, to overtime pay, sick leave pay, vacation leave pay, etc.

APPENDIX D - COST ESTIMATES IN NAMIBIAN DOLLARS

Note: *List hereunder cost estimates in Namibian Dollars:*

1. *Monthly rates for local Personnel (Key Personnel and other Personnel)*
2. *Reimbursable expenses (items that are not applicable should be deleted; others may be added):*
   - *(a) Per diem rates for subsistence allowance for Foreign short-term Personnel:*
     - *(i) per diem allowance in Namibian Dollars equivalent to [name agreed foreign currency specified in Clause SC 6.1(b)] per day, plus estimated totals, for each of the short-term Foreign Personnel (i.e., with less than twelve (12) months consecutive stay in the Republic of Namibia) for the first ninety (90) days during which such Personnel shall be in the Republic of Namibia;*
     - *(ii) per diem allowance in Namibian dollars equivalent to [name agreed foreign currency specified in Clause SC 6.1(b)] per day, plus estimated totals, for each of the short-term Foreign Personnel for each day in excess of ninety (90) days during which such Personnel shall be in the Republic of Namibia.*
   - *(b) Per diem allowance for each of the long-term Foreign Personnel (twelve (12) months or longer consecutive stay in the Republic of Namibia, plus estimated totals.*
   - *(c) The cost of local transportation.*
   - *(d) The cost of the following locally procured items: office accommodations, camp facilities, camp services, subcontracted services, soil testing, equipment rentals, supplies, utilities and communication charges arising in the Republic of Namibia, all if and to the extent required for the purpose of the Services.*
   - *(e) The cost of equipment, materials and supplies to be procured locally in the Republic of Namibia.*
   - *(f) The cost in Namibian dollars of any subcontract required for the Services and approved in writing by the Client.*
   - *(g) The cost of training of Client's staff in the Republic of Namibia, if training is a major component of the assignment, specified as such in the TOR.*
   - *(h) The cost of such further items not covered in the foregoing but which may be required by the Consultant for the purpose of the Services, as agreed in writing by the Client.*

APPENDIX E - DUTIES OF THE CLIENT

Note: *List under:*

F-1 Services, facilities and property to be made available to the Consultant by the Client.

F-2 Professional and support counterpart personnel to be made available to the Consultant by the Client.

APPENDIX F - FORM OF ADVANCE PAYMENTS GUARANTEE

***Note**: See Clause GC 6.4(a) and Clause SC 6.4(a).*

Bank Guarantee for Advance Payment

_____ *[Bank's Name, and Address of Issuing Branch or Office]*

Beneficiary: _____ *[Name and Address of Client]*

Date: _____

ADVANCE PAYMENT GUARANTEE No.: _____

We have been informed that _____ *[name of Consulting Firm]* (hereinafter called "the Consultants") has entered into Contract No. _____ *[reference number of the contract]* dated _____ with you, for the provision of _____ *[brief description of Services]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of _____ *[amount in figures]* (_____) *[amount in words]* is to be made against an advance payment guarantee.

At the request of the Consultants, we _____ *[name of Bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ *[amount in figures]* (_____) *[amount in words]*[1] upon receipt by us of your first demand in writing accompanied by a written statement stating that the Consultants are in breach of their obligation under the Contract because the Consultants have used the advance payment for purposes other than toward providing the Services under the Contract.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Consultants on their account number _____ at _____ *[name and address of Bank]*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Consultants as indicated in copies of certified monthly statements which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of the monthly payment certificate indicating that the Consultants have made full

[1] The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Client.

repayment of the amount of the advance payment, or on the __ day of _____, 2___,[2] whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758.

_____

[signature(s)]

Note: All italicized text is for indicative purposes only to assist in preparing this form and shall be deleted from the final product.

[2] Insert the expected expiration date. In the event of an extension of the time for completion of the Contract, the Client would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Client might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Client's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."