



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

**KENYA NATIONAL HIGHWAYS AUTHORITY**

**ROADS 10,000 PROGRAMME**

**THE DEVELOPMENT OF 2,000 KM OF ROADS SUPPORTING PRIMARY GROWTH  
SECTORS THROUGH CONTRACTOR FACILITATED FINANCING MECHANISM  
(PHASE 1)**

**Tender Number: KeNHA/1291/2016**

**Lot No. 6**

**REQUEST FOR QUALIFICATION (RFQ) DOCUMENT**

**JULY, 2016**

General Manager [Design and Construction]  
**Kenya National Highways Authority**  
P.O. BOX 49712  
**NAIROBI**

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

## GLOSSARY

<b>Applicant(s)</b>	As defined in Clause 1.2.1
<b>Application</b>	As defined in the Disclaimer
<b>Application Due Date</b>	As defined in Clause 1.1.5
<b>Associate</b>	As defined in Clause 2.2.9
<b>Authority</b>	As defined in Clause 1.1.1, and Definitions Clause (3)
<b>Bids</b>	As defined in Clause 1.2.3
<b>Bid Due Date</b>	As defined in Clause 1.2.3
<b>Bid Security</b>	As defined in Clause 1.2.4
<b>Bidders</b>	As defined in Clause 1.1.1
<b>Bidding Documents</b>	As defined in Clause 1.2.3
<b>Bidding Process</b>	As defined in Clause 1.2.1
<b>Bid Stage</b>	As defined in Clause 1.2.1
<b>Concessionaire</b>	As defined in Clause 1.1.2
<b>Concession Agreement</b>	As defined in Clause 1.1.2
<b>Conflict of Interest</b>	As defined in Clause 2.2.1(c)
<b>Consortium</b>	As defined in Clause 2.2.1(a)
<b>DBFM</b>	As defined in Clause 1.1.1
<b>Eligible Experience</b>	As defined in Clause 3.2.1
<b>Eligible Projects</b>	As defined in Clause 3.2.1
<b>Estimated Project Cost</b>	As defined in Clause 1.1.4
<b>Experience Score</b>	As defined in Clause 3.2.6
<b>Financial Capacity</b>	As defined in Clause 2.2.2 (B)
<b>Government</b>	Government of *****
<b>Grant</b>	As defined in Clause 1.2.8
<b>Highest Bidder</b>	As defined in Clause 1.2.8
<b>ITP</b>	<b>As defined in Definitions Clause (2)</b>
<b>Joint Bidding Agreement</b>	As defined in Clause 2.2.6 (g)
<b>Lead Partner</b>	As defined in Clause 2.2.6 (c)
<b>LOA</b>	Letter of Award
<b>Member</b>	Member of a Consortium
<b>Net Worth</b>	As defined in Clause 2.2.4 (ii)
<b>Phase</b>	<b>As defined in Clause 2.2.13</b>
<b>PPP</b>	Public Private Partnership
<b>Premium</b>	As defined in Clause 1.2.8
<b>Package</b>	As defined in Clause 1.1.1
<b>Qualification</b>	As defined in Clause 1.2.1
<b>Qualification Stage</b>	As defined in Clause 1.2.1
<b>RFP or Request for Proposals</b>	As defined in Clause 1.2.1
<b>RFQ</b>	As defined in the Disclaimer
<b>SPV</b>	As defined in Clause 2.2.6
<b>Technical Capacity</b>	As defined in Clause 2.2.2 (A)
<b>Threshold Technical Capability</b>	As defined in Clause 2.2.2 (A)

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein.

## TABLE OF CONTENTS

<b>Sl. No.</b>	<b>Contents</b>	<b>Page No.</b>
	<b>Glossary</b>	i
	<b>Disclaimer</b>	v
<b>1</b>	<b>Introduction</b>	1
1.1	Background	1
1.2	Brief description of Bidding Process	2
1.3	Schedule of Bidding Process	4
<b>2</b>	<b>Instructions to Applicants</b>	6
<b>2A</b>	<b>General</b>	6
2.1	Scope of Application	6
2.2	Eligibility of Applicants	6
2.3	Change in composition of the Consortium	12
2.4	Number of Applications and costs thereof	13
2.5	Site visit and verification of information	13
2.6	Acknowledgement by Applicant	14
2.7	Right to accept or reject any or all Applications/ Bids	14
<b>2B</b>	<b>Documents</b>	15
2.8	Contents of the RFQ	15
2.9	Clarifications	15
2.10	Amendment of RFQ	16
<b>2C</b>	<b>Preparation and Submission of Application</b>	16
2.11	Language	16
2.12	Format and signing of Application	17
2.13	Sealing and marking of Applications	17
2.14	Application Due Date	18
2.15	Late Applications	18
2.16	Modifications/ substitution/ withdrawal of Applications	18
<b>2D</b>	<b>Evaluation Process</b>	19
2.17	Opening and Evaluation of Applications	19
2.18	Confidentiality	19
2.19	Tests of responsiveness	20

2.20	Clarifications	21
<b>2E</b>	<b>Qualification and Bidding</b>	21
2.21	Short-listing and notification	21
2.22	Submission of Bids	21
2.23	Proprietary data	22
2.24	Correspondence with the Applicant	22
<b>3</b>	<b>Criteria for Evaluation</b>	23
3.1	Evaluation parameters	23
3.2	Technical Capacity for purposes of evaluation	23
3.3	Details of Experience	25
3.4	Financial information for purposes of evaluation	25
3.5	Short-listing of Applicants	26
<b>4</b>	<b>Fraud and Corrupt Practices</b>	27
<b>5</b>	<b>Pre-Application Conference</b>	29
<b>6</b>	<b>Miscellaneous</b>	30
<b>Appendices</b>		
<b>I</b>	<b>Format for Application</b>	31
	Annex – I Details of Applicant	35
	Annex – II Technical Capacity of Applicant	37
	Annex – III Financial Capacity of Applicant	39
	Annex – IV Details of Eligible Projects	41
	Annex – V Statement of Legal Capacity	46
<b>II</b>	<b>Format for Power of Attorney for signing of Application</b>	47
<b>III</b>	<b>Format for Power of Attorney for Lead Member of Consortium</b>	49
<b>IV</b>	<b>Format for Joint Bidding Agreement for Consortium</b>	52
<b>V</b>	<b>Format for CV</b>	56

## **Definitions**

- (1) **ITP (Invitation to Prequalify)** is the open tender notice published by the State Department of Infrastructure for this RFQ in Kenya Local Daily Newspapers
- (2) **Lot** means a package of roads and shall constitute a contract to be awarded to a successful bidder.
- (3) **'Authority'** shall mean Kenya National Highways Authority a State Corporation, established under the Kenya Roads Act(2007), including their successors and assignees;

## DISCLAIMER

The information contained in this Request for Qualification document (the “**RFQ**”) or subsequently provided to Applicant(s), whether verbally or in documentary or any other form, by or on behalf of the Authority or any of its employees or advisors, is provided to Applicant(s) on the terms and conditions set out in this RFQ and such other terms and conditions subject to which such information is provided.

This RFQ is not an agreement and is neither an offer nor invitation by the Authority to the prospective Applicants or any other person. The purpose of this RFQ is to provide interested parties with information that may be useful to them in the formulation of their application for qualification pursuant to this RFQ (the “**Application**”). This RFQ includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Applicant may require. This RFQ may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFQ. The assumptions, assessments, statements and information contained in this RFQ may not be complete, accurate, adequate or correct. Each Applicant should therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFQ and obtain independent advice from appropriate sources.

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

The Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Applicant or Bidder, under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFQ or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFQ and any assessment, assumption, statement or information contained therein or deemed to form part of this RFQ or arising in any way with pre-qualification of Applicants for participation in the Bidding Process.

The Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Applicant upon the statements contained in this RFQ.

The Authority may, in its absolute discretion but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFQ.

The issue of this RFQ does not imply that the Authority is bound to select and short-list pre-qualified Applications for Bid Stage or to appoint the selected Bidder or Concessionaire, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Applications or Bids without assigning any reasons whatsoever.

The Applicant shall bear all its costs associated with or relating to the preparation and submission of its Application including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Authority or any other costs incurred in connection with or relating to its Application. All such costs and expenses will remain with the Applicant and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by an Applicant in preparation or submission of the Application, regardless of the conduct or outcome of the Bidding Process.

# 1. INTRODUCTION

## 1.1 Background<sup>1</sup>

1. The Government of the Republic of Kenya through the Ministry of Transport and Infrastructure represented by the Kenya National Highways Authority (KeNHA), Kenya Rural Roads Authority (KeRRA), and the Kenya Urban Roads Authority (KURA) being state corporations established under the Kenya Roads Act, 2007 (hereinafter referred to as ‘the Authority’) has identified the need to upgrade to paved standards approximately 3,000km of roads. These roads are intended to support the primary growth sectors of Commerce, Tourism, Agriculture and Rural Production, and Extractive Industries.
2. The Authority therefore seek to procure Consortium with the capacity to secure funding for roads development projects supporting the above sectors that have been packaged into “New lot. 6” as shown in the table below:-

### Roads under “New Lot. 6”

County	Road Name	Road Class	Km
Narok	Kilgoris - Lolgorian	B3	30.2
Bungoma, Trans Nzoia	Turbo -Sikhendu - Endebess Turbo - Sikhendu (C622) -36km Endebes– Sikhendu (C619) – 28km	C622/C619	64.0
Kakamega	Kakamega (Sichirai) – Ingotse – Namukoye- Nzoia River – Musikoma (Khalaba) Road	C777	43.4
Siaya	Ugunja - Ukwala – Ruambwa	C776	28.0
Busia	Ruambwa – Port Victoria (Mabinju)	C672	17.5
Narok	Kehancha – Lolgorian	B1	25.2
Teso	Kimaeti – Malakisi - Lwakhakha	C807	25.0
<b>TOTAL</b>			<b>233.3</b>

3. The Authority intends to pre-qualify suitable Applicants (“Consortia”) who will be eligible for participation in the competitive selection process at the Bid Stage in accordance with the procedure set out in this RFQ.

1.1.2 The selected Consortia, who is either a company incorporated under the Companies Act (Chapter 486 Laws of Kenya) or undertakes to incorporate as such prior to execution of the Contract agreement (the “**Consortium**”) shall have the requisite capacity for and be responsible for designing, engineering, financing, procurement, construction and maintenance of the respective roads contracted and in accordance with the provisions of a long - term annuity contract agreement (the “**Agreement**”) to be entered into between the Consortium and the respective Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto.

---

<sup>1</sup> Serially numbered footnotes are for guidance of the Authority and should be omitted prior to issue of RFQ. Footnotes marked in non-numerical characters shall be retained in the RFQ.

- 1.1.3 The scope of work will broadly include upgrading to paved standards of gravel and earth roads and rehabilitation/reconstruction of existing 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 Contract Framework..

- 1.1.5 The Authority shall receive Applications pursuant to this RFQ in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by the Authority, and all Applications shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Applications (the “**Application Due Date**”).

## **1.2 Brief description of Bidding Process**

- 1.2.1 The Authority have adopted a two-stage process (collectively referred to as the “**Bidding Process**”) for selection of the bidder for award of the contracts. The first stage (the “**Qualification Stage**”) of the process involves qualification (the “**Qualification**”) of interested parties/ consortia who make an Application in accordance with the provisions of this RFQ (the “**Applicant**”, which expression shall, unless repugnant to the context, include the Members of the Consortium). At the end of this stage, the Authority expects to announce a list of all pre-qualified Applicants who shall be eligible for participation in the second stage of the Bidding Process (the “**Bid Stage**”) comprising Request for Proposals (the “**Request for Proposals**” or “**RFP**”).
- 1.2.2 In the Qualification Stage, Applicants will be required to furnish all the information specified in this RFQ. Only those Applicants that are pre-qualified and short-listed by the Authority shall be invited to submit their Bids for the Project(s). Applicants are strongly advised to contact the Authority early enough so as to familiarize themselves with the requirements under each lot.
- 1.2.3 At the Bid Stage, the Bidders will be called upon to submit their financial offers (the “**Bids**”) in accordance with the RFP and other documents pursuant to the requirements contained in the documents issued by each authority (collectively the “**Bidding Documents**”). The Bidding Documents for the Project(s) will be provided to every Bidder on payment of Kenya Shillings One Thousand only (Kshs.1,000.00). The Bid shall be valid for a period of not less than 120 days from the date specified in Clause 1.3 for submission of bids (the “**Bid Due Date**”).
- 1.2.4 In terms of the RFP, a Bidder will be required to deposit, along with its Bid, a bid security [equivalent to about 0.01% of the Estimated Project Cost] (the “**Bid Security**”), refundable no later than forty two days (42) days after the notification of Award of Contract to the successful bidder, except in the case of the selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Agreement. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to the Authority<sup>2</sup> and in such event, the validity period of the demand draft or bank guarantee, as the case may be, shall

---

<sup>2</sup> The format for the bank guarantee has been published as part of the Model RFP document.

not be less than 120 (one hundred and twenty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

- 1.2.5 Generally, the Lowest Evaluated Bidder shall be the selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in the RFP, be invited to match the Bid submitted by the Lowest Evaluated Bidder in case such Lowest Evaluated Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of the Lowest Evaluated Bidder, the Authority may, in their discretions, invite fresh Bids from the remaining Bidders or annul the Bidding Process, as the case may be.
- 1.2.6 During the Bid Stage, Bidders are invited to examine the Project(s) in greater detail, and to carry out, at their own cost, such studies as may be required for submitting their respective Bids for award of the contract including implementation of the Project(s).
- 1.2.7 As part of the Bidding Documents, the Authority will provide draft Contract Agreements and, where available [project reports/ feasibility] report prepared by the [Authority] and other information pertaining/ relevant to the Project available with the Authority.
- 1.2.8 Bids will be invited for the Project on the basis of the lowest financial Annuity payable quarterly (the "Annuity") required by a Bidder for implementing the Project. The Contract period shall be pre-determined, and will be indicated in the draft Contract Agreement forming part of the Bidding Documents. The Project shall be awarded to the Bidder quoting the Lowest Total Life Cycle Cost.

In this RFQ, the term "Lowest Evaluated Bidder" shall mean the Bidder who is offering the Lowest Total Life Cycle Cost.

- 1.2.9 Further and other details of the process to be followed at the Bid Stage and the terms thereof will be spelt out in the Bidding Documents.
- 1.2.10 Any queries or request for additional information concerning this RFQ shall be submitted in writing or by fax and e-mail to the officer designated in Clause 2.13.3 below. The envelopes/ communications shall clearly bear the following identification/ title:

"Queries/ Request for Additional Information: RFQ for \*\*\*\*\* Project".

### **1.3 Schedule of Bidding Process**

The Authority shall endeavour to adhere to the following schedule:

**Event Description****Date**Qualification Stage

- |  |  |
|--|--|
| 1. Last date for receiving queries         | [7 days before Application Due Date]         |
| 2. Pre-Application Conference              | [None]                                       |
| 3. Authority response to queries latest by | [5 days before Application Due Date]         |
| 4. Application Due Date                    | [29 <sup>th</sup> July, 2014 or as notified] |
| 5. Announcement of short-list              | Within 15 days of Application Due Date       |

Bid Stage**Estimated Date**

- |  |                             |
|--|-----------------------------|
| 1. Sale of Bid Documents                   | [To be specified]           |
| 2. Last date for receiving queries         | [To be specified]           |
| 3. Pre-Bid meeting – 1                     | [To be specified]           |
| 4. Authority response to queries latest by | [To be specified]           |
| 5. Bid Due Date                            | [To be specified]           |
| 6. Opening of Bids                         | On Bid Due Date             |
| 7. Letter of Award (LOA)                   | To be specified             |
| 8. Validity of Bids                        | 120 days after Bid Due Date |
| 9. Signing of Contract Agreement           | <b>To be specified</b>      |

## 2. INSTRUCTIONS TO APPLICANTS

### A. GENERAL

#### 2.1 Scope of Application

- 2.1.1 The Authority wish to receive Applications for Qualification in order to pre-qualify experienced and capable Applicants for the Bid Stage.
- 2.1.2 Pre-qualified Applicants may be subsequently invited to submit the Bids for the Project.

#### 2.2 Eligibility of Applicants

- 2.2.1 For determining the eligibility of Applicants for their pre-qualification hereunder, the following shall apply:

- (a) The Applicant for pre-qualification may be a single entity or a group of entities (the “**Consortium**”), coming together to implement the Project(s). However, no applicant applying individually or as a member of a Consortium, as the case may be, can be member of another Applicant. The term Applicant used herein would apply to both a single entity and a Consortium.

- (b) An Applicant may be a natural person, private entity, or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.6 below.

- (c) An Applicant shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Applicant found to have a Conflict of Interest shall be disqualified. An Applicant shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

- (i) the Applicant, its Member or Associate (or any constituent thereof) and any other Applicant, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of an Applicant, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5 per cent of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be) in the other Applicant, its Member or Associate is less than 5 per cent of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution. For the purposes of this Clause 2.2.1(c), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person;

and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or

- (ii) a constituent of such Applicant is also a constituent of another Applicant; or
  - (iii) such Applicant, or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Applicant, or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Applicant, its Member or any Associate thereof; or
  - (iv) such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
  - (v) such Applicant, or any Associate thereof has a relationship with another Applicant, or any Associate thereof, directly or through common third party/parties, that puts either or both of them in a position to have access to each others' information about, or to influence the Application of either or each other.
- (d) An Applicant shall be liable for disqualification if any legal, financial or technical adviser of the Authority in relation to the Project(s) is engaged by the Applicant, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project(s). For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Applicant, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of **ITP**. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from date of the last engagement with the Authority.

*Explanation:* In case an Applicant is a Consortium, then the term Applicant as used in this Clause 2.2.1, shall include each Member of such Consortium.

### **2.2.2 Additional requirements of an Applicant to be qualified**

To be pre-qualified, an Applicant shall fulfil the following conditions:

#### **A. CONSORTIUM'S EXPERIENCE**

- I. Technical Capacity:** For demonstrating technical capacity and experience (**the "Technical Capacity"**), the Applicant shall, over the past 5 (five) financial years preceding the Application Due Date, have:
  - (i) Experience in carrying out feasibility study, environmental and social impact study and detailed engineering design, construction and construction supervision of roads to paved standards.
  - (ii) Experience under construction contracts in the role of contractor, subcontractor, or management contractor for the last five (5) years

- prior to the application submission deadline, and with activity in at least nine (9) months in each year;
- (iii) Any one partner must have participated as a contractor, management contractor or subcontractor, in at least one (1) contract within the last five (5) years, with a value of **KShs 5.0 billion** or equivalent, that have been successfully and substantially completed;
  - (iv) Any one Engineering Design / Supervision partner in the Consortium must have undertaken a detailed engineering design and construction of at least 50Km within the last ten (10) years;

Evidence for the stated experience shall be completion certificate or any other acceptable form detailing the contract, date of award, date of completion, amount of contract, role played by applicant, scope of works (including physical size, complexity and methodology/technology used) as well as full details of the Employer.

**B. Financial Capacity:** For demonstrating financial capacity (the “**Financial Capacity**”), the Applicant shall demonstrate the following:

- (a) In the case of a consortium, all members shall submit audited accounts in accordance with the international financial reporting standards (IFRS) for the last five (5) years to demonstrate the applicant’s current combined financial strength and capacity to have an aggregate cash flow amount of **Kshs 500 million** equivalent as indicated in the lot per **annum** excluding any line of credit”
- (b) The Consortium shall demonstrate a minimum average annual construction turnover of **Kshs 5.0 billion** equivalent over the last 5 years;

**C. Capacity to Mobilize Project Financing**

- a) The applicant shall demonstrate ability to mobilize the required financing by indicating the following:
  - Magnitude of financing to be raised by the applicant; and
  - Commitment letters/reference from the probable financier of the project;
  - References/recommendation Proven experience in organizing this type of financing;
  - for firms from lenders or potential financiers
- b) Acceptability of the loan terms in this programme at tender stage shall include the following information:-
  - Terms of financing, (Concessional or Commercial loan);
  - Interest rates;
  - Grace and payment period; and
  - Any other requirements of the potential financier.

**D. Contractor’s Strategy for Supporting Economic Growth**

The Consortium shall provide the proposed strategy to support Government of Kenya’s aspirations of stimulating economic growth through job creation resulting from

investment in large scale infrastructure projects. The strategy shall be examined to ascertain the following:

- Proposed interaction with local contractors;
- Percentage of locals (skilled and others) to be employed on the project; and
- Inputs to be procured locally;
- Affirmative action especially for youth, women and persons living with disabilities
- Any other proposal considered critical for stimulating economic growth.

E. **Managerial Capacity:** For demonstrating managerial capacity, the Applicant shall provide the organization structure along with the Curriculum Vitae (CV) and testimonials of key management staff.

In case of a Consortium, the combined technical, Financial, Contractor's Strategy for Supporting Economic Growth, Capacity to Mobilize Project Financing, and managerial capability of all Members, should satisfy the above conditions;

2.2.3 **O&M Experience:** The Applicant shall have an experienced O&M contractor or hire qualified and trained personnel for operation and maintenance of the roads in contracted lot in conformity with the provisions of the Contract agreement.

2.2.4 The Applicant shall enclose with its application, to be submitted as per the format provided in **Appendix-I**, complete with its Annexes, the following:

- (i) Certificate(s) from its statutory auditors<sup>§</sup> or the concerned client(s) stating the payments made/ received or works commissioned, as the case may be, during the past 5 years in respect of the projects specified in paragraph 2.2.2 (A) above. In case a particular job/ contract has been jointly executed by the Applicant (as part of a consortium), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client; and

2.2.5 The Applicant should submit a Power of Attorney as per the format attached in **Appendix-II**, authorising the signatory of the Application to commit the Applicant. In the case of a Consortium, the Members should submit a Power of Attorney in favour of the Lead Partner as per format at **Appendix-III**.

2.2.6 Where the Applicant is a single entity, it may be required to form an appropriate Consortium, incorporated under The Companies Act (Chapter 486 Laws of Kenya) (the "**Consortium**"), to execute the Contract Agreement and implement each Project. In case the Applicant is a Consortium, it shall, in addition to forming a Consortium, comply with the following additional requirements:

- (a) Number of members in a consortium shall not exceed Three (3) AND atleast one of the member shall be a company registered in Kenya, in case

---

<sup>§</sup> In case duly certified audited annual financial statements containing explicitly the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.2.4 (i). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant may provide the certificates required under this RFQ.

- (i) the total length of the Project is less than or equal to 40 Kms, or
- (ii) the Estimated Project cost is less than or equal to Kshs.2 Billion,

Provided that, in any case other than mentioned in this sub clause above, the number of members in a consortium shall not exceed five (5).

- (b) Subject to the provisions of clause (a) above, the Application should contain the information required for each member of the Consortium;
- (c) Members of the Consortium shall nominate one member as the lead Partner (the “**Lead Partner**”), who shall have an equity share holding of at least 26% (twenty six per cent) of the paid up and subscribed equity of the Consortium. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other members of the Consortium;
- (d) The Application should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;
- (e) An individual Applicant cannot at the same time be member of a Consortium applying for pre-qualification. Further, a member of a particular Applicant Consortium cannot be member of any other Applicant Consortium applying for pre-qualification;
- (f) The members of a consortium shall form an appropriate entity to execute the Project, if awarded to the Consortium;
- (g) Members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified in Appendix-IV (the “**Joint Bidding Agreement**”), for the purpose of making the Application and submitting a Bid in the event of being short-listed. The joint Bidding Agreement, to be submitted along with the Application, shall, *inter alia*:
  - (i) Convey the intent to form an entity/Consortium with shareholding/ ownership equity commitment(s) in accordance with this RFQ, which would enter into the Contract Agreement and subsequently perform all the obligations of the Consortium in terms of the Contract Agreement, in case the Contract for the Project is awarded to the Consortium;
  - (ii) Clearly outline the proposed roles and responsibilities, if any, of each member;
  - (iii) commit the minimum equity stake to be held by each member;
  - (iv) members of the Consortium undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the Consortium at all times until the commissioning of the Project; and

- (v) include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Consortium in relation to the Project until the Financial Close of the Project is achieved in accordance with the Contract Agreement; and
- (h) Except as provided under this RFQ and the Bidding Documents, there shall not be any amendment to the joint Bidding Agreement without the prior written consent of the Authority.

2.2.7 Any entity which has been barred by the Government, or any entity controlled by it, from participating in any project (Annuity or otherwise), and the bar subsists as on the date of Application, would not be eligible to submit an Application, either individually or as member of a Consortium.

2.2.8 An Applicant including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated any public entity for breach by such Applicant, Consortium Member or Associate

The applicants shall list the Non-performing contracts it has had in the last Five years (in Kenya Shillings) while indicating the full details of the employer, reasons for non-performance and whether they have been resolved or still pending. All pending litigations against the lead partner shall in total not represent more than 50% of the lead partner's net worth and shall be treated as resolved against the Consortium.

2.2.9 In computing the Technical Capacity and Financial Capacity of the Applicant/ Consortium Members under Clauses 2.2.2, 2.2.4 and 3.2, the Technical Capacity and Financial Capacity of their respective Associates would also be eligible hereunder.

For purposes of this RFQ, Associate means, in relation to the Applicant/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Applicant/ Consortium Member (the “**Associate**”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

2.2.10 the following conditions shall be adhered to while submitting an Application:

- (a) Applicants should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Applicants may format the prescribed forms making due provision for incorporation of the requested information;

- (b) information supplied by an Applicant (or other constituent Member if the Applicant is a Consortium) must apply to the Applicant, Member or Associate named in the Application and not, unless specifically requested, to other associated companies or firms. Invitation to submit Bids will be issued only to Applicants whose identity and/ or constitution is identical to that at pre-qualification;
  - (c) in responding to the pre-qualification submissions, Applicants should demonstrate their capabilities in accordance with Clause 3.1 below; and
  - (d) in case the Applicant is a Consortium, each Member should substantially satisfy the pre-qualification requirements to the extent specified herein.
- 2.2.11 While Qualification is open to persons from any country, the following provisions shall apply:

- a) Where, on the date of the Application, not less than 10% (ten percent) of the aggregate issued, subscribed and paid up equity share capital in an applicant shall be held by persons of Kenyan Nationality or member(s) incorporated in Kenya and not controlled by persons resident outside Kenya.”

This criterion is applicable to Joint Ventures for works under this annuity financing mechanism between local contractors and foreign contractors as defined in the National Construction Authority Act, 2011 (Act No. 41 of 2011).;

- b) The Applicant shall promptly inform the Authority of any change in the shareholding, as above, and failure to do so shall render the Applicant liable for disqualification from the Bidding Process.

2.2.12 Notwithstanding anything to the contrary contained herein, in the event that the Application Due Date falls within three months of the closing of the latest financial year of an Applicant, it shall ignore such financial year for the purposes of its Application and furnish all its information and certification with reference to the 5 (five) years or 1 (one) year, as the case may be, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of an Application hereunder, mean the accounting year followed by the Applicant in the course of its normal business.

### **2.3 Change in composition of the Consortium**

2.3.1 Change in the composition of a Consortium will not be permitted by the Authority during the Qualification Stage.

2.3.2 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).

2.3.3 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.

2.3.4 The modified/ reconstituted Consortium shall submit a revised Joint Bidding Agreement before the Bid Due Date.

2.3.5 Notwithstanding anything to the contrary contained in sub-clause (c) (i) of Clause 2.2.1, an Applicant may, within 10 (ten) days after the Application Due Date, remove from its Consortium any Member who suffers from a Conflict of Interest, and such removal shall be deemed to cure the Conflict of Interest arising in respect thereof. Such removal shall be notified immediately to the Authority in writing.

## **2.4 Number of Applications and costs thereof**

2.4.1 No Applicant shall submit more than one Application for the lot. An applicant applying individually or as a member of a Consortium shall not be entitled to submit another application either individually or as a member of any Consortium, as the case may be.

2.4.2 The Applicants shall be responsible for all costs associated with the preparation of their Applications and their participation in the Bid Process. The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

## **2.5 Site visit and verification of information**

Applicants are encouraged to submit their respective Applications after visiting the Project(s) site and ascertaining for themselves 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 by them.

## **2.6 Acknowledgement by Applicant**

2.6.1 It shall be deemed that by submitting the Application, the Applicant has:

- (a) made a complete and careful examination of the RFQ;
- (b) received all relevant information requested from the Authority;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the RFQ or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.5 above; and
- (d) agreed to be bound by the undertakings provided by it under and in terms hereof.

2.6.2 The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the RFQ or the Bidding Process, including any error or mistake therein or in any information or data given by the Authority.

## **2.7 Right to accept or reject any or all Applications/ Bids**

2.7.1 Notwithstanding anything contained in this RFQ, the Authority reserves the right to accept or reject any Application and to annul the Bidding Process and reject all Applications/ Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefor. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

2.7.2 The Authority reserves the right to reject any Application and/ or Bid if:

- (a) at any time, a material misrepresentation is made or uncovered, or
- (b) the Applicant does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Application.

If the Applicant/Bidder is a Consortium, then the entire Consortium may be disqualified/ rejected. If such disqualification/ rejection occurs after the Bids have been opened and the Lowest Evaluated Bidder gets disqualified/ rejected, then the Authority reserves the right to:

- (i) invite the remaining Bidders to match the Lowest Evaluated Bidder/ submit their Bids in accordance with the RFP; or
- (ii) take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.

2.7.3 In case it is found during the evaluation or at any time before signing of the Contract Agreement or after its execution and during the period of subsistence thereof, that one or more of the pre-qualification conditions have not been met by the Applicant, or the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet

appointed as the Contractor either by issue of the LOA or entering into of the Contract Agreement, and if the Applicant has already been issued the LOA or has entered into the Contract Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFQ, be liable to be terminated, by a communication in writing by the Authority to the Applicant, without the Authority being liable in any manner whatsoever to the Applicant and without prejudice to any other right or remedy which the Authority may have under this RFQ, the Bidding Documents, the Contract Agreement or under applicable law.

- 2.7.4 The Authority reserves the right to verify all statements, information and documents submitted by the Applicant in response to the RFQ. Any such verification or lack of such verification by the Authority shall not relieve the Applicant of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.

The Applicant, by submitting the Application, hereby authorizes the Authority to verify from other parties the information provided.

## **B. DOCUMENTS**

### **2.8 Contents of the RFQ**

This RFQ comprises the disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.10.

#### **Invitation for Pre-Qualification**

- Section 1. Introduction
- Section 2. Instructions to Applicants
- Section 3. Criteria for Evaluation
- Section 4. Fraud & Corrupt Practices
- Section 5. Pre Application Conference (where applicable)
- Section 6. Miscellaneous

#### **Appendices**

- I. Letter comprising the Application
- II. Power of Attorney for signing of Application
- III. Power of Attorney for Lead Member of Consortium
- IV. Joint Bidding Agreement for Consortium

## **2.9 Clarifications**

- 2.9.1 Applicants requiring any clarification on the RFQ may notify the Authority in writing or by fax and e-mail in accordance with Clause 1.2.10. They should send in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.3. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 5 (five) days prior to the Application Due Date. The written responses will be sent by fax and/or e-mail or through hand delivery to all Applicants without identifying the source of queries.
- 2.9.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Applicants. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.
- 2.9.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Applicants. All clarifications and interpretations issued by the Authority shall be deemed to be part of the RFQ. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

## **2.10 Amendment of RFQ**

- 2.10.1 At any time prior to the deadline for submission of Application, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the RFQ by the issuance of Addenda.
- 2.10.2 Any Addendum thus issued will be sent in writing to all those who will be issued with the RFQ.
- 2.10.3 In order to afford the Applicants a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Application Due Date.<sup>§</sup>

## **C. PREPARATION AND SUBMISSION OF APPLICATION**

### **2.11 Language**

The Application and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Applicant with the Application may be in any other language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by the Applicant. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Application, the English language translation shall prevail.

---

<sup>§</sup> While extending the Application Due Date on account of an addendum, the Authority shall have due regard for the time required by bidders to address the amendments specified therein. In the case of significant amendments, at least 10 (fifteen) days shall be provided between the date of amendment and the Application Due Date, and in the case of minor amendments, at least 7 (seven) days shall be provided.

## 2.12 Format and signing of Application

- 2.12.1 The Applicant shall provide all the information sought under this RFQ. The Authority will evaluate only those Applications that are received in the required formats and complete in all respects. Incomplete and /or conditional Applications shall be liable to rejection.
- 2.12.2 The Applicant shall prepare 1 (one) original set of the Application (together with originals/ copies of documents required to be submitted along therewith pursuant to this RFQ) and clearly marked "ORIGINAL". In addition, the Applicant shall submit Two (2) copies of the Application, along with documents required to be submitted along therewith pursuant to this RFQ, marked "COPY". The Applicant shall also provide **one soft copies** on Compact Disc (CD). In the event of any discrepancy between the original and the copy, the original shall prevail.
- 2.12.3 The Application and its copies shall be typed or written in indelible ink and signed by the authorised signatory of the Applicant who shall also initial each page in blue ink. In case of printed and published documents, only the cover shall be initialled. All the alterations, omissions, additions or any other amendments made to the Application shall be initialled by the person(s) signing the Application. The Application shall contain page numbers and shall be bound together.

## 2.13 Sealing and Marking of Applications

- 2.13.1 The Applicant shall submit the Application in the format specified in Appendix-I, together with the documents specified in Clause 2.13.2, and seal it in an envelope and mark the envelope as "**APPLICATION TO PREQUALIFY FOR THE DEVELOPMENT OF 2,000 KMS OF ROADS SUPPORTING PRIMARY GROWTH SECTORS THROUGH CONTRACTOR FACILITATED ANNUITY FINANCING MECHANISM, TENDER NUMBER: KeNHA/1291/2016**". The Applicant shall seal the original and the copy of the Application, together with their respective enclosures, in separate envelopes duly marking the envelopes as "ORIGINAL" and "COPY". The envelopes shall then be sealed in an outer envelope which shall also be marked in accordance with Clauses 2.13.2 and 2.13.3.

- 2.13.2 Each envelope shall contain:

- (i) Application in the prescribed format (Appendix-I) along with Annexes and supporting documents;
- (ii) Power of Attorney for signing the Application as per the format at Appendix-II;
- (iii) if applicable, the Power of Attorney for Lead Member of Consortium as per the format at Appendix-III;
- (iv) copy of the Joint Bidding Agreement, in case of a Consortium, substantially in the format at Appendix-IV;
- (v) Copy of Memorandum and Articles of Association, if the Applicant is a body corporate, and if a partnership then a copy of its partnership deed; and

- (vi) Copies of Applicant's duly audited balance sheet and profit and loss account and receipts in accordance with the international financial reporting standards (IFRS) for the eligible projects for the preceding five years.

Each of the envelopes shall clearly bear the following identification:

**“APPLICATION FOR QUALIFICATION FOR THE  
DEVELOPMENT OF 3,000 KMS OF ROADS SUPPORTING  
PRIMARY GROWTH SECTORS THROUGH CONTRACTOR  
FACILITATED FINANCING MECHANISM  
TENDER NUMBER: KeNHA/1291/2016”**

and shall clearly indicate the name and address of the Applicant. In addition, the Application Due Date should be indicated on the right hand corner of each of the envelopes.

2.13.3 Each of the envelopes shall be addressed to:

**Secretary/Tender Committee,  
Kenya National Highways Authority,  
Blue Shield Towers, First Floor, Hospital Road, Upper Hill,  
P. O. Box 49712-00100,  
NAIROBI, KENYA**

and delivered to the address below by 1200 hours (Local time) on or before Friday, 29<sup>th</sup> July, 2016

**The Procurement Manager,  
Kenya National Highways Authority,  
Blue Shield Towers, First Floor, Hospital Road, Upper Hill,  
P. O. Box 49712-00100,  
NAIROBI, KENYA  
Email: [dg@Kenha.co.ke](mailto:dg@Kenha.co.ke)  
Website: [www.kenha.co.ke](http://www.kenha.co.ke)**

2.13.4 If the envelopes are not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Application and consequent losses, if any, suffered by the Applicant.

2.13.5 Applications submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

## **2.14 Application Due Date**

2.14.1 Applications should be submitted on or before 1200 hours Local Time on the Application Due Date, at the address provided in Clause 2.13.3 in the manner and

form as detailed in this RFQ. A receipt thereof should be obtained from the person specified in Clause 2.13.3.

- 2.14.2 The Authority may, in its sole discretion, extend the Application Due Date by issuing an Addendum in accordance with Clause 2.10 uniformly for all Applicants.

### **2.15 Late Applications**

Applications received by the person named in Clause 2.13.3 after the specified time on the Application Due Date shall not be eligible for consideration and shall be summarily rejected.

### **2.16 Modifications/ substitution/ withdrawal of Applications**

- 2.16.1 The Applicant may modify, substitute or withdraw its Application after submission, provided that written notice of the modification, substitution or withdrawal is received by the person named in Clause 2.13.3 prior to the Application Due Date. No Application shall be modified, substituted or withdrawn by the Applicant on or after the Application Due Date.

- 2.16.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.13, with the envelopes being additionally marked “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL”, as appropriate.

- 2.16.3 Any alteration/ modification in the Application or additional information supplied subsequent to the Application Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

## **D. EVALUATION PROCESS**

### **2.17 Opening and Evaluation of Applications**

- 2.17.1 The Authority shall open the Applications immediately after the deadline at the place specified in Clause 2.13.3 and in the presence of the Applicants who choose to attend.

- 2.17.2 Applications for which a notice of withdrawal has been submitted in accordance with Clause 2.16 shall not be opened.

- 2.17.3 The Authority will subsequently examine and evaluate Applications in accordance with the provisions set out in Section 3.

- 2.17.4 Applicants are advised that pre-qualification of Applicants will be entirely at the discretion of the Authority. Applicants will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.

- 2.17.5 Any information contained in the Application shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding on the Applicant if the Tender is subsequently awarded to it on the basis of such information.
- 2.17.6 The Authority reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Application(s) without assigning any reasons.
- 2.17.7 If any information furnished by the Applicant is found to be incomplete, or contained in formats other than those specified herein, the Authority may, in its sole discretion, exclude the incomplete information in the evaluation of the Applicant's bid.
- 2.17.8 In the event that an Applicant claims credit for an Eligible Project, and such claim is determined by the Authority as incorrect or erroneous, the Authority shall reject such claim and exclude the same from computation of the Eligible Score, and may also, while computing the aggregate Experience Score of the Applicant, make a further deduction equivalent to the claim rejected hereunder. Where any information is found to be patently false or amounting to a material representation, the Authority reserves the right to reject the Application and/ or Bid in accordance with the provisions of Clauses 2.7.2 and 2.7.3.

## **2.18 Confidentiality**

Information relating to the examination, clarification, evaluation, and recommendation for the short-listed pre-qualified Applicants shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Authority in relation to, or matters arising out of, or concerning the Bidding Process. The Authority will treat all information, submitted as part of Application, in confidence and will require all those who have access to such material to treat the same in confidence. The Authority may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Authority or as may be required by law or in connection with any legal process.

## **2.19 Tests of responsiveness**

- 2.19.1 Prior to evaluation of Applications, the Authority shall determine whether each Application is responsive to the requirements of the RFQ. An Application shall be considered responsive only if:
- (a) it is received as per format at Appendix-I.
  - (b) it is received before the set deadline on the Application Due Date subject to any extension thereof pursuant to Clause 2.14.2;
  - (c) it is signed, sealed, bound together, and marked as stipulated in Clauses 2.12 and 2.13;

- (d) it is accompanied by the Power of Attorney as specified in Clause 2.2.5, and in the case of a Consortium, the Power of Attorney as specified in Clause 2.2.6 (c);
- (e) it contains all the information and documents (complete in all respects) as requested in this RFQ;
- (f) it contains information in formats same as those specified in this RFQ;
- (g) it contains certificates from its statutory auditors<sup>s</sup> in the formats specified at Appendix-I of the RFQ for each Eligible Project;
- (h) it contains an attested copy of the receipt for payment of Kshs (**Nil**) to Authority towards the cost of the RFQ document;
- (i) it is accompanied by the joint Bidding Agreement (for Consortium), specific to the Project, as stipulated in Clause 2.2.6(g);
- (j) it does not contain any condition or qualification; and
- (k) it is not non-responsive in terms hereof.

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

## **2.20 Clarifications**

2.20.1 To facilitate evaluation of Applications, the Authority may, at its sole discretion, seek clarifications from any Applicant regarding its Application. Such clarification(s) shall be provided within the time specified by the Authority for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.

2.20.2 If an Applicant does not provide clarifications sought under Clause 2.20.1 above within the prescribed time, its Application shall be liable to be rejected. In case the Application is not rejected, the Authority may proceed to evaluate the Application by construing the particulars requiring clarification to the best of its understanding, and the Applicant shall be barred from subsequently questioning such interpretation of the Authority.

## **E. QUALIFICATION AND BIDDING**

### **2.21 Pre-qualification and notification**

After the evaluation of Applications, the Authority shall inform in writing the pre-qualified Applicants (Bidders) who will be eligible for participation in the Bid Stage.

---

<sup>s</sup> In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.19.1 (g). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant may provide the certificates required under this RFQ.

At the same time, the Authority would notify the other Applicants that they have not been pre-qualified. The Authority will not entertain any query or clarification from Applicants who fail to qualify.

## **2.22 Submission of Bids**

The Bidders will be requested to submit a Bid in the form and manner to be set out in the Bidding Documents.

Only pre-qualified Applicants shall be invited by the Authority to submit their proposals. The Applicants are advised to visit the site and familiarize themselves with the Project (s) beforehand.

## **2.23 Proprietary data**

All documents and other information supplied by the Authority or submitted by an Applicant to the Authority shall remain or become the property of the Authority. Applicants are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Application. The Authority will not return any Application or any information provided along therewith.

## **2.24 Correspondence with the Applicant**

Save and except as provided in this RFQ, the Authority shall not entertain any correspondence with any Applicant in relation to the acceptance or rejection of any Application.

### 3. CRITERIA FOR EVALUATION

#### 3.1 Evaluation parameters

- 3.1.1 Only those Applicants who meet the eligibility criteria specified in Clause 2.2.2 above shall qualify for evaluation under this Section. Applications of firms/ consortia who do not meet these criteria shall be rejected.
- 3.1.2 The Applicant's competence and capability is proposed to be established by the following parameters:
- (a) Technical Capacity;
  - (b) Financial Capacity;
  - (c) Managerial Capacity
  - (d) Contractor's Strategy for Supporting Economic Growth, and
  - (e) Capacity to Mobilize Project Financing,

#### 3.2 Technical Capacity for purposes of evaluation

- 3.2.1 Subject to the provisions of Clause 2.2, the following categories of experience would qualify as Technical Capacity and eligible experience (the "**Eligible Experience**") in relation to eligible projects as stipulated in this Clause (the "**Eligible Projects**"). For highway sector projects:
- a) Experience in carrying out feasibility study, environmental and social impact study and detailed engineering design, construction/reconstruction and supervision of roads to paved standards.
  - b) Experience under construction contracts in the role of contractor, subcontractor, or management contractor for at least the last five (5) years prior to the application submission deadline, and with activity in at least nine (9) months in each year;
  - c) Any one Engineering Design / Supervision partner in the Consortium must have undertaken a detailed engineering design and construction/reconstruction to paved standards of at least 50Km within the last ten (10) years;
  - d) Any one partner must have participated as a contractor, management contractor or subcontractor, in at least one (1) contract within the last five (5) years, with a value of KShs 5.0 billion or equivalent, that have been successfully and substantially completed;

- e) Related sector projects having capital cost of ½ the project being bid for.

Evidence for the experience stated in a),b), c), d) and e) above shall be completion certificate or any other acceptable form detailing the contract, date of award, date of completion, amount of contract, role played by applicant, scope of works (including physical size, complexity and methodology/technology used) as well as full details of the Employer.

For the purpose of this RFQ:

- (i) highways sector would be deemed to include highways, expressways, bridges, tunnels and airfields; and
- (ii) Related sector projects would be deemed to include power, ports, airports, railways, metro rail, industrial parks/ estates, logistic parks, pipelines, irrigation, water supply, sewerage and real estate development.<sup>\$</sup>

- 3.2.2 Eligible Experience in respect of each category shall be measured only for Eligible Projects.

For a project to qualify as an Eligible Project, the entity claiming experience should have held, in the company owing the Eligible Project, a minimum of ten per cent (10%) equity during the entire year for which Eligible Experience is being claimed;

- 3.2.4 For a project to qualify as an Eligible Project, the Applicant should have paid for execution of its construction works or received payments from its client(s) for construction works executed, fully or partially, during the 5 (five) financial years immediately preceding the Application Due Date, and only the payments (gross) actually made or received, as the case may be, during such 5 (five) financial years shall qualify for purposes of computing the Experience Score. For the avoidance of doubt, construction works shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. Further, the cost of land shall not be included hereunder.

- 3.2.5 The Applicant shall quote experience in respect of a particular Eligible Project under any one category only, even though the Applicant (either individually or along with a member of the Consortium) may have played multiple roles in the cited project. Double counting for a particular Eligible Project shall not be permitted in any form.

- 3.2.6 Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.

---

<sup>\$</sup> Real estate development shall not include residential flats unless they form part of a real estate complex or township which has been built by the Applicant.

### **3.3 Details of Experience**

- 3.3.1 The Applicant should furnish the details of Eligible Experience for the last 5 (five) financial years immediately preceding the Application Due Date.
- 3.3.2 The Applicants must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-I.
- 3.3.3 The Applicant should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex-IV of Appendix-I.

### **3.4 Financial information for purposes of evaluation**

- 3.4.1 The Application must be accompanied by the Audited Annual Reports of the Applicant (of each Member in case of a Consortium) for the last 5 (five) financial years, preceding the year in which the Application is made.
- 3.4.2 In case the annual accounts for the latest financial year are not audited and therefore the Applicant cannot make it available, the Applicant shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Applicant shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.

### **3.5 Managerial information for the purposes of evaluation**

- 3.5.1 The Application must be accompanied by the organisation structure of the proposed consortium and the profiles and relevant experience of the managerial staff as per format Appendix V.

### **3.6 Pre-qualification of Applicants**

All Applicants who fulfil the conditions of eligibility specified in Clause 2.2.2 and meet the other conditions specified in this RFQ shall be pre-qualified.

#### 4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, the Authority may reject an Application without being liable in any manner whatsoever to the Applicant if it determines that the Applicant 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.
- 4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove, if an Applicant or any member of the bidding consortium 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, such Applicant or member of the bidding consortium shall not be eligible to participate in any tender or RFQ issued by the Authority as shall be determined by a competent authority.
- 4.3 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.
  - (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 Applicants with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

## **5. PRE-APPLICATION CONFERENCE**

- 5.1 If applicable a Pre-Application conference of the interested parties shall be convened at the designated date, time and place. Only those persons who have been issued with the RFQ document shall be allowed to participate in the Pre-Application conference. A maximum of three representatives of each Applicant shall be allowed to participate on production of authority letter from the Applicant.
- 5.2 During the course of Pre-Application conference, the Applicants will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

## 6. MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the Laws of Kenya and the parties shall subject themselves to the exclusive jurisdiction of Kenya Courts for all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
  - (b) consult with any Applicant in order to receive clarification or further information;
  - (c) pre-qualify or not to pre-qualify any Applicant and/ or to consult with any Applicant in order to receive clarification or further information;
  - (d) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Applicant; and/ or
  - (e) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Applicant.
- 6.3 It shall be deemed that by submitting the Application, the Applicant agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process, to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

APPENDIX I

**Letter Comprising the Application for Pre-Qualification**

(Refer Clause 2.13.2)

Date:

To,

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

Dear Sir,

**INVITATION TO PREQUALIFY FOR THE DEVELOPMENT OF 3,000 KMS OF  
ROADS SUPPORTING PRIMARY GROWTH SECTORS THROUGH  
CONTRACTOR FACILITATED FINANCING MECHANISM**

**Tender Number: KeNHA/1291/2016**

**APPLICATION TO PRE-QUALIFY FOR NEW LOT NO. 6**

---

With reference to your RFQ document dated .....<sup>s</sup>, I/we, having examined the RFQ document and understood its contents, hereby submit my/our Application for Qualification for **LOT NUMBER 6** in the aforesaid project. The Application is unconditional and unqualified.

2. I/ We acknowledge that the Authority will be relying on the information provided in the Application and the documents accompanying such Application for pre-qualification of the Applicants for the aforesaid project (s), and we certify that all information provided in the Application and in Annexes I to IV is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Application are true copies of their respective originals.
3. This statement is made for the express purpose of qualifying as a Bidder for the development, construction, operation and maintenance of the aforesaid Project (s).
4. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Qualification statement.
5. I/ We acknowledge the right of the Authority to reject our Application without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by

---

<sup>s</sup> All information required in square brackets [ ] shall be suitably filled up by the Applicant to reflect the particulars relating to such Applicant/Application.

imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

7. I/ We declare that:

- (a) I/ We have examined and have no reservations to the RFQ document, including any Addendum issued by the Authority.
- (b) I/ We do not have any conflict of interest in accordance with Clauses 2.2.1(c) and 2.2.1(d) of the RFQ document; and
- (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFQ document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government; and
- (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFQ document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.

8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Application that you may receive nor to invite the Applicants to Bid for the Project, without incurring any liability to the Applicants, in accordance with Clause 2.17.6 of the RFQ document.

9. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(ies) the deployable equity criteria and meet(s) all the requirements as specified in the RFQ document and are/ is qualified to submit a Bid.

10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium applying for pre-qualification.

11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.

12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charged in any Court of competent jurisdiction, by any person, or agency of the Government or convicted by a Court of Law.

13. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our directors/ managers/ employees.

14. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are affected by any of the provisions for disqualification in terms of the provisions of this RFQ, we shall immediately inform the Authority in writing.

15. The Statement of Legal Capacity as per format provided at Annex-V in Appendix-I of the RFQ document, and duly signed, is enclosed. The power of attorney for signing of application and the power of attorney for Lead Member of consortium, as per format provided at Appendix II and III respectively of the RFQ, are also enclosed.

16. I/ We understand that the selected Bidder shall either be an existing Company incorporated under The Companies Act (Chapter 486 Laws of Kenya), or shall incorporate as such prior to execution of the Contract Agreement.

17. I/ We hereby confirm that we [are in compliance of/ shall comply with] the requirements specified in Clause 2.2.3.

18. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of Applicants, selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.

19. I/ We agree and undertake to abide by all the terms and conditions of the RFQ document.

20. I/ We certify that in terms of the RFQ, I/we qualify for the Technical and Financial Capability

[21. We agree and undertake to be jointly and severally liable for all the obligations of the Consortium under the Contract Agreement till occurrence of Financial Close in accordance with the Contract Agreement].<sup>s</sup>

In witness thereof, I/ we submit this application under and in accordance with the terms of the RFQ document.

Yours faithfully,

Date: (Signature, name and designation of the Authorized Signatory)

Place: Name and seal of the Applicant/ Lead Member

Note: Paragraphs in square parenthesis may be omitted, if not applicable, or modified as necessary.

---

<sup>s</sup> Omit if the Applicant is not a Consortium.

ANNEX-II

**Details of Applicant**

1.
  - (a) Name:
  - (b) Country of incorporation:
  - (c) Address of the corporate headquarters and its branch office(s), if any, in Kenya:
  - (d) Date of incorporation and/ or commencement of business:
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:
3. Details of individual(s) who will serve as the point of contact/ communication for the Authority:
  - (a) Name:
  - (b) Designation:
  - (c) Company:
  - (d) Address:
  - (e) Telephone Number:
  - (f) E-Mail Address:
  - (g) Fax Number:
4. Particulars of the Authorised Signatory of the Applicant:
  - (a) Name:
  - (b) Designation:
  - (c) Address:
  - (d) Phone Number:
  - (e) Fax Number:
5. In case of a Consortium:
  - (a) The information above (1-4) should be provided for all the Members of the Consortium.
  - (b) A copy of the Joint Bidding Agreement, as envisaged in Clause 2.2.6(g) should be attached to the Application.
  - (c) Information regarding the role of each Member should be provided as per table below:

Sl. No.	Name of Member	Role* {Refer Clause 2.2.6(d)} <sup>\$</sup>	Percentage of equity in the Consortium {Refer Clauses 2.2.6(a), (c) & (g)}
1.			
2.			
3.			
4.			

\* The role of each Member, as may be determined by the Applicant, should be indicated in accordance with instruction 4 in Annex-IV.

(d) The following information shall also be provided for each Member of the Consortium:

**Name of Applicant/ member of Consortium:**

No.	Criteria	Yes	No
1.	Has the Applicant/ constituent of the Consortium been barred by the Government, or any entity controlled by it, from participating in any project		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Application?		
3.	Has the Applicant/ constituent of the Consortium paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last three years?		

6. A statement by the Applicant and each of the Members of its Consortium (where applicable) or any of their Associates disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary):

---

<sup>\$</sup> All provisions contained in curly parenthesis shall be suitably modified by the Applicant to reflect the particulars relating to such Applicant.

ANNEX-II

**Technical Capacity of the Applicant @**

(Refer to Clauses 2.2.2(A), 3.2 and 3.3 of the RFQ)

Applicant type #	Member Code*	Project Code**	Experience <sup>‡</sup>		
			Number of Km of Project in Highway sector(Km) <sup>\$\$</sup> (4)	Capital cost of the Project in Highway sector (Equivalent Kshs.) <sup>\$\$</sup> (5)	Capital cost of the Project in Related sector (Equivalent Kshs) <sup>\$\$</sup> (6)
(1)	(2)	(3)			
Single entity Applicant		a			
		b			
		c			
		d			
Consortium Member 1		1a			
		1b			
		1c			
		1d			
Consortium Member 2		2a			
		2b			
		2c			
		2d			
Consortium Member 3		3a			
		3b			
		3c			
		3d			
Consortium Member 4		4a			
		4b			
		4c			
		4d			
<b>Aggregate Experience Score =</b>					

*® Provide details of only those projects that have been undertaken by the Applicant under its own name and/ or by an Associate specified in Clause 2.2.9 and/ or by a project company eligible under Clause 3.2.1(d). In case the Application Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.12.*

*# An Applicant consisting of a single entity should fill in details as per the row titled Single entity Applicant and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Applicant may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Applicant with such Associate, in terms of Clause 2.2.9, shall be provided.*

*\* Member Code shall indicate NA for Not Applicable in case of a single entity Applicant. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member, OM means Other Member, DM means Design Member, PMM means Project Management Member*

*\*\*Refer Annex-IV of this Appendix-I. Add more rows if necessary.*

*¥ Refer Clause 3.2.1.*

*\$\$ The conversion rate of currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.*

ANNEX-III

**Financial Capacity of the Applicant**

*(Refer to Clauses 2.2.2(B) and 3.4 of the RFQ)*

**(In KES<sup>\$\$</sup>)**

<b>Applicant type <sup>\$</sup></b>	<b>Member Code<sup>£</sup></b>	<b>Equity Required in the Project</b>	<b>Equity Required in the Project <sup>££</sup></b>	<b>Total Equity Available for deployment<sup>##</sup></b>
(1)	(2)			
Single entity Applicant				
Consortium Member 1				
Consortium Member 2				
Consortium Member 3				
Consortium Member 4				
<b>TOTAL</b>				

**Name & address of Applicant's Bankers:**

<sup>\$</sup> An Applicant consisting of a single entity should fill in details as per the row titled Single entity Applicant and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Applicant may be ignored.

<sup>£</sup>For Member Code, see instruction 4 at Annex-IV of this Appendix-I.

<sup>££</sup>The Applicant should provide details of its own Financial Capability or of an Associate specified in Clause 2.2.9.

<sup>\$\$</sup> For conversion of other currencies into Kshs. see note below Annex-II of Appendix-I.

<sup>££</sup> If an applicant is also applying for other projects in this package, the members have to add columns of the Projects and their contributions thereof. Please add additional columns as may be required.

<sup>##</sup> The equity available for deployment towards total contributions for all the projects by the members has to be adequately demonstrated.

**FINANCIAL CAPACITY OF THE APPLICANT**

- 1 Submit copies of audited profit and loss statements and balance sheet for the last five calendar years and estimated projection for the next two years with certified English translation where appropriate.
- 2 Give turnover figures for each of the last five (5) financial years. Quote in millions and decimal thereof.

	Year	Year	Year	Year	Year
	Ksh.	Ksh.	Ksh.	Ksh.	Ksh.
Road works					
Other civil Engineering works					
Other (specify)					
Total					

**SUMMARY OF ASSETS AND LIABILITIES OF THE AUDITED FINANCIAL STATEMENTS OF THE LAST FIVE (5) FINANCIAL YEARS**

	Year	Year	Year	Year	Year
	KShs.	KShs.	KShs.	KShs.	KShs.
1. Total Assets					
2. Current Assets					
3. Bank Credit Line Value					
4. Total Liabilities					
5. Current Liabilities					
6. Net Worth (1-4)					
7. Working capital (2+3-5)					

- (a) Name and Address of Commercial Banker(s) of the applicant

.....

**Instructions:**

1. The Applicant/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports prepared in accordance with International Financial Reporting Standards (IFRS) for 5 (five) years preceding the Application Due Date. The financial statements shall:
  - (a) reflect the financial situation of the Applicant or Consortium Members and its/ their Associates where the Applicant is relying on its Associate's financials;

- (b) be audited by a statutory auditor;
  - (c) be complete, including all notes to the financial statements; and
  - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. In the case of a Consortium, a copy of the Joint Bidding Agreement shall be submitted in accordance with Clause 2.2.6 (g) of the RFQ document.
  3. The applicant shall also provide the name and address of the Bankers to the Applicant.

ANNEX-IV

**Details of Eligible Projects**

*(Refer to Clauses 2.2.2(A), 3.2 and 3.3 of the RFQ)*

**Project Code:**

**Member Code:**

<b>Item</b>  (1)	<b>Refer Instruction</b>  (2)	<b>Particulars of the Project</b>  (3)
Title & nature of the project		
Category	5	
Year-wise (a) payments received/ made for construction, (b) payments made for development of PPP projects and/ or (c) revenues appropriated	6	
Entity for which the project was constructed/ developed	7	
Location		
Project cost	8	
Date of commencement of project/ contract		
Date of completion/ commissioning	9	
Equity shareholding (with period during which equity was held)	10	
Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)	16	

**Instructions:**

1. Applicants are expected to provide information in respect of each Eligible Projects in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 3.2.3 and 3.2.4 of the RFQ, as the case may be. Information provided in this section is intended to serve as a back up for information provided in the Application. Applicants should also refer to the Instructions below.

2. For a single entity Applicant, the Project Codes would be a, b, c, d etc. In case the Applicant is a Consortium then for Member 1, the Project Codes would be 1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.
3. A separate sheet should be filled for each Eligible Project.
4. Member Code shall indicate NA for Not Applicable in case of a single entity Applicant. For other Members, the following abbreviations are suggested viz. LM means Lead Member, and OM means Other Member. In case the Eligible Project relates to an Associate of the Applicant or its Member, write “Associate” along with Member Code.
5. Refer to Clause 3.2.1 of the RFQ for category number.
6. The total payments received/ made and/or revenues appropriated for each Eligible Project are to be stated in Annex-II of this Appendix-I. The figures to be provided here should indicate the break-up for the past 5 (five) financial years. Year 1 refers to the financial year immediately preceding the Application Due Date; Year 2 refers to the year before Year 1, Year 3 refers to the year before Year 2, and so on (Refer Clause 2.2.12). For Categories 1 and 2, expenditure on development of the project and/or revenues appropriated, as the case may be, should be provided, but only in respect of projects having an estimated capital cost exceeding the amount specified in Clause 3.2.1(d). In case of Categories under Clause 3.2.1e (ii), payments made/ received only in respect of construction should be provided, but only if the amount paid/received exceeds the minimum specified in Clause 3.2.4. Payment for construction works should only include capital expenditure, and should not include expenditure on repairs and maintenance.
7. Particulars such as project name, address and contact details of owner/ Authority/ Agency may be provided.
8. Provide the estimated capital cost of Eligible Project. Refer to Clauses 3.2.1 and 3.2.4
9. The date of commissioning of the project or, date of completion of construction, should be indicated. In the case of projects under construction, the likely date of completion or commissioning, as the case may be, shall be indicated.
10. Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double

counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.

11. Certificate from the Applicant's statutory auditor<sup>§</sup> or its respective clients must be furnished as per formats below for each Eligible Project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the Applicant/Member/Associate may provide the requisite certification.
13. If the Applicant is claiming experience under development of project, it should provide a certificate from its statutory auditor in the format below:

**Certificate from the Statutory Auditor regarding Eligible Projects<sup>Φ</sup>**

Based on its books of accounts and other published information authenticated by it, this is to certify that ..... (*name of the Applicant/Member/Associate*) is/ was an equity shareholder in ..... (*title of the project company*) and holds/ held Kshs. .... Million. (Kshs ..... Million) of equity (which constitutes .....%<sup>€</sup> of the total paid up and subscribed equity capital) of the project company from ..... (*date*) to ..... (*date*)<sup>¥</sup>. The project was/is likely to be commissioned on ..... (*date of commissioning of the project*).

We further certify that the total estimated capital cost of the project is Kshs. .... Million. (Kshs ..... Million), of which Kshs. .... Million. (Kshs ..... million) of capital expenditure was incurred during the past five financial years as per year-wise details noted below:

.....  
.....

We also certify that the eligible annual revenues collected and appropriated by the aforesaid project company in terms of Clause 3.2.1 of the RFQ during the past five financial years were Kshs. .... Million. (Kshs ..... Million). as per year-wise details noted below:

.....  
.....

Name of the audit firm:

Seal of the audit firm: (Signature, name and designation

Date: \_\_\_\_\_ of the authorised signatory)

<sup>§</sup> In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary.

<sup>Φ</sup> Provide Certificate as per this format only. Attach Explanatory Notes to the Certificate, if necessary. Statutory auditor means the entity that audits and certifies the annual accounts of the company.

<sup>€</sup> Refer instruction no. 10 in this Annex-IV.

<sup>¥</sup> In case the project is owned by the Applicant company, this language may be suitably modified to read: "It is certified that ..... (name of Applicant) constructed and/ or owned the ..... (name of project) from ..... (date) to ..... (date)."

14. If the Applicant is claiming experience under construction of project\*, it should provide a certificate from its statutory auditors or the client in the format below:

<p style="text-align: center;"><b>Certificate from the Statutory Auditor/ Client regarding construction works<sup>Φ</sup></b></p> <p>Based on its books of accounts and other published information authenticated by it, {this is to certify that ..... (name of the Applicant/Member/Associate) was engaged by ..... (title of the project company) to execute ..... (name of project) for ..... (nature of project)}<sup>Ψ</sup>. The construction of the project commenced on ..... (date) and the project was/ is likely to be commissioned on ..... (date, if any). It is certified that ..... (name of the Applicant/ Member/ Associate) received/paid Kshs. .... Million. (Kshs .....Million) by way of payment for the aforesaid construction works.</p> <p>We further certify that the total estimated capital cost of the project is Kshs. .... Million. (Kshs .....Million), of which the Applicant/Member/Associate received/paid Kshs. .... Million. (Kshs .....Million), in terms of Clauses 3.2.1 and 3.2.4 of the RFQ, during the past five financial years as per year-wise details noted below:</p> <p>..... .....</p> <p><i>{It is further certified that the payments/ receipts indicated above are restricted to the share of the Applicant who undertook these works as a partner or a member of joint venture/ consortium.}</i><sup>▲</sup></p> <p>Name of the audit firm: Seal of the audit firm: (Signature, name and designation of the Date: ..... authorised signatory).</p>
--

\* Refer Clauses 3.2.1 and 3.2.4 of the RFQ.

Φ Provide Certificate as per this format only. Attach Explanatory Notes to the Certificate, if necessary. Statutory auditor means the entity that audits and certifies the annual accounts of the company.

Ψ In case the Applicant owned the Eligible Project and engaged a contractor for undertaking the construction works, this language may be modified to read: “ this is to certify that ..... (Name of Applicant/ Member/ Associate) held 20% or more of the paid up and subscribed share capital in the..... (Name of Project company) when it undertook construction of the ..... (Name of Project) through ..... (Name of the contractor).

▲ This certification should only be provided in case of jobs/ contracts, which are executed as part of a partnership/ joint venture/ consortium. The payments indicated in the certificate should be restricted to the share of Applicant in such partnership/ joint venture/ consortium. This portion may be omitted if the contract did not involve a partnership/ joint venture/ consortium. In case where work is not executed by partnership/ joint venture/ consortium, this paragraph may be deleted.

15. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 2.2.9, the Applicant should also provide a certificate in the format below:

**Certificate from Statutory Auditor/ Company Secretary regarding Associate<sup>§</sup>**

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of ..... (*name of the Associate*) is held, directly or indirectly<sup>£</sup>, by ..... (*name of Applicant/ Consortium Member*). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of Clause 2.2.9 of the RFQ.

A brief description of the said equity held, directly or indirectly, is given below:

*{ Describe the share-holding of the Applicant/ Consortium Member in the Associate }*

Name of the audit firm:

Seal of the audit firm: (Signature, name and designation of Date: the authorised signatory).

<sup>§</sup> In the event that the Applicant/ Consortium Member exercises control over an Associate by operation of law, this certificate may be suitably modified and copies of the relevant law may be enclosed and referred to.

<sup>£</sup> In the case of indirect share-holding, the intervening companies in the chain of ownership should also be Associates i.e., the share-holding in each such company should be more than 50% in order to establish that the chain of “control” is not broken.

16. It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of the relevant project in computation of Experience Score.

ANNEX-V

**Statement of Legal Capacity**

*(To be forwarded on the letterhead of the Applicant/ Lead Member of Consortium)*

Ref. Date:

To,

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

Dear Sir,

We hereby confirm that we/ our members in the Consortium (constitution of which has been described in the application) satisfy the terms and conditions laid out in the RFQ document.

We have agreed that ..... (insert member's name) will act as the Lead Member of our consortium.\*

We have agreed that ..... (insert individual's name) will act as our representative/ will act as the representative of the consortium on its behalf\* and has been duly authorized to submit the RFQ. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

*\*Please strike out whichever is not applicable.*

APPENDIX II

**Power of Attorney for signing of Application**

*(Refer Clause 2.2.5)*

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr/ Ms (name), ..... son/daughter/wife of ..... and presently residing at ....., who is presently employed with us/ the Lead Member of our Consortium and holding the position of ....., as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our application for pre-qualification and submission of our bid for the \*\*\*\*\* Project proposed or being developed by the **Kenya National Highways Authority** (the “Authority”) including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre-Applications and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/ or upon award thereof to us and/or till the entering into of the Concession Agreement with the Authority.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, ....., THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ..... 2.....

For .....

(Signature, name, designation and address)

Witnesses:

1.

(Notarised)

2.

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

*Notes:*

- *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.*
- *Wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Kenyan Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Applicants from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Kenyan Embassy if it carries a conforming Appostille certificate.*

APPENDIX III

**Power of Attorney for Lead Member of Consortium**

*(Refer Clause 2.2.5)*

Whereas the **Kenya National Highways Authority** (“the Authority”) has invited applications from interested parties for the \*\*\*\*\* Project (the “Project”).

Whereas, ..... and ..... (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Qualification document (RFQ), Request for Proposal (RFP) and other connected documents in respect of the Project, and

Whereas, it is necessary 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 and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, ..... having our registered office at ....., M/s. .... having our registered office at ....., M/s. .... having our registered office at ....., and ..... having our registered office at ....., (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/S ..... having its registered office at ....., being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”). We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the concession/contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the Consortium and submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s bid for the Project and/ or upon award thereof till the Concession Agreement is entered into with the Authority.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts,

Appendix III

Page 2

deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ..... 2.....

For .....  
(Signature)

.....  
(Name & Title)

For .....  
(Signature)

.....  
(Name & Title)

For .....  
(Signature)

.....  
(Name & Title)

Witnesses:

1.

2.

.....

(Executants)

(To be executed by all the Members of the Consortium)

Notes:

- *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 Applicant should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Kenyan Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Applicants from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Kenyan Embassy if it carries a conforming Appostille certificate.*

APPENDIX IV

**Joint Bidding Agreement**

*(Refer Clause 2.13.2)*

*(To be executed on Stamp paper of appropriate value)*

THIS JOINT BIDDING AGREEMENT is entered into on this the ..... day of ..... 20...

**AMONGST**

1. {..... Limited, a company incorporated under the The Companies Act (Chapter 486, Laws of Kenya)} and having its registered office at ..... (hereinafter referred to as the “**First Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

**AND**

2. {..... Limited, a company incorporated under the The Companies Act (Chapter 486, Laws of Kenya)} and having its registered office at ..... (hereinafter referred to as the “**Second Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

**AND**

3. {..... Limited, a company incorporated under the The Companies Act (Chapter 486, Laws of Kenya) and having its registered office at ..... (hereinafter referred to as the “**Third Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)}

**AND**

4. {..... Limited, a company incorporated under the The Companies Act (Chapter 486, Laws of Kenya) and having its registered office at ..... (hereinafter referred to as the “**Fourth Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)}<sup>§</sup>

The above mentioned parties of the FIRST, SECOND, {THIRD and FOURTH} PART are collectively referred to as the “**Parties**” and each is individually referred to as a “**Party**”

**WHEREAS,**

- (A) Kenya National Highway Authority, established under the Kenya Roads Act, 2007, represented by its Director General and having its principal offices at Blue Shield Towers, Upper Hill Nairobi (hereinafter referred to as the “**Authority**” which expression

---

<sup>§</sup> The number of Parties will be shown here, as applicable, subject however to a maximum of 6 (six).

shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited applications (the **Applications**) by its Request for Qualification No. .... dated .....(the **RFQ**) for pre-qualification and short-listing of bidders for development and operation/ maintenance of \*\*\*\*\* Project (the **Project**) through public private partnership.

- (B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFQ document and other bid documents in respect of the Project, and
- (C) It is a necessary condition under the RFQ document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Application.

**NOW IT IS HEREBY AGREED as follows:**

**1. Definitions and Interpretations**

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFQ.

**2. Consortium**

- 2.1 The Parties do hereby irrevocably constitute a consortium (the **Consortium**) for the purposes of jointly participating in the Bidding Process for the Project.
- 2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

**3. Covenants**

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the **SPV**) under The Companies Act (Chapter 486 Laws of Kenya) for entering into a Contract Agreement with the Authority and for performing all its obligations in the Contract in terms of the Contract Agreement for the Project.

**4. Role of the Parties**

The Parties hereby undertake to perform the roles and responsibilities as described below:

- (a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding

Process and until the Appointed Date under the Contract Agreement when all the obligations of the SPV shall become effective;

- (b) Party of the Second Part shall be {the Technical Member of the Consortium ;}
- {(c) Party of the Third Part shall be the Financial Member of the Consortium; and}
- {(d) Party of the Fourth Part shall be the Operation and Maintenance Member/ Other Member of the Consortium. }

## **5. Joint and Several Liability**

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFQ, RFP and the Contract Agreement, till such time as the Financial Close for the Project is achieved under and in accordance with the Contract Agreement.

## **6. Shareholding in the SPV**

- 6.1 The Parties agree that the proportion of shareholding among the Parties in the Contract shall be as follows:

First Party:

Second Party:

{Third Party: }

{Fourth Party: }

- 6.2 The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the Contract shall, at all times till the date of commissioning of the Project, be held by the Parties of the First, {Second and Third} Part whose experience and equity have been reckoned for the purposes of qualification and short-listing of Applicants for the Project in terms of the RFQ.
- 6.3 The Parties undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity share capital of the Contract at all times until the commercial operation date of the Project.

- 6.4 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Contract Agreement.

## 7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

- (a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
  - (i) require any consent or approval not already obtained;
  - (ii) violate any Applicable Law presently in effect and having applicability to it;
  - (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
  - (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
  - (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;

- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

## **8. Termination**

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Project is achieved under and in accordance with the Contract Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Applicant is not pre-qualified or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

## **9. Miscellaneous**

- 9.1 This Joint Bidding Agreement shall be governed by laws of {Kenya}.
- 9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED

For and on behalf of  
LEAD MEMBER by:

(Signature)  
(Name)  
(Designation)  
(Address)

SIGNED, SEALED AND DELIVERED

SECOND PART

(Signature)  
(Name)  
(Designation)  
(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of  
THIRD PART

(Signature)  
(Name)  
(Designation)  
(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of  
FOURTH PART

(Signature)  
(Name)  
(Designation)  
(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of  
FIFTH PART

(Signature)  
(Name)  
(Designation)  
(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of  
SIX PART

(Signature)  
(Name)  
(Designation)  
(Address)

In the presence of:

2.

*Notes:*

1. The mode of the execution of the Joint Bidding Agreement 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.
2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.
3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Kenyan Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

FORMAT OF CURRICULUM VITAE (CV) FOR PROPOSED PROFESSIONAL STAFF

Proposed Position: \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Name of Staff: \_\_\_\_\_

Profession: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Years with Firm: \_\_\_\_\_ Nationality: \_\_\_\_\_

Membership in Professional Bodies: \_\_\_\_\_

---

Detailed Tasks Assigned: \_\_\_\_\_

---

Key Qualifications:

*[Give an outline of staff member's experience and training most pertinent to tasks on assignment. Describe degree of responsibility held by staff member on relevant previous assignments and give dates and locations].*

---

Education:

*[Summarize college/university and other specialized education of staff member, giving names of schools, dates attended and degree[s] obtained.]*

---

Employment Record:

*[Starting with present position, list in reverse order every employment held. List all positions held by staff member since graduation, giving dates, names of employing organizations, titles of positions held, and locations of assignments.]*

---

Certification:

I, the undersigned, certify that these data correctly describe me, my qualifications, and my experience.

\_\_\_\_\_ Date: \_\_\_\_\_  
*[Signature of staff member]*

\_\_\_\_\_ Date;  
*[Signature of authorised representative of the firm]*

Full name of staff member: \_\_\_\_\_

Full name of authorized representative: \_\_\_\_\_