



**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**

**REQUEST FOR QUALIFICATION (RFQ)**

**22<sup>nd</sup> DECEMBER, NOVEMBER, 2016**

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## DISCLAIMER

The information provided to Prospective Bidder(s), in this RFQ and any other information, whether verbal or written, provided by KeNHA or any of its employees or advisors, or on behalf of KeNHA, is provided to Prospective Bidders on the terms and conditions set out in this RFQ and such other terms and conditions as may be set out from time to time. Capitalised terms used in this Disclaimer have the meaning assigned to such term in this RFQ.

The RFQ is not an agreement and is neither an offer nor an invitation by KeNHA to the Prospective Bidders or any other person. KeNHA, its employees and advisors are not bound by any of the contents of the RFQ. The purpose of the RFQ is to provide interested parties with information that may be useful to them in preparing their Qualification Documents pursuant to the RFQ. The RFQ includes statements that reflect various assumptions and assessments arrived at by KeNHA in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Prospective Bidder may require. The RFQ may not be appropriate for all persons, and it is not possible for KeNHA, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses the RFQ. The assumptions, assessments, statements and information contained in the RFQ and any other associated documents may not be complete, adequate, accurate or correct. Each Prospective Bidder should, therefore, conduct its own investigations and analysis and should check the completeness, adequacy, accuracy, correctness, and reliability of the assumptions, assessments, statements and information contained in the RFQ and obtain independent advice from appropriate sources.

Information provided in the RFQ is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. KeNHA accepts no responsibility for the accuracy or otherwise of any opinion or interpretation of law expressed herein.

KeNHA, its employees and advisors make no undertaking, assurance, representation or warranty and shall have no liability to any person, including any Prospective Bidder, under any law, statute, rules or regulations, tort, principles of restitution or unjust enrichment or otherwise, for any loss, damages, cost or expense that may arise from or be incurred or suffered on account of anything contained in the RFQ or other information provided to Prospective Bidders, including the completeness, adequacy, accuracy, correctness, and reliability of the RFQ and any assessment, assumption, statement or information contained therein or deemed to form part of the RFQ or arising in any way from participation in the Bidding Process.

KeNHA may, in its absolute discretion, but without being under any obligation to do so, amend, update, or supplement the information, assessments or assumptions contained in the RFQ. However, KeNHA, its employees and advisors shall not be liable to any Prospective Bidder (including to the Pre-Qualified Bidders) in respect of any failure to (i) disclose or make available any information, documents or data; (ii) amend, update, or supplement the RFQ; or (iii) provide any information regarding any inaccuracy, error, omission, defect or inadequacy in the RFQ.

The issuance of the RFQ does not imply that KeNHA is bound to shortlist, select or to appoint one or more Pre-Qualified Bidders for the Project, and KeNHA reserves the right to reject all or any of the Prospective Bidders or Qualification Documents.

Each Prospective Bidder shall bear all its costs associated with or relating to the preparation and submission of its Qualification Documents including but not limited to preparation, copying, postage, delivery fees or any other costs incurred in connection with or relating to its Qualification Documents. All such costs and expenses will remain with the Prospective Bidder and KeNHA shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Prospective Bidder in preparation or submission of the Qualification Documents, regardless of the conduct or outcome of the Bidding Process.

Each Prospective Bidder shall comply with the Qualification Documents' parameters, terms and conditions provided therein. In no case shall any Prospective Bidder be allowed to modify the Qualification Documents' parameters even if, in its opinion, it offers better terms to KeNHA than that provided herein.

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## Government of Kenya

### KENYA NATIONAL HIGHWAYS AUTHORITY

#### INTRODUCTION

The Kenya National Highways Authority (“KeNHA”) invites Prospective Bidders to apply for Qualification and submit Bids for the design, finance, construction, operation and maintenance of the Project Highway pursuant to a two-stage open competitive bidding process in accordance with the PPP Act and the PPP Regulations, the applicable provisions of which are incorporated herein by reference. The Project consists of the widening, improvement, operation and maintenance of various sections of highway between Nairobi and Mau Summit and 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 carriageway 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.

This Request for Qualification (RFQ) describes the process, procedures and requirements for the preparation and submission of the Qualification Documents by Prospective Bidders and the process to be followed by KeNHA in its evaluation of the Qualification Documents and the appointment of Pre-Qualified Bidders.

The documents that describe the Project and the processes to be followed for Pre-Qualification are:

- a) This RFQ document together with all its Annexes, Schedules and Appendices;
- b) The Project Information Memorandum (PIM); and
- c) Any Addendum ~~or~~ Clarification issued by KeNHA from the date of the first publication of the RFQ until the RFQ Submission Date.

#### 1. DEFINITIONS

1.1 The following capitalised terms and expressions in this RFQ shall, unless the context otherwise requires, have the meaning assigned hereunder:

- (a) **Addendum ~~or~~ Clarification** means written instructions or guidance issued by KeNHA including (but not limited to) further instructions, scheduling changes, information updates, clarifications and the response to any queries made by the Prospective Bidders in relation to this RFQ and made available online by KeNHA at [www.kenha.co.ke](http://www.kenha.co.ke), [www.treasury.go.ke](http://www.treasury.go.ke) and [www.devbusiness.com](http://www.devbusiness.com).
- (b) **Affiliate** means, in relation to a Prospective Bidder or a Consortium Member, any person having Control of that Prospective Bidder or Consortium Member, or any person over which such Prospective Bidder or Consortium Member has Control or is under the common Control with

such person. For the avoidance of doubt, a Subsidiary of a Prospective Bidder or a Consortium Member is also an Affiliate.

- (c) **Audited Financial Statements** means the financial statements of an Entity, prepared in accordance with International Financial Reporting Standards (IFRS), duly attested to provide a true and fair view in accordance with IFRS by an auditor who is certified to do so. For an Entity which does not have the financial statements prepared in accordance with the IFRS, Audited Financial Statements shall mean the financial statements prepared on a non-IFRS basis and certified by an auditor certified to do so. ~~For an Entity whose Audited Financial Statements is in a currency other than USD, the Audited Financial Statements shall be accompanied with a certificate of the Company's statutory auditor, or in case of an Entity other than a Company, by an independent auditor/, specifying the financial figures in USD.~~
- (d) **Bid** means the documents in their entirety submitted by a Pre-Qualified Bidder to KeNHA in response to the RFP.
- (e) **Bid Amount** means the amount quoted by the Pre-Qualified Bidder as part of the Financial Proposal which will be evaluated in accordance with the financial Evaluation Criteria set out in the RFP.
- (f) **Bidding Documents** means:
  - (i) the RFP together with all of its annexes, schedules, appendices and attachments, including all modifications, amendments, clarifications, replies to any queries and information issued by KeNHA;
  - (ii) the draft Project Agreement together with all its Schedules, annexes, appendices and attachments; and
  - (iii) such other documents as may be provided by KeNHA in relation to the RFP.
- (g) **Bidding Process** means the two-stage procurement process for the selection of a Successful Bidder commencing on the date this RFQ is published and expiring on the date of Financial Close or such other date as may be determined by KeNHA.
- (h) **Bid Security** means the security by way of an irrevocable bank guarantee to be provided by the Pre-Qualified Bidder as a part of its Bid, in substantially the form set-out in the RFP.
- (i) **Bid Stage** means the period commencing on the date that the RFP is issued to Pre-Qualified Bidders and expiring on the date of Financial Close or such other date as may be determined by KeNHA.
- (j) **Bid Stage Schedule** means the indicative schedule for the Bid Stage as set out in Table 2 in Section 2 of this RFQ.
- (k) **Bid Submission Date** means the last date and time by which Pre-Qualified Bidders must submit their Bids to KeNHA in accordance with the terms of the RFP.
- (l) **Business Day** means any day of the week other than Saturdays, Sundays or public holidays in Kenya.

- (m) **Conflict of Interest** is defined in Section 3(b) of this RFQ.
- (n) **Consortium** means an association of two or more Entities for the purpose of Pre-Qualifying to Bid for the Project.
- (o) **Consortium Member** means an Entity that is a member of a Consortium.
- (p) **Construction Contractor** means an Entity, proposed by the Prospective Bidder in the Qualification Documents to undertake the construction works under the Project Agreement.
- (q) **Construction Experience** means the experience described under Section 4.2.1 (B) of this RFQ.
- (r) **Contractor** means a Construction Contractor or a O&M Contractor
- (s) **Control** means in relation to a person:
- (i) holding or controlling, directly or indirectly, a majority of voting rights exercisable at shareholder meetings (or the equivalent) of that person; or
  - (ii) having, directly or indirectly, the ability to appoint or remove a majority of the directors or partners; or
  - (iii) having, directly or indirectly, the ability to direct or procure the direction of the management and policies of that person, whether through ownership of shares, by contract or otherwise, or
  - (iv) having the ability, directly or indirectly, whether alone or together with another, to ensure that the affairs of that person are conducted in accordance with his or its instructions or wishes;

And the terms **controlled, controlling** and **majority shareholding** shall be construed accordingly.

- (t) **Corrupt, Fraudulent or Dishonest, Collusive, Coercive, Undesirable, and Restrictive Practice** are defined in Section 3 (f) of this RFQ.
- (u) **Day** means a calendar day, unless otherwise specified.

~~(v) **Deed of Guarantee** means, in relation to an Affiliate whose experience or credentials have been used by a Prospective Bidder or a Qualifying Shareholder to meet the Technical Qualification Requirements or the Financial Qualification Requirements to Pre-Qualify, a guarantee substantially in the form as provided at **Annex QD-8**.~~

~~(w)~~(v) **Eligible Construction Project** means an Eligible Project carried out by the Prospective Bidder or a Qualifying Shareholder or their Affiliate or a Construction Contractor, in each case as the main or principal contractor, in which construction has been completed in ten (10) years preceding the RFQ Submission Date, consisting of not less than 80 Lane-km.

~~(x)~~(w) **Eligible O&M Project** means an Eligible Project carried out by the Prospective Bidder or a Qualifying Shareholder or their Affiliate or an O&M Contractor under a performance based O&M contract, in each case as the main or principal contractor, with an operation and maintenance

period of not less than five (5) years (post-construction completion) ongoing or completed in the ten (10) years preceding the RFQ Submission Date, consisting of not less than ~~175350~~ Lane-km.

~~(y)~~(x) **Eligible Project** means a Highway Sector Project proposed by a Prospective Bidder to count towards the Minimum Qualification Requirements.

~~(z)~~(y) **Eligible PPP Project** 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 at any time during the five (5) year period preceding the RFQ Submission Date.

~~(aa)~~(z) **Entity** for the purpose of this RFQ means a person which is a company or, partnership or corporation.

~~(bb)~~(aa) **Evaluation Criteria** means those technical and financial criteria set-out in the RFP

~~(cc)~~(bb) **Financial Close** means the date on which all the conditions precedent for the initial drawdown of funds for the Project under the financing agreements between the Project Company and lenders, have been fulfilled or waived.

~~(dd)~~(cc) **Financial Qualification Requirements** means all the requirements as set out in Section 4.2.2.

~~(ee)~~(dd) **Financial Proposal** means, inter-alia, the Financial Model, ~~Financing~~**Financial** Plan and the Bid Amount submitted by the Pre-Qualified Bidder as part of its Bid.

~~(ff)~~(ee) **Frivolous or Vexatious Petition** means a petition which is determined as frivolous or vexatious by the Petition Committee established under the PPP Act, or by the High Court pursuant to any judicial review application that a Prospective Bidder or a Pre-Qualified Bidder may institute against any decision of KeNHA regarding Pre-Qualification, or selection of the Preferred Bidder or Successful Bidder.

~~(gg)~~(ff) **Grade Separated Structure** means a structure that enables vehicular traffic movement at different levels over the same surface of land, and includes vehicular underpasses or overpasses and interchanges.

~~(hh)~~(gg) **Highway Sector Project** means highways, expressways and motorways with a minimum of two Lanes.

~~(ii)~~(hh) **Infrastructure Projects** means construction, development, rehabilitation, operation or management of an asset or facility in the following sectors:—like roads (including highways, expressways, motorways, bridges and tunnels), power, telecom, ports, airports, railways, metro rail, industrial parks/ estates, logistic parks, oil and gas, pipelines, irrigation, water supply, sewerage, and for the purpose of this



RFQ shall exclude any asset or facility relating to real estate development.

(jj)(ii) **KeNHA** means the Kenya National Highways Authority and shall include the Pre-Qualification Committee or any other committee or group or team or board that KeNHA may set up in relation to the Bidding Process or for any purpose thereof pursuant to provisions of the PPP Act and the PPP Regulations.

(kk)(jj) **KURA** means the Kenya Urban Roads Authority

(ll)(kk) **Latest Audited Financial Statements** means Audited Financial Statements in respect of the year ended not earlier than 15 months prior to the RFQ Submission Date

(mm)(ll) **Lane** means ~~theis~~ a carriageway lane of the Eligible Project including the lane of the service road and slip road but excluding the paved shoulders, emergency lane and lay byes.

(nn)(mm) **Lead Member** means, with reference to a Prospective Bidder which is formed of a Consortium, a Consortium Member who undertakes to hold not less than twenty six percent (26%) of the shares in the Project Company and is named as the Lead Member in the form at **Annex QD-1C**.

(oo)(nn) **Letter of Award** means the letter issued by KeNHA to the Successful Bidder listing any further requirements to be fulfilled prior to signing of the Project Agreement.

(oo) Lock-In Period means the period specified under the Project Agreement in accordance with the requirements of Section 59 of the PPP Act during which, inter-alia, the Lead Member and the Qualifying Shareholders shall hold and maintain a minimum level of equity in the Project Company.

(pp) **Minimum Qualification Requirements** means the Technical Qualification Requirements and Financial Qualification Requirements set out in Section 4.

(qq) **Net Worth** means:

(i) with reference to a Prospective Bidder ~~whichwho~~ is a single Entity, the amount by which the total assets of such an Entity and its Affiliate exceed its total liabilities based on its Latest Audited Financial Statements;

(ii) with reference to a Prospective Bidder ~~whichwho~~ is formed of a Consortium, the amount by which the aggregate assets of the Qualifying Shareholders and their Affiliates exceed their aggregate liabilities based on their Latest Audited Financial Statements; Provided however, only a Qualifying Shareholder or Affiliate whose Net Worth exceeds USD 50 million shall be considered as counting towards the Minimum Financial Requirements;Requirements.

(iii) with reference to a Prospective Bidder, Qualifying Shareholder or an Affiliate which is a closed Investment Fund, the available funds

which have yet to be committed to projects shall be provided as evidence of Net Worth together with a declaration by its authorised representative that the anticipated investment in the Project by such Investment Fund falls within the Investment Fund's country and sectoral limits, taking into account investments held as on the RFQ Submission Date. Certified and notarised copy of its charter documents should be provided as a true and correct copy by the authorized representative.

- (rr) **Operation & Maintenance Contractor** or **O&M Contractor** means an Entity proposed by the Prospective Bidder in the Qualification Documents to undertake the operation and maintenance of the Project.
- (ss) **Operation and Maintenance (O&M) Experience** means the experience described under Section 4.2.1 (C) of this RFQ.
- (tt) **Participation Fee** means a non-refundable fee ~~in, in the form of a banker's cheque for~~ an amount of 100,000 Kenyan Shillings, to be paid to KeNHA by a Prospective Bidder in accordance with the requirements as set out in Section 3 (j) (ii).
- (uu) **Post-Award Requirements** means any further requirements set out in the Letter of Award ~~that are~~ to be fulfilled by the Successful Bidder.
- (vv) **PPP Act** means the Public Private Partnerships Act, 2013 (Act No. 15 of 2013), as amended or substituted from time to time.
- (ww) **PPP Experience** means the experience described under Section 4.2.1 (A) of this RFQ.
- (xx) **PPP Regulations** means the Public Private Partnerships Regulations, 2014, as amended from time to time.
- (yy) **Preferred Bidder** means the Pre-Qualified Bidder whose Bid has been evaluated by KeNHA to be the ~~bestmost economically advantageous to KeNHA~~ in accordance with the Evaluation Criteria and with whom KeNHA may hold further negotiations in accordance with the PPP Act and the terms of the RFP.
- (zz) **Pre-Bid Conference** means the meeting to be convened by KeNHA pursuant to issuance of ~~the~~ RFP, the date, time and venue of which will be advised in writing to the Pre-Qualified Bidders.
- (aaa) **Pre-Qualified Bidder** means a Prospective Bidder who has ~~Pre-Qualified~~ qualified to participate in the ~~Bidding Process~~ bidding process for the ~~Project~~ project herein, following its submission of the Qualification Documents in accordance the required form to KeNHA including providing of any other information required by KeNHA to enable it to fully evaluate the Prospective Bidder's Qualification Documents, and who has met or surpassed the Minimum Qualification Requirements and has complied with the terms ~~all other requirements of this~~ the RFQ.
- (bbb) **Pre-Qualification Committee** means the committee established pursuant to Section 39 of the PPP Act.

- (ccc) **Pre-Qualification Conference** means the meeting to be convened by KeNHA pursuant to issuance of this RFQ, the date, time and venue of which is specified in Section 3 (n).
- (ddd) **Pre-Qualification Stage** means the first stage of the Bidding Process commencing on the date that the RFQ is issued and expiring on the notification of results of evaluation of the Qualification Documents in accordance with the PPP Act and PPP Regulations; and the terms **Pre-Qualification, Pre-Qualify** and **Qualify** shall be construed accordingly
- (eee) **Pre-Qualification Stage Schedule** means the schedule for the Pre-Qualification Stage as set out at Table 1 in Section 2 (b) of this RFQ unless amended in writing and contained in an Addendum ~~or~~ Clarification issued by KeNHA.
- (fff) **Prohibited Person** means, in relation to (i) a Prospective Bidder or any of its Consortium Members, or (ii) a proposed Contractor, whose experience is proposed to meet the Minimum Qualification Requirements or (iii) an Affiliate, which:
- (i) has been named on a list of sanctioned persons promulgated by the United Nations Security Council or its committees pursuant to resolutions under Chapter VII of the Charter of the United Nations;
  - (ii) has been named on the list of ineligible firms of the international financial institutions including, inter alia, the World Bank, African Development Bank Group, European Investment Bank, European Bank for Reconstruction and Development, Asian Development Bank and Inter-American Development Bank; or
  - (iii) is listed on a list, published by the Government of Kenya or the Central Bank of Kenya, of persons prohibited by the Government of Kenya from involvement in transactions with them or is an agency thereof; or
  - (iv) is a person who has had their service or project contracts terminated by the Government of Kenya for poor or unsatisfactory performance and or inability to deliver the work they were contracted to do; or
  - (v) is a person from a country with which the Republic of Kenya is at war; whom Government of Kenya is at war with, or otherwise listed howsoever as a country with whom Kenya does not currently transact business with; or
  - (vi) is or has been involved in any Corrupt, Fraudulent, Collusive, Coercive, Undesirable, or Restrictive Practice or having a Conflict of Interest insofar as the current Project is concerned.
- (ggg) **Project** means the Design, Construction, Financing, Operation and Maintenance of the Nairobi-Nakuru-Mau Summit Highway as is described in more detail in the PIM.

- (hhh) **Project Agreement** means the contract to be entered into by KeNHA and the Project Company.
- (iii) **Project Company** means a special purpose vehicle (SPV) established under the Companies Act, 2015 by the Successful Bidder, in accordance with the provisions of the PPP Act, for the sole purpose of entering into the Project Agreement with KeNHA and implementing the Project in terms thereof.
- (jjj) **Project Highway** means Nairobi-Nakuru-Mau Summit Highway as is described in more detail in the PIM.
- (kkk) **Project Manager** means the Project Manager identified at Section 3(j).
- (lll) **Project Information Memorandum ("PIM")** means the document describing the Project available online at [www.kenha.co.ke](http://www.kenha.co.ke), [www.treasury.go.ke](http://www.treasury.go.ke) and [www.devbusiness.com](http://www.devbusiness.com).
- (mmm) **Project Team** means representatives of KeNHA together with the Transaction Advisor and any other person as may be provided under the PPP Act or PPP Regulations.
- (nnn) **Prospective Bidder** means any Entity or Consortium that submits a response to this RFQ.
- (ooo) **Public Entity** has the meaning ascribed to it in the Public Procurement and Asset Disposal Act, 2015, as amended from time to time.
- (ppp) **Qualification Documents** means the documents listed at Section 5 of this RFQ.
- (qqq) **Qualifying Bank and Financial Institution** means banks and financial institutions that have loaned debt finance to private sector parties for at least three (3) Infrastructure Projects in emerging market economies with minimum debt finance of USD 25 million each at any time during the 10 years preceding the RFQ Submission Date with the repayment period for such debt being five years or more. An emerging market economy means the countries falling under (i) Upper middle income, (ii) Lower middle income and (iii) Low Income; as categorised under the World Bank Country and Lending Groups. (Ref:<https://datahelpdesk.worldbank.org/knowledgebase/topics/19280-country-classification>). For purposes of calculating the minimum debt finance where the currency of debt financed is other than USD, refer Section 3 (q) for the applicable exchange rate.
- (rrr) **Qualifying Shareholder** means, with reference to a Prospective Bidder which is formed of a Consortium, a Consortium Member who undertakes to hold not less than ten percent (10%) of the shares in the Project Company and is named as a Qualifying Shareholder in the form at **Annex QD-1C**
- (sss) **Request for Proposal or RFP** means the Request for Proposal document, including all its annexures, schedules and appendices that may be issued to the Prequalified Bidders at the Bid Stage and shall deem to include all amendments, revisions or alterations thereto.

(ttt) **RFQ** means this document including all Annexes, Schedules, PIM, Appendices and any Addendum ~~/or~~ Clarification.

(uuu) **RFQ Submission Date** means the date provided in Section 6.3.1, as may be amended by KeNHA in accordance with this RFQ.

(vvv) **Subsidiary** means in relation to an Entity (the “Holding Entity”), any other Entity (the “Subsidiary Entity”) in which such Holding Entity holds, whether directly or indirectly, more than 50% of shares or voting rights of the Subsidiary Entity.

~~(www)(xxx)~~ **Successful Bidder** means the Preferred Bidder ~~who is selected by KeNHA to implement the Project and~~ to whom a Letter of Award is issued in accordance with the terms of the PPP Act and the PPP Regulations.

~~(www)(xxx)~~ **Technical Proposal** means all the information and documents forming part of ~~a the Bid (excluding the Financial Proposal), of the Pre-Qualified Bidder under the RFP.~~

~~(xxx)(yyy)~~ **Technical Qualification Requirements** means all the requirements as set out in Section 4.2.1 of this RFQ.

~~(yyy)(zzz)~~ **Transaction Advisor** means Intercontinental Consultants and Technocrats Private ~~Limited. Limited, appointed by KeNHA to advise KeNHA and the PPP Unit on matters related to the Bidding Process and the Project.~~

~~(zzz)(aaaa)~~ **Unsatisfactory Performance** means in relation to any Eligible Project, the failure or expulsion of, or the breach of obligations by a Prospective Bidder or by any of its Consortium Members, or by a proposed Affiliate, or by a proposed Construction Contractor or the O&M Contractor, whose experience is relied upon by the Prospective Bidder to meet the Minimum Qualification Requirements. Notwithstanding the generality of the above, Unsatisfactory Performance shall include:

- (i) the failure of such Prospective Bidder, any of its Consortium Members, or a proposed Affiliate, Construction Contractor or O&M Contractor to satisfactorily perform any of its material obligations in such Eligible Project, due to the imposition of a judicial pronouncement or arbitration award;
- (ii) the expulsion of the Prospective Bidder, any of its Consortium Members, or a proposed Affiliate, Construction Contractor or O&M Contractor from such Eligible Project, due to any reason, including a pending or final judicial, administrative or arbitral ruling, decision or award;
- (iii) the breach of the obligations by the Prospective Bidder, any of its Consortium Members, an Affiliate, or Contractor, resulting in the termination or suspension of any such Eligible Project.

- (iv) a record of significant performance-linked litigation, penalties or other sanctions-based impositions over the ten (10) years immediately preceding the RFQ Submission Date.

(~~aaaa~~)(~~bbbb~~) **USD** means the legal currency of United States of America.

1.2 The words and expressions beginning with capital letters and not defined herein, but defined in the PPP Act or PPP Regulations, shall unless repugnant to the context herein bear the meaning ascribed thereto under the PPP Act or the PPP Regulations.

### 1.3 General Rules of Interpretation

(a) In case of ambiguities or discrepancies within this RFQ, the following rules of interpretation shall apply:

- (1) between two or more Sections of this RFQ, the provisions of a specific Section relevant to the issue under consideration shall prevail over those in other Sections;
- (2) between the Sections of this RFQ and the Annexes, the Sections shall prevail;
- (3) between any two Annexes, the Annex relevant to the issue shall prevail; and
- (4) between any value written in numerals and that in words, the latter shall prevail.

The rule of construction, if any, that a document should be interpreted against the party responsible for the drafting and preparation thereof, shall not apply.

(b) Unless the context otherwise requires:

- (1) **“Include”, “includes”, and “including”** are deemed to be followed by **“without limitation”** or **“but not limited to”**, whether or not actually followed by such words or words of like import.
- (2) References to any Annex or Schedule or Appendix shall be deemed to include references to such document as amended, supplemented, novated, varied or replaced from time to time.
- (3) Reference to a person includes Entity and also such person’s successors and permitted assigns.
- (4) References to any gender include all genders, and references to the singular include the plural, and vice versa.
- (5) References to Sections or Annex or Schedule or Appendix which do not specify what document they are referenced to are Sections or Annexes to this RFQ.
- (6) Headings are for convenience only and shall not affect the interpretation or construction of any provision.

(7) References to a “day” shall be to a calendar day, to a “month” shall be to a calendar month, and to a “year” shall be to a period of time commencing on a particular date and ending on the day before the anniversary of such date.

(c) The interpretation and construction of this RFQ shall rest solely with KeNHA. KeNHA shall not assume any responsibility for any erroneous interpretations or conclusions by any Prospective Bidder or person out of data furnished or indicated in the RFQ.

## 2.—THE PROPOSED-BIDDING PROCESS

- a. The open competitive public bidding for the Project shall be conducted in accordance with the rules and procedures for public bidding set under the PPP Act and the PPP Regulations, the applicable provisions of which are incorporated herein by reference.
- b. An indicative timeline for the Bidding Process is shown in the following tables. The following timeline may be subject to change by KeNHA.

**Table 1: Pre-Qualification Stage Schedule**

Event/ Activity Description	Responsible Party	Target date/time period
<b>PRE-QUALIFICATION STAGE</b>		
Publication of Pre-Qualification notice	KeNHA	7 <sup>th</sup> November 2016
Publication of the RFQ	KeNHA	7 <sup>th</sup> November 2016
Pre-Qualification Conference	KeNHA	16 <sup>th</sup> November 2016
Last date for submission of queries on the RFQ	Prospective Bidders	<del>Fourteen (14) Business Days before the RFQ Submission Date</del> <del>5<sup>th</sup> December 2016</del>
Last date for replying to the queries of the Prospective Bidders	KeNHA	<del>Seven (7) days before the RFQ Submission Date.</del> <del>16<sup>th</sup> December 2016</del>
RFQ Submission Date	Prospective Bidders	<del>07<sup>th</sup> February</del> <del>09<sup>th</sup> January 2017</del>
Opening of all Qualification Documents received	KeNHA	<del>07<sup>th</sup> February</del> <del>09<sup>th</sup> January 2017</del>
Notification of results of evaluation of the Qualification Documents	KeNHA	<del>24<sup>th</sup> February</del> <del>20<sup>th</sup> January 2017</del>

**Table 2: Indicative Bid Stage Schedule**

Event/ Activity Description	Responsible Party	Target date/time period
<b>BID STAGE</b>		
Issuance of Request for Proposal Document (RFP) together with the draft Project Agreement including Schedules thereto	KeNHA	<del>03<sup>rd</sup> February</del> <del>06<sup>th</sup> March</del> 2017
Pre-Bid Conference	KeNHA	<del>21<sup>st</sup> February</del> <del>20<sup>th</sup> March</del> 2017
Last date for submission of queries on the Bidding Documents	Pre-Qualified Bidders	<del>30<sup>th</sup> February</del> <del>27<sup>th</sup> March</del> 2017
Last date for replying to the queries of the Pre-Qualified Bidders	KeNHA	10 <sup>th</sup> 2017 <del>April</del> <del>March</del>
Site visits	KeNHA / Pre-Qualified Bidders	<del>21<sup>st</sup> February</del> <del>20<sup>th</sup> March</del> to <del>20<sup>th</sup> May</del> <del>April</del> 2017
Pre-Qualified Bidders due diligence	Pre-Qualified Bidders	<del>21<sup>st</sup> February</del> <del>20<sup>th</sup> March</del> to Bid Submission Date <del>20<sup>th</sup> June</del> <del>30<sup>th</sup> February</del> 2017
Competitive dialogue process	KeNHA / Pre-Qualified Bidders	20 <sup>th</sup> 19 <sup>th</sup> <del>April</del> <del>March</del> to <del>19<sup>th</sup> June</del> <del>May</del> 2017
Issuance of final Request for Proposal Document (RFP) together with the draft Project Agreement and its Schedules	KeNHA	<del>30<sup>th</sup> June</del> <del>31<sup>st</sup> May</del> 2017
Bid Submission Date	Pre-Qualified Bidders	<del>31<sup>st</sup> July</del> <del>30<sup>th</sup> June</del> 2017
Opening of Technical Proposals	KeNHA	<del>31<sup>st</sup> July</del> <del>30<sup>th</sup> June</del> 2017
Notification of the results of evaluation of the Technical Proposals	KeNHA	<del>14<sup>th</sup> July</del> <del>2017</del> <del>40<sup>th</sup> August</del> 2017
Opening of Financial Proposals	KeNHA	<del>31<sup>st</sup> August</del> <del>25<sup>th</sup> July</del> 2017
Completion of Evaluation of Financial Proposals and Ranking of Bidders	KeNHA	<del>11<sup>th</sup> August</del> <del>2017</del> <del>4<sup>th</sup> September</del>
PPP Committee Approval of Tender Evaluation Report	PPP Unit/Committee	<del>25<sup>th</sup> August</del> <del>2017</del> <del>4<sup>th</sup> September</del>



Event/ Activity Description	Responsible Party	Target date/time period
Finalisation of negotiations between KeNHA and the Preferred Bidder	KeNHA/Preferred Bidder	<del>25<sup>th</sup> – 21<sup>st</sup> August to 15<sup>th</sup> September</del> <u>16<sup>th</sup> October</u> 2017
PPP Committee approval of Project and Financial Risk Assessment (or Negotiation) Report	PPP Unit & PPP Committee	<del>31<sup>st</sup> September</del> <u>29<sup>th</sup> October</u> 2017
Approval of Project	Cabinet	<del>30<sup>th</sup> November</del> <u>27<sup>th</sup> October</u> 2017
Issuance of Letter of Award to the Successful Bidder	KeNHA	<del>4<sup>th</sup> December</del> <u>30<sup>th</sup> October</u> 2017
Compliance by the Successful Bidder of the Post-Award Requirements	Successful Bidder	<del>5<sup>th</sup> January 2018</del> <u>30<sup>th</sup> November</u> 2017
Issuance of notice of compliance with all Post-Award Requirements	KeNHA	<del>10<sup>th</sup> January 2018</del> <u>4<sup>th</sup> December</u> 2017
Signing of Project Agreement	KeNHA and Successful Bidder	<del>26<sup>th</sup> January 2018</del> <u>20<sup>th</sup> – December</u> 2017
Financial Close/ Project Agreement effectiveness	KeNHA and Successful Bidder	<u>Q2, Q1</u> , 2018

c. All references to dates, days and time shall refer to Kenya Standard Time (KST).

d. **Modification of Pre-Qualification Stage & Bid Stage Schedule**

KeNHA may, at its sole discretion, issue Addendum ~~or~~ Clarification at any time to amend, modify, and substitute the RFQ, Bid Stage Schedule and/ or the Pre-Qualification Stage process and requirements, the Bid-Stage process and requirements, the Pre-Qualification Stage Schedule and/or the Bid-Stage Schedule set out above, including the RFQ Submission Date. Prospective Bidders are encouraged and advised to refer / visit the websites (www.kenha.co.ke, www.treasury.go.ke and www.devbusiness.com) regularly for any Addendum / Clarification posted by KeNHA and failure on part of the Prospective Bidder or any Consortium Member/Affiliates and Contractors to keep themselves updated shall not incur any liability or responsibility of KeNHA towards Prospective Bidder or any Consortium Member/Affiliates and Contractor..

e. **Bid Stage**

Following the selection and announcement of Pre-Qualified Bidders, KeNHA (should KeNHA elect to continue the Bidding Process) will conduct the Bid Stage as follows: in accordance with the provisions of the PPP Act, PPP Regulations and the procedures to be set out in the RFP. For the avoidance of doubt the dates set out in this RFQ for the Bid Stage are indicative and may be subject to amendment by KeNHA in its sole discretion.

The Bid Stage shall generally be implemented as outlined below:

- i. KeNHA shall issue a notice to all Prospective Bidders announcing the names of the Pre-Qualified Bidders who will be issued the RFP. The RFP will provide details on the form and content of the Bid and procedures to be followed for the Bid preparation, submission, and evaluation by KeNHA, and post-Bid submission requirements.
- ii. The draft Project Agreement will ~~also~~ be provided ~~to all Pre-Qualified Bidders~~ as part of the RFP and KeNHA will invite Pre-Qualified Bidders to comment, seek clarification and raise queries on the Project Agreement in advance of and during the Pre-Bid Conference and subsequent Competitive Dialogue process (as defined in the RFP).
- iii. KeNHA will also announce the date, time and ~~venue~~ location of the Pre-Bid Conference, to which all Pre-Qualified Bidders ~~are invited. Pre-Qualified Bidders~~ will be invited given the opportunity to raise any questions and issues regarding the Project and the Bidding Process during and / or in advance of the Pre-Bid Conference.
- iv. KeNHA shall respond in writing to queries raised ~~by Pre-Qualified Bidders~~ during the Pre-Bid Conference, Competitive Dialogue meetings and at any other time specified in the RFP.
- v. Bidders may submit written queries and requests for clarifications on the RFP up to the date falling fourteen (14) days before the Bid Submission Date. ~~indicated in the indicative Bid Stage Schedule in Table 2 under Section 2.~~ KeNHA will respond to all requests for clarification by way of Addendum / Clarification omitting in writing, and circulate such responses to all the Pre-Qualified Bidders, excluding the identity of the Pre-Qualified Bidder that sought the clarification, ~~save provided, however,~~ that any query submitted during the Competitive Dialogue Process shall be deemed kept confidential as between each Pre-Qualified Bidder and KeNHA. ~~better elaborated in the RFP.~~
- vi. Following the submission of Bids, KeNHA will firstly review the Technical Proposals ~~and the Financial Proposals submitted by each Pre-Qualified Bidder. KeNHA will first review the Pre-Qualified Bidders' Technical Proposals.~~ KeNHA will return the Financial Proposal and Bid Security of all Pre-Qualified Bidders whose Technical Proposal doess do not meet the minimum technical parameters as prescribed in the RFP.
- vii. Only those Bids containing Technical Proposals that are compliant and are assessed, as being capable of meeting the standards specified in the RFP ~~acceptable~~ shall progress to the evaluation of the Financial Proposal.
- viii. The Financial Proposal evaluation will include the analysis, evaluation and comparison of the Financial Proposals of the Pre-Qualified Bidders, based on the parameters set out in the RFP.
- ix. Following analysis and evaluation of the Financial Proposals, KeNHA shall rank the Bids in accordance with the parameters stated in the RFP to determine the Preferred Bidder.
- x. For the opening of ~~both~~ the Technical Proposal ~~and the Financial Proposal,~~ KeNHA will invite Pre-Qualified Bidders to attend the opening sessions, and to sign a register of attendance. For the opening of the Financial Proposals, KeNHA shall invite only those Pre-Qualified Bidders whose Technical

~~Proposals have progressed in accordance with vii above. The procedure for this will be as indicated in the relevant sections of the RFP.~~

- xi. KeNHA (in its sole discretion) may elect to conduct further negotiations with the Preferred Bidder and upon satisfactory completion of all such negotiations; KeNHA will issue a Letter of Award selecting the Preferred Bidder as the Successful Bidder. In addition, KeNHA may request the second ranked Pre-Qualified Bidder to extend the validity of its Bid including the Bid Security, pending completion of negotiations with the ~~first ranked Pre-Qualified Bidder i.e. the~~ Preferred Bidder.
- xii. The Successful Bidder shall be required to comply with all the requirements stated in the Letter of ~~Award. Failure~~ Award; failure to comply with any such requirements (unless any such requirement is waived by KeNHA) will result in forfeiture of the Bid Security and the cancellation of the Letter of Award.
- xiii. ~~Where~~In case the Successful Bidder or any ~~of its~~ Qualifying Shareholder ~~of the Successful Bidder~~ has relied upon the ~~experience or~~ credentials of its Affiliate(s) to satisfy any or all of the Minimum Qualification Requirements, such Affiliate(s) shall ~~be required to comply with the conditions~~ provide a Deed of ~~the Bidding Documents~~ Guarantee in ~~addition to of the requirements of accordance with~~ Section 4.2.3 (i) ~~herein of this RFQ.~~ Failure ~~to do so may result in disqualification of the on part of the Affiliate(s) to furnish the Deed of Guarantee as required shall lead to disqualification of the~~ Successful Bidder and forfeiture of ~~the~~ Bid Security or the Performance Security as the case may be.

## ~~3.2.~~ TERMS AND CONDITIONS

### a. Eligibility

In order to be eligible for Pre-Qualification, a Prospective Bidder must be either an Entity or a Consortium (i.e. group of Entities).

### b. Conflict of Interest

- i.      Prospective Bidders, Consortium Members (if the Prospective Bidder is a Consortium) including, in each case their Affiliates, and any Contractors of the Prospective Bidders must not have any Conflict of Interest. The assessment of the existence of a Conflict of Interest shall be based on the specific facts of each case.
- ii.      Without limiting the generality of what would constitute a Conflict of Interest, a Prospective Bidder shall be considered to have a Conflict of Interest, under any or all of the following circumstances:
  - a) a Prospective Bidder, any Consortium Member, or any of the Affiliates of the Prospective Bidder or that of the Consortium Members, or a Contractor, is also a Consortium Member of another Prospective Bidder, or an Affiliate thereof or of a Consortium Member, or a Contractor of another Prospective Bidder;
  - b) a Prospective Bidder, any Consortium Member, or any of the Affiliates of the Prospective Bidder or that of the Consortium Members, or a

Contractor has common shareholder(s) that holds in excess of ten percent (10%), of the shares or voting rights of another Prospective Bidder or a Consortium Member or any of the Affiliates of such other Prospective Bidder or Consortium Member, or the Contractors;

- c) a member of the board of directors, partner, officer, employee, professional advisor or agent of a Prospective Bidder, or any Consortium Member, or any of the Affiliates of the Prospective Bidder or that of the Consortium Members, or that of a Contractor who is directly or indirectly involved in the Bidding Process, is also directly or indirectly involved in any capacity related to the Bidding Process for another Prospective Bidder, any Consortium Member of any other Prospective Bidder, or any of the Affiliates of such other Prospective Bidder or Consortium Member, or the Contractors;
- d) a Prospective Bidder has the same authorized representative for the purposes of Pre-Qualification as any other Prospective Bidder; and
- e) any two or more Prospective Bidders, or Consortium Members of any two or more Prospective Bidders, or any Affiliates of two or more Prospective Bidders or any of the Consortium Members, or any of their Contractors are Public Entities of Kenya or public institutions or public sector undertakings belonging to the same country.

iii. Without limiting the generality of what constitutes Conflict of Interest, any of the following shall also be considered a Conflict of Interest:

- a) a Prospective Bidder, or any of its Consortium Members, or the Affiliates of the Prospective Bidder or that of the Consortium Members, or any of the Contractors, has been directly engaged as a consultant by KeNHA in the preparation of RFQ, RFP or any other relevant document or the design, or technical specifications of the Project or in connection with the Bidding Process; or
- b) a Prospective Bidder, or any of its Consortium Members, or the Affiliates of the Prospective Bidder or that of the Consortium Members, or any of their Contractors engages any legal, financial, or technical advisor or consultant who is or was an employee of KeNHA or Government of Kenya and was involved in the Project in any manner or capacity at any time in the 3 years preceding the RFQ Submission Date;
- c) a Prospective Bidder, any of its Consortium Members, or the Affiliates of the Prospective Bidder or that of the Consortium Members, or any of the Contractors receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Prospective Bidder, any of its Consortium Members or any of their Affiliates, or Contractors, or has provided any subsidy, grant, concessional loan or subordinated debt to any other Prospective Bidder, any of its Consortium Members, or to the Affiliates of such Prospective Bidders or that of their Consortium Members, or any of the their Contractors.

iv. If a Prospective Bidder, Consortium Member, the Affiliates of the Prospective Bidder or that of the Consortium Members, or any of the Contractors,

is found to have a Conflict of Interest as defined herein, the Prospective Bidder shall be disqualified from further participation in the Bidding Process. If the Conflict of Interest involves another Prospective Bidder, any of its Consortium Members, or their Affiliates or any of its Contractors, such Prospective Bidder shall also be disqualified.

c. **Warranties**

-By submitting the Qualification Documents, the Prospective Bidder (including each Consortium Member) warrants that :

- i. \_\_\_ No Conflicts of Interest exists;
- ii. \_\_\_ Their Qualification Documents have been prepared without consultation, communication or agreement for restricting competition with any other Prospective Bidder (including the Consortium Members or Affiliates thereof if the other Prospective Bidder is a Consortium);
- iii. \_\_\_ Their Qualification Documents have not been disclosed, nor will they be disclosed to any other Prospective Bidder, Consortium Member of any other Prospective Bidder including their Affiliates if the other Prospective Bidder is a Consortium;
- iv. \_\_\_ No attempt has been made nor will be made by them to induce any other person to submit or not to submit Qualification Documents; and
- v. \_\_\_ They (including any of the Consortium Members and their Affiliates, or Contractors) have not engaged or consulted with, including by way of gratuitous consultations, any person who (i) is currently in the employment of the Transaction Advisor or of KeNHA/Government of Kenya; or (ii) was in the employment of the Transaction Advisor or of KeNHA/Government of Kenya and was involved in the Project in any manner or capacity in the three (3) years preceding the RFQ Submission Date.

d. **Change in composition, ~~or~~ Control or form of a Prospective Bidder**

- i. \_\_\_ Pursuant to submission of its Qualification Documents, any change in composition or Control of a Prospective Bidder, if (i) it is a single Prospective Bidder or (ii) any Consortium Member where the Prospective Bidder is a Consortium, which results in breach of any of the terms and conditions of this RFQ shall result in automatic disqualification from the Bidding Process of such Prospective Bidder.
- ii. \_\_\_ Where a Prospective Bidder or any of its Consortium Members undergoes a change in its composition or Control post submission of the Qualification Documents, it shall immediately following such change and in no event later than seven (7) days following such change, notify KeNHA in writing. KeNHA reserves the right to require the relevant Prospective Bidder to resubmit any Qualification Documents or provide such information with regard to the proposed change. Should any Prospective Bidder fail to advise KeNHA of any change in composition or Control within seven (7) days of it becoming aware of such, KeNHA may in its sole discretion disqualify such Prospective Bidder from the Bidding Process.

- iii. From the date of notification of results of evaluation of the Qualification Documents till such time as the RFP may be issued, KeNHA may, in circumstances where a Pre-Qualified Bidder experiences a change in its composition due to a Consortium Member or an Affiliate or Contractor withdrawing (the "Withdrawing Participant"), permit the replacement of the Withdrawing Participant with another Entity, (the "Replacement Participant").
- iv. Change in composition of a Pre-Qualified Bidder shall be permitted by KeNHA only where:
  - (a) the Lead Member continues to be the Lead Member;
  - (b) the modified Consortium continues to meet the Minimum Qualification Requirements and all other terms and conditions specified under this RFQ;
  - (c) the proposed new member is not a Prohibited Person; and
  - (d) the Replacement Participant accepts in writing to the satisfaction of KeNHA, the Qualification Documents submitted on behalf of the Consortium as if it were a party to it originally.
- v. KeNHA shall advise all other Prospective Bidders of the changes to the Consortium and such modified Consortium shall thereafter be referred to and considered as a Pre-Qualified Bidder.
- vi. KeNHA reserves the right to require the relevant Prospective Bidder or the Pre-Qualified Bidder, as the case may be, which has undergone a change in composition or Control to submit such information with regard to the proposed change (including any Qualification Documents) so as to enable it to fully evaluate the consequences of such change and to determine whether the Pre-Qualified Bidder is required to re-qualify under the terms of the RFQ. All approvals for change in control or composition of a Consortium shall be given in writing by KeNHA.
- vii. Any membership changes in the Consortium under this section shall not under any circumstance exceed one half of the Qualifying Shareholders membership (excluding Lead Member) – and where such proposed membership changes exceed more than half of the total originally named Qualifying Shareholders, regardless of its/their role in the Consortium, the change shall not be approved, and the Consortium shall be disqualified from further participation in the Pre-Qualification process.
- vii-viii. A single Prospective Bidder cannot be replaced by another Prospective Bidder being a single Prospective Bidder or a Consortium and a Prospective Bidder being a Consortium cannot be replaced by a single Prospective Bidder or another Consortium.
- viii-ix. For the avoidance of doubt KeNHA is not obliged to extend the RFQ Submission Date or amend the Pre-Qualification Stage Schedule or the Bid Stage Schedule to accommodate any change in the composition or Control of a Prospective Bidder.

**e. Ownership of Documents**

- (i) All information and data submitted by a Prospective Bidder shall become the property of KeNHA, with the exception of material protected by copyright, trade secrets or other proprietary information clearly identified as such by the Prospective Bidder. Prospective Bidders agree to indemnify KeNHA and hold it harmless from any loss, damage, liabilities, claims, actions, proceedings, demands, costs, charges or expenses of whatsoever nature suffered by KeNHA for its refusal to disclose materials marked as being copyright material, trade secrets or other proprietary information to any person seeking the disclosure of such materials.
- (ii) This RFQ is being made available to Prospective Bidders exclusively in connection with the Project and shall not be used for any purpose other than the Bidding Process. The Qualification Documents provided by Prospective Bidders and any confidential information contained therein shall be disclosed by KeNHA only to employees and advisers employed or engaged by it, and persons employed or engaged by a Public Entity who is involved or connected in any manner with the Bidding Process and the evaluation of Qualification Documents submitted by Prospective Bidders.

**f. Corrupt, Fraudulent or Dishonest, Collusive, Coercive, Undesirable, And Restrictive Practices**

- (i) If a Prospective Bidder, any Consortium Member, an Affiliate of the Prospective Bidder or a Consortium Member, or a Contractor is found to have, directly or indirectly, engaged in any Corrupt, Fraudulent or Dishonest, Collusive, Coercive, Undesirable or Restrictive Practice during the Bidding Process, KeNHA shall:
  - a) \_\_\_ disqualify the Prospective Bidder or rescind the Letter of Award, without liability whatsoever towards the Prospective Bidder or the Successful Bidder, as the case may be or any other person;
  - b) \_\_\_ seek to impose the maximum penalties for civil and criminal liability available under the applicable law on person involved in such practices; and
  - c) \_\_\_ without limitation of time prohibit or disqualify persons involved in such practices from participating in any bidding process run by KeNHA or the Government of Kenya from the date that they are found to have directly or indirectly engaged in any such practices.
- (ii) For the purposes of this Section, the following terms shall have the meanings hereinafter assigned to them:
  - a) **"Corrupt Practice"** means any of the prohibited acts and omissions punishable under laws of Kenya and relevant rules and procedures, by which a person improperly and unlawfully enriches or benefits himself or others, or induces others to do so, and includes the offering, giving, receiving, or soliciting of anything of value to influence the actions of any person connected with Pre-Qualification or the Bidding Process or the execution of the Project Agreement;
  - b) **"Fraudulent or Dishonest Practice"** means any hoax, delusion, falsification, scheme, artifice, dishonesty, trickery, deceit, cheating, misrepresentation, omission, concealment, suppression, non-disclosure or disclosure of incomplete facts, in order to influence the Pre-Qualification or the Bidding Process or the execution of the Project Agreement;

- c) **“Collusive Practice”** means a scheme or arrangement between two or more Prospective Bidders or Pre-Qualified Bidders including the Successful Bidder, with or without the knowledge of the government, designed to establish the Bid Amount at an artificial, or non-competitive level or otherwise to restrict competition in the Bidding Process;
- d) **“Coercive Practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, or exercising undue influence upon any person or property in order to influence any person’s participation in the Bidding Process or the execution of the Project Agreement;
- e) **“Undesirable Practice”** means (i) establishing contact with any person connected with or employed or engaged by KeNHA with the objective of canvassing or lobbying or (ii) in any manner influencing or attempting to influence the Bidding Process; and
- f) **“Restrictive Practice”** means any act, scheme, plan or agreement such as forming a group, clique, cartel, trust, syndicate, pool and the like or arriving at any understanding or arrangement among Prospective Bidders, Pre-Qualified Bidders(including the Successful Bidder), Consortium Members, Affiliates of any of the above, Construction Contractors or O&M Contractors, with the objective of restricting, subverting or manipulating a full and fair competition in the Pre-Qualification and/ or the Bidding Process.

**g. Statement as to the accuracy of the Qualification Documents**

The Qualification Documents shall include a statement, in the form of **Annex QD-1A** by the signatories to the Qualification Documents, to the effect that all information and documentation forming part of the Qualification Documents are true and accurate and that the Prospective Bidder (and all of its Consortium Members if the Prospective Bidder is a Consortium and its Affiliates) agrees to be bound by the terms of this RFQ. If the information provided by any Prospective Bidder is found to be untrue or inaccurate, KeNHA (in its sole discretion) shall disqualify such Prospective Bidder and KeNHA shall be entitled to claim damages for any loss suffered by it as a result thereof.

**h. Single Prospective Bidder**

- i. Where a Prospective Bidder is a single Prospective Bidder (i.e. not a Consortium), the Qualification Documents shall be signed by the authorized representative who can duly bind such Prospective Bidder.
- ii. As proof of authority of the authorized representative to bind the Prospective Bidder it shall provide a notarized copy, in the form set out in **Annex QD-1B**, of the resolution of the board of directors, or its equivalent, of such Prospective Bidder ~~authorizing~~**authorising** the representative to sign the Qualification Documents on its behalf.

**i. Consortium**

- i. Where a Prospective Bidder is a Consortium, the Qualification Documents are to be signed by the authorized representative of the Lead Member.



- ii. As proof of authority of the authorized representative to bind the Lead Member, the Prospective Bidder shall provide a notarized copy, in the form set out in **Annex QD-1B**, of the resolution of the board of directors, or its equivalent, of such Lead Member ~~authorizing~~~~authorising~~ the representative to sign the Qualifications Documents on its behalf
- iii. Proof of ~~authorization~~~~authorisation~~ by the Consortium Members of the Lead Member to act on behalf of the Consortium is to be included in the Qualification Documents, by way of notarized copies, in the form set out in **Annex QD-1C**, duly signed by the representative authorized by resolution of the board of directors or its equivalent, of each Consortium Member
- iv. The Lead Member shall be the only person authorized to make statements on behalf of and receive instructions from KeNHA on behalf of the Prospective Bidder which is a Consortium.
- v. 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 shares of the Project Company, if the Consortium of which the Lead Member is a constituent is awarded the Project.
- vi. A Consortium Member shall not participate through more than one Prospective Bidder for the purpose of pre-qualifying in terms of the PPP Act.

**j. Queries, Requests for Clarifications, Contact Policy and Participation Fee**

- i. All queries with respect to the RFQ are to be received, not later than fourteen (14) Business Days before the RFQ Submission Date, at the email addresses set out below:
  - a) Kenya National Highways Authority (KeNHA)

Attention: **Eng. Kefa Seda, The Project Manager**,  
Nairobi-Nakuru-Mau Summit Highway  
Email: [k.seda@kenha.co.ke](mailto:k.seda@kenha.co.ke)
  - b) Intercontinental Consultants and Technocrats Pvt. Ltd. (Transaction Advisors)

Attention: **Mr. Amandeep Singh Virk, PPP Advisor**  
Email: [ads.virk@ictonline.com](mailto:ads.virk@ictonline.com)
- ii. Participation Fee shall be paid by a Prospective Bidder to KeNHA no later than seven (7) days before the RFQ Submission Date. The proof of such payment of Participation Fee to KeNHA shall be submitted by the Prospective Bidder along with its Qualification Documents. For the avoidance of doubt, the Qualification Documents submitted by a Prospective Bidder who has not paid the Participation Fee ~~or whose submission does not contain proof of payment~~ will be rejected and the Prospective Bidder will be disqualified from the Bidding Process.

Participation Fee may be paid in the form of a banker's cheque or through online transfer to the bank account of KeNHA, the details of which are provided below:

Bank: Equity Bank

Branch: Equity Centre

Beneficiary: Kenya National Highways Authority

Account No: 0810295139897

Swift code : EQBLKENA

- iii. All queries and requests for clarifications shall be submitted in English.
- iv. All queries, requests for clarifications and comments by the Prospective Bidders shall be submitted via email to the email addresses provided in this RFQ and the Prospective Bidders must use the MS Excel template provided in **Schedule 1** for all queries/comments.
- v. All queries must clearly indicate the name of the signatory and his position/title with respect to the Prospective Bidder making the query.
- vi. No information or clarification may be requested by a Prospective Bidder (including any Consortium Member or Affiliate or Contractor) from any member of the Project Team, the employees of KeNHA or any other public official who may be associated with the Project, other than from the Project Manager. In the event that any Prospective Bidder is in breach of this requirement, KeNHA shall disqualify such a Prospective Bidder. In the event it is demonstrated to the satisfaction of KeNHA that a Consortium Member or Affiliate or Contractor is acting alone with respect to a breach under this provision, such Consortium of which the offending Consortium Member or Affiliate or Contractor is a part may be offered the opportunity to disengage the offending Consortium Member or Affiliate or Contractor and KeNHA in its sole discretion may allow the Consortium to continue in the Bidding Process provided that removal of the offending Consortium Member or Affiliate or Contractor does not result in the Prospective Bidder failing to meet or surpass the Minimum Qualification Requirements. For the avoidance of doubt, this provision may not be construed as a mechanism for instituting changes to the membership of consortia under the PPP Act.
- vii. Although KeNHA will attempt to respond to all reasonable queries before the RFQ Submission Date, KeNHA is under no obligation to do so. Responses to queries and any modifications to the RFQ will be made available to all Prospective Bidders through issue of Addendum ~~/or~~ Clarification. KeNHA shall not reveal the identity of the Prospective Bidder who made the query to which such Addendum ~~/or~~ Clarification has responded.

**k. Non-Compliance**

- i. Any material failure on the part of a Prospective Bidder to comply with the terms of this RFQ will result in its Qualification Documents being treated as non-compliant.

- ii. KeNHA shall reject any non-compliant Qualification Documents without further evaluation of the remaining Qualification Documents, whether compliant or not.

**i. Language and foreign documents**

- i. The Qualification Documents, and all correspondence and documents relating to this RFQ, shall be prepared and written in the English language. All certified statements, regardless of the place of execution, must be notarized.
- ii. All documents issued or executed in a foreign country must be notarized by a notary public in that country. Wherever copies of the original documents are required to be submitted as a part of the Qualification Documents, same shall also be duly notarized as true copies of the originals.
- iii. Supporting documents and printed literature furnished by Prospective Bidders along with the Qualification Documents may be in any other language provided that they are accompanied by an accurate English translation of such document duly translated into English by a translator who shall certify the translation as true and genuine. Additionally, the Prospective Bidder shall duly certify the translation as true and genuine and the same shall also be duly notarized by a notary public of that country.
- iv. If the document was issued by a foreign authority, the Prospective Bidder should also submit a certified true copy of such document issued by such foreign authority along with a duly translated English copy of such document by a translator who shall certify the translation as true and genuine. Additionally, the Prospective Bidder shall duly certify the translation as true and genuine and the same shall also be duly notarized by a notary public of that country.

**m. Responsibilities of Prospective Bidders**

- a. Notwithstanding any information express or implied in this RFQ, any additional communications issued by KeNHA, including any Addendum ~~or~~ Clarification, it is the sole responsibility of any Prospective Bidder to:
  - i. fully acquaint itself with the requirements, terms, and conditions of the Bidding Process;
  - ii. examine this RFQ, and other documents to verify the completeness and accuracy of the information contained in such documents;
  - iii. familiarize itself with all the applicable laws and administrative issuances and regulations of Kenya, whether national or local, that may affect the Bidding Process and the Project;
  - iv. determine and satisfy itself, at its own cost, expense and risk, and by such means as it considers necessary or desirable, as to all matters pertaining to the execution of the Project, including but not limited to the location and nature of the Project; the terrain, geological, meteorological, and hydrological conditions; existing works and plans for future works in

the area; existing and planned above ground and sub-level utilities; easements; existing or threatened legal disputes or issues; environmental and social concerns and issues; the requirement and availability of labour, materials, equipment, aggregate sources, water, power, roads, communications and other relevant factors; resource requirements; traffic projections; the financial viability of the Project; risks and contingencies that may affect the cost, duration, execution and completion of the Project.

- b. By submitting the Qualification Documents, a Prospective Bidder shall be deemed to have accepted all of the terms and conditions of this RFQ.

**n. Pre-Qualification Conference**

- i. KeNHA shall conduct a Pre-Qualification Conference on the date indicated in Table 1. The purpose of the Pre-Qualification Conference is to clarify any part of the RFQ or the Bidding Process and to answer any relevant questions Prospective Bidders may raise. The details of the Pre-Qualification Conference are as follows:

**Date:** 16th November 2016

**Time:** 0900-1300 hours

**Venue:** Safari Park Hotel, Nairobi

- ii. No provisions, terms, or conditions of this RFQ shall be modified by statements made at the Pre-Qualification Conference unless these are made in writing and contained in an Addendum ~~or~~ Clarification issued by KeNHA.
- iii. Attendance at the Pre-Qualification Conference shall not be mandatory, and non-attendance by a Prospective Bidder shall not constitute a ground for any valid claim with respect to the requirement to satisfy all conditions of this RFQ.

**o. Frivolous and Vexatious Petition**

KeNHA reserves the right to seek damages from a Prospective Bidder or a Pre-Qualified Bidder in the event the Bidding Process is delayed as a result of a Frivolous or Vexatious Petition filed by such Prospective Bidder or Pre-Qualified Bidder.

**p. Other projects**

Prospective Bidders may seek pre-qualification for other PPP road projects that may be procured by KeNHA or KURA or any other contracting authority (as defined under the PPP Act), in addition to ~~Pre-Qualification for~~ ~~pre-qualification under~~ this Project. In doing so, a Prospective Bidder will be required to meet the applicable Minimum 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.

In the event that, following the evaluation process based on the Evaluation Criteria, a private party is to be considered for award of more than one PPP road project, the contracting authority reserves the right to require the applicable private party to demonstrate that they have the necessary technical and/or financial resources to

undertake and perform the required works, services and other obligations on more than one project without imposing additional risk on the contracting authority.

q. **Applicable exchange rate for currency conversion to USD**

~~(i) Unless otherwise specified, for expressing~~ For the ~~value~~ purpose of assessment under this RFQ, ~~for converting~~ any currency other than USD in USD equivalent, into US Dollars, the applicable exchange rate shall be the daily representative exchange rates published by the International Monetary Fund as on 9<sup>th</sup> November, 2016.

~~(ii) Where seven (7) days prior to the exchange rate is not published for any 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 into USD shall deemed to be the relevant exchange rate.~~

~~(iii) The Prospective Bidder shall, together with its Qualification Documents, state all the exchange rates, the reference RFQ notification publishing date and the definitive source of the exchange rate for the currency used.-~~

~~(iv) In the event that the Audited Financial Statements of a Prospective Bidder/ Qualifying Shareholder/ Affiliate/ Construction Contractor are prepared in any currency other than USD, then:~~

~~- Net Worth figures presented in the Qualification Documents shall be converted by the Prospective Bidder into USD at the relevant exchange rate for the financial year end date to which the Latest Audited Financial Statements were drawn up; and~~

~~- turnover figures presented in the Qualification Documents shall be converted by the Prospective Bidder into USD at the average of the relevant 12 month end exchange rates for each of the 3 financial years for which turnover information is required.~~

**4.3. MINIMUM QUALIFICATION REQUIREMENTS**

(a) KeNHA has established the following Minimum Qualification Requirements that Prospective Bidders must meet (or surpass) in order to Pre-Qualify. Evaluation of Prospective Bidder's credentials against the Minimum Qualification Requirements will be strictly on a pass/ fail basis. In the event a Prospective Bidder fails to meet any of the Minimum Qualification Requirements, their Qualification Documents will not be considered further and such Prospective Bidder will have failed to Pre-Qualify for the next stage of the Bidding Process.

(b) Where the Prospective Bidder is a Consortium, the aggregate of the technical and financial qualifications of the Qualifying Shareholders shall meet or surpass the Minimum Qualification Requirements as specified below.

(c) The Prospective Bidder or a Qualifying Shareholder may, where permitted, use the experience or credentials of its Affiliate(s) or Contractors provided such Affiliate(s) and Contractors fall within the meaning of an Entity and comply, subject to compliance with all requirements under this RFQ.

(d) KeNHA reserves the right to disqualify the Successful Bidder and rescind the Letter of Award or terminate the Project Agreement, as the case may be, if (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 until the expiry of the Lock-In Period, till such times as specified in the Project Agreement.

(e) (i) Two members of the same Consortium who have worked together on the same Eligible Project may not both use such Eligible Project in their experience statements. Such a project will only be counted once towards the Qualification Requirements.

(ii) Two Consortium Members of competing Prospective Bidders who have worked together on the same Eligible Project may both use such Eligible Project in their Qualification Documents.

(iii) An Eligible Project may qualify as one or more of an Eligible PPP Project, an Eligible Construction Project and an Eligible O&M Project.

#### 4.2.1 TECHNICAL QUALIFICATION REQUIREMENTS

##### (A) PPP EXPERIENCE

(i) The Prospective Bidder shall demonstrate that in the five (5) years preceding the RFQ Submission Date, it has experience of undertaking Eligible PPP Projects such that the aggregate of Lane-km of such Eligible PPP Projects 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 held a share of not less than five percent (5%) in the project company responsible for the Eligible PPP Project.

(ii) The Entity proposed to meet the PPP ~~Experience~~ requirement may be any of the following, holding the minimum share as stated in (i) above:

- The Prospective Bidder itself or its Subsidiary(ies) or Affiliate(s) (being other than Subsidiary(ies))~~Affiliate(s), provided that such Affiliate(s) will execute a Deed of Guarantee in accordance with Section 4.2.3 (i).~~
- A Qualifying Shareholder or its Subsidiary(ies) or Affiliate(s) (being other than Subsidiary(ies)), if the Prospective Bidder is a Consortium~~Consortium~~,

Provided that in each case the PPP Experience of Affiliates (being other than Subsidiaries) does not exceed 40% of the total PPP Experience presented in the Qualification Documents;

Provided further that such Affiliate(s) (being other than Subsidiary(ies)) of the Prospective Bidder or the Qualifying Shareholder, as the case may be, shall also comply with the requirements under Section 4.2.3 (i).

##### (B) CONSTRUCTION EXPERIENCE

(i) The Prospective Bidder shall demonstrate that in the ten (10) years preceding the RFQ Submission Date, it has completed construction of:

- (a) Eligible Construction Projects in aggregate, of not less than ~~3,500~~5,000 Lane-km; and
- (b) at least 10 Lane-km of Grade Separated Structure(s), which may or may not be a part of the Eligible Construction Projects under (a) above.

(ii) Prospective Bidders may demonstrate ~~Construction Experience~~construction experience proposed by any of the following Entities, strictly acting as main or principal contractor:

- The Prospective Bidder itself ~~or its Affiliate(s)~~
- A Qualifying Shareholder ~~or its Affiliate(s)~~, if the Prospective Bidder is a Consortium, ~~provided that such Affiliate(s) shall execute a Deed of Guarantee in accordance with Section 4.2.3 (i).~~
- The Construction Contractor

(iii) The Entity proposed to meet the ~~Construction Experience~~construction experience requirements must also meet the turnover requirements specified under the Financial Qualification Requirements.

### **(C) OPERATION AND MAINTENANCE (O&M) EXPERIENCE**

(i) The Prospective Bidder shall demonstrate Eligible O&M Project experience such that the aggregate Lane-kms of Eligible O&M Projects under operation, maintenance and management of the Prospective Bidder in the ten (10) years preceding the RFQ Submission Date shall be not less than 3,500 Lane-km.

(ii) Prospective Bidders may demonstrate O&M Experience proposed by any of the following Entities, strictly acting as main or principal contractor:

- The Prospective Bidder itself ~~or its Affiliate(s)~~
- A Qualifying Shareholder, ~~or its Affiliate(s)~~, if the Prospective Bidder is a Consortium, ~~provided that such Affiliate(s) shall execute a Deed of Guarantee in accordance with Section 4.2.3 (i).~~
- The O&M Contractor

### **4.2.2 FINANCIAL QUALIFICATION REQUIREMENTS**

(i) A Prospective Bidder shall demonstrate Net Worth of not less than USD 1.0 billion, as per its Latest Audited Financial Statements.

(ii) The Entity proposed to meet the ~~Net Worth requirements~~Financial Qualification Requirements may be any of the following:

- The Prospective Bidder itself or its Affiliate(s) [being other than Subsidiary(ies)]~~provided that such Affiliate(s) will execute a Deed of Guarantee in accordance with Section 4.2.3 (i).~~
- A Qualifying Shareholder or its Affiliate(s) [being other than Subsidiary(ies)], if the Prospective Bidder is a Consortium

Provided that such Affiliate(s) [being other than Subsidiary(ies)], of the Prospective Bidder or the Qualifying Shareholder, as the case may be, shall comply with the requirements under Section 4.2.3 (i).

-

(iii) The Entity proposed to meet the ~~Construction Experience~~construction experience requirement must have an average annual turnover from construction activities ~~(as stated in its Audited Financial Statements)~~ of not less than USD 850 million over

the 3 (three) years preceding the RFQ Submission Date as reflected in the Latest Audited Financial Statements and the Audited Financial Statements for the two financial years immediately preceding the year of the Latest Audited Financial Statements.

#### 4.2.3 OTHER QUALIFICATION REQUIREMENTS

- (i) ~~(a) Where a Prospective Bidder has relied upon the experience / credentials of its Affiliate(s) [being other than Subsidiary(ies)] or Affiliate(s) [being other than Subsidiary(ies)] of its Qualifying Shareholder to satisfy the PPP Experience any or the Net Worth, the all of the Minimum Qualification Requirements, and such Prospective Bidder is finally declared as the Successful Bidder, such Affiliate(s) shall submit to KeNHA provide a Deed of Guarantee (as a part of the Qualification Documents a signed and notarized copy of the financial letter of support condition precedent to Financial Close under the Project Agreement) substantially in the form annexed at Annex QD-8 from each such Affiliate confirming that the Affiliate shall extend all necessary support to the Prospective Bidder, as may be amended by an Addendum or the Qualifying Shareholder in meeting the equity commitment of such Prospective Bidder Clarification or the Qualifying Shareholder, as the case may be, in the Project Company. A self-certified and notarized copy of the authorization by the Bidding Documents, in favour of the authorized representative of the Affiliate signing the financial letter of support shall be provided together KeNHA with the financial letter of support.~~

~~(b) respect to its obligations under the Project Agreement. Failure on the part of a Prospective Bidder to furnish the financial letter of support from its Affiliate(s) as required under (a) above to do so will result in disqualification of the Prospective Bidder. Failure on the part of the Affiliate(s) to comply with any requirements provided in or substituted by the Bidding Documents shall lead to disqualification of the Pre-Qualified Bidder and where such Pre-Qualified Bidder is the Successful Bidder, failure on part of the Affiliate(s) to comply with the requirements as may be provided in or substituted by the Bidding Documents shall lead to disqualification of the Successful Bidder, withdrawal of the Letter of Award and forfeiture of the Successful Bidder's Bid Security. In the event such a default occurs pursuant to signing of the Project Agreement, then the same shall stand terminated and the Performance Security of Project Company shall be forfeited. As a part of the Qualification Documents submission under this RFQ, the Prospective Bidder shall be required to submit a signed copy of Annex QD-8 signifying its acceptance this essential requirement which shall be fully set out in the RFP.~~

- (ii) Prospective Bidders are required to submit as a part of their Qualification Documents, indicative letters of support from two or more Qualifying Bank and Financial Institution regarding the provision of debt finance for the Project substantially in, using the form provided at ~~in~~ **Annex QD-9A**.
- (iii) A single Prospective Bidder is required to submit, as a part of its Qualification Documents, a Letter of Commitment using the format in **Annex QD-9B** stating that its minimum intended level of equity contribution to the Project Company will not be less than USD 150 million.

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 individual minimum intended level of equity contribution and that the aggregate of the minimum intended equity contributions of all the



Consortium Members in the Project Company will not be less than USD 150 million.

4.2.4 The summary of Minimum Qualification Requirements is enclosed as **Appendix 1**. The same (i.e. Appendix 1) should be read in conjunction with Section 4 and in the event of any conflict, the provisions of Section 4 shall prevail.

#### **5.4. QUALIFICATION DOCUMENTS**

The Prospective Bidder shall, in pursuance of this RFQ, submit the Qualification Documents consisting of the following documents:

- a. Notarized Application to Pre-Qualify, using the form in **Annex QD-1A**.
- b. Notarized Authority to Apply to Pre-Qualify and designate an Authorized Representative.
  - i. If the Prospective Bidder is a single Prospective Bidder, it must submit a Notarized Authority using the form in **Annex QD-1B**.
  - ii. If the Prospective Bidder is a Consortium, each Consortium Member must submit a Notarized Authority to Participate in Consortium jointly and severally and apply to Pre-Qualify, and designate the Lead Member and other Consortium Members of the Consortium, using the form in **Annex QD-1C**. The Lead Member shall submit a Notarized Authority using the form in **Annex QD-1B** in favour of its authorized representative. Provided however, the Consortium shall be essentially required to submit a joint bidding agreement executed between all Consortium Members for the purposes of jointly participating in the Bidding Process for the Project at the RFP stage.
- c. Business Structure, using the form in **Annex QD-2A** for a single Prospective Bidder and **Annex QD-2B** for Consortia.
  - i. The Business Structure (in both Annex **QD-2A** and **QD-2B**) must also indicate the Entity proposed to satisfy each and every Minimum Qualification Requirement set out in Section 4.
  - ii. With reference to Annex **QD-2B**, the Prospective Bidder must show the Lead Member, all Consortium Members, proposed Qualifying Shareholder(s) and/ or their Affiliates, and/ or any other holder(s). A copy of the consortium agreement setting out the relationship and the proposed shareholding of the Consortium Members in the Project Company shall also be enclosed with **Annex QD-2B**.
- d. Basic Information Sheet, using the form in **Annex QD-3**.
  - i. The Basic Information Sheet must be submitted by all Entities identified in the Business Structure.
  - ii. Required attachments for each of the Entities in the Business Structure include the following :

For an Entity incorporated or registered in Kenya, (i) a certified true copy of the Certificate of Incorporation, or where such Entity is not a Company, a certified true copy of the registration certificate issued by an appropriate authority evidencing

legal existence of such Entity; and (ii) a letter from the authorized representative of the Entity~~Company's statutory auditor, or in case of a Entity other than a Company, a letter from an independent auditor,~~ to the effect that the Entity is not insolvent, in receivership, bankrupt or in the process of being wound up;

For an Entity incorporated or registered outside Kenya, (i) a certified true copy of the Certificate of Incorporation or an equivalent document issued by the appropriate authority in that country, ~~or where such Entity is not a Company, a certified true copy of the registration certificate issued by an appropriate authority in that country~~ evidencing legal existence of such Entity; and (ii) a letter from the Entity's authorized representative~~Company's statutory auditor, or in case of an Entity other than a company, a letter from an independent auditor,~~ to the effect that the Entity is not insolvent, in receivership, bankrupt or in the process of being wound up.

e. Public Private Partnership (PPP) Experience, using the form in **Annex QD-4**.

The following must be provided by an Entity proposed to meet the PPP ~~Experience~~experience requirements, as identified in the Business Structure:

i. Documentary evidence from each Eligible PPP Project owner that the construction of such Eligible PPP Project has been completed and accepted by the project owner and specifying the date of completion and acceptance of such Eligible PPP Project (e.g. completion certificate). The documentary evidence for each Eligible PPP Project shall be accompanied by a notarized statement from the authorized representative of the Entity claiming the PPP Experience that the documentary evidence provided is the standard form of project acceptance in the jurisdiction from which Eligible Project is presented; and

~~ii. for each and every Eligible PPP Project, a copy of the certificate of construction completion from the project owner; and~~

~~iii.~~ii. project data sheets specifying the name and location of the Eligible PPP Project, Lane-km constructed, length of road and number of Lanes, client name and contact details, and details including percentage shareholding of such Entity in the Eligible PPP Project.

f. -Construction ~~Experience~~experience, using the form in **Annex QD-5**

The following must be provided by the Entity proposed to meet the Construction Experience~~construction—experience~~ requirements, as identified in the Business Structure:

i. Documentary evidence from each Eligible Construction Project owner that the construction of such Eligible Construction Project has been completed and accepted by the project owner specifying the date of completion and acceptance of such Eligible Construction Project (e.g. completion certificate). The documentary evidence for each Eligible Construction Project shall be accompanied by a notarized statement from the authorized representative of the Entity claiming the Construction Experience that the documentary evidence provided is the standard form of project acceptance in the jurisdiction from which the Eligible Project is presented

- ~~ii. Notarized certification 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 proposed as fulfilling the construction experience requirements that such copy is a certified true copy of the original certificate.~~
- ~~iii.ii. Certification of the authorized representative statutory auditor of the company or in case of thean Entity other than a company, a letter from an independent auditor, specifying that the average annual turnover from construction activity of the Entity meeting the Construction Experienceconstruction experience requirements is equal to or greater than USD 850 million, over the last 3 (three) years preceding the RFQ Submission Date, is equal to or greater than USD 850 million together with the Audited Financial Statements of the last 3 years in support thereof as prescribed under Section 4.2.2 (iii).~~
- g. O&M Experience,experience, using the form in **Annex QD-6**.
  - ~~The following must be provided by the Entity proposed to meet the O&M Experienceexperience requirements, as identified in the Business Structure:~~
    - i. Confirmation from the Eligible O&M Project owner that the Eligible O&M Project road has been (or continues to be) operated and maintained by that Entity in the ten (10) years preceding the RFQ Submission Date and that the period ~~forever~~ which that Entity has ~~to operateoperated~~ and ~~maintained~~ the Eligible O&M Project road is not less than five (5) years.
    - ii. ~~2)~~ Project data sheets specifying the name and location of the Eligible O&M Project including, Lane km being operated and maintained, length of road, number of Lanes, client name and contact details.
- h. Notarized Statement of Financial Capacity, using the form in **Annex QD-7** by the Prospective Bidder. If the Prospective Bidder is a Consortium, duly certified true copy of the Latest Audited Financial Statements, duly notarized, must be submitted by each Qualifying Shareholder proposed as meeting the Financial Qualification Requirements. In the event such Audited Financial Statements are in a language other than English, the same shall be accompanied by an accurate English translation of such document duly translated into English by a translator who shall certify the translation as true and genuine. Additionally, the Prospective Bidder shall duly certify the translation as true and genuine and the same shall also be duly notarized by a notary public of that country. In addition to the above requirements, where a Prospective Bidder or a Qualifying Shareholder is an Entity which is a closed Investment Fund, the available funds which have yet to be committed to projects shall be provided as evidence of Net Worth together with a declaration by its authorised representative that the anticipated investment in the Project by such Investment Fund falls within the Investment Fund's country and sectoral limits, taking into account investments held as on the RFQ Submission Date. Certified and notarised copy of its charter documents should be provided as a true and correct copy by the authorized representative of the closed Investment Fund.
  - i. Notarized financial letter of support in the form provided at **Annex QD-8** by each of the Affiliate(s) whose experience / credentials have been relied upon by the Prospective Bidder or the Qualifying Shareholder to satisfy the PPP

Experience or the Financial Qualification Requirements. Where the experience or credentials of an Affiliate is used by the Prospective Bidder or a Qualifying Shareholder, a notarized copy of the Latest Audited Financial Statements of such Affiliate shall be submitted together with a summary table providing aggregate of its Net Worth. The copy of the Latest Audited Financial Statements shall be certified as a true and correct copy by the Affiliate's authorized representative who will also sign the financial letter of support to be furnished under Section 4.2.3 (i).

- ~~i. A signed copy of Annex QD-8 signifying its acceptance towards complying with the essential requirement of submitting a Deed of Guarantee (as be amended) at a later date.~~
- j. Indicative letter of support from Qualifying Bank and Financial Institution for lending of debt finance for the Project, substantially in using the form provided at in Annex QD-9A.
- k. Letter of Commitment, using the format in **Annex QD-9B**, from a single Prospective Bidder stating that the minimum intended level of equity contribution in the Project Company will not be less than USD 150 million. Where such Prospective Bidder is a Consortium, the Letters of Commitment using the format in **Annex QD-9B**, shall be given by each of the Consortium Members stating their individual minimum intended equity contribution and that the aggregate minimum intended equity contribution level of all the Consortium Member equity contribution in the Project Company will not be less than USD 150 million.
- l. Notarized Certification of Absence of Unsatisfactory Performance Record using the **Annex QD-10** by a single Prospective Bidder and all Qualifying Shareholders, Affiliates and Contractors.
- m. Information, using the form in **Annex ID-1**

For information purposes only, ~~the~~ Prospective Bidders shall provide the names of the key team members (and their employers) who are intended to be involved in the management of the Bid.

~~Note: In the event, the turnover/ Net Worth figures of a Prospective Bidder/ Qualifying Shareholder/ Affiliate/ Contractor is in any currency other than USD, for the purpose of assessment under this RFQ, the same shall be converted into US Dollars at the exchange rate specified in Section 3(q) above.~~

## ~~6.5.~~ SUBMISSION AND VALIDITY OF QUALIFICATION DOCUMENTS

### 6.1 FORMAT OF SUBMISSION OF QUALIFICATION DOCUMENTS

6.1.1    A Prospective Bidder must submit its Qualification Documents in the    following form:

- (a) One (1) complete original set, clearly marked on the cover each page as "QUALIFICATION DOCUMENTS-ORIGINAL," and each document must have pagination in continuous sequential order;
- (b) ~~two (2)~~four (4) sets of photocopies, clearly marked on the cover each page as "QUALIFICATION DOCUMENTS-COPY NO.   "; and

(c) two (2) readable compact discs (CD-R), each containing electronic files of all the documents comprising the Qualification Documents in Portable Document Format (.pdf), except for spreadsheets and charts, if any, which may be submitted in Microsoft Word application as appropriate, with the pages arranged in exactly the same sequence as the sequence in the original set of the Qualification Documents; provided that in the event of any conflict between the printed (paper) copies and the electronic copies, the original printed (paper) copies shall prevail.

6.1.2 Each page of the original set of Qualification Documents, including any required attachments, shall be serially numbered and initialled using blue ink (on the right margin) by the Prospective Bidder's authorized representative as identified in the form in **Annex QD-1B or QD-1C**. In case of conflict between the original set and the photocopies, the original set shall prevail.

6.1.3 Each set of the Qualification Documents should contain a table of contents.

~~6.1.46-14~~ Whenever possible, Qualification Documents must be printed either in standard A4 or letter size (8 1/2" x 11") paper and bound together in ring binders or folders of appropriate size. Documents must be paginated and text must be at least of 12-font size.

6.1.5 Each set of the Qualification Documents must be placed in an envelope. The two (2) CDs should also be placed in another envelope. Each of the ~~three (3) five (5)~~ envelopes containing the Qualification Documents and the two envelopes containing the two (2) CDs must be sealed and appropriately addressed and marked as follows:

<p>KENYA NATIONAL HIGHWAYS AUTHORITY</p> <p>PUBLIC PRIVATE PARTNERSHIP FOR THE NAIROBI-NAKURU-MAU SUMMIT HIGHWAY</p> <p>QUALIFICATION DOCUMENTS</p> <p>KeNHA/1397/2016</p> <p>[ORIGINAL/ COPY NO. ( ) / CDs No. ( )</p> <p>[STATE NAME, ADDRESS, TELEPHONE NUMBER (WITH COUNTRY AND CITY CODE), E-MAIL AND FACSIMILE NUMBER OF PROSPECTIVE BIDDER]</p> <p>DO NOT OPEN UNTIL <del>07<sup>th</sup> FEBRUARY 2017</del> <u>07<sup>th</sup> FEBRUARY 2017</u> <del>JANUARY 2017</del></p>
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**6.2 FORMAT OF SUBMISSION OF QUALIFICATION DOCUMENTS BY THE RFQ SUBMISSION DATE**

6.2.1 The Prospective Bidder shall place the envelopes containing (i) one (1) original set of the Qualification Documents, (ii) ~~two (2) four (4)~~ sets of photocopies of the Qualification Documents and (iii) the two (2) CDs containing the electronic copies, in one outer sealed box marked as follows:

KENYA NATIONAL HIGHWAYS AUTHORITY

PUBLIC PRIVATE PARTNERSHIP FOR THE  
NAIROBI-NAKURU-MAU SUMMIT HIGHWAY

QUALIFICATION DOCUMENTS  
KeNHA/1397/2016

[STATE NAME, ADDRESS, TELEPHONE NUMBER (WITH COUNTRY AND CITY CODE),  
E-MAIL AND FACSIMILE NUMBER OF PROSPECTIVE BIDDER]  
DO NOT OPEN UNTIL ~~07<sup>th</sup> FEBRUARY 2017~~<sup>07<sup>th</sup> FEBRUARY 2017</sup> ~~JANUARY 2017~~

6.2.2 If any of the envelopes are not sealed and marked as required, KeNHA shall assume no responsibility for the misplacement or premature opening of the envelopes. Any incomplete submission of the Qualification Documents as at the date and time of opening of the Qualification Documents by KeNHA shall be rejected.

**6.3 PLACE AND DEADLINE OF SUBMISSION OF QUALIFICATION DOCUMENTS AND THEIR VALIDITY**

6.3.1 Each Prospective Bidders' Qualification Documents are to be submitted no later than 2:00 pm, Kenya Standard Time, on RFQ Submission Date by hand or courier (at the Prospective Bidder's absolute risk as to timely delivery) to:

The Pre-Qualification Committee for Nairobi-Nakuru-Mau Highway  
Kenya National Highways Authority  
1<sup>st</sup> Floor, Blue Shield Towers, Hospital Road, Upper Hill  
Nairobi, Kenya

Provided that KeNHA shall not receive a Prospective Bidder's couriered Qualification Documents where such couriered delivery occurs after the date and time indicated above.

6.3.2 The Qualification Documents submitted by Prospective Bidders shall be stamped with the date and time of receipt (Kenya Standard Time) which shall be recorded in a register maintained for that purpose by KeNHA.

6.3.3 Any Qualification Documents received after the RFQ Submission Date will be automatically rejected and not accepted.

6.3.4 Qualification Documents cannot be modified, altered, substituted or withdrawn after the RFQ Submission Date. For avoidance of doubt, it is clarified that Qualification Documents can be substituted by the Prospective Bidder any time prior to the RFQ Submission Date by written notification to KeNHA.

6.3.5 Qualification Documents shall remain valid for a period of one hundred twenty (120) days after the RFQ Submission Date. The Prospective Bidder may extend the validity of the Qualification Documents if so required by KeNHA. Failure on part of the Prospective Bidder to extend or agree to extend the validity period of the Qualification Documents as may be requested by KeNHA shall result in rejection of the Bid of such Pre-Qualified Bidder.

**7.6. OPENING OF QUALIFICATION DOCUMENTS**

- 7.1 At 3:00 p.m. on the RFQ Submission Date, KeNHA will commence the opening proceedings by announcing the names of the Prospective Bidders who have submitted Qualification Documents. KeNHA shall then open the envelope of each Prospective Bidder, one at a time, in the order in which the Qualification Documents were received by KeNHA.
- 7.2 KeNHA shall examine the contents of each Prospective Bidder's envelope to determine whether it contains all of the Qualification Documents required. If the contents of the envelope are found to be incomplete, KeNHA shall disqualify the Prospective Bidder.
- 7.3 A representative of each Prospective Bidder will be allowed to witness the opening of the Qualifications Documents. Such representative shall sign the register confirming their attendance. A Prospective Bidder who does not send a representative to witness the opening of the envelope shall be deemed to have waived the opportunity to witness the opening.
- 7.4 KeNHA shall evaluate the Qualifications Documents submitted in accordance with Section 8.

**8.7. EVALUATION OF QUALIFICATION DOCUMENTS**

- 8.1 KeNHA shall evaluate the Qualification Documents after the RFQ Submission Date. The detailed evaluation of the Minimum Qualification Requirements of each Prospective Bidder for the Project shall be based exclusively upon the submitted Qualification Documents.
- 8.2 KeNHA reserves the right to make enquiries or seek clarification or any additional information it may find necessary or desirable to clarify or authenticate the statements made and information provided in the Qualification Documents by any Prospective Bidder. KeNHA shall only make requests for clarification in writing to the authorized representative~~Authorised Representative~~ of the Prospective Bidder.
- 8.3 All information submitted and any clarifications received by KeNHA shall be evaluated against the Minimum Qualification Requirements and evaluated strictly on a pass-or-fail basis. The Prospective Bidder will be considered as Pre-Qualified if all Qualification Requirements are rated "passed" and all required Qualification Documents and attachments are completely submitted in the proper form and any other enquiries made by KeNHA shall have produced a satisfactory response and all other requirements of the RFQ have been complied with. The Prospective Bidder shall be considered as disqualified if any Qualification Requirement is rated failed or if any required Qualification Document is missing or not in the proper form or KeNHA receives an unsatisfactory response to any enquiries it has made in respect of a Prospective Bidder's Qualification Documents.

**9.8. DISQUALIFICATION OF PROSPECTIVE BIDDERS**

- 9.1 A Prospective Bidder may be disqualified from participating in the Bidding for any of the following reasons in addition to the grounds for disqualification described above in section 8.3.
- 9.2 A Prospective Bidder shall be disqualified if:
- it is a Prohibited Person; or
  - it submits false, inaccurate or incomplete information in relation to its qualifications; or
  - it involves itself in any Corrupt, Fraudulent or Dishonest, Collusive, Coercive, Undesirable, or Restrictive Practice; or
  - it has a Conflict of Interest as described in Section 3 (b); or
  - it contravenes the provisions of the PPP Act, PPP Regulations or any other written law, inter-alia, in order to have an unfair advantage over the other Prospective Bidders; or
  - it fails to meet any of the Minimum Qualification Requirements set out at Section 4; or
  - it makes a material misrepresentation in the Qualification Documents; or
  - it participates in any illegal activity or attempts to influence the Pre-Qualification Committee's evaluation of the Qualification Documents or otherwise interferes with the Pre-Qualification process; or
  - it fails to make payment of the Participation Fee in accordance with this RFQ.
- 9.3 For the avoidance of doubt grounds for disqualification shall apply to all Prospective Bidders, Consortium Members, Affiliates, and any Contractor proposed by the Prospective Bidder to fulfill any of the Minimum Qualification Requirements.

**10.9. PRE-QUALIFIED BIDDERS AND NOTICE OF QUALIFICATION**

- 10.1 A Prospective Bidder who is declared as having 'passed' under Section 8 shall be deemed to have Pre-Qualified and is designated a Pre-Qualified Bidder and eligible to participate in the Bid Stage of the Bidding Process.
- 10.2 KeNHA shall notify all Prospective Bidders in writing following completion of the evaluation of all submitted Qualification Documents and shall advise each Prospective Bidder individually as to whether or not they have Pre-Qualified. KeNHA shall also publish the list of the Pre- Qualified Bidders in the Gazette and in at least two newspapers of national circulation.



**11.10. ACCEPTANCE OF TERMS AND CONDITIONS AND OF GOVERNING LAW**

- 11.1 By submitting the Qualification Documents, the Prospective Bidder agrees to be bound by:
- (a) all the terms and conditions contained in this RFQ; and
  - (b) the laws of Kenya applicable to:(i) the issuance of this RFQ by KeNHA; and (ii) the submission of the Qualification Documents by the Prospective Bidder.

**Annex QD-1A  
NOTARIZED APPLICATION FOR PRE-QUALIFICATION**

[Letterhead]

Date: [•]

To,  
The Secretary  
Pre-Qualification Committee  
Kenya National Highways Authority  
Blue Shield Towers, Hospital Road, Upper Hill  
NAIROBI

**TENDER NO: KeNHA/1397/2016 [•]**

**PRE-QUALIFICATION FOR THE NAIROBI-NAKURU-MAU SUMMIT HIGHWAY**

I, (name), (citizenship), of legal age, with the office address at (address), acting as the authorized representative of (name of single Prospective Bidder/Lead Member), a (~~company.~~~~Company~~, partnership, or corporation) having its registered office at (address), being the Prospective Bidder / Lead Member of [name of the Consortium] comprising of name of all Consortium Members) (organized and existing under the laws of [State and Country] / organized by an agreement among the Consortium ~~Members].~~~~Members~~), as indicated by the authorization certificate attached as QD-1B being the notarized authority to apply to Pre-Qualify and designation of authorized representative (and QD-1C being the Consortium Member's notarized authority to participate in Consortium and apply to Pre-Qualify, and designate the designation—of Lead Member and Qualifying Shareholder/s<sup>1</sup>], after having been duly sworn according to law, hereby declare and certify for and on behalf of (name of Prospective Bidder) that:

(Capitalized terms used ~~herein~~ but not defined herein will have the meaning assigned to such term in the Request for Qualification ("RFQ").~~("RFQ"), unless the context requires otherwise.~~)

1. The Qualification Documents to Pre-Qualify to Bid for the Nairobi-Nakuru-Mau Summit Highway Project are hereby submitted after fully reviewing and understanding the contents of the RFQ and the Qualification Documents.
2. The Qualification Documents are unqualified and unconditional.
3. All statements made and the information and documents provided by us, being the Prospective Bidder [and all the Consortium Members/Qualifying Shareholders, the Subsidiaries, and Affiliates and the Contractors of the Prospective Bidder and the Qualifying Shareholders]~~Shareholders, and the Contractors~~ in or as any part of the Qualification Documents, are true and correct and any misrepresentation or false statement made therein shall be a ground for our disqualification from the Bidding Process.
4. We, the Prospective Bidder, authorize KeNHA to make enquiries to authenticate the statements, documents and information submitted in our Qualification Documents, and to seek clarification from us and, as applicable, from our board of directors / partners, Consortium Members, Subsidiaries, Affiliates, Contractors, advisors, clients or bankers regarding any legal, technical and financial aspects.

<sup>1</sup>For a Consortium only, to be submitted by each Consortium Member.

5. -We acknowledge the right of KeNHA to reject our Qualification Documents and to cancel the Bidding Process at any time in accordance with Section 58 of the PPP Act, without incurring any liability, and accept all the terms and conditions of the RFQ.
6. We, the Prospective Bidder, [including any of the Consortium Member/ Qualifying Shareholder(s), Subsidiaries, Affiliate(s) and /Contractors named in the Qualifying Documents as complying with the Minimum Qualification Requirements under this RFQ], have not at any time engaged in any Corrupt, Fraudulent or Dishonest, Coercive, Undesirable or Restrictive Practices.
7. We, the Prospective Bidder [all the Consortium Members/Qualifying Shareholders, the Subsidiaries, Affiliates or Contractors of the Prospective Bidder/~~and the Qualifying Shareholders]Shareholders, and the Contractors] are neither Prohibited Person nor do we have any Conflict of Interest.~~
8. We, the Prospective Bidder, confirm and warrant that:
  - (a) the Qualification Documents have been prepared without consultation, communication or agreement for restricting competition with any other Prospective Bidder (including the Consortium Members/Qualifying Shareholders, -and/-or the Subsidiaries, Affiliates or Contractors of such other Prospective Bidder or Qualifying Shareholder(s));
  - (b) the Qualification Documents have not been disclosed, nor will they be disclosed to any other Prospective Bidder, or Consortium Member of any other Prospective Bidder, or any of their Affiliates or Contractors;
  - (c) no attempt has been made nor will be made by us to induce any other person to submit or not to submit their Qualification Documents;
  - (d) we (including any Consortium Member /Qualifying Shareholders, the Subsidiaries, Affiliates or Contractors)and Affiliate) have not hired and engaged or been advised by or consulted with, including by way of gratuitous consultations, any person who is (i) currently in the employment of the Transaction Advisor or of KeNHA/Government of Kenya; or (ii) was in the employment of the Transaction Advisor or of KeNHA/Government of Kenya and was involved in the Project in any manner or capacity in the last 3 years preceding the RFQ Submission Date.
9. We, the Prospective Bidder [and all the Consortium Members, the Subsidiaries, Affiliates and Contractors of the Prospective Bidder or and the Qualifying Shareholders]Shareholders, and the Contractors] undertake to indemnify KeNHA and hold it harmless from any loss, damage, liabilities, claims, actions, proceedings, demands, costs, charges or expenses of whatsoever nature suffered by KeNHA for its refusal to disclose materials marked as being copyright material, trade secrets or other proprietary information to any person seeking the disclosure of such materials.
10. We, the Prospective Bidder [and all the Consortium Members/Qualifying Shareholders, the Subsidiaries, Affiliates and Contractors of the Prospective Bidder and the Qualifying Shareholders]Shareholders, and the Contractors] confirm that the Qualification Documents shall remain valid for a period of one hundred and twenty (120) days after the relevant RFQ Submission Date.
11. We, the Prospective Bidder being a single Prospective Bidder undertake that in the event the we become the Successful Bidder and are asked to execute the Project Agreement, we shall, pursuant to the provisions of the PPP Act, establish

a Project Company in accordance with the Companies Act, 2015, as amended or substituted from time to time and we shall comply with all other requirements under the RFQ and shall be the Project Company's sole shareholder for the duration of the Lock-In Period as long as the Project Agreement requires it to be its sole shareholder.

OR

We, the Prospective Bidder being a Consortium undertake that in the event the Consortium becomes the Successful Bidder and is asked to execute the Project Agreement, we shall, pursuant to the requirements of the PPP Act, establish a Project Company in accordance with the PPP Act, as amended or substituted from time to time, and ~~that~~ the Lead Member recognised as such in these Qualification Documents shall hold a minimum of no less than twenty-six percent (26%) of the shares of the Project Company for the duration of the Lock-In Period as long as the Project Agreement requires the Lead Member to hold a minimum of no less than twenty-six percent (26%) of the shares of the Project Company and that the Qualifying Shareholders named as such in these Qualification Documents shall hold a minimum of no less than ten percent (10%) of the shares of the Project Company for the duration of the Lock-In Period and we shall comply with all other requirements under the RFQ.~~as long as the Project Agreement requires the Qualifying Shareholders to hold a minimum of no less than ten percent (10%) of the shares of the Project Company.~~

For and on behalf of *(Name of Prospective Bidder/ Lead Member together with all otherist of Consortium Members mentioned in the attached list)*

(Signature of authorized representative)

(Name)

(Designation)

[(Name of Entity / Lead Member), Lead Member of (name of Consortium)]

SUBSCRIBED AND SWORN TO before me this (\_\_) day of (month and year) at (place), each affiant exhibiting to me his/her (proof of identity acceptable under the applicable laws) issued at (city) on (date) in support of his identity.

Notary Public

*Note: Please insert, the information, as applicable, in the ( ) or { } or [ ] parenthesis. Where any information is not relevant, the irrelevant part or the whole of the text with, as the case may be, in the parenthesis / brackets should be deleted.*

**Annex QD-1B  
NOTARIZED AUTHORITY TO APPLY TO PRE-QUALIFY AND DESIGNATE AN  
AUTHORIZED REPRESENTATIVE**

To be submitted by a Prospective Bidder which is a single Prospective Bidder or by the Lead Member

[Letterhead]

Date: [●]

To:  
The Secretary  
Pre-Qualification Committee  
Kenya National Highways Authority  
Blue Shield Towers, Hospital Road, Upper Hill

NAIROBI

**TENDER NO: KeNHA/1397/2016 [●]**

**PRE-QUALIFICATION FOR NAIROBI-NAKURU-MAU SUMMIT HIGHWAY PROJECT**

I, *(name of authorized representative)*, hereby depose and state on behalf of *(name of Prospective Bidder)* that:

1. I am a citizen of (state and nationality), ~~citizen~~, of legal age and a resident of (address);
2. *(Name of single Prospective Bidder/Consortium)* (the "Prospective Bidder"), is a *(provide the legal structure i.e. Company, partnership or corporation/Consortium)* (duly organized and existing under the laws of (State and Country/ organized by an agreement among the Consortium Members) (of which [name of Lead Member] is the Lead Member);
3. At a ~~(regular/special<sup>2</sup>)~~ 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:

NOW IS IT HEREBY RESOLVED

- 3.1 that *(name of single Prospective Bidder /Lead Member)* is, authorized to apply for Pre-Qualification as *(a single Prospective Bidder /Lead Member of the [name] Consortium)* for Nairobi-Nakuru-Mau Summit Highway "the Project"; and
- 3.2 that *(name of representative and designation)* is hereby appointed as the authorized representative of the *(Prospective Bidder/Lead Member)* to make submissions/statements, commit, undertake, declare, submissions, execute, sign, certify, submit the Qualification Documents / Bid and receive any requests/documents for clarification, additional information, authentication or verification, and otherwise act

<sup>2</sup>~~As applicable under the applicable laws.~~

in the name of, the (Prospective Bidder/Lead Member and the Prospective Bidder) in relation to the Pre-Qualification; and

3.3 that any and all acts performed by (*name of representative*) under and by virtue of this Resolution are hereby, confirmed and ratified.

4. These resolutions have not been revoked, amended or modified and remain valid and binding on the Prospective Bidder; and
5. The above resolutions are in accordance with the records of the (Prospective Bidder/Lead Member).

Capitalized terms used herein but not defined herein will have the meaning assigned to such term in the Request for Qualification, No: KeNHA/1397/2016 ("RFQ"), ~~["RFQ"]~~, ~~unless the context requires otherwise.~~

*Place, Date of Execution.*

(Signature of authorized representative)

(Name)

(Designation)

[(Name of Entity) (Authorised Representative)]

SUBSCRIBED AND SWORN TO before me this (\_\_) day of (month and year) at (place), each affiant exhibiting to me his/her (proof of identity acceptable under the applicable laws) issued at (city) on (date) in support of his identity.

Notary Public

Note: *Fill in the complete description/ strike out the non-applicable text, as applicable, so as to provide sufficient explanation mentioned within the ( ) or [ ] parenthesis / brackets.*

**Annex QD-1C  
 CONSORTIUM MEMBER'S NOTARIZED AUTHORITY TO PARTICIPATE IN  
 CONSORTIUM AND APPLY TO PRE-QUALIFY, AND DESIGNATE LEAD MEMBER  
 AND OTHER CONSORTIUM MEMBERS**

For a Prospective Bidder which is a Consortium; to be submitted by each Consortium Member.

[Letterhead]

To,  
 The Secretary  
 Pre-Qualification Committee  
 Kenya National Highways Authority  
 Blue Shield Towers, Hospital Road, Upper Hill

NAIROBI

**TENDER NO: KeNHA/1397/2016 [•]**

**PRE-QUALIFICATION FOR THE NAIROBI-NAKURU-MAU SUMMIT HIGHWAY PROJECT**

I, (*name of authorized representative*), after having been duly sworn according to law, hereby depose and state that:

1. I am a citizen of (*state and nationality*), ~~citizen~~, of legal age and a resident of (*address*);
2. I am ~~a~~ duly appointed authorized representative of (*name of Consortium Member*), a (*provide the legal structure i.e. Company, partnership, or corporation*) organized and existing under and by virtue of the laws of (*the place of incorporation/registration*);
3. At a ~~(regular/special<sup>3</sup>)~~ meeting of the (*board of directors/partners*) of (*name of Consortium Member*), held on (*date*) at (*place*), in which meeting a quorum was present throughout, the following resolutions were unanimously passed and approved:

RESOLVED, AS IT IS HEREBY RESOLVED, that the (*name of Consortium Member*) be, and is, authorized to participate in the Bidding Process as a Consortium Member and apply for Pre-Qualification for the Nairobi-Nakuru-Mau Summit Highway (the "Project") through a Consortium consisting of the following Consortium Members;

Name of all Consortium Members	Nationality	Role [i.e Lead Member/ Qualifying Shareholder/ Others (please specify)]	Proposed <u>percentage (%)</u> age of share holding in the Project Company, if any

<sup>3</sup>~~As under the applicable laws.~~

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RESOLVED, FURTHER, that the (name of Consortium Member) in ~~the~~ exercise of its interest in the Consortium hereby designates (name of Lead Member of Consortium) as Lead Member of the Consortium with the authority to represent the Consortium on all matters whatsoever during the Pre-Qualification Stage and the Bid Stage for the Project, with the power to appoint and ~~sub-~~delegate any powers herein to any of its director, partner, officer or employee to act as the authorized representative of the Consortium and who shall have the authority to make submissions/statements, commit, undertake, declare, execute, sign, certify, submit the Qualification Documents/Bid and receive any requests/documents for clarification, additional information, authentication or verification; and otherwise act on our behalf and in the name of the Consortium.

RESOLVED, FURTHER, that any and all act done or performed by (name of Lead Member of Consortium) and it's authorized representative under and by virtue of this resolution be, as they are hereby, confirmed and ratified.

RESOLVED, FURTHER, that in the event the Consortium is declared as the Successful Bidder, the (name of Consortium Member) will cooperate with the other Consortium Members to register the Project Company as per the PPP Act, as amended or substituted from time to time, for implementation of the Project and shall hold ( %) shares in the Project Company.

RESOLVED, FURTHER, that (name of the Consortium Member) binds itself jointly and severally for all the obligations of the Prospective Bidder under the RFQ.

RESOLVED, FINALLY, that (name of the authorized representative of the Consortium Member) be and is hereby authorized to sign and issue all documents on behalf of (name of the Consortium Member) as may be required as a Consortium Member for submission of or in relation to the Qualification Documents.

4. These resolutions have not been revoked, amended or modified and remain valid and binding on the (Consortium Member); and

5. The above resolutions are in accordance with the records of the (name of the Consortium Member).

Capitalized terms used herein but not defined herein will have the meaning assigned to such term in the Request for Qualification, No: KeNHA/1397/2016 ("RFQ").~~[•] ("RFQ"); unless the context requires otherwise.~~

*Place, Date of Execution.*

(Signature of authorized representative)

(Name)

(Designation)

[(Name of Entity){Authorized Representative}]



SUBSCRIBED AND SWORN TO before me this ( ) day of (month and year) at (place), each affiant exhibiting to me his/her (proof of identity acceptable under the applicable laws) issued at (city) on (date) in support of his identity.

Notary Public

Note: Fill in the complete description/ strike out the non-applicable text, as applicable, so as to provide sufficient explanation mentioned within the ( ) or [ ] parenthesis / brackets.

**Annex QD-2A**  
**BUSINESS STRUCTURE (FOR A PROSPECTIVE BIDDER WHICH IS A SINGLE PROSPECTIVE BIDDER)**

1. Single Prospective Bidder who will satisfy the PPP Experience Requirement

a. Name of the <u>Entity being the Prospective Bidder</u>	
b. Net worth in USD as per the Latest Audited Financial Statements	
c. Address	
d. Website	
e. Contact person	
i. Telephone	
ii. Fax	
iii. Email	

2. Affiliate (including Subsidiary) of Prospective Bidder, if any, who will satisfy the PPP Experience Requirement

a. Name of the Affiliate	
b. Net worth in USD as per the Latest Audited Financial Statements	
c. Address	
d. Website	
e. Contact person	
i. Telephone	
ii. Fax	
iii. Email	

[Note: If more than one Affiliate fulfils the PPP Experience Requirement, replicate table above.]

3. Single Prospective Bidder who will satisfy the Construction Experience Requirement

a. Name of the <u>Entity being the Prospective Bidder</u>	
b. Average annual turnover from construction activities in the last 3 years prior to the RFQ Submission Date in USD	
c. Address	

d. Website	
e. Contact person	
i. Telephone	
ii. Fax	
iii. Email	

4. ~~Construction Contractor, proposed by the Affiliate of~~ Prospective Bidder, ~~proposed~~ as fulfilling the Construction Experience Requirement

a. Name of the <del>Construction Contractor</del> <del>Affiliate</del>	
<del>b. Relationship with Prospective Bidder</del>	
<del>e-b. Average annual turnover from construction activities in the last 3 years prior to the RFQ Submission Date in USD</del>	
<del>e-c. Address</del>	
<del>e-d. Website</del>	
<del>f-e. Contact person</del>	
i. Telephone	
ii. Fax	
iii. Email	

~~[Note: If more than one Affiliate fulfils the Construction Experience Requirement, replicate table above.]~~

~~5. Construction Contractor, proposed by the Prospective Bidder as fulfilling the Construction Experience Requirement~~

<del>a. Name of the Construction Contractor</del>	
<del>b. Average annual turnover from construction activities in the last 3 years prior to the RFQ Submission Date in USD</del>	
<del>c. Address</del>	
<del>d. Website</del>	
<del>e. Contact person</del>	
i. Telephone	
ii. Fax	
iii. Email	

~~6.5. Single Prospective Bidder who will satisfy the O&M Experience Requirement~~

a. Name of Entity	
b. Address	
c. Website	
d. Contact person	
i. Telephone	
ii. Fax	
iii. Email	

~~7.6. O&M Contractor proposed by Affiliate of the Prospective Bidder proposed as fulfilling the O&M Experience Requirement~~

a. Name of Entity	
<del>b. Relationship with Prospective Bidder</del>	
<del>e-b. Address</del>	
<del>d-c. Website</del>	
<del>e-d. Contact person</del>	
i. Telephone	
ii. Fax	
iii. Email	

~~[Note: If more than one Affiliate is proposed to fulfil the O&M Experience Requirement, replicate table above.]~~

~~8.7. O&M Contractor proposed by the Prospective Bidder who will fulfil the Financial Qualification as fulfilling the O&M Experience Requirement~~

<del>a. Name of Entity</del>	
<del>b. Address</del>	
<del>c. Website</del>	
<del>d. Contact person</del>	
<del>i. Telephone</del>	
<del>ii. Fax</del>	
<del>iii. Email</del>	

~~9. Prospective Bidder who will fulfil the Financial Qualification Requirement~~

<del>a.</del> <del>Name of Entity</del>	
<del>b.a.</del> Net worth in USD as per the Latest Audited Financial Statements	
<del>e.b.</del> Address	
<del>d.c.</del> Website	
<del>e.d.</del> Contact person	
i. Telephone	
ii. Fax	
iii. Email	

~~10.8.~~          Affiliate of the Prospective Bidder proposed as fulfilling the Financial Qualification Requirement

a. Name of <del>Entity</del> <u>Affiliate</u>	
b. Net worth in USD as per the Latest Audited Financial Statements	
c. Address	
d. Website	
e. Contact person	
i. Telephone	
ii. Fax	
iii. Email	

[Note: If more than one Affiliate is proposed to fulfil the Financial Qualification Requirement, replicate table above.]

For and on behalf of (Name of Prospective Bidder)

(Signature of ~~authorized representative~~Authorized Representative)

(Name, Title, and Date)

Note: Fill in the complete description/ strike out the non-applicable text, as applicable, so as to provide sufficient explanation mentioned within the ( ) or [ ] parenthesis / brackets.

**Annex QD-2B  
BUSINESS STRUCTURE (FOR A PROSPECTIVE BIDDER WHICH IS A  
CONSORTIUM)**

## 1. Consortium Members

Name of Consortium Member				
Proposed shareholding in the Project Company				
Role in Consortium (such as Lead Member/Consortium Member/ Qualifying Shareholder whose credentials <u>or</u> /experience is used/ <del>or</del> any other,)				

## 2. Contact Information of Consortium Members

a. Name of <del>Lead Member/Qualifying Shareholder/ Other</del> Consortium Member)	
b. Address	
c. Website	
d. Contact (Name and Designation)	
i. Telephone	
ii. Fax	
iii. Email	

[Note: Replicate table above for all Consortium Members.]

## 3. Qualifying Shareholder which fulfils the PPP Experience Requirement

a. Name of Qualifying Shareholder	
<u>a. Net Worth in USD as per the Latest Audited Financial Statements</u>	
b. Proposed share holding in the Project Company	
c. Address	
d. Website	
e. Contact (Name and Designation)	
i. Telephone	

ii. Fax	
iii. Email	
<u>Provide the Exchange rate, reference date and source of the exchange rate for the currency used.</u>	

[Note: 1) If more than one Qualifying Shareholder fulfils the PPP Experience Requirement, replicate table above

4. Affiliates (including Subsidiaries), if any, of the Qualifying Shareholder(s) nominated to satisfy the PPP Experience Requirement

a. Name of Affiliate	
b. Qualifying Shareholder with whom <del>It is</del> Affiliated	
<u>a. Net Worth in USD as per the Latest Audited Financial Statements</u>	
c. Address	
d. Website	
f. Contact (Name and Designation)	
i. Telephone	
ii. Fax	
iii. Email	

[Note: 1) If more than one Affiliate fulfils the PPP Experience Requirement, replicate table above.

5. Qualifying Shareholder(s), if any, which fulfils the Construction Experience Requirement:

a. Name of Qualifying Shareholder	
b. Average annual turnover from the construction activities over the last 3 years prior to the RFQ Submission Date in USD	
c. Proposed share holding in the Project Company	
d. Address	
e. Website	
g. Contact (Name and Designation)	
i. Telephone	
ii. Fax	
iii. Email	

[Note: If more than one Qualifying Shareholder fulfils the Construction Experience Requirement, replicate table above.]

~~6.6. Affiliates, if any, of the Qualifying Shareholder nominated by the Prospective Bidder to satisfy the Construction Experience Requirement~~

<del>a. Name of Affiliate</del>	
<del>b. Qualifying Shareholder with whom it is Affiliated</del>	
<del>c. Average annual turnover from the construction activities over the last 3 years prior to the RFQ Submission Date in USD</del>	
<del>d. Address</del>	
<del>e. Website</del>	
<del>h. Contact (Name and Designation)</del>	
<del>i. Telephone</del>	
<del>ii. Fax</del>	
<del>iii. Email</del>	

~~[Note: If the experience of more than one Affiliate fulfils the Construction Experience Requirement, replicate table above.]~~

~~7. Construction Contractor, if any, nominated by the Prospective Bidder to satisfy the Construction Experience Requirement~~

<del>a. Name of the Construction Contractor</del>	
<del>b. Average annual turnover from the construction activities over the last 3 years prior to the RFQ Submission Date in USD</del>	
<del>c. Address</del>	
<del>d. Website</del>	
<del>e. Contact person</del>	
<del>i. Telephone</del>	
<del>ii. Fax</del>	
<del>iii. Email</del>	

~~7.8. Qualifying Shareholder(s), if any, which fulfil/s the O&M Experience~~

<del>1. Name of Qualifying Shareholder</del>	
<del>2. Proposed share holding in the Project Company</del>	
<del>3. Address</del>	



4. Website	
<del>i-h.</del> Contact (Name and Designation)	
i. Telephone	
ii. Fax	
iii. Email	

[Note: If more than one Qualifying Shareholder fulfils the O&M Experience Requirement, replicate table above.]

~~8.O&M Contractor,9. Affiliates,~~ if any, ~~nominated by~~ the ~~Prospective Bidder to~~Qualifying Shareholder(s) who satisfy the O&M Experience Requirement

a. Name of <del>the O&amp;M Contractor</del> Affiliate	
<del>b. Qualifying Shareholder with whom It Is Affiliated</del>	
<del>e-b.</del> Address	
<del>d-c.</del> Website	
<del>j-i.</del> Contact person(Name and Designation)	
i. Telephone	
ii. Fax	
iii. Email	

~~9. Qualifying Shareholder(s) which fulfils the Financial Qualification Requirements~~

~~[Note: If the experience of more than one Affiliate fulfils the O&M Experience Requirement, replicate table above.]~~

~~10.O&M Contractor, if any, nominated by the Prospective Bidder to satisfy the O&M Experience Requirement~~

a. Name of <del>Qualifying Shareholder</del> the O&M Contractor	
<del>b. Address</del>	
<del>c. Website</del>	
<del>d. Contact person</del>	
<del>i. Telephone</del>	
<del>ii. Fax</del>	
<del>iii. Email</del>	

~~11. Qualifying Shareholder(s) which fulfils the Financial Qualification Requirements~~

<del>a. Name of Qualifying Shareholder</del>	
--	--

b. Net Worth in USD as per the Latest Audited Financial Statements	
c. Proposed share holding in the Project Company	
d. Address	
e. Website	
<del>k-j.</del> Contact (Name and Designation)	
i. Telephone	
ii. Fax	
iii. Email	

[Note: If more than one Qualifying Shareholder fulfils the Financial Qualification Requirement, replicate table above.]

10. Affiliates, if any, of the Qualifying Shareholder(s) nominated by the Prospective Bidder to satisfy the Financial Qualification Requirement

<del>a-b.</del> Name of Affiliate	
<del>b-c.</del> Qualifying Shareholder with whom It Is Affiliated	
<del>e-d.</del> Net Worth in USD as per the Latest Audited Financial Statements	
<del>d-e.</del> Address	
<del>e-f.</del> Website	
<del>k.</del> Contact (Name and Designation)	
i. Telephone	
ii. Fax	
iii. Email	

[Note: If the experience of more than one Affiliate fulfils the Financial Qualification Experience Requirement, replicate table above.]

~~Enclosures: Enclose/attach a copy of the consortium agreement, clearly setting out the relationship between the Consortium Members and the proposed shareholding in the Project Company of each of the Consortium Member.~~

~~Note: Fill in the complete description/ strike out the non applicable text, as applicable, so as to provide sufficient explanation mentioned within the ( ) or [ ] brackets.~~

For and on behalf of (Name of Lead Member), Lead Member of (name of Consortium))

(Signature of authorized representative)~~Authorized Representative~~

(Name, Title, and Date)

**Annex QD-3  
BASIC INFORMATION SHEET**

To be submitted by every Entity listed in the Business Structure (Form QD-2A or QD-2B)

1. Name of Entity	
2. Single Prospective Bidder?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. Consortium Member?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. Qualifying Shareholder?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5. <del>Subsidiary/Affiliate</del> of the Prospective Bidder	<input type="checkbox"/> Yes <input type="checkbox"/> No
6. <del>Subsidiary/Affiliate</del> of the Qualifying Shareholders	<input type="checkbox"/> Yes <input type="checkbox"/> No
7. <del>Affiliate/Place of the Prospective Bidder/Incorporation or Registration</del>	<input type="checkbox"/> <del>Yes</del> <input type="checkbox"/> <del>No</del>
8. <del>Affiliate/Year of the Qualifying Shareholders/Incorporation or Registration</del>	<input type="checkbox"/> <del>Yes</del> <input type="checkbox"/> <del>No</del>
9. <del>Construction Contractor</del>	<input type="checkbox"/> <del>Yes</del> <input type="checkbox"/> <del>No</del>
10. <del>O&amp;M Contractor</del>	<input type="checkbox"/> <del>Yes</del> <input type="checkbox"/> <del>No</del>
11. <del>Place of Incorporation or Registration</del>	
12. <del>Year of Incorporation or Registration</del>	

~~8-~~ Shareholder/s or Partner/s Information

Name of Shareholder/s, or Partner/s of the Entity	Nationality	Total percentage shareholding or partnership interest
1.		
2.		
3.		

4.		
5.		

(Insert rows as necessary)

Required attachments:

For an Entity which is incorporated or registered in Kenya : (i) a certified true copy of the Certificate of Incorporation, or where such Entity is not a Company, a certified true copy of the registration certificate issued by an appropriate authority evidencing legal existence of such Entity;; and ~~(ii) a letter from the Entity's authorized representative~~Company's statutory auditor, or in case of a Entity other than a Company, a letter from an independent auditor, to the effect that the Entity is not insolvent, in receivership, bankrupt or in the process of being wound up;

For an Entity which is incorporated or registered outside Kenya, (i) a certified true copy of the Certificate of Incorporation or an equivalent document issued by the appropriate authority in that country,~~or where such Entity is not a Company, a certified true copy of the registration certificate issued by an appropriate authority in that country~~ evidencing legal existence of such Entity; and ~~(ii) a letter from the Entity's authorized representative~~Company's statutory auditor, or in case of an Entity other than a Company, a letter from an independent auditor, to the effect that the Entity is not insolvent, in receivership, bankrupt or in the process of being wound up.

For and on behalf of (Name of Entity)}

For and on behalf of (Name of Prospective Bidder/if Consortium, Name of Consortium and Lead Member)

(Signature of ~~authorized~~ Authorized Representative)

(Signature of ~~authorized representative\*)~~Authorized Representative)

(Name, Title, and Date)

(Name, Title, and Date)

Note: *Fill in the complete description/ strike out the non-applicable text, as applicable, so as to provide sufficient explanation mentioned within the ( ) or [ ] parenthesis / brackets.*

\* Authorized representative of the Lead Member shall sign in case of a Consortium.

**Annex QD-4  
PPP EXPERIENCE**

To be submitted by each Entity proposed as fulfilling the PPP Experience Requirement, as identified in the Business Structure (Annex QD-2A or QD-2B).

Name of Prospective Bidder	
----------------------------	--

Name of the Entity proposed as fulfilling PPP Experience Requirement	Relationship to the Prospective Bidder ( <i>Single Prospective Bidder itself/ Qualifying Shareholder/ <u>Subsidiary</u>/ Affiliate <u>other than a Subsidiary</u></i> )

*(Insert rows as necessary)*

**List of Eligible PPP projects**

Ref #	Name of Entity meeting the PPP Experience	Name of project	Lane-km
1.			
2.			
3.			
Sum of Lane-km			

*(Insert rows as necessary)*

**Description of each Eligible PPP project**

Ref #	
Name of project	
Country	
Description	
Name of contracting authority	
Name and contact details of contracting authority's contact person	
Name of Entity undertaking the project	

Percentage share holding by Single Prospective Bidder/ Qualifying Shareholder/ <u>Subsidiary/ Affiliate other than a Subsidiary</u> in the Project Company	
Number of Lane kilometres encompassing the project	
Length of the project in kilometres (indicate per section if necessary)	
Number of Lanes (per section if applicable) available for use after completion of the construction works	
Date of PPP contract	
Date of Completion of Construction	

[Note: If more than one project is submitted, replicate table above.]

Required Attachments:

- a. Documentary evidence from each Eligible PPP Project owner that the construction of such Eligible PPP Project has been completed and accepted by the project owner and specifying the date of completion and acceptance of such Eligible PPP Project (e.g. completion certificate).
- b. Notarized statement from the authorized representative of the Entity claiming the PPP Experience that the documentary evidence provided is the standard form of project acceptance in the jurisdiction from which Eligible Project is presented.
- ~~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.a. Certification from the authorized representative statutory auditor of the Company or in case of the Entity for correctness of the information furnished other than a Company, such certification should be done by an independent auditor, to that effect, in the following manner:~~

**Certificate from the authorized representative Statutory Auditor/ Independent Auditor**

This is to certify that the abovementioned information provided by \_\_\_\_\_ (Details of the Entity/Prospective Bidder) are true and correct based on the authenticated record of the (Company/Corporation/Partnership). ~~provided to me/ us.~~

Name: ~~of the audit firm:~~

Seal/stamp (if any): ~~of the audit firm:~~

Date:

(Signature) ~~(Signature, name and designation of the authorized signatory)~~

For and on behalf of:

(Name of Entity)

For and on behalf of (Name of  
Prospective Bidder/if Consortium, Name  
of Consortium and Lead Member)

(Signature of ~~authorized representative~~ Authorized Representative)  
~~authorized representative\*)~~ Authorized Representative)

(Name, Title, and Date)

(Signature of

(Name, Title, and Date)

Note: *Fill in the complete description/ strike out the non-applicable text, as applicable, so as to provide sufficient explanation mentioned within the ( ) or [ ] parenthesis / brackets.*

\* Authorized representative of the Lead Member shall sign in case of a Consortium.



**Annex QD-5  
CONSTRUCTION EXPERIENCE**

To be submitted by each Entity proposed as fulfilling the Construction Experience Requirement, as identified in the Business Structure (Annex QD-2A or QD-2B).

Name of Prospective Bidder	
----------------------------	--

Name of Entity meeting the Construction Experience	Relationship to the Prospective Bidder <i>(Single Prospective Bidder itself/ Qualifying Shareholder/ Affiliate/Construction Contractor)</i>

*(Insert rows as necessary)*

**List of Projects (under 4.2.1(B)(i)(a) of RFQ)**

Ref #	Name of Entity meeting the Construction Experience	Name of project	Lane-km
1.			
2.			
3.			
Sum of Lane-km			

*(Insert rows as necessary)*

**Description of each Eligible Construction Project (under 4.2.1(B)(i)(a) of RFQ)**

Ref #	
Name of project	
Country	
Description	
Name of contracting authority	
Name and contact details of contracting	

authority's contact person	
Name of Entity/ which completed the Project <i>(Single Prospective Bidder/Qualifying Shareholder/ Construction Contractor)</i>	
Number of Lane kilometres encompassing the project	
Length of the project in kilometres (indicate per section if necessary)	
Number of Lanes (per section if applicable) available for use after completion of the works	
Date of Certificate of Completion or alike	

[Note: If more than one project is submitted, replicate table above.]

**Annual turnover from the construction activities over the last 3 years prior to the RFQ Submission Date in USD (based on the Audited Financial Statement of the last 3 years)**

Name of Entity	Relationship <i>(i.e Prospective Bidder itself/ Qualifying Shareholders/ <del>Affiliate</del> Construction Contractor)</i>	Annual turnover		
		Financial Year ( )  (please mention the year)	Financial Year ( )  (please mention the year)	Financial Year ( )  (please mention the year)
1.				
2.				
3.				

(Insert rows as necessary)

**Exchange rate, reference date and source of the exchange rate for the currency used.**

<u>Month end exchange rate</u>	<u>Financial Year ( )</u>  <u>(please mention the year)</u>	<u>Financial Year ( )</u>  <u>(please mention the year)</u>	<u>Financial Year ( )</u>  <u>(please mention the year)</u>
<u>Month end 1</u>			
<u>Month end 2</u>			
<u>Month end 3</u>			
<u>Month end 4</u>			
<u>Month end 5</u>			
<u>Month end 6</u>			
<u>Month end 7</u>			
<u>Month end 8</u>			
<u>Month end 9</u>			
<u>Month end 10</u>			

<u>Month end 11</u>			
<u>Month end 12 (equals Financial Year end)</u>			

**List of Grade Separated Structure Projects (under 4.2.1(B)(i)(b) of RFQ)**

Ref #	Name of Entity meeting the Grade Separator construction experience	Name of project	Lane-km
1.			
2.			
3.			
Sum of Lane-km			

Ref #	Name of Project	Person meeting the Construction Experience <i>(Single Prospective Bidder itself /Qualifying <u>Shareholder</u> <u>/Shareholder/Affiliate/ Construction Contractor)</u></i>	Lane-km
Sum of Lane-km			

(Insert rows as necessary)

**Description of each Grade Separated Structure Project (under 4.2.1(B)(i)(b) of RFQ)**

Ref #	
Name of project	
Country	
Description	

Name of contracting authority	
Name and contact details of contracting authority's contact person	
Name of Entity/ which completed the Project <i>(Single Prospective Bidder itself/Qualifying Shareholder/Shareholder/Affiliate/ Construction Contractor)</i>	
Number of Lane-km encompassing the <b>Grade Separated Structure Project</b>	
Date of Certificate of Completion or alike	

[Note: If more than one project is submitted, replicate table above.]

Required Attachments:

a. ~~Notarized certification of project completion~~ Documentary evidence from each Eligible Construction Project ~~the project's owner~~ that the construction of such Eligible Construction Project has been completed and accepted by or the project owner specifying the date of completion and acceptance of such Eligible Construction Project (e.g. completion original certificate).

a-b. ~~Notarized statement from the authorized representative of project completion or a copy thereof accompanied by a notarized certification issued by an officer of the Entity claiming which fulfils the Construction Experience that the documentary evidence provided is the standard form of project acceptance in the jurisdiction from which Eligible Project is presented. Requirement that such copy is a true and faithful reproduction of the original certificate.~~

b-c. ~~Certification of the authorized representative~~ statutory auditor of the Company or in case of the an Entity other than a Company, a letter from an independent auditor certifying that the Average annual turnover from the construction activity of the Entity meeting the Construction Experience, over the last 3 (three) years preceding RFQ Submission Date, is equal to or more than USD 850 million.

d. ~~Copies of Audited Financial Statement of last 3 (three) years preceding RFQ Submission Date duly certified by the authorized representative and notarized by a notary public.~~

e-e. ~~Certification from the authorized representative~~ statutory auditor of the Company or in case of an Entity required under a. and b. above other than a Company, such certification should be done by an independent auditor, to that effect, in the following manner:

**Certificate from the authorized representative Statutory Auditor/ Independent Auditor**

This is to certify that the abovementioned information provided by \_\_\_\_\_ (*Details of the Entity/Prospective Bidder*) are true and correct based on the authenticated record

of the (Company/Corporation/Partnership) ~~provided to me/ us.~~  
Name: ~~of the audit firm:~~  
Seal/stamp (if any): ~~of the audit firm:~~  
Date:  
(Signature)~~(Signature, name and designation of the authorized signatory)~~

~~For and on behalf of:~~

For and on behalf of:

(Name of Entity)

For and on behalf of (Name of Prospective Bidder/if Consortium, Name of Consortium and Lead Member)

(Signature of authorized representative) ~~Authorized Representative~~ (Signature of authorized representative\*)  
~~Authorized Representative~~ (Name, Title, and Date) (Name, Title, and Date)

Note: Fill in the complete description/ strike out the non-applicable text, as applicable, so as to provide sufficient explanation mentioned within the ( ) or [ ] parenthesis / brackets.

\* Authorized representative of the Lead Member to sign in case of a Consortium.

**Annex QD-6  
OPERATIONS AND MAINTENANCE EXPERIENCE**

To be submitted by the Entity proposed as fulfilling the O&M Experience Requirement, as identified in the Business Structure (Annex QD-2A or QD-2B).

Name of Prospective Bidder	
----------------------------	--

Name of the Entity proposed as fulfilling the <del>O&amp;M</del> Experience Requirement	Relationship to the Prospective Bidder <i>(Single Prospective Bidder itself/ Qualifying Shareholder/ <del>O&amp;M</del>Affiliate/<del>O&amp;M</del> Contractor)</i>

*(Insert rows as necessary)*

**List of Eligible O&M projects**

Ref #	Name of Entity proposed as meeting the O&M Experience	Name of project	Lane-km
1.			
2.			
3.			
Sum of Lane-km			

*(Insert rows as necessary)*

**Description of each Eligible O&M project**

Ref #	
Name of Road	
Location	
Description of scope of work	
Name of Contracting Authority	
Name and contact details of Contracting Authority's contact person	

Name of Entity which is Operating and Maintaining the Road <i>(Single Prospective Bidder/Qualifying Shareholder/Shareholder/Affiliate/ O&amp;M Contractor)</i>	
Number of Lane kilometres encompassing the project	
Length of the project in kilometres (indicate per section if necessary)	
Number of Lanes (per section if applicable)	
Start Date of O&M Period	
End Date of O&M Period	

[Note: If more than one project is submitted, replicate table above.]

Required Attachments:

- 1) Notarized certification from the project owner's that the road is being or has been operated and maintained by the Entity within the last ten (10) years preceding ~~from~~ the RFQ Submission Date with an operation and maintenance period~~has or had a term~~ of not less than at least five (5) years (post-construction completion or a copy thereof accompanied by a notarized certification issued by the authorized representative of the Entity which fulfils the O&M Experience Requirement that such copy is a true and correct reproduction of the original certificate-
- 2) Certification from the authorized representative 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 :

**Certificate from the authorized representative Statutory Auditor/ Independent Auditor**

This is to certify that the abovementioned information provided by \_\_\_\_\_ (*Details of the ~~Entity~~Prospective Bidder*) are true and correct based on the authenticated record of the (Company/Corporation/Partnership). ~~provided to me/ us.~~

Name: ~~of the audit firm:~~

Seal/stamp (if any): ~~of the audit firm:~~

Date:

(Signature)~~(Signature, name and designation of the authorized signatory)~~

For and on behalf of:

~~For and on behalf of:~~

(Name of Entity)

For and on behalf of (Name of Prospective Bidder/if Consortium, Name of Consortium and Lead Member)

(Signature of ~~authorized representative~~)~~Authorized Representative~~

(Signature of

~~authorized representative\*)~~Authorized Representative)

(Name, Title, and Date)

(Name, Title, and Date)

Note: *Fill in the complete description/ strike out the non-applicable text, as applicable, so as to provide sufficient explanation mentioned within the ( ) or [ ] parenthesis / brackets.*



\* Authorized representative of the Lead Member shall sign in case of a Consortium.

**Annex QD-7  
FINANCIAL QUALIFICATION**

**NOTARIZED STATEMENT OF FINANCIAL QUALIFICATION**

To be submitted by each of the Entity proposed to fulfil the Financial Qualification Requirement, as identified in the Business Structure (Annex QD-2A or QD-2B).

Name of Prospective Bidder	
Single Prospective Bidder or Consortium	
Name of the Entity proposed to fulfil the Financial Qualification Requirements  <i>(Single Prospective Bidder or its Affiliate/ Qualifying Shareholder(s) in case of Consortium or their Affiliate)</i>	1. 2. 3. 4.  (and so on)

I, (name), (citizenship), of legal age, with an office address at (address), as the (position/designation) of (name of Qualifying Shareholder(s)/ Affiliate meeting the Financial Qualification Requirement), a (provide the legal structure i.e. Company, partnership, or a corporation) organized and existing under and by virtue of the laws of (place of incorporation/registration) hereby declare for and on behalf of (name of Entity/Qualifying Shareholder(s)/ Affiliate meeting the Financial Qualification Requirement) that the information stated in this Notarized Statement of Financial Qualification Requirement is true and that the attached documents are genuine and true copies of the original.

- The (name of ~~Prospective Bidder/Qualifying Entity/Qualifying~~ Shareholder(s)/ Affiliate meeting the Financial Qualification Requirement) has a minimum unrestricted Net Worth equivalent to at least \_\_\_ United States Dollars (USD) or its equivalent as of its 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. ~~As the Audited Financial Statements are in a currency other than USD, the Audited Financial Statements are also accompanied with a certificate of (the Company's statutory auditor / an independent auditor)<sup>4</sup> specifying the Net Worth in USD.~~
- The financial summary of (name of Entity) which is the Prospective Bidder itself / Qualifying Shareholder(s) / Affiliate meeting the Financial Qualification Requirements is as follows:

<b>Financial Information (in USD)</b>	<b>Financial Year ( )</b> <i>(please mention the</i>	<b><u>Provide the Exchange rate, reference date and</u></b>
---------------------------------------	---	---

<sup>4</sup>~~Please choose as appropriate.~~

	year)	<u>source of the exchange rate for the currency used.</u>
(indicate last day of accounting year)		
1. Total Assets		
2. Total Liabilities		
3. Total Net Worth		

3. The available funds which are yet to be committed to projects of the (name of Prospective Bidder / Qualifying Shareholder(s)) being an Investment Fund is as follows:

<u>Committed but undrawn funds (in USD)</u>	<u>Financial Year ( ) (please mention the year)</u>	<u>Provide the Exchange rate, reference date and source of the exchange rate for the currency used.</u>
(indicate last day of accounting year)		

4. I declare on behalf of the (name of the Investment Fund) (being the Prospective Bidder/Qualifying Shareholder(s)) that the anticipated investment in the Project by the Investment Fund falls within the Investment Fund's country and sectoral limits, taking into account investments held as on the RFQ Submission Date. A certified and notarised copy of the charter documents of (name of the Investment Fund) is provided herewith.]\*\*

*Date and Place of Execution.*

For and on behalf of (Name of Entity)

(Signature of authorized representative)~~Authorized Representative~~

(Name)  
(Designation)

For and on behalf of (Name of Prospective Bidder/if Consortium, Name of Consortium and Lead Member)

(Signature of authorized representative\*)~~Authorized Representative~~

SUBSCRIBED AND SWORN TO before me this ( ) day of (month and year) at (place), each affiant exhibiting to me his/her (proof of identity acceptable under the applicable laws) issued at (city) on (date) in support of his identity.

Notary Public

Required Attachments:

1. The Prospective Bidder shall also provide a summary table providing aggregate of the Net Worth of all Entities ~~being~~ relied on for Financial Qualification Requirement with the total aggregate Net Worth given at the bottom of the table in **BOLD** figures and shall also provide the Exchange rate, reference date and source of the exchange rate for the currency used. -

2. Notarized and certified copy of the Latest Audited Financial Statements.

3. Where the experience or credentials of an Affiliate is used by the Prospective Bidder or a Qualifying Shareholder to satisfy the PPP Experience requirements, a notarized copy of the Latest Audited Financial Statement of such Affiliate shall be submitted which shall be certified by the Affiliate's authorized representative signing the financial letter of support to be furnished under Section 4.2.3 (i).

4. The Investment Fund shall provide a certified and notarised copy of its charter documents as evidence that the anticipated investment in the Project by such Investment Fund falls within the permitted activities and limits.

Note: 1. Replicate this Annex, if the Net Worth credentials of more than one Entity (either as a Qualifying Shareholder and/ or Affiliate) is being relied on to meet the Financial Qualification Requirements.

2. *Fill in the complete description/ strike out the non-applicable text, as applicable, so as to provide sufficient explanation mentioned within the ( ) or [ ] brackets.*

\* Authorized representative of the Lead Member shall sign in case of a Consortium.

\*\* The details under Sr. No. 3 and 4 are only required in case of an Entity being an Investment Fund. The same shall be deleted where the Prospective Bidder/ Qualifying Shareholder is not an Investment Fund.



**Annex QD-8: NOTARIZED FINANCIAL LETTERFORMAT FOR DEED OF SUPPORTGUARANTEE**

Dear Sir,

We, (name of the Affiliate), a (company/partnership/corporation) registered under the laws of (state and country) and having our registered place of business at (address), being an Affiliate other than a Subsidiary of (name of the Prospective Bidder/Qualifying Shareholder) whose Net Worth is relied upon by (name of the Prospective Bidder / Qualifying Shareholder) to meet the (Financial Qualification Requirements), having gone through and understood the requirements of the RFQ for the "Design, Construction, Financing, Operation and Maintenance of the Nairobi-Nakuru-Mau Summit Highway" and the Addendums and Clarifications issued, do hereby declare and undertake in terms of the requirements under the RFQ including Section 4.2.3 (i) read with 5 (i) as follows:

1. We have studied the RFQ Document carefully and are fully aware of the obligations placed upon us as an Affiliate not being a Subsidiary to the (Prospective Bidder / Qualifying Shareholders) under the RFQ.

2. We undertake to provide all necessary financial support to (name of the Prospective Bidder or the Qualifying Shareholder), being the (Prospective Bidder / Qualifying Shareholder in the Consortium, being the Prospective Bidder) in meeting its equity commitment to the Project Company.

Sincerely yours,

(Signature of the authorized representative of the Affiliate)

(Name)

(Designation)

SUBSCRIBED AND SWORN TO before me this ( ) day of (month and year) at (place), each affiant exhibiting to me his/her (proof of identity acceptable under the applicable laws) issued at (city) on (date) in support of his identity.

Notary Public

Required Attachments:

1. The Affiliate shall also provide a summary table providing aggregate of its Net Worth and provide a notarized and attested copy of the Latest Audited Financial Statements. The Exchange rate, reference date and source of the exchange rate for the currency shall also be provided.

Notes:

- Fill in the complete description/ strike out the non-applicable text so as to provide sufficient explanation mentioned within the ( ) or [ ] parenthesis / brackets.
- This document shall be notarized by a notary public in the country of its origin/execution so as to comply with the requirements of Section 3 (l) of this RFQ.

Self certified (by the authorized representative) and notarised copy of the authorization in favour of the authorized representative of the Affiliate signing this letter shall be provided together with the letter.

### DEED OF GUARANTEE

~~THIS DEED OF GUARANTEE executed at **[place]** on this **[date]** of **[month and year]** by **[mention compete name of the Affiliate]** a **[company/partnership/corporation]** duly registered and existing under the laws of **[country/ jurisdiction]**, having its Office at **[address]** hereinafter called “the Guarantor” which expression shall be deemed to include its successors and permitted assigns.~~

#### WHEREAS

- ~~A. Kenya National Highways Authority (hereinafter called the “**KeNHA**”, which expression shall unless excluded by or repugnant to the context thereof, be deemed to include its successor and assigns), had invited Bids for design, finance, construction, operation and maintenance of Nairobi-Nakuru-Mau Summit Highway (hereinafter referred to as “**Project**”) by issuing RFQ and the Bidding Documents (for selection of the Successful Bidder to implement the said Project.~~
- ~~B. **[Mention compete name]**, a **[company/partnership/corporation]** duly registered and existing under the laws of **[Jurisdiction/Country]**, having its Office at **[give complete address]** (hereinafter referred to as the “**Successful Bidder/Qualifying Shareholder**”), which expression shall, unless excluded by or repugnant to the subject or context thereof, be deemed to include its successor and permitted assigns), is a **[specify how Guarantor is Affiliated to Successful Bidder/ Qualifying Shareholder i.e. Controlled by/ Controlling the Guarantor/is under the common Control of \_\_\_\_\_]**, which, had used the **[PPP Experience or Construction Experience or O&M Experience or Financial Qualification Experience]** of the Guarantor to meet the Minimum Qualification Requirement as stipulated in the RFQ a **[single Prospective Bidder/ Consortium]**.~~
- ~~C. The **[name of single Prospective Bidder/ name of the Consortium of which the Qualifying Shareholder is a Consortium Member]** has been declared as the Successful Bidder and has since promoted and incorporated the Project Company in the name and style of **[name of the Project Company]** to implement the Project in terms of the Project Agreement.~~
- ~~D. Towards compliance with the condition under Section 4.2.3 (1) 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&M Experience/ Financial Qualification Experience]** was used to Pre-Qualify, guaranteeing due and satisfactory performance of such **[PPP Experience/ Construction Experience/ O&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.~~
- ~~E. The Guarantor represents that it has gone through and understood the requirement of the RFQ and is capable of and committed to provide such **[technical or financial]** support for the successful execution of the Project.~~

~~F. The Guarantor is executing this Deed of Guarantee in favour of KeNHA, wherein the Guarantor guarantees that the Guarantor shall be jointly and severally liable towards the said Obligation of the Successful Bidder, and the Guarantor shall provide support towards meeting the said Obligation of the Successful Bidder and the Project Company relating to the Project.~~

~~Accordingly, at the request of the **Successful Bidder [and/or Qualifying Shareholder]** and in consideration of and as a requirement of the RFQ, the Guarantor hereby agrees to give this guarantee and undertakes as follows:~~

- ~~1. The Guarantor unconditionally agrees that in case of non-compliance by the Successful Bidder of the Obligation, the Guarantor shall, immediately on receipt of notice by KeNHA, take up the Obligation without any demur or objection, in continuation and without loss of time and without any cost to KeNHA and duly perform the Obligations of the Successful Bidder to the satisfaction of KeNHA. In case the Guarantor also fails to discharge the Obligations herein, KeNHA shall have the absolute rights for effecting the execution of the Obligation from any other person at the risks and costs of the Guarantor. The Guarantor also undertakes to make good any loss that may be caused to KeNHA for any non-performance or unsatisfactory performance by the Guarantor or the Successful Bidder or the Project Company of the Obligation or any of the terms and conditions contained under the Project Agreement in relation to performance of the Obligations.~~
- ~~2. The Guarantor agrees that the Guarantee herein contained shall remain valid and enforceable till the satisfactory execution and completion of the Obligation or till such time this Guarantee is replaced by a subsequent Guarantee.~~
- ~~3. The Guarantor shall be jointly liable with the Successful Bidder and the Project Company, as also severally responsible for the satisfactory execution and performance of the Obligation.~~
- ~~4. The Guarantor hereby undertakes that the Guarantor shall obtain and maintain in full force and effect all approvals, permits and consents that are necessary and do all other acts and things necessary or desirable in connection therewith or for the due performance of the promises and obligations hereunder.~~
- ~~5. The Guarantor also agrees that this Guarantee shall be governed and construed in accordance with the laws of Kenya and is subject to the exclusive jurisdiction of the courts of Kenya.~~
- ~~6. The Guarantor hereby declares and represents that this Guarantee has been given without any undue influence or coercion from any person and that the Guarantor has fully understood the implications of the same.~~
- ~~7. The Guarantor represents and confirms that the Guarantor has the legal capacity, power and authority to issue this Guarantee and that giving of this Guarantee and the performance and observations of the obligations hereunder do not contravene any existing law or any judgment of a competent court or authority.~~

~~8. The Guarantor represents and confirms that in pursuance of the above, the Guarantor has submitted and provided to KeNHA (with this Deed of Guarantee), a valid resolution from the Board of Directors or its equivalent governing body duly authorizing the Guarantor to provide support with respect to performance of its **[PPP Experience/ Construction Experience/ O&M Experience/ Financial Qualification Experience Obligation]** and to provide this Guarantee for performance of the Obligations relating to the said Project.~~

~~For and on behalf of (NAME OF GUARANTOR)~~

~~\_\_\_\_\_~~

Witness:

1.

2.

~~SUBSCRIBED AND SWORN TO before me this (\_\_\_) day of (month and year) at (place), each affiant exhibiting to me his/her (proof of identity acceptable under the applicable laws) issued at (city) on (date) in support of his identity.~~

Notary Public

Notes:

~~— The mode of execution of this document should be in accordance with the procedure, if any, laid down by the laws of the jurisdiction in which it is executed.~~

~~— This document shall be notarized by a notary public in the country of its origin/execution so as to comply with the requirements of Section 3 (I) of this RFQ.~~

~~—~~





~~— Fill in the complete description/ strike out the non-applicable text, as applicable, so as to provide sufficient explanation mentioned within the ( ) or [ ] brackets.~~

—

**Annex QD-9A:**  
**INDICATIVE FORM OF LETTER OF SUPPORT FROM QUALIFYING BANK AND FINANCIAL INSTITUTION**

<Qualifying Bank and Financial Institution Letter Head>

Letter of Support

In connection with the participation of (*name of Prospective Bidder*) in the Bidding Process for the Nairobi-Nakuru-Mau Summit Highway Project (the "Project"), we wish to confirm that we meet the criteria of a Qualifying Bank and Financial Institution as prescribed under the RFQ and express our interest and willingness, subject to the conduct of our internal due diligence processes, to provide or arrange the credit facility/facilities as may be required for the Project Company that the **[name of the Prospective Bidder/Consortium]Bidder** will incorporate for the purpose of implementation of the Project, if and when it is declared by KeNHA as the Successful Bidder.

~~Very truly yours,~~

~~(Signature of Authorized Representative)~~

~~(Name)~~

~~(Designation)~~

Sincerely yours,

<Name of Qualifying Bank and Financial Institution>

By:

(Full Name of duly authorized officer/s)  
(Official designation)

Date:

Note: *Fill in the complete description/ strike out the non-applicable text, as applicable, so as to provide sufficient explanation mentioned within the ( ) or [ ] parenthesis / brackets.*

**Annex QD-9B**  
**LETTER OF COMMITMENT FROM PROSPECTIVE BIDDER/ CONSORTIUM MEMBER**

< On Prospective Bidder's / each Consortium Member's Letter Head >

Date:

Letter of Commitment Support

In connection with the participation of (~~name of Prospective Bidder/ Consortium Member~~) in the Bidding Process for Nairobi-Nakuru-Mau Summit Highway (the "Project"), we, (~~name of single Prospective Bidder/ Consortium Member~~), subject to the terms of our Bid, Member\* commit to subscribe ~~to~~ a minimum equity contribution ~~[in aggregate]~~\* of USD [\*150 million] in the Project Company that ~~we shall 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 for the purpose of implementing the Project [so that the aggregate equity contribution of all the Consortium Members shall be at least USD 150 million in the Project Company]\*\*. -~~

~~Very truly yours,~~

~~(Signature of Authorized Representative)~~

~~(Name)~~

~~(Designation)~~

Sincerely yours,

<Name of Prospective Bidder/ Consortium Member potential equity investor>

By:

(Full Name of duly authorized representative)

(Designation)

\* Please provide the amount of contribution. In case of a single Prospective Bidder, this amount shall be at least 150 million USD.

~~\*~~

~~\* To be retained only in case of Consortium Members and shall be deleted in case of a single Prospective Bidder.~~

Note: *Fill in the complete description/ strike out the non-applicable text, as applicable, so as to provide sufficient explanation mentioned within the ( ) or [ ] parenthesis / brackets.*

**Annex-QD-10:NOTARIZED CERTIFICATION OF ABSENCE OF UNSATISFACTORY PERFORMANCE RECORD**

Note: To be submitted by a single Prospective Bidder / each Qualifying Shareholders and Subsidiaries and Affiliates and/or Contractors which fulfil any of the Qualification Requirements, as identified in the Business Structure (Annex QD-2A or QD-2B).

Name of Prospective Bidder	
Name of Entity which fulfils any Qualification Requirement	
Qualification Requirement being met	
Relationship to the Prospective Bidder	<i>(i.e. Prospective Bidder itself/ Qualifying Shareholders/ <u>Subsidiary/Affiliate (other than a Subsidiary)</u> of Prospective Bidder or Qualifying Shareholder/ Construction Contractor/O&amp;M Contractor)</i>

**Notarized Certification of Absence of Unsatisfactory Performance Record**

I, *(name of authorized representative)*, *(citizenship)*, of legal age, with office address at *(address)*, as the *(position/designation)* of *(name of Entity represented)*, a *(the legal structure i.e. Company, partnership, or corporation)* *[organized and existing under and by virtue of the laws of (name of State and Country)]* do hereby certify, for and on behalf of *(name of Entity represented)*, that *(name of Entity represented)* does not have any record of Unsatisfactory Performance, as defined in Section 1 ~~(aaaa)(www)~~ of the Request for Qualification.

Date and Place of Execution

For and on behalf of (Name of Entity)

(Signature of ~~authorized representative~~)~~Authorized Representative~~

(Name of ~~authorized representative~~)~~Authorized Representative~~  
(Designation)

SUBSCRIBED AND SWORN TO before me this (\_\_) day of (month and year) at (place), each affiant exhibiting to me his/her (proof of identity acceptable under the applicable laws) issued at (city) on (date) in support of his identity.  
Notary Public

Note: *Fill in the complete description/ strike out the non-applicable text, as applicable, so as to provide sufficient explanation mentioned within the ( ) or [ ] parenthesis / brackets.*

**Annex ID-1  
PROJECT MANAGEMENT**

FOR INFORMATION PURPOSES ONLY

1. Provide the names and designations of the key team members who are to be ~~responsible and~~ involved ~~in~~for the ~~Project Pre-Qualification Stage~~.

Role	Name and Designation	Name of Organisations (full title)
<u>Prospective Bidder's authorised representative</u> <del>Bid Manager</del>		
<u>Subsidiary No.1* authorised</u> <del>Prospective Bidder's</del> representative <i>(please mention name of the Consortium member)</i>		
<u>Affiliate No.1* authorised representative</u> <i>(please mention name of the Consortium member)</i> <del>Member's</del> representatives	1. 2. 3.	
<u>Consortium Member No.1* authorised</u> <del>Qualifying Shareholders</del> representative <i>(please mention name of the Consortium member)</i>	1. 2. 3.	
<u>Construction Contractor No.1* authorised representative</u> <i>(please mention name of the Construction Contractor)</i> <del>Affiliate's</del> representatives	1. 2. 3.	
<u>O&amp;M Contractor No.1* authorised</u> <del>Construction Contractor's</del> representative <i>(please mention name of the O&amp;M Contractor)</i>	1. 2. 3.	

Role	Name and Designation	Name of Organisations (full title)
<del>O&amp;M Contractor's representative</del> <u>Designers and technical advisors</u>	<del>Not Applicable</del> 1. 2. 3.	
<del>Designers and technical advisors</del> <u>Legal advisor(s), if appointed</u>		
<del>Financial</del> <u>Legal advisor(s), if appointed</u>		
<del>Financial</del> <u>advisor(s)</u>		
Others (please specify role)		

\*Please add rows, as necessary where there are more than one Consortium Member / Subsidiary / Affiliate / Construction Contractor / O&M Contractor.

~~\*Please add rows wherever required.~~

**SCHEDULE 1: TEMPLATE FOR QUERIES AND COMMENTS ON RFQ**

**NAME OF PROSPECTIVE BIDDER:**

**DATE:**

**1. RFQ DOCUMENT**

Reference No.*	Section No./ Annex No. / Schedule No./Appendix No. 1	Question or Comment

\* Leave blank.

**2. PROJECT INFORMATION MEMORANDUM**

Reference No.*	Section No. of PIM	Question or Comment

\* Leave blank.



## APPENDIX-1: SUMMARY OF MINIMUM QUALIFICATION REQUIREMENTS

Criteria	Satisfying Party	Eligible Project	Eligible Period	Minimum threshold for Eligible Project	Threshold to be achieved
<b>PPP EXPERIENCE</b>					
Lane-km of Highway sector PPP project	<p>Prospective Bidder</p> <p>Qualifying Shareholders</p> <p><u>Subsidiary(ies) of the Prospective Bidder</u></p> <p><u>Subsidiary(ies) of the Qualifying Shareholder</u></p> <p><u>Affiliate(s), other than Subsidiary(ies) of the Prospective Bidder</u></p> <p><u>Affiliate(s), other than Subsidiary(ies) of the Qualifying Shareholder</u></p> <p><u>Affiliates, who will execute</u></p>	Highway Sector PPP design, construct, finance, operate and maintain Project	Been in operation for at least 1 year prior to RFQ Submission Date	175 Lane-km	Aggregate of 3500 Lane-km

Criteria	Satisfying Party	Eligible Project	Eligible Period	Minimum threshold for Eligible Project	Threshold to be achieved
	<p><del>the Deed of Guarantee</del></p> <p>Holding or held an equity shareholding of not less than five percent (5%) in the project company responsible for the Eligible PPP Project.</p> <p><u>PPP Experience of Affiliates (being other than Subsidiaries) does not exceed 40% of the total PPP Experience</u></p> <p><u>Affiliate(s) [other than Subsidiary(ies)] to submit financial letter of support and Latest Audited Financial Statement</u></p>				

Criteria	Satisfying Party	Eligible Project	Eligible Period	Minimum threshold for Eligible Project	Threshold to be achieved
<b>CONSTRUCTION EXPERIENCE</b>					
Lane-km of Highway project construction	Prospective Bidder  Qualifying Shareholders  <i>Affiliates, who will execute the Deed of Guarantee</i>  Construction Contractor	Highway Sector Construction Project	Construction completed within 10 years prior to RFQ Submission Date	80 Lane-km	Aggregate of <del>3,500</del> 5,000 Lane-km
Lane-km of Grade Separated Structure	Prospective Bidder  Qualifying Shareholders  <i>Affiliates, who will execute the Deed of Guarantee</i>  Construction Contractor	Grade Separated Structure	Construction completed within 10 years prior to RFQ Submission Date	N/A	10 Lane-km
<b>O&amp;M EXPERIENCE</b>					
Lane-km of	Prospective	Highway	During the 10	<del>175</del> 350	Aggregate

Criteria	Satisfying Party	Eligible Project	Eligible Period	Minimum threshold for Eligible Project	Threshold to be achieved
Highway project O&M	Bidder  Qualifying Shareholders  <del>Affiliates, who will execute the Deed of Guarantee</del>  O&M Contractor	Sector Performance Based O&M Project	years immediately prior to RFQ Submission Date  <u>Minimum 5 year of operation and maintenance period (post-construction completion) contract</u>	Lane-km	Minimum of 3500 Lane-km
<b>FINANCIAL CAPABILITY</b>					
Net Worth	Prospective Bidder  Qualifying Shareholders  <u>Affiliate(s,) of the Prospective Bidder</u>  <u>Affiliate(s) of the Qualifying Shareholder</u>  <del>Affiliates, who will submit</del>	NA	Latest Audited Financial Statements with yearend not earlier than 15 months prior to RFQ Submission Date	USD 50 mn	USD 1.0 Bn

Criteria	Satisfying Party	Eligible Project	Eligible Period	Minimum threshold for Eligible Project	Threshold to be achieved
	<u>financial letter of support</u> <del>execute the Deed of Guarantee</del>				
Average Annual Turnover	Construction Contractor	N/A	3 financial year ends prior to RFQ Submission Date		USD 850 mn
<b>OTHER QUALIFYING CRITERIA</b>					
Indicative Letters of Support from Qualifying Bank and Financial Institution	Prospective Bidder  Qualifying Bank and Financial Institution	N/A	N/A	N/A	From two or more Qualifying Bank and Financial Institution
Equity Commitment Letters	Prospective Bidder  Consortium Members	N/A	N/A	N/A	Aggregate of USD 150 mn
Signed copy of <u>financial letter</u> <del>Deed of support</del> <u>Guarantee</u>	Affiliate/s	N/A	N/A	N/A	N/A