



**Kenya National Highways Authority**

Quality Highways, Better Connections

**PUBLIC PRIVATE PARTNERSHIP (PPP) PROJECT  
NAIROBI – NAKURU – MAU SUMMIT HIGHWAY**

**DESIGN, FINANCE, CONSTRUCT, OPERATE, MAINTAIN AND TRANSFER**

**Tender Number: KeNHA/1397/2016**

**Addendum / Clarification No. 3**

**23<sup>rd</sup> DECEMBER, 2016**

Head PPP Section  
**Kenya National Highways Authority**  
P.O. BOX 49712  
**NAIROBI**

The Director General  
**Kenya National Highways Authority**  
P. O. Box 49712  
**NAIROBI**

**Date:** 23<sup>rd</sup> December, 2016

**Tender No:** KENHA/1397/2016

**Project:** Public Private Partnership (PPP) for design, finance, construct, operate, maintain and transfer of Nairobi – Nakuru – Mau Summit highway

**To:** All Prospective Bidders

**Addendum / Clarification No: 3**

Pursuant to Sections 3 (j) (iii) of the RFQ dated/published on 9<sup>th</sup> November, 2016, all Prospective Bidders are advised of:

- (i) the responses of KeNHA to queries raised; and
- (ii) the updated RFQ dated 23<sup>rd</sup> December, 2016.

For the convenience of Prospective Bidders, KeNHA is issuing the updated RFQ in both clean and tracked changes version. In case of any conflict between the clean and tracked changes versions the provisions of the clean version shall prevail.

All Prospective Bidders shall take note of the same.

Procurement Manager  
For: Director General  
Kenya National Highways Authority

## 1. RESPONSE TO QUERIES ON THE RFQ

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
1.	Section 1 - 1.1 - b Affiliate	Could you please confirm that the definition of affiliate includes every persons which are controlled by a person which controls the Prospective Bidder or Consortium Member?	Yes, such a person will be included under “common Control” as used in the definition of Affiliate.
2.	Section 1 - 1.1 - c Audited Financial Statement	Thanks to confirm that the financial figures in USD can be signed off by the Chief Financial Officer of the prospective bidder. Statutory Auditors are here to certify that accounting principles are properly applied to establish the account, and may not be entitled to certify any other figures.	There is no longer a requirement for Audited Financial Statements prepared in a currency other than USD to be converted into USD. Please refer to amended Section 1.1 (c) of the updated RFQ dated 22 <sup>nd</sup> December, 2016. However, we would draw your attention to the requirements under Section 3 q. of the updated RFQ dated 22 <sup>nd</sup> December, 2016 which requires the Net Worth/ turnover to be converted in USD.
3.	Section 1 - 1.1 - II Latest Audited Financial Statement	Thanks to confirm that you want us to refer to the Financial Statements that cover the period between the 1/01/2014 to the 31/12/2014.	The actual period covered by the Latest Audited Financial Statements will depend upon the relevant Entity’s accounting period. The RFQ requirement is simply that the period end for the Latest Audited Financial Statements should not be earlier than 15 months prior to the RFQ Submission Date. An accounting period which ends on 31/12/2014 would not satisfy the requirement for Latest Audited Financial Statements since that would be more than twenty four months prior to the RFQ Submission Date.
4.	Annexes QD-1A, QD-1B, QD-1C, QD-7, QD-8 QD-10	These annexes are required to be subscribed and sworn before a public Notary. It is hereby suggested that such documents are executed as private deed with	The Annexes QD-1A, QD-1B, QD-1C, QD-7, QD-8 QD-10 are to be notarised as provided therein.

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
		notarized signature, which - we believe – maintain acceptable evidence of authenticity of the documents whilst giving more flexibility to the bidders and their affiliates for collecting Qualification Documents in due time.	The RFQ Submission Date is extended to 7 <sup>th</sup> February 2017.
5.	Section 4-2-3 - (i) & QD 8	Deed of Guarantee could not be provided as such since it contains (i) a joint and several liability between the Affiliate and the Successful Bidder & Project Company and (ii) Affiliate's corporate guarantee in case of default of the Successful Bidder or Project Company. Affiliates which will be used at that qualification stage could only provide a support letter to KeNHA until the Project Agreement is signed, whereby there will undertake to provide to the Successful Bidder the technical or financial support for the Experience referred to in the Qualification Documents. Could you please reconsider form of Annex QD-8 accordingly?	The requirement for a Deed of Guarantee under Section 4.2.3 (i) has been removed. Please refer to Section 4.2.3 (i) and Annex QD-8 of the updated RFQ dated 22 <sup>nd</sup> December, 2016 for the revised requirements.
6.	Section 4-2-3 - (iii) and Annex QD - 9B	It is hereby suggested the following amendments to form of Annex QD-9B: (i) commits to subscribe equity <b><u>in accordance with the terms of the Bid</u></b> (ii) each Prospective Bidder commits to subscribe <b><u>to its stake</u></b> of equity contribution (i.e. no join commitment) and (iii) equity contribution will take place <b><u>if and when Finance Close occurs.</u></b> Could you please confirm acceptability?	Annex QD - 9B has been amended. Please refer to Section 4.2.3 (iii), Section 5 (k) and Annex QD - 9B of the updated RFQ dated 22 <sup>nd</sup> December, 2016.
7.	Annex QD - 4 - PPP Experience	The role of the statutory auditor is to provide an opinion whether the financial statements are stated in accordance with specified criteria. Thus, our statutory auditor may not be entitled to certify any other information. We suggest that the Authorized representative of the Prospective Bidder sign the	Please refer to the requirements of the updated RFQ dated 22 <sup>nd</sup> December, 2016. Certification in respect of Annex QD-4 (as well as those under Annexes QD-3, QD-5 and QD-6) is to be done by the authorized representative of the Entity being the Prospective Bidder, Qualifying Shareholder, Subsidiary, Affiliate,

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
		references.	Construction Contractor, O&M Contractor as the case may be.
8.	Annex QD - 6 - O&M Experience	The role of the statutory auditor is to provide an opinion whether the financial statements are stated in accordance with specified criteria. Thus, our statutory auditor may not be entitled to certify any other information. We suggest that the Authorized representative of the Prospective Bidder sign the references.	Please refer to the requirements of the updated RFQ dated 22 <sup>nd</sup> December, 2016. Certification in respect of Annex QD-6 (as well as the certifications under Annexes QD-3, QD-4 and QD-5) is to be done by the authorised representative of the Prospective Bidder, Qualifying Shareholder, Subsidiary, Affiliate, Construction Contractor, O&M Contractor as the case may be.
9.	Section 4-2-3 - (iii) QD - 9B	<p>At this stage of the process (pre-qualification) the information and financials on the project are very limited. Without sufficient information basis (traffic reports, financing analysis, technical studies, etc.) the future project structure remains unclear and it can vary substantially as the process advances. For example, equity investments could be reviewed downwards for a better value for money for the public authority. Furthermore, the financial capabilities of Bidders to invest in this project are confirmed through Financial Qualification and Net Assets criteria. Later in the tender process a commitment will be provided subject to satisfactory project documentation, tender rules and PPP framework, satisfactory due diligence and satisfactory risk allocation between the various parties.</p> <p>Under these circumstances, we propose the following modification to form of Annex QD-9B:</p>	Annex QD - 9B has been amended. Please refer to Section 4.2.3 (iii), Section 5 and Annex QD - 9B of the updated RFQ dated 22 <sup>nd</sup> December, 2016.

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
		<p>"In connection with the participation of (Prospective Bidder) in the Bidding Process for Nairobi-Nakuru-Mau Summit Highway, we (Prospective bidder) <b>express our interest and willingness to subscribe our stake of equity contribution (no joint commitment) in accordance with the terms of the Bid</b> in the Project Company that the Pre-Qualified Bidder will incorporate for the purpose of implementation of the Project, <b>if and when the Financial Close occurs</b>".</p> <p>Could you please confirm acceptability?</p>	
10.	Section 4-2-3 - (iii) QD - 9A	Regarding the ease of procedures within major international banks, it could be more efficient if banks could be allowed to use their own wording for the letter of support (no validation required, etc.). We propose to consider the possibility to provide a letter of support with the banks' own wording for pre-qualification stage.	<p>The Letter of Support template from Qualifying Banks and Financial Institutions is intended as an example of what would be acceptable to the Contracting Authority. Other wording may be acceptable at KeNHA's sole discretion provided that the intention, meaning and spirit of the template provided in Annex QD-9A of the RFQ is substantially maintained and respected.</p> <p>Please refer to Section 4.2.3 (ii) and Section 5 (j) together with Annex QD – 9A of the updated RFQ dated 22<sup>nd</sup> December, 2016.</p>
11.	Section 5 (u) &DQ-3	Section 5 (u) of the RFQ requires a letter from the Company's statutory auditor [...] to the effect that the Entity is not insolvent, in receivership, bankrupt or in the process of being wound up. For companies governed by the French Law, evidence that none of the aforementioned events has occurred is commonly provided through a certificate from the Commercial Court where the company is registered. For the	Certification in respect of Annex QD-3 (as well as those under Annexes QD-4, QD-5 and QD-6) is to be done by the authorised representative of the Prospective Bidder, Qualifying Shareholder, Subsidiary, Affiliate, Construction Contractor, O&M Contractor as the case may be. Please refer to the requirements of the updated RFQ dated 22 <sup>nd</sup> December, 2016.

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
		purpose of our Prequalification it is hereby proposed to substitute auditor's letter by this judicial certificate. Please confirm acceptability.	
12.	Section 4.2.3, Annex QD-8 Deed of Guarantee	<p>The last paragraph of Section 4.2.3 (i) requires "the Prospective Bidder" to submit a signed copy of Annex QD-8 signifying its acceptance of this essential requirement.</p> <p>At this stage of the procurement process, and above all, without an understanding of the terms of the Project Agreement, the RFP or of the full ambit of the Project itself, our business practices and corporate guidelines will simply not allow us to be in a position to submit such signed Deed of Guarantee. In particular, we deem it proper to respectfully draw your attention to the fact that a parent company undertaking which is unlimited in either time duration or scope would not be within the spirit of project finance and limited/ non-recourse liability as we understand it to be. While respecting the intent of the public authority to ensure for the proper support at a parent company level, we are also of the reasoned position (as also mentioned above) that this must also be considered as part of the context of PPP/ concession structures.</p> <p>With this in mind, can you please confirm that the Deed of Guarantee can be (and is expected to be) amended during the bid process and (for example) only signed/ submitted as part of the bid submission (and not already at the PQ stage)? This would, in turn, be extremely helpful in ensuring that we are operating</p>	The requirement for a Deed of Guarantee under Section 4.2.3 (i) has been removed. Please refer to Section 4.2.3 (i) and Annex QD-8 of the updated RFQ dated 22 <sup>nd</sup> December, 2016 for the revised requirements.

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
		within our corporate rules.	
13.	Notarization procedure in general (e.g. Annex QD 5,...)	Giving the current RFQ submission date of 9 <sup>th</sup> of January 2017, it will be very challenging to get the documents duly notarized and certified, and therefore, we would like to suggest to either: <b>a)</b> slightly postpone the RFQ submission date of 9 <sup>th</sup> of January 2017 to sometime during the week of 23-27 January 2017; or <b>b)</b> to entitle the Prospective Bidder to submit its documents in a self-certified format and, should KeNHA only then require, provide the notarized and certified documents thereafter within a reasonably-prescribed timeframe. We would be grateful if you could please confirm one of the above mentioned procedures.	The Annexes QD-1A, QD-1B, QD-1C, QD-7, QD-8 and QD-10 are to be notarised as required.  RFQ Submission Date is extended to 7 <sup>th</sup> February 2017.
14.	Section 2.e.(i)	For the avoidance of doubt, can you please confirm that all those who meet the prequalification criteria be provided with the RFP?	All Pre-Qualified Bidders who have met the Qualification Requirements, have complied with the provisions of the RFQ and are not disqualified in accordance with the terms of the RFQ shall be issued with the RFP.
15.	Section 3.d.iv.	Would the replacement of a member with a member's Affiliate be treated as a change in the Consortium?	Yes, replacement of a Consortium Member with an Affiliate of that Consortium Member would be treated as change in Consortium / its composition. Also replacement of a Consortium Member with another Consortium Member's Affiliate would be treated as a change in the composition of the Consortium. Please refer to the clarified Section 3.d. of the updated RFQ dated 22 <sup>nd</sup> December, 2016.
16.	Section 4. (d)	For which period is it envisaged that the Lead Member	This requirement shall be spelt out in detail at the Bid



Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
		and the Qualifying Shareholder respectively hold shares in the Project Company? Our expectation – also in light of our investment policy and assets management practice - in this respect is that such minimal holding period should be limited accordingly (i.e. thru construction completion or expiration of the construction defects liability period).	Stage in the RFP/Project Agreement which will be guided by Section 59 of the Public Private Partnerships Act, 2013 and pertinent regulations contained in the Public Private Partnerships Regulations, 2014.
17.	4.2.1 (A) and Appendix 1	Please provide clarity on the 5 year PPP experience requirement. Does this mean that the projects with an aggregate length of 3,500 lane-Km should have been implemented in the last 5 years or should the bidder/consortium provide evidence that it has more than 5 years of PPP experience implementing eligible PPP Projects.	<p>Both of these interpretations are incorrect.</p> <p>The requirement is that the Prospective Bidder or Qualifying Shareholder has held the requisite interest (at least 5% shares in the project company in an Eligible PPP Project) within the 5 year period prior to RFQ Submission Date. The Eligible PPP Project itself may have been completed (i.e. construction completed) prior to that.</p> <p>Please refer to the clarified definition of Eligible PPP Project under Section 1.1 (y) and Section 4.2.1 (A) in the updated RFQ dated 22<sup>nd</sup> December, 2016.</p>
18.	4.2.1 (A), (B), (C) & Appendix 1	In the event that there are two members of a consortium or competing bidders who worked on eligible projects together, can they both claim PPP, Construction and O&M experience from the same project	<p>Two Consortium Members who are applying for Pre-Qualification as part of the same Consortium and have worked together on an Eligible Project shall not each use such Eligible Project in their Qualification Documents. Such a project will only be counted once towards the Qualification Requirements.</p> <p>However, Consortium Members of competing Prospective Bidders may do so.</p>

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
			Please note the addition of Section 4 (e) in the updated RFQ dated 22 <sup>nd</sup> December, 2016.
19.	4.2.1 (A) Appendix 1	Will brownfield investments acquired after the 9 <sup>th</sup> January 2016 cut-off date for operation be allowable considering they were in operation for more than 1 year before the RFQ submission date?	Yes provided the project meets the definition of Eligible PPP Project. Note that the RFQ Submission Date has been extended to 7 <sup>th</sup> February 2016.
20.	4.2.1 (C) Appendix 1	Can a bidder owning an interest in an eligible Operations & Maintenance project claim O&M experience even if the operations and maintenance works have been sub-contracted to a third party?	No, operation and maintenance works that was sub-contracted cannot be claimed towards the O&M Experience. Please refer to Section 4.2.1 (C) and in particular 4.2.1 (C) (ii) of the updated RFQ dated 22 <sup>nd</sup> December, 2016, which clearly refers to acting as main or principal contractor.
21.	4.2.1 A,B & C Appendix 1	Will partially operational roads that are part of an upgrade which falls within the Last Twelve Months be allowable?	<p>Partially operational or completed roads will be considered subject to obtaining documentary evidence from the project owner with respect completion and acceptance of construction of such project and provided that such operational part of the road meets the requirements under Section 4.2.1 and definitions of Eligible PPP Project, Eligible Construction Project and Eligible O&amp;M Project (as the case may be) of the updated RFQ dated 22<sup>nd</sup> December, 2016.</p> <p>To confirm, if the road has been in operation for less than one year, it will not meet the criteria under Section 4.2.1(A) and will therefore not be allowed towards meeting the PPP Experience.</p> <p>Please refer to Sections 5 e. and 5 f. of the updated RFQ dated 22<sup>nd</sup> December, 2016.</p>

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
22.	4.2.2	Please confirm if in the case of an Investment Fund seeking to bid, a certified statement of Assets Under Management or a confirmation of the undrawn commitments on the Fund suffice as evidence of Net Worth.	<p>Assets Under Management will not be considered as evidence of Net Worth of a closed Investment Fund.</p> <p>KeNHA will consider available funds which have yet to be committed to projects as evidence of Net Worth, provided the Investment Fund provides a certified and notarised copy of its charter documents and a statement by its authorized representative as evidence that the anticipated investment in the Project by such Investment Fund falls within the Fund's country and sectoral limits, taking into account investments held as at the RFQ Submission Date.</p> <p>Please refer to the revised requirements under Section 5 h. and Annex QD – 7 of the updated RFQ dated 22<sup>nd</sup> December, 2016.</p>
23.	4.2.3	<p>We believe it will not be possible at this RFQ stage for bidders to submit a fully executed Deed of Guarantee in the format prescribed in Annex QD-8 of the RFQ Document. Please advise if an alternative form of comfort to KeNHA can be provided to meet the requirement sought.</p> <p>The RFQ anticipates that the final format of the Deed of Guarantee shall be determined at the Preferred Bidder stage which we believe is reasonable.</p>	The requirement for a Deed of Guarantee under Section 4.2.3 (i) has been removed. Please refer to Section 4.2.3 (i) and Annex QD-8 of the updated RFQ dated 22 <sup>nd</sup> December, 2016 for the revised requirements.
24.	5.e.1 & 2 Annex QD-4	Can a global statement from a qualified auditor covering all projects within a qualifying shareholder's portfolio be used to meet the requirement to have an independent Audit Statement for the qualifying	Information regarding Eligible PPP Projects should be provided as per the requirements of Annex QD-4. The authorized representative of the Entity shall certify that the information provided is true and correct in the

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
		projects.	manner provided in Annex QD-4. Please refer to the updated RFQ dated 22 <sup>nd</sup> December, 2016.
25.	Section 4.2.3	<p>In terms of section 4.2.3, Prospective Bidders are advised of the requirement for Affiliates (where these have been used to provide references) to furnish a Deed of Guarantee in the form as set out in Annex QD-8, as amended, in respect of obligations under the Project Agreement (as it exists at the time of furnishing the Deed of Guarantee). It is understood that the Deed of Guarantee may be amended during the bid process (as it currently contains unusual provisions relating to demand and joint and several obligations of the Guarantor in favour of KeNHA for the obligations (this definition to be further explored) of both the Successful Bidder and the Project Company). However, the last paragraph of Section 4.2.3 requires “the Prospective Bidder” (defined as the Consortium) to submit a signed copy of Annex QD-8 signifying its acceptance of this essential requirement.</p> <p>At this stage of the procurement, it would not be responsible for our Affiliates to submit such Guarantee without an understanding of the terms of the Project Agreement, the RFP or of the full ambit of the Project itself. Please clarify the requirements in this regard: we respectfully suggest that an acknowledgement of the future requirement, (with necessary amendments to the Guarantee) should be of sufficient comfort to KeNHA.</p>	The requirement for a Deed of Guarantee under Section 4.2.3 (i) has been removed. Please refer to Section 4.2.3 (i) and Annex QD-8 of the updated RFQ dated 22 <sup>nd</sup> December, 2016 for the revised requirements.

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
		Please further clarify whether the requirement relates to the “Prospective Bidder” or merely to those Qualifying Shareholders who use Affiliate references and experience. Please further clarify that this is not a requirement with respect to PPP experience (see clause 4.2.1 (A) last bullet point).	
26.	Annexes QD-1A; 1B; 1C	These Annexes require notarization before a notary to verify the signatory to the documents: could certification before a commissioner of oaths suffice : such person is also qualified to take oaths and verify identity and are more available than notaries.	Annexes are to be notarised, as required.
27.	Annexures QD-4, QD5, and QD6	These annexures require notarised certification from the Project Owner in various forms (completion certificates or operation and maintenance certificates). Given the relatively short time frame to compile the RFQ, could these certificates be provided post submission bearing in mind that Affiliate and our own references will be used to compile experience and that we do not always get completion certificates where equity is concerned?	<p>Documentary evidence for completion and acceptance of construction of Eligible PPP Projects and Eligible Construction Projects are required to be submitted along with the Qualification Documents and not after the notification of results of evaluation of the Qualification Documents. Also, confirmation from the Eligible O&amp;M Project owner that the Eligible O&amp;M Project road has been (or continues to be) operated and maintained is required as part of the Qualification Documents. Failure to comply with the requirements will render the Qualification Documents incomplete / non-compliant and are liable to be rejected.</p> <p>Please refer to the revised requirements under Section 5 e. , 5 f. and 5 g. of the updated RFQ dated 22nd December, 2016. Also, note that the RFQ Submission Date is extended to 7th February, 2017.</p>

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
28.	Annexure QD-4 , QD5, and QD6	Given the time frame and the holidays, would it be possible to provide the auditors certification after RFQ submission, should the results indicate that the prequalification conditions have been met?	<p>No. Certification is required to be submitted as part of the Qualification Documents and not after the notification of results of evaluation of the Qualification Documents. However, please refer to the revised requirements for certification by the authorized representative of the Entity under Annexes QD-4, QD-5 and QD-6 of the updated RFQ dated 22<sup>nd</sup> December, 2016.</p> <p>The RFQ Submission Date is extended to 7<sup>th</sup> February, 2017.</p>
29.	Annexure QD-7	Again, could the notarization be replace by certification by a commissioner of oaths	The requirement of Notarisation is mandatory as provided under the updated RFQ dated 22 <sup>nd</sup> December, 2016.
30.	Section 2.e.i	Will all prospective bidders who are meeting the prequalification criteria be issued with the RFP or can KeNHA choose a closed list of bidders?	All Pre-Qualified Bidders who have met the Qualification Requirements, have complied with the provisions of the RFQ and are not disqualified in accordance with the terms of the RFQ shall be issued with the RFP.
31.	Section 3.d.iv.	Would the replacement of a member with a member's Affiliate (subject to the furnishing of the Deed of Guarantee) constitute a change in the consortium?	Yes, replacement of a Consortium Member with an Affiliate of that Consortium Member would be treated as change in Consortium / its composition. Also replacement of a Consortium Member with another Consortium Member's Affiliate would be treated as a change in the composition of the Consortium. Please refer to the clarified Section 3.d. of the updated RFQ dated 22 <sup>nd</sup> December, 2016

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
			Further, the requirement for a Deed of Guarantee under Section 4.2.3 (i) has been removed. Please refer to Section 4.2.3 (i) and Annex QD-8 of the updated RFQ dated 22 <sup>nd</sup> December, 2016.
32.	4.d	For what period is it envisaged that the Lead Member and Qualifying Shareholder respectively hold shares in the Project Company?	This requirement shall be spelt out in detail at the Bid Stage in the RFP/Project Agreement which will be guided by Section 59 of the Public Private Partnerships Act, 2013 and pertinent regulations contained in the Public Private Partnerships Regulations, 2014.
33.	Annexure QD-4	In some of our investment concessions, completion certificates are not issued by the Project Owner: would confirmation of the lane km and equity held from the Project Owner suffice to fulfil this PPP experience requirement?	<p>Documentary evidence for completion and acceptance of construction of Eligible PPP Projects are required to be submitted along with the Qualification Documents. Failure to comply with the requirements will render the Qualification Documents incomplete / non-compliant and are liable to be rejected.</p> <p>Please refer to the revised requirements under Section 5 e. read with Sections 3 (k) and 9.2 of the updated RFQ dated 22<sup>nd</sup> December, 2016.</p>
34.	2. The Proposed Bidding Process / Table 1	We kindly ask KeNHA to please postpone the RFQ submission date at least six weeks in order to consolidate a strong consortium of solvent and experienced partners and in order to get all the notarized documents, letters of support, commitment letters, certificates and translations in place. Bear in mind that we are approaching a holiday term which makes very difficult to get documents from Clients and other administrations worldwide.	RFQ Submission Date is extended to 7 <sup>th</sup> February, 2017.

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
35.	Annex QD-8: Format for Deed of Guarantee	We refer to the requirement of a Deed of Guarantee. We would kindly ask KeNHA to withdraw this requirement as from our experience we do not see the reason why an affiliate has to give an <u>unconditionally</u> guarantee making it <u>jointly and severally</u> liable for all the members of the Project Company and for the 30 years of the concession. As this is supposed to be a Project Finance the guarantee is already in the predictable cash flow of the project limiting the responsibility to the SPV created for the purpose of the project. The forthcoming security package to be required under the PA together with the Project's cash flows should give enough confidence to the Client and Lenders to make the project fundable. We do not see how an affiliate has to guarantee the project when relying on the availability payments that are not guaranteed by the Government through a Sovereign Guarantee.	The requirement for a Deed of Guarantee under Section 4.2.3 (i) has been removed. Please refer to Section 4.2.3 (i) and Annex QD-8 of the updated RFQ dated 22 <sup>nd</sup> December, 2016 for the revised requirements.
36.	financial qualification requirements	We would kindly ask the Client to bear in mind that there will be companies listed in the Stock Exchange of their countries and therefore the latter will not be able to discover any financial results until these ones have been approved by the national Stock Exchange body as these results are very sensitive. We would appreciate you consider these limitations. For example , the requirement of average annual turnover over the 3 year preceding the RFQ submission date; this involves to discover privilege information from the end of the year 2016 that for a listed company is forbidden to reveal before is audited.	Annual turnover figures are to be taken from the Latest Audited Financial Statements and the two financial years immediately preceding the year of the Latest Audited Financial Statements. The RFQ requires that the financial year end of the Latest Audited Financial Statements should not be earlier than 15 months prior to the RFQ Submission Date. This is not considered to be an onerous requirement for any Prospective Bidder, listed or otherwise.  Please refer to the amended Section 4.2.2. (iii) in the updated RFQ dated 22 <sup>nd</sup> December, 2016.



Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
37.	O&M qualification requirements	We would kindly ask the Client to reduce the minimum threshold for edible O&M project to the same as the one required for the PPP experience as normally the O&M scope is within the scope of PPP projects.	Eligible O&M Project threshold has been revised to 175 lane km. Please refer to the definition of Eligible O&M Project under Section 1.1 (y) of the updated RFQ dated 22 <sup>nd</sup> December, 2016.
38.	PPP Experience	We would kindly ask the Client to increase from five to ten years the minimum threshold for eligible PPP projects as required for the O&M and construction experience.	Please refer to the clarified definition of Eligible PPP Project under Section 1.1 (y) and Section 4.2.1 (A) in the updated RFQ dated 22 <sup>nd</sup> December, 2016.
39.	6.1 FORMAT OF SUBMISSION OF QUALIFICATION DOCUMENTS	We would appreciate if you can reduce the number of set of copies of the Qualification Documents from four sets to two.	The number of copies of the Qualification Documents has been reduced to two (2). Please refer to Sections 6.1 and 6.2 of the updated RFQ dated 22 <sup>nd</sup> December, 2016.
40.	6.1 FORMAT OF SUBMISSION OF QUALIFICATION DOCUMENTS	Please confirm that the mark "QUALIFICATION DOCUMENTS-ORIGINAL," has to be marked only in the Cover Page and not in all the pages where the pagination in continuous sequential order is in place in every page.	The marking requirement of the Qualification Documents has been changed. Please refer to Section 6.1.1 of the updated RFQ dated 22 <sup>nd</sup> December, 2016.
41.	Section 4.2.1 (A) PPP Experience	According to 4.2.1 (A), the requirement is for the Prospective Bidder to demonstrate his PPP Experience by making reference to the past five (5) years preceding the RFQ Submission Date. We respectfully draw your attention to the fact that the overall situation in Europe (= our home market) has been very challenging in the past several years; thus, corresponding reference projects (i.e. also in light of the definition of "Eligible PPP Projects") have been rather limited in number. In order to help ensure for a more level playing field (i.e. where no preference is given to market participants from another geographic/	Please refer to the clarified definition of Eligible PPP Project under Section 1.1. (y) and Section 4.2.1 (A) in the updated RFQ dated 22 <sup>nd</sup> December, 2016.

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
		<p>regional location), we are of the reasoned viewpoint that such five year period should be extended accordingly (for example, to 8-10 years).</p> <p>Closely related to the above, we also deem it appropriate to convey our position that the currently-prescribed requirement of 3,500 lane-kilometers is a little high. Therefore, as a potential Prospective Bidder, we respectfully ask that this be slightly reduced (i.e. by 10%).</p>	
42. .	Section 2, Proposed Bidding Process/RFQ Submission Date	Subject of the project requires special attention and a meticulous study when it is considered that structure of the bidder includes Lead Member, Consortium Member, Qualifying Share holder and Affiliates. It will be very challenging to get the documents duly notarized and certified in tandem with consortium companies. However, the given prequalification preparation period is not enough to conduct above mentioned study especially considering Christmas holiday and days off during holiday. For this reason, we kindly ask you to postpone the deadline of prequalification submission for at least 1 (one) months.	RFQ Submission date is extended to 7 <sup>th</sup> February, 2017.
43.	Annex QD-2B Business Structure	Could you please explain what the difference is between Consortium member and Qualifying Shareholder in the scope of structure or in consortium agreement?	Kindly refer to the definition of the term "Qualifying Shareholder". A Qualifying Shareholder is a Consortium Member who will hold not less than 10% of the shares in the Project Company. A Consortium Member who will hold less than 10% of the shares in the Project Company would not be a Qualifying Shareholder.

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
44.	Annex QD-7 Financial Qualification	<p>As per Annex QD-7 “Latest Audited Financial Statements for the period not earlier than 15 months preceding the RFQ Submission Date, a certified true copy of which, duly notarized, is attached to this certificate” is requested from prospective Bidders.</p> <p>We kindly ask you to clarify if financial statement which is prepared in accordance with IFRS, duly attested (signed and stamped by certified Auditor) to provide a true and fair view in accordance with IFRS by a certified Auditor is sufficient to prove the Bidder's financial qualification. We understand that any additional notarization for Financial Statements which is attested by certified Auditor is not required.</p> <p>Please Clarify?</p>	Notarization, as prescribed, is required in terms of the updated RFQ dated 22 <sup>nd</sup> December, 2016.
45.	Section 4.2.3, Annex QD-8 Deed of Guarantee	<p>The last paragraph of Section 4.2.3 (i) requires “the Prospective Bidder” to submit a signed copy of Annex QD-8 signifying its acceptance of this essential requirement...”</p> <p>Can you please confirm that the Deed of Guarantee can be amended during the bid process and only submitted as part of the bid submission and not already at the PQ stage? Please confirm.</p>	The requirement for a Deed of Guarantee under Section 4.2.3 (i) has been removed. Please refer to Section 4.2.3 (i) and Annex QD-8 of the updated RFQ dated 22 <sup>nd</sup> December, 2016 for the revised requirements.
46.	Section 3.d.iv.	We kindly ask you to clarify is it possible to replace a member with a member's affiliate at Bid stage, is it considered as a Consortium change?	Yes, replacement of a Consortium Member with an Affiliate of that Consortium Member would be treated as change in Consortium / its composition. Also replacement of a Consortium Member with another Consortium Member's Affiliate would be treated as a change in the composition of the Consortium. Please refer to the clarified Section 3.d. of the updated RFQ

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
			dated 22 <sup>nd</sup> December, 2016.
47.	Section 4.2.1 (A) PPP Experience	Please clarify could we submit an on-going PPP project to meet PPP experience criteria?	Yes, provided that the project meets the definition of Eligible PPP Project including the requirement that the project should have been operational for at least one year prior to RFQ Submission Date.
48.	Annex QD-9B	In the letter of support, Name of potential equity investor is requested. We understand that equity investor is the Bank which supplies the form Annex QD-9A.  Please Confirm?	No, this is a misunderstanding. Annex QD-9A is specifically designed for the potential providers of debt finance for the project. Annex QD-9B is to be completed by the potential equity providers – the potential shareholders in the Project Company.  Please refer to the updated RFQ dated 22 <sup>nd</sup> December, 2016.
49.	Annex QD-3 & Annex QD-4 & Annex QD-5 Annex QD-7	Signature and name of entity is requested end of the forms. We understand that name and signature of the consortium member is requested besides the signature of the Lead Member.  Please confirm?	Name and signature of the concerned Consortium Member together with the name and signature of the authorised representative of the Lead Member is required.  Please refer to the updated RFQ dated 22 <sup>nd</sup> December, 2016.
50.	2.b.Table 1	We would like to ask for an extension of 2 month for the presentation of the RFQ, to March 9 <sup>th</sup> 2017, we justify this extension in order to collect properly the required RFQ documents from several entities (Prospective bidder and affiliates).	RFQ Submission Date is extended to 7 <sup>th</sup> February, 2017.
51.	3.1	According to local legislation from one member of the prospective bidder, the lawyers can replace notaries in	Notarization, as required is mandatory.

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
		certification of copies, certification of translations, minutes of declaration. Please confirm that following this local law, documentation of this member its suitable with the requirements of the RFQ?	
52.	3.m.iv	When mention on Responsibilities of Prospective Bidders, <b><i>'determine and satisfy itself, at its own cost, expense and risk,...,plans for future works in the area, ..., existing or threatened legal disputes or issues,... social concerns or issues,... that may affect the cost, duration, execution and completion of the Project'</i></b> do you mean that you are transfer the social and political risk to the Prospective Bidders and later to the winning bidder? Can you provide a update risk matrix for this project?	<p>The narrative in this Section seeks to emphasise that Pre-Qualified Bidders will be expected to carry out their own due-diligence of the Project.</p> <p>Risk allocation will be governed by the Project Agreement, a draft of which will be made available to Pre-Qualified Bidders at the Bid Stage.</p> <p>For a high level summary risk matrix please refer to the Project Information Memorandum.</p>
53.	3.p	When mention <b><i>' in doing so, a prospective bidder will be required to meet the aggregate of the Financial Qualification Requirements for this Project and for any other such PPP road project in order to pre-qualify for more than one project'</i></b> – If the a company bids for more than one PPP road project but in different consortiums, how this rule apply?	Please refer to the amended Section 3 (p) of the updated RFQ dated 22 <sup>nd</sup> December, 2016.
54.	4.2.1 (A)	In case of a consortium, if a member uses affiliates to demonstrate the PPP experience are (SPV's - PPP Project Companies), is still required that these affiliates (SPV's) issued a Deed of Guarantees?	The requirement for a Deed of Guarantee under Section 4.2.3 (i) has been removed. Please refer to Section 4.2.3 (i) and Annex QD-8 of the updated RFQ dated 22 <sup>nd</sup> December, 2016 for the revised requirements.
55.	4.2.1(B)	What criteria should be use, to determine the extension	Please clarify the query.

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
		of the grade separated structures?	
56. .	4.2.1(C)	Can the Prospective Bidders provide O&M experience, using the experience of (SPV- PPP Project Companies)?	No. Operation and maintenance works that was sub-contracted cannot be claimed towards the O&M Experience. Please refer to Section 4.2.1 (C) and in particular 4.2.1 (C) (ii) of the updated RFQ dated 22 <sup>nd</sup> December, 2016.
57.	4.2.3	Please confirm the understanding that only the successful Bidder will need to present the Deeds of Guarantees, and this only before financial close, after RFP?	The requirement for a Deed of Guarantee under Section 4.2.3 (i) has been removed. Please refer to Section 4.2.3 (i) and Annex QD-8 of the updated RFQ dated 22 <sup>nd</sup> December, 2016 for the revised requirements.
58.	Section No. 1 (c)	<p>In this clause, KeNHA has stated that in case of company, financial figures in USD to be certified by Statutory Auditor of the Company.</p> <p>Under Annex QD-7, Financial Qualification S. No. 2, Financial Summary table is given.</p> <p>Please confirm, if only these key financial terms and mentioned under Annex QD-7 are to be certified and notarised copy of Audited Financial Statements for last 3 years are to be submitted, under this requirement.</p>	<p>There is no longer a requirement for Audited Financial Statements prepared in a currency other than USD to be converted into USD. Please refer to amended Section 1.1 (c) of the updated RFQ dated 22<sup>nd</sup> December, 2016. However, we would draw your attention to the requirements under Section 3 q. of the updated RFQ dated 22<sup>nd</sup> December, 2016.</p> <p>The requirements have been changed. Kindly refer to amended Annexes QD-5 and QD – 7 of the updated RFQ dated 22<sup>nd</sup> December, 2016.</p>
59.	Section no. 1 (w)	Please confirm, that the Projects considered under	Yes, provided the requirements under Section 4.2.1

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
		PPP Experience, can be considered under Construction Experience as well, as the Company awarded PPP project, may have also undertaken the construction works for the project.	(B) are met including that of the construction being carried out as the main or principal contractor and subject to the requirements under Section 4 (e) of the updated RFQ dated 22 <sup>nd</sup> December, 2016.
60.	Section no. 1. (nn)	It is stated that Lead Member should hold not less than 26% of the shares in the Project Company. Please advise, on equity lock-in period proposed for Consortium Members.	This requirement shall be spelt out in detail at the Bid Stage in the RFP/Project Agreement which will be guided by Section 59 of the Public Private Partnerships Act, 2013 and pertinent regulations contained in the Public Private Partnerships Regulations, 2014.
61.	Section no. 1 (qq)	We understand from this Section that if the consortium member itself does not satisfy the threshold mentioned, but it is fulfilling this criterion through its Affiliate who has Networth of USD 50 MM, then the consortium Member is eligible to participate. Please Confirm.	Yes, subject to meeting the requirements set forth in the updated RFQ dated 22 <sup>nd</sup> December, 2016.
62.	Section no. 2 (b)	Considering the documentation to be submitted as part of PQ application, involves certifying of documents by Statutory Auditor and notarisation, which is time consuming activity. Alternatively request Authority to consider such certification from Chartered Accountant. Request Authority to extend the RFQ Submission Date by atleast 2 weeks i.e. 23rd January, 2016.	RFQ Submission Date is extended to 7 <sup>th</sup> February, 2017.
63.	Section no., 4.2.2 (i).	Request Authority to dilute this requirement at PQ stage and request for the same as part of Technical Submission at RFP state, as prospective bidder is already providing a letter of commitment as per Annex QD-9B.	No Change. The requirements under the RFQ shall prevail.

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
64.	Section no. 4.2.3 (ii) QD-9A.	<p>Request Authority to dilute this requirement at PQ stage and request for the same as part of Technical Submission at RFP state, as prospective bidder is already providing a letter of commitment as per Annex QD-9B.</p> <p>Additionally when we read through Annex QD-9A, it is mentioned that the same shall be provided on letterhead of Qualifying bank/ Financial Institution, however, you have asked for two signatures; one from authorised representative; and second from authorised officer of Qualifying bank/Financial Institution, Please clarify.</p>	<p>No Change. The requirements under the RFQ shall prevail.</p> <p>Please refer to the requirement under the updated RFQ dated 22<sup>nd</sup> December, 2016.</p>
65.	Annex QD-4, QD-5, QD-6	<p>We understand that for all these formats including project data sheets, you have asked for a certification from Statutory Auditor of the company.</p> <p>We request Authority to dilute this and limit it only to certification of Eligible Project financials and basic Project info like Project name, length, etc. by Statutory Auditor, as audit or will not certify Eligible Project technical info such as lane km, details of structures, grade separated structure description, etc.</p> <p>Also, if required for certification of lane kms for Eligible Project, we may provide certificate from legal representative of Special Purpose Vehicle (Project company under taking project works) / self-attestation by authorized signatory of prospective Applicant.</p> <p>This is for your consideration, please.</p>	<p>Certification in respect of Annex QD-4, QD-5 and QD-6 is to be done by the authorised representative of the Prospective Bidder, Qualifying Shareholder, Subsidiary, Affiliate, Construction Contractor, O&amp;M Contractor as the case may be. Please refer to the requirements of the updated RFQ dated 22<sup>nd</sup> December, 2016.</p>



Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
66.	Section no. 5 - Qualification Documents	The sub-sections to this section 5, starts from "r". Please advise, if sub-section "a to q" is missing, or is this a typo error?	Please refer to updated RFQ document dated 22 <sup>nd</sup> December, 2016 available online at <a href="http://www.kenha.co.ke">www.kenha.co.ke</a> , <a href="http://www.treasury.go.ke">www.treasury.go.ke</a> and <a href="http://www.devbusiness.com">www.devbusiness.com</a> .
67.	Section no.5.(w).(i).(2)-	Request Authority, to reduce this requirement to USD 450-500 MM, as USD 850 MM is higher than the estimated Project Cost for this Project.	No Change. The requirements under the RFQ shall prevail.
68.	Section no. 6.1.1.(a) & (b)	In this section, it is stated that each page should be clearly marked as "Qualification Document-Original" in case of Original set and "Qualification Documents-Copy No.____" in case of Copies. Request Authority to consider this marking only on the cover pages & table of contents page, as the RFQ submission is quite voluminous. Also, it is not possible to put such markings on certificates, annual reports, incorporation certificate, memorandum & article of association of the company, etc. Please confirm.	The marking requirement for the Qualification Documents has been changed. Please refer to Section 6.1.1 of the updated RFQ dated 22 <sup>nd</sup> December, 2016.
69.	Annex QD-1B-	In this form under S.No. 3, you have mentioned that the points mentioned from S.No. 3.1 to 3.3 should be passed and approved in special/general board meeting held.  We request Authority to remove "At a (regular/special) meeting of the (board of directors/partners) of the (single/Prospective Bidder/Lead member) held on (date) at (place), in which meeting a quorum was present throughout, the following Resolutions were unanimously passed and approved", as this is only pre-qualification stage and passing special resolutions in a	The requirement is for Board Resolution and not a shareholder resolution.  Please refer to the amended Annex QD-1B of the updated RFQ dated 22 <sup>nd</sup> December, 2016.

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
		<p>listed company is a tedious and time consuming activity. However, such requirement, may be included at the time of Bid Stage.</p> <p>Excluding the above-requirement of passing resolution, we are in agreement to get this form notarised through notarised authority. Please confirm.</p>	
70.	Annex QD-1C	<p>In this form under S.No. 3, you have mentioned that the points Mentioned w.r.t. consortium participation should be passed and approved in special/general board meeting held.</p> <p>We request Authority to remove "At a (regular/special) meeting of the (board of directors/partners) of the (single/Prospective Bidder/Lead member) held on (date) at (place), in which meeting a quorum was present throughout, the following Resolutions were unanimously passed and approved", as this is only pre-qualification stage and passing special resolutions in a listed company is a tedious and time consuming activity. However, such requirement, may be included at the time of Bid Stage.</p> <p>Excluding the above-requirement of passing resolution, we are in agreement to get this form notarised through notarised authority. Please confirm.</p>	<p>The requirement is for Board Resolution and not a shareholder resolution.</p> <p>Please refer to the amended Annex QD-1B of the updated RFQ dated 22<sup>nd</sup> December, 2016.</p>
71.	Annex ID-1: Project Management	Please confirm that, if for each position, we may provide name of One Main Representative and One Alternative Representative.	Please refer to the amended Annex ID-1 of the updated RFQ dated 22 <sup>nd</sup> December, 2016.

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
72.	Introduction	Under introduction it is stated that the Project includes: (i) Widening of 175 km of the A8 highway between Rironi and Mau Summit to become a 4 Lane dual carriageway (and in due course a 6 Lane carriage way in sections dependent upon traffic volumes); (ii) Strengthening of 57.8 km of the A8-South highway between Rironi and Naivasha; and (iii) Operation and maintenance of 12.43 km of the A8 highway between Gitaru and Rironi and 28.6 km of Nairobi Southern Bypass. Considering that 3 different sections of roads are to be developed, we request Authority to consider separate Commercial Operations Date for each section of road, as this would make the project more viable & economical by way of optimizing the Total Project Cost and Availability Payment, considering tolling on these sections may commence separately backed by a guarantee which could be infused in the project in the form of a Grant.	These matters shall be spelt out in detail at the Bid Stage.
73.	Participation Fee	Request Authority to facilitate provisions for making payment for participation fee through an online portal as well, as this will facilitate international players for making payments easily. Accordingly ,request you to share details for making online payments, such as: beneficiary bank name, beneficiary bank account no., swift code, etc.	Please refer to the changes made to Section 3 j. (ii) of the updated RFQ dated 22 <sup>nd</sup> December, 2016.
74.	Section 2 Table 1 and Section 6.3.1 (Place and Deadline of	In terms of Section 6.3.1 as read with Table 1 of Section 2, the RFQ Submission Date is the 9th of January 2017. Given the impending holidays, and the	RFQ Submission Date is extended to 7 <sup>th</sup> February, 2017.

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
	Submission of Qualification Documents and their Validity)	requirements of the RFQ (including that relating to shareholding), we would appreciate a 2 week extension to the RFQ Submission Date to 23 January 2017.	
75.		Request for extension of RFQ Submission date by three weeks	RFQ Submission Date is extended to 7 <sup>th</sup> February, 2017.
76.	4.2.1 (A), (B) and (C)	We request KeNHA to specify the required technical capability as 1.5 to 2 times the project requirement to obtain competitive bids for best price discovery in the interest of better cost of procurement of highway.	Please refer to the amended Section 4.2.1 and the relevant definitions under Section 1.1 of the updated RFQ dated 22 <sup>nd</sup> December, 2016.
77.	Clause no. 4.2.2 (i) Financial Qualification Requirements	We request KeNHA to specify the required Net Worth as USD 150-200 millions commensurate with anticipated equity required as to obtain competitive bids for best price discovery in the interest of better cost of procurement of highway	No Change. The requirements under the RFQ shall prevail.
78.	Clause no. 4.2.2 (iii) Financial Qualification Requirements	We request KeNHA to specify the required average annual turnover over 3 preceding year of the Entity proposed to meet the construction experience as USD 150-200 million to obtain competitive bids for best price discovery in the interest of better cost of procurement of highway.	No Change. The requirements under the RFQ shall prevail.
79.	4.2.3 qualification requirement other	When we bid as a consortium ,the letter of support from the bank can be addressed to the member of the consortium or must be to the consortium?	It should be addressed to the Consortium. Please see Annex QD-9A of the updated RFQ dated 22 <sup>nd</sup> December, 2016.
80.	Section 4.2.1 Technical	We have interpreted the term " experience of undertaking Eligible PPP Projects" in the broader	Yes, in order to be an Eligible PPP Project, a project should have been procured as a design, construct,

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
	Qualification Requirements. (A) PPP Experience Item (i)	sense to include experience in all functions of PPP's including all aspects of financing, operations and maintenance. We do not believe that "undertaking" refers only to initial implementation (closing) or establishment of PPP's ( ieintial funding / financial close/ intial construction works). Please confirm our understanding.	finance, operate and maintain project, but the required role of the Entity which is claiming the experience is that of shareholder (minimum 5%) in the Project Company responsible for the Eligible PPP Project. Please refer to the clarified definition of Eligible PPP Project under Section 1.1 (y) and the requirements under Section 4.2.1 (A) in the updated RFQ dated 22 <sup>nd</sup> December, 2016.
81.	4.2.1(A)(i) – PPP Experience	<p>Following some extensive internal assessment, also looking at our own references and those of our consortium partners, we are now respectfully seeking clarity from the Authority as to how the word “undertaking” is to be interpreted. In doing so, we convey the reasoned view that a narrow/ limited interpretation of this term would not be appropriate.</p> <p>As mentioned in our previous correspondence from 05 22nd December, 2016 on this issue, there were a very limited amount of larger road PPPs actually constructed/ completed in recent years (whether using the current 5 years or even assuming an extension to 7-10 years). A further working premise is that the Authority is also aware of this.</p> <p>Our reasoned belief is that the word “undertaking” should be interpreted/ understood as including (for example) our current/ ongoing ownership as a (≥ 5%) shareholder in an SPC which is undertaking such an Eligible Project (i.e. already in full operation for at least a year, irrespective of when the facility was actually</p>	Please refer to the clarified definition of Eligible PPP Project under Section 1.1 (y) and Section 4.2.1 (A) in the updated RFQ dated 22 <sup>nd</sup> December, 2016.

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
		<p>completed).</p> <p>Likewise, such engagement would not necessarily have to be current; rather, one could also use an Eligible Project as a reference for PPP experience where such shareholding was in place at any point in time in the last [5] years.</p> <p>Please advise and thank you for your attention to this important matter.</p>	
82.	Annex QD-9B Letter of Commitment from Consortium Member	<p>Please note that we have slightly amended the current wording of this document in order to be in line with our internal governance procedure.</p> <p>Please confirm that the following wording would be acceptable:</p> <p>“In connection with the participation of [XXXX]in the Bidding process for Nairobi-Nakuru-Mau Summit Highway (the “Project”), we, [XXXX], as a Consortium Member of [.....], commit to subscribe to a minimum equity contribution which together with the remaining Consortium Members will amount to an aggregate of USD 150 million in the Project Company that the Pre-Qualified Bidder will incorporate for the purpose of implementation of the Project, if and when it is declared by KeNHA as the successful bidder and subject to the Consortium being satisfied with the terms of the Project Agreement.</p> <p>Should the tender submitted by the Consortium not be successful, this letter of support will become null and void.”</p>	Annex QD - 9B has been amended. Please refer to Section 4.2.3 (iii), Section 5 (k) and Annex QD - 9B of the updated RFQ dated 22 <sup>nd</sup> December, 2016.

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
83.	Sections 3 and 4	<p>The RFQ contains provisions to address a withdrawal of a consortium member from the consortium and its consequences. Among others, the RFQ provides that a consortium may be disqualified if <i>“(i) any named Qualifying Shareholder fails to hold at least ten percent (10%) shareholding in the Project Company, or (ii) the Lead Member does not hold at least twenty six percent (26%) shareholding in the Project Company, till such times as specified in the Project Agreement”</i>.</p> <p>Please also confirm what will be such intended times as specified in the Project Agreement.</p> <p>Also, we understand such provisions only apply to a withdrawal between the periods from date of notification of results of evaluation of the Qualification Documents until the issue of the RFP.</p> <p>Please confirm whether or not a withdrawal will be allowed after the issue of the RFP. In the affirmative, will the RFP adopt same rules and conditions set out in the RFP or will it contain different, more flexible rules?</p>	<p>This requirement shall be spelt out in detail at the Bid Stage in the RFP/Project Agreement which will be guided by Section 59 of the Public Private Partnerships Act, 2013 and pertinent regulations contained in the Public Private Partnerships Regulations, 2014.</p> <p>Change in composition of a Consortium / withdrawal of Consortium Members is to be governed in accordance with Section 3 d. of the updated RFQ dated 22<sup>nd</sup> December, 2016. Additional requirements in this regard may be provided at the Bid Stage under the RFP, but it is not the intention that the substance of these provisions apply only for the Pre-Qualification Stage, specifically a change in Consortium composition at any point which leads to a Consortium no longer meeting the Qualification Requirements would lead to disqualification</p> <p>Please refer to the clarified Section 3 d. of the updated RFQ dated 22<sup>nd</sup> December, 2016.</p>
84.	Section 4.2.3 and Annex QD-9B	The RFQ provides that where the Prospective Bidder is a Consortium, the Letters of Commitment using the format in Annex QD-9B shall be given by all the Consortium Members stating that the aggregate of their	Annex QD - 9B has been amended. Please refer to Section 4.2.3 (iii), Section 5 (k) and Annex QD - 9B of the updated RFQ dated 22 <sup>nd</sup> December, 2016.

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
		<p>minimum intended level of equity contribution in the Project Company will not be less than USD 150 million. Please confirm that each Consortium Member is not committed individually to provide any equity contribution the Project Company not less than USD 150 million.</p>	
85.	Annex QD-8: FORMAT FOR DEED OF GUARANTEE	<p>In D. it is mentioned the following: “D. Towards compliance with the condition under Section 4.2.3 (l) read with Section 5 of the RFQ, the Successful Bidder is required to arrange and submit a guarantee from the Affiliate whose [PPP Experience/ Construction Experience/ O&amp;M Experience/ Financial Qualification Experience] was used to Pre-Qualify, guaranteeing due and satisfactory performance of such [PPP Experience/ Construction Experience/ O&amp;M Experience/ Financial Qualification Experience]obligation of the Successful Bidder (hereinafter referred to as the “Obligation”) under the Project Agreement during the course of implementation of the Project by the Project Company”.</p> <p>Please confirm that this sub-paragraph is not intended to bind the relevant affiliate to the Project Agreement before it is issued and understood.</p> <p>We are concerned by the following portion of the text which is confusing: “guaranteeing due and satisfactory performance of such [PPP Experience/ Construction Experience/ O&amp;M Experience/ Financial Qualification Experience] obligation of the Successful Bidder (hereinafter referred to as the “Obligation”) under the Project Agreement during the course of implementation</p>	<p>The requirement for a Deed of Guarantee under Section 4.2.3 (i) has been removed. Please refer to Section 4.2.3 (i) and Annex QD-8 of the updated RFQ dated 22<sup>nd</sup> December, 2016 for the revised requirements.</p>



Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
		of the Project by the Project Company". Please clarify or delete this portion of the text.	
86.	Annex QD-4 PPP Experience	<p>We are concerned by the below requirements :<i>Required Attachments: a. Notarized certificate of project completion from the project's owner or the original certificate of project completion or a copy thereof accompanied by a notarized certification issued by an officer of the Entity which fulfils the PPP Experience Requirement that such copy is a true and faithful reproduction of the original certificate. b. Certification from the statutory auditor of the Company or in case of a Entity other than a Company, such certification should be done by an independent auditor, to that effect, in the following manner"</i></p> <p>It will be difficult to have an Auditor certifying technical completion certificate. We do not understand the rationale behind this query, as far as the certificates of completion are issued by the project' owner. Could you please specify what certification you require, bearing in mind that bidders are coming with International References.</p>	<p>Certification in respect of Annex QD-4 (as well as those under Annexes QD-3, QD-5 and QD-6) is to be done by the authorised representative of the Prospective Bidder, Qualifying Shareholder, Subsidiary, Affiliate, Construction Contractor, O&amp;M Contractor as the case may be. Please refer to the requirements of the updated RFQ dated 22<sup>nd</sup> December, 2016.</p>

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
87.	<p>Clause 3 terms and condition (q) Applicable exchange rate for currency conversion to USD</p>	<p>This clause states the following: <i>“Applicable exchange rate for currency conversion to USD For the purpose of assessment under this RFQ, for converting any currency other than USD, into US Dollars, the applicable exchange rate shall be the daily representative exchange rates published by the International Monetary Fund seven (7) days prior to the RFQ notification publishing date”.</i></p> <p>For a Company registering its account in Euro, please confirm that all data’s have to be changed to USD? If so, please take into account the time constraints this represents.</p> <p>Also, the RFQ is date November 2016. Shall we use the exchange rate of October 24<sup>th</sup>, or 7 days prior to the Investor Conference dated Nov 16th, as mentioned in the RFQ at clause 3 - n?</p>	<p>Please refer to the requirements under Section 3 q. of the updated RFQ dated 22<sup>nd</sup> December, 2016.</p> <p>The RFQ Submission Date is extended to 7<sup>th</sup> February 2017.</p> <p>Please refer to the requirements under Section 3 q. of the updated RFQ dated 22<sup>nd</sup> December, 2016.</p>
88.	<p>Clause 3 Terms and Condition (i) consortium item (v)</p>	<p>This clause states the following: “A copy of the agreement entered into by the Consortium Members for the purposes of forming a consortium shall be included in the Qualification Documents, which agreement must clearly set out the relationship between the Consortium Members and their proposed shareholding of each of the Consortium Member in the Project Company. For the avoidance of doubt the Lead Member shall hold no less than twenty six (26%) of the</p>	<p>A copy of the consortium agreement needs to be provided, duly certified by the authorized representative of the Lead Member. Please refer to the requirements under Annex QD –2B of the updated RFQ dated 22<sup>nd</sup> December, 2016.</p>

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
		<p>shares of the Project Company, if the Consortium of which the Lead Member is a constituent is awarded the Project”</p> <p>With Consortium having its members in different continent, do you need a document signed by All Parties, or would you be satisfied with a document only signed by the Lead Member? Otherwise, we could provide a coloured copy with all signatures? Please, confirm.</p>	
89.	1.1 Definitions (z) & 4.2.1 (A)PPP Experience	<p>As per RFQ documents 1. Definitions (z): <b>Eligible PPP Project</b> means an Eligible Project procured as a PPP design, construct, finance, operate and maintain project having been in operation (post –construction completion) for not less than one (1) year preceding the RFQ Submission Date and comprising not less than 175 Lane-km in which the Prospective Bidder or a Qualifying Shareholder or their Affiliate held a minimum five percent (5%) shares in the project company responsible for the Eligible PPP Project.</p> <p>Additionally, as per section 4.2.1 TECHNICAL QUALIFICATION REQUIREMENTS, required PPP EXPERIENCE is described as follows;</p> <p><i>(i). The prospective bidder shall demonstrate that <b><u>in the five (5) years preceding the RFQ Submission Date, it has experience of undertaking Eligible PPP Projects</u></b> such that the aggregate of Lane-km of such Eligible PPP Project is no less than 3,500 Lane-km. The Entity whose Eligible PPP Project is proposed as counting towards the aggregate Lane-km above stated must provide documents evidencing that it holds or has</i></p>	Please refer to the clarified definition of Eligible PPP Project under Section 1.1 (y) and Section 4.2.1 (A) in the updated RFQ dated 22 <sup>nd</sup> December, 2016.

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
		<p><i>held a share of not less than five percent(5%) in the project company responsible for the Eligible PPP Project.</i></p> <p>When these two requirements are considered together, there is a conflict in the criteria.</p> <p>First understanding is the reference Project should be completed within five years from RFQ submission date, and it should be completed at least one year ago so the road is under usage at least one year. But in this case the reference Project is limited with only 4 years period which is very very limited and we believe that there is only a few companies could provide these experience and this will harm the competition in the tender.</p> <p>The second understanding is that the eligible PPP Project should be under operation during the five years preceding the RFQ submission date, so construction completion date might be older that five years.</p> <p>Please clarify?</p>	
90.	Applicable exchange rate for currency conversion to USD	<p>It is stated that:  “For the purpose of assessment under this RFQ, for converting any currency other than USD, into US Dollars , the applicable exchange rate shall be the daily representative exchange rates published by the International Monetary Fund seven (7) days prior to the RFQ notification publishing date”</p> <p>But our local currency is not shown by the International Monetary Fund. Please confirm that for converting our local currency into US Dollars, exchange rates</p>	<p>Exchange rates published by the International Monetary Fund shall be used.</p> <p>Where the exchange rate is not published for a particular currency by the International Monetary Fund, the exchange rate published by the central bank of the country of which the currency is to be converted shall deemed to be the relevant exchange rate. The Prospective Bidder shall, together with its Qualification Documents, provide the rate and the source of the exchange rate for the currency used. The relevant</p>

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
		published by the Central Bank seven (7) days prior to the RFQ notification publishing date.	<p>exchange rates shall be the date of the RFQ publishing date (i.e. 9th November, 2016).</p> <p>Please refer to the clarified requirements under Section 3 q. of the updated RFQ dated 22nd December, 2016.</p>
91.	Section 3.d	We are planning to participate the RFQ as a single entity as we could satisfy the minimum qualification requirement ourselves. Is it possible or negotiable for us to invite other partners to share the equity investment of the Project Company when we set up the Project Company after our entity win the tender through RFP and we will keep the controlling share in the Project Company?	<p>Specific requirements in this regard may be spelt out at the Bid Stage under the RFP and the Project Agreement. Please also refer to the clarified Section 3 d. of the updated RFQ dated 22<sup>nd</sup> December, 2016.</p> <p>In addition, the attention of Prospective Bidders is drawn to Section 46 of the PPP Act. Pursuant to these provisions a Pre-Qualified Bidder may not change the form of its bidding entity during the bidding process or thereafter. Specifically a Pre-Qualified Bidder which is a Single Bidder may not become a Consortium.</p> <p>If a single bidder intends to eventually become a consortium, bidders are advised to bid for qualification as consortia, and to note that changes to consortium membership may be permissible in accordance with the requirements of section 46 of the PPP Act, 2013.</p> <p>For the avoidance of doubt, bidders are advised that their eligibility to continue participating in the tender process will be based purely on the basis on which they were qualified.</p>
92.	Annex QD-9A	All our proposed financing banks have their own standard format of Letter of Support or Letter of Intent	The Letter of Support template from Qualifying Banks and Financial Institutions is intended as an example of

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
		which is different in narrative with and have more information than the Annex QD-9A. And it will take long time for the banks to issue the Letter of Support using the Annex QD-9A and even possibly refused to issue as the Annex QD-9A is too simple. Do you accept the Letter of Support using the banks' own format as we attached herein from China EXIM Bank for one of our other projects?	what would be acceptable to the Contracting Authority. Other wording may be acceptable at KeNHA's sole discretion provided that the intention, meaning and spirit of the template provided in Annex QD-9A of the RFQ is substantially maintained and respected.
93.	Annex QD-4	For some PPP projects in BOT model we have done in China, there were no certificates of project completion issued by the project's owner due to different administration systems in China. Can we attach the quality inspection report as a proving document for the experience issued by the relevant government institution when the project was completed which is required before opening to traffic?	<p>Documentary evidence for completion and acceptance of construction of Eligible PPP Projects and Eligible Construction Projects are required to be submitted along with the Qualification Documents. Failure to comply with the requirements will render the Qualification Documents incomplete / non-compliant and are liable to be rejected.</p> <p>Please refer to the revised requirements under Sections 5 e., 5 f, 3 (k) and 9.2 of the updated RFQ dated 22nd December, 2016.</p>
94.	Definitions: Clause 1.1.(mm)	"Lane" is a carriageway lane of the Eligible Project excluding paved shoulders, emergency lane and lay byes. There is no mention about service road/ slip road in this definition. Can service road/ slip road be considered as part of Lane?	A Lane of the service/ slip road will be included as part of the Lane. Please refer to the clarified definition of the term "Lane" under Section 1.1 (II) of the updated RFQ dated 22 <sup>nd</sup> December, 2016.
95.	Definitions: Clause 1.1.(qq).ii	Qualifying Shareholder or Affiliate, whose Net Worth exceeds USD 50 MM shall be considered as counting towards Min. Financial Requirements". This limit to be reduced to USD 15 MM or eliminated	No Change. The requirements under the RFQ shall prevail.

Sr. No.	Section /Annex / Schedule /Appendix Number	Question or comment	Response
		completely	
96.	Definitions: Clause 1.1(zzz).(iv)	We understand that this clause is linked with only Eligible Projects which will be quoted by Prospective Bidder for qualification purposes and not any other matters.	Yes.
97.	Clause 4.2.2(iii) – Turnover	Under this clause it is stated that, construction turnover to be met by entity fulfilling construction experience is USD 850 MM. We request Authority to consider Total Turnover of prospective Bidder under this criteria, as the Project is being developed on PPP scheme, which not only involves construction but also project management, development, supervision, design and O&M related works as well.	No Change. The requirements under the RFQ shall prevail.
98.	Clause 5.(x).(1) O&M Experience	This clause is conflicting with the O&M criterion mentioned under Appendix 1. Under Appendix 1 it is stated that for Eligible O&M Project, eligible period is - min. 5 year contract, however under this clause it states that Entity has operated and maintained Eligible O&M project road for a period of not less than 5 years. This to be clarified. For us min. 5 year contract is preferable option as we can use recently completed projects as well.	Please refer to the clarifications under Section 5 g. and at Appendix 1 of the updated RFQ dated 22 <sup>nd</sup> December, 2016.
99.	Appendix 1 - O&M Experience	Eligible O&M project length to be reduced to 250 lane km instead of 350 lane km.	Eligible O&M Project threshold has been revised to 175 lane km. Please refer to the definition of Eligible O&M Project under Section 1.1 (y) of the updated RFQ dated 22 <sup>nd</sup> December, 2016.





## 2. RESPONSE TO WRITTEN QUERIES ON PROJECT INFORMATION MEMORANDUM / PRE-QUALIFICATION CONFERENCE

Sr. No.	Section No. of PIM	Question or Comment	Response
1.	1.5 Roads to be developed through PPP	The project pipeline is very ambitious, with not less than 4 national projects to be developed through 2017. Handling 4 projects of such magnitude at the same time will be a huge challenge for the market. In order to address this issue, we shall recommend to focus on one unique project, maybe on Nairobi-Nakuru for which the PQ has already been issued. Once this project reach commercial close, then PQ of others project shall be disclosed, and use the same structure as the one which came up during the competitive dialogue of Nairobi - Nakuru.	Your views are noted.
2.	3.1 Proposed PPP Scheme	We understand that the Government will make good any deficit in the event of a shortfall of the toll proceeds (should they not be high enough to cover the availability payment). Could you please give us more details regarding the level of commitment of the government in relation to the funding of the availability payment, as this is a key matter for the financing stakeholders.	KeNHA as an agency of Government will be a counterparty to the Project Agreement which will include provisions regarding KeNHA's payment obligations. Further details will be available at the Bid Stage.

Sr. No.	Section No. of PIM	Question or Comment	Response
3.	3.1 Potential PPP Scheme	In relation with the 2 precedent questions, we believe that only the toll proceeds of Nairobi-Nakuru-Mau Summit shall be considered to assess how the toll revenues can cover the availability payment funding. We believe this is a more realistic approach, as we understand that land acquisition may substantially delay the other projects.	Your views are noted.
4.	3.1 Toll Operator	<p>While the concept of introducing a third party toll operator makes sense from an interoperability point of view, we would be much more comfortable if the toll collection was included in the main PPP contract.</p> <p>Indeed, toll collection is a strategic activity, and having it managed by someone else may downgrade our perception of the risk profile of the project.</p>	Your views are noted.
5.	Section no. 2.7- Minimal Land Acquisition requirements	Please advise on the current status of 92 hectares of land which is to be acquired and what is the tentative time line for acquisition of the same. Also, advise on the status of environmental clearances.	Further details will be made available at Bid Stage.
6.	Nairobi Southern Bypass	This by pass is a 4 lane road and has interchanges which connect with link roads to nearby villages. Please clarify that O&M works is for only 28.6 km of Nairobi Southern Bypass and does not include the connecting link roads.	The Southern Bypass includes the 28.6 km and interchanges.

Sr. No.	Section No. of PIM	Question or Comment	Response
7.	Section no. 3.2-Key Risk Allocation: Necessary approvals	This risk is allocated to Project Company. Please advise, if RFP document will detail the requirements of necessary approvals to be obtained for the Project and any assistance required by the Project Company in obtaining such approvals, shall be provided by Authority?	Further details will be made available at Bid Stage.
8.	Section no. 3.2-Key Risk Allocation: Traffic Volume - Cost Implications	This risk is allocated to Project Company. We understand, from Proposed PPP Scheme that Project Company will receive performance related Service Payments and tolling will be done by third party contractor appointed by Authority. Then how can Traffic Volume - Cost implication risk be allocated to Project Company?	In broad terms by this we mean that the Project Company would bear the risk of increased costs arising from the number of axles on the highway exceeding that anticipated by the bidder, however, full details of risk allocation on this issue will be provided at Bid Stage.
9.	Force Majure	In the presentations provided during the last PQQ presentation in Nairobi it is highlighted that force majeure could be a risk entitled to the bidder, we would kindly appreciate to specify in what situations this would be the case	Further details will be made available at Bid Stage. Our intention is to put in place market standard Force Majeure provisions.
10.	PRE-QUALIFICATION CONFERENCE	After chatting with members of KenHa and their advisors we were advised to put our observation/comments regarding the information presented in the Pre Qualification Conference that took place last 15-16th November. Our observation/comments/suggestions would be	

Sr. No.	Section No. of PIM	Question or Comment	Response
		<p>as follows:</p> <ul style="list-style-type: none"> <li>- From our experience we believe that the timeline presented is not realistic and the projects will slide in time.</li> <li>- We highly recommend to postpone the RFQ submission date a minimum of six weeks in order to give enough time to bidder to consolidate consortiums and gather all the information requested to be submitted</li> <li>- It has been informed that the bidders can bid for the three different packages or for the whole project. In order to get a best value for money bid and in order to avoid interface risks that could lead into delays and claims we would recommend to bid only for the whole project instead on a package by package basis.</li> <li>- We highly recommend to ring fence the fund created for the revenue of the tolls and to be specific for these projects only otherwise we will have serious issues with the funding.</li> <li>- We noticed big concerns on the implementation of the Environmental and</li> </ul>	<p>Your views are noted.</p> <p>RFQ Submission Date is extended to 7<sup>th</sup> February 2017.</p> <p>This question relates to Nairobi-Mombasa project. We will address questions related to that project once the procurement for that project is launched.</p> <p>Your views are noted.</p> <p>Your views are noted. Further details will be made available at Bid Stage.</p>

Sr. No.	Section No. of PIM	Question or Comment	Response
		<p>Social Impact Assessment to be done by the bidders. KeNHA mentioned at the Forum that the bidders would have to implement this assessment and that the implications raised from this report would be assumed by the GoK. We believe this has to be very clear and it should be reflected in the tender documents. We also believe that this assessment should be delivered by the one who can manage this risk better, being KenHa (via an independent advisor), especially when we are talking of a country with wild life all around.</p> <p>- A third party private toll operator will be contracted for the purpose of establishing the tolling systems and subsequently collecting the tolls. It has been advised that an interface agreement among the highway Concessionaire and the toll operator will be in place. We suggest to have a draft of this agreement during the Competitive Dialogue.</p> <p>- In regards to the availability payment, it has been said that the GoK will take revenue risk and will pay the Concessionaire in USD. Also it has been mentioned that the bidder could offer a payment mechanism based in local and USD currency (or other). We would suggest to have a very detail Payment</p>	<p>Further details will be made available at Bid Stage.</p> <p>Further details will be made available at Bid Stage.</p>

Sr. No.	Section No. of PIM	Question or Comment	Response
		<p>Mechanism document where all the risks assumed by the GoK in regards to local inflation, exchange rate risk, local currency interest rate risk are well explained.</p> <ul style="list-style-type: none"> <li>- During the conference it was mentioned that a mechanism to deal with overloaded trucks was going to be implemented for the GoK to take control of this matter. We would advise for the document containing the mechanism to be ready at a early stage during the bidding process.</li> <li>- Other concerns are related to resolving dispute resolutions or claims. We suggest to incorporate the possibility of an international arbitration court.</li> <li>- We suggest for the GoK to provide the lenders/bidder with a Sovereign Guarantee in order to have a better value for money project as this will impact in the financing's costs of the project.</li> </ul>	<p>Your views are noted. Further details will be made available at Bid Stage.</p> <p>Your views are noted. Further details will be made available at Bid Stage.</p> <p>Your views are noted.</p>