



MINISTRY OF TRANSPORT
AND INFRASTRUCTURE

**MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING & URBAN
DEVELOPMENT
STATE DEPARTMENT FOR INFRASTRUCTURE**

KENYA NATIONAL HIGHWAYS AUTHORITY

ROADS10,000 PROGRAMME

**THE DEVELOPMENT OF ROADS SUPPORTING PRIMARY GROWTH SECTORS
THROUGH CONTRACTOR FACILITATED FINANCING MECHANISM**

Tender Number: KeNHA/1291/2016

Lot No.6

REQUEST FOR PROPOSALS DOCUMENT

29TH SEPTEMBER, 2017

Head Public Private Partnership (PPP)
Kenya National Highways Authority
P.O. BOX 49712
NAIROBI

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

REQUEST FOR PROPOSAL, PART I
(Finance, Design, Build, Maintain & Transfer)

Roads in Lot No.6 are:-

County	Road Name	Road Class	Notice Kms
Narok	Kilgoris - Lolgorian	B3	30.2
Bungoma, Trans Nzoia	Turbo -Sikhendu - Endebess Turbo - Sikhendu (C622) -36km Sikhendu - Endebes (C619) – 28km	C622/C619	64.0
Kakamega	Kakamega (Sichirai) – Ingotse –Namukoye - Nzoia River –Musikoma (Khalaba) Road	C777	43.4
Busia	Ruambwa – Port Victoria (Mabinju)	C672	17.5
Narok	Kehancha - Lolgorian	B1	25.2
Busia (Teso)	Kimaeti – Malakisi - Lwakhakha	C807	25.0

Bidders

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Bidders**SCHEDULE OF BIDDING PROCESS**

S.NO.	Event Description	Reference Clause	Date
1	Date of issue of RFP documents	-	25 th May, 2017
2	Pre-bid site visits	1.17	29 th – 31 st May 2017
3	Pre-Bid meeting	1.19	2 nd June, 2017
4	Last date for receiving queries	1.10	22 nd September, 2017
5	Deadline for Authority's response to queries	1.10	29 th September, 2017
6	Bid Due Date / Opening of technical Bids	1.22	12 th October, 2017
10	Notification to Qualified Bidders	1.34	24 th November, 2017
11	Date for Opening Of Financial Proposals	1.33	8 th December, 2017
12	Issue Letter of Acceptance	1.34	28 th December, 2017
13	Validity of Bids	1.15	280 days after Bid Due Date
14	Signing of Concession Agreement	1.36.1	Within 90 days of issue of LOA



Bidders

DISCLAIMER

This Request for Proposal (RFP) is issued by **Kenya National Highways Authority** (The Authority).

The RFP is not a prospectus or offer on invitation to the public in relation to the sale of shares, debentures or securities, nor shall this RFP or any part of it form the basis of or be relied upon in any way in connection with, any contract relating to any shares, debentures or securities.

In considering and investment, if any, in the proposed road Project, each recipient should make its own independent assessment and seek its own professional, technical, financial and legal advice.

Whilst the information in this RFP has been prepared in good faith, it is not and does not purport to be comprehensive or to have been independently verified. Neither The Authority, nor any of its officers or employees, nor any of their advisers nor consultants accept any liability or responsibility for the accuracy, reasonableness or completeness of, or for any errors, omissions or misstatements, negligent or otherwise, relating to the proposed road Project, or makes any representation or warranty, express or implied, with respect to the information contained in this RFP or on which this RFP is based or with respect to any written or oral information made or to be made available to any of the recipients or their professional advisers and, so far as permitted by law and except in the case of fraudulent misrepresentation by the party concerned, and liability therefore is hereby expressly disclaimed.

The information contained in this RFP is selective and is subject to updating, expansion, revision and amendment. It does not, and does not purport to, contain all the information that a recipient may require. Neither The Authority nor any of its officers, employees nor any of its advisors nor consultants undertakes to provide any recipient with access to any additional information or to update the information in this RFP or to correct any inaccuracies therein which may become apparent. Each recipient must conduct its own analysis of the information contained in this RFP or to correct any inaccuracies therein that may be in this RFP and is advised to carry out its own investigation into the proposed road Project, the legislative and regulatory regime which applies thereto and by and all matters pertinent to the proposed Project and to seek its own professional advice on the legal, financial, regulatory and taxation consequences of entering into any agreement or arrangement relating to the proposed Project.

This RFP includes certain statements, estimates, Projections, designs, targets and forecasts with respect to the road Project. Such statements, estimates, Projections, targets, forecasts and designs reflect various assumptions made by the management, officers and employees of The Authority, which assumptions (and the base information on which they are made) may or may not prove to be correct. No representation or warranty is given as to the reasonableness of forecasts or the assumptions on which they may be based and nothing in this RFP is, or should be relief on as, a promise, representation or warranty.



Bidders

LETTER OF INVITATION



Kenya National Highways Authority

Quality Highways, Better Connections

Blue Shield Towers, Hospital Road, Upper Hill P.O. Box 49712 – 00100 Nairobi
Tel 020 – 8013842 Email dg@kenha.co.ke / info@kenha.co.ke Website www.kenha.co.ke

**The Development of Roads Supporting Primary Growth Sectors through
Contractor Facilitated Financing Mechanism: Lot No.6
Tender No. KeNHA/1291/2016**

Kenya National Highways Authority invites bids from prequalified applicants to Finance, Design, Build, Maintenance and Transfer of roads in Lot No.6 for a specified period (the “Concession Period”).

1. The scope of the concession shall include: finance, design, build, maintain and transfer of the roads listed in Lot No.6.
2. An agreement will be drawn up between the Authority and the selected bidder on the basis of the “Concession Agreement” (Part-II of this RFP). Revenues from the tolling of the Project, **if any**, at the sole discretion of the Authority, will accrue to the Authority and the company undertaking the Project (the “Project Company” or the “Concessionaire”) will be entitled to agreed repayments (the “Annuity”) for the entire Concession Period.
3. Shortlisted Applicants may obtain the Request for Proposal documents (the “RFP” document) from the address given in the **Data Sheet** upon written request.
4. The request must clearly state “Request for Proposal to Finance, Design, Build, Maintain and Transfer roads in Lot No.6 and be accompanied by a non-refundable fee of Kenya Shillings (“KES.”) 10,000.00 (Shillings Ten Thousand only) in the form of a Banker's Cheque (non-refundable) drawn in favour of **Kenya National Highways Authority** payable at any bank recognized by Central Bank of Kenya.
5. Bidders will be required to meet minimum threshold for technical and financial capability criteria and qualify for undertaking the Project as set out in this RFP. This qualification assessment will be carried out as part of the current bidding and evaluation process. The Financial Proposal of only those Bidders that possess the minimum threshold Technical & Financial capability will be opened and evaluated.
6. All RFP submissions will be evaluated in terms of financial and technical capability of the Consortium/sole applicant (as the case may be). Detailed information on evaluation criteria and methodology are available in Annex 5A hereto.



Bidders

7. The Authority will not be responsible for any delay, loss or non-receipt of RFP document sent by post /courier. Further, the Authority shall not be responsible for any delay in receiving the Proposal and reserves the right to accept / reject any or all applications without assigning any reason thereof.
8. The RFP document contains information about the project, bidding process, proposal submission, qualification and financial proposal requirements. The RFP document is also available on the Authority's website www.kenha.co.ke from **25th May, 2017**. Bidders, who download the RFP document from the website, will be required to pay the non-refundable fee, as stated in 6 above, at the time of the submission of the Proposal.
9. Three parts of the Proposal (Other Submissions, Qualification Proposal and Financial Proposal) must be submitted in a hard bound form separately (hard bound implies binding between two covers through stitching or otherwise whereby it may not be possible to replace any paper without disturbing the document- spiral bound form, loose form, etc. will not be accepted) with all **pages serially numbered**, along with an index of submissions. The **fourth part of the Proposal (Bid Security) shall be submitted separately in a sealed envelope**. All figures quoted in the financial proposal should be covered with a transparent adhesive tape. Bidders are required to submit all details only on issued or downloaded RFP document. In the event any of the instructions mentioned herein have not been adhered to, The Authority will reject the Proposal.
10. RFP submissions must be received as per the requirements provided in the Data Sheet.

Manager Procurement

For: Director General



RFP PART I: INSTRUCTIONS TO BIDDERS

A. BIDDING PROCESS AND GENERAL GUIDELINES

1.1 Background / Introduction

The Government of the Republic of Kenya through the Ministry of Transport, Infrastructure, Housing and Urban Development represented by the Kenya National Highways Authority (KeNHA), being State Corporation established under the Kenya Roads Act, 2007 (hereinafter referred to as ‘the Authority’) has identified the need to upgrade to paved standards approximately 10,000 km of roads. These roads are intended to support the primary growth sectors of Commerce, Tourism, Agriculture and Rural Production, and Extractive Industries. The Authorities therefore seek to procure the Consortia/applicants with the capability to secure financing for road development projects supporting the above sectors.

The Government of Kenya through the Ministry of Transport Infrastructure, Housing and Urban Development and its road agency **Kenya National Highways Authority** (hereinafter referred to as “The Authority”) intends to procure a consortium / applicant to **Finance, Design, Build, Maintain and Transfer** of the roads in Lot No.6.

The scope of work will broadly include upgrading to paved standards of gravel and earth roads and rehabilitation/reconstruction of existing paved roads including bridges, culverts, road intersections, drains, etc. and the maintenance thereof. The approach under this programme will be based on the Finance-Design-Build-Maintain and Transfer Contract Framework.

- 1.1.1 The Authority now invites Proposals from shortlisted applicants for the execution of the Project.

1.2 Bidding process

- 1.2.1 Bidders shall submit only one Proposal comprising of :

Part 1: Other Submissions (Clause 2.2)

Part 2: Qualification Proposal (Clause 2.1)

Part 3: Financial Proposal (Clause 2.4)

Part 4: Bid Security (Clause 1.14, 2.3)

The evaluation of the Proposals will be carried out in three stages. The first stage will involve a test for responsiveness based on Other Submissions (Part 1) and Bid Security (Part 4). Those proposals found to be responsive will be evaluated i.e. Qualification Stage. In the Qualification Stage the Qualification Proposal (Part 2) comprising information of the parties on their technical and financial capability for undertaking the Project will be evaluated. Based on evaluation at this stage, only those Proposals that meet the threshold technical and financial capabilities as set out in this RFP for the Project will be qualified and their Financial Proposal (Part 3) will be opened and evaluated.



- 1.2.2 All Bidders are required to submit their Proposal in accordance with the guidelines set forth in this RFP. In order to promote consistency among Proposals and minimize potential misunderstandings regarding how Bidders' Proposals will be interpreted by The Authority, the format in which Bidders will specify the fundamental aspects of their Proposals has been broadly outlined in this RFP.
- 1.2.3 The responsive Proposals and Bidders found to possess minimum threshold technical and financial capabilities will undergo a financial evaluation. On the basis of this evaluation process, the Authority will issue a Letter of Acceptance to the Successful Bidder.
- 1.2.4 In this RFP, the term "Bidder" refers to all those Applicants that submitted proposal in response to this RFP. "Sponsor" refers to the Successful Bidder selected by the Authority to develop this Project.
- 1.2.5 The Authority reserves the right not to follow up this RFP and terminate the entire selection process without any obligation to any of the Applicants / Bidders.
- 1.2.6 The terms used in this RFP and not defined herein shall have the meaning ascribed thereto in the Concession Agreement (the Part II of this RFP).
- 1.2.7 Following the issue of the Letter of Acceptance, the Sponsor shall be required to form a Company (hereinafter referred to as the "Concessionaire"). The Concession Agreement shall be executed between the Concessionaire and The Authority. In case the Sponsor is a Consortium, the equity holding of the Consortium members in the Concessionaire would be as per the requirements of this RFP.
- 1.2.8 The principal contract between the Authority and the successful bidder will be the Concession Agreement, a draft of which is provided in Part II of this RFP.

1.3 Eligible Bidders

- 1.3.1 The Bidder may be a single entity or a group of entities (hereinafter referred to as 'Consortium'), coming together to implement the Project. The term Bidder used hereinafter would therefore apply to both a single entity and a Consortium. The purchaser of the RFP document must be the Bidder itself or a member of the Consortium submitting the Proposal. The Bidder should submit a Power of Attorney as per the format enclosed at **Annex 2A**, authorizing the signatory of the Proposal to commit the Bidder. In case the Bidder is a Consortium, it must comply with the additional requirements for Bidding as a Consortium as specified in Clause 1.4 of this RFP.



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- 1.3.2 At any point of time in the Bidding Process, if required by The Authority, it is the Bidders' responsibility to provide such evidence to their eligibility as per the terms of the RFP, to the satisfaction of The Authority.
- 1.3.3 One company, single or Joint Venture firm shall not be eligible to submit more than one bid, either individually or as a member of a consortium for this Lot.
- 1.3.4 All Proposals must be submitted, duly signed by the Bidder (or a member authorized to sign the Proposal on behalf of the Consortium) under the "Covering Letter for Proposal Submission" the format for which is provided at *Annex IA* of this RFP.

1.4 Additional requirements for Proposals submitted by a Consortium

- 1.4.1 In case the Bidder is a Consortium, the members of the Consortium shall furnish a Power of Attorney designating one of the members, as per the Memorandum of Understanding (MoU), as their Lead Member (Lead Member is a member who meets at least 50% of either the technical or financial qualification criteria and holds at least 26% of aggregate equity shareholding of the Consortium. A prescribed format for submitting the MoU along with the key Clauses that should be contained in the MOU is provided at *Annex 2C*. The authorized representatives of the members shall duly sign the Power of Attorney. The Power of Attorney shall be duly furnished and attested by notary public.

Proposal submitted by a Consortium should comply with the following additional requirements:

- (i) Wherever required, the Proposal should contain the information required for each member of the Consortium;
- (ii) One of the Consortium members should have purchased the RFP document from the Authority or have paid the non-refundable fee to the Authority as specified in the RFP documents;
- (iii) The Proposal should include a description of the roles and responsibilities of individual members;
- (iv) An individual member applying as a sole Bidder cannot at the same time be member of any Consortium applying for this Project. Further, a member of a particular Consortium cannot be member of any other Consortium applying for this Project. Any member who submits or participates in more than one Bid for this Project will be disqualified and will also lead to disqualification of the Consortium of which it is a member;
- (v) Members of the Consortium shall nominate one member as the Lead Member. The nomination(s) shall be supported by a Power of Attorney as per the format enclosed at *Annex 2B* signed by all the members. The Lead Member shall be required to meet the criteria specified in the RFQ and this RFP Document;



1.4.2 Members of the Consortium shall submit a Memorandum of Understanding (MoU) for the purpose of submitting the Proposal, as per format attached in Annex 2C. The Memorandum of Understanding (MoU) shall be furnished on a non-judicial stamp paper duly attested by notary public.

The MoU shall, inter alia:

- (i) Convey the intent to form a Special Purpose Vehicle with shareholding commitment(s) explicitly stated. The Special Purpose Vehicle shall be incorporated in line with the terms mentioned in Clause 1.5 of this RFP.
- (ii) These shareholding commitments would be recorded in the Concession Agreement and no changes thereof would be allowed except in accordance with the provisions of the Concession Agreement and this RFP. The MoU shall communicate the willingness of the Consortium to subsequently carry out all the responsibilities as Concessionaire in terms of the Concession Agreement, in case the Concession to undertake the Project is awarded to the Consortium.
- (iii) Clearly outline the proposed roles and responsibilities of each member at each stage and shall commit the minimum equity stake of each member as required under Clause 1.5 of this RFP.
- (iv) Clearly state that members of the Consortium shall be liable jointly and severally for the execution of the Project in accordance with the terms of the Concession Agreement and a statement to this effect shall be included in the MoU.
- (v) Should be accompanied by the Board Resolutions (in case of corporate members) and/or undertakings (in case of individual members) of the Consortium, giving authority/undertaking to enter into an MoU with other members for undertaking the Project and, if successful, to participate and undertake the Project and in case of corporate members nominating and authorising an authorised representative of the member to sign and enter into the MoU and execute Power of Attorneys for the Project. The format for the Board Resolutions / Undertaking that must be submitted is provided at **Annex 2D**.
- (vi) Should be accompanied by a certified true copy of the Memorandum and Articles of Association (in case of corporate members), notarised copy of the Registered Partnership Deed (in case of partnership firms) and Sales tax registration number/PIN/VAT (in case of proprietorship firms)

1.4.3 A copy of the MoU duly notarised, shall be submitted with the Proposal. The MoU entered into among the members of the Consortium should be specific to this Project and shall contain the above requirements failing which the Application shall be rejected as non-responsive. The MoU shall be governed by the laws and regulations of Kenya and shall be subject to jurisdiction of Kenyan Laws.



- 1.4.4 Any entity which has been barred by the Authority or any other relevant body mandated under a written law from participating in any Projects and the bar subsists as on the Proposal Due Date would not be eligible to submit the Proposal, either individually or as member of a Consortium. An Affidavit as per the format in **Annex 2E** and shall be submitted along with the Proposal.
- 1.4.5 The Proposal shall be signed by the duly authorized signatory of the Lead Member and shall be legally binding on all the members of the Consortium.
- 1.4.6 All witnesses and sureties shall be persons of status and probity and their full names, address and telephone numbers/mobile numbers shall be stated below their signature. All signatures in the Proposal documents shall be dated.

1.5 Minimum Equity Requirement

- 1.5.1 The Sponsor will be required to incorporate a Special Purpose Vehicle (SPV), which shall not undertake any other business during the Concession Period, to domicile the Project prior to the start of implementation of the Project.
- 1.5.2 The aggregate equity shareholding of the Consortium members (or sole applicant, if applicable) and their / his Associates, in the issued and paid up capital of the Concessionaire shall not be less than [51% (fifty-one per cent)] of its issued and paid up Equity as on the date of this Agreement and up to the Completion Date and thereafter for a period of 5 (five) years after the Completion Date hold not less than [26%] of its issued and paid up Equity
- 1.5.3 In case of a Consortium:
- (i) The Lead Member shall commit to hold a minimum equity stake equal to 26% of the aggregate shareholding of the Consortium in the SPV at all times during the Concession Period.
 - (ii) Other than the lead member, each Member of the Consortium shall commit to hold a minimum equity stake equal to 10% of the aggregate shareholding of the Consortium in the SPV at all times during the Concession Period.
- 1.5.4 Any dilution in the equity holding of the SPV as provided in this clause shall be as per the provisions of the Concession Agreement.

1.6 Concession Period & Total Project Cost

The Concession Period and the Construction Period for the Project shall be as indicated in the **Data Sheet**.

The Estimated Unit Cost (EUC) of the Project is provided at the **Data Sheet**.



1.7 Change in Composition of the Bidder

Where the Bidder is a Consortium, change in the composition of a Consortium may be permitted by the Authority during the Bid Stage, only where:

- a) the application for such change is made no later than 15 (fifteen) days prior to the Bid Due Date;
- b) the Lead Member continues to be the Lead Member of the Consortium;
- c) the Consortium Member resident in Kenya, as the case may be, can be replaced by another member resident in Kenya provided the Consortium Member who is sought to be substituted and the modified Consortium shall continue to meet the pre-qualification and short-listing criteria for Applicants;
- d) the substitute is at least equal, in terms of Technical Capacity, to the Consortium Member who is sought to be substituted and the modified Consortium shall continue to meet the pre-qualification and short-listing criteria for Applicants; and
- e) the new Member(s) expressly adopt(s) the Application already made on behalf of the Consortium as if it were a party to it originally, and is not an Applicant/Member/Associate of any other Consortium bidding for this Project(s).

Approval for change in the composition of a Consortium shall be at the sole discretion of the Authority and must be approved by the Authority in writing.

1.8 Proposal Preparation Cost

The Bidder shall be responsible for all costs associated with the preparation of its Proposal and its participation in the bidding process. The Authority will neither be responsible nor in any way be liable for such costs, regardless of the conduct or outcome of the bidding process.

1.9 Contents of RFP

The RFP consists of four Parts as listed below and would include any Addenda issued in accordance with Clause 1.11 of Part I of the RFP.

PART I	Request for Proposal
PART II	Draft Concession Agreement
PART III	Non-Technical Schedules
PART IV	Technical Schedules & Drawings



The information presented in Schedule-A of Part IV is for initial understanding and guidance of the Concessionaire. The Concessionaire shall prepare the Detailed Engineering Designs & Drawings and get it approved from the Authority before implementation of Project.

1.10 Clarifications

- 1.10.1 A prospective Bidder requiring any clarification on the RFP may notify the Authority in writing. Bidders should send in their queries latest by the Last Date for Receiving Queries as given in the schedule of Bidding Process.
- 1.10.2 Copies of the Authority response will be forwarded to all purchasers of the RFP, including a description of the enquiry.

1.11 Amendment of RFP

- 1.11.1 The Authority may modify the RFP by issuing an Addendum before Proposal Due Date.
- 1.11.2 Any Addendum thus issued shall be part of the RFP and shall be communicated in writing to all the purchasers of the RFP and will also be hosted on the Authority's website. Bidders shall acknowledge receipt of each Addendum in writing to the Authority. The Authority will assume no responsibility for postal delays.
- 1.11.3 To give prospective Bidders reasonable time in which to take Addendum into account in preparing their bids, the Authority may, at its sole discretion, extend the Proposal Due Date.

B. PREPARATION AND SUBMISSION OF PROPOSAL

1.12 Language of the Proposal

The language of Proposal and related documents and correspondence shall be as per the **Data Sheet**. Supporting documents and printed literature furnished by Bidder along with the Proposal may be in any other language provided that they are accompanied by translations in the language as per the Data Sheet and certified by the concerned Embassy/High Commission/Consulate of the country of origin of Bidder, in Kenya. Supporting materials, which are not translated into the language mentioned in the Data Sheet, shall not be considered for evaluation. For the purpose of interpretation and evaluation of the application, translation certified by Embassy /High Commission/Consulate shall prevail.



1.13 Currency of Proposal and Payments

- 1.13.1 The currency for the purpose of the Proposal shall be as per the **Data Sheet**. In case the conversion is required, the conversion to the currency mentioned in the Data Sheet shall be based on the mean exchange rate (CBK exchange Rate) as was applicable 7 days prior to Proposal Due Date. In all such cases, the original figures in the relevant foreign currency and the Proposal currency equivalent thereof must be given. The date used and exchange rate thereof shall be clearly stated. The Authority reserves the right to use any other suitable exchange rate for the purposes of evaluating all Bidders uniformly.

1.14 Bid Security

- 1.14.1 Proposal shall be accompanied by a Bid security in Kenya Shillings for an amount as indicated in the **Data Sheet** and valid for **45 days** beyond the Proposal validity date. The bid security shall be kept valid throughout the Proposal Validity Period including any extensions in the Proposal Validity Period as given in Clauses 1.15 and 1.16 and would be required to be extended and further extended if so required by the Authority. Any extension of the validity of the Bid Security may be requested by the Authority the same shall be provided within a minimum of seven calendar days prior to the expiry of the same. When an extension of the Bid Validity Period is requested, Bidders shall not be permitted to change the terms and conditions of their Bids. The Authority reserves the right to reject the Proposal submitted by any Bidder who fails to extend the validity of the Bid Security in line with the provisions of this clause.

- 1.14.2 The Bid Security shall be in the following form:

Unconditional and irrevocable Bank Guarantee issued by a Bank in favour of **Kenya National Highways Authority**, as per the format set out in **Annex 4A**. For the purpose of providing Bid Security, the “Bank” shall have the meaning specified below. Bank Guarantee issued by the following Banks only would be accepted:

1. Central Bank of Kenya (CBK) and its subsidiaries
2. Any Kenyan Nationalized Bank
3. Foreign Bank (issued by a branch outside Kenya) with a guarantee from CBK or its subsidiaries or any Kenyan Nationalized Bank
4. Any scheduled Commercial Bank Licensed by CBK.

- 1.14.3 The Bid Security of the unsuccessful bidders will be returned within the period specified in the Data Sheet from the date of notification of award to the Successful Bidder, with exception of the bid security of the second lowest Bidder (“Second Ranked Bidder”) as determined on the opening of the Financial Proposal whose Bid Security shall be returned by the Authority on the expiry of the Proposal Validity Period or the execution of the Concession Agreement, whichever is earlier – provided that following expiry of the Proposal Validity Period the Second Ranked Bidder may be requested to extend the validity of its bid pending



negotiations with the successful bidder and execution of the Concession Agreement.

Unopened Financial Proposals of the bidders who do not meet the qualification criteria as well as similar proposals and bid securities for bidders rejected at the first stage of evaluation will be returned within a period specified in the **Data Sheet** from the date of notification of award to the Successful Bidder.

1.14.4 The Authority shall reject the Proposal which does not include the Bid Security.

1.14.5 The Bid Security shall be forfeited in the following cases:

- (i) If the Bidder withdraws its Proposal except as provided in Clause 1.24;
- (ii) If the Bidder withdraws its Proposal during the interval between the Proposal Due Date and expiration of the Proposal Validity Period;
- (iii) If the Successful Bidder fails to provide the Performance Security within the stipulated time or any extension thereof provided by The Authority;
- (iv) As per the provisions of the Concession Agreement.

1.15 Proposal Validity Period

Proposal shall remain valid for the period indicated in the **Data Sheet**. The Authority reserves the right to reject any Proposal, which does not meet this requirement.

1.16 Extension of Proposal Validity Period

1.16.1 The Authority may request Bidders to extend the Proposal Validity Period for a specified additional period. The request and the Bidders' responses shall be made in writing. The Authority reserves the right to reject the Proposal submitted by any Bidder who fails to extend the Proposal Validity Period in line with the provisions of this clause.

1.16.2 The Bid Validity Period of the Successful Bidder shall be automatically extended till the date on which the Concession Agreement is signed and is in force.

1.17 Project Inspection and Site Visits

Bidders are required to submit their respective Bids after visiting the Project site and ascertaining the site conditions, traffic, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant to the project.

It shall be deemed that by submitting a Bid, the Bidder has:

- (a) made a complete and careful examination of the Bidding Documents;



- (b) received relevant and available information on the project from the Authority;
- (c) satisfied itself about all matters, things and information including issues referred to the first paragraph of this Clause hereinabove necessary and required for submitting an informed Bid and execution of the Project in accordance with the Bidding Documents and performance of all of its obligations there under;
- (d) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to the first paragraph of this Clause hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Concession Agreement; and
- (e) agreed to be bound by the undertakings provided by it under and in terms hereof.

The Authority shall not be liable for any omission, mistake or error on the part of the Bidder in respect of any of the above or on account of any matter/issues or things arising out of or concerning or relating to RFP, the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data given by the Authority.

1.18 Bidder's Responsibilities

1.18.1 The Bidder is expected to examine carefully the contents of all the documents provided. Failure to comply with the requirements of RFP will be at the Bidders' own risk.

1.18.2 It shall be deemed that prior to the submission of the Proposal, the Bidder has:

- (i) Made a complete and careful examination of requirements and other information set forth in this RFP;
- (ii) Received available relevant information requested from the Authority; and
- (iii) Made a complete and careful examination of the various aspects of the Project including but not limited to:
 - (a) The Project site;
 - (b) Existing facilities and structures;
 - (c) The conditions of the access roads and utilities in the vicinity of the Project Site;



- (d) Conditions affecting transportation, access, disposal, handling and storage of the materials;
- (e) Clearances obtained by The Authority for the Project; and
- (f) All other matters that might affect the Bidder's performance under the terms of this RFP.

1.18.3 The Authority shall not be liable for any mistake or error or neglect by the Bidder in respect to Clause 1.18.2 above.

1.18.4 Each Bidder shall submit **ONLY** one Proposal in response to this RFP. Submission of more than one Proposal by any Bidder shall be sufficient grounds for disqualification of the Bidder. In case, any entity is part of more than one Bidder (either a sole Bidder or a Consortium), this shall lead to disqualification of all the Bidders in which such an entity is participating.

1.19 Pre-Bid Conference

1.19.1 The Authority shall hold a Pre-Bid Conference on the date specified in the Schedule of Bidding Process to discuss the issues related to the Project with all the bidders. The Authority may on its discretion hold further discussions with the bidders to finalize the technical/ financial and other related issues for the Project, before submission of the Proposals.

1.19.2 Prior to the Pre-Bid Conference, the Bidders may submit a list of queries and propose amendments, if any, to the Project requirements and/or the Concession Agreement. Bidders must formulate their queries or amendment proposals and forward the same to the Authority before Last Date for Receiving Queries as specified in the Schedule of Bidding Process. The Authority may amend the RFP based on inputs, provided by Bidders that may be considered acceptable in its sole discretion.

1.19.3 The Authority may at its discretion respond to inquiries submitted by the conference attendees after the date of the Pre-Bid Conference. Such a response will be sent in writing to all bidders who have purchased the RFP or shown intention to Bid and the same will qualify as an "Addendum".

1.19.4 Bidders should **NOTE** that the Authority will not entertain any amendments to the RFP at the time of submission of the Proposal or thereafter. The bidders shall submit unconditional and unqualified Proposals and they shall be deemed to have accepted the terms and conditions of the RFP with all its contents including the Concession Agreement. **Any conditional Proposal shall be regarded as non-responsive and shall be rejected.**

1.19.5 Attendance of the Pre-Bid Conference is **mandatory**.

1.19.6 All correspondence/ enquiries shall be submitted to the address indicated in the Data Sheet in writing by email / post/ courier.



1.19.7 No interpretation, revision, or other communication from the Authority regarding this solicitation is valid unless in writing and signed by the Authorized representative in the Authority.

1.20 Format and Signing of Proposal

1.20.1 The Bidder shall provide all the information as per this RFP. The Authority reserves the right to evaluate **ONLY** those Proposals that are received in the required format, complete in all respects and in line with the instructions contained in this RFP.

1.20.2 The Proposal shall be submitted in Four Parts enclosed in four (4) separate envelopes / packages and put together in one single outer envelope/package.

“Part 1: Other Submissions” which will consist of details mentioned in Clause 2.2 of this RFP.

“Part 2: Qualification Proposal” which will consist of the details mentioned in Annex 5 and 7 of this RFP.

“Part 3: Financial Proposal” which will consist of details mentioned in Annex 6-A, 6-B and 6-C of this RFP.

“Part 4: Bid Security” which will be as per Annex 4A of this RFP. ***Bid security is not to be submitted in Hard Bound Form***

1.20.3 The Bidder shall prepare and submit **one original, one copy and one electronic version (searchable PDF for submissions in text and Microsoft excel for computations e.g. financial model)** of the Proposal (comprising Other Submissions, Qualification Proposal, Financial Proposal and Bid Security in separate envelopes). Each Proposal shall be marked “**ORIGINAL**” or “**COPY**” as appropriate. If there are any discrepancies between the original and the copies of the proposal, the original shall govern. The **FINANCIAL PROPOSAL SHALL NOT** be included in the CD ROM Copy. However, Bidders may be required to provide soft copies of The Financial Proposal for purposes of evaluation of the bids at a later date.

1.20.4 The pages and volumes of each part of the Proposal shall be serially numbered.

1.20.5 All documents shall be submitted in a hard bound form, separately for Part 1, Part 2 and Part 3. Bid Security shall be placed in a separate envelope, sealed and duly marked. Hard bound implies binding between two covers through stitching or otherwise whereby it may not be possible to replace any paper without disturbing the document. Spiral bound form; loose form etc. will be not accepted). The Proposal shall not include any loose papers.

1.20.6 The Proposal shall be typed or printed. The Proposal submission letter shall be signed and each page of the Proposal shall be initialed by a person or persons



duly authorized to sign on behalf of the Bidder and holding the Power of Attorney as per the format provided in Annex 2A of this RFP.

- 1.20.7 The numbers contained in the Financial Proposal (bid price format) should be covered with a **clear/transparent adhesive tape**. Any signs of tampering will lead to the rejection of the Financial Proposal.
- 1.20.8 The Proposal shall contain no alterations or additions, except those to comply with instructions issued by the Authority or as necessary to correct errors made by the Bidder, in which case such corrections shall be initialed by the person or persons signing the Proposal.

1.21 Sealing and Marking of Proposal

- 1.21.1 The Bidder shall seal each Part (Other Submissions, Qualification Proposal, Financial Proposal and Bid Security) of the Proposal in separate envelopes duly marking each envelope as **“OTHER SUBMISSIONS”** or **“QUALIFICATION PROPOSAL”** or **“FINANCIAL PROPOSAL”** or **“BID SECURITY”** as appropriate. The original and all copies of the Financial Proposal in a sealed envelope clearly marked **“FINANCIAL PROPOSAL”** and warning: **“DO NOT OPEN WITH THE QUALIFICATION PROPOSAL”**. All envelopes shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address and other information indicated in the bid **Data Sheet** and be clearly marked, **“DO NOT OPEN, EXCEPT IN PRESENCE OF THE OPENING COMMITTEE.”**
- 1.21.2 The Bidder shall put four separate envelopes enclosing the Proposal (Other Submissions, Qualification Proposal, Financial Proposal and Bid Security) in a single outer envelope and seal the envelope.
- 1.21.3 The outer envelopes shall clearly bear the following identification.
- “Proposal for Finance, Design, Build, Maintain and Transfer of roads under Lot No. 6 Tender No. KeNHA/1291/2016**
- 1.21.4 Each of the envelopes shall indicate the complete name, address, telephone number (which country and city code) and facsimile number of the Bidder.
- 1.21.5 Each envelope shall be addressed to the addresses indicated in the **Data Sheet**.
- 1.21.6 The Authority reserves the right to reject any Proposal which is not sealed and marked as instructed above and will assume no responsibility for the misplacement or premature opening of the Proposal.

1.22 Proposal Due Date and Time

- 1.22.1 Proposal should be submitted on or before the date and time, the Proposal Due Date as stated in the **Schedule of Bidding Process**. Proposals submitted by either facsimile transmission or telex will not be accepted.



- 1.22.2 The Authority may, in exceptional circumstances and at its sole discretion, extend the Proposal due Date by issuing an Addendum in accordance with Clause 1.11 uniformly for all Bidders.

1.23 Late Proposals

Any Proposal received after the Proposal Due date and time will not be accepted by the Authority.

1.24 Modifications / Substitution / Withdrawal of Proposals

- 1.24.1 A Bidder may modify, substitute, or withdraw its Proposal after submission, provided that written notice of the modification, substitution, or withdrawal is received by the Authority before or by the Proposal Due Date and Time. **No Proposal shall be modified, substituted or withdrawn by the Bidder after the Proposal Due Date and Time.**

- 1.24.2 The modification, substitution, or withdrawal notice shall be prepared in Original only and each page of the notice shall be prepared and submitted in the manner given in clause 1.20.3. The copies of the notice shall be sealed, marked, and delivered in accordance with Clause 1.21, with the envelope being additionally marked “**MODIFICATION**”, “**SUBSTITUTION**” or “**WITHDRAWAL**” as appropriate.

C. EVALUATION PROCESS

1.25 Proposal Opening Date

- 1.25.1 All Qualification and Financial Proposals received by the Authority will remain sealed and unopened in the Authority’s possession until the Other Submissions and Bid Security have been tested for their responsiveness to RFP as per Clause 1.31 of this RFP.
- 1.25.2 The Authority will open the **Part 1 and Part 4** of Proposal (Other Submissions and Bid Security only) on the Proposal Due Date and Time. **Qualification and Financial Proposal envelopes shall not be opened at this stage.**
- 1.25.3 Proposals for which an acceptable notice of withdrawal has been submitted in accordance with Clause 1.24 shall not be opened.
- 1.25.4 The Part 1 and 4 of the Proposal shall be opened in the presence of Bidders’ representatives, who choose to attend.
- 1.25.5 The following information will be announced at the Proposal Opening and recorded:

- Bidder’s names



- Names of Consortium Members
- presence or absence of other parts of the proposal
- bid security amount, issuing financial institution and validity period

1.25.6 The Authority shall subsequently examine responsiveness of Proposals in accordance with the criteria set out in Clause 1.31.

1.25.7 After the Proposal Opening, information relating to the examination, clarification and evaluation of Bids and recommendations concerning the Bid Award **shall remain confidential**.

1.26 Non-Discriminatory and Transparent Bidding Proceedings

The Authority shall ensure that the rules for the bidding proceedings for the Project are applied in a non-discriminatory, transparent and objective manner. The Authority shall not provide to any bidder information with regard to the Project or the bidding proceedings, which may have the effect of restricting competition.

1.27 Confidentiality

- 1.27.1 Information relating to the examination, clarification, evaluation, and recommendation for the Bidders shall not be disclosed to any person not officially concerned with the process. The Authority will treat all information submitted as part of Proposal in confidence and would require all those who have access to such material to treat the same in confidence. The Authority will not divulge any such information unless so ordered by any relevant authority that has the power under the Laws of Kenya.

1.28 Clarifications

To facilitate evaluation of Proposals, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Proposal. Notwithstanding anything contained in the RFP, the Authority reserves the right not to take into consideration any such clarifications sought for evaluation of the Proposal.

1.29 Payments by the Authority

- 1.29.1 While evaluating bids, the sole criterion for selection of Sponsor will be the least Annuity quoted by the bidder, as duly described in **Annex 6 – A** for financial bid of this RFP.
- 1.29.2 All payments for a specific year of the Concession shall be made as per timing and procedure specified in the Concession Agreement (Part II of this RFP).

1.30 Proposal Evaluation



-
- 1.30.1 The Concession will be awarded to the Bidder, who submits a responsive Bid, meets the minimum threshold qualification criteria for undertaking the Project and offers to enter into a Concession Contract on the best financial terms with the Authority.
- 1.30.2 The Qualification Proposals will undergo evaluation as per the criteria and process specified in **Annex 5 and 7** of Part I of this RFP. If the Proposal is found to be satisfactory based upon the qualification evaluation criteria, the Proposal shall be subject to a financial evaluation. The Authority reserves the right to reject the proposals, which do not meet the technical and financial parameters stipulated in the RFP.
- 1.30.3 Once the evaluation is completed and a Sponsor is selected, any change in the variables, which form the basis of the bidders' financial bid will not affect the Concession terms except as provided in the Concession Agreement.
- 1.30.4 Proposals not accompanied by “**Other Submissions**” and “**Bid Security**” shall not be evaluated.

1.31 Test of responsiveness

- 1.31.1 In Stage I of Proposal Evaluation, the Other Submissions as stated in Clause 2.2 and Bid Security as stated in Clause 2.3 submitted by the Bidders shall be checked for compliance with the requirements of the RFP. Prior to evaluation of Qualification and Financial Proposals, the Authority will determine whether each Proposal is substantially responsive to the requirements of the RFP. A Proposal shall be considered responsive if the Proposal satisfies the criteria stated below:
- a) The Proposal is submitted with "Other Submissions" as stipulated in Clause 2.2
 - b) The Proposal is submitted with "Bid Security" as stipulated in Clause 2.3
 - c) All the parts of the proposal as mentioned in Clause 1.20.2 are received by the Proposal Due Date including any extension thereof pursuant to Clause 1.22.
 - d) Is signed, sealed and marked as stipulated in Clause 1.20 and 1.21.
 - e) Contains all the information in formats specified in this RFP.
 - f) Contains all the formats specified in this RFP.
 - g) Mentions the validity period of the Proposal as set out in Clause 1.15.
 - h) Provides the information in Reasonable Detail (“Reasonable Details” means the details which but for minor deviations, contains the information, which can be reviewed and evaluated by the Authority without communication with the Bidder). The Authority reserves the right to determine whether the information has been provided in Reasonable Detail.
- 1.31.2 A Proposal that is substantially responsive is one that conforms to the preceding requirements without material deviation or reservation. A material deviation or reservation is one:



- (i) Which affects in any substantial way the scope, or performance of the Project, or
- (ii) Which limits in any substantial way, inconsistent with the RFP, rights of the Authority or the obligations of the Bidder under the Concession Agreement, or
- (iii) Will affect unfairly the competitive position of other Bidders presenting substantially responsive bids.

1.31.3 The Authority reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Proposals.

1.32 Evaluation of Qualification Proposals (Stage II)

1.32.1 At RfP stage, each Bid Response will be evaluated as follows:

- (a) Technical evaluation Minimum Score: 70%
- (b) Financial evaluation of the bids passing the minimum technical score:
 - *Financial Deliverability Evaluation: Minimum score: 70%*
 - *Price Evaluation: Bidder with the lowest annuity payment after passing the minimum Financial Deliverability Score will be selected*

1.32.2 In Stage II of Proposal Evaluation, only those Proposals that are found to be responsive to the requirements of the RFP as specified in Clause 1.31 above will be opened for assessing their qualification for technical and financial capability to undertake the Project as per **Annex 5 & 7**.

1.32.3 The technical and financial capability of the Bidders would be assessed based on the evaluation process and threshold requirements as set by the Authority as per **Annex 5&7**, to be submitted by the Bidders

1.32.4 Qualification Proposal is to determine the Bidder's capability and will be assessed by the following parameters:

(a) Technical Capability

The bidder shall provide method statements as required under Annex 7 of this RFP.

Parameters	Parameter Weightage
Mobilization	10
Design	30
Construction /Rehabilitation	20
Operation and Maintenance	15
Health and Safety	5
Skills Transfer and Economic Growth Enhancement	10
Demobilization and Transfer	10
Total	100

(b) Financial Capability:

The Bidder will be evaluated on the Detailed Financial Model that captures and integrates project structure and Funding Plan, deliverability of the proposed Funding Plan, Strength of commitment from financiers and financial robustness.

Each of these aspects will be scored in the following manner:

S/NO.	Parameters	Parameter Weightage
1	Detailed Financial Model that captures and integrates Project structure and Funding Plan and is consistent with the Technical Proposal	10
2	Deliverability of the proposed Funding Plan – the extent to which the proposed funding structure and strategy have previously been shown to be deliverable and have market precedents, or, to the extent that there is no market precedent, the degree to which evaluation committee is satisfied with an explanation from the Bidder and its financiers and advisers that the proposed funding structure and strategy are deliverable	30
3	Strength of commitment from financiers: the strength of commitment and the level of approval by both equity and debt providers.	30
4	Financial robustness: The determination of the financial robustness of a Bidder’s Bid will be based on an assessment of the ability of the Bidder’s proposed commercial structure to mitigate and absorb the risks involved and minimise their impact on the financial structure. This will include (without limitation) an evaluation of the Bidder’s security package, hedging strategies, standby facilities, bonding arrangements and insurance arrangements.	30
	Total	100

1.32.5 Bidders who attain a minimum score of 70% in technical capability and 70% in the financial capability will be considered for next stage of evaluation.

1.32.6 On each of these parameters, the Bidder shall be required to meet the evaluation criteria as detailed in **Annex 7**. Any Bidder meeting all the criteria will, subject to provisions of this document, will be qualified for evaluation of Financial Proposal.

1.32.7 Financial Proposals of those bidders whose Qualification Proposals meet the threshold technical and financial capability requirements as set out in Annex 5&7 shall be opened and evaluated in Stage III of the Evaluation Process. The Client shall notify Bidders whose Proposals were considered non-responsive or did not meet the minimum qualifying technical and financial score within 14



days upon issuance of letter of award to the successful bidder and that their unopened Financial Proposals shall be enclosed in such notices.

1.32.8 Legal requirements will be assessed by considering Bidders' compliance with the RfP documents, acceptance of the (Project Agreement and Schedules and any changes made to the risk allocation).

1.32.9 Not used

1.32.10 Qualified Bidders will be required to provide a price (**The FINANCIAL PROPOSAL**) which will be evaluated to ensure the cost of the Project as a whole fits the pre-determined Affordability envelope and ranked.

1.33 Evaluation of Financial Proposals (Stage III)

1.33.1 The Authority will open Envelope 'FINANCIAL PROPOSAL' for the Bidders, who pass the Qualification stage (Stage II) as stated, in clause 1.32, in the presence of the Bidders' representatives who choose to attend. The Authority will endeavour to open the Financial Proposals as per Schedule of Bidding Process.

1.33.2 In this RFP, the term "lowest Bidder" shall mean the Bidder who is offering the Lowest Annuity. Bidders will be ranked on the basis of the Annuity quoted as per Annex 6-A of this RFP. The proposal with the lowest Annuity would be ranked L1 and the other proposals will be ranked subsequently.

1.33.3 In the event that two or more bidders have quoted same Annuity, the Authority may:

- (1) Invite fresh Financial Proposals only from the Bidders quoting same Annuity. However, the fresh Financial Proposals shall not have higher Annuity than the one quoted by the Bidder in their original bids.

OR

- (2) Take any such measure as may be deemed fit in its sole discretion, including annulment of the bidding process

1.33.4 The Authority may invite the lowest bidder for negotiations.

1.33.5 Upon acceptance of the Annuity with or without negotiations, The Authority may declare the Successful Bidder.

1.34 Notification



The Successful Bidder shall be notified in writing by the Authority. The Authority shall endeavour to issue the Letter of Acceptance (LOA) to the Successful Bidder by the date mentioned against issue of LOA in the Schedule of Bidding Process.

1.35 The Authority's Right to accept or reject Proposal

1.35.1 The Authority reserves the right to accept or reject any or all of the Proposals without assigning any reason and to take any measures as it may deem fit, including annulment of the bidding process, at any time prior to execution of the Concession Agreement, without liability or any obligation for such invitation and without assigning any reason.

1.35.2 The Authority reserves the right to invite fresh bids with or without amendment of the RFP at any stage without liability or any obligation for such invitation and without assigning any reason.

1.35.3 The Authority reserves the right to reject any Proposal if:

- (i) At any time, a material misrepresentation is made or uncovered for a bidder or any of its members
- (ii) The Bidder does not respond promptly and thoroughly to request for supplemental information required for the evaluation of the proposal.

This would lead to disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium will be disqualified/ rejected. If such disqualification/ rejection occurs after the Financial Proposals have been opened and the Successful Bidder gets disqualified/ rejected, the Authority reserves the right to take any such measure as may be deemed fit in its sole discretion, including annulment of the bidding process. Notwithstanding the above, the Authority may recommend debarment of the bidder (s) to the relevant Authority for their misleading or false representations in the forms, statements etc. for the period to be decided by the Authority.

1.36 Acceptance of Letter of Acceptance (LOA) and Execution of Concession Agreement

1.36.1 Within seven (7) days from the date of the issue of LOA, the Successful Bidder shall accept the LOA in a written letter to the Authority. The Successful Bidder shall execute the Concession Agreement within the time specified in the **Data Sheet**.

1.36.2 In case, the Concession Agreement is not executed within the time specified in the **Data Sheet**, the Authority on receiving a request from the Successful Bidder may at its absolute discretion, permit extension of the stated period for execution of the Concession Agreement. If the Concession Agreement is not executed within the



extended period, the Authority shall enter negotiations with the Second Ranked Bidder. In such a case the entire bid security submitted by the Successful Bidder shall be forfeited..

- 1.36.3 If negotiations between the Second Ranked Bidder and the Authority are unsuccessful, the Authority reserves the right to annul the bidding process and may invite fresh bids for the Project. In such a case the entire bid security submitted by the Second Ranked Bidder shall be forfeited

1.37 Performance Security

1.37.1 The Successful Bidder shall incorporate an SPV solely for the purpose of domiciling the project (the “Concessionaire”) and the Concessionaire for due and faithful performance of its obligations during the Construction period furnish Performance Security by way of an unconditional and irrevocable Bank Guarantee issued by a bank, as defined in clause 1.14.2 of this RFP, in favour of **Kenya National Highways Authority** for a percentage of the Total Project Cost as mentioned in the **Data Sheet**. The Successful Bidder shall provide the Performance Security within the period specified in the **Data Sheet**. The format of the Performance Security is placed at Schedule F of the Concession Agreement.

1.37.2 Till such time the Concessionaire provides to the Authority the Performance Security, the Bid Security shall remain in full force and effect. The Performance Security shall be released to the Concessionaire as per provisions of the Concession Agreement.

1.37.3 Failure of the Successful Bidder to comply with the requirements of Clause 1.36.1 or 1.37.1 shall constitute sufficient grounds for the annulment of the LOA and forfeiture of the Bid Security. In such an event, the Authority reserves the right to take any such measure as may be deemed fit in its sole discretion including annulment of the bidding process.

1.38 Fraud and Corrupt Practices

1.38.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Concession Agreement, the Authority shall reject a Bid, withdraw the LOA, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Concessionaire, as the case may be, if it determines that the Bidder or Concessionaire, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall forfeit and appropriate the Bid Security

or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the Authority towards, inter alia, time, cost and effort of the Authority, without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise.

1.38.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Concession Agreement, if a Bidder or Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Concession Agreement, such Bidder or Concessionaire shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder or Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

1.38.3 For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:

- (a) “corrupt practice” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;
- (b) “fraudulent practice” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process ;
- (c) “coercive practice” means impairing or harming, or threatening to



impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bidding Process;

(d) "undesirable practice" means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and

(e) "restrictive practice" means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process



CONTENTS OF PROPOSAL

2.1 Qualification Proposal

Qualification Proposal shall consist of the following:

- a. Method statements as per ANNEX 7
- b. Financial Capability as per ANNEX 5
- c. Legal requirements under Clause 1.32.8

2.2 Other submission

The other submissions shall consist of:

- a) Covering letter for proposal submission clearly stating the validity period of the Proposal in the prescribed format **Annex 1A**.
- b) Power of Attorney for signing the Proposal, as per the prescribed format **Annex 2A**
- c) Power of Attorney in favour of Lead Member, whenever required, as per the prescribed format **Annex 2B**
- d) Memorandum of Understanding (MoU), as per the prescribed format in **Annex 2C** wherever required.
- e) Board resolution, as per the prescribed format in Annex 2D
- f) Affidavit, as per the prescribed format in **Annex 2E**
- g) Anti-collusion certificate, as per the prescribed format **Annex 3**
- h) Project Undertaking as per the prescribed format **Annex 4B**

2.3 Bid Security, as per the prescribed format **Annex 4A**

2.4 Financial Proposal as per the prescribed format **Annexes 6A, 6B & 6C**



ANNEX 1A
FORMAT FOR COVERING LETTER FOR PROPOSAL SUBMISSION
(On the Letterhead of the Bidder or Lead Member in case of a Consortium)

Date:

Director General
Kenya National Highways Authority
Blue Shield Towers, Hospital Rd, Upper Hill.
P. O. Box 49712,
NAIROBI, KENYA

Dear Sir,

Re: The Development of Roads Supporting Primary Growth Sectors through Contractor Facilitated Financing Mechanism: Lot No.6
Tender No. KeNHA/1291/2016

Being duly authorized to represent and act on behalf of Lead Member (in case of consortium) / Sole Applicant. I, the undersigned, having reviewed and fully understood all of the Proposal requirements and information provided hereby submit the Proposal for the Project referred above.

I am enclosing the Proposal (one original, one copy and one electronic version (searchable PDF for submissions in text and Microsoft excel for computations e.g. financial model), with the details as per the requirements of this RFP, for your evaluation. The Proposal shall be valid for a period of two hundred and eighty (280) days from the Proposal Due Date and the Bid Security shall be valid for an additional 45 days beyond the proposal validity period.

Dated this Days of 2014

Name of the Lead Member / Person

Signature of the Authorized Person

.....

Name of Authorized Person

.....

Designation of the Authorized Person



ANNEX 2A
FORMAT FOR POWER OF ATTORNEY FOR SIGNING
(duly attested by notary public)

POWER OF ATTORNEY

Know all men by these presents, we _____ (name and address of the registered office of the Sole Applicant / Lead Member / Member) do hereby constitute, appoint and authorize Mr. / Ms. _____ R/o _____ (name and address of residence) who is presently employed with us and holding the position of _____ as our attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to the bid of the consortium consisting of _____ and _____ (please state the name and address of the members of the consortium) to (i) finance, design, build, maintain and transfer of roads in Lot No.6 (the “Project”), including to sign and submit all documents and providing information / responses to **Kenya National Highways Authority** (the Authority), representing us in all matters in connection with our bid for the said Project.

We hereby agree to ratify all acts, deeds and things lawfully done by our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney shall always be deemed to have been done by us.

For

(Signature)

Name, Title and Address)

Accept

..... (Signature)

(Name, Title and Address of the Attorney)

Note:

- *To be executed by the Sole Applicant or all members including the Lead Member in case of a Consortium.*
- *The mode of execution of Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant (s) and when it is so required the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the executant (s) should submit for verification the extract of the charter documents and documents such as a resolution / Power of attorney in favour of the Person executing this Power of Attorney for the delegation of power hereunder on behalf of the executant (s).*



ANNEX 2B
FORMAT FOR POWER OF ATTORNEY FAVORING LEAD MEMBER OF CONSORTIUM

POWER OF ATTORNEY
(duly attested by notary public)

Whereas **Kenya National Highways Authority** (‘the Authority’) has invited applications from interested parties to **Finance, Design, Build, maintain and Transfer of roads in Lot No.6 (the “Project”)** for a specified Concession period (the “Concession Period”).

Whereas, M/s _____, M/s _____, M/s _____ and M/s _____ (the respective names of the members along with address of their registered offices) have formed a Consortium and are interested in bidding for the Project and implementing the Project in accordance with the terms and conditions of the Request for Proposal (RFP), Concession Agreement and other documents in respect of the Project, and

Whereas, it is necessary under the RFP for the members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the Project or in the alternative to appoint one of them as the Lead Member who, acting jointly, would have all necessary power and authority to do all acts, deeds and things on behalf of the Consortium, as may be necessary in connection with the Consortium’s bid for the Project.

NOW THIS POWER OF ATTORNEY WITNESSETH THAT :

We, M/s _____, M/s _____, M/s _____ and M/s _____ (the respective names of the members along with address of their registered offices) do hereby designate M/s _____ (name along with address of the registered office) being one of the members of the Consortium, as the Lead Member of the Consortium to do on behalf of the Consortium, all or any of the acts, deed or things necessary or incidental to the Consortium’s bid for the Project, including submission of Proposal participating in conference, responding to queries, submission of information / documents and generally to represent the Consortium in all its dealings with the Authority, any other Government Agency or any person, in connection with Project until culmination of the process of bidding and thereafter till the Concession Agreement is entered into with The Authority.

We hereby agree to ratify all acts, deeds and things lawfully done by Lead Member our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney.

Dated this _____ day of _____ 2014

[Executant(s)]

(To be executed by all the members in the Consortium and accepted by the Lead Member)



Note:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant (s) and when it is so required the same should be under common seal affixed in accordance with the required procedure.*
- *Also wherever required, the executant (s) should submit for verification the extract of the charter documents and documents such as resolution / Power of attorney in favour of the person executing this Power of attorney for the designation of power hereunder on behalf of the Bidder.*



ANNEX 2C
FORMAT FOR MEMORANDUM OF UNDERSTANDING (MoU)

This Memorandum of Understanding (MoU) entered this _____ day of _____ 200_ at _____

Among

_____ (hereinafter referred as “_____”) and having office at _____,
Kenya Party of the First Part

And

_____ (hereinafter referred as “_____”) and having office at _____,
Kenya Party of the Second Part

And

_____ (hereinafter referred as “_____”) and having office at _____,
Kenya Party of the Third Part

And

_____ (hereinafter referred as “_____”) and having office at _____,
Kenya Party of the Fourth Part

The parties are individually referred to as **Party** and collectively as **Parties**.

WHEREAS Kenya National Highways Authority (the Authority) has invited Qualification and Financial Proposal from entities interested in **Financing, Designing, Building, Maintenance and Transfer of roads in Lot No.6 (the “Project”)** for a specified Concession period (the “Concession Period”).

AND WHEREAS the Parties have had discussions for formation of a Consortium for bidding for the said Project and have reached an understanding on the following points with respect to the Parties rights and obligations towards each other and their working relationship.

IT IS HEREBY AS MUTUAL UNDERSTANDING OF THE PARTIES AGREED AND DECLARED AS FOLLOWS:

1. That the Parties will form a Special Purpose vehicle (SPV) with the shareholding commitments expressly stated to domicile the Project prior to the start of implementation of the Project. The said SPV shall not undertake any other business during the Concession Period.
2. That the aggregate equity share holding of the Parties and their / his Associates, in the issued and paid up capital of the SPV shall not be less than 51% (fifty one percent) during the Construction Period and for 3 years following Commercial Operations Date (‘COD’) and 26% (twenty six percent) during the balance remaining Operation Period.
3. That M/s _____ who is the Lead Members of the Consortium commits to hold a minimum equity stake equal to 26% of the aggregate shareholding of the Consortium in the SPV at all times during the Concession Period.
4. That M/s _____, M/s _____, and M/s _____, who are not Lead Members of the Consortium commit to hold a minimum equity stake equal to 10% of the aggregate shareholding of the Consortium in the SPV at all times during the Concession Period.



5. That any dilution in the equity holding by the Parties in the SPV shall be as per the provisions of the Concession Agreement.
6. That the shareholding commitments shall be recorded in the Concession agreement and no changes shall be allowed thereof, except in accordance with the provisions of the Concession agreement and the Request for Proposal.
7. That the Parties shall carry out all responsibilities as Concessionaire in terms of the Concession agreement.
8. That the roles and the responsibilities of each party at each stage of the Bidding shall be as follows :

-
9. That the minimum equity holding of each party (in percentage term) **in the SPV** shall be as follows :

Name of the Party	% of equity capital
.....
.....

10. That the Parties shall be jointly and severally liable for the execution of the Project in accordance with the terms of the Concession Agreement.
11. That the Parties affirm that they shall implement the Project in good faith and shall take all necessary steps to see the Project through expeditiously. They shall not negotiate with any other party for this Project.
12. That this MoU shall be governed in accordance with the laws of Kenya and courts in Kenya shall have exclusive jurisdiction to adjudicate disputes arising from the terms herein.

In witness whereof the Parties affirm that the information provided is accurate and true and have caused this MoU to be duly executed on the date and year above mentioned.

.....
 (Party of the first part) (Party of the second part) (Party of the third part) (Party of the fourth part)

Witness :

- 1.
- 2.



ANNEX 2D
FORMAT FOR BOARD RESOLUTION FOR COMPANIES

Format for Lead Member

“RESOLVED THAT approval of the Board be and is hereby granted to join the consortium with _____, _____ and _____ (name and address of the consortium members) for joint submission of bids to the Authority to **Finance, Design, Build, Maintain and Transfer of roads under Lot No.6 (the “Project”)**

“RESOLVED FURTHER THAT the “draft” Memorandum of Understanding (“MoU”) to be entered into with the consortium partners (a copy whereof duly initialed by the Chairman is tabled in the meeting) be and is hereby approved.”

“RESOLVED FURTHER THAT Mr. _____ (name), _____ (designation) be and is hereby authorized to enter into an MoU, on behalf of the company, with the consortium members and to sign the bidding documents on behalf of the consortium for submission of the bidding documents and execute a Power of Attorney in favour of _____ to act as the Lead Member.

Format for members

“RESOLVED THAT approval of the Board be and is hereby granted to join the consortium with _____, _____ and _____ (name and address of the consortium members) for joint submission of bids to THE AUTHORITY to **Finance, Design, Build, Maintain and Transfer of roads under Lot No.6 (the “Project”)**

“RESOLVED FURTHER THAT the “draft” Memorandum of Understanding (“MoU”) to be entered into with the consortium partners (a copy whereof duly initialed by the Chairman is tabled in the meeting) be and is hereby approved.”

“RESOLVED FURTHER THAT Mr. _____ (name), _____ (designation) be and is hereby authorized to enter into an MoU with the consortium members and execute a power of attorney in favour of _____ to act as the Lead Member”



ANNEX 2D (Continued)

**FORMAT FOR UNDERTAKING FOR INDIVIDUAL MEMBERS / FIRMS
On the letter head of the Individual (In case the member is not a Company or where
the Bidder is not a Company)**

Format for Lead Member

I / We _____ hereby agree to join the consortium with _____, _____ and _____ (name and address of the consortium members) for joint submission of bids to the Authority to **Finance, Design, Build, Maintain and Transfer of roads under Lot No.6 (the “Project”)**.

I / We also approve the Memorandum of Understanding (“MoU”) to be entered into with the consortium partners.

I / We also authorize Mr. _____ (name), _____ (designation) to enter into an MoU with the consortium members and to sign the bidding documents on behalf of the consortium for submission of the bidding documents.

Format for members

I / We _____ hereby agree to join the consortium with _____, _____ and _____ (name and address of the consortium members) for joint submission of bids to The Authority to **Finance, Design, Build, Maintain and Transfer** of roads under **Lot No.6 (the “Project”)**.

I / We also approve the Memorandum of Understanding (“MoU”) to be entered into with the consortium partners.

I / We also authorize Mr. _____ (name), _____ (designation) to enter into an MoU with the consortium members and execute a power of attorney in favour of _____ to act as the Lead Member”

Each applicant will have to attach its Board Resolution / Undertaking as the case may be, approving the participation in the consortium, bidding for the Project and authorizing a company official to sign the bidding documents / Power of Attorney to the Lead Member.



ANNEX 2E
FORMAT FOR AFFIDAVIT
(In case of Consortium to be given separately by each member)

(On Non – judicial stamp paper of KES. --- duly attested by notary public)

- i. I, the undersigned, do hereby certify that all the statements made in our proposal are true and correct.
- ii. The undersigned also hereby certifies that neither our firm M/s _____ nor any of its directors / constituent partners have abandoned any infrastructure related works in Kenya nor any contract awarded to us for such works have been terminated for reasons attributed to us, during last five years prior to the date of this application.
- iii. The undersigned also hereby certifies that neither our firm M/s-----nor any of its directors/ constituent partners have been debarred by The Authority for any work on (BOT or otherwise) or from bidding for road projects.
- iv. The undersigned hereby authorize(s) and request(s) any bank, person, firm or corporation to furnish pertinent information deemed necessary and requested by the Authority to verify this statement or regarding my (our) competence and general reputation.
- v. The undersigned understands and agrees that further qualifying information may be requested, and agrees to furnish any such information at the request of the The Authority.

Signed by an authorized Officer of the Co./firm

Title of Officer

Name of Co./firm

Date



ANNEX 3
FORMAT FOR ANTI-COLLUSION CERTIFICATE
(On the letter head of the Lead Member / Sole Applicant)

ANTI-COLLUSION CERTIFICATE

We hereby certify and confirm that in the preparation and submission of this Proposal, we have not acted in concert or in collusion with any other Bidder or other person(s) and also not done any act, deed or thing which is or could be regarded as anti-competitive.

We further confirm that we have not offered nor will offer any illegal gratification in cash or kind to any person or agency in connection with the instant Proposal.

Date this Day of 2017.

Name of the Bidder

Signature of the Authorized Person

Name of the Authorized Person

Note:

To be executed by lead member, in case of a Consortium



ANNEX 4A
FORMAT FOR BID SECURITY
BID SECURITY

(To be issued by a Bank, as defined in Clause 1.14.2 of this RFP)

1. In consideration of the **Kenya National Highways Authority** (hereinafter called “the Authority” which expression shall include any entity which the Authority may designate for the purpose) having agreed, inter alia, to consider the bid of (hereinafter referred to the “Bidder” which expression shall include their respective successors and assigns) which will be furnished in accordance with the terms of the Request for Proposals for the Project (name of the Project) envisaging (hereinafter called the “RFP”) in lieu of the Bidder being required to make a cash deposit, we [name of the bank and address of the issuing branch], hereinafter called the “Bank” which expression shall include our successors and assigns, as to bind ourselves our successors and assigns do at the instance of the Bidder hereby unconditionally and irrevocably undertake to pay as primary obligor and not as surety only to The Authority without protest or demand and without any proof or condition the sum of Kenya Shillings. (in words), (Refer to Clause 1.14 and Data Sheet).
2. We, the Bank, do hereby unconditionally and irrevocably undertake to pay forthwith (and in any event within five days) the amounts due and payable under this Guarantee without any delay or demur merely on a written demand from The Authority stating that the amount claimed is due by reason of the occurrence of any of the events referred to in the RFP. Any such demand made on the Bank by the Authority shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, the Bank’s liability under this Guarantee shall be restricted to an amount not exceeding Kenya Shillings. (in words), (Refer to Clause 1.14 and Data Sheet).
3. We, the Bank unconditionally undertake to pay to the Authority any money so demanded under this Guarantee notwithstanding any dispute or disputes raised by the Bidder or any other party including in any suit or proceeding pending before any court or tribunal relating thereto or any instructions or purported instructions by the Bidder or any other party to the Bank not to pay or for any cause to withhold or defer payment to The Authority under this Guarantee. The Bank’s liability under this Guarantee is irrevocable, unconditional, absolute and unequivocal. The payment so made by the Bank under this Guarantee shall be a valid discharge of the bank’s liability for payment hereunder and the Bidder shall have no claim against the Bank for making such payment.
4. We, the Bank further agree that the Guarantee herein contained shall remain in full force and effect upto and until 1700 hours on the date which falls 45 days beyond the Proposal Validity period i.e. (hereinafter called “the End Date”). Unless a demand or claim under this Guarantee is made on the Bank by The Authority in writing on or before the said End Date the Bank shall be discharged from all liability under this Guarantee thereafter.
5. We, the Bank further agree with the Authority that the Authority shall have the fullest liberty without the Bank’s consent and without affecting in any manner the Bank’s obligation hereunder to vary any of the terms and conditions of the RFP or to extend or postpone the time of performance by the Bidder or any other party from time to



- time or postpone for any time or from time or postpone for any time or from time to time any of the powers exercisable by the Authority against the Bidder or any of them and to enforce or to forbear from enforcing any of the terms and conditions relating to the RFP and the Bank shall not be relieved from its liability by reason or any forbearance act or omission on the part or by any such matter or thing whatsoever which under the law relating to securities would, but for this provision, have the effect of so relieving the Bank.
6. To give full effect to the obligations herein contained, the Authority shall be entitled to act against the Bank as primary obligor in respect of all claims subject of this Guarantee and it shall not be necessary for the Authority to proceed against the Bidder or any other party before proceeding against the Bank under this Guarantee and the Guarantee herein contained shall be enforceable against the bank as principal obligor.
 7. This Guarantee will not be discharged or affected in any way by the liquidation or winding up or dissolution or change of constitution or insolvency of any individual member of the Bidder or any other party or any change in the legal constitution or insolvency of the Bidder or any other party or any change in the legal constitution of the Bank or the Authority.
 8. We, the bank lastly undertake not to revoke this Guarantee during its currency except with the previous consent of the Authority in writing.

Notwithstanding any thing contained herein.

- i. Our liability under the Bank Guarantee shall not exceed Kenya Shillings (in word), (Refer to Clause 1.14 and Data Sheet).
- ii. The Bank Guarantee shall be valid upto [date], 2014_.
- iii. Unless acclaimed or a demand in writing is made upon us on or before _____, all our liability under this guarantee shall cease.

IN WITNESS WHEREOF THE BANK HAS SET ITS HANDS HERETO ON THE DAY, MONTH AND YEAR MENTIONED HEREUNDER.

Signed and Delivered

On behalf of	(Bank name)	(Signature)
		(Date)

By the hand of Mr..
(Name of authorized signatory)

Designation

Note: Authenticated copy of Letter of Authority authorizing the signatory of this guarantee to execute the same to be enclosed herewith).



ANNEX 4B
FORMAT FOR PROJECT UNDERTAKING
(On the Letter head of the Sole Applicant / Lead Member)

Date :

To:

Director General
Kenya National Highways Authority
Blue Shield Towers, Hospital Rd, Upper Hill.
P. O. Box 49712,
NAIROBI, KENYA

Dear Sir,

Re: The Development of Roads Supporting Primary Growth Sectors through Contractor Facilitated Financing Mechanism: Lot No.6

Tender No. KeNHA/1291/2016

We have read and understood the Request for Proposal (RFP) in respect of the captioned Project provided to us by The Authority.

We hereby agree and undertake as under:

Notwithstanding any qualifications of conditions, whether implied or otherwise, contained in our Proposal we hereby represent and confirm that our Proposal is unqualified and unconditional in all respects and we agree to the terms of the proposed Concession Agreement, a draft of which also forms a part of the RFP provided to us.

Dated this Days of 200_

Name of the Bidder

Signature of the Authorized Person

.....

Name of Authorized Person

.....

Note : To be signed by the Lead Member, in case of a Consortium, authorized to submit the bid



ANNEX 5A FUNDING PLAN

The following section assumes there will be a separate Special Purpose Vehicle (SPV) to enter into the Concession Agreement. However, Bidders are required to determine their own project structure, commercial arrangements and financing structure for project that offers best value for money.

Bidders must provide a 'Financial Deliverability Proposal' specifically covering the information required for Funding Deliverability and Financial Robustness as a minimum covering the following set of information for each of the SPVs, where applicable.

INFORMATION TO BE PROVIDED WITH BIDS

Provide a structure diagram showing:

- the SPV's proposed ownership structure and percentage shareholdings (holding / parent company (ies));
- the SPV's proposed sources of finance (split total amounts between different classes of debt and equity); and
- commercial arrangements and relationship between the SPV and its shareholders.

Bidders are required to set out the financing plan for Road. At a minimum the financing plan should set out:

- amount of funding and commitment achieved;
- proposed financing structure;
- sources of finance and funding instruments;
- key terms (based on term sheets) and principal assumptions;
- security, reserving, standby arrangements; and
- strengths and weaknesses and risk profile of the commercial arrangements backing the financing structure

Bidders are required to present their Funding Plan setting out their strategy for achieving financial close:

- profile and strength of the funding group (including financial strengths and credit rating of funders);
- level of due diligence already conducted;
- level of commitment and approvals;
- outstanding issues and conditions precedent to financial close;
- syndication strategy, where applicable;
- detailed plan for getting to financial close reflecting the level of commitment at bid stage; and
- timetable for delivering firm commitment and achieving financial close

Details of the requirements from lenders include:

1. Letter of support / commitment from the lead arranger (minimum) and (where applicable) other underwriting banks, monoline insurers and other financial institutions setting out their:

- level / amount of funding underwritten / committed;
- term sheet(s) (marked up or agreed / conformed) in respect of the commitment to



-
- meet the SPV(s) debt requirements;
 - level of involvement in, understanding of and their approval of/ satisfaction with:
 - the financing plan
 - the technical issues
 - the commercial arrangements and agreement
 - agreement and satisfaction with the level of parent company support and contractor
 - guarantees;
 - suite of sensitivities and minimum terms required; and
 - views on the deliverability of the financing
2. Details of the extent of due diligence and other work carried out and remaining to attract and gain committed debt finance and timeframe, including:
- the overall scope and timetable of the financier due diligence up to selection of a Preferred Bidder and subsequently to get to financial close;
 - assessment of principal risks and opportunities;
 - approach to syndication risk; where applicable
 - timeframe for financial close; and
 - other issues impacting financial close
3. Identity of financiers:
- those providing committed finance; and
 - those who would be willing to commit subject to further work
4. Amounts to be provided by each financier:
- those providing committed finance; and
 - those who would be willing to commit subject to further work
5. In respect of in-principle and / or committed finance, term sheets detailing all terms and conditions attaching to the financing arrangements including:
- interest rates and margins;
 - fees;
 - financial ratios and covenants (base case, lock up and default) explicitly stating the basis of calculation;
 - default clauses;
 - conditions precedent;
 - guarantee structure and security required;
 - reserve requirements or other conditions on distribution;
 - working capital requirements and how this will be financed; and
 - residual value assumptions (and the basis of the calculation).

Where the Bidder is proposing to find equity injections from its own resources, it is required to provide information set out under “Equity” below.

The level of commitment should be demonstrated by providing the following documents:

- a) Board minutes from all equity investors, including third party equity investors evidencing:
 - commitment to subscribe equity on agreed terms (set out in the equity documents required to be submitted); and



-
- adequate funds are available or there is a likely plan for funding all equity portions
 - b) Where any future injection of equity is to be guaranteed by a Bidder's parent company or a bank letter of credit, a copy of the proposed guarantee/letter of credit together with a letter from the parent company/bank stating that it is willing to provide the guarantee.
 - c) Identity of the investors and their financial standing.
 - d) Amounts to be subscribed by each investor and any conditions attached to the commitment.
 - e) Timing of injection(s) of equity.
6. Where investors are a company, joint venture, trust, or other form of interposed entity, a description of the relationship of the beneficial interests to its holding company.
- minimum return requirement for each class of risk capital and the basis of any IRR calculations;
 - details of arrangement, management, directors and commitment fees;
 - terms and conditions of the subscription;
 - dividend policy;
 - rights attached to the subscription;
7. Equivalent information as under "Equity" is required for quasi-equity (including any subordinated and mezzanine debt).

Details of the issuer, including the issuer's current credit rating;

In addition to the documented key sub-contractor guarantees, Bidders must state the following details with regard to each key sub-contractor guarantee:

- Details of the provider of the performance guarantee, including the provider's current
- credit rating and its relationship to the relevant key subcontractor;
- Duration of the performance guarantee;
- Limitations on liability;
- Any exclusions; and
- Copies of board minutes showing in principle approval of the key sub-contractor guarantee.
- a description of the capital and contractual structure



ANNEX 5B FINANCIAL MODEL

Each Bidder is required to provide a Financial Model for the Concession.

Note: Standardized output sheets will be provided to which Bidders must link their models to ensure that outputs can be reviewed and are comparable.

The financial year is defined as 1 July – 30 June with the initial concession period to commence financial year 2015 and ending financial year 2030

Financial Model Structure

Each Bidder must submit a Financial Model in accordance with the following requirements:

- a) the Financial Model must be compatible with Microsoft Excel 2010;
- b) all amounts are to be in Kenyan Shillings, rounded to the nearest Million;
- c) the Financial Model must contain and show all the formulae required to undertake all calculations;
- d) the models, together with all sheets and cells within the Financial Model should be unlocked;
- e) all Financial Model functions, formulae and linkages should be operational and no part of the model, including macros, should be password protected (unless the password is clearly provided for each level of protection), nor should any cells containing input or output data be hidden away from view in any way;
- f) financial projections should be provided monthly until the earlier of the completion of the Construction Phase or [Construction completion Date]. Projections should be provided annually thereafter; and
- g) financial projections must be prepared in accordance with IFRS.

CONCESSION MODEL

At a minimum the Financial Model for the Concession must include the following:

Inputs

1. Revenue inputs: forecast Annuity revenues
2. Nominal capital cost assumptions, broken down by year of expenditure
3. Real operating, Maintenance and administrative cost assumptions split between direct and indirect costs and the nature of these expenses (fixed, variable and semi-fixed for each line item)
4. Inflation assumptions;
5. Financing assumptions
6. Depreciation assumptions;



-
7. Working capital assumptions; and
 8. Taxation assumptions.

Calculations

1. Projected cash cascade showing the priority of the distribution of cash flows as set out in accordance with the finance documents. This should include the priority of payments to reserve accounts, senior debt, subordinated debt, service providers, etc;
2. funding schedules for each form of finance setting out drawdown, repayment amounts, interest payments, distributions and timing;
3. Debt Service Reserve Account (DSRA) or Facility (DSRF);
4. any other reserve accounts (please specify);
5. depreciation schedule (tax and accounting); and

Outputs

1. A financing plan;
2. projected cash flow statements;
3. projected profit and loss accounts;
4. projected balance sheets;
5. project IRR before financing pre and post-tax in both real and nominal terms;
6. return on equity and sub-debt pre and post-tax in both real and nominal terms and a blended equity return, that incorporates all sub-senior debt finance;
7. The blended equity return is to include all payments to/from equity investors including, but not limited to:
 - i. dividends;
 - ii. equity principal repayment;
 - iii. capital distributions;
 - iv. shareholder loans;
8. debt to equity ratio;
9. ratios which are considered relevant to the proposed financial structure;
10. the precise timing of any equity injections; and
11. any other specific outputs considered appropriate by the Bidders.

Sensitivity

The Bidder should detail the sensitivities performed in the model including but not limited to interest rates, delays in financial close, inflation rates, capital and operational costs.

Financial Model Data book Assumptions and Instructions

Each Bidder is required to provide data book assumptions and instructions supporting its Financial Model.



FINANCIAL MODEL DATA BOOK ASSUMPTIONS

The data book assumptions should include the following details as a minimum:

1. all information required to complete the assumptions required for the Concession;
2. a table of all inputs to the Financial Model with the cell reference and source;
3. sufficient information to be able to calculate sensitivities on the Financial Model with different volume assumptions;
4. copies of source documents (e.g. construction cash flow) or a clear indication where these may be found elsewhere in the Bid;
5. copies of relevant market related financial screens that detail the interest rates and exchange rates, used in the calculation of the Bid are to be provided. This should include the date and time of day (as specified) and information relating to whether the rates are monthly, bi-monthly, quarterly, semi-annual annual, or longer and all necessary supporting information to document clearly the basis for determination of the interest rates and exchange rates;
6. an explanation of the methodology used to generate the financial projections;
7. a definition of how the financial ratios are calculated, (which must be consistent with the
8. financiers' term sheets), and that the underlying values are confirmed as acceptable to financiers in their support letter;
9. a detailed statement of the assumptions used in relation to tax, detailing in particular the assessment of capital costs for capital allowances and how maintenance expenditure is treated for tax purposes.

FINANCIAL MODEL DATA BOOK INSTRUCTIONS

The instructions should include the following details as a minimum:

1. details of the mechanisms contained within the Financial Model and an explanation of how key tasks in the Financial Model are carried out;
2. how to adjust and recalculate the Financial Model in order to run sensitivities.
3. where relevant, instruction on how to switch between the base proposal Financial Model and any alternative financing proposal Financial Model (if within the same Financial Model); and

Information and Compliance Checklist

COMPLIANCE ASSUMPTIONS

The instructions should include the following details as a minimum:

Financial Model compliance (at the beginning of the Financial Model) – confirm that all the information provided within the Financial Model are consistent with each other.



ANNEX 6A

(On the letterhead of the Lead Member)

**The Development of Roads Supporting Primary Growth Sectors through Contractor Facilitated Financing Mechanism: Lot No.6.
Finance, Design, Build, Maintain and Transfer of roads in Lot No.6
Tender No. KeNHA/1291/2016**

Price Bid format for FDBMT (Annuity basis)

Quarterly Annuity Amount

Quarterly Annuity Amount = KES. *In figures (KES in words)*

.....
Name of the Bidder / Consortium

.....
Signature of the Authorized Person

.....
Name of the Authorised Person

Bidder to note:

- The Financial Proposal is to be signed by the authorized person of the Bidder (In case of a Consortium, as per a valid power of attorney given by all members of the Consortium)
- Bidders should specify the fixed Annuity amount, to be received from the Authority throughout the Operations Period (Annuity Amount) in the format set out above clearly indicating the amount in both figures and words in KES.
- The Annuity Amount must include two places of decimals.
- All the definitions shall be as per the Draft Concession Agreement (RFP Part II) unless specifically stated otherwise in this document.



ANNEX 6B

Cash flow Projections

Finance, Design, Build, Maintain and Transfer of roads in Lot No.6

Bidders shall submit Cash flow Projections as part of the Price Proposal as per the format set out below.

Bidders shall be required to quote the Annuity Amount in the relevant place in the table below for this purpose. Bidders would not be allowed to change any other item in the Cash flow Projections. All other relevant details of the Cash flow Projections have already been filled in by the Authority. The completed Cash flow Projections would form part of the Bidder's Price Proposal.

Bidders may note that provision of cost estimates in the Cash flow Projections by the Authority does not constitute any guarantee whatsoever by the Authority in respect of the same and the actual amounts incurred by the Concessionaire may vary.

While the Cash flow Projections shall not be used for the purpose of evaluation of the Price Proposal, the same shall be appended to the Concession Agreement and shall form part thereof.

Following are the details of the Cash flow Projections:

1. All amounts are in KES .
2. **“Deemed Date of Investment” (DID)** means the date exactly midway between Commencement Date and Scheduled Project Completion Date (SPCD). For the purpose of Cash flow Projections, the Bidders may assume that the construction period is 24 months.
3. **“Initial Investment”** means the TPC of the Project and is considered as a cash outflow as on the DID.
4. **“Annuity Amount”** means the annuity amount quoted by the Bidder as part of his Price Proposal as per the format in Appendix 6-A and is considered as a cash inflow occurring quarterly after SPCD.
5. **“Projected Routine Maintenance Cost”** means an amount of KES._____ (*amount to be filled in on the basis of the length of the Project Roads and will be KES ----- -- multiplied by the length of Project Roads*), which is the cost of routine maintenance, as estimated by the Authority, escalated @2.5 % every six months. This item of cost is considered as a cash outflow occurring every semi-annual period after SPCD.



-
6. **“Projected Cost of Major Maintenance”** means an amount of KES. _____ (amount to be filled in on the basis of the length of the Project and will be KES ----- multiplied by the length of the Project), which is the cost of Periodic Maintenance as estimated by the Authority, escalated @2.5% every six months.

This item of cost is considered as a cash outflow in the semi-annual periods as mentioned below:

First Major Maintenance - End of 10th semi-annual period from SPCD.

7. **“Projected Total O&M Expenses”** in a semi-annual period means the aggregate of Projected Routine Maintenance Cost and Projected Cost of Periodic Maintenance occurring in that semi-annual period.
8. **“Projected Net Cash flows”** in any period means the amount arrived at after considering.
- (a) the Annuity Amount in that period as a cash inflow and
 - (b) the Projected Total O&M Expenses in that period as a cash outflow
 - (c) the Initial Investment, considered as a one time cash outflow as on the DID.
9. **“Internal Rate of Return”** means the annualized pre-tax internal rate of return of the Projected Net Cash flows.
10. **“Discounted Value of Future Net Cash flows”** or any date means an amount, the payment of which, on that date would result in the Concessionaire attaining the Internal Rate of Return.



CASH FLOW PROJECTIONS

(in KES)

Cash Flow Projections							
	DID						
End of semi-annual period from SPCD		1	2__	_____	_____	_18	__36
End of Month							
Initial Investment(1)							
Annuity Amount(2)							
Less:							
Projected Routine Maintenance Cost (3)							
Projected Periodic Maintenance Cost (4)							
Projected Total O&M Expenses(5)=(3)+(4)							
Projected Net Cash Flows(6)=(2)-(1)-(5)							
Internal Rate of Return-IRR of (6)							



ANNEX 6 - C

Key Assumptions

Finance, Design, Build, Maintain and Transfer of roads in Lot No.6

Bidders would be required to submit information on key assumptions for the Project (Key Assumptions) based on their estimates of various parameters pertaining to the Project. Key Assumptions must include information on the following:

- i. Project Cost Estimates
 - Base Construction Cost as on Proposal Due Date
 - Contingencies
 - Details of Preliminary Expenses
 - Details of Pre-Operative Expenses
- ii. Quarterly Phasing Schedule
- iii. Estimated Total Project Cost as on COD
- iv. Capital Structure
 - Debt-Equity Ratio
 - Equity capital
 - Debt funding
 - Quasi-equity, if any
- v. Terms of Debt and Quasi-equity
 - Interest Rate
 - Maturity
- vi. Economic Assumptions
 - Inflation Rate
 - Exchange Rate, if any
- vii. O&M Cost Estimates
 - Routine Maintenance Costs as on Proposal Due Date
 - Periodic Maintenance Costs as on Proposal Due Date
- viii. Other Costs and Charges
 - Establishment Cost
 - Depreciation Rates
- ix. Taxation Assumptions
 - Tax Rates
 - Tax Benefits



ANNEX 7

7A: METHOD STATEMENTS AND 7B: OUTPUT SPECIFICATIONS

(Bound Separately)

**DATA SHEET****Name of the Project:****Finance, Design, Build, Maintain and Transfer of roads in Lot No.6**

Clause Reference	Tender Data
1.5.2	Minimum Equity Requirement: Minimum Equity Shareholding of Lead Member: 26 %
1.6	Concession Period and Project Unit Cost: Concession Period : 10 years (Including Construction period) Construction Period : 24 Months
1.12	The language of the Proposal is: English
1.13	The currency of the proposal shall be Kenya Shillings
1.14.1	Bid Security: The amount of the Bid Security shall be: Kshs 10,000,000 Validity period for Bid Security: 45 days Beyond Proposal validity date
1.14.2	Form of Bid Security: Unconditional and Irrevocable Bank Guarantee
1.14.3	Period for return of Bid Security to unsuccessful Bidders: 14 Days
1.15	Proposal Validity Period : 280.....Days from Proposal Due Date
1.17	A Mandatory Pre-Bid Site Inspection will take place at the following date, time and venue: Date: 29th – 31st May, 2017 Time: (as per schedule provided in the Authority's website) Venue: (as per schedule provided in the Authority's website) Non-attendance of the Pre-Bid Visit meeting will be a cause for disqualification of the Bidder.
1.19	A Pre-Bid Conference will take place at the following date, time and venue: Date: 2 nd June, 2017 Time: 9.00 A.M Venue: To be communicated Non-attendance of the Pre-Bid Conference will NOT be a cause for disqualification of the Bidder.
1.19.6	All correspondences to be addressed to. (Address of the Procuring Entity): Director General Kenya National Highways Authority Blue Shield Towers, Hospital Rd, Upper Hill. P. O. Box 49712-00100,



	NAIROBI, KENYA
1.20.3	Bid Submission : One Original of the Bid, One hard copy and One electronic copy
1.21.5	<p>Bid Submission to: Each envelope shall be addressed to</p> <p>The Secretary/Tender Committee, Kenya National Highways Authority Blue Shield Towers, Hospital Rd, Upper Hill. P. O. Box 49712, NAIROBI, KENYA</p> <p>Each Bidder shall submit only one bid for this Lot. Alternative bids shall not be permitted.</p>
1.22	Proposal Due Date: 1100h, Friday, 25th August, 2017
	Maximum number of Lots a bidder may be awarded: 1 (One)
1.36.1	Period for Execution of Concession Agreement shall be: Within 90 days of issue of LOA
1.37.1	<p><u>Performance Security</u> Period for submission of Performance Security within 60days before signing of the Project Agreement. Amount for Performance Security: 5% of the Contract Cost Form of performance security : irrevocable and unconditional guarantee from a Bank</p>
1.6	Estimated Unit Cost of the Project : KES.60-90Million per KM