



HIGHER EDUCATION LOANS BOARD

Financing Higher Education now and in the future

HELB/RFP/7/2020-2021

PROVISION OF LEGAL AND COMPLIANCE AUDIT

Higher Education Loans Board
Anniversary Towers, 18th floor
P. O. Box 69489 – 00400
Nairobi – Kenya

Tel: 0711052411/308/297/307

Email: procurement@helb.co.ke

Website: www.helb.co.ke

Tender closing date: Completed tender documents to be received on or before **11.00 a.m** on **Tuesday 11th April 2021**

**TENDER DOCUMENT TO BE DROPPED IN THE TENDER BOX
LOCATED ON 18TH FLOOR LIFT LOBBY, ANNIVERSARY TOWERS**

INVITATION TO TENDER



HIGHER EDUCATION LOANS BOARD

TENDER NOTICE

HELB/ RFP/07/2020-2021 – PROVISION OF LEGAL AND COMPLIANCE AUDIT

The Higher Education Loans Board is a state corporation whose mandate is to source for funds and provide loans, scholarships and bursaries to Kenyans studying in recognized institutions of higher learning.

HELB intends to engage a reputable consultant in the provision of Legal and Compliance Audit. Interested and eligible firms may view the detailed tender advert, respective tender document and further details regarding the tender submission from our website www.helb.co.ke/procurement/tenders or IFMIS portal <https://supplier.treasury.go.ke> . Tender documents downloaded from the two websites are free of charge. All bidders interested in participating in the tender are required to forward their contact details on email to procurement@helb.co.ke in case of any further tender addendum.

Interested bidders shall be required to submit one (1) original and one copy of their technical and financial proposals, which shall be clearly marked “ORIGINAL” and “COPY” as appropriate. The original and copy of the technical proposal shall be sealed in an envelope clearly marked “ **Technical Proposal**” and the original and copy of financial proposal shall be sealed in an envelope clearly marked “ **Financial Proposal**” with a warning, “**Do not open with technical proposal**”. All Bidders **must serially number all the pages** in their tender submission proposal **from the 1st page to the last page** as the number of pages received in each bidder’s tender submission proposal will be recorded during the tender opening.

The envelope containing the financial proposal should have the bidders name and address clearly marked on the outside. Both Envelopes shall be placed in an outer envelope and sealed. The outer envelope, bearing no indication of the bidder and clearly marked: **HELB/RFP/07/2020-2021: PROVISION OF LEGAL AND COMPLIANCE**

AUDIT should be deposited in the tender box at Anniversary Towers 19th floor, University Way or sent by post to:

**The C.E.O & Board Secretary
Higher Education Loans Board
P. O. Box 69489 – 00400
NAIROBI**

So as to be received not later than **Tuesday 11th May 2021 at 11.00 a.m.** Interested bidders are invited to witness the opening to be held at the main boardroom on 19th floor on the same day at 11.15 a.m.

All tenders **must** be accompanied by a tender security of **Kshs.80,000.00** in the form of a **bank guarantee** from a reputable bank, a **bankers cheque, insurance from companies authorized to transact in bid bonds, letter of credit or a guarantee by a deposit taking microfinance institution, Sacco Society, Youth Enterprise Fund or Women Enterprise Fund** and valid for a period of **120 days** from the day of opening the tender. **The tender security shall be placed in the envelope containing the technical proposal.** AGPO registered firms are not required to submit a tender security but **must fill, sign and submit the Tender Securing Declaration form and must submit the valid AGPO registration certificate.** Please note that any tender that shall not be accompanied by a tender security or a filled and signed Tender Securing Declaration form and **AGPO certificate** shall be deemed to be non-responsive and disqualified.

Bidders are hereby advised that any tender that shall not be submitted in the prescribed format outlined above shall be deemed non responsive and disqualified. The Higher Education Loans Board may at any time terminate the procurement proceedings without entering into a contract and also reserves the right to accept or reject any or all tenders and is not bound to give reasons for its decision.

Prices quoted should be net inclusive of all taxes, must be in Kenya Shillings and shall remain valid for **(120) days** from the closing date of the tender.

**C.E.O & Board Secretary
HIGHER EDUCATION LOANS BOARD**

1. Introduction

1.1 The Client named in Appendix “A” will select a firm among those invited to submit a proposal, in accordance with the method of selection detailed under this section.

1.2 The consultants are invited to submit a **Technical Proposal and a Financial Proposal**, as specified in Appendix “A” for consulting services required for the assignment named in the said Appendix.

1.3 The Client will provide the inputs specified in Appendix “A”, assist the firm in to carry out the services.

1.4 Please note that (i) the costs of preparing the proposal and of negotiating the Contract, including any visit to the Client are not reimbursable as a direct cost of the assignment; and (ii) the Client is not bound to accept any of the proposals submitted.

2. Clarification and Amendment of RFP

2.1 Consultants may request a clarification of any of the RFP documents only up to seven [7] days before the proposal submission date. Any request for clarification must

be sent in writing by paper mail, cable, telex, facsimile or electronic mail to the Client’s address indicated in Appendix “A”. The Client will respond by cable, telex, facsimile or electronic mail to such requests and will send written copies of the response (including an explanation of the query but without identifying the source of inquiry) to all invited consultants who intend to submit proposals.

2.2 At any time before the submission of proposals, the Client may for any reason, whether at his own initiative or in response to a clarification requested by an invited firm, amend the RFP. Any amendment shall be issued in writing through addendum. Addendum shall be sent by mail, cable, telex or facsimile to all invited consultants and will be binding on them. The Client may at his discretion extend the deadline for the submission of proposals.

Preparation of Proposal

3.1 The Consultant’s proposal shall be written in English language.

Technical Proposal

3.2 In preparing the Technical Proposal, a Consultant is expected to examine the documents constituting this RFP in detail. Material deficiencies in providing the information requested may result in rejection of a proposal.

3.3 While preparing the Technical Proposal, Consultants must give

particular attention to the following:

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

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

- i. A brief description of the firm's organization and an outline of recent experience on assignments of a similar nature. For each assignment the outline should indicate *inter alia*, the profiles of the staff proposed, duration of the assignment, contract amount and firm's involvement. Any comments or suggestions on the Terms of Reference, a list of services and facilities to be provided by the Client.
- ii. A description of the methodology and work plan for performing the assignment.
- iii. The list of the proposed staff team by specialty, the tasks that would be assigned to each staff team member and their timing.
- iv. CVs recently signed by the proposed professional staff and the authorized representative submitting the proposal. Key information should include number of years working for the firm/entity and degree of responsibility held in various assignments during the last ten (10) years.

- v. Estimates of the total staff input (professional and support staff-time) needed to carry out the assignment supported by bar chart diagrams showing the time proposed for each professional staff team member.
- vi. A detailed description of the proposed methodology, staffing and monitoring of training, if Appendix “A” specifies training as a major component of the assignment.
- vii. Any additional information requested in Appendix “A”.

3.5 The Technical Proposal shall not include any financial information.

Financial Proposal

3.6 In preparing the Financial Proposal, a Consultant is expected to take into account the requirements and conditions outlined in the RPF documents. The Financial Proposal should follow Standard Forms (Section C). It lists all costs associated with the assignment including; (a) remuneration for staff (in the field and at headquarters), and; (b) reimbursable expenses such as subsistence (per diem, housing), transportation (international and local, for mobilization and demobilization), services and equipment (vehicles, office equipment, furniture, and supplies), office rent, insurance, printing of documents, surveys, and training, if it is a major component of the assignment. If appropriate these costs should be broken down by activity.

- 1. The Financial Proposal should clearly identify as a separate amount, the local taxes, duties, fees, levies and other charges imposed under the law on the consultants, the sub consultants and their personnel.
- 2. A Consultant shall express the price of their services in Kenya Shillings.
- 3. Commissions and gratuities, if any, paid or to be paid by consultants and related to the assignment will be listed in the Financial Proposal submission Form.
- 4. The Proposal must remain valid for 120 days after the submission date. During this period, the consultant is expected to keep available, at his own cost, the professional staff proposed for the assignment. The Client will make his best effort to complete negotiations within this period. If the Client wishes to extend the validity period of the proposals, the consultants who do not agree have the right not to extend the validity of their proposal.

4 Submission,4.1 The original proposal (Technical Proposal and,

Receipt, and Opening of Proposals Financial Proposal) shall be prepared in indelible ink
 It shall contain no interlineations or overwriting except as necessary to correct errors made by the firm Any such corrections must be initialed by the persons or person authorized to sign the proposals.

1. For each proposal, the consultants shall prepare the number of copies indicated in Appendix "A". Each Technical Proposal and Financial Proposal shall be marked "**ORIGINAL**" or "**COPY**" as appropriate. If there are any discrepancies between the original and the copies of the proposal, the original shall govern.
2. The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked "**TECHNICAL PROPOSAL,**" and the original and all copies of the Financial Proposal in a sealed envelope clearly marked "**FINANCIAL PROPOSAL**" and warning: "**DO NOT OPEN WITH THE TECHNICAL PROPOSAL**". Both envelopes shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address and other information indicated in Appendix "A" and be clearly marked, "**DO NOT OPEN WITH THE TECHNICAL PROPOSAL.**"
3. The completed Technical and Financial Proposals must be delivered at the submission address on or before the time and date stated in Appendix "A". Any proposal received after the closing time for submission of proposals shall be returned to the respective consultant unopened.
4. After the deadline for submission of proposals, the Technical Proposal shall be opened immediately by the Opening committee. The Financial Proposal shall remain sealed and deposited with a responsible officer of the client department until all submitted proposals are opened publicly.

5. Proposal Evaluation General

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

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

6. Evaluation of Technical

The evaluators shall evaluate the proposals based on the listed technical submission requirements

Proposals Evaluation criteria is on page40- 43

Financial Evaluation

The firms that qualify at the technical evaluation stage shall have their financial proposals opened by the client's Opening committee. The evaluation committee shall determine whether the financial proposals are complete, correct and without any computational errors.

The committee shall thereafter compute the financial scores out of 20 points using the following formulae:-

$$\frac{\text{Lowest evaluated bid}}{\text{Scores Bid Price}} \times 20 = \text{Financial}$$

Both technical and financial scores will be combined and the firm achieving the highest combined technical and financial score will be considered for award of the tender.

Note: Tenderers will be expected to quote in Kenya Shillings inclusive of all taxes in the following format:-

Financial Proposal

Bidders must submit a summary of their financial proposal and breakdown of rates charged to justify the total cost of the project as guided by the format provided below:-

- (i) Summary of costs
- (ii) Breakdown of price/per activity
- (iii) Breakdown of remuneration per activity
- (iv) Reimbursable per activity
- (v) Miscellaneous expenses

To be eligible to proceed to the next evaluation stage, bidders must score at least sixty (80) out of Hundred (100) at the technical evaluation stage.

Bidders are also expected to indicate their proposed payment schedule in line with their proposed work schedule in the format below. HELB is not bound by a Bidder's proposed payment schedule but the proposal will form part of the contract negotiations with the winning Bidder.

However, where a Bidder has not proposed a payment schedule, HELB will ensure the bidder is paid at the conclusion of the contract and the same shall not be negotiable.

The payment schedule shall be provided in the following format:-

NO.	WORK DESCRIPTION	PERCENTAGE OF TENDER SUM	AMOUNT (KES)
	Total	100%	

The formulae for determining the Financial Score (Sf) shall, unless an alternative formulae is indicated in the Appendix “ITC”, be as follows:- $Sf = 100 \times \frac{FM}{F}$ where Sf is the financial score; FM is the lowest priced financial proposal and F is the price of the proposal under consideration. Proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weights (T=the weight given to the Technical Proposal; P= the weight given to the Financial Proposal; T + p = I) indicated in the Appendix. The combined technical and financial score, S, is calculated as follows:- $S = St \times T \% + Sf \times P \%$.

The technical and financial scores will be combined and the firm achieving the **HIGHEST COMBINED SCORES** will be considered for award of the tender.

NB: The financial proposal must include all applicable taxes. The taxes currently applicable to consultancies are:

- i) Withholding Taxes- There is an applicable tax rate for local and international firms. For international firms the withholding taxes vary from country to country depending on the double taxation agreement with Kenya. The applicable percentage must therefore be included and shown in the financial proposal submitted.
- ii) Value Added Tax (VAT) – The VAT is loaded up to the consultancy cost and the applicable rate currently is 16% of the project cost. This is applicable to all the firms and must be included and shown in the financial proposal.

6. Negotiations 6.1 Negotiations will be held at HELB’s offices, Anniversary Towers along University Way, with the aim of reaching an agreement on all points and sign a contract.

6.2 Unless there are exceptional reasons, the financial negotiations will not involve the remuneration rates for staff (no breakdown of fees).

- 6.3 Having selected the firm on the basis of, among other things, an Evaluation of proposed key professional staff, the HELB expects to negotiate a contract on the basis of the experts named in the proposal. Before contract negotiations, HELB will require assurances that the experts will be actually available. HELB will not consider substitutions during contract negotiations unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the firm may be disqualified.
- 6.4 The negotiations will conclude with a review of the draft form of the Contract. To complete negotiations HELB and the selected firm will initial the agreed Contract. If negotiations fail, HELB will invite the firm whose proposal received the second highest score to negotiate a contract.
- 7. Award of Contract** 7.1 The Contract will be awarded following negotiations. After negotiations are completed, HELB will promptly notify other consultants on the shortlist that they were unsuccessful and return the Financial Proposals of those consultants who did not pass the technical evaluation.
- 7.2 The selected firm is expected to commence the assignment on the date and at the location as specified by HELB.
- 8. Performance Bond** The selected firm shall within Seven (7) days from the date of executing the Contract Agreement furnish HELB with a professional indemnity that will remain valid for the duration of contract.

and to be provided before execution of contract.

The proceeds of the professional indemnity shall be payable to HELB as compensation for any delay or damage resulting from failure by the firm to fulfill its obligations hereunder.

9. Confidentiality

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

APPENDIX "A"

Clause Reference

- 1.1 & 2.1 The name of the Client is: **Higher Education Loans Board (HELB)**
- The method of selection is: **Quality and Cost Based selection method**
- 1.2 Technical and Financial Proposals are requested: **Yes**
A Technical Proposal only is requested: **No**
- The name, objectives, and description of the assignment are: **As per the Terms of Reference.**
- 1.3 Pre-proposal conferences will be held: **No**
- The name(s), address (es) and telephone numbers of the Client's official(s) are: **P.O Box 69489 Nairobi 00400; Tel: 0711052000/411/308/297**
- 1.4 The Client will provide the following inputs: **any information required on the assignment**
- 3.3 (i) The minimum required experience of proposed professional staff is:
Lead consultant with 10 years' experience in legal audits, three (3) first tier staff with 5 years' experience in legal audits and two (2) second tier staff with three (3) year experience in legal audits.
- 3.4 (ii) Training is a specific component of this assignment:
No
- (viii) Additional information in the Technical Proposal includes:
N/A
- 3.7 Taxes: All taxes to be included in the financial proposal.
- Consultants must submit an original and two (2) additional copies of each proposal. Original and copy.
- 4.2 The proposal submission address is as shown below. Information on the outer envelope should also include: **Tender Number and Tender Description addressed to:
CEO & Board Secretary
Higher Education Loans Board
P.O Box 69489 - 00400**

Nairobi

- 4.3 Proposals must be submitted no later than **11th May, 2021 at 11.00 a.m.**
- 4.4 The address to send information to the Client is: procurement@helb.co.ke ;**P.O Box 69489-00400, NAIROBI.**
- 4.5 The minimum technical score required to pass *is 80/100*

The assignment is expected to commence after submission of professional indemnity and signing the contract within an agreed time frame between the two parties.

SECTION C: - TECHNICAL PROPOSAL – STANDARD FORMS

The following sample formats have been attached:

- i) Technical Proposal submission form.
- ii) Firm's references.
- iii) Comments and suggestions of consultants on the Terms of Reference and on data, services and facilities to be provided by HELB.
- iv) Description of the methodology and work plan for performing the assignment.
- v) Team composition and task assignments.
- vi) Format of curriculum vitae (CV) for proposed professional staff.
- vii) Time schedule for professional personnel.
- viii) Activity (work) schedule.

All firms must submit the above forms.

See the complete list of the technical proposal submission requirements on pages 35 – 38 of the tender document from no.1 to 14 . All bidders are requested to submit all the listed documents that will be used to evaluate their capacity to execute the assignment successfully. The technical proposal will be evaluated as per the criteria listed on pages 40-43 of the tender document.

(i). TECHNICAL PROPOSAL SUBMISSION FORM

[_____ *Date*]

To: _____ [*Name and address of procuring entity*]

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for _____

_____ [*Provision of consultancy services*] in accordance with your

Request for Proposal dated _____ [*Date*] and our Proposal. We are

hereby submitting our Proposal, which includes this Technical Proposal, [and a Financial Proposal

sealed under a separate envelope].

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

We remain,

Yours sincerely,

_____ [*Authorized Signature*]:

_____ [*Name and Title of Signatory*]

_____ [*Name of Firm*]

_____ [*Address:*]

(ii) FIRM'S REFERENCES**Relevant Services Carried Out in the Last Five Years
That Best Illustrate Qualifications**

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

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

Firm's Name: _____

Name and title of signatory: _____

(iii) COMMENTS AND SUGGESTIONS OF CONSULTANTS ON THE TERMS OF REFERENCE ON SERVICES AND FACILITIES TO BE PROVIDED BY HELB.

On the Terms of Reference:

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

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

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

**(IV) DESCRIPTION OF THE METHODOLOGY AND WORK PLAN
FOR PERFORMING THE ASSIGNMENT**

(v). **TEAM COMPOSITION AND TASK ASSIGNMENTS**

1. Technical/Managerial Staff

Name	Position	Task

2. Support Staff

Name	Position	Task

(Vi) FORMAT OF CURRICULUM VITAE (CV) FOR PROPOSED PROFESSIONAL STAFF

Proposed

Position: _____

Name of

Firm: _____

Name of

Staff: _____

Profession:

Date of

Birth: _____

Years with Firm: _____ Nationality: _

Membership in Professional

Societies: _____

Detailed Tasks

Assigned: _____

Key Qualifications:

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

Education:

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

**Employment
Record:**

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

Certification:

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

_____ Date:

[Signature of staff member]

Date;
[Signature of authorized representative of the firm]

Full name of staff member: _____

Full name of authorized representative: _____

(vii). **TIME SCHEDULE FOR PROFESSIONAL PERSONNEL**

Weeks (in the Form of a Bar Chart)

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

Reports Due: _____

Activities Duration: _____

Signature: _____ (Authorized representative)

Full Name: _____

Title: _____

Address: _____

ACTIVITY (WORK) SCHEDULE

(a). Field Investigation and Study Items

[1st, 2nd, etc, are months from the start of assignment)

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

Completion and Submission of Reports

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

SECTION D: - FINANCIAL PROPOSAL – STANDARD FORMS

The following sample formats for the Financial Proposal have been attached:

- i) Financial Proposal submission form.
- ii) Summary of costs.
- iii) Breakdown of price per activity.
- iv) Breakdown of remuneration per activity.
- v) Reimbursable per activity.
- vi) Miscellaneous expenses.

1.FINANCIAL PROPOSAL SUBMISSION FORM

_____ [Date]

To: _____

[Name and address of Client]

Ladies/Gentlemen:

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

We remain,

Yours sincerely,

_____ *[Authorized Signature]*

: _____ *[Name and Title of Signatory]:*

_____ *[Name of Firm]*

_____ *[Address]*

2. SUMMARY OF COSTS

Costs	Currency(ies)	Amount(s)
Subtotal		
Taxes		
Total Amount of Financial Proposal		<hr/>

3. BREAKDOWN OF PRICE PER ACTIVITY

Activity NO.: _____	Description: _____
Price Component	Amount(s)
Remuneration	
Reimbursables	
Miscellaneous Expenses	
Subtotal	_____

4. **BREAKDOWN OF REMUNERATION PER ACTIVITY**

Activity No. _____		Name: _____		
Names	Position	Input(Staff months, days or hours as appropriate.)	Remuneration Rate	Amount
Regular staff				
(i)				
(ii)				
Consultants				
Grand Total				_____

5. REIMBURSABLES PER ACTIVITY

Activity No: _____

Name: _____

No.	Description	Unit	Quantity	Unit Price	Total Amount
1.	Air travel	Trip			
2	Road travel	Kms			
3.	Rail travel	Kms			
4.	Subsistence Allowance	Day			_____
	Grand Total				

6. MISCELLANEOUS EXPENSES

Activity No. _____ Activity Name:

No.	Description	Unit	Quantity	Unit Price	Total Amount
1.	Communication costs____ _____ _____ (telephone, telegram, telex)				
2.	Drafting, reproduction of reports				
3.	Equipment: computers etc.				
4.	Software				
	Grand Total				_____ _____



CONSULTANCY TERMS OF REFERENCE FOR PERFORMANCE OF LEGAL AND COMPLIANCE AUDIT

INTRODUCTION

The Higher Education Loans Board is a State Corporation established under the Higher Education Loans Board Act CAP 213A management of a Fund to be used for granting loans to assist Kenyan students to obtain higher education at recognized institutions within and outside Kenya.

The Higher Education Loans Board has considered it important to conduct an audit to establish the level of compliance to the relevant laws of Kenya, policies, and regulations. This will help in identifying the gaps and areas that require review in order to enhance compliance and reduce the number of suits and or cases of inefficiency arising as a result of the noncompliance or gaps within the Board's operations.

The Legal Compliance Audit will review the status of compliance and identify any specific deficiencies or areas of weaknesses as far as compliance with Kenya Laws, Policies and Regulations by the Board is concerned.

Conformity with governance parameters as set out in the Constitution, applicable laws and best practices is a requirement under the Mwongozo Code of Governance, which provides guidance on governance within State Corporations. Legal and Compliance Audit would entail review of governance structures, policies, and practices to ensure they are in conformity with highest standards of good governance.

The Board wishes to engage the services of a consultant to review all HELB's operational areas to establish that they are compliant with the relevant laws, policies, and regulations. The consultant will be required to provide the professional services necessary to undertake a comprehensive Legal Compliance Audit.

ORGANIZATIONAL AND BUSINESS STRUCTURE

HELB is organized under eight key departments namely.

- (i) Finance
- (ii) Strategy, Research and Communications

- (iii) Operations – (Lending and Debt Recovery)
- (iv) Information and Technology
- (v) Human Resource
- (vi) Legal and Corporation
- (vii) Procurement and Logistics
- (viii) External Resource Mobilization and Self Protection Loan Scheme

1.0. TERMS OF REFERENCE

HELB wishes to engage services of a Consultant(s) to carry out a comprehensive legal audit by reviewing all HELB's operational areas, with a view to establishing that they are compliant with all applicable laws and that HELB is observing good corporate governance in relation to its mandate and to provide guidelines on effective legal compliance.

2.0. SPECIFIC OBJECTIVES

The consultant will be expected to be guided by the specific objectives set out below in carrying out the assignment.

1. Identify the extent of the Board's compliance with the relevant laws, policies, guidelines, and processes including, but not limited to, the Constitution of Kenya 2010, Vision 2030 Blueprint, among others specified in 2.0.
2. Produce an audit report indicating the level of compliance and the gaps identified that require interventions.
3. Propose mechanisms of enhancing compliance in order to address the identified compliance gaps especially through benchmarking with other regulatory Board's proven working strategies.

3.0. THE OVERALL SCOPE OF ASSIGNMENT

The consultant will work within the TORs in accordance with the objectives set out to deliver quality output of this assignment which will include the following:

- 3.1. Identify and analyze the current framework of laws, regulations, and policies under which the HELB operates.
- 3.2. For each of the laws and policies identified, analyze the sections that the HELB needs to adhere to in order to achieve compliance.

- 3.3. Initiate and conduct research on various Government policy pronouncements\circulars that need compliance by State Corporation.
- 3.4. Identify and analyze governance parameters, which HELB is required to operate under the Constitution of Kenya, 2010, attendant Statutes and best practices. These parameters shall include:
 - 3.4.1. Leadership and strategic management.
 - 3.4.2. Transparency and Disclosure.
 - 3.4.3. Board independence and governance.
 - 3.4.4. Corporate social responsibility and investment.
- 3.5. Review the HELB's existing governance structures, policies and procedures and assess the extent of their effective compliance with:
 - a) The Constitution of Kenya, 2010.
 - b) Policies and laws of Kenya relating to labour, occupational health and safety, tax, finance, procurement, corporate governance.
 - c) Any other policies, directives, circulars, and laws that may be relevant to or impact on the Board
- 3.6. Identify internal and external compliance requirements and gaps in compliance and recommend intervention programs that will ensure that all the regulatory and reporting requirements are met by the Board.
- 3.7. Develop a compliance implementation framework that will ensure all regulatory and reporting requirements are met and that is in line with best practices and in agreement with the Board's Strategic Plan and overall mandate.
- 3.8. Identify any specific deficiencies or areas of weakness in the internal and external compliance that compromise potential legal risk and liability.
- 3.9. Hold a session with the Senior management team and Board of Directors to brief them on the pertinent issues emerging from the legal and compliance audit exercise.
- 3.10. Facilitate an organizational wide compliance risk assessment to identify regulatory, legal, reporting, internal and external compliance requirements: including training the Heads of Departments/sections and staff whose functions primarily support HELB's function regarding their roles and responsibilities in regulatory compliance.

3.11. Evaluate existing policies and procedures that support the legal and compliance functions to assess whether they adequately support the institutions regulatory and other compliance requirements. Assist management to design and develop additional compliance policies and procedures as may necessary.

3.12. Develop an inventory of compliance requirements relevant to the HELB and complete a detailed compliance risk assessment to identify all the risks, supporting controls and any potential gaps for remediation.

3.13. Share the best practices and compliance Risk Management Framework with the senior Management and staff.

4.0 DURATION AND CONDUCT OF CONSULTANCY

4.1. The services will be conducted within a period of Sixty (60) days from the date of execution of the contract by both parties.

4.2. The consultant shall agree with the Board on the work plan, scope, and the professional inputs for each of the reports and the reporting period.

4.3. The Consultant shall be required to submit a priced plan indicating deliverable in line with No. 2.0 above.

4.4. All reports, documents and outputs prepared by the consultant for this assignment shall become the property of the client and the consultant shall have an obligation to deliver such documents accompanied by their inventory upon expiration of the consultancy.

4.5. The consultant shall report to the Head of Legal /Corporation Secretary during the entire duration of three (3) months.

4.6. A detailed reporting schedule and timelines will be discussed prior to the signing of the consultancy contract.

5.0 QUALIFICATIONS AND COMPETENCIES

The Consultant should provide adequate information indicating that he / she /they, is /are qualified to undertake the assignment successfully. This may necessitate proof of legal audits previously conducted by the firm, relevant training and experience in conducting legal audits, appropriate skills and competencies as well as qualifications and professional staff working for the consultancy firm, as will be set out by the tender and prequalification document in accordance with the Public Procurement and Oversight Act and the Regulations .

6.0 METHODOLOGY

The Consultant shall adopt but not be limited to the following methodologies to deliver the objectives of the assignment.

- 1. Desk review of existing laws and documentation
- 2. Formal and informal interviews
- 3. Structured and unstructured questionnaires

7.0. CONSULTANCY DELIVERABLES AND ESTIMATED TIME REQUIREMENT

Linked to the above terms of reference, the consultancy would produce the following deliverables:

Activity	Time frame
Inception report outlining the consultant’s understanding of the tasks, methodology of execution of the tasks and a timetable on how they intend to undertake the assignment	15 days
<ul style="list-style-type: none"> (i) Interim Report on legal audit findings. (ii) Draft reviewed Board Charter; and (iii) An inventory of compliance requirements (iv) An Inventory of risk’s identified 	30 days
<ul style="list-style-type: none"> (i) Final Report on legal audit findings and recommendations. (ii) Reviewed Board Charter; and (iii) A compliance enhancement proposal comprising of additional policies and procedures to strengthen the existing compliance measures. (iv) Legal Compliance matrix showing the relevant laws and the level of compliance with respect to each. (v) Compliance Risk Management Framework 	15 days

TECHNICAL PROPOSAL EVALUATION CRITERIA

Your tender proposal submission will be evaluated in three (3) stages namely:

- Preliminary evaluation in stage 1
- Detailed technical evaluation in stage 2
- Financial evaluation in stage 3




The following under listed criteria will be used in the evaluation of all potential bidders in the determination of the tender responsiveness and as per the submitted documents requested for in the **submission of tender proposal requirements** as from **no.1-18** on **pages 27-30 of the tender document**. The tender proposal submitted by the bidders shall be evaluated and awarded marks up to a maximum of 100%. Only bidders that shall score **80%** and above (**technical score of 64**) in the detailed Technical evaluation shall proceed to the next level of financial evaluation. Technical proposal shall carry a weight of **80 points** while the financial proposal shall carry a weight of **20 points**.

Only bidders who shall meet all the mandatory requirements in the preliminary evaluation and further score **80%** and above (**technical score of 64**) in the detailed technical evaluation shall have their financial proposals considered.

(For ease of evaluation, kindly arrange your documents in the order of the evaluation criteria below).

S/no.	Description of criteria	Score
1.	<p>(Mandatory documents: Failure to which leads to automatic disqualification)</p> <ol style="list-style-type: none"> 1) Whether you have submitted the tender in the required format i.e technical proposal containing the bid bond in its own envelope without any financial details and financial proposal including the summary of costs forms in its own envelope – <i>This is Mandatory</i> 2) Whether you have serially numbered <u>all</u> the pages your tender submission proposal from the 1st page to the last page -<i>This is Mandatory</i>. Partially numbered documents will be disqualified. 3) Whether you have submitted a tender security of Kshs.80,000/= valid for 120 days from the date of tender opening or a valid AGPO certificate and a filled Tender Securing Declaration form for AGPO groups-<i>This is Mandatory</i>. 4) Whether you have submitted a copy of the company's certificate of incorporation/Registration-<i>This is Mandatory</i>. 5) Whether you have submitted a copy of your company's valid Tax Compliance Certificate-<i>This is Mandatory</i>. 6) Whether you have submitted a filled and signed declaration statement not to engage in corruption and fraudulent practice -<i>This is Mandatory</i>. 7) Whether you have submitted a filled and signed declaration 	Mandatory

	<p>statement that your company is not debarred from participating in procurement proceedings-<i>This is Mandatory.</i></p> <p>AT THIS STAGE THE TENDERER'S SUBMISSION WILL EITHER BE RESPONSIVE OR NON RESPONSIVE.THE NONRESPONSIVE SUBMISSIONS WILL BE ELIMINATED FROM THE ENTIRE EVALUATION PROCESS AND WILL NOT BE CONSIDERED FURTHER.</p>	
	Stage 2 – detailed technical evaluation	Marks
2.	<p>Experience and qualification of proposed key personnel: Whether you have proposed at least six (6) key staff for the assignment i.e Lead Consultant/team leader, three (3) first tier staff and two (2) second tier staff.</p> <p>i. Lead Consultant/team leader: Whether you have submitted the academic certificate, professional certificate and CV for the Lead Consultant/team leader.</p> <ul style="list-style-type: none"> + Undergraduate degree (Law degree) (@4 marks) + Masters(@2 marks) + Professional qualification(@2 marks) + CV(@1 mark) + Post qualification experience of at least 10 years(@3 marks) + Number of audits carried out (at least 3) (@3 marks) <p>ii. Proposed three (3) first tier staff: Whether you have submitted the academic certificates, professional certificates and CVs for the proposed three (3) first tier staff.</p> <ul style="list-style-type: none"> + Undergraduate degree (Law degree) (@2 marks each) + Masters(@1 mark each) + Post qualification experience of at 5 years and above.(@2 mark each). Below 5 years 1 mark each) + Professional qualification(@1 mark each) + CVs(1 mark each) + Number of legal compliance audits carried out (at least 2 each) (6 marks) <p>iii. Proposed two (2) second tier staff: Whether you have submitted the academic certificates, professional certificates and CVs for the proposed two (2) second tier staff.</p> <ul style="list-style-type: none"> + Undergraduate degree (Law degree) (1 mark each) + Masters(1 mark each) + Post qualification experience of at least 3 years(2 marks) + Number of audits carried out (at least 1) (2 marks) 	<p>4 marks</p> <p>2 marks</p> <p>2 marks</p> <p>1 mark</p> <p>3 marks</p> <p>3 marks</p> <p>6 marks</p> <p>3 marks</p> <p>6 marks</p> <p>3 marks</p> <p>3 marks</p> <p>6 marks</p> <p>2 marks</p> <p>2 marks</p> <p>2 marks</p> <p>TOTAL 50Marks</p>
3.	<p>Company profile, experience and reputation:</p> <p>a) Whether you have submitted the company's/firms brief profile @1 mark.</p> <p>b) Whether you have submitted the company's organogram. @1 mark.</p> <p>c) Number of years of experience for the company/firm.(5 years and above@4 marks. Below 5 years @2 marks.</p>	<p>1mark</p> <p>1 Mark</p> <p>4Marks</p> <p>6Marks</p> <p>TOTAL12 Marks</p>

	d) Number of legal compliance audits carried out by the company.(5 audits and above @6 marks), 4 to 2 audits @4 marks, below 2 audits @2 marks)	
4.	Firms experience with public institutions a) Whether you have submitted copies of letter of awards or copies of contracts or LPO's. for similar undertakings in three (3) public institutions in the last five years @4 marks each	12marks
5.	References: a) Whether you have submitted written reference letters from the three assignments listed in 4 above as confirmation of having successfully undertaken works of similar nature. References may be contacted to authenticate information. @12 marks	12 marks
6.	Adequacy of proposed work plan and methodology in responding to the TOR's. @ 10marks . a) Methodology and work plan: Whether you have submitted a detailed description of the proposed methodology and work plan for performing the assignment including quality assurance.@ 2marks . b) Comments or suggestions on the Terms of Reference: Whether you have submitted any comments or suggestions on the Terms of Reference , a list of services and facilities to be provided by the Client.@ 2marks c) Whether you have submitted your team composition and task assignments and time schedule for proposed personnel: -The list of the proposed staff team by specialty, the tasks that would be assigned to each staff team member and their timing supported by bar chart diagrams showing the time proposed for each professional staff team member. @ 4marks d) Activity and work schedule: Whether you have submitted your activity and work schedule @ 2marks.	10 Marks
7.	Conformance:  Conformance with tender requirements@ 1mark.  Whether you have filled and submitted the confidential business questionnaire@ 1mark.	2 Marks
8.	Audited Accounts:  Submit the company's financial statement/accounts for the last two (2) years@ 2marks.	2 Marks
	TOTAL SCORE	100

FINANCIAL EVALUATION CRITERIA

FINANCIAL PROPOSAL EVALUATION CRITERIA

Your financial proposal will be evaluated to determine:

1. Whether the **Financial Proposal Submission Form** has been filled clearly indicating the tender sum in words and figures, signed and authenticated with the company seal or company rubber stamp - *Mandatory*.
2. Whether the **Summary of costs , Breakdown of fees per activity, Breakdown of reimbursable costs/expenses per activity and miscellaneous expenses forms** have been filled and submitted - *Mandatory*.

Note: As per section 82 of the Public Procurement Asset and Disposal Act 2015, the tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.

The formulae for determining the financial score (SF) shall be as follows:

$$Sf = 100 \times \frac{f_m}{f}$$

Sf is the financial score
Fm is the lowest fees quoted and
F is the fees of the proposal under consideration.

The lowest fees quoted will be allocated the maximum score of 100 marks (a score 20 points). Firms shall then be ranked in accordance with the scores earned in the technical and financial scores.

AWARD OF TENDER

The winning bidder shall be the firm that shall attain the **highest combined technical and financial score** provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

Competitive negotiations as prescribed in the Public Procurement and Asset Disposal Act 2015 shall be conducted:

1. Where firms shall tie in the highest combined technical and financial score,
2. With tenderers whose evaluated price are <25% above available budget.

TECHNICAL PROPOSAL EVALUATION CRITERIA

Your tender proposal submission will be evaluated in three (3) stages namely:







- Preliminary evaluation in stage 1
- Detailed technical evaluation in stage 2
- Financial evaluation in stage 3

The following under listed criteria will be used in the evaluation of all potential bidders in the determination of the tender responsiveness and as per the submitted documents requested for in the **submission of tender proposal requirements** as from **no.1-14** on **pages 35-38 of the tender document**. The tender proposal submitted by the bidders shall be evaluated and awarded marks up to a maximum of 100%. Only bidders who shall meet all the mandatory requirements in the preliminary evaluation and further score **80%** and above (**technical score of 64**) in the detailed technical evaluation shall have their financial proposals considered.

Technical proposal shall carry a weight of **80 points** while the financial proposal shall carry a weight of **20 points**.

(For ease of evaluation, kindly arrange your documents in the order of the evaluation criteria below).

S/no.	Description of criteria	Score
1.	<p>(Mandatory documents: Failure to which leads to automatic disqualification)</p> <p>8) Whether you have submitted the tender in the required format i.e technical proposal containing the bid bond in its own envelope without any financial details and financial proposal including the summary of costs forms in its own envelope – <i>This is Mandatory</i></p> <p>9) Whether you have serially numbered <u>all</u> the pages your tender submission proposal from the 1st page to the last page -<i>This is Mandatory</i>. Partially numbered documents will be disqualified.</p>	Mandatory

	<p>10) Whether you have submitted a tender security of Kshs.80,000/= valid for 120 days from the date of tender opening or a valid AGPO certificate and a filled Tender Securing Declaration form for AGPO groups-<i>This is Mandatory.</i></p> <p>11) Whether you have submitted a copy of the company's certificate of incorporation/Registration-<i>This is Mandatory.</i></p> <p>12) Whether you have submitted a copy of your company's valid Tax Compliance Certificate-<i>This is Mandatory.</i></p> <p>13) Whether you have submitted a filled and signed declaration statement not to engage in corruption and fraudulent practice -<i>This is Mandatory.</i></p> <p>14) Whether you have submitted a filled and signed declaration statement that your company is not debarred from participating in procurement proceedings-<i>This is Mandatory.</i></p> <p>AT THIS STAGE THE TENDERER'S SUBMISSION WILL EITHER BE RESPONSIVE OR NON RESPONSIVE.THE NON RESPONSIVE SUBMISSIONS WILL BE ELIMINATED FROM THE ENTIRE EVALUATION PROCESS AND WILL NOT BE CONSIDERED FURTHER.</p>	
Stage 2 – detailed technical evaluation		Marks
2.	<p>Experience and qualification of proposed key personnel: Whether you have proposed at least six (6) key staff for the assignment i.e Lead Consultant/team leader, three (3) first tier staff and two (2) second tier staff.</p> <p>iv. Lead Consultant/team leader: Whether you have submitted the academic certificate, professional certificate and CV for the Lead Consultant/team leader.(@15 marks)</p> <ul style="list-style-type: none">  Undergraduate degree (Law degree) (@4 marks)  Masters(@2 marks)  Professional qualification(@2 marks)  CV(@1 mark)  Post qualification experience of at least 10 years(@3 marks)  Number of audits carried out (at least 3) (@3 marks) <p>v. Proposed three (3) first tier staff: Whether you have submitted the academic certificates, professional</p>	<p>4 marks</p> <p>2 marks</p> <p>2 marks</p> <p>1 mark</p> <p>3 marks</p> <p>3 marks</p>

	<p>certificates and CVs for the proposed three (3) first tier staff. (@27 marks)</p> <ul style="list-style-type: none"> ✚ Undergraduate degree (Law degree) (@2 marks each) 6 marks ✚ Masters(@1 mark each) 3 marks ✚ Post qualification experience of at 5 years and above.(@2 mark each). Below 5 years 1 mark each) 6 marks ✚ Professional qualification(@1 mark each) 3 marks ✚ CVs(@1 mark) 3 marks ✚ Number of legal compliance audits carried out (at least 2 each) (@2 marks) 6 marks <p>vi. Proposed two (2) second tier staff: Whether you have submitted the academic certificates, professional certificates and CVs for the proposed two (2) second tier staff. (@8 marks)</p> <ul style="list-style-type: none"> ✚ Undergraduate degree (Law degree) (1 mark each) 2 marks ✚ Masters(1 mark each) 2 marks ✚ Post qualification experience of at least 3 years(@1 mark) 2 marks ✚ Number of audits carried out (at least 1) (@1 marks) 2 marks 	
3.	<p>Company profile, experience and reputation: (@12marks)</p> <ul style="list-style-type: none"> e) Whether you have submitted the company's/firms brief profile @1 mark. @1mark f) Whether you have submitted the company's organogram. @1 mark. @1mark g) Number of years of experience for the company/firm.(5 years and above@4 marks. Below 5 years @2 marks. @4marks h) Number of legal compliance audits carried out by the company.(5 audits and above @6 marks), 4 to 2 audits @4 marks, below 2 audits @2 marks) @6marks 	
4.	<p>Firms experience with public institutions: (@12 marks)</p> <ul style="list-style-type: none"> b) Whether you have submitted copies of letter of awards or copies of contracts or LPO's. for similar undertakings in three (3) public institutions in the last five years @4 marks each 	@12marks
5.	<p>References: (@12 marks)</p> <ul style="list-style-type: none"> b) Whether you have submitted written reference letters from the three assignments listed in 4 above as confirmation of having successfully undertaken works of similar nature. 	@12marks

	References may be contacted to authenticate information. @4 marks each	
6.	<p>Adequacy of proposed work plan and methodology in responding to the TOR's.@ 10marks .</p> <p>e) Methodology and work plan: Whether you have submitted a detailed description of the proposed methodology and work plan for performing the assignment including quality assurance.@ 2marks .</p> <p>f) Comments or suggestions on the Terms of Reference: Whether you have submitted any comments or suggestions on the Terms of Reference, a list of services and facilities to be provided by the Client.@ 2marks</p> <p>g) Whether you have submitted your team composition and task assignments and time schedule for proposed personnel: -The list of the proposed staff team by specialty, the tasks that would be assigned to each staff team member and their timing supported by bar chart diagrams showing the time proposed for each professional staff team member. @ 4 marks</p> <p>h) Activity and work schedule: Whether you have submitted your activity and work schedule @ 2marks.</p>	<p>2 marks</p> <p>2 marks</p> <p>4 marks</p> <p>2 marks</p>
7.	<p>Conformance: @ 2marks.</p> <ul style="list-style-type: none"> ✚ Conformance with tender requirements@ 1mark. ✚ Whether you have filled and submitted the confidential business questionnaire@ 1mark. 	<p>1 mark</p> <p>1 mark</p>
8.	<p>Audited Accounts: @ 2marks.</p> <ul style="list-style-type: none"> ✚ Submit the company's financial statement/accounts for the last two (2) years@ 2marks. 	@2marks.
	TOTAL SCORE	100

FINANCIAL EVALUATION CRITERIA

Financial proposal evaluation criteria

Your financial proposal will be evaluated to determine:

3. Whether the **Financial Proposal Submission Form** has been filled **clearly indicating the tender sum in words and figures, signed and authenticated with the company seal or company rubber stamp** - *Mandatory*.
4. Whether the **Summary of costs , Breakdown of fees per activity, Breakdown of reimbursable costs/expenses per activity and miscellaneous expenses forms** have been filled and submitted - *Mandatory*.

Note: As per section 82 of the Public Procurement Asset and Disposal Act 2015, the tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.

The formulae for determining the financial score (SF) shall be as follows:

$$Sf = 100 \times \frac{fm}{f} \text{ where}$$

Sf is the financial score

Fm is the lowest fees quoted and

F is the fees of the proposal under consideration.

The lowest fees quoted will be allocated the maximum score of 100 marks (a score 20 points).

Firms shall then be ranked in accordance with the scores earned in the technical and financial scores.

Award of tender

The winning bidder shall be the firm that shall attain the **highest combined technical and financial score** provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

Competitive negotiations as prescribed in the Public Procurement and Asset Disposal Act 2015 shall be conducted:

3. Where firms shall tie in the highest combined technical and financial score,
4. With tenderers whose evaluated price are <25% above available budget.

II. GENERAL CONDITIONS OF CONTRACT

1. GENERAL PROVISIONS

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

- (a) “Applicable Law” means the laws and any other instruments having the force of law in the Republic of Kenya as they may be issued and in force from time to time;
- (b) “Contract” means the Contract signed by the Parties, to which these General Conditions of Contract (GC) are attached together with all the documents listed in Clause 1 of such signed Contract;
- (c) “Contract Price” means the price to be paid for the performance of the Services in accordance with Clause 6 here below;
- (d) “Foreign Currency” means any currency other than the Kenya Shilling;
- (e) “GC” means these General Conditions of Contract;
- (f) “Government” means the Government of the Republic of Kenya;
- (g) “Local Currency” means the Kenya Shilling;
- (h) “Member”, in case the Consultant consists of a joint venture of more than one entity, means any of these entities; “Members” means all these entities, and “Member in Charge” means the entity specified in the SC to act on their behalf in exercising all the Consultant’s rights and obligations towards HELB under this Contract;
- (i) “Party” means HELB or the Consultant, as the case may be and “Parties” means both of them;
- (j) “Personnel” means persons hired by the Consultant or by any Sub consultant as employees and assigned to the performance of the Services or any part thereof;
- (k) “SC” means the Special Conditions of Contract by which the GC may be amended or supplemented;

- (l) “Services” means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A; and
- (m) “Sub consultant” means any entity to which the Consultant subcontracts any part of the Services in accordance with the provisions of Clauses 3 and 4.

1.2 Law Governing the Contract

This Contract, its meaning and interpretation and the relationship between the Parties shall be governed by the Laws of Kenya.

1.3 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.

1.4 Notices

Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed or when sent by registered mail, telex, telegram or facsimile to such Party at the address specified in the SC.

1.5 Location

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

1.6 Authorized Representatives’

Any action required or permitted to be taken and any document required or permitted to be executed under this Contract by HELB or the Consultant may be taken or executed by the officials specified in the SC.

1.7 Taxes and Duties

The Consultant, Sub-consultant [s] and their personnel shall pay such taxes, duties, fees and other impositions as may be levied under the Laws of Kenya, the amount of which is deemed to have been included in the Contract Price.

2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

2.1 Effectiveness of Contract

This Contract shall come into effect on the date the Contract is signed by both Parties and such other later date as may be stated in the SC.

2.2 Commencement

The Consultant shall begin carrying out the Services

of Services	on Contract Execution or at such other date as may be specified in the SC.
2.3 Expiration of Contract	Unless terminated earlier pursuant to Clause 2.6, this Contract shall terminate at the end of such time period, after the Effective Date, as is specified in the SC.
2.4 Modification	Modification of the terms and Conditions of this Contract, including any modification of the scope of the Services or the Contract Price, may only be made by written agreement between the Parties.
2.5 Force Majeure	
2.5.1 Definition	For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party and which makes a Party’s performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.
2.5.2 No Breach of Contract	The failure of a Party to fulfill any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.
2.5.3 Extension Of Time	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.
2.5.4 Payments	During the period of his inability to perform the Services as a result of an event of Force Majeure, the Consultant shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by him during such period for the purposes of the Services and in reactivating the Service after the end of such period.
2.6 Termination	
2.6.1 By the	HELB may terminate this Contract by not less than

HELB thirty (30) days' written notice of termination to the Consultant, to be given after the occurrence of any of the events specified in this Clause;

- (a) If the Consultant does not remedy a failure in the performance of his obligations under the Contract within thirty (30) days after being notified or within any further period as HELB may have subsequently approved in writing;
- (b) If the Consultant becomes insolvent or bankrupt;
- (c) If, as a 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; or
- (d) If the Consultant, in the judgment of HELB, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this clause;

“Corrupt practice” means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the selection process or in Contract execution

“fraudulent practice” means a misrepresentation of facts in order to influence a selection process or the execution of Contract to the detriment of HELB, and includes collusive practice among consultants (prior to or after submission of proposals) designed to establish prices at artificial non-competitive levels and to deprive HELB of the benefits of free and open competition.

- (e) If HELB in his sole discretion decides to terminate this Contract.

2.6.2 By the Consultant

The Consultant may terminate this Contract by not less than thirty (30) days' written notice to HELB, such notice to be given after the occurrence of any of the following events;

- (a) if HELB fails to pay any monies due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause 7 within sixty (60) days after

receiving written notice from the Consultant that such payment is overdue; or

- (b) if, as a 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.

2.6.3 Payment Upon termination of this Contract pursuant to Clauses
Upon 2.6.1 or 2.6.2, HELB shall make the following
Termination payments to the Consultant:

- (a) remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination;
- (b) Except in the case of termination pursuant to paragraphs (a) and (b) of Clause 2.6.1, reimbursement of any reasonable costs incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel and their eligible dependents.

3. OBLIGATIONS OF THE CONSULTANT

3.1 General

The Consultant shall perform the Services and carry out his Obligations with all due diligence, efficiency and economy in accordance with generally accepted professional techniques and practices and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to HELB and shall at all times support and safeguard HELB's legitimate interests in any dealing with Sub consultants or third parties.

3.2 Conflict of Interests

Any conflict on interest that may arise in this process should be disclosed as is provided for in the Public Officer And Ethics Act

3.2.1 Consultant Not to Benefit from HELB's, Discounts, Etc.

- (i) The remuneration of the Consultant pursuant to Clause 6 shall constitute the Consultant's sole remuneration in connection with this Contract or the Services and the Consultant shall not accept for his own benefit any trade Authority, discount or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of his obligations under the Contract and the

Consultant shall use his best efforts to ensure that his personnel, any sub consultant[s] and agents of either of them similarly shall not receive any such additional remuneration.

- (ii) For a period of two years after the expiration of this Contract, the Consultant shall not engage and shall cause his personnel as well as his sub consultant[s] and his/their personnel not to engage in the activity of a purchaser (directly or indirectly) of the assets on which he advised HELB on this Contract nor shall he engage in the activity of an adviser (directly or indirectly) of potential purchasers of such assets.
- (iii) Where the Consultant as part of the Services has the responsibility of advising HELB on the procurement of goods, works or services, the Consultant will comply with any applicable Procurement guidelines and shall at all times exercise such responsibility in the best interest of HELB. Any discounts or Authority's obtained by the Consultant in the exercise of such procurement shall be for the account of HELB.

3.2.2 Consultant and Affiliates Not to be Otherwise Interested in Project

The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and his affiliates, as well as any Sub-consultant and any of his affiliates, shall be disqualified from providing goods, works or services (other than the Services and any continuation thereof) for any project resulting from or closely related to the services.

3.2.3 Prohibition of Conflicting Activities

Neither the Consultant nor his sub-consultant[s] nor their personnel shall engage, either directly or indirectly in any of the following activities:

- (a) During the term of this Contract, any business or professional activities in the Republic of Kenya which would conflict with the activities assigned to them under this Contract; or
- (b) After the termination of this Contract, such other activities as may be specified in the SC.

3.3 Confidentiality

The Consultant, his sub-consultant[s] and the personnel of either of them shall not, either during the term of this

Contract or within five (5) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract or the HELB's business or operations without the prior written consent of HELB.

3.4 Insurance to be Taken Out by the Consultant

The Consultant (a) shall take out and maintain and shall cause any sub-consultant[s] to take out and maintain, at his (or the sub-consultants', as the case may be) own cost but on terms and conditions approved by HELB, insurance against the risks and for the coverage, as shall be specified in the SC; and (b) at HELB's request, shall provide evidence to HELB showing that such insurance has been taken out and maintained and that the current premiums have been paid.

3.5 Consultant's Actions Requiring HELB's Prior Approval

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

- (a) entering into a sub-contract for the performance of any part of the Services,
- (b) Appointing such members of the personnel not listed by name in Section C ("Key Personnel and Sub-consultants").

3.6 Reporting Obligations

The Consultants shall submit to HELB the reports and documents specified in Appendix A in the form, in the numbers, and within the periods set forth in the said Appendix.

3.7 Documents prepared by the Consultant to Be the Property of HELB

All plans, drawings, specifications, designs, reports and other documents and software submitted by the Consultant in accordance with Clause 3.6 shall become and remain the property of HELB and the Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to HELB together with a detailed inventory thereof. The Consultant may retain a copy of such documents and software. Neither Party shall use these documents for purposes unrelated to this Contract without the prior approval of the other Party.

4. CONSULTANT'S PERSONNEL

4.2 Description of Personnel The titles, agreed job descriptions, minimum qualifications- and estimated periods of engagement in the carrying out of the Services of the Consultant's Key Personnel are described in Section C. The Key Personnel and Sub consultants listed by title as well as by name in Section C are hereby approved by HELB.

4.2.1 Removal and/ or Replacement Of Personnel (a) Except as HELB may otherwise agree, no changes shall be made in the Key Personnel. If for any reason beyond the reasonable control of the Consultant, it becomes necessary to replace any of the Key

Personnel, the Consultant shall provide as a replacement a person of equivalent or better qualifications.

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

(c) The Consultant shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

5. OBLIGATIONS OF HELB

5.1 Assistance and Exemptions HELB shall use his best efforts to ensure that he provides the Consultant such assistance and exemptions as may be necessary for due performance of this Contract.

5.2 Change in the Applicable Law If after the date of this Contract, there is any change in the Laws of Kenya with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Consultant, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties and corresponding adjustments shall be made to the amounts referred to in Clause 6.2 (a) or (b), as the case may be.

5.3 Services and Facilities

HELB shall make available to the Consultant the Services and Facilities listed under Appendix F.

6. PAYMENTS TO THE CONSULTANT

6.1 Lump-Sum Remuneration

The Consultant's total remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all staff costs, Sub-consultants' costs, printing, communications, travel, accommodation and the like and all other costs incurred by the Consultant in carrying out the

Services described in Appendix A. Except as provided in Clause 5.2, the Contract Price may only be increased above the amounts stated in Clause 6.2 if the Parties have agreed to additional payments in accordance with Clause 2.4.

6.2 Contract Price

- (a) The price payable in foreign currency is set forth in the SC.
- (b) The price payable in local currency is set forth in the SC.

6.3 Payment for Additional

For the purposes of determining the remuneration due for additional services as may be agreed under Services Clause 2.4, a breakdown of the lump-sum price is provided in Appendices D and E.

6.4 Terms and Conditions of Payment

Payments will be made to the account of the Consultant and according to the payment schedule stated in the SC. Unless otherwise stated in the SC, the first payment shall be made against the provision by the Consultant of a bank guarantee for the same amount and shall be valid for the period stated in the SC. Any other payment shall be made after the conditions listed in the SC for such payment have been met and the Consultant has submitted an invoice to HELB specifying the amount due.

6.5 Interest on Delayed Payment

Payment shall be made within thirty (30) days of receipt of invoice and the relevant documents specified in Clause 6.4. If HELB has delayed payments beyond thirty (30) days after the due date hereof, simple interest shall be paid to the Consultant for each day of delay at a rate three percentage points above the prevailing Central Bank of Kenya's average rate for base lending .

7. SETTLEMENT OF DISPUTES

- 7.1 Amicable Settlement** The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.
- 7.2 Dispute Settlement** Any dispute between the Parties as to matters arising pursuant to this Contract that cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be referred by either Party to the arbitration and final decision of a person to be agreed between the Parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the Chairman of the Chartered Institute of Arbitrators, Kenya Branch, on the request of the applying party.

Appendix I

FORM OF TENDER- SUBMITTED WITH FINANCIAL PROPOSAL

FROM: _____

DATE _____

To: _____

RE: REQUEST FOR PROPOSAL (RFP) FOR CONSULTANCY FOR LEGAL AND COMPLIANCE AUDIT

In accordance with Tender Number _____

Date _____

I/We _____

Tender an amount of KES _____

In accordance with the attached tender forms / conditions of tender / schedule of requirements and in conformity with the scheduled delivery arrangements stated.

I/We understand that HELB reserves the right to accept or reject this tender for any reason it considers justifiable.

I/We agree that the terms of this tender will remain valid for and will not be withdrawn for a

period of _____ submission of tender.

days from the final date of submission of tender.

In the event of this tender being accepted within the stipulated _____ days; I/We agree to provide consultancy services as indicated in this tender to be quoted delivery dates and failure on my/our part to meet these requirements constitutes a breach on contract.

Witnessed by _____

Address _____

Signature of Witness _____

Date _____

Tenderer's Name _____

Tenderer's Signature _____

Tenderer's designation _____

Full address _____

2. CONTRACT FORM

THIS AGREEMENT made the _____ day of _____ 2018 between **Higher Education Loans Board** (hereinafter called “the Employer”) of the one part and _____ (hereinafter called “the Contractor”) of the other part:

WHEREAS the Employer invited tenders for certain goods and ancillary services, viz., Provision of consultancy Services and has accepted a tender by the Consultant for the provision of the services in the sum of

_____ (words) _____ [figures] (hereinafter called “the Contract Price”).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz:
 - (a) The Tender Form and the Price Schedule submitted by the Tenderer;
 - (b) The schedule of Requirements;
 - (c) The General Conditions of Contract;
 - (d) The Special Conditions of Contract; and
 - (e) The Employer’s Notification of Award and Consultants’ letter of Acceptance.
3. In consideration of the payments to be made by the Employer to the Contractor, the Contractor hereby covenants with the Employer to provide the services in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Consultant in consideration of the provision of the services, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the contract.
5. The consultant undertakes to perform the services with the highest standards of proficiency and ethical competence and integrity.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with their respective laws the day and year first above written.

SIGNED FOR AND ON BEHALF OF HIGHER EDUCATION LOANS BOARD

CEO & Board Secretary)
)

In the presence of:)
)
)
)

LEGAL SERVICES MANAGER) SIGNED FOR AND ON BEHALF OF

DIRECTOR)
)

In the presence of:)
)
)

WITNESS