

**NUCLEAR POWER AND ENERGY
AGENCY
(NuPEA)**



REQUEST FOR EXPRESSION OF INTEREST

EOI NO. NuPEA/EOI/DLRS/001/21-22

EOI DESCRIPTION: DEVELOPMENT OF A NATIONAL NUCLEAR POLICY

ISSUE DATE: 8TH SEPTEMBER 2021

CLOSING DATE: 17TH SEPTEMBER 2021

CLOSING TIME: 10.00AM

NUCLEAR POWER AND ENERGY AGENCY

KAWI COMPLEX, OFF REDCROSS

P. O. Box 26374-00100

NAIROBI

Telephone: +254-20-5138300

Email 1: tenders@nuclear.co.ke

Email 2: alusuli@nuclear.co.ke

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Website: www.nuclear.co.ke

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NOTICE FOR REQUEST FOR EXPRESSIONS OF INTEREST (REOI)- (CONSULTING SERVICES – FIRMS SELECTION)

NUCLEAR POWER AND ENERGY AGENCY

EOI DESCRIPTION: DEVELOPMENT OF A NATIONAL NUCLEAR POLICY

EOI NO. NuPEA/EOI/DLRS/001/21-22

1. Nuclear Power and Energy Agency intends to shortlist consultants to provide consulting services (the Services) for Development of a National Nuclear Policy in full consistency with the Terms of Reference (TOR) that:

- i) Are attached or referred to in this request for expressions of interest. or
- ii) Can be found at the following website: [_www.nuclear.co.ke](http://www.nuclear.co.ke). or
- iii) Can be obtained at the address given below.

Name of Procuring Entity: Nuclear Power and Energy Agency

Contact Person/Official: Dr. Antony Lusuli

Telephone number: +254205138300

Email Address: alusuli@nuclear.co.ke;

Postal Address: 26374-00100, Nairobi

Physical Address: 2nd Floor, KAWI Complex, Wing C, Off Redcross road, South C, Nairobi

2. Nuclear Power and Energy Agency now invites eligible consulting firms (“Consultants”) to indicate their interest in providing the Services. Interested Consultants should provide information demonstrating that they have the required qualifications and relevant experience to perform the Services. The shortlisting criteria on required qualifications and experience of the firm are:

- i) Experience in the assignment, including technical and managerial capability of the firm.
- ii) Number of years in business working on the area of the assignment.
- iii) Reference to at least three assignments of similar nature and size carried out in the last five (5) years Include persons or institutions and contact addresses (*phone, email*) who can be contacted on the same.
- iv) Qualifications and Experience of Key Experts

3. The attention of interested Consultants is drawn to the following provisions that will be highlighted in the Request for Proposals to be issued to shortlisted firms.

- i) The Consultant will be expected to have no conflict of interest with other

assignments or its own corporate interests and acting without any consideration for future work.

- ii) The consultant has no personal or business relationship with the Procuring Entity's senior management or professional staff.
 - iii) A firm or an individual in the firm has not been sanctioned by the Public Procurement Regulatory Authority or are under a suspension or a debarment imposed by any other entity of the Government of Kenya, or any international organization.
 - iv) Government-owned enterprises or institutions of Kenya Government, officials and civil servants and employees of public institutions may not eligible.
4. Consultants may associate with other firms to enhance their qualifications, but should indicate clearly whether the association is in the form of a joint venture and/or a sub-consultancy. In the case of a joint venture, all the partners in the joint venture shall be jointly and severally liable for the entire contract, if selected.
5. A Consultant will be selected in accordance with the Quality Cost Based Selection method set out in the Act and Regulations.
6. Further information can be obtained at the address below during office hours 0800 to 1700 hours.

Name of Procuring Entity: Nuclear Power and Energy Agency

Contact Person/Official: Dr. Antony Lusuli

Telephone number: +254205138300

Email Address: alusuli@nuclear.co.ke;

Postal Address: 26374-00100, Nairobi

Physical Address: 2nd Floor, KAWI Complex, Wing C, Off Redcross road, South C, Nairobi

7. Expressions of interest to be received via email tenders@nuclear.co.ke” as indicated below;

Completed EOI documents, in PDF format encoded with a password, MUST be sent to tenders@nuclear.co.ke and the EOI No. should be indicated in the subject on or before Friday, 17th September 2021 at 10.00 am. The password should be sent to alusuli@nuclear.co.ke. Hard Copies shall not be accepted. Applications for Expression of Interest will be opened immediately thereafter at 4th Floor, Kawi Complex, wing “C”, South C, Nairobi. Recordings of the opening shall be sent via email to all bidders who will have submitted their EOI. Late submissions shall not be accepted.

TERMS OF REFERENCE

1. BACKGROUND

Nuclear Power and Energy Agency (NuPEA) is a State Corporation in the Ministry of Energy established under the **Energy Act, 2019**, to be the nuclear energy programme implementing organization and promote the development of nuclear electricity in Kenya; and carry out research, development and dissemination activities in the energy and nuclear power sector.

Section 56(2) of the **Energy Act, 2019** specifically outlines NuPEA's mandate in respect to nuclear energy policy development as:...(a) Propose policies and legislation necessary for the successful implementation of a nuclear power programme; (d) In collaboration with the relevant Government agencies develop a comprehensive legal and regulatory framework for nuclear electricity generation in Kenya; (n) Collaborate with institutions that collect, analyse and prepare policy papers in order to access energy sector specific information.

The peaceful application of nuclear science technology in Kenya is key to sustainable development. The government is committed to the utilization and expansion of nuclear technology. This has to be carried out in a coordinated, systematic, safe and secure manner. Therefore, there is a need for a comprehensive national nuclear policy.

Globally, nuclear related techniques in power generation, food & agriculture, human health, water resource management, industrial processes, education, research and training have been in use. Over 450 nuclear power reactors producing over 380000 MWe of total capacity are in use in about 31 countries and about 60 nuclear power plants are at various stages of construction.

In food and agriculture, nuclear technology has played a major role in improving food security. For example, nuclear technology has been used in early plant disease diagnosis, in developing over 300,000 mutant varieties of plants species for commercial production stemming from 170 different plant species, and irradiation technology has been used to preserve food through the control of microorganisms including those that cause food-borne disease.

In livestock production, the analysis of genetic diversity has been used to improve the selection of desirable animals for higher productivity, resistance to endemic diseases and

resistance to harsh environments. Sterile Insect Technique (SIT) has been used in the reduction of insect pests.

In water resource management, some of the nuclear techniques in use include the use of stable isotopes to understand the spatial distribution of various processes that affect groundwater availability and quality both at the local as well as at regional levels. This information provides a basis for assessing the impact of climate change and other factors on groundwater resources. Nuclear energy is also used for sea water desalination.

In the medical field, nuclear technology is used in the diagnosis and treatment of medical conditions such as cancer. It is also used in the sterilization of surgical equipment. Nuclear technology can be used in research in various sectors such as medicine, agriculture and industry through production of radioisotopes and neutron beams for neutron activation analysis, material structure studies and neutron transmutation doping among other applications bringing innovations and inventions that foster economic growth.

In Kenya, various nuclear applications are already in use in food & agriculture, human health, water resource management, industrial processes, education, research and training. However, the full potential is yet to be exploited due to various challenges including lack of an adequate nuclear policy, policy legislation and institutional capacity. In addition, electricity generation using nuclear technology calls for more legislation in nuclear energy.

2. CALL FOR CONSULTANTS

In light of the aforementioned and with a view to effectively develop and implement a Comprehensive Legal and Regulatory Framework for the successful implementation of a NPP, NuPEA is seeking the services of a competent consultancy firm with relevant and verifiable experience in Policy formulation and Legislative drafting. Interested Consultants are encouraged to submit their bids and other supporting documents with information demonstrating that they have the required qualifications and relevant experience to perform the consultancy under the following terms.

3. NATURE AND AIM AND SCOPE OF THE ASSIGNMENT

The consultancy aims at the development of a **NATIONAL NUCLEAR POLICY** that seeks to provide a comprehensive framework for the regulation of the application of Nuclear

technology in Kenya. The Consultant is expected to develop a clear understanding of NuPEA's legal positioning, its role and overall mandate in ensuring the development of Legal and regulatory framework by Identifying gaps/needs and propose strategies to address the identified gaps/needs.

4. OBJECTIVES AND PURPOSE OF THE ASSIGNMENT

The Consultant will be required to offer all consultancy services necessary to achieve the stated objectives. The objective of this assignment is in two phases.

Phase One

4.1 In Phase one the Objectives of the Assignment in to be achieved by the Consultant will include;

- a) Carry out a review of select studies, reports and policy documents including the National Energy Policy relating to nuclear energy over the past three years
- b) Identify applicable existing legal and regulatory regime on nuclear energy
- c) Make recommendations on any commentaries, policy documents
- d) Prepare a Framework for adoption by Government of Kenya of the National Nuclear Policy and monitoring of the same
- e) Review, advise and make recommendations on Reports from public participation and legislative sessions on Draft Policy.
- f) Review, advise and make recommendations from Reports of Validation Workshops on the Draft Policy
- g) Participate in, review, advise and make recommendations from international engagements on the Draft Policy
- h) Prepare zero Draft Policy from Validation Workshops
- i) Prepare and submit final Draft National Nuclear Policy.

Phase Two

4.2 Objectives of the Assignment to be achieved by the Consultant.

- a) Prepare a Framework for conduct of Awareness by stakeholders and the Public on the National Nuclear Policy
- b) Identify existing legal and regulatory provisions on nuclear energy applicable in Kenya
- c) Review and make commentaries on existing legal and regulatory provisions on nuclear energy applicable in Kenya
- d) Propose amendments and appropriate legal regime with a Draft Nuclear Energy Bill
- e) Prepare a Framework for Adoption by GOK of the Draft Nuclear Energy Bill.

- f) Review, advise and make recommendations on commentaries from public participation and legislative sessions on Draft Nuclear Energy Bill
- g) Participate in, review, advise and make recommendations from international engagements on the Draft Bill
- h) Review and incorporate any commentaries from Cabinet on zero Draft Bill
- i) Prepare and submit final Draft Bill
- j) Monitor and advise on progress of Draft Bill through Parliament

5. REPORTING AND TIME SCHEDULES

The Consultant is expected to enter into discussion and agreement with NuPEA on the approach and action plans to realize the basic objective of the appointment and submit all Reports timeously as agreed from the commencement date of the contract.

Such an arrangement shall take into account the consultant reporting to NuPEA's Chief Executive Officer, while working in consultation with the Director, Legal and Regulatory Services. The Consultant will be responsible for the accuracy and timely delivery of the required outputs as well as preparing and presenting progress reports to the CEO and final report to the Board of Directors.

6. DELIVERABLES

- 6.1. A Draft National Nuclear Policy
- 6.2. Simplified Guide to the National Nuclear Policy
- 6.3. Draft Nuclear Energy Bill

7. THE KEY PROPOSAL FOCUS AND EVALUATION CRITERIA

The selected Consultant will be expected to demonstrate how this will be achieved through a comprehensive work plan and methodology.

The proposals received shall be evaluated on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria as follows:

Evaluation Criteria

Part 1- Preliminary Evaluation Criteria.

These are mandatory requirements.

- a) All pages of the bidder's documents (including attachments) MUST be serially paginated (i.e 1,2,3.....)

- b) Letter from the firm giving authority the person signing the tender to represent the firm (Power of Attorney)
- c) Copy of Company's or Firm's registration certificate/ Incorporation
- d) Copy of Valid Tax Compliance Certificate
- e) Duly filled , signed and stamped self-declaration form (SD1)- attached
- f) Duly filled, signed and stamped self-declaration form (SD2)- attached
- g) Duly filled, signed and stamped Declaration and commitment to the code of ethics-attached
- h) Copy of Certificate of Confirmation of Directors (CR12) in case for a limited company and copies of National Identity Cards / Passport of the directors and shareholders as given in CR12 for limited companies
- i) Copies of national identity cards for sole proprietors / partnerships

NB: Only tenderers who satisfy ALL mandatory requirements will be proceed to Technical Evaluation Stage

Part II-Technical

S/No	Criteria	Points / Score
1	Consultants experience of not less than 10 years it has been in operational in that line business	5
2	Consultant's Relevant Experience for the Assignment Provide evidence of at least three similar / same assignments carried out	15
3	Technical and Managerial capability Understanding of the TOR and the exercise at hand and value addition comments	45
4	Qualifications and Experience of Proposed Key Personnel <ul style="list-style-type: none"> • Lead Consultant- 10 points • Other four consultants- 25 points 	35

Only firms with scores above 70%, shall be invited to make Technical and Financial proposals.

8. PREPARATION OF THE EOI

The Expression of Interest shall not contain any financial proposals and shall be written in English language.

In preparing the EOI, consultants are expected to examine the documents constituting the TOR in detail. While preparing the document, 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 who have registered themselves for this assignment. Any firms associating in contravention of this requirement shall automatically be disqualified.
- (ii) 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.
- (iii) Proposed professional staff must as a minimum, have the experience indicated in the TOR preferably working under conditions similar to those prevailing in Kenya.

The EOI shall provide the following information:

- (i) A brief description of the firm's understanding of the exercise;
- (ii) A brief description of the firm's organization and an outline of experience on assignments of a similar nature.
- (iii) A list of the proposed staff team by specialty, the tasks that would be assigned to each staff team member and their timing.

9. QUALIFICATION REQUIREMENTS OF THE KEY EXPERTS

The consultancy is envisaged to be an interdisciplinary one which requires resources from different fields to undertake as a team. The consultant is therefore expected to make a proposal giving his understanding of the requirements and propose the best way of deploying resources. The following is an indicative mix of skills that may be required for the assignment.

i) LEAD CONSULTANT

The Team Leader shall have a Master's degree in Law, a Bachelor's degree in Law, Advocate of the High Court with at least 10 years' experience and demonstrate deep understanding in Policy formulation and development and also legislative drafting. He/She shall be a member of Law Society of Kenya in good standing. The Team Leader will seek and coordinate the inputs of all team members and ensure the quality and timely submission of reports is observed.

ii) OTHER CONSULTANTS

At least four (4) other Consultants shall be proposed to work with the Lead Consultant and should have a Bachelor's degree in Law or in any other relevant field with at least 3 years' work experience in policy formulation, development and legislative drafting.

APPENDIX TO FORM OF PROPOSAL ON FRAUD AND CORRUPTION CLAUSE (for information)

(Appendix shall not be modified)

Purpose

The government of Kenya's Anti-Corruption and Economic Crime laws and their sanction's policies and procedures, Public Procurement and Asset Disposal Act (*no. 33 of 2015*) and its Regulation, and any other Kenya's Acts or Regulations related to Fraud and Corruption, and similar offences, shall apply with respect to Public Procurement Processes and Contracts that are governed by the laws of Kenya.

Requirements

The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts ,and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1 above.

Kenya's public procurement and asset disposal act (*no.33 of 2015*) under Section 66 describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted below highlight Kenya's policy of no tolerance for such practices and behavior:

- (1) a person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
- (2) A person referred to under sub section (1) who contravenes the provisions of that sub-section commits an offence;
- (3) Without limiting the generality of the subsection (1) and (2), the person shall be: -
 - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
 - b) if a contract has already been entered into with the person, the contract shall be avoidable;
- (4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
- (5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement—
 - i) Shall not take part in the procurement proceedings;
 - ii) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
 - iii) Shall not be a sub-contractor for the tender to whom was awarded contract, or a member of the group of tenderers to whom the contract was awarded, but the sub-contractor appointed shall meet all the requirements of this Act.
- (6) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;
- (7) If a person contravenes sub section (1) with respect to a conflict of interest described in subsection (5)(a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer.
- (8) Incompliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:
 - a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
 - i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - ii) “fraudulent practice” is any act or omission, including misrepresentation, that knowingly or

recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;

- iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- 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 party;
- v) “obstructive practice” is:
 - i) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya 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
 - ii) Acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3e. below.
- b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor,

and includes collusive practices amongst tenderers prior to or after tenders submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.
- c) Rejects a proposal or award¹ of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or debar or recommend to appropriate authority (ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;
- e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect² all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and
- f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a “Self-Declaration Form” as included in the procurement document declaring that they and all parties involved

in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

¹For the avoidance of doubt, a party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in

A consultancy, and tendering, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and(ii) entering into an addendum or amendment introducing a material modification to any existing contract.

² Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Investigating Authority or persons appointed by the Procuring Entity to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/audit, and making copies there of as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.

SELF-DECLARATION FORMS

FORM SD1

SELF DECLARATION THAT THE PERSON/TENDERER IS NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015.

I,, of Post Office Box

being a resident of

..... in the Republic of do

hereby make a statement as follows: -

1. THAT I am the Company Secretary/Chief Executive/Managing Director/Principal Officer/Director of
..... (Insert name of the Company) who is a Bidder in respect of **Tender No.**
..... for..... (Insert tender title/description)
for..... (*Insert name of the Procuring entity*) and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.
3. THAT what is deponed to here in above is true to the best of my knowledge, information and belief.

.....
(Title) (Signature)

(Date)

Bidder Official Stamp

FORM SD2

SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE.

I, of P. O. Box.....being a resident of in the Republic of do hereby make a statement as follows: -

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of.....
..... (*insert name of the Company*) who is a Bidder in respect of **Tender No.** for (*insert tender title/description*) for (*insert name of the Procuring entity*) and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its servants and/or agents /subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/ or agents of..... (*insert name of the Procuring entity*) which is the procuring entity.
3. THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of..... (*name of the procuring entity*).
4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject tender.
5. THAT what is deponed to herein above is true to the best of my knowledge information and belief.

.....

(Title) (Signature)

(Date)

Bidder Official Stamp

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

I
(person) on behalf of (*Name of the Business/ Company/Firm*) declare that I have read and fully understood the contents of the Public Procurement & Asset Disposal Act,2015, Regulations and the Code of Ethics for persons participating in Public Procurement and Asset Disposal Activities in Kenya and my responsibilities under the Code.

I do here by commit to abide by the provisions of the Code of Ethics for persons participating in Public Procurement and Asset Disposal.

Name of Authorized signatory.....

Sign.....

Position.....

Office address.....

Telephone..... E-mail.....

Name of the Firm/Company.....

Date.....

(Company Seal/ Rubber Stamp where applicable)

Witness Name

Sign.....

Date.....