



**REPUBLIC OF KENYA  
THE NATIONAL TREASURY AND ECONOMIC PLANNING**

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**INFRASTRUCTURE FINANCE AND PUBLIC PRIVATE PARTNERSHIPS ADDITIONAL FINANCING  
(IFPPP-AF)**

**COMPONENT 1A – SUPPORT TO INSTITUTIONAL STRENGTHENING**

**TERMS OF REFERENCE**

**PREQUALIFICATION OF LEGAL FIRMS**

**TENDER NO. IFPPP/PFF/PPPD/05/2023-2024**

**FOR THE PUBLIC PRIVATE PARTNERSHIPS DIRECTORATE (PPPD)  
IN KENYA**

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**JUNE, 2024**

## 1.0. BACKGROUND AND CONTEXT

The Government of Kenya (GOK) has made Public Private Partnerships (PPPs) a priority mechanism to facilitate the development of assets and provision of services to address the major infrastructure gaps in the country. In November 2011, GOK issued a National PPP Policy and in February 2013, through the enactment of the PPP Act, established an institutional framework to attract private sector participation in the provision of public services through PPPs. The institutional framework under the Act includes a PPP Committee, responsible for developing and implementing PPP policy initiatives; a PPP Directorate (PPPD), housed within the National Treasury and Planning, to function as a national centre for PPP expertise and for facilitating project development and implementation; and Project Implementation Teams in contracting authorities at national and county level. Kenya has made significant strides in promoting private sector involvement in the financing, construction, development, operation, and maintenance of infrastructure development projects, and is widely recognized as having one of the most progressive Public-Private Partnerships (PPP) programs in Africa. The program in Kenya has matured over the years with several operational projects in the road and energy sectors, and various pipeline projects at different stages in multiple sectors. The Government of Kenya (GoK) has been working on building robust legal and institutional frameworks, and tools and methodologies for selecting and taking forward projects that not only provide economic benefits but are attractive to private investors.

The Government of Kenya (GoK) in conjunction with the World Bank (International Development Association - IDA) has been implementing a five-year Infrastructure Finance and Public Private Partnerships Project (IFPPP) whose overall development objective is to increase private investment in the Kenyan infrastructure market by improving the enabling environment to generate a pipeline of bankable PPP projects.

This objective is being achieved by providing technical expertise and building the capacity of the Public Private Partnerships Directorate to implement the program.

In this regard, the Public Private Partnerships (PPP) Directorate seeks to prequalify Legal Firms on a **NEED TO PROCURE** basis.

## 2.0. OBJECTIVES OF THE PPP LEGAL FIRMS' PREQUALIFICATION

- 2.1. The primary purpose is to establish a repository of legal advisory services consultancy firms available for contracting and utilisation on need basis. This is to support the PPP Directorate in preparing or reviewing various legal documents (including but not limited to legal review of documents, project agreements/contracts related to different projects, initiatives and operations led by the PPP Directorate.
- 2.2. Assistance in comprehensively reviewing Feasibility studies/project development reports from PIPs and providing detailed assessments and recommendations; providing support in developing the risk allocation matrix, the conduct of negotiations and structuring appropriate model PPP project agreements and associated documents in **any three (3)** of the listed sectors:

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- i. **Sector 1** - Transport (airports, ports, road tolling (O&M), Bus Rapid Transport, Space, maritime and bridges);
- ii. **Sector 2** - Energy (Geothermal Exploration, Power Generation Plants, Storage, Transmission and Distribution networks);
- iii. **Sector 3** - Water and sanitation (dams, treatment plants, desalination plants, liquid waste, solid waste);
- iv. **Sector 4** - Irrigation and Agriculture: (large scale farming for food security and export);
- v. **Sector 5** - Social infrastructure for health care, education, affordable housing and, student accommodation; and
- vi. **Sector 6** - Telecoms/ICT/Smart Streets

2.3. To support the capacity building initiatives of the PPP Directorate and sensitize Contracting Authorities and stakeholders on Kenya's PPP legal framework.

Interested firms are encouraged to bid for the assignments in any of the above sectors (clearly indicate the same) **but not more than three (3)** segments/sectors, application for more than three sectors will lead the bid to be disqualified.

### 3.0. INVITATION

The PPP Directorate, National Treasury invites suitably qualified and experienced prospective legal service providers to form part of a Panel of Advocates for a period of **THREE (3) Years**. Applicants are to respond by complying with all the mandatory requirements and ensuring the responses are in line with the specifications and evaluation criteria.

### 4.0. SCOPE OF WORK - TERMS OF REFERENCE – CHECKLIST OF POTENTIAL TASKS FOR LEGAL ADVISERS TO THE GOVERNMENT

- (I) The following sets out the areas of scope of work for terms of reference (ToRs) to appoint legal advisers to assist the Government in the preparation of public-private partnerships transactions (PPP) in the above identified sectors.
- (II) The Government may wish to appoint a combination of local and international legal advisers. The use of international legal advisers is often necessary to satisfy international investors or financiers when accessing the international financial markets.

#### A. Project Feasibility

The Directorate may, in co-ordination with a Contracting Authority hire an external adviser to, review and provide any of the following services:

- Conduct legal feasibility of the project through legal analysis of the Constitution, relevant Acts of Parliament, regulations and policies;
- Review of risk allocation to assess whether those risks can legally be allocated to the private

sector (e.g. land acquisition, collection of tariffs from individual consumers etc.);

- Identify licensing, permitting and other legal risks that need to be addressed under the chosen approach;
- Identifying other contractual and commercial relationships in the sector or related to the sector and interface with the PPP project.
- Assess risk management structures for potential efficiency gains through alternative structures or modifications.
- Ensuring all necessary approvals and permissions are obtained for PPP processes before commencement of tender process, in particular to allow the relevant Government entity to sign the tender documents and the PPP contract.
- Assessing risk allocation approaches to ensure that they correspond with private sector appetite and lender requirements. This should be done before bidding to avoid failure of the bidding process and the costly and reputation damaging recommencement of the tendering process.
- Assessing chosen approach to PPP and whether any aspect of that approach will conflict with available or required procurement, contracting and financing structures.
- Assessing Government role in the proposed PPP project, whether that role corresponds with the Government's legal obligations, maintains sufficient power to protect the Government's interests and corresponds to the proposed corporate structure of the project vehicle and how in practice the Government role will be established in the project vehicle (e.g. voting rights, pre-emption rights, golden shares and the protection of minority shareholders)
- Developing and providing detail to the legal architecture and design of the transaction, identifying e.g. the (i) type of PPP contract to be used (e.g. concession, BOT or management contract) (ii) investment commitments to be required, their nature and management, (iii) investment plan, how, where and when investments will be made (iii) type of public sector support required, including terms and conditions and (iv) corporate structure for the investment and commercial management including nature of the SPV holding the concession, etc.

## **B. Project Transaction**

- Drafting the PPP contract and any other legal instrument that implements the chosen PPP approach, explaining to the Government whether and to what extent certain provisions could be amended without disturbing the key risk allocation goals of the Government;

- Support the contracting authority with negotiations with the preferred bidder to reach agreement on the PPP contract or any other legal instrument;
- Support the contracting authority with legal due diligence of the private party to ascertain suitability to contract;
- Advice on financing structures - The Government may need to obtain debt or provide a loan to the project company or to provide some other financial instrument (e.g. guarantee or subsidy) to make the PPP project financial viable or more cost effective. Then Government may want advice on structuring of such instruments, their drafting, negotiation and implementation (e.g. setting up trusts and escrow accounts, arrangements with security sharing and management and other aspects of financial management and ensuring compliance with financial covenants). The scope of input from the legal advisor will depend on the nature of the financial obligations undertaken by the Government.

### **C. Contract Renegotiation and Dispute Resolution**

- Support and advise the contracting authority on any matters relating to contract renegotiations, as they may arise.
- Advise the contracting authority on matters relating to dispute resolution as they may arise, including the appropriate dispute resolution mechanisms;
- Act for the contracting authority in arbitration proceedings in any dispute resolution forum, as the need may arise from time to time.

### **5.0. PROPOSAL REQUIREMENTS**

Each proposal must include the specialised segment/sector of PPP Practice. If a firm of Advocates has expertise in more than one sector, the same should be indicated and submitted under separate envelope.

### **6.0. CONDITIONS:**

- The PPP Legal Consultant will be expected to work closely with the PPPD Legal Department
- The PPP Legal Consultant shall respond positively to the need for complementary analysis that the PPPD may request in order to deliver its PPP program objectives.

### **7.0. EXPECTED KEY PERFORMANCE INDICATORS (KPIs) AND REPORTING:**

Upon being selected as part of the PPP Directorate's law firm's panel, an exacting expectation exists for the consistent provision of legal services characterized by efficiency, cost-effectiveness, and exceptional quality. Performance is mandated to be in strict alignment with the PPP Directorate's corporate strategic objectives and in full compliance with the pertinent legal regulations and standards. Such a performance should also demonstrate a comprehensive understanding of the PPP legal regulatory regime and financing model.

The selected law firms will undergo regular evaluations, based on a comprehensive set of KPIs including, but not limited to:

- **Adherence to deadlines:** Monitor the adherence to legal deadlines and statutory

requirements.

- **Quality of service:** The PPP Directorate will assess the quality of legal advice and representation provided by the panel firms. This includes the accuracy, depth, and effectiveness of legal counsel.
- **Resolution of legal issues:** Track the number of legal issues or disputes successfully resolved by the panel of lawyers within a specific time frame.
- **Communication:** The law firms should maintain effective and timely communication with the PPP Directorate's legal department and other relevant stakeholders. Responsiveness to queries and concerns is crucial.
- **Cost-Efficiency:** Evaluate the cost-effectiveness of the legal services provided by the panel in terms of legal fees, litigation expenses, and settlements.
- **Compliance:** Panel firms must demonstrate their commitment to complying with all relevant laws and regulations in the course of their provision of the legal services.
- **Adherence to budgets:** Track the ability of the law firms to work within allocated legal budgets for specific projects or cases.
- **Risk management:** Assess the panel's ability to identify and mitigate legal risks to protect the PPP Directorate's interests.

#### **8.0. PERFORMANCE IMPROVEMENT:**

If a law firm consistently fails to meet the established KPIs, the PPP Directorate reserves the right to issue performance improvement notices and, if necessary, review the firm's inclusion in the panel.

Panel firms must comply with the reporting and performance evaluation requirements outlined under the present Terms of References. The PPP Directorate reserves the right to conduct periodic reviews to ensure continued compliance and to make necessary adjustments in the panel, as deemed necessary.

#### **9.0 Applicable Procurement Laws and Policies Procedures**

Public Procurement and Asset Disposal Act, 2015 of Kenya will be applicable in respect to this tender.

#### **10.0 Reporting Mechanism**

The prequalified legal firms will enter into a framework contract with the National Treasury – Kenya (for engagement on need basis) and will report to the Director General, PPP Directorate for any assignment as may be allocated and for which an assignment specific Engagement Agreement shall be entered into with the National Treasury.

#### **11.0 Professional Fees & Applicable Taxes**

- i. An assignment fee will be negotiated for each assignment issued, in accordance with the terms and conditions outlined in the tender document provided in the next stage of the procurement process and based on the Advocates Remuneration Order applicable in Kenya.
- ii. As per Kenya's tax law, the PPP Directorate will pay the law firm after withholding the appropriate taxes at the applicable rate between Kenya and the law firm's country of tax residence, considering any tax treaties in force. It is the responsibility of the law firm to keep themselves apprised of these applicable taxes.

12.0 Basis of Award – Eligibility and Qualification Criteria

12.1 Checklist of Mandatory Documents To Be Submitted

<b>(PLEASE TICK IN THE RELEVANT BLOCK BELOW)</b>			
<b>DOCUMENT DESCRIPTION</b>		<b>YES</b>	<b>NO</b>
1.	Certified ID Copies of all Partners/Associates of the law firm		
2.	Applicants must ensure compliance with their tax obligations and submit their tax clearance certificates.		
3.	Current and valid Legal Practicing Certificates for all Advocates		
4.	Letters of good standing from the relevant bar organization		
5.	Proof of valid Professional Indemnity Cover		
6.	Amenability to negotiations for sustainability and value for money		
7.	Duly filled, Certificate of Independent Proposal Determination		
8.	Duly filled, Self-Declaration that the Person/Tenderer is Not Debarred to Participate in Public Procurement-SD1		
9.	Duly filled, signed and stamped Self-Declaration That the Person/Tenderer Will Not Engage in Any Corrupt or Fraudulent Practice-SD 2		
10.	Duly filled, signed and stamped Declaration and Commitment to The Code of Ethics		
11.	Must submit a duly filled, Confidential Business Questionnaire in format provided by authorized signatory/person		
12.	Certificate of Registration		
13.	Power of Attorney to submit proposal on behalf of the partnered law firm		
14.	Audited financial Accounts for the last three (3) consecutive years		
15.	Submit the required number of copies of the Technical Proposals i.e. one (1) original and two (2) copies		
16.	The proposals “Original” and “Copies” must be <b>chronologically serialized on all pages of the proposal documents submitted. (NB: Use of Spring or Box Files will not be allowed and will result in automatic disqualification.)</b>		

AT THIS STAGE, THE TENDERER’S SUBMISSION WILL EITHER BE RESPONSIVE OR NON-RESPONSIVE. THE NON-RESPONSIVE SUBMISSIONSWILL BE ELIMINATED FROM THE ENTIRE EVALUATION PROCESS AND WILL NOT BE CONSIDERED FURTHER.

## 12.2 Technical Evaluation Criteria

The Criteria, sub-criteria, and point system for the evaluation of the Technical Proposals:		
S/NO.	PARTICULARS	MARKS
1	<p>Experience in PPP's, Project Finance and/or Project Management; At least ten (10) years' experience in advising on the development of large infrastructure projects on a PPP basis including extensive experience in:</p> <ul style="list-style-type: none"> <li>-</li> <li>a) Assessing PPP feasibility study reports (particularly project development reports from Privately Initiated Proposals (PIPs),</li> <li>b) Drafting and negotiating complex commercial PPP agreements,</li> <li>c) Resolving legal issues and</li> <li>d) Policy and institutional assessment</li> </ul> <p>Documentary evidence to attach for each project</p> <p>I) Detailed and current company profile -10 Years and above <b>3 Marks</b></p> <p>II) Award Letter/ Letter of Instructions <b>4 Marks</b></p> <p>III) Copy of Executed Contract/SLA <b>4 Marks</b></p> <p>IV) Reference letter or completion certificate <b>4 Marks</b></p> <p>Two (2) Projects Each 12 Marks - (Maximum 24 Marks)</p>	<b>27 Marks</b>
2	<p>Demonstrated experience in advising and structuring PPP transactions, drafting and negotiating relevant contractual documentation in the sector(s) bid for.</p> <p>Provide documentation demonstrating financial closure for at least two projects within the relevant sector for which the bid is submitted.</p> <p><b>Documentary evidence to attach for each project</b></p> <ul style="list-style-type: none"> <li>- Award Letter/ Letter of Instructions <b>5 Marks</b></li> <li>- Reference Letter or Completion Certificate <b>5 Marks</b></li> </ul> <p>Two (2) Projects Each 10 Marks - <b>(Maximum 20 MARKS)</b></p> <p><b>Additional credit will be given for experience in three sectors– 5 Marks for evidence on 3<sup>rd</sup> Sector</b></p> <p>(Maximum Score 25 Marks)</p>	<b>25 Marks</b>
3	<p>Experience in dealing with contract renegotiations as well as procurement petitions and dispute resolution for Project Finance transactions in both local and international fora.</p>	<b>(24 Marks)</b>



	<p>Documentary evidence to attach for each project</p> <ul style="list-style-type: none"> <li>- Award Letter/ Letter of Instructions <b>4 Marks</b></li> <li>- Evidence of award or settlement agreement <b>6 Marks</b></li> <li>- Reference letter or completion certificate <b>2 Marks</b></li> </ul> <p>Two (2) Projects Each 12 Marks - <b>(Maximum 24 MARKS)</b></p>	
4	<p>Experience working in Sub-Saharan Africa and in Kenya is a prerequisite.</p> <p>Documentary evidence to attach for each project</p> <ul style="list-style-type: none"> <li>- Award Letter/ Letter of Instructions <b>3 Marks</b></li> <li>- Reference letter or completion certificate <b>4 Marks</b></li> </ul> <p>Two (2) Projects Each 7 Marks - <b>(Maximum 14 MARKS)</b></p>	<b>(14 Marks)</b>
5	Signed declaration/commitment to engage competent local firms - <b>(7 marks)</b>	<b>7 Marks</b>
6	Financial Capacity	
	Audited financial Accounts for the last three (3) accounting years <b>1 Mark per financial year</b>	<b>3 Marks</b>
	<b>TOTAL MARKS</b>	<b>100</b>

The total points are as summarized below;

	<b>Points</b>
(i) General experience of the Firm	27 Marks
(ii) Experience related to commercial close	25 Marks
(iii) Experience in renegotiations and dispute resolution	24 Marks
(iv) Specific experience in Sub-Saharan Africa and Kenya	14 Marks
(v) Declaration/Commitment to engage local firms	7 Marks
(vi) Financial Capacity	3 Marks
<b>Total</b>	<b>100</b>

The minimum technical score (St) required to pass is: **80%**

- Firm(s) which scores 80% and above will be recommended to be considered for prequalification.
- Firm(s) which scores less than 80% will be disqualified and not shortlisted in the prequalification list.

**THE FIRMS WHO WILL BE FOUND RESPONSIVE IN THE TECHNICAL EVALUATION STAGE, WILL BE RECOMMENDED FOR PREQUALIFICATION**

**13.0 Date for Receipt of Application/Bids**

Hard Copy Proposals should be submitted with the subject as **EXPRESSION OF INTEREST FOR INCLUSION INTO THE PPP DIRECTORATE’S PANEL OF LEGAL SERVICE PROVIDERS FOR ASSESSMENT AND IMPLEMENTATION OF PRIVATELY INITIATED PROPOSALS**. Addressed to reach the Procurement Expert, PPP Directorate, Reinsurance Plaza, 6<sup>th</sup> Flr, Taifa Road, P.O. Box 30007 - 00100, Nairobi; Email: not later than **18<sup>th</sup> June, 2024 at 11: 00 hours**.

**Contact Details**

Any further enquiries and/or clarifications to be addressed to the following address:

[info@pppunit.go.ke](mailto:info@pppunit.go.ke) , [Procurement@pppunit.go.ke](mailto:Procurement@pppunit.go.ke)

Tel. No. 020 3225000;

**DECLARATION**

I/We have examined the information provided in your terms of reference and offer to undertake the work prescribed in accordance with the requirements set out. We confirm that the terms of reference will remain binding upon us and may be accepted by you at any time before the expiry date.

Are you duly Authorized to commit to the Terms of Reference? Yes:  No

Sector (s) Interested in: -

a) .....

b) .....

c).....

Capacity under which this TOR is signed: .....

Signature: .....

Date: .....

# CERTIFICATE OF INDEPENDENT PROPOSAL DETERMINATION

I, the undersigned, in submitting the accompanying TECHNICAL PROPOSAL SUBMISSION FORM to the \_\_\_\_\_

\_\_\_\_\_ [Name of Procuring Entity]

for: \_\_\_\_\_ [Name and number of tender] in response to the request for tenders made by: \_\_\_\_\_ [Name of Tenderer] do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of \_\_\_\_\_ [Name of Tenderer] that:

1. I have read and I understand the contents of this Certificate;
2. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;
1. I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;
2. For the purposes of this Certificate and the Tender, I understand that the word "competitor" shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:
  - Has been requested to submit a Tender in response to this request for tenders;
  - could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;
3. The Tenderer discloses that **[check one of the following, as applicable]:**
  - The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
  - The Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements;
4. In particular, without limiting the generality of paragraphs(5)(a) or (5) (b)above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
  - prices;
  - methods, factors or formulas used to calculate prices;
  - the intention or decision to submit, or not to submit, a proposal; or
  - the submission of a proposal which does not meet the specifications of the request for proposals; except as specifically disclosed pursuant to paragraph(5)(b) above;
5. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this RFP relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph(5)(b) above;
6. The terms of the RFP have not been, and will not be, knowingly disclosed by the Consultant, directly or indirectly, to any competitor, prior to the date and time of the official proposed opening, or of the awarding of the Contract, which ever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph(5)(b) above.

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**APPENDIX TO FORM OF PROPOSAL ON FRAUD AND CORRUPTION CLAUSE (for information) (Appendix shall not be modified)**

**Purpose**

the Government of Kenya's Anti-Corruption and Economic Crime laws and their sanction's policies and procedures, Public Procurement and Asset Disposal Act (*no. 33 of 2015*) and its Regulation, and any other Kenya's Acts or Regulations related to Fraud and Corruption, and similar offences, shall apply with respect to Public Procurement Processes and Contracts that are governed by the laws of Kenya.

**Requirements**

The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts ,and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1 above.

Kenya's public procurement and asset disposal act (*no.33 of 2015*) under Section 66 describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted below highlight Kenya's policy of no tolerance for such practices and behavior:

- (1) A person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
- (2) A person referred to under sub section (1) who contravenes the provisions of that sub-section commits an offence;
- (3) Without limiting the generality of the subsection (1) and (2), the person shall be: -
  - a) disqualified from entering into a contract for a procurement or asset disposal proceeding;
  - or
  - b) if a contract has already been entered into with the person, the contract shall be avoidable;
- (4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
- (5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement—
  - i) Shall not take part in the procurement proceedings;
  - ii) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
  - iii) Shall not be a sub-contractor for the tender to whom was awarded contract, or a member of the group of tenderers to whom the contract was awarded, but the sub-contractor appointed shall meet all the requirements of this Act.
- (6) An employee, agent or member described in subsection (1) who refrains from doing

anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;

- (7) If a person contravenes sub section (1) with respect to a conflict of interest described in subsection (5)(a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer.
- (8) Incompliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:
- a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
    - i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
    - ii) "fraudulent practice" is any act or omission, including misrepresentation, that knowingly  
Or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
    - iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
    - iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
    - v) "obstructive practice" is:
      - i) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
      - ii) Acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3e. below.
  - b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:

"Fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.
  - c) Rejects a proposal or award<sup>1</sup> of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or

obstructive practices in competing for the contract in question;

- d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or debar or recommend to appropriate authority (ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;
- e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect<sup>2</sup> all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and
- f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a "Self-Declaration Form" as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

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<sup>1</sup>For the avoidance of doubt, a party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in A consultancy, and tendering, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and(ii) entering into an addendum or amendment introducing a material modification to any existing contract.

<sup>2</sup> Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Investigating Authority or persons appointed by the Procuring Entity to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/audit, and making copies thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.

**SELF-DECLARATION FORMS**

**FORM SD1**

**SELF DECLARATION THAT THE PERSON/TENDERER IS NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015.**

I, ....., of Post Office Box ..... being a resident of ..... in the Republic of ..... do hereby make a statement as follows: -

1. THAT I am the Company Secretary/Chief Executive/Managing Director/Principal Officer/Director of..... (Insert name of the Company) who is a Bidder in respect of Tender No. .... for.....(Insert tender title/description) for..... (*Insert name of the Procuring entity*) and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.
3. THAT what is deponed to here in above is true to the best of my knowledge, information and belief.

.....  
(Title) (Signature) (Date)

Bidder Official Stamp

**SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE.**

I.....of

P.O. Box.....being a resident of

.....in the Republic of ..... do hereby make a statement as follows: -

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of..... *(insert name of the Company)* who is a Bidder in respect of Tender No. .... for .....  
.....*(insert tender title/description)* for .....  
.....*(insert name of the Procuring entity)* and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its servants and/or agents /subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/ or agents of..... *(insert name of the Procuring entity)* which is the procuring entity.
3. THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of..... *(name of the procuring entity)*.
4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject tender.
5. THAT what is deponed to herein above is true to the best of my knowledge information and belief.

.....  
(Title) (Signature) (Date)

**Bidder Official Stamp**



## DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

I .....  
(person) on behalf of (*Name  
of the Business/ Company/Firm*) ..... declare  
that I have read and fully understood the contents of the Public Procurement & Asset  
Disposal Act,2015, Regulations and the Code of Ethics for persons participating in Public  
Procurement and Asset Disposal Activities in Kenya and my responsibilities under the  
Code.

I do here by commit to abide by the provisions of the Code of Ethics for persons  
participating in Public Procurement and Asset Disposal.

Name ..... of ..... Authorized  
signatory.....

Sign.....  
.....

Position.....  
.....

Office ..... address.....

Telephone..... E-mail  
.....

Name of the Firm/Company.....

Date.....

(Company Seal/ Rubber Stamp where applicable)

Witness

Name .....

Sign.....

Date.....

## TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE

### Instruction to Tenderer

Tender is instructed to complete the particulars required in this Form, *one form for each entity if Tender is a JV*. Tenderer is further reminded that it is an offence to give false information on this Form.

#### a) Tenderer's details

	ITEM	DESCRIPTION
1	Name of the Procuring Entity	
2	Reference Number of the Tender	
3	Date and Time of Tender Opening	
4	Name of the Tenderer	
5	Full Address and Contact Details of the Tenderer.	<ol style="list-style-type: none"> <li>1. Country</li> <li>2. City</li> <li>3. Location</li> <li>4. Building</li> <li>5. Floor</li> <li>6. Postal Address</li> <li>7. Name and email of contact person.</li> </ol>
6	Current Trade License Registration Number and Expiring date	
7	Name, country and full address ( <i>postal and physical addresses, email, and telephone number</i> ) of Registering Body/Agency	
8	Description of Nature of Business	
9	Maximum value of business which the Tenderer handles.	
10	State if Tenders Company is listed in stock exchange, give name and full address ( <i>postal and physical addresses, email, and telephone number</i> ) of state which stock exchange	

## General and Specific Details

a) **Sole Proprietor**, provide the following details.

Name in full \_\_\_\_\_

Age \_\_\_\_\_

Nationality \_\_\_\_\_

Country of Origin \_\_\_\_\_

Citizenship \_\_\_\_\_

b) **Partnership**, provide the following details

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

c) **Registered Company**, provide the following details.

i) Private or public Company

ii) State the nominal and issued capital of the Company: -

Nominal Kenya Shillings (Equivalent)

\_\_\_\_\_

Issued Kenya Shillings (Equivalent)

\_\_\_\_\_

iii) Give details of Directors as follows.

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

d) **DISCLOSURE OF INTEREST**-Interest of the Firm in the Procuring Entity.

i) Are there any person/persons  
in.....(*Name of Procuring  
Entity*) who has/have an interest or relationship in this firm?

Yes/No.....

If yes, provide details as follows.

	Names of Person	Designation in the Procuring Entity	Interest or Relationship with Tenderer
1			
2			
3			

e) **Conflict of interest disclosure**

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
1	Tenderer is directly or indirectly controlled by or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Tender has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process.		
5	Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender.		
6	Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract specified in this Tender		

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
	Document.		
7	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract.		
8	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision of the such Contract.		
9	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.		

**f) Certification**

On Behalf of the Tenderer, I certify that the information given above is complete, current and accurate as at the date of submission.

Full Name

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Title or Designation

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Stamp

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*(Signature)*

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*(Date)*