



**Request for Proposals
Environmental Baseline and Roads Construction ESIA**

Barrier Geothermal Project

TURKANA COUNTY

KENYA

OEL/RFP/002/2015-2016

16th November, 2015

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SECTION I - LETTER OF INVITATION

Date: 16th November 2015

Dear Sir/Madam,

RE: BARRIER GEOTHERMAL PROJECT: ENVIRONMENTAL BASELINE AND ROADS CONSTRUCTION ESIA

1.1 Olsuswa Energy Limited (OEL) is due to receive a grant from the African Union Commission (AUC) through the Geothermal Risk Mitigation Facility (GRMF) -Application ID: 03-SS-04-KE towards detailed surface exploration for geothermal resources at Barrier Volcanic Complex in Turkana County. One of the components under this grant includes infrastructure development to open up the area and enable access to the geothermal site.

1.2 Olsuswa Energy Limited (OEL) the proponent of this project invites proposals for the following contracting services. The purpose of the Project is to establish the size of the resource, develop a conceptual model for Barrier, site drilling targets and eventually develop the steam field for the generation of 140 MW of electricity.

To ensure the implementation of the above project components in accordance with best environmental practices and to mitigate project related risks, OEL intends to procure the services of an Environmental Consultant whose role would include:

- (i) Undertake an Environmental and Social Impact Assessment (ESIA) study and initial environmental audit reports for Olsuswa Energy's proposed Katilia – Barrier road upgrade
- (ii) Assess the impacts of the proposed road cutting, building of bridges and drifts to the environment.
- (iii) Prepare an ESIA study and initial environmental audit reports for Olsuswa Energy's planned surface studies at Barrier Volcanic complex
- (iv) Assess the impacts of the proposed Geoscientific studies at Barrier Volcanic Complex to the Environment

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

- Section I - Letter of invitation
- Section II - Information to Bidders
 - Appendix to Bidders Information
- Section III - Terms of Reference
- Section IV - Technical Proposals
- Section V - Financial Proposal
- Section VI - Standard Contract Form

1.4 The proposal shall be submitted as per the instructions in the document.

We remain,

Yours sincerely,

Mugwe Manga
Commercial Director
Olsuswa Energy Limited
P.O. Box 14991 – 00800
NAIROBI, KENYA

SECTION II – INFORMATION TO BIDDERS (ITB)

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2.1 Introduction

2.1.1 The Employer named in the Appendix “ITB” will select a firm among those invited to submit a proposal, in accordance with the method of selection detailed in the appendix. The method of selection shall be as indicated by the Employer in the Appendix.

2.1.2 The Bidders are invited to submit a Technical Proposal and a Financial Proposal, or a Technical Proposal only, as specified in the Appendix “ITB” for contracting services required for the assignment named in the said Appendix. A Technical Proposal only may be submitted in assignments where the Employer intends to apply standard conditions of engagement and scales of fees for professional services which are regulated as is the case with Building and Civil Engineering Consulting services. In such a case the highest ranked firm of the technical proposal shall be invited to negotiate a contract on the basis of scale fees. The proposal will be the basis for Contract negotiations and ultimately for a signed Contract with the selected firm.

2.1.3 The Bidders must familiarize themselves with local conditions and take them

into account in preparing their proposals. To obtain first-hand information on the assignment and on the local conditions, Bidders are encouraged to liaise with the Employer regarding any information that they may require before submitting a proposal and to attend a pre-proposal conference where applicable. Bidders should contact the officials named in the Appendix “ITB” to arrange for any visit or to obtain additional information on the pre-proposal conference. Bidders should ensure that these officials are advised of the visit in adequate time to allow them to make appropriate arrangements.

2.1.4 The Employer will provide the inputs specified in the Appendix “ITB”, assist the firm in obtaining licenses and permits needed to carry out the services and make available relevant project data and reports.

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

2.1.6 The Employer’s employees, committee members, board members and their relatives (spouse and children) are not eligible to participate.

2.1.7 The Tender Document shall be downloaded at **no charge** from OEL’s website: www.olsuswaenergy.com/tenders.

2.2 Eligibility

Interested consulting firms must provide information that they are suitably qualified to perform the services which will not be limited to the following:

- i. Consulting firm must show that they have been accredited by a reputable organization/Government with not less than ten (10) years of having been established to perform the required services.
- ii. Consulting firm shall demonstrate that its core business is the provision of such services as described.
- iii. The firm shall demonstrate that it has provided consultancy services for the provision of similar nature and magnitude with high degree of success.
- iv. The Consulting firm shall demonstrate that it has staff with the requisite education and experience and competence in the execution of described assignment
- v. The firm shall provide Financial statements for the last three years or more
- vi. Provide certificate of registration/incorporation specifically for the local firms
- vii. Provide PIN certificates for local firms
- viii. Any other information the firms deem necessary to demonstrate that they have the required qualifications, capacity and relevant experience to perform the services.

2.3 Clarification and Amendment of RFP Documents

2.3.1 Bidders may request a clarification of any of the RFP documents only up to fourteen [14] days before the proposal submission date. Any request for clarification or enquiry must be sent by a registered user on www.olsuswaenergy.com/tenders. The Employer will respond to such enquiries on the same portal. Comments and replies will be accessible to all Bidders who will be shortlisted.

2.3.2 At any time before the submission of proposals, the Employer may for any reason, whether at his own initiative or in response to a clarification requested by an invited firm, amend the RFP. Any amendment shall be issued in writing through addenda. Addenda shall be sent by e-mail to all invited Bidders and will be binding on them. The Employer may at his discretion extend the deadline for the submission of proposals.

2.4 Preparation of Technical Proposal

2.4.1 The Bidders proposal shall be written in English language.

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

2.4.3 While preparing the Technical Proposal, Bidders 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 bidder(s) and/or other firms or entities in a joint venture or sub-consultancy as appropriate. Bidders shall not associate with the other Bidders 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-time is given in the Terms of Reference (ToR). The proposal shall however be based on the number of professional staff-time estimated by the firm.
- (iii) It is desirable that the majority of the key professional staff proposed be permanent employees of the firm or have an extended and stable working relationship with it.
- (iv) Proposed professional staff must as a minimum, have the experience indicated in Appendix, 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.

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

- (i) A brief description of the firm’s organization and an outline of recent experience on assignments of a similar nature. For each assignment the outline should indicate inter alia, the profiles of the staff proposed, duration of the assignment, contract amount and firm’s involvement.
- (ii) Any comments or suggestions on the Terms of Reference, a list of services and facilities to be provided by the Employer.
- (iii) A description of the methodology and work plan for performing the assignment.
- (iv) The list of the proposed staff team by specialty, the tasks that would be assigned to each staff team member and their timing.
- (v) 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.
- (vi) Estimates of the total staff input (professional and support staff staff-time) needed to carry out the assignment supported by bar chart diagrams showing the time proposed for each professional staff team member.
- (vii) A detailed description of the proposed methodology, staffing and monitoring of training, if Appendix “A” specifies training as a major component of the assignment.
- (viii) Any additional information requested in Appendix “A”.

2.4.5 The Technical Proposal shall not include any financial information.

2.5 Preparation of Financial Proposal

2.5.1 In preparing the Financial Proposal, Bidders are expected to take into account the requirements and conditions outlined in the RFP documents. The Financial Proposal should follow Standard Forms (Section D). It lists all costs associated with the assignment. If appropriate these costs should be broken down by activity.

2.5.2 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 Bidders, the sub-Bidders and their personnel, unless Appendix “A” specifies otherwise.

2.5.3 Bidders shall express the price of their services in USD and in Kenya Shillings for local taxes, levies and duties

2.5.4 Commissions and gratuities, if any, paid or to be paid by Bidders and related to the assignment will be listed in the Financial Proposal submission Form.

2.5.5 The Proposal must remain valid for 120 days after the submission date. During

this period, the bidder is expected to keep available, at his own cost, the professional staff proposed for the assignment. The Employer will make his best effort to complete negotiations within this period. If the Employer wishes to extend the validity period of the proposals, the Bidders shall agree to the extension of participation guarantee, advance payment guarantee, and completion guarantee for the consulting services.

2.6 Submission, Receipt, and Opening of Proposals

2.6.1 For each proposal, the Bidders shall prepare the number of copies indicated in Appendix "ITB". If there are any discrepancies between the original and the copies of the proposal, the original shall govern.

2.6.2 The completed Technical and Financial Proposals must be uploaded to the indicated portal on or before the time and date stated in the Appendix "ITB". Any proposal received after the closing time for submission of proposals shall not be considered.

2.6.3 After the deadline for submission of proposals, the Technical Proposal shall be reviewed immediately by the evaluation committee. The Financial proposals shall be examined only if the Technical proposals have been reviewed and meets the minimum score.

2.7 Proposal Evaluation General

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

2.8 Evaluation of Technical Proposal

2.8.1 The evaluation committee appointed by the Employer shall evaluate the proposals on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria as follows:

- (i) Specific experience of the consultant related to the assignment **[10]**
- (ii) Adequacy of the proposed work plan and methodology in responding to the terms of reference **[30]**
- (iii) Qualifications and competence of the key staff for the assignment **[50]**
- (iv) Local Participation (as reflected by nationals among proposed key staff) **[10]**

Total Points [100]

Note: 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 Terms of Reference or if it fails to achieve the minimum technical score indicated in the Appendix “ITB”.

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

2.9 Evaluation of Financial Proposal

2.9.1 After Technical Proposal evaluation, the Employer shall notify those Bidders whose proposals did not meet the minimum qualifying mark. The Employer shall simultaneously notify the Bidders who have secured the minimum qualifying mark.

2.9.2 The evaluation committee will determine whether the financial proposals are complete (i.e. whether the bidder has costed all the items of the corresponding Technical Proposal and correct any computational errors). The cost of any unpriced items shall be assumed to be included in other costs in the proposal. In all cases, the total price of the Financial Proposal as submitted shall prevail.

2.9.3 The Bidders whose Technical Proposals have met the minimum score shall subsequently have their Financial Proposals examined by the committee. The list of successful bidders of the financial evaluation shall be forwarded to the Board of Directors for final awarding.

2.9.4 The formulae for determining the Financial Score (Sf) shall, unless an alternative formulae is indicated in the Appendix “ITB”, be as follows:

$$\mathbf{Sf = 100 X (Fm/F)}$$

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 firm achieving the highest combined technical and financial score will be invited for negotiations.

2.9.5 The tender evaluation committee shall evaluate the tender within 30(thirty) days from the date of opening the tender.

2.9.6 Contract price variations shall not be allowed for contracts not exceeding 120 days and not exceeding 5% of the full contract value. This variation has to be ratified and approved by the board and can only be submitted not less than 30 days to the

end of the contract.

2.9.7 Where contract price variation is allowed, the variation shall not exceed 15% of the original contract price.

2.9.8 Price variation requests shall be processed by the Employer as per the payment stipulations in the contract.

2.10 Contract Negotiations

2.10.1 Negotiations will be held at the same address as indicated in the Appendix "ITB". The aim is to reach agreement on all points and sign a contract.

2.10.2 Negotiations will include a discussion of the Technical Proposal, the proposed methodology (work plan), staffing and any suggestions made by the firm to improve the Terms of Reference. Special attention will be paid to getting the most the firm can offer within the available budget and to clearly defining the inputs required from the Employer to ensure satisfactory implementation of the assignment.

2.10.3 The financial negotiations will not involve the remuneration rates for staff (no breakdown of fees).

2.10.4 Having selected the firm on the basis of, among other things, an evaluation of proposed key professional staff, the Employer expects to negotiate a contract on the basis of the experts named in the proposal. Before contract negotiations, the Employer will require assurances that the experts will be available for the total time period needed for performing the consulting services. If this is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the firm may be disqualified.

2.10.5 The negotiations will conclude with a review of the draft form of the Contract. To complete negotiations the Employer and the selected firm will initial the agreed Contract.

2.10.6 The Employer shall appoint a team for the purpose of the negotiations.

2.11 Award of Contract

2.11.1 The Contract will be awarded following negotiations.

2.11.2 The selected firm is expected to commence the assignment on the date and at the location specified in Appendix "ITB".

2.11.3 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

2.11.4 The Employer may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

2.11.5 The Employer shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

2.11.6 To qualify for contract awards, the tenderer shall have the following necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured. In addition, the consultant will need to prove the following:

- a) Legal capacity to enter into a contract for procurement
- b) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
- c) Shall not be debarred from participating in public procurement.
- d) Shall acknowledge all formal Declarations as part of the Technical Proposal.

2.11 Confidentiality

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

2.12 Corrupt and fraudulent practices

2.12.1 The Employer requires that all parties in this Tender, including Bidders and their agents (whether or not declared), sub-Consultants, sub-Bidders, service providers or suppliers and any personnel thereof, observe the highest standards of ethics during the selection process and award of the contract, and during the performance of this assignment. The tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.

2.12.2 The Employer defines, for the purpose 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 party²;
- ii) "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party³ to obtain financial or other benefit or to avoid an obligation;
- iii) "collusive practice" is an arrangement between two or more parties⁴ designed to achieve an improper purpose, including to influence improperly the actions of another party;
- iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party⁵;
- v) "obstructive practice" is:
 - (a) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in

order to materially impede a Bank 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

(b) Acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under paragraph 1.22(e) below.

2.12.3 The Employer will reject a proposal for award if it determines that the bidder recommended for award, or any of its personnel, or its agents, or its sub-Bidders, sub-Consultants, service providers, suppliers and/or their employees, has directly or indirectly, has engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question.

2.12.4 Further a bidder who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

2.12.5 All Bidders will submit the Declaration of Undertaking as integral part of their Technical Proposal.

Appendix to Information to Bidder

| Information to Bidders Reference | Data | Description |
|---|-------------------------------------|--|
| Clause 2.1.1 | The Employer and Employer’s Address | Olsuswa Energy Limited Mayfox House Garden Road, off Riverside Drive P.O Box 14991-00800 Nairobi, Kenya |
| Clause 2.1.2 | Submission of proposals | The Bidders are invited to submit both Technical and Financial proposals separately. |
| Clause 2.1.3 | Mandatory Site Visit | There shall be a mandatory site visit for all bidders on 25 th November 2015 at Katilia ward, Turkana East. Bidders are requested to assemble at Lokichar at 8.00am. Bidders shall complete an attendance register and be issued with a certificate of site visit. Travel and accommodation is the responsibility of bidders. OFF ROAD vehicles are a MUST. |
| Clause 2.1.4 | Inputs provided by The Employer | Refer to the Terms of References (ToR). |
| Clause 2.2.1 | Enquiries by Bidders | For purposes of enquiries, bidders may notify OEL in writing via email in PDF at the following address: info@olsuswaenergy.com OEL will respond in writing (e-mail) to any |

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| | | request received at least fourteen (14) days prior to the deadline for submission of bidding forms i.e December 2 nd 2015. |
| Clause 2.5.3 | Format and Signing of Applications | Olsuswa Energy Limited Mayfox House Garden Road, off Riverside Drive P.O Box 14991-00800 Nairobi, Kenya |
| Clause 2.5.4 | RFP Closing and opening Date | Proposals must be must be uploaded to the portal www.olsuswaenergy.com/tenders by 16:00 hours GMT on 16 th December 2015. |
| Clause 2.7.1 | Technical proposal evaluation | <p>Criteria, sub-criteria, and point system for the evaluation of Technical Proposals are:</p> <ul style="list-style-type: none"> (i) Specific experience of the consultant related to the assignment [10] (ii) Adequacy of the proposed work plan and methodology in responding to the terms of reference [30] (iii) Qualifications and competence of the key staff for the assignment [50] (iv) Local Participation (as reflected by nationals among proposed key staff) [10] <p>Total Points [100]</p> <p>Total points for the four criteria: 100 The minimum technical score St required to pass is: 80 Points</p> |
| Clause 2.8.5 | Formulae for determining the Financial Score (Sf) | <p>The formula for determining the financial scores is the following: $Sf = 100 \times Fm / F$</p> <p>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 = 80% P = 20% NB: The firm with the highest combined technical and financial score will be recommended for award</p> |

SECTION III: -TECHNICAL PROPOSAL

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3.1. TECHNICAL PROPOSAL SUBMISSION FORM

[_____ Date] To:

Ladies/Gentlemen:

We, the undersigned, offer to provide the contracting services for Barrier Environmental Baseline and Roads Construction ESIA in accordance with your Request for Proposal dated _____ 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 that you receive.

We remain,

Yours sincerely,

3.2. DECLARATION OF UNDERTAKING

We underscore the importance of a free, fair and competitive contracting procedure that precludes abusive practices. In this respect we have neither offered nor granted directly or indirectly any inadmissible advantages to any public servant or other person nor accepted such advantages in connection with our bid, nor will we offer or grant or accept any such incentives or conditions in the present tendering process or, in the event that we are awarded the contract, in the subsequent execution of the contract. We also declare that no conflict of interest exists in the meaning of the kind described in the corresponding Guidelines.

We also underscore the importance of adhering to minimum social standards (core labour standards) in the implementation of the project. We undertake to comply with the core labour standards ratified by the country of Republic of Kenya.

We will inform our staff of their respective obligations and of their obligation to fulfil this declaration of undertaking and to obey the laws of the country of Republic of Kenya.

We also declare that our company/all members of the consortium has/have not been included in the list of sanctions of the United Nations, nor of the AU, nor in any other list of sanctions and affirm that our company/all members of the consortium will immediately inform the Employer if this situation occurs at a later stage.

We acknowledge that, in the event that our company (or a member of the consortium) is added to a list of sanctions that is legally binding on the Employer and/or AU, the Employer shall be entitled to exclude us/the consortium or, if the contract is awarded to our company/the consortium, to immediately cancel such contract if the statements made in the Declaration of Undertaking were objectively false or the reason for exclusion from the tender procedure occurs after the Declaration of Undertaking has been issued.

(Place)..... (Name of company)
(Date).....
(Signature(s)).....

3.3. FIRM'S REFERENCES

3.3 A. Relevant Services Carried Out in the Last Five Years That Best Illustrate Qualifications

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

| | | |
|--|-------------------------------|---|
| Assignment Name: | | Country: |
| Name of Firm/Entity: | | Professional Staff Provided by Firm/Entity: |
| Location within Country: | | Firm's contact person: |
| Address: | | No. of Staff-Months; Duration of assignment |
| Start Date (Month/Year): | Completion Date (Month/Year): | Approximate value of services (USD): |
| Name of Associated Consultants. If any: | | No. of Staff provided by Associated Consultant: |
| 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: _____

3.4. COMMENTS AND SUGGESTIONS OF BIDDERS ON THE TERMS OF REFERENCE AND ON DATA, SERVICES AND FACILITIES TO BE PROVIDED BY THE EMPLOYER.

On the Terms of Reference:

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

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

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

3.5. DESCRIPTION OF THE METHODOLOGY AND WORK PLAN FOR PERFORMING THE ASSIGNMENT

3.6. TEAM COMPOSITION AND TASK ASSIGNMENTS

3.6.1 Technical/Managerial Staff

| Name | Position | Task |
|------|----------|------|
| | | |
| | | |
| | | |
| | | |

3.6.2 Support Staff

| Name | Position | Task |
|------|----------|------|
| | | |
| | | |
| | | |
| | | |

3.7. 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.

Full name of staff member:

[Signature of staff member]

_____ Date: _____

Full name of authorized representative:

[Signature of authorized representative]

_____ Date: _____

3.8. TIME SCHEDULE FOR PROFESSIONAL PERSONNEL

Months (in the Form of a Bar Chart)

| Name | Position | Reports Due/ Activiti es | Months | | | | | | | | | | | | Number of months |
|------|----------|-----------------------------------|--------|---|---|---|---|---|---|---|---|----|----|----|---------------------|
| | | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | |

Reports Due: _____

Activities Duration: _____

Signature: _____ (Authorized
representative)

Full Name: _____

Title: _____

Address: _____

3.9. ACTIVITY (WORK) SCHEDULE

(a). Field Investigation and Study Items

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

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

(b). Staff Task Matrix

| | Location | Key Experts | Team Leader | | Short-term Experts | Total (Man-Months) | |
|---------------------|----------|-------------|-------------|--|--------------------|--------------------|--|
| Activity | | | | | | | |
| Sub-activity | | | | | | | |
| | | | | | | | |

(c). Completion and Submission of Reports

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

SECTION IV: -FINANCIAL PROPOSAL Table of Contents

1. Financial proposal submission Form
2. Summary of costs
3. Breakdown of price/per activity
4. Breakdown of remuneration per activity
5. Miscellaneous expenses

4.1. FINANCIAL PROPOSAL SUBMISSION FORM

[Date _____]

To: [Name and address of Employer]

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for Barrier Roads Upgrade and Environmental Baseline ESIA's in accordance with your Request for Proposal dated (_____) and our Proposal. Our attached Financial Proposal is for the sum of (_____) inclusive of the taxes.

We remain,

Yours sincerely,

4.2. SUMMARY OF COSTS

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

4.3. BREAKDOWN OF PRICE PER ACTIVITY

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

4.4. 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 | | | | |

4.5. MISCELLANEOUS EXPENSES

| No. | Description | Unit | Quantity | Unit Price | Total Amount |
|-----|-----------------------------------|------|----------|------------|--------------|
| 1. | Communication costs | | | | |
| 2. | Drafting, reproduction of reports | | | | |
| 3. | Equipment: computers etc. | | | | |
| 4. | Software | | | | |
| | Grand Total | | | | |

Activity No. _____ Activity Name: _____

SECTION V: - TERMS OF REFERENCE

5.1 INTRODUCTION

Olsuswa Energy Limited is a Kenyan based company that has applied for a geothermal resource license as per the Geothermal Act (1982) in the northern-most known geothermal prospect - Barrier Volcanic Complex in Turkana County.

Olsuswa Energy has both local and international investors. The main local investor is Mayfox LLP which also has interests in the Kenyan gold mining sector. The main International investor is DI Frontier Market Energy and Carbon Fund K/S. The fund boasts of key investors such as CDC Group (the UK Development Finance Institution), GEEREF (European Investment Bank), IFU (the Danish Development Finance Institution) and Pension Denmark. The fund is managed by Frontier Investment Management.

Bidders participating in this procurement process will be required to submit a Declaration of Undertaking failure to which the bidder's proposal will be rejected.

5.1.1 PROJECT BACKGROUND

The current Least Cost Power Development Plan (LCPDP) that guides the planning in the energy sector projects an increase of electricity demand from the current 8% to over 10% annually upon successful implementation of Vision 2030 initiatives. The current peak power demand stands at about 1,200 MW and is projected to grow to about 19,000 MW over the next 20 years.

Kenya's untapped geothermal potential; estimated at more than 10,000 MWe is seen as a suitable source of power generation to meet the growth in the electricity demand. To this end, the country has embarked on a program to realize at least 5,000 MW of electricity from geothermal sources by 2030.

Olsuswa Energy is keen to accelerate the realization of the 5,000 MW from geothermal sources through the development of the Barrier Volcanic Complex. Olsuswa's intended prospect covers an area of 136 sq.km and as identified through two previous investigations, the geothermal field has a potential of over 750 MW. Olsuswa is conducting further detailed surface and infill surveys to specifically define the optimal geothermal resource locations for the production of clean, affordable electricity that will be fed to the national grid through the Loiyangalani-Suswa transmission line.

Barrier Volcanic complex is located in Katilia ward, Turkana East Constituency, Turkana County. It is the Northern most geothermal field within the Kenyan rift, sandwiched between Lakes Logipi and Turkana. The terrain around the site is as shown in the attached maps.

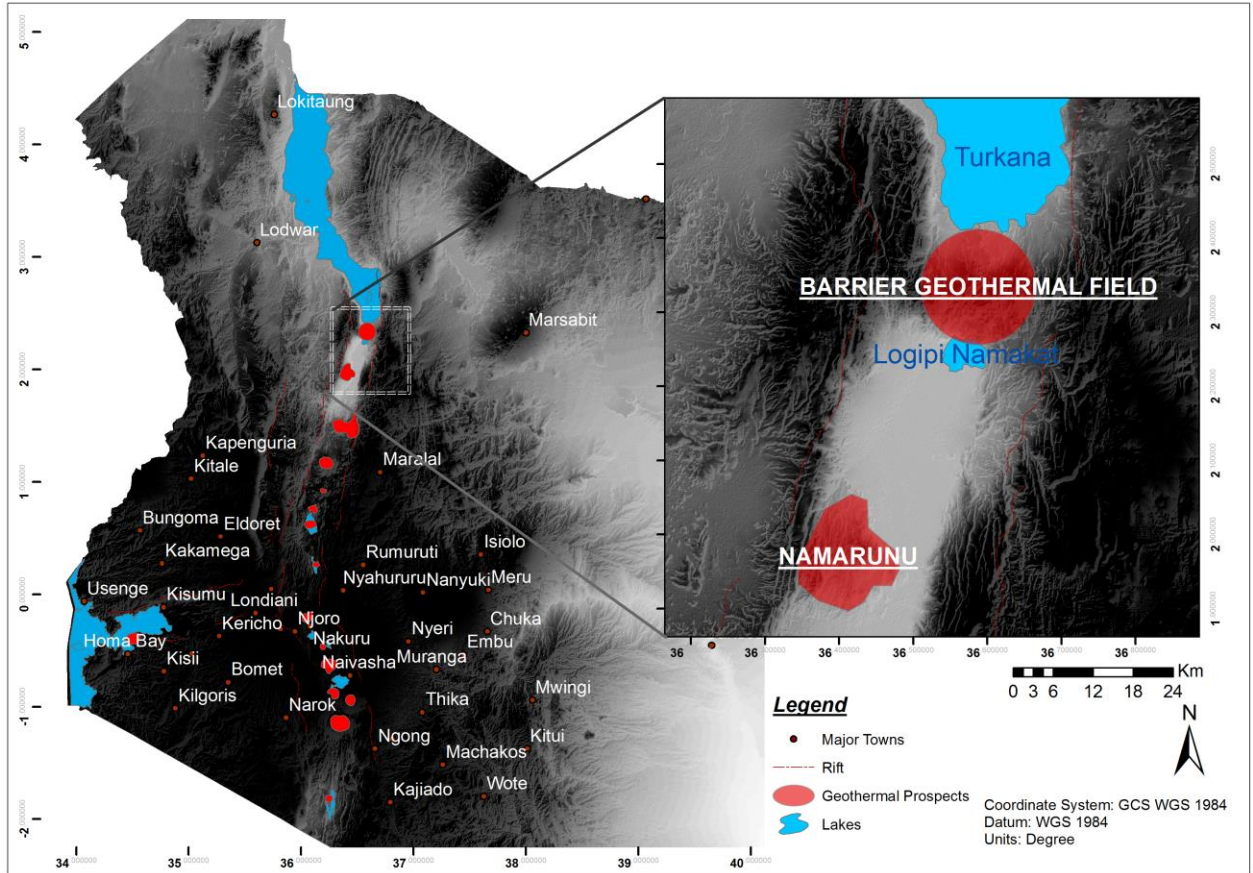


Figure 1: Location of the Barrier Geothermal Field

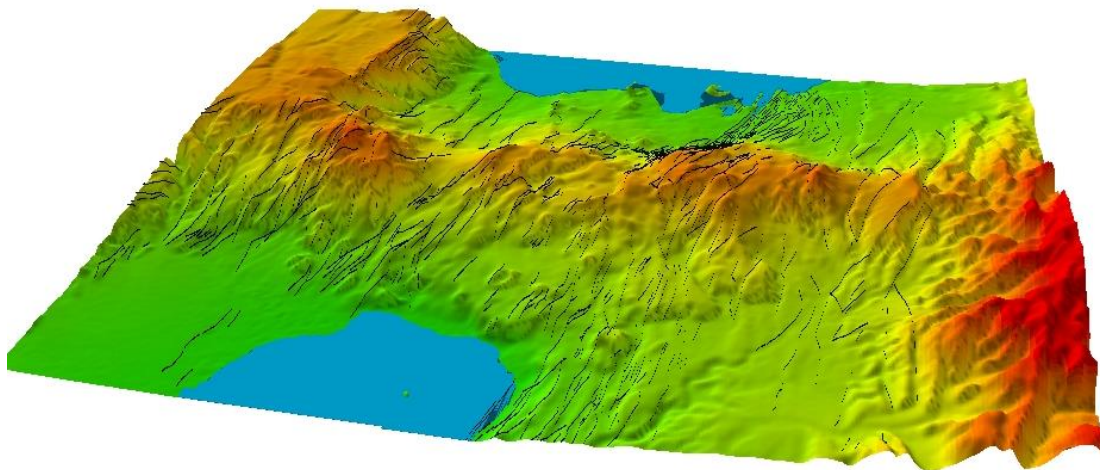


Figure 2: The terrain at Barrier

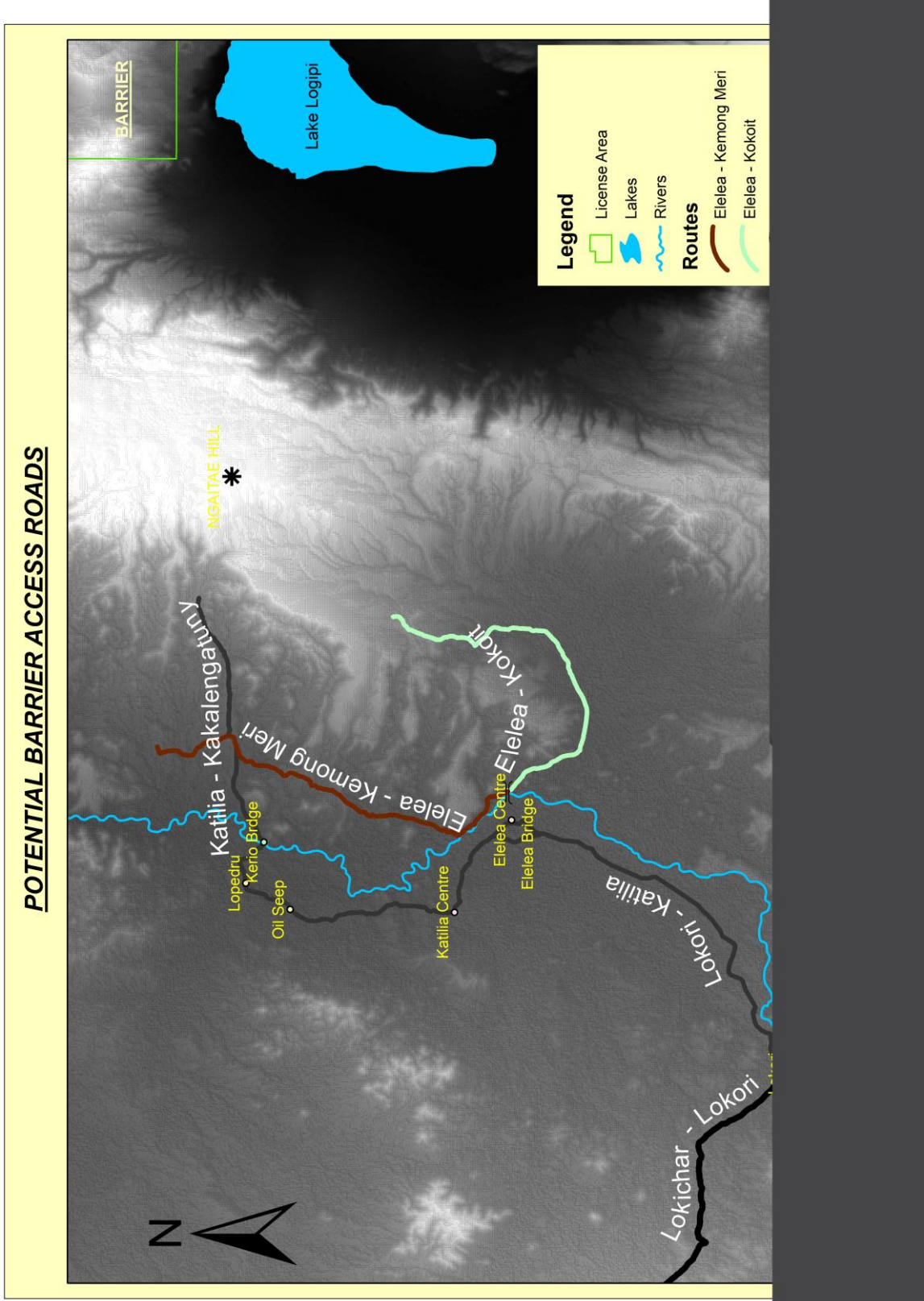


Figure 3: Existing roads in the area

5.2 OBJECTIVES OF THE ASSIGNMENT

To ensure the implementation of the above project OEL intends to procure the services of a Consultant for the following tasks:

- (i) Undertake initial environmental audit reports for Olsuswa Energy's proposed Katilia – Barrier road upgrade
- (ii) Assess the impacts of the proposed development- new road cutting, bridges and drifts,
- (iii) Prepare baseline environmental audit reports for Olsuswa Energy's planned surface studies at the Barrier Volcanic complex,
- (iv) Assess the impacts of the proposed developments at the Barrier Volcanic Complex as a result of the surface studies.

5.3 SCOPE OF ASSIGNMENT

The tasks whose ESIA, the employer seeks will include but not restricted to;

5.3.1 Roads Upgrade and new road cutting

- a) Construction of a bridge across R. Kerio at Elelea
- b) Opening up a new road from Kokoit to Barrier
- c) Construction of drifts along the Katilia – Barrier road
- d) Installation of road signs

The work of the consultancy firm will be;

- 1) To prepare ESIA study report and initial environmental audit reports for Olsuswa Energy's proposed roads upgrade in accordance with the administrative guidelines provided under the Environmental (Impact Assessment and Audit) Regulations, 2003.
- 2) Assess the impacts of the proposed development as provided for by the second schedule to the Environmental (Impact Assessment and Audit) Regulations, 2003:
- 3) Where involuntary resettlement cannot be avoided, the consultant will be required to prepare Response Action Plan (RAP) as a mitigation measure for the potential negative impacts. This shall be carried out in line with the World Bank Involuntary Resettlement Policy (OP 4.12).
- 4) The initial environmental audit report will capture all the relevant aspects as provided for by Environmental (Impact Assessment and Audit) Regulations, 2003.

5.3.2 Surface Exploration Baseline ESIA

The planned surface exploration techniques are;

- Geophysics;
 - MagnetoTellurics soundings
 - Transient Electromagnetics soundings
 - Gravity survey
 - Microseismics survey
- Geochemistry
 - Soil Gas sampling

- Fluid sampling
- CO₂ flux
- Geological/Structural mapping

It will be the responsibility of the Consultant to ensure that all the output work is of the highest quality.

5.4 SKILLS AND EXPERIENCE

The firms submitting proposals should demonstrate that they can mobilize and deploy multiple skills necessary to undertake the range of tasks set out in this Terms of Reference.

Interested bidders must provide information indicating that they are qualified to perform the services. Bidders may constitute joint-ventures to enhance their chances of qualification.

The Bidder's competence and capability will be established by the following parameters:

- a) A brief profile of the bidder including description of the firm or consortium member's incorporation details (Articles and Memorandum of Association, Certificate of Incorporation, joint ventures agreements).
- b) Environmental Scientists in their individual capacity having minimum experience of 20 years as Environmental Scientists or a closely related field and having worked as independent Environmental Scientists in a similar project can also apply. Individual Consultants must be registered with National Environmental Management Authority (NEMA) as Lead Auditor or a recognised equivalent registering Authority recognized by Kenyan Governing Law
- c) Description of experience of the bidder (and consortium members, if any) in undertaking similar work for the last five (5) years and bidders must attach letters of recommendation; Firms will have to be approved by NEMA or by a recognized equivalent registering Authority recognized by the Kenyan Governing Law.
- d) Providing CVs of key staff proposed for the assignment which **MUST** include but not limited to expertise in the following areas;
 - i) A Senior Environmental Scientist proposed to be designated and to perform as the Team Leader
 - ii) Sociologist/ Social Economist
 - iii) Environmental & Social Expert
- e) All the proposed staff MUST have at least a University Degree and Fifteen (15) years' experience for the Team Leader and Ten (10) years for other experts in handling similar assignments. In addition to this, the Team Leader MUST have at least 15 years of experience in planning, project management, and environmental survey within the construction/energy sector.

5.5 PROVISION OF FACILITIES AND OTHER INPUTS

5.5.1 Counterpart Personnel

OEL will not avail counterpart staff for this assignment. Instead OEL staff may be

attached to the Bidder on agreement with the Employer for training purposes. Each party may request the other for such attachment and the request will not be unduly denied. The Bidder may assign duties to such staff but he retains responsibility for delivery of all services under his scope.

The Bidder will propose a performance evaluation tool for the attached staff which will be reviewed and agreed by the Employer.

5.5.2 Data to be provided by the Employer

The Bidder will provide an information request checklist which will be discussed and agreed with OEL. The Employer (OEL) will provide the following facilities

- a) Access to the project area covered by this project,
- b) Liaison with the community and facilitate requirements/supports needed for the Bidder to perform their duties in the area.
- c) OEL will arrange and pay for venues for meetings and workshops which have been approved and organized by OEL

5.6 MAN-MONTH ALLOCATION

The Bidder shall indicate in his proposal sufficient man-months for proper execution of the project. Considering the technical and financial evaluation, contract shall be awarded to a single bidder whose entire result reflects the evaluation criteria.

The Bidder shall provide a schedule with breakdown for the various activities called for in the Terms of Reference (TORs). The bidder will be evaluated with the total man-month proposed.

The minimum proposed man-month by the Bidder shall not be less than the estimated man-month by the Employers as follows, for each key personnel and activities.

5.6.1 PROPOSED MAN-MONTHS

| CONSULTANT/EXPERT | NO | PROPOSED MANMONTHS |
|--------------------------------|-----------|---------------------------|
| Senior Environmental Scientist | | |
| Sociologist/ Social Economist | | |
| Environmental & Social Expert | | |
| TOTAL | | |

5.6.2 BIDDER'S FEE

The Bidder's Fees and Expenses shall include:

- a) Home Office Coordination;
- b) Supervision and Management
- c) All travel expenses;
- d) All personnel expenses;

- e) All field expenses including working equipment and materials, vehicles running cost, house accommodation, etc. for the Project Manager and Deputy Project Managers;
- f) Expenses of the workshop Meetings including, travel expenses, accommodation, meals, International transport, allowances/per diem, travel insurance cost of venue, etc.
- g) Project Office Costs

The Financial Proposal shall be clear and formal as possible with breakdowns of each subtotal into remuneration, reimbursable, miscellaneous and grand total. The evaluation will consider all items on the same basis and on equal ground for comparison. All items in the Technical Proposal incurring expense must be supported with a corresponding financial proposal.

5.7 TIME SCHEDULE

The project is set to start at the start of the fourth quarter of 2015 (October) for a duration indicated in the Gantt chart attached below.

The commencement of detailed surface exploration activities is dependent on;

- The accessibility of the geothermal site- (the opening up of the Katilia – Barrier road)
- Approval of both the roads ESIA and the Environmental Baseline Survey by relevant authorities.

Therefore the employer desires strict adherence to the stipulated timeline and delivery date.

5.8 REPORTING REQUIREMENTS

5.8.1 General

OEL and financiers of the Project consider of utmost importance the timely submission of project reports during the course of the project implementation. Format of the report should be discussed and agreed upon with OEL. The Weekly Progress Reports (WPRs) shall cover all aspects of Project implementation, including the status of progress against agreed implementation and disbursement schedules for all lots of the project. The WPRs shall also highlight issues affecting Project implementation and proper corrective actions.

5.8.2 Inception report

The Bidder shall submit inception reports to the executing agencies. The inception report shall be submitted within two weeks of contract effectively. It will outline the Bidder's work plan, define the review and implementation schedule by task, specify submission dates for each one of the required reports in draft form, and assign the personnel by name and date period to each task. The proposed Project schedule shall be broken down by tasks and sub-tasks and presented in chart form in an acceptable form using Microsoft Project.

5.8.3 Progress Reports

The Bidder shall prepare and submit weekly progress reports to OEL. The Weekly Progress Reports are to be prepared in an agreeable format and availed in soft copy.

The reports by Consultant shall at least include written description of:

- Progress of the works and expenditure to-date;
- Progress of the works during the week;
- Future planned works and expenditure;
- Technical problems , if any; with their remedies, delays of any kind, if any;
- And any other issues, which could facilitate or affect the progress of the work;
- Graphical presentation of physical progress planned/actual;
- Cash flow planned/actual;
- Expected future progress and expenditure;

5.8.4 Project Completion Reports (PCR)

Upon completion of the project activities, the Bidder shall, in accordance with OEL requirement, prepare two Reports;

1. The Environmental and Social Impact Assessment Report of the Proposed Katilia – Barrier Road Construction
2. Baseline ESIA Report on the Proposed Surface Geoscientific Exploration of Barrier Volcanic Complex.

5.9 IMPROVEMENT OF TOR

The Bidder may offer suggestions and improvements to the Terms of Reference, which it considers would result in better implementation of the project. Such

proposals if accepted will form part of the Terms of Reference of the proposals submitted by the bidder. The effect on time and cost estimates given under the above clause shall be clearly identified.

SECTION VI: STANDARD CONTRACT FORM

6. GENERAL CONDITIONS OF CONTRACT

6.1. GENERAL PROVISIONS

6.1.1 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 Government’s country, or in such other country as may be specified in the Special Conditions of Contract (SC), as they may be issued and in force from time to time.
- (b) “AUC” means the African Union Commission and “GRMF” means Geothermal Risk Mitigation Facility.
- (c) “Contractor” means any private or public entity that will provide the Services to the Client under the Contract.
- (d) “Contract” means the Contract signed by the Parties and all the attached documents listed in its Clause 1 that is these General Conditions (GC), the Special Conditions (SC), and the Appendices.
- (e) “Contract Price” means the price to be paid for the performance of the Services, in accordance with Clause 6;
- (f) “Effective Date” means the date on which this Contract comes into force and effect pursuant to Clause GC 2.1.
- (g) “Foreign Currency” means any currency other than the currency of the Client’s country.
- (h) “GC” means these General Conditions of Contract.
- (i) “Government” means the Government of the Client’s country.
- (j) “Local Currency” means the currency of the Client’s country.
- (k) “Member” means any of the entities that make up the joint venture/consortium/association, and “Members” means all these entities.
- (l) “Party” means the Client or the Contractor, as the case may be, and “Parties” means both of them.
- (m) “Personnel” means persons hired by the Contractor or by any Sub-Contractors and assigned to the performance of the Services or any part thereof.

- (n) “SC” means the Special Conditions of Contract by which the GC may be amended or supplemented.
- (o) “Services” means the work to be performed by the Contractor pursuant to this Contract, as described in Appendix A hereto.
- (p) “Sub-Contractors” means any person or entity to whom/which the Contractor subcontracts any part of the Services.
- (q) “In writing” means communicated in written form with proof of receipt.

**6.1.2 Law
Governing
Contract**

This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.

6.1.3 Language

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

6.1.4 Notices

6.1.4.1

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.

6.1.4.2

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.

6.1.5 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 Government’s country or elsewhere, as the Client may approve.

**6.1.6 Authority of
Member in
Charge**

In case the Contractor 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 Contractor’s rights and obligations towards the Client under this Contract, including without limitation the receiving of instructions and payments from the Client.

**6.1.7 Authorized
Representa-
tives**

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 Contractor may be taken or

executed by the officials specified in the SC.

6.1.8 Taxes and Duties

The Contractor, Sub-Contractor, and their Personnel shall pay such indirect taxes, duties, fees, and other impositions levied under the Applicable Law as specified in the SC, the amount of which is deemed to have been included in the Contract Price.

6.1.9 Fraud and Corruption

6.1.9.1 Definitions

It is the Bank's policy to require that Borrowers (including beneficiaries of Bank loans), as well as Contractors under Bank-financed contracts, observe the highest standard of ethics during the selection and execution of such contracts. In pursuance of this policy, the Bank:

- (a) defines, for the purpose of this provision, the terms set forth below as follows:
 - (i) "corrupt practice" means the offering, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the selection process or in contract execution;
 - (ii) "fraudulent practice" means a misrepresentation or omission of facts in order to influence a selection process or the execution of a contract;
 - (iii) "collusive practices" means a scheme or arrangement between two or more contractors, with or without the knowledge of the Borrower, designed to establish prices at artificial, non-competitive levels;
 - (iv) "coercive practices" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract;

6.1.9.2 Measures to be Taken

- (b) will cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of the loan were engaged in corrupt, fraudulent, collusive or coercive practices during the selection process or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to remedy the situation;
- (c) will sanction a Contractor, including declaring the Contractor ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed contract if it at any time determines that the Contractor has, directly or through an agent, engaged in corrupt, fraudulent,

collusive or coercive practices in competing for, or in executing, a Bank-financed contract;

- 6.1.9.3** (d) will require the successful Contractor 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.

6.2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

- 6.2.1 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. The date the Contract comes into effect is defined as the Effective Date.
- 6.2.2 Commencement of Services** The Contractor shall begin carrying out the Services not later than the number of days after the Effective Date specified in the SC.
- 6.2.3 Expiration of Contract** Unless terminated earlier pursuant to Clause GC 2.6 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the SC.
- 6.2.4 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. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party.
- 6.2.5 Force Majeure**
- 6.2.5.1 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.
- 6.2.5.2 No Breach of Contract** The failure of a Party to fulfil any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an 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.

6.2.5. 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.

6.2.5. Payments

During the period of their inability to perform the Services as a result of an event of Force Majeure, the Contractor 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 them during such period for the purposes of the Services and in reactivating the Service after the end of such period.

6.2.6 Termination

6.2.6.1. By the Client

The Client may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause GC 2.6.1. In such an occurrence the Client shall give a not less than thirty (30) days' written notice of termination to the Contractor, and sixty (60) days' in the case of the event referred to in (e).

- (a) If the Contractor does not remedy a failure in the performance of their obligations under the Contract, within thirty (30) days after being notified or within any further period as the Client may have subsequently approved in writing.
- (b) If the Contractor becomes insolvent or bankrupt.
- (c) If the Contractor, in the judgment of the Client has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.
- (d) If, as the result of Force Majeure, the Contractor are unable to perform a material portion of the Services for a period of not less than sixty (60) days.
- (e) If the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.
- (f) If the Contractor fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GC 8 hereof.

6.2.6.2 . By the Contractor

The Contractors may terminate this Contract, by not less than thirty (30) days' written notice to the Client, such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (c) of this Clause GC 2.6.2:

- (a) If the Client fails to pay any money due to the Contractor pursuant to this Contract and not subject to dispute pursuant to Clause GC 7 hereof within forty-five (45) days after receiving written notice from the Contractor that such payment is overdue.
- (b) If, as the result of Force Majeure, the Contractor 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.

6.2.6.3 Payment upon Termination

Upon termination of this Contract pursuant to Clauses GC 2.6.1 or GC 2.6.2, the Client shall make the following payments to the Contractor:

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

6.3. OBLIGATIONS OF THE CONTRACTOR

6.3.1 General

6.3.1.1 Standard of Performance

The Contractor shall perform the Services and carry out their 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 Contractor shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the Client, and shall at all times support and safeguard the Client's legitimate interests in any dealings with Sub-Contractors or third Parties.

6.3.2 Conflict of Interests

The Contractor 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.

6.3.2. Contractors Not to Benefit from Commissions, Discounts, etc.

The payment of the Contractor pursuant to Clause GC 6 shall constitute the Contractor's only payment in connection with this Contract or the Services, and the Contractor shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Contractor shall use their best efforts to ensure that the Personnel, any Sub-Contractors, and agents of either of them similarly shall not receive any such additional payment.

6.3.2.2 Contractor and Affiliates Not to be Otherwise Interested in Project

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

6.3.2.3 Prohibition of Conflicting Activities

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

6.3.3 Confidentiality

Except with the prior written consent of the Client, the Contractor 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 Contractor and the Personnel make public the recommendations formulated in the course of, or as a result of, the Services.

6.3.4 Insurance to be Taken Out by the Contractor

The Contractor (a) shall take out and maintain, and shall cause any Sub-Contractors to take out and maintain, at their (or the Sub-Contractors', as the case may be) own cost but on terms and conditions approved by the Client, insurance against the risks, and for the coverage, as shall be specified in the SC; and (b) 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 have been paid.

6.3.5 Contractor's Actions

The Contractor shall obtain the Client's prior approval in writing

Requiring Client's Prior Approval

before taking any of the following actions:

- (a) entering into a subcontract for the performance of any part of the Services,
- (b) appointing such members of the Personnel not listed by name in Appendix C, and
- (c) any other action that may be specified in the SC.

6.3.6 Reporting Obligations

- (a) The Contractor 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.
- (b) Final reports shall be delivered in CD ROM in addition to the hard copies specified in said Appendix.

6.3.7 Documents Prepared by the Contractor to be the Property of the Client

- (a) All plans, drawings, specifications, designs, reports, other documents and software submitted by the Contractor under this Contract shall become and remain the property of the Client, and the Contractor shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Client, together with a detailed inventory thereof.
- (b) The Contractor may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be specified in the SC.

6.3.8 Accounting, Inspection and Auditing

The Contractor (i) shall keep accurate and systematic accounts and records in respect of the Services hereunder, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time changes and costs, and the bases thereof, and (ii) shall periodically permit the Client or its designated representative and/or the Bank, and up to two years from the expiration or termination of this Contract, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the Client or the Bank, if so required by the Client or the Bank as the case may be.

6.4. CONTRACTOR'S PERSONNEL

6.4.1 Description of Personnel

The Contractor shall employ and provide such qualified and experienced Personnel and Sub-Contractors as are required to carry out the Services. The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Contractor's Key Personnel are described in Appendix C. The Key Personnel and Sub-Contractors listed by title as well as by name in Appendix C

are hereby approved by the Client.

**6.4.2 Removal
and/or
Replacement
of Personnel**

- (a) Except as the Client may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Contractor, such as retirement, death, medical incapacity, among others, it becomes necessary to replace any of the Key Personnel, the Contractor shall provide as a replacement a person of equivalent or better qualifications.
- (b) If the Client finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Contractor shall, at the Client's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Client.
- (c) The Contractor shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

6.5. OBLIGATIONS OF THE CLIENT

**6.5.1 Assistance
and
Exemptions**

The Client shall use its best efforts to ensure that the Government shall provide the Contractor such assistance and exemptions as specified in the SC.

**6.5.2 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 Contractor in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Contractor 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 Clauses GC 6.2 (a) or (b), as the case may be.

**6.5.3 Services and
Facilities**

The Client shall make available free of charge to the Contractor the Services and Facilities listed under Appendix F.

6.6. PAYMENTS TO THE CONTRACTOR

**6.6.1 Lump-Sum
Payment**

The total payment due to the Contractor shall not exceed the Contract Price which is an all-inclusive fixed lump-sum covering all costs required to carry 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.

6.6.2 Contract Price

(a) The price payable in foreign currency/currencies is set forth in the SC.

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

6.6.3 Payment for Additional Services

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

6.6.4 Terms and Conditions of Payment

Payments will be made to the account of the Contractor 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 Contractor of an advance payment guarantee for the same amount, and shall be valid for the period stated in the SC. Such guarantee shall be in the form set forth in Appendix G hereto, or in such other form, as the Client shall have approved in writing. Any other payment shall be made after the conditions listed in the SC for such payment have been met, and the Contractor has submitted an invoice to the Client specifying the amount due.

6.6.5 Interest on Delayed Payments

If the Client has delayed payments beyond fifteen (15) days after the due date stated in the Clause SC 6.4, interest shall be paid to the Contractor for each day of delay at the rate stated in the SC.

6.7. GOOD FAITH

6.7.1 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.

6.8. SETTLEMENT OF DISPUTES

6.8.1 Amicable Settlement

The Parties agree that the avoidance or early resolution of disputes is crucial for a smooth execution of the Contract and the success of the assignment. The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

6.8.2 Dispute Resolution

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 submitted by either Party for settlement

in accordance with the provisions specified in the SC.

6.9. Special Conditions of Contract

(Clauses in brackets {} are optional; all notes should be deleted in final text)

| Number of GC Clause | Amendments of, and Supplements to, Clauses in the General Conditions of Contract |
|----------------------------|---|
| {6.9.0(a)} | |
| 6.9.1 | The language is English |
| 6.9.2 | The addresses are: Client: Olsuswa Energy Limited Mayfox House Garden Road, off Riverside Drive P.O Box 14991-00800 Nairobi, Kenya Attention: Mr Mugwe Manga (Commercial Director) E-mail: info@olsuswaenergy.com Contractor: _____ Attention: _____ E-mail: _____ |
| 6.9.4 | {The Member in Charge is <i>[insert name of member]</i> } Note: <i>If the Contractor 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 Contractor consists only of one entity, this Clause SC 1.8 should be deleted from the SC.</i> |
| 6.9.5 | The Authorized Representatives are: For the Client: The Commercial Director or his designated representative. For the Contractor: _____ |

6.9.6

The Client warrants that the Contractor, the Sub-Contractors and the Personnel shall be exempt from (or that the Client shall pay on behalf of the Contractor, the Sub-Contractors and the Personnel, or shall reimburse the Contractor, the Sub-Contractors and the Personnel for) any indirect taxes, duties, fees, levies and other impositions imposed, under the Applicable Law, on the Contractor, the Sub-Contractors and the Personnel in respect of:

- (a) any payments whatsoever made to the Contractor, Sub-Contractors and the Personnel (other than nationals or permanent residents of the Government's country), in connection with the carrying out of the Services;
- (b) any equipment, materials and supplies brought into the Government's country by the Contractor or Sub-Contractors for the purpose of carrying out the Services and which, after having been brought into such territories, will be subsequently withdrawn there from by them;
- (c) any equipment imported for the purpose of carrying out the Services and paid for out of funds provided by the Client and which is treated as property of the Client;
- (d) any property brought into the Government's country by the Contractor, any Sub-Contractors or the Personnel (other than nationals or permanent residents of the Government's country), or the eligible dependents of such Personnel for their personal use and which will subsequently be withdrawn there from by them upon their respective departure from the Government's country, provided that:
 - (1) the Contractor, Sub-Contractors and Personnel, and their eligible dependents, shall follow the usual customs procedures of the Government's country in importing property into the Government's country; and
 - (2) if the Contractor, Sub-Contractors or Personnel, or their eligible dependents, do not withdraw but dispose of any property in the Government's country upon which customs duties and taxes have been exempted, the Contractor, Sub-Contractors or Personnel, as the case may be, (i) shall bear such customs duties and taxes in conformity with the regulations of the Government's country, or (ii) shall reimburse them to the Client if they were paid by the Client at the time the property in question was brought into the Government's country.

{6.9.7}

The Effective Date is: **the date when the Contract is executed and the following conditions have been fulfilled:**

- (i) **Approval of Contract by AUC**
- (ii) **The Client issues a written confirmation that condition (i) above has been fulfilled**

6.9.8 The date for the commencement of Services is **not later than 15 days after effective date or such other time period as the parties may agree in writing.**

6.9.9 The time period shall be **months or such other time period as the parties may agree in writing.**

6.9.10 Insurance

- a) The Contractor to cover its Personnel or any Sub-Contractors or their Personnel, with a minimum coverage of one million Kenya Shillings (KES 1,000,000);
- b) Third Party liability insurance, with a minimum coverage of **Fifteen Million Kenya Shillings (KES 15,000,000);**
- c) professional liability insurance, with a minimum coverage of **One hundred and ten percent (110%) of the total contract value;**
- d) Employer's liability and workers' compensation insurance in respect of the Personnel of the Contractor and of any Sub-Contractors, 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; and
- e) Insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the Contractor's property used in the performance of the Services, and (iii) any documents prepared by the Contractor in the performance of the Services.

6.9.11 The other actions are:

(i) Publishing descriptive articles, with or without illustrations, with respect to the services either on his own account or in conjunction with other parties concerned. The client's approval shall not be unreasonably withheld.

6.9.12 The Contractor shall not use these documents and software for purposes unrelated to this Contract without the prior written approval of the Client.

6.9.13 **Not Applicable**

6.9.14 The amount in foreign currency or currencies is *[insert amount]*.

For whole study :

6.9.15(b) The amount in local currency is *[insert amount]*.

For whole study :

6.9.16(a) The accounts are:

for foreign currency or currencies: *[insert account]*

for local currency: *[insert account]*

Payments shall be made according to the following schedule:

- (a) Twenty (30%) Advance Payment of the lump sum contract amount shall be paid within 30 days of contract effectiveness.
- (b) Twenty (20%) percent of the lump-sum amount shall be paid upon submission of the Preliminary Detailed Survey Report.
- (c) Twenty (20%) percent of the lump sum amount shall be paid upon submission of the Draft Final Detailed Survey Report.
- (d) Ten (10%) percent of lump-sum amount shall be paid upon conclusion of the Review Workshop.
- (e) Twenty (20%) percent of the lump-sum amount shall be paid upon submission of the Final Detailed Survey Report.
- (f) Within fourteen (14) days of receipt of the notification of Contract award, the successful contractor shall furnish to OISuswa Energy Limited a performance security of 10% of the contract value.
- (g)

All payments will be paid **within 45 days of invoicing**, except for the Advance Payments, which will be made within 30 days.

- 6.9.16(b)** The winning bidder will be required to provide a **Bid Bond** equivalent to **10% of the project cost** issued from a reputable bank or an insurance firm.
- 6.9.17** The interest rate is: **LIBOR rate on the foreign currency portion and the Central Bank of Kenya lending rate for the local currency portion corresponding to the date upon which payment became due.**
- 6.9.18** 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 Federation Internationale des Ingenieurs-Conseil (FIDIC) of Lausanne, Switzerland for a list of not fewer than five nominees and, on receipt of such list, the Parties shall alternately strike names therefrom, 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 sixty (60) days of the date of the list, FIDIC 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 Contractor 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 *[name an appropriate international appointing authority, e.g., the Secretary General of the Permanent Court of Arbitration, The Hague; the Secretary General of the International Centre for Settlement of Investment Disputes, Washington, D.C.; the International Chamber of Commerce, Paris; etc.]*.

- (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 *[name the same appointing authority as in Clause SC 8.2 1.(b)]* 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 rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in force on the date of this Contract.
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. Nationality and 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 an internationally recognized legal or technical expert with extensive experience in relation to the matter in dispute and shall not be a national of the Contractor's home country [**Note:** *If the Contractor consists of more than one entity, add:* or of the home country of any of their Members or Parties] or of the Government's country. For the purposes of this Clause, "home country" means any of:
- (a) the country of incorporation of the Contractor [**Note:** *If the Contractor consists of more than one entity, add:* or of any of their Members or Parties]; or
 - (b) the country in which the Contractor's [or any of their Members' or Parties'] principal place of business is located; or
 - (c) the country of nationality of a majority of the Contractor's [or of any Members' or Parties'] shareholders; or
 - (d) the country of nationality of the Sub-Contractors concerned, where the dispute involves a subcontract.
5. Miscellaneous. In any arbitration proceeding hereunder:
- (a) proceedings shall, unless otherwise agreed by the Parties, be held in *[select a country which is neither the Client's country nor the contractor's country]*;
 - (b) the *[type of language]* 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.

6.10.1 Performance Security

Within fourteen (14) days of receipt of the notification of Contract award, the successful contractor shall furnish to OISuswa Energy Limited a performance security of 10% of the contract value.

- 6.10.2** The proceeds of the performance security shall be payable to OISuswa Energy Limited as compensation for any loss resulting from the Contractor's failure to complete its obligations under the Contract.

- 6.10.3** The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Procuring entity and shall be in the form of bank guarantee.

- 6.10.4** The performance security will be discharged by OISuswa Energy Limited and returned to the contractor not later than thirty (30) days following the date of completion of the Contractor's performance of obligations under the contract, including any warranty obligations under the contract.

LIST OF ANNEXES

If one or several of the Annexes should not be necessary in the actual Contract, to preserve the

| Annex no. | Title |
|-----------|---|
| 1 | Minutes of Negotiations |
| 2 | Terms of Reference plus RFP Documents |
| 3 | Staffing Schedule |
| 4 | Time Schedule for the Performance of the Services |
| 5 | Statement of Costs |
| 6 | The Bidder's Bid |
| 7 | Declaration of Undertaking |
| 8 | Advance Payment Guarantee |
| 9 | Model Retention Guarantee |

integrity of the references please retain the numbering of the Annexes and insert the words “not applicable” in the relevant Annexes.

Annex 1: Minutes of Negotiations

Annex 2: Terms of Reference plus Tender Documents

Annex 3: Staffing Schedule

(pursuant to the Bidder's Bid; where applicable in the version subsequently negotiated)

Annex 4: Time Schedule for Performance of the Services

(pursuant to the Bidder's Bid; where applicable in the version subsequently negotiated)

Annex 5: Statement of Costs

(pursuant to the Bidder's Bid; where applicable in the version subsequently negotiated)

Annex 6: The Bidder's Bid

Annex 7: Declaration of Undertaking

We underscore the importance of a free, fair and competitive contracting procedure that precludes abusive practices. In this respect we have neither offered nor granted directly or indirectly any inadmissible advantages to any public servant or other person nor accepted such advantages in connection with our bid, nor will we offer or grant or accept any such incentives or conditions in the present tendering process or, in the event that we are awarded the contract, in the subsequent execution of the contract. We also declare that no conflict of interest exists in the meaning of the kind described in the corresponding Guidelines.

We also underscore the importance of adhering to minimum social standards (core labour standards) in the implementation of the project. We undertake to comply with the core labour standards ratified by the country of Republic of Kenya.

We will inform our staff of their respective obligations and of their obligation to fulfil this declaration of undertaking and to obey the laws of the country of Republic of Kenya.

We also declare that our company/all members of the consortium has/have not been included in the list of sanctions of the United Nations, nor of the AU, nor in any other list of sanctions and affirm that our company/all members of the consortium will immediately inform the Employer if this situation occurs at a later stage.

We acknowledge that, in the event that our company (or a member of the consortium) is added to a list of sanctions that is legally binding on the Employer and/or AU, the Employer shall be entitled to exclude us/the consortium or, if the contract is awarded to our company/the consortium, to immediately cancel such contract if the statements made in the Declaration of Undertaking were objectively false or the reason for exclusion from the tender procedure occurs after the Declaration of Undertaking has been issued.

(Place)..... (Name of company)
(Date).....
(Signature(s)).....

Annex 8: Advance Payment Guarantee

Address of guarantor bank: ...

.....
.....
.....

Address of beneficiary (Employer):

.....
.....
.....

On you concluded with (name and full address).....

..... ("Contractor") a Contract for (Project, object of the Contract) at a price of.....

According to the provisions of the contract, the Contractor receives an advance payment in the amount of

.....equalling % of the contract value, as an advance payment.

We, the undersigned (bank), waiving all objections and defences under the aforementioned Contract, hereby irrevocably and independently guarantee to pay on your first written demand any amount advanced to the Contractor up to a total of

..... (In words) against your written declaration that the Contractor has failed to perform the aforementioned Contract.

This guarantee shall come into force as soon as the advance payment has been credited to the account of the Contractor. This guarantee shall be automatically reduced pro rata in accordance with the payments performed.

In the event of any claim under this guarantee, payment shall be effected to

Olsuswa Energy Limited

GT Bank

Skypark Branch

Account Number 2250002704.

This guarantee shall expire not later than.....by which date we must have received any claims by letter or coded telecommunication.

It is understood that you will return this guarantee to us on expiry or after settlement of the total amount to be claimed hereunder.

.....
Place, date

.....
Guarantor

Annex 9: Model Retention Guarantee

Address of guarantor bank: ...
.....
.....
.....

Address of beneficiary (Employer):
.....
.....
.....

On you concluded with (name and full address).....
.....
..... (“Contractor”) a Contract for
..... (Project, object of the Contract) at a price of
.....

According to the provisions of the Contract, the Contractor receives the amount of
.....
..... equalling %
of the Contract value, as a final payment.

We, the undersigned
(bank), waiving all objections and defences under the aforementioned contract, hereby
irrevocably and independently guarantee to pay on your first written demand an amount up to
a total of

..... (in words)
against your written declaration that the Contractor has failed to perform the aforementioned
contract.

In the event of any claim under this guarantee, payment shall be effected

Olsuswa Energy Limited

GT Bank

Skypark Branch

Account Number 2250002704.

This guarantee shall expire not later than..... By which date we
must have received any claims by letter or coded telecommunication.

It is understood that you will return this guarantee to us on expiry or after settlement of the total
amount to be claimed hereunder.

.....
Place, date

.....
Guarantor