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Ref: TNT/017/2022-2023 (12)

THE NATIONAL TREASURY

P.O. BOX 30007 – 00100

NAIROBI

3rd March, 2023

REF: TENDER FOR MOTOR VEHICLES LEASING PROGRAMME PHASE VII
TENDER NO. TNT/017/2022-2023
ADDENDUM I

The National Treasury has issued the following addendum to the Tender For Motor Vehicles Leasing Programme Phase VII following the virtual pre – bid conference meeting held on 1st March, 2023 at 10.00 a.m.

S/No	Requested Clarifications	Clarification
1.	Assignment (Clause 14 - Page 223 of 285) a) The Lessor has the right, subject to the consent to the Lessee, to assign or transfer to any person all or any of its rights under this Agreement and any document entered into with or pursuant to this Agreement and in such event the Lessee agrees, after receiving the notice thereof, to lease the Vehicles from the assignee/transferee from date of assignment/transfer and to make all payments due in terms of this Agreement to the assignee/transferee. b) The Lessee has the right to assign or delegate the Lessee's rights or obligations under this Agreement to any other Government Agency or any document entered into with or pursuant to this Agreement without the Lessor's prior written consent.	The Procuring Entity shall seek the Attorney General's opinion on the same before contract signing

S/No	Requested Clarifications	Clarification
	<p>We suggest the templates of Notice of Assignment and its Acknowledgements be included as annexures to the tender documentation. Since the leases are usually financed, it's necessary to ring fence the rentals to reduce exposures as well as introduce parties to the contract e.g. vehicle ownership and banks involvement.</p> <p>We note that the assignment clauses 14 (a) talks about the OEM/Lessor assigning the contract to another party which will be applicable in instances, they are restructuring/selling their business. The contracts in their current form don't recognize banks. This has become a big issue with banks trying to explain their position in these transactions to the regulator Central Bank of Kenya. As per Central Bank of Kenya Prudential guideline on lending any money advanced by a bank must be linked/connected to an obligor</p> <p>Solution</p> <p>Introduce an assignment clause that talks about rental security assignment to the financier. This should be accompanied with an assignment and acknowledgement template (we have attached a sample for your approval)</p>	
2.	<p>Annual Contract Renewal SCC (Page 268 of 285)</p> <p>The Contract shall be for a period of Four (4) years.</p> <p>The Contract Implementation Team (C.I.T)/ National Treasury shall undertake annual performance assessment of the Service Provider to determine whether the terms designated in the contract remains competitive pursuant to the Public Procurement and Asset Disposal Act, 2015.</p> <p>Draft – Master Lease Page 219 (4) Term of Lease</p> <p>In respect of each Lease rental the Term shall commence on the Commencement Date and shall continue for Four (4) years as set out in the Lease rental and end on the Termination Date unless terminated earlier in accordance with the</p>	<p>The Contract shall be for a period of Four (4) years.</p> <p>The Contract Implementation Team (C.I.T)/ National Treasury shall undertake annual performance assessment of the Service Provider pursuant to section 114(2) of the Public Procurement and Asset Disposal Act, 2015.</p>

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	<p>terms of this Agreement and the Lease rental inter alia subject to annual assessment by the Lessee upon satisfactory performance by the Lessor.</p> <p>We request alignment of Master Lease Agreement Clause No 3 (lease term) with the SCC (page 268 of 285). The clause on Master Lease Agreement conditions subjects the lease term to assessment, resulting in a one year non-cancelable term contract.</p> <p>Delete the wording in the RFP and replace with the wording from the Master lease agreement which talks of performance assessment.</p>	
3.	<p>Delayed Payments GCC Clause 16.5 (Page 259 of 285)</p> <p>In the event that the Procuring Entity fails to pay the Lessor any payment by its due date or within the period set forth in the SCC, the Procuring Entity shall pay to the Lessor interest on the amount of such delayed payment at the rate shown in the SCC, for the period of delay until payment has been made in full, whether before or after judgment or arbitration award.</p> <p>Section VIII - SCC (Page 267 of 285)</p> <p>The payment-delay period after which the Procuring Entity shall pay interest to the Lessor shall be as per the master lease agreement.</p> <p>The draft master agreement makes no mention of default interest. Under the payment clause, we propose to include default interest in the Master Lease Agreement.</p> <p>There is no clause in the Master lease agreement instructing payment of interest in the current form all past due payments are enjoying capital and interest moratorium which is against the guidelines set by Central Bank of Kenya for loans/advanced given by the banks. As per prudential guidelines on lending all lending must be priced. Each payment that is due should continue accruing interest.</p>	<p>The Procuring Entity shall seek the Attorney General's opinion on the same before contract signing.</p>

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	<p>Solution</p> <p>A clause to be added in the master Lease agreement to allow interest to accrue on amounts that are due but have not been paid at the normal funding rate. Kindly note that this is not late payment penalty/fees just normal interest on overdue amounts.</p>	
4.	<p>Delayed Payment</p> <ol style="list-style-type: none"> 1. Given the financing aspect from the financial institution who undertake funding for this lease programmes, in case of any significant delay allow for charging of interest on the instalment outstanding. 2. Delayed payments have caused huge interest penalties. This trend is not sustainable. 3. It's also affecting the lessor's ability to create value addition to other sectors as envisioned by the lessee/authors of this programme. Functions like skills and technology transfer, TVETs programmes e.t.c. will be affected as they require substantial investment. 4. Financial institutions are raising the risk profile of dealers arising from delayed payments. This implies expensive financing cost. 	The Procuring Entity shall seek the Attorney General's opinion on the same before contract signing.
5.	<p>Indemnity (Clause 13 - Page 223 of 285)</p> <p>In pursuance of this Agreement, each Party, covenants to the other that such Party will at all times hereafter indemnify and keep the other Party indemnified against all third party demands, claims, liabilities, losses, costs, expenses that the other Party may incur arising from the defaulting Party's gross negligence in the performance or non-performance of the defaulting Party's obligations hereunder.</p> <p>Nothing in this Agreement shall restrict or limit either Party's general obligations at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim for indemnity.</p> <p>We seek lessee inclusion in third-party claims that have been rejected by insurance companies due to</p>	The Procuring Entity shall seek the Attorney General's opinion on the same before contract signing.

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	lessee actions or omissions.	
6.	<p>In cases where despite comprehensive cover Insurance rejects to compensate after accident emanating from users' negligence, request National Treasury to indemnify the lessor on this cost. As per lessor costing does not include such cases of negligence from the users. Same as when the Courts apply cost to the owner of the vehicle and not the user.</p> <p>Example, please follow below link: - https://www.businessdailyafrica.com/bd/corporate/companies/judge-dismisses-leasing-firm-claim-of-sh619m-from-ncba-3816488</p>	The Procuring Entity shall seek the Attorney General's opinion on the same before contract signing.
7.	<p>Return conditions (5) (Appendix 1c - Page 232 of 285)</p> <p>Any accidental damage (including damage to any glass) caused to the vehicle(s) must be repaired as per manufacturer's (Lessor) recommendation. In the event of an accident causing any damage to the chassis, pillars or vehicle engine, the mechanic will replace them at the Lessor's cost.'</p> <p>We are seeking clarification on whether the lessee should be charged for damage caused by user negligence.</p>	<p>The lessor shall maintain the vehicles up to the end of the lease period as per the master leasing agreement.</p> <p>The lessee shall take appropriate administrative actions to the officers causing damages as a result of negligence.</p>
8.	<p>We humbly request for an extension of the closing date for us to fully and comprehensively respond to your requirements in the tender.</p> <p>We wish to request for a 14 day extension to the tender closing date.</p> <p>We request for a 21 day extension to the tender closing date to allow for integration of the information in the anticipated addendum into our proposal. In particular annual approval - depending on how it is worded we feel will affect the terms sheet from our lenders.</p>	<p>The Tender Shall not be extended.</p> <p>The Tender Shall Open / Close on Wednesday 8TH March, 2023 at 11.00 a.m.</p>
9.	Shall the prices be adjustable during the contract period because of changes in the forex and can one quote in any convertible foreign currencies	<p>Page 26 of the Tender Document</p> <p>Refer to ITT clause 13.4: Prices quoted SHALL be fixed during the contract period</p>

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		Refer to ITT clause 14.1: Tenderers shall quote in Kenya Shillings
10.	Please explain what are covered in the local content	<p>Please refer to item 16 and 17 on page 31 of the Tender Document</p> <p>Page 75 item b: Skills, Technological Transfer and Local content and item c page 76 of the Tender Document</p> <p>Refer to page 77 – 80 of the Tender Document</p>
11.	Can the Technical mandatory criteria on page 32 of the Tender Document be considered as minor / major deviations from the requirements of the tender document	These are mandatory criteria and all Tenderers must adhere to the requirements. They shall not be considered as minor / major deviation.
12.	The Treasury's anticipated response via addendum, particularly on annual performance review (approval) and interest accrual on late payments (not penalties), in our opinion, will impact appetite and pricing of debt and thus our overall proposal. We look forward to a positive response.	<p>The Contract shall be for a period of Four (4) years.</p> <p>The Contract Implementation Team (C.I.T)/ National Treasury shall undertake annual performance assessment of the Service Provider pursuant to section 114(2) of the Public Procurement and Asset Disposal Act, 2015.</p> <p>On interest accrual, the Procuring Entity shall seek the Attorney General's opinion on the same before contract signing.</p>
13.	<p>We are grateful for the pre-bid meeting.</p> <p>Our main concern is regarding the annual review or approval as this makes the risk of termination at the end of Y1 or 2 or 3 a possibility. This is material to the lender and ourselves. The wording could help mitigate the perceived risk - you are to advise us via addendum.</p>	<p>The Contract shall be for a period of Four (4) years.</p> <p>The Contract Implementation Team (C.I.T)/ National Treasury shall undertake annual performance assessment of the Service Provider pursuant to section 114(2) of the Public Procurement and Asset Disposal Act, 2015.</p>

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	Furthermore, as this is a material item and together with interest on unreceived amounts (delayed payments), will affect the term sheet from the lender, we request that you consider extending the tender closing date by 14 days to allow us time to work with our lenders after receipt of the addendum.	
14.	<p>The global warming phenomena is now a geo-political and economic issue, hence the call by UN for countries to reduce emission levels and embrace environmentally friendly practices.</p> <p>It is in line with this global agenda that from 1st July 2022, KEBS through a notice informed motor vehicle importers that vehicles imported into Kenya must meet Euro 4 emission norms.</p> <p>The tender document was not clear on the matter of Euro 4 standards. It would be important that this issue is clarified, and motor vehicle dealers impressed upon to supply vehicles that are Euro 4 compliant. Euro 4 vehicles are better at fuel consumption and thus will save GOK a lot of money besides assisting in keeping our environment cleaner.</p>	The vehicles to be leased should comply with existing KEBS regulations.
15.	<p>Vehicle delivery period – 120 days</p> <p>Part of local content is achieved through local vehicle assembly. This alone takes two to three months.</p> <p>Process of vehicle acquisition starts at contract signing due to associated cost of stock holding in case the bidder doesn't win the tender.</p> <p>Vehicle supply/delivery will be gradual as per factory allocated quotas, such that the last batch would perhaps consist only 10% of total vehicles in a particular Lot.</p> <p>In the absence of this there will be enormous risk of the lessors forfeiting the Performance bond which at 10% is a huge cost.</p> <p>We request amendment of this to longer period, up to 180 days due the current vehicles supply</p>	Vehicle delivery period remains at 120 days

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	chains disruption across the globe.	
16.	<p>Page 59 lot 7a MTD-2561-014-21 - Medium Duty, 4 Ton, 4x2, High Sided Truck with Canvas. Overall length 6,500-7,000 mm</p> <p>Deviation sought – Overall length 6,500 – 7,100mm</p> <p>Longer load body would give higher loading volume and further comfort and seating</p>	Overall length has been amended to between 6,500 – 7,100mm
17.	<p>Page 59 lot 7a MTD-2561-014-21 - Medium Duty, 4 Ton, 4x2, High Sided Truck with Canvas. Ground clearance min 210mm</p> <p>Deviation sought – Ground clearance min 180mm</p> <p>Lower ground clearance / lower length would give better stability in uneven terrain</p>	<p>Ground clearance shall remain as per the tender document - min 210mm</p> <p>This is a critical technical parameter and if reduced will negatively affect performance of truck and users' needs will not be met</p>
18.	<p>Page 59 lot 7a MTD-2561-014-21 - Medium Duty, 4 Ton, 4x2, High Sided Truck with Canvas. Piston displacement – 3,900 – 5,000 cc</p> <p>Deviation sought – Piston displacement – 3,200 – 5,000 cc</p> <p>Superior technology helps us to develop higher power and torque from lower engine cc. the fuel consumption would be lower, assisting in lower operating costs</p>	Piston displacement on page 59 lot 7a has been amended to 2,900 – 5,000 cc
19.	<p>Page 62 lot 9 MTD-2716-012-21 - Large Truck, 4X2,9-10 Ton, High Sided Body with Superstructure and Canvas. Piston displacement – 5,500 – 10,000 cc</p> <p>Deviation sought – Piston displacement – 5,000 – 10,000 cc</p> <p>Superior technology helps us to develop higher power and torque from lower engine cc. the fuel consumption would be lower, assisting in lower operating costs</p>	<p>Piston displacement to remain as per the tender document i.e. 5,500 – 10,000 cc</p> <p>This is a critical technical parameter. A smaller engine is worse off compared to a bigger engine in terms of durability and performance.</p>
20.	<p>Page 62 lot 9 MTD-2716-012-21 - Large Truck, 4X2,9-10 Ton, High Sided Body with Superstructure and Canvas. Number of cylinders, min 6</p>	<p>Number of cylinders to remain as per the tender document, min 6</p> <p>This is an important technical parameter in engines as it</p>

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	<p>Deviation sought – Number of cylinders, min 4</p> <p>Less number of cylinders, developing appropriate power and torque would provide balanced performance at lower maintenance cost thereby improving the operating costs.</p>	<p>indicates standard or level of performance. The higher the number of cylinders, the higher the standard or quality and quantitative performance of the engine.</p>
21.	<p>Page 62 lot 9 MTD-2716-012-21 - Large Truck, 4X2, 9-10 Ton, High Sided Body with Superstructure and Canvas. Maximum power output min. 230Hp/3,000rpm</p> <p>Deviation sought – Maximum power output min. 175Hp/2,400rpm</p> <p>Adequate designed power at lower rpm would support longer trouble – free operation of the engine</p>	<p>Maximum power output to remain as per the tender document - min. 230Hp/3,000rpm</p> <p>This is one of the most important technical parameter in vehicles which indicates performance. If reduced it will negatively affect truck performance in terms of engine performance and output, vehicle speed, hill climbing ability, durability among others.</p>
22.	<p>Page 62 lot 9 MTD-2716-012-21 - Large Truck, 4X2, 9-10 Ton, High Sided Body with Superstructure and Canvas. Maximum torque developed min. 700 Nm/1700rpm</p> <p>Deviation sought – Maximum torque developed min. 580 Nm/1000rpm – 2000rpm</p> <p>Adequate designed torque and flatter rpm range would provide better drivability and lesser gearshifts</p>	<p>Maximum torque developed to remain as per the tender document - min. 700 Nm/1700rpm</p> <p>This is an important technical which If reduced will negatively affect truck performance. The truck will not be able to wriggle itself out of ditches, uneven places, hilly areas as it will not perform to the required level.</p>
23.	<p>Page 64 lot 10 MTD-1056-162-21 - Water Bowser, 4x2, 10,000-12,000 litres Piston displacement 5,500 – 10,000 cc</p> <p>Deviation sought – Piston displacement 5,000 – 10,000 cc</p> <p>Superior technology helps us to develop higher power and torque from lower engine cc. the fuel consumption would be lower, assisting in lower operating costs</p>	<p>Piston displacement to remain as per the tender document - 5,500 – 10,000 cc</p> <p>This is a critical technical parameter A smaller engine is worse off compared to a bigger engine in terms of durability and performance.</p>
24.	<p>Page 64 lot 10 MTD-1056-162-21 - Water Bowser, 4x2, 10,000-12,000 litres Maximum power output min 230Hp/2,500rpm</p>	<p>Maximum power output to remain as per the tender document - min</p>

S/No	Requested Clarifications	Clarification
	<p>Deviation sought – Maximum power output min 175Hp/2,400rpm</p> <p>Adequate designed power at lower rpm would support longer trouble – free operation of the engine</p>	<p>230Hp/2,500rpm</p> <p>This is one of the most important technical parameter in vehicles which indicates performance.</p> <p>If reduced it will negatively affect truck performance in terms of engine performance and output, vehicle speed, hill climbing ability, durability among others</p>
25.	<p>Page 64 lot 10 MTD-1056-162-21 - Water Bowser, 4x2, 10,000-12,000 litres</p> <p>Maximum torque developed min 700 Nm/1,300rpm</p> <p>Deviation sought – Maximum torque developed min 580 Nm/1,000 – 2,000 rpm</p> <p>Adequately designed torque at flatter rpm range, would provide better drivability and lesser gearshifts</p>	<p>Maximum torque developed to remain as per the tender document min 700 Nm/1,300rpm</p> <p>This is an important technical parameter which If reduced will negatively affect truck performance.</p> <p>The truck will not be able to wriggle itself out of ditches, uneven places, hilly areas as it will not perform to the required level.</p>

All the other terms and conditions remain the same.

 **HEAD, SUPPLY CHAIN MANAGEMENT SERVICES**
FOR: PRINCIPAL SECRETARY / NATIONAL TREASURY