



PUBLIC PRIVATE PARTNERSHIP (PPP) PROJECT

**2nd NYALI BRIDGE
Mombasa**

**DESIGN, FINANCING, CONSTRUCTION, OPERATION, MAINTENANCE AND
TRANSFER**

Tender Number: KURA/PPP/HQ/002/2017-2018

**REQUEST FOR QUALIFICATION (RFQ)
UPDATED FOR ADDENDUMS 1 AND 2**

28 July 2017

**The Director General
Kenya Urban Roads Authority
PO Box 41727 – 00100
NAIROBI**

DISCLAIMER

The information provided to Prospective Bidder(s) in this Request for Qualification (RFQ) or which is made available during the procurement process in connection with any further enquiries and any other information, whether verbal or written, provided by Kenyan Urban Roads Authority (KURA) or any of its employees or advisors, or on behalf of KURA, is provided on the terms and conditions set out in this RFQ and such other terms and conditions as may be set out by KURA from time to time. Further the information is made available by KURA to Prospective Bidders on the condition that it is used solely for the purpose of the procurement process of the RFQ, and any subsequent RFP, and for no other purpose. Unless otherwise specified, capitalised terms used in this Disclaimer have the meaning assigned to them in this RFQ.

The RFQ is not an agreement nor an offer by KURA to the Prospective Bidders or any other person. KURA, its employees and advisors are not bound by any of the contents of the RFQ. The purpose of the RFQ is to provide interested parties with information to assist them in preparing their Qualification Documents pursuant to the RFQ. The RFQ includes statements that reflect various assumptions and assessments arrived at by KURA in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Prospective Bidder may require in order to submit Qualification Documents. The RFQ may not be appropriate for all persons, and it is not possible for KURA, its employees or advisors to consider the investment objectives, finances and needs of any person who reads or uses the RFQ. The assumptions, assessments, statements and information contained in the RFQ and any other associated documents may not be complete, adequate, accurate or correct. Each Prospective Bidder should, therefore, conduct its own investigations and analysis and should check the completeness, adequacy, accuracy, correctness, and reliability of the assumptions, assessments, statements and information contained in the RFQ and obtain independent professional advice from appropriate sources.

Information provided in the RFQ is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of legal or statutory requirements and should not be regarded as a complete or authoritative statement of law.

Whilst reasonable care has been taken in preparing this RFQ, the RFQ does not purport to be comprehensive or to have been verified by KURA, its officials, officers, employees or advisors or any other person. Neither KURA nor any of its officials, officers, employees or advisors accept any liability or responsibility for the adequacy, accuracy or completeness of any of the information or opinions stated in any document.

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

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

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

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

Each Prospective Bidder shall comply with the requirements of the Qualification Document. In no event shall a Prospective Bidder be allowed to modify the Qualification Documents requirements, even if in its opinion, it offers improved terms to KURA than that required herein.

This RFQ is provided solely for the purpose set out in this notice and is not intended to form any part or basis of any investment decision by Prospective Bidders. The recipient should not consider this document as an investment recommendation by KURA or any of its officials, officers, employees or advisers. Each person to whom this document (and other later documents) is made available must make his, her or its own independent assessment of the Project after making such investigation and taking such professional advice as he, she or it deems necessary. Neither the receipt of this document or any related document by any person, nor any information contained in the documents or distributed with them or previously or subsequently communicated to any Prospective Bidder or its advisers, is to be taken as constituting the giving of investment advice by KURA or its officials, officers, employees or advisers.

TABLE OF CONTENTS

INTRODUCTION.....	1
1. DEFINITIONS	2
2. THE BIDDING PROCESS	9
3. TERMS AND CONDITIONS	12
4. MINIMUM QUALIFICATION REQUIREMENTS.....	21
5. QUALIFICATION DOCUMENTS	24
6. SUBMISSION AND VALIDITY OF QUALIFICATION DOCUMENTS	26
7. OPENING OF QUALIFICATION DOCUMENTS	29
8. EVALUATION OF QUALIFICATION DOCUMENTS	29
9. DISQUALIFICATION OF PROSPECTIVE BIDDERS	30
10. PRE-QUALIFIED BIDDERS AND NOTICE OF QUALIFICATION	30
11. ACCEPTANCE OF TERMS AND CONDITIONS AND OF GOVERNING LAW	31
Annex QD-1A NOTARIZED APPLICATION FOR PRE-QUALIFICATION	32
Annex QD-1B NOTARIZED AUTHORITY TO APPLY TO PRE-QUALIFY AND DESIGNATE AN AUTHORIZED REPRESENTATIVE	35
Annex QD-1C CONSORTIUM MEMBER'S NOTARIZED AUTHORITY TO PARTICIPATE IN CONSORTIUM AND APPLY TO PRE-QUALIFY, AND DESIGNATE LEAD MEMBER AND OTHER CONSORTIUM MEMBERS	37
Annex QD-2A BUSINESS STRUCTURE (FOR A PROSPECTIVE BIDDER WHICH IS A SINGLE PROSPECTIVE BIDDER).....	39
Annex QD-2B BUSINESS STRUCTURE (FOR A PROSPECTIVE BIDDER WHICH IS A CONSORTIUM)	43
Annex QD-3 BASIC INFORMATION SHEET	48
Annex QD-4 PPP EXPERIENCE.....	51
Annex QD-5 CONSTRUCTION EXPERIENCE	54
Annex QD-6 OPERATIONS AND MAINTENANCE EXPERIENCE	58
Annex QD-7 FINANCIAL QUALIFICATION.....	60
Annex QD-8: FINANCIAL LETTER OF SUPPORT	63
Annex QD-9A: INDICATIVE FORM OF LETTER OF SUPPORT FROM RELEVANT BANK AND FINANCIAL INSTITUTION.....	63
Annex QD-9B LETTER OF COMMITMENT FROM PROSPECTIVE BIDDER/ CONSORTIUM MEMBER.....	65
Annex QD-10 CERTIFICATION OF ABSENCE OF UNSATISFACTORY PERFORMANCE RECORD.....	66
Annex ID-1 PROJECT MANAGEMENT	67
SCHEDULE 1: TEMPLATE FOR QUERIES AND COMMENTS ON RFQ.....	69
APPENDIX-1: SUMMARY OF MINIMUM QUALIFICATION REQUIREMENTS.....	70

GOVERNMENT OF KENYA

KENYA URBAN ROADS AUTHORITY

INTRODUCTION

The Kenya Urban Roads Authority (KURA) invites Prospective Bidders to apply for Qualification and submit Bids for the design, financing, construction, operation, maintenance and transfer of the Project (2nd Nyali Bridge) pursuant to a two-stage open competitive bidding process in accordance with the PPP Act and the PPP Regulations, the applicable provisions of which are incorporated herein by reference. The Project consists of construction, operation and maintenance of a new bridge between Mombasa Island and the Mombasa North Coast Mainland (0.6km), new bridge approach ramps (0.4km) and a new road at Kongowea (1.4km); and expansion of Abdel Nasser Road (0.5km) and Links Road (4km), together with new road interchanges¹.

The purpose of this RFQ is to allow KURA to establish a short list of Pre-qualified Bidders who are adjudicated to be sufficiently experienced organisations which meet the technical, financial and other requirements that KURA considers that the successful bidder must have (see also Section 4 below).

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

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

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

KURA therefore seeks responses from experienced and committed organisations who wish to be pre-qualified and in due course be given the opportunity to bid to undertake the Project.

¹ All distances are approximate

1. DEFINITIONS

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

Addendum / Clarification means written instructions or guidance issued by KURA including (but not limited to) further instructions, scheduling changes, information updates, clarifications and the response to any queries made by the Prospective Bidders in relation to this RFQ and made available online by KURA at www.kura.go.ke.

Affiliate means, in relation to a Prospective Bidder or a Consortium Member, any person having Control of that Prospective Bidder or Consortium Member, or any person over which such Prospective Bidder or Consortium Member has Control or is under the common Control with such person. For the avoidance of doubt, a Subsidiary of a Prospective Bidder or a Consortium Member is also an Affiliate.

Audited Financial Statements means the financial statements of an Entity, prepared in accordance with International Financial Reporting Standards (IFRS), duly attested to provide a true and fair view in accordance with IFRS by an auditor who is certified to do so. For an Entity which does not have its financial statements prepared in accordance with IFRS, Audited Financial Statements shall mean the financial statements prepared on a non-IFRS basis and certified by an auditor certified to do so.

Bid means the documents in their entirety submitted by a Pre-Qualified Bidder to KURA in response to the RFP.

Bid Amount means the amount quoted by the Pre-Qualified Bidder in the Financial Proposal which will be evaluated in accordance with the financial Evaluation Criteria set out in the RFP.

Bidding Documents means:

- (i) the RFP together with all of its annexes, schedules, appendices and attachments, including all modifications, amendments, clarifications, replies to any queries and information issued by KURA;
- (ii) the draft Project Agreement together with all its Schedules, annexes, appendices and attachments; and
- (iii) such other documents as may be provided by KURA in relation to the RFP.

Bidding Process means the two-stage procurement process for the selection of a Successful Bidder commencing on the date this RFQ is published and expiring on the date of Financial Close or such other date as may be determined by KURA.

Bid Security means the security by way of an irrevocable bank guarantee to be provided by the Pre-Qualified Bidder as a part of its Bid, in substantially the form set out in the RFP.

Bid Stage means the period commencing on the date that the RFP is issued to Pre-Qualified Bidders and expiring on the date of Financial Close or such other date as may be determined by KURA.

Bid Stage Schedule means the indicative schedule for the Bid Stage as set out in Table 2 in Section 2 of this RFQ.

Bid Submission Date means the last date and time by which Pre-Qualified Bidders must submit their Bids to KURA in accordance with the terms of the RFP.

Business Day means any day of the week other than Saturdays, Sundays or public holidays in Kenya.

Competitive Dialogue means the competitive dialogue procedure to be carried out in accordance with section 45 of the PPP Act.

Conflict of Interest is defined in Section 3(b) of this RFQ.

Consortium means an association of two or more Entities bound by a consortium agreement entered into by them for the purpose of Pre-Qualifying to Bid for the Project.

Consortium Member means an Entity that is a member of a Consortium and which is a party to the consortium agreement.

Construction Contractor means an Entity, proposed by the Prospective Bidder in the Qualification Documents to undertake the construction works under the Project Agreement.

Construction Experience means the experience described under Section 4.2.1 (B) of this RFQ.

Contractor means a Construction Contractor or an O&M Contractor.

Control means in relation to a person:

- (i) holding or controlling, directly or indirectly, a majority of voting rights exercisable at shareholder meetings (or the equivalent) of that person; or
- (ii) having, directly or indirectly, the ability to appoint or remove a majority of the directors or partners; or
- (iii) having, directly or indirectly, the ability to direct or procure the direction of the management and policies of that person, whether through ownership of shares, by contract or otherwise; or
- (iv) having the ability, directly or indirectly, whether alone or together with another, to ensure that the affairs of that person are conducted in accordance with his or its instructions or wishes;

and the term **controlling** shall be construed accordingly.

Corrupt Practice, Fraudulent or Dishonest Practice, Collusive Practice, Coercive Practice, Undesirable Practice, and Restrictive Practice are defined in Section 3 (f) of this RFQ.

Day means a calendar day, unless otherwise specified.

Eligible Bridge Construction Project means an Eligible Project carried out by the Prospective Bidder or a Qualifying Shareholder or a Construction Contractor, in each case as the Main or Principal Contractor, in which construction has been completed in the ten (10) years preceding the RFQ Submission Date, and which includes a bridge over a waterway where (i) the bridge's total length, measured from abutment to abutment, is at least 400 metres; and (ii) the bridge's longest span is greater than or equal to 200 metres.

Eligible Construction Project means an Eligible Bridge Construction Project or an Eligible Urban Road Construction Project.

Eligible O&M Project means an Eligible Project carried out by the Prospective Bidder or a Qualifying Shareholder or by any Subsidiary or Eligible SPV or an O&M Contractor under a performance based O&M contract in respect of road(s), in each case as the Main or Principal Contractor, with an operation and maintenance period of not less than five (5) years (post-construction completion), ongoing or completed in the ten (10) years preceding the RFQ Submission Date.

Eligible PPP Project means an Eligible Project in the road and/or bridge sectors with a capital value of at least USD 150 million procured as a PPP design, construct, finance, operate and maintain project having been in operation (post-construction completion) for not less than one (1) year preceding the RFQ Submission Date in which the Prospective Bidder or a Qualifying Shareholder or their Affiliate held a minimum five percent (5%) shares in the project company responsible for the Eligible PPP Project at any time during the five (5) year period preceding the RFQ Submission Date.

Eligible Project means a Project proposed by a Prospective Bidder to count towards the Minimum Qualification Requirements.

Eligible SPV means a project company formed as a special purpose vehicle where the Prospective Bidder or the Qualifying Shareholder holds no less than 26% (twenty six percent) shares and the special purpose vehicle is directly rendering or has rendered O&M services on an Eligible O&M Project

Eligible Urban Road Construction Project means an Eligible Project carried out by the Prospective Bidder or a Qualifying Shareholder or a Construction Contractor, in each case as the Main or Principal Contractor, in which construction has been completed in the ten (10) years preceding the RFQ Submission Date, and which comprises or includes the construction and /or substantial upgrade of bituminous roads in an Urban Environment, with a capital value of at least USD 20 million.

Entity for the purpose of this RFQ means a person which is a company or partnership or corporation.

Evaluation Criteria means the criteria set out in the RFP, including the technical and financial criteria.

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

Financial Qualification Requirements means all the requirements as set out in Section 4.2.2.

Financial Proposal means, inter-alia, the Financial Model, Financial Plan and the Bid Amount submitted by the Pre-Qualified Bidder as part of its Bid.

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

Infrastructure Projects means construction, development, rehabilitation, operation or management of an asset or facility in the following sectors: roads (including highways, expressways, motorways, bridges and tunnels), power, telecom, ports, airports, railways, metro rail, industrial parks/ estates, logistic parks, oil and gas, pipelines, irrigation, water supply, sewerage, and for the purpose of this RFQ shall exclude any asset or facility relating to real estate development.

KeNHA means the Kenya National Highways Authority.

KURA means the Kenya Urban Roads Authority and shall include the Pre-Qualification Committee or any other committee or group or team or board that KURA may set up in relation to the Bidding Process or for any purpose thereof pursuant to provisions of the PPP Act and the PPP Regulations.

Lane means the carriageway lane of an Eligible Project including the lane of the service road and slip road but excluding the paved shoulders, emergency lane, non-motorised lanes and lay byes.

Lane-km means the number of Lanes of a section of road multiplied by the distance of that section, measured in kilometres.

Latest Audited Financial Statements means Audited Financial Statements in respect of the year ended not earlier than 15 months prior to the RFQ Submission Date.

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

Letter of Award means the letter issued by KURA to the Successful Bidder listing any further requirements to be fulfilled prior to signing of the Project Agreement.

Lock-In Period means a period specified under the Project Agreement during which, inter-alia, the Lead Member and the Qualifying Shareholders shall hold and maintain their shareholding in the Project Company and shall be precluded from transferring any of their shares held in the Project Company.

Main or Principal Contractor shall be one who contracts for the completion of an entire project, including directly or indirectly purchasing all materials, hiring and paying subcontractors and coordinating all the work.

Minimum Qualification Requirements means the Technical Qualification Requirements, the Financial Qualification Requirements and Other Qualification Requirements set out in Section 4.

Net Worth means:

- (i) where the Prospective Bidder is an Entity, the amount by which the total assets of such an Entity and its Affiliates exceed its total liabilities based on its Latest Audited Financial Statements; Provided however, that only an Affiliate whose Net Worth exceeds USD 50 million shall be considered as counting towards Minimum Financial Requirements;
- (ii) where the Prospective Bidder is a Consortium, the amount by which the aggregate assets of the Qualifying Shareholders and their Affiliates exceed their aggregate liabilities based on their Latest Audited Financial Statements; Provided however, only a Qualifying Shareholder or Affiliate whose net Worth exceeds USD 50 million shall be considered as counting towards the Minimum Financial Requirements;
- (iii) with reference to a Prospective Bidder or a Qualifying Shareholder or an Affiliate which is a closed investment fund, the available funds which have yet to be committed to projects shall be provided as evidence of Net Worth together with a declaration by its authorised representative that the anticipated investment in the Project by such investment fund falls within the investment fund's country and sectoral limits, taking into account investments held as on the RFQ Submission Date. Certified copy of its charter documents should be provided as a true and correct copy by its authorized representative.

However, if in the Financial Statements of an Entity the Net Worth of its Affiliate has already been considered and consolidated, then for the purposes of calculating the Net Worth of such Entity, the Net Worth of the Affiliate equal to the percentage of shareholding of such Entity in the Affiliate will not be counted towards calculation of Net Worth.

O&M Contractor means an Entity proposed by the Prospective Bidder in the Qualification Documents to undertake the operation, maintenance and management of the Project.

Operation and Maintenance (O&M) Experience means the experience described under Section 4.2.1 (C) of this RFQ.

Other Qualification Requirements means all the requirements set out in Section 4.2.3 of this RFQ.

Participation Fee means a non-refundable fee, in an amount of 100,000 Kenyan Shillings, to be paid to KURA by a Prospective Bidder in accordance with the requirements as set out in Section 3 (j) (ii).

Post-Award Requirements means any further requirements set out in the Letter of Award that are to be fulfilled by the Successful Bidder.

PPP Act means the Public Private Partnerships Act, 2013 (Act No. 15 of 2013), as amended or substituted from time to time.

PPP Experience means the experience described under Section 4.2.1 (A) of this RFQ.

PPP Regulations means the Public Private Partnerships Regulations, 2014, as amended from time to time.

Preferred Bidder means the Pre-Qualified Bidder whose Bid has been evaluated by KURA to be the best in accordance with the Evaluation Criteria and with whom KURA may hold further negotiations in accordance with the PPP Act and the terms of the RFP.

Pre-Bid Conference means the meeting to be convened by KURA pursuant to issuance of the RFP, the date, time and venue of which will be advised in writing to the Pre-Qualified Bidders.

Pre-Qualified Bidder means a Prospective Bidder who has Pre-Qualified to participate in the Bid Stage for the Project, in accordance with the terms of this RFQ.

Pre-Qualification Committee means the committee established for the Project pursuant to Section 39 of the PPP Act.

Pre-Qualification Conference means the meeting to be convened by KURA pursuant to issuance of this RFQ, the date, time and venue of which is specified in Section 3 (n).

Pre-Qualification Stage means the first stage of the Bidding Process commencing on the date that the RFQ is issued and expiring on the notification of results of evaluation of the Qualification Documents in accordance with the PPP Act and PPP Regulations; and the terms **Pre-Qualification, Pre-Qualify** and **Qualify** shall be construed accordingly.

Pre-Qualification Stage Schedule means the schedule for the Pre-Qualification Stage as set out at Table 1 in Section 2 (a) of this RFQ unless amended by issue of an Addendum / Clarification by KURA.

Prohibited Person means, in relation to (i) a Prospective Bidder or any of its Consortium Members, or (ii) a proposed Contractor, whose experience is proposed to meet the Minimum Qualification Requirements or (iii) an Affiliate or an Eligible SPV, which:

- (i) has been named on a list of sanctioned persons promulgated by the United Nations Security Council or its committees pursuant to resolutions under Chapter VII of the Charter of the United Nations;
- (ii) has been named on the list of ineligible firms of the international financial institutions including, inter alia, the World Bank, African Development Bank Group, European Investment Bank, European Bank for Reconstruction and Development, Asian Development Bank and Inter-American Development Bank; or
- (iii) is listed on a list, published by the Government of Kenya or the Central Bank of Kenya, of persons prohibited by the Government of Kenya from involvement in transactions with them or is an agency thereof; or

- (iv) is a person who has had their service or project contracts terminated by the Government of Kenya for poor or unsatisfactory performance and or inability to deliver the work they were contracted to do; or
- (v) is a person from a country with which the Republic of Kenya is at war; or
- (vi) is or has been involved in any Corrupt, Fraudulent, Collusive, Coercive, Undesirable, or Restrictive Practice or having a Conflict of Interest insofar as the current Project is concerned.

Project means the design, financing, construction, operation, maintenance and transfer of the 2nd Nyali Bridge as is described in more detail in the PIM.

Project Agreement means the contract to be entered into by KURA and the Project Company in respect of the Project.

Project Company means a special purpose vehicle (SPV) to be established under the Companies Act, 2015 by the Successful Bidder, in accordance with the provisions of the PPP Act, for the sole purpose of entering into the Project Agreement with KURA and implementing the Project in terms thereof.

Project Manager means the Project Manager identified at Section 3(j).

Project Information Memorandum or PIM means the document describing the Project available online at www.kura.go.ke.

Project Team means representatives of KURA together with the Transaction Advisor and any other person as may be provided under the PPP Act or PPP Regulations.

Prospective Bidder means any Entity or Consortium that submits a response to this RFQ.

Public Entity has the meaning ascribed to it in the Public Procurement and Asset Disposal Act, 2015, as amended from time to time.

Qualification Documents means the documents listed at Section 5 of this RFQ.

Relevant Bank and Financial Institution means banks and financial institutions that have loaned debt finance to private sector parties for at least three (3) Infrastructure Projects in emerging market economies with minimum debt finance of USD 25 million each at any time during the 10 years preceding the RFQ Submission Date with the repayment period for such debt being five years or more. An emerging market economy means the countries falling under (i) Upper middle income, (ii) Lower middle income and (iii) Low Income; as categorised under the World Bank Country and Lending Groups. (Ref: <https://datahelpdesk.worldbank.org/knowledgebase/topics/19280-country-classification>). For purposes of calculating the minimum debt finance where the currency of debt financed is other than USD, refer Section 3 (q) for the applicable exchange rate.

Qualifying Shareholder means, with reference to a Prospective Bidder which is formed of a Consortium, a Consortium Member who undertakes to hold not less than ten percent (10%) of the shares in the Project Company and is named as a Qualifying Shareholder in the form at **Annex QD-1C**.

Request for Proposal or RFP means the Request for Proposal document, including all its annexures, schedules and appendices to be made available to the Prequalified Bidders at the Bid Stage and shall be deemed to include all amendments, revisions or alterations thereto.

Request for Qualification or RFQ means this document including all Annexes, Schedules, PIM, Appendices and as may be varied or modified any Addendum / Clarification.

RFQ Submission Date means the date provided in Section 6.3.1, as may be amended by KURA in accordance with this RFQ.

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

Successful Bidder means the Preferred Bidder to whom a Letter of Award is issued in accordance with the terms of the PPP Act and the PPP Regulations.

Technical Proposal means all the information and documents forming part of a Bid (excluding the Financial Proposal).

Technical Qualification Requirements means all the requirements set out in Section 4.2.1 of this RFQ.

Transaction Advisor means Deloitte Consulting Limited, the consulting arm of Deloitte & Touche (Kenya) in association with Deloitte Touche Tohmatsu India LLP.

Unsatisfactory Performance means in relation to any Eligible Project, the failure or expulsion of, or the breach of obligations by a Prospective Bidder or by any of its Consortium Members, or by a proposed Affiliate, or by a proposed Eligible SPV, or by a proposed Contractor, whose experience is relied upon by the Prospective Bidder to meet the Minimum Qualification Requirements. Notwithstanding the generality of the foregoing, Unsatisfactory Performance shall include:

- (i) the failure of such Prospective Bidder, any of its Consortium Members, or a proposed Affiliate, or a proposed Eligible SPV, or Contractor to satisfactorily perform any of its material obligations in such Eligible Project, due to the imposition of a judicial pronouncement or arbitration award;
- (ii) the expulsion of the Prospective Bidder, any of its Consortium Members, or a proposed Affiliate, or a proposed Eligible SPV or Contractor from such Eligible Project, due to any reason, including a pending or final judicial, administrative or arbitral ruling, decision or award;
- (iii) the breach of the obligations by the Prospective Bidder, any of its Consortium Members, an Affiliate, or a proposed Eligible SPV, or Contractor, resulting in the termination or suspension of any such Eligible Project; or
- (iv) a record of significant performance-linked litigation, penalties or other sanctions-based impositions over the ten (10) years immediately preceding the RFQ Submission Date.

Urban Environment means within the limits of a city, town or municipal authority.

USD means the legal currency of United States of America.

1.2 Capitalised words and expressions not defined herein, but defined in the PPP Act or PPP Regulations, shall unless contrary to the context herein bear the meaning ascribed thereto under the PPP Act or the PPP Regulations.

1.3 General Rules of Interpretation

- (a) In case of ambiguities or discrepancies within this RFQ, the following rules of interpretation shall apply:
 - (1) between two or more Sections of this RFQ, the provisions of the specific Section relevant to the issue under consideration shall prevail over those in other Sections;

- (2) between the Sections of this RFQ and the Annexes, the Sections shall prevail;
- (3) between any two Annexes, the Annex relevant to the issue shall prevail; and
- (4) between any value written in numerals and that in words, the latter shall prevail.

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

(b) Unless the context otherwise requires:

- (1) “**Include**”, “**includes**”, and “**including**” are deemed to be followed by “**without limitation**” or “**but not limited to**”, whether or not actually followed by such words or words of like import.
- (2) References to any Annex or Schedule or Appendix shall be deemed to include references to such document as amended, supplemented, novated, varied or replaced from time to time.
- (3) Reference to a person includes Entity and also such person’s successors and permitted assigns.
- (4) References to any gender include all genders, and references to the singular include the plural, and vice versa.
- (5) References to any Sections or Annexes or Schedules or Appendices are to Sections or Annexes or Schedules or Appendices to this RFQ unless stated otherwise.
- (6) Headings are for convenience only and shall not affect the interpretation or construction of any provision.
- (7) References to a “**month**” shall be to a calendar month, and to a “**year**” shall be to a period of time commencing on a particular date and ending on the day before the anniversary of such date.

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

2. THE BIDDING PROCESS

a. An indicative timeline for the Bidding Process is shown in the following tables. The following timeline may be subject to change by KURA.

Table 1: RFQ Schedule

Event/ Activity Description	Responsible Party	Target period date/time
PRE-QUALIFICATION STAGE		
Publication of Pre-Qualification notice	KURA	28 th July 2017
Publication of the RFQ	KURA	28 th July 2017
Pre-Qualification Conference	KURA	26 th September 2017

Event/ Activity Description	Responsible Party	Target date/time period
Last date for submission of queries on the RFQ	Prospective Bidders	Fourteen (14) Days before the RFQ Submission Date
Last date for replying to the queries of the Prospective Bidders	KURA	Seven (7) Days before the RFQ Submission Date
RFQ Submission Date	Prospective Bidders	9th November 2017
Opening of all Qualification Documents received	KURA	9th November 2017
Notification of results of evaluation of the Qualification Documents	KURA	4th December 2017
Publication of the prequalified Bidders	KURA	4th December 2017

Table 2: Indicative Bid Stage Schedule

Event/ Activity Description	Responsible Party	Target date/time period
BID STAGE		
Issuance of draft RFP together with the draft Project Agreement including Schedules thereto	KURA	January 2018
Site visit	KURA / Pre-Qualified Bidders	February 2018
Pre-Qualified Bidders Conference	KURA / Pre-Qualified Bidders	February 2018
Competitive Dialogue: Including discussion of high level conceptual bridge design and non-binding indicative costing	KURA/ Pre-Qualified Bidders	March/April 2018
Issuance of final RFP together with the final Project Agreement including Schedules thereto	KURA	May 2018
Last date for replying to the queries of the Pre-Qualified Bidders	KURA	May 2018
Bid Submission Date	Pre-Qualified Bidders	June 2018
Opening of Technical Proposals	KURA	June 2018
Notification of the results of evaluation of the Technical Proposals	KURA	June 2018
Opening of Financial Proposals	KURA	July 2018
Completion of Evaluation of Financial Proposals and Ranking of Bidders	KURA	August 2018

Event/ Activity Description	Responsible Party	Target date/time period
PPP Committee Approval of Tender Evaluation Report	PPP Unit/Committee	August 2018
Finalisation of negotiations between KURA and the Preferred Bidder	KURA/Preferred Bidder	September 2018
PPP Committee approval of Project and Financial Risk Assessment (or Negotiation) Report	PPP Unit, Debt Management Office & PPP Committee	October 2018
Approval of Project	Cabinet	November 2018
Issuance of Letter of Award to the Successful Bidder	KURA	November 2018
Compliance by the Successful Bidder of the Post-Award Requirements	Successful Bidder	December 2018
Issuance of notice of compliance with all Post-Award Requirements	KURA	December 2018
Signing of Project Agreement	KURA and Successful Bidder	December 2018
Publication of the results of the Tender	KURA	December 2018
Financial Close/ Project Agreement effectiveness	KURA and Successful Bidder	Q2 2019

b. All references to dates, Days, Business Days and time shall refer to Kenya Standard Time (KST).

c. Modification of Pre-Qualification Stage & Bid Stage Schedule

KURA may, at its sole discretion, issue an Addendum / Clarification at any time to amend, modify, and substitute the RFQ, the Pre-Qualification Stage process and requirements, the Bid-Stage process and requirements, the Pre-Qualification Stage Schedule and/or the Bid-Stage Schedule set out above, including the RFQ Submission Date. Prospective Bidders are encouraged and advised to refer to / visit the website www.kura.go.ke regularly for any Addendum / Clarification posted by KURA and failure on part of the Prospective Bidder or any Consortium Member/Affiliate/Eligible SPV and Contractor to keep themselves updated shall not incur any liability or responsibility of KURA towards such Prospective Bidder or any Consortium Member/Affiliate/Eligible SPV and Contractor.

d. Bid Stage

Following the selection and announcement of Pre-Qualified Bidders, KURA (should KURA elect to continue the Bidding Process) will conduct the Bid Stage as follows:

- i. KURA shall issue a notice to all Pre-Qualified Bidders announcing the names of the Pre-Qualified Bidders to whom the RFP will be issued. The RFP will provide details on the form and content of the Bid and procedures to be followed for the Bid preparation, submission, and evaluation by KURA, and post-Bid submission requirements.
- ii. The draft Project Agreement will be provided as part of the draft RFP and KURA will invite Pre-Qualified Bidders to comment, seek clarification and raise queries on the Project Agreement in advance of and during the Pre-Bid Conference and subsequent Competitive Dialogue process (to be defined in the RFP).
- iii. KURA will also confirm the date, time and venue of the Pre-Bid Conference, to which all Pre-Qualified Bidders will be invited.

- iv. KURA shall respond in writing to queries raised during the Pre-Bid Conference, Competitive Dialogue meetings and at any other time specified in the RFP.
- v. Bidders may submit written queries and requests for clarifications on the RFP up to the date falling fourteen (14) Days before the Bid Submission Date. KURA will respond to all requests for clarification by way of Addendum / Clarification omitting the identity of the Pre-Qualified Bidder that sought the clarification, save that any query submitted during the Competitive Dialogue Process shall be deemed confidential as between each Pre-Qualified Bidder and KURA. KURA also reserves the right not to answer any question it receives from Pre-Qualified Bidders.
- vi. Following the submission of Bids, KURA will firstly review the Technical Proposals. KURA will return the Financial Proposal and Bid Security of all Pre-Qualified Bidders whose Technical Proposal does not meet the minimum technical parameters as prescribed in the RFP.
- vii. Only those Bids containing a Technical Proposal, which is compliant and is assessed as being capable of meeting the standards specified in the RFP shall progress to the evaluation of the Financial Proposal.
- viii. The Financial Proposal evaluation will include the analysis, evaluation and comparison of the Financial Proposals of the Pre-Qualified Bidders, based on the parameters set out in the RFP.
- ix. Following analysis and evaluation of the Financial Proposals, KURA shall rank the Bids in accordance with the parameters stated in the RFP to determine the Preferred Bidder.
- x. For the opening of the Technical Proposal, KURA will invite Pre-Qualified Bidders to attend the opening sessions, and to sign a register of attendance. For the opening of the Financial Proposals, KURA shall invite only those Pre-Qualified Bidders whose Technical Proposals have progressed in accordance with Section 2 (vii) above.
- xi. KURA (in its sole discretion) may elect to conduct further negotiations with the Preferred Bidder and upon satisfactory completion of all such negotiations KURA may (in its sole discretion) issue a Letter of Award selecting the Preferred Bidder as the Successful Bidder. In addition, KURA may request the second ranked Pre-Qualified Bidder to extend the validity of its Bid including the Bid Security, pending completion of negotiations with the Preferred Bidder.
- xii. The Successful Bidder shall be required to comply with all the requirements stated in the Letter of Award. Failure to comply with any such requirements (unless any such requirement is waived by KURA) will result in forfeiture of the Bid Security and the cancellation of the Letter of Award.
- xiii. Where the Successful Bidder or any of its Qualifying Shareholders has relied upon the credentials of its Affiliate(s) to satisfy any or all of the Minimum Qualification Requirements, such Affiliate(s) shall be required to comply with the conditions of the Bidding Documents in addition to the requirements of Section 4.2.3 (i) herein. Failure to do so may result in disqualification of the Successful Bidder and forfeiture of the Bid Security or the Performance Security as the case may be.

3. TERMS AND CONDITIONS

a. Eligibility

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

b. Conflict of Interest

- i. Prospective Bidders or each Consortium Member (if the Prospective Bidder is a Consortium) including in each case their Affiliates, Eligible SPV and any Contractor of the Prospective Bidders must not have any Conflict of Interest. The assessment of the existence of a Conflict of Interest shall be based on the facts of each case.

- ii. Without limiting the generality of what could constitute a Conflict of Interest, a Prospective Bidder shall be considered to have a Conflict of Interest, under any or all of the following circumstances:
 - a) a Prospective Bidder, any Consortium Member, or any of the Affiliates or Eligible SPVs of the Prospective Bidder or that of the Consortium Members, or a Contractor, is also a Consortium Member of another Prospective Bidder, or an Affiliate or Eligible SPV or a Contractor thereof;
 - b) a Prospective Bidder, any Consortium Member, or any of the Affiliates or Eligible SPVs of the Prospective Bidder or that of the Consortium Members, or a Contractor has common shareholder(s) that hold in excess of ten percent (10%) of the shares or voting rights of another Prospective Bidder or a Consortium Member or any of the Affiliates or Eligible SPVs of such other Prospective Bidder or Consortium Member, or the Contractors;
 - c) a member of the board of directors, partner, officer, employee, professional advisor or agent of a Prospective Bidder, or any Consortium Member, or any of the Affiliates or Eligible SPVs of the Prospective Bidder or that of the Consortium Members, or that of a Contractor who is directly or indirectly involved in the Bidding Process, is also directly or indirectly involved in any capacity related to the Bidding Process for another Prospective Bidder, any Consortium Member of any other Prospective Bidder, or any of the Affiliates or Eligible SPVs of such other Prospective Bidder or Consortium Member, or the Contractors;
 - d) a Prospective Bidder has the same authorized representative for the purposes of Pre-Qualification as any other Prospective Bidder; and/or
 - e) any two or more Prospective Bidders, or Consortium Members of any two or more Prospective Bidders, or any Affiliates or any Eligible SPVs of two or more Prospective Bidders or any of the Consortium Members, or any of their Contractors are Public Entities of Kenya or public institutions or public sector undertakings belonging to the same country.
- iii. Without limiting the generality of what constitutes Conflict of Interest, any of the following shall also be considered a Conflict of Interest:
 - a) a Prospective Bidder, or any of its Consortium Members, or the Affiliates or Eligible SPVs of the Prospective Bidder or that of the Consortium Members, or any of the Contractors, has been directly engaged as a consultant by KURA or KeNHA in the preparation of the RFQ, RFP or any other relevant document or the design, or technical specifications of the Project or in connection with the Bidding Process;
 - b) a Prospective Bidder, or any of its Consortium Members, or the Affiliates or Eligible SPVs of the Prospective Bidder or that of the Consortium Members, or any of their Contractors engages any legal, financial, or technical advisor or consultant who is or was an employee of KURA or Government of Kenya and was involved in the Project in any manner or capacity at any time in the 3 (three) years preceding the RFQ Submission Date; and/or
 - c) a Prospective Bidder, any of its Consortium Members, or the Affiliates or Eligible SPVs of the Prospective Bidder or that of the Consortium Members, or any of the Contractors receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Prospective Bidder, any of its Consortium Members or any of their Affiliates, Eligible SPVs, or Contractors, or has provided any subsidy, grant, concessional loan or subordinated debt to any other Prospective Bidder, any of its Consortium Members, or to the Affiliates or Eligible SPV of such Prospective Bidders or that of their Consortium Members, or any of the their Contractors.
- iv. If a Prospective Bidder, Consortium Member, the Affiliates or Eligible SPV of the Prospective Bidder or that of the Consortium Members, or any of the Contractors, is found to have a Conflict of Interest as defined herein, the Prospective Bidder may be disqualified from further participation in the Bidding Process. If the Conflict of Interest involves another Prospective Bidder, any of its Consortium Members, or their Affiliates, Eligible SPVs or any of its Contractors, such Prospective Bidder may also be disqualified.

c. Warranties

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

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

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

- i. Pursuant to submission of its Qualification Documents, any change in composition or Control of (i) a Prospective Bidder if it is a single Entity or (ii) any Consortium Member if the Prospective Bidder is a Consortium, which results in breach of any of the terms and conditions of this RFQ, the PPP Act and/or the PPP Regulations shall result in automatic disqualification from the Bidding Process of such Prospective Bidder.
- ii. Where a Prospective Bidder or any of its Consortium Members undergoes a change in its composition or Control post submission of the Qualification Documents, it shall immediately following such change and in any event not later than 7 (seven) Days following such change, notify KURA in writing. KURA reserves the right to require the relevant Prospective Bidder to resubmit any Qualification Documents or provide such information with regard to the proposed change. Should any Prospective Bidder fail to advise KURA of any change in composition or Control within 7 (seven) Days of it becoming aware of such change, KURA may in its sole discretion disqualify such Prospective Bidder from the Bidding Process.
- iii. From the date of notification of results of evaluation of the Qualification Documents until such time as the RFP may be issued, KURA may, in circumstances where a Pre-Qualified Bidder experiences a change in its composition due to a Consortium Member, Affiliate, Eligible SPV or a Contractor withdrawing (the "**Withdrawing Participant**"), permit the replacement of the Withdrawing Participant with another Entity, (the "**Replacement Participant**") in its sole discretion and, if applicable, subject to Section 3 (d)(iv) below.
- iv. Change in composition of a Pre-Qualified Bidder shall be permitted by KURA only where:
 - (a) the Lead Member continues to be the Lead Member;
 - (b) the modified Consortium continues to meet the Minimum Qualification Requirements and all other terms and conditions specified under this RFQ;
 - (c) the proposed new Replacement Participant is not a Prohibited Person; and

- (d) the Replacement Participant accepts in writing to the satisfaction of KURA, the Qualification Documents submitted on behalf of the Consortium as if it were a party to it originally.
- v. KURA shall advise all other Prospective Bidders of the changes to the Consortium and such modified Consortium shall thereafter be referred to and considered as a Pre-Qualified Bidder.
- vi. KURA reserves the right to require the relevant Prospective Bidder or the Pre-Qualified Bidder, as the case may be, which has undergone a change in composition or Control to submit such information with regard to the proposed change (including any Qualification Documents) so as to enable it to fully evaluate the consequences of such change and to determine whether the Pre-Qualified Bidder is required to re-qualify under the terms of the RFQ. All approvals for change in control or composition of a Consortium shall be given in writing by KURA.
- vii. Any membership changes in the Consortium under this section shall not under any circumstance exceed one half of the Qualifying Shareholders membership (excluding Lead Member) – and where such proposed membership changes exceed more than half of the total originally named Qualifying Shareholders, regardless of its/their role in the Consortium, the change shall not be approved, and the Consortium may be disqualified from further participation in the Pre-Qualification process.
- viii. Where the Prospective Bidder is an Entity, such Entity cannot be replaced by another Entity and where a Prospective Bidder is a Consortium, such Consortium cannot be replaced by an Entity.
- ix. For the avoidance of doubt KURA is not obliged to extend the RFQ or the RFP Submission Date or amend the Pre-Qualification Stage Schedule or the Bid Stage Schedule to accommodate any change in the composition or Control of a Prospective Bidder or Pre-Qualified Bidder.

e. Ownership of Documents

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

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

- i. The Government of Kenya and KURA are committed to a corruption-free procurement process. If any Prospective Bidder, Consortium Member, Affiliate, Eligible SPV of the Prospective Bidder or a Consortium Member, or Contractor encounters any conduct of corruption on the part of any of the employees, agents and advisors of KURA or the PPP Unit or any agency of the Government of Kenya in connection with this Project and this Bidding Process, such Prospective Bidder, Consortium Member, Affiliate, Eligible SPV of the Prospective Bidder or a Consortium Member, or Contractor is advised to immediately inform, in strictest confidence, the Director General, KURA at dg@kura.go.ke.
- ii. If a Prospective Bidder, any Consortium Member, an Affiliate, and Eligible SPV of the Prospective Bidder or a Consortium Member, or a Contractor is found to have, directly or indirectly, engaged in any Corrupt

Practice, Fraudulent or Dishonest Practice, Collusive Practice, Coercive Practice, Undesirable Practice or Restrictive Practice during the Bidding Process, KURA shall:

- a) disqualify the Prospective Bidder, the Pre-Qualified Bidder or rescind the Letter of Award, without any liability whatsoever towards the Prospective Bidder, Pre-Qualified Bidder or the Successful Bidder, as the case may be or any other person;
- b) seek to impose the maximum penalties for civil and criminal liability available under the applicable law on persons involved in such practices; and
- c) without limitation of time prohibit or disqualify persons involved in such practices from participating in any bidding process run by KURA or the Government of Kenya from the date that they are found to have directly or indirectly engaged in any such practices so described herein.

iii. For the purposes of this Section 3 (f), the following terms shall have the meanings hereinafter assigned to them:

- a) **"Corrupt Practice"** means any of the prohibited acts and omissions punishable under laws of Kenya and relevant rules and procedures, by which a person improperly and unlawfully enriches or benefits himself or others, or induces others to do so, and includes the offering, giving, receiving, or soliciting of anything of value to influence the actions of any person connected with Pre-Qualification or the Bidding Process or the execution of the Project Agreement;
- b) **"Fraudulent or Dishonest Practice"** means any hoax, delusion, falsification, scheme, artifice, dishonesty, trickery, deceit, cheating, misrepresentation, omission, concealment, suppression, non-disclosure or disclosure of incomplete facts, in order to influence the Pre-Qualification or the Bidding Process or the execution of the Project Agreement;
- c) **"Collusive Practice"** means a scheme or arrangement between two or more Prospective Bidders or Pre-Qualified Bidders including the Successful Bidder, with or without the knowledge of the Government of Kenya, designed to establish the Bid Amount at an artificial, or non-competitive level or otherwise to restrict competition in the Bidding Process;
- d) **"Coercive Practice"** means impairing or harming, or threatening to impair or harm, directly or indirectly, or exercising undue influence upon any person or property in order to influence any person's participation in the Bidding Process or the execution of the Project Agreement;
- e) **"Undesirable Practice"** means (i) establishing contact with any person connected with or employed or engaged by KURA with the objective of canvassing or lobbying or (ii) in any manner influencing or attempting to influence the Bidding Process; and
- f) **"Restrictive Practice"** means any act, scheme, plan or agreement such as forming a group, clique, cartel, trust, syndicate, pool and the like or arriving at any understanding or arrangement among Prospective Bidders, Pre-Qualified Bidders (including the Successful Bidder), Consortium Members, Affiliates, Eligible SPVs of any of the above, Construction Contractors or O&M Contractors, with the objective of restricting, subverting or manipulating a full and fair competition in the Pre-Qualification and/ or the Bidding Process.

g. Statement as to the accuracy of the Qualification Documents

The Qualification Documents shall include a statement, in the form of **Annex QD-1A** by the signatories to the Qualification Documents, to the effect that all information and documentation forming part of the Qualification Documents are true and accurate and that the Prospective Bidder (and all of its Consortium Members if the Prospective Bidder is a Consortium and its Affiliates, Eligible SPVs) agrees to be bound

by the terms of this RFQ. If the information provided by any Prospective Bidder is found to be false, incomplete, untrue or inaccurate, KURA (in its sole discretion) shall disqualify such Prospective Bidder and KURA shall be entitled to claim damages for any loss suffered by it as a result thereof.

h. Prospective Bidder who is an Entity

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

i. Prospective Bidder who is a Consortium

- i. Where a Prospective Bidder is a Consortium, the Qualification Documents are to be signed by the authorized representative of the Lead Member.
- ii. As proof of authority of the authorized representative to bind the Lead Member, the Prospective Bidder shall provide a notarized copy, in the form set out in **Annex QD-1B**, of the resolution of the board of directors, or its equivalent, of such Lead Member authorising the representative to sign the Qualifications Documents on its behalf.
- iii. Proof of authorisation by the Consortium Members of the Lead Member to act on behalf of the Consortium is to be included in the Qualification Documents, by way of notarized copies, in the form set out in **Annex QD-1C**, duly signed by the representative authorized by resolution of the board of directors or its equivalent, of each Consortium Member.
- iv. The Lead Member shall be the only person authorized to make statements on behalf of and receive instructions from KURA on behalf of the Prospective Bidder which is a Consortium.
- v. A copy of the agreement entered into by the Consortium Members for the purposes of forming a consortium shall be included in the Qualification Documents, which agreement must clearly set out the relationship between the Consortium Members and their proposed shareholding of each of the Consortium Member in the Project Company. For the avoidance of doubt the Lead Member shall hold no less than twenty six (26%) of the shares of the Project Company, in the event the Consortium is awarded the Project.
- vi. A Consortium Member shall not participate through more than one Prospective Bidder for the purpose of pre-qualifying in terms of the PPP Act.

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

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

a) Kenya Urban Roads Authority (KURA)

Attention: **Project Manager – 2nd Nyali Bridge PPP**
Email: nyalibrIDGEPPP@kura.go.ke

b) Deloitte

Attention: **Mr. John Ponsonby, PPP Advisor**
Email: nyalibrIDGEPPP@deloitte.co.ke

- ii. The Participation Fee may be paid in the form of a banker's cheque from a bank registered in Kenya, or through online transfer to the bank account of KURA, the details of which are provided below:

Bank: Kenya Commercial Bank
Branch: Moi Avenue, Nairobi
Branch Number: 01100
Beneficiary: Kenya Urban Roads Authority – A.I.A.
Reference: Nyalii PPP - [Prospective Bidder company/consortium name]
Account No: 1130723704
Swift code : KCBLKENX

A Prospective Bidder's submission of Qualification Documents shall be accompanied by either a valid bankers' cheque for the Participation Fee in favour of 'Kenya Urban Roads Authority' or proof of its prior payment in the form of a banking slip or remittance advice to KURA. Official receipts for properly made out bankers' cheques may be obtained from the Kenya Urban Roads Authority's finance department at 1st Floor, Tower B, IKM Place, 5th Ngong Avenue during normal working hours at any time prior to the RFQ Submission deadline.

The proof of such payment of Participation Fee to KURA shall be submitted by the Prospective Bidder along with its Qualification Documents. The Qualification Documents submitted by a Prospective Bidder who has not paid the Participation Fee or whose submission does not contain proof of payment may be rejected by KURA and the Prospective Bidder disqualified from the Bidding Process.

The Participation Fee shall be required to have cleared prior to the notification of the shortlisted bidders. KURA reserves the right to disqualify any Prospective Bidder whose funds shall not have cleared by the said date.

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

shall not reveal the identity of the Prospective Bidder who made the query to which such Addendum / Clarification has responded.

k. Non-Compliance

- i. Any material failure on the part of a Prospective Bidder to comply with the terms of this RFQ will result in its Qualification Documents being treated as non-compliant.
- ii. KURA reserves the right to reject any materially non-compliant Qualification Documents without further evaluation of the remaining Qualification Documents, whether compliant or not. KURA in exercising its right to reject non-compliant Qualification Documents can elect to disregard minor deficiencies/ anomalies which do not inhibit its ability to evaluate such Qualification Documents in the manner and as per the procedure set out under this RFQ. Further, having disregarded any such minor deficiency/ anomaly KURA may either opt to ignore such minor deficiencies/anomalies during the evaluation or seek rectification of the same prior to completing the evaluation.

l. Language and attachments/ documents

- i. The Qualification Documents, and all correspondence and documents relating to this RFQ, shall be prepared and written in the English language.
- ii. Supporting documents and printed literature furnished by Prospective Bidders along with the Qualification Documents may be in any other language provided that they are accompanied by an accurate English translation of such document duly translated into English by a translator who shall certify the translation as true and genuine.

m. Responsibilities of Prospective Bidders

- a. Notwithstanding any information express or implied in this RFQ, any additional communications issued by KURA, including any Addendum / Clarification, it is the sole responsibility of any Prospective Bidder to:
 - i. fully acquaint itself with the requirements, terms, and conditions of the Bidding Process;
 - ii. examine this RFQ, and other documents to verify the completeness and accuracy of the information contained in such documents;
 - iii. familiarize itself with all the applicable laws and administrative issuances and regulations of Kenya, whether national or local, that may affect the Bidding Process and the Project;
 - iv. determine and satisfy itself, at its own cost, expense and risk, and by such means as it considers necessary or desirable, as to all matters pertaining to the execution of the Project, including but not limited to the location and nature of the Project; the terrain, geological, meteorological, and hydrological conditions; existing works and plans for future works in the area; existing and planned above ground and sub-level utilities; easements; existing or threatened legal disputes or issues; environmental and social concerns and issues; the requirement and availability of labour, materials, equipment, aggregate sources, water, power, roads, communications and other relevant factors; resource requirements; traffic projections; the financial viability of the Project; risks and contingencies that may affect the cost, duration, execution and completion of the Project.
- b. By submitting the Qualification Documents, a Prospective Bidder shall be deemed to have accepted all of the terms and conditions of this RFQ.

n. Pre-Qualification Conference

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

Date: 26th September 2017

Time: 1000-1600 hours

Venue: Nairobi, Kenya

- ii. No provisions, terms, or conditions of this RFQ shall be modified by statements made at the Pre-Qualification Conference unless these are made in writing and contained in an Addendum / Clarification issued by KURA.
- iii. Attendance at the Pre-Qualification Conference shall not be mandatory, and non-attendance by a Prospective Bidder shall not constitute a ground for any valid claim with respect to the requirement to satisfy all conditions of this RFQ. Bidders are required to register prior to the Pre-Qualification conference via email to the addresses in j(i) above.

o. Frivolous and Vexatious Petition

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

p. Other projects

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

In the event that, following the evaluation process based on the Evaluation Criteria, the Prospective Bidder is to be considered for award of more than one PPP road project, the contracting authority reserves the right to require the applicable Prospective Bidder to demonstrate that they have the necessary technical and/or financial resources to undertake and perform the required works, services and other obligations on more than one project without imposing additional risk on the contracting authority.

q. Applicable exchange rate for currency conversion to USD

- i. Unless otherwise specified, for expressing the value of any currency other than USD in USD equivalent, the applicable exchange rate shall be the daily representative exchange rates published by the International Monetary Fund as on 28th July 2017.
- ii. Where the exchange rate is not published for any currency by the International Monetary Fund, the exchange rate published by the central bank of the country of which the currency is to be converted into USD shall be deemed to be the relevant exchange rate.
- iii. The Prospective Bidder shall, together with its Qualification Documents, state all the exchange rates, the reference date and the definitive source of the exchange rate for the currency used.

- iv. In the event that the Audited Financial Statements of a Prospective Bidder/ Qualifying Shareholder/ Affiliate/ Construction Contractor are prepared in any currency other than USD, then Net Worth figures presented in the Qualification Documents shall be converted by the Prospective Bidder into USD at the relevant exchange rate for the financial year end date to which the Latest Audited Financial Statements were drawn up; and
- v. Turnover figures presented in the Qualification Documents shall be converted by the Prospective Bidder into USD at the average of the relevant 12 month end exchange rates for each of the 3 financial years for which turnover information is required.

4. MINIMUM QUALIFICATION REQUIREMENTS

- (a) KURA has established the following Minimum Qualification Requirements that Prospective Bidders must meet (or surpass) in order to Pre-Qualify. Evaluation of Prospective Bidders' credentials against the Minimum Qualification Requirements will be strictly on a pass/ fail basis. In the event a Prospective Bidder fails to meet any of the Minimum Qualification Requirements, their Qualification Documents will not be considered further and such Prospective Bidder will have failed to Pre-Qualify for the next stage of the Bidding Process.
- (b) The technical and financial qualifications of the permitted Entities (as aggregated where relevant) shall meet or surpass the Minimum Qualification Requirements.
- (c) The Prospective Bidder or a Qualifying Shareholder may, where permitted, use the experience or credentials of its Affiliate(s) or Eligible SPV(s) or Contractors, provided such Affiliate(s), Eligible SPV(s) and Contractors fall within the meaning of an Entity and comply with all requirements under this RFQ.
- (d) KURA reserves the right to disqualify the Successful Bidder and rescind the Letter of Award or terminate the Project Agreement, as the case may be, if (i) any named Qualifying Shareholder fails to hold at least ten percent (10%) shareholding in the Project Company, or (ii) the Lead Member does not hold at least twenty six percent (26%) shareholding in the Project Company until the expiry of the applicable Lock-In Period.
- (e) (i) Consortium Members and Contractors of the same Consortium who have worked together on the same Eligible Project may use such Eligible Project in their experience statements provided that such a project will only be counted once towards the Qualification Requirements of one of them.
- (ii) Two Consortium Members of competing Prospective Bidders who have worked together on the same Eligible Project may both use such Eligible Project in their Qualification Documents.
- (iii) An Eligible Project may qualify as one or more of an Eligible PPP Project, an Eligible Construction Project and an Eligible O&M Project.

4.2.1 TECHNICAL QUALIFICATION REQUIREMENTS

(A) PPP EXPERIENCE

- (i) The Prospective Bidder shall demonstrate that in the five (5) years preceding the RFQ Submission Date, it has experience of undertaking a minimum of four (4) Eligible PPP Projects in accordance with the environmental and social sustainability laws / policies applicable to the project, being either the national laws/policies of the implementing authority of the project or the Equator Principles, the International Finance Corporation (IFC) Performance Standards on Environmental and Social Sustainability or the World Bank Group Environmental, Health and Safety Guidelines, where these have been accepted by the implementing authority. The Prospective Bidder shall confirm that there has not been any fine, out of court settlement or conviction in relation to environmental and social issues arising from the Eligible PPP Projects with respect to the obligations of the developer / project proponent.

The Entity whose Eligible PPP Project is proposed as counting towards these Eligible PPP Projects must provide documents evidencing that it holds or has held a share of not less than five percent (5%) in the project company responsible for the Eligible PPP Project.

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

The Prospective Bidder itself or its Subsidiary(ies) or Affiliate(s) (being other than Subsidiary(ies));or

A Qualifying Shareholder or its Subsidiary(ies) or Affiliate(s) (being other than Subsidiary(ies), if the Prospective Bidder is a Consortium:

Provided that in each case the PPP Experience of Affiliates (being other than Subsidiaries) does not exceed one (1) of the Eligible PPP Projects counting towards the Technical Qualification Requirements presented in the Qualification Documents;

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

(B) CONSTRUCTION EXPERIENCE

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

- a) two (2) Eligible Bridge Construction Projects, at least one of which must be in a marine environment; and
- b) Eligible Urban Road Construction Projects with, in aggregate, at least 100 Lane-km of road construction in an Urban Environment.

- (ii) Prospective Bidders may demonstrate Construction Experience proposed by any of the following Entities, strictly acting as Main or Principal Contractor:

The Prospective Bidder itself;

A Qualifying Shareholder if the Prospective Bidder is a Consortium; or

The Construction Contractor(s), provided that the number of Construction Contractors shall not exceed two (2).

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

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

- (i) The Prospective Bidder shall demonstrate Eligible O&M Project experience such that the aggregate Lane-kms of roads within an Urban Environment of Eligible O&M Projects under operation, maintenance and management of the Prospective Bidder in the ten (10) years preceding the RFQ Submission Date shall be not less than 150 Lane-km.

- (ii) Prospective Bidders may demonstrate O&M Experience by any of the following Entities, acting strictly as Main or Principal Contractor:

The Prospective Bidder itself, or its Subsidiary(ies) or Eligible SPVs;

A Qualifying Shareholder, if the Prospective Bidder is a Consortium, or its Subsidiary(ies) or Eligible SPV(s); or

The O&M Contractor.

4.2.2 FINANCIAL QUALIFICATION REQUIREMENTS

- (i) A Prospective Bidder shall demonstrate Net Worth of not less than USD 300 million, as per its Latest Audited Financial Statements.
- (ii) The Entity proposed to meet the Net Worth requirements may be any of the following:

The Prospective Bidder itself or its Subsidiary(ies) or Affiliate(s) (being other than Subsidiaries); or
A Qualifying Shareholder itself or its Subsidiary(ies) or Affiliate(s) (being other than Subsidiaries), if the
Prospective Bidder is a Consortium,

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

(iii) The Entity(ies) proposed to meet the Construction Experience requirement must have an aggregate average annual turnover from construction activities of not less than USD250m over the three (3) years preceding the RFQ Submission Date (as reflected in the Latest Audited Financial Statements and the Audited Financial Statements for the two financial years immediately preceding the year of the Latest Audited Financial Statements).

4.2.3 OTHER QUALIFICATION REQUIREMENTS

- (i) (a) Where a Prospective Bidder or a Qualifying Shareholder has relied upon its Affiliate(s) to satisfy the PPP Experience or the Net Worth, the Prospective Bidder shall submit to KURA as a part of the Qualification Documents a signed financial letter of support in the form at **Annex QD-8** from each such Affiliate confirming that the Affiliate shall extend all necessary support to the Prospective Bidder or the Qualifying Shareholder in meeting the equity commitment of such Prospective Bidder or the Qualifying Shareholder, as the case may be, in the Project Company; provided however that a letter of support shall not be required to be provided by a Subsidiary whose experience or credentials have only been used towards meeting the PPP Experience. A copy of the authorization in favour of the authorized representative of the Affiliate signing the financial letter of support shall be provided together with the financial letter of support.
- (b) Failure on the part of a Prospective Bidder or a Qualifying Shareholder to furnish the financial letter of support from its Affiliate(s) as required under (i) (a) above may result in the said PPP Experience or Net Worth not being counted towards satisfaction of its Minimum Qualification Requirements. Failure on the part of the Affiliate(s) to comply with any requirements provided in or substituted by the Bidding Documents may lead to disqualification of the Pre-Qualified Bidder and where such Pre-Qualified Bidder is the Successful Bidder, failure on part of the Affiliate(s) to comply with the requirements as may be provided in or substituted by the Bidding Documents may lead to disqualification of the Successful Bidder, withdrawal of the Letter of Award and forfeiture of the Successful Bidder's Bid Security. In the event such a default occurs pursuant to signing of the Project Agreement, then the same may, at KURA's option, be terminated and the Performance Security of Project Company forfeited.
- (ii) Prospective Bidders are required to submit as a part of their Qualification Documents, indicative letters of support from two or more Relevant Bank and Financial Institutions regarding the provision of debt finance for the Project substantially in the form provided at **Annex QD-9A**.
- (iii) A single Prospective Bidder is required to submit, as a part of its Qualification Documents, a Letter of Commitment using the format in **Annex QD-9B** stating that its minimum intended level of equity contribution to the Project Company will not be less than USD 50 million.

- (iv) Where the Prospective Bidder is a Consortium, the Letters of Commitment using the format in **Annex QD-9B** shall be given by all the Consortium Members stating their individual minimum intended equity contribution and that the aggregate of the minimum intended equity contributions of all the Consortium Members in the Project Company will not be less than USD 50 million.
- 4.2.4 The summary of the Minimum Qualification Requirements is enclosed as **Appendix 1**. The same (i.e. Appendix 1) should be read in conjunction with Section 4 and in the event of any conflict, the provisions of this Section 4 shall prevail.

5. QUALIFICATION DOCUMENTS

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

- a. Notarized Application to Pre-Qualify, using the form in **Annex QD-1A**.
- b. Notarized Authority to Apply to Pre-Qualify and designate an Authorized Representative.
 - i. If the Prospective Bidder is a single Prospective Bidder, it must submit a Notarized Authority using the form in **Annex QD-1B**.
 - ii. If the Prospective Bidder is a Consortium, each Consortium Member must submit a Notarized Authority to Participate in Consortium jointly and severally and apply to Pre-Qualify, and designate the Lead Member and other Consortium Members of the Consortium, using the form in **Annex QD-1C**. The Lead Member shall submit a Notarized Authority using the form in **Annex QD-1B** in favour of its authorized representative. Provided however, the Consortium shall be required to submit a joint bidding agreement executed between all Consortium Members for the purposes of jointly participating in the Bidding Process for the Project at the RFP stage.
- c. Business structure, using the form in **Annex QD-2A** for a single Prospective Bidder and **Annex QD-2B** for Consortia.
 - i. The Business Structure (in both Annex **QD-2A** and **QD-2B**) must also indicate the Entity proposed to satisfy each and every Minimum Qualification Requirement set out in Section 4.
 - ii. With reference to Annex **QD-2B**, the Prospective Bidder must show the Lead Member, all Consortium Members, proposed Qualifying Shareholder(s) and their Affiliates, Subsidiaries, Eligible SPVs and Contractors. A copy of the consortium agreement setting out the relationship and the proposed shareholding of the Consortium Members in the Project Company shall also be enclosed with **Annex QD-2B**
- d. Basic Information Sheet, using the form in **Annex QD-3**.
 - i. The Basic Information Sheet must be submitted by all Entities identified in the Business Structure.
 - ii. Required attachments for each of the Entities in the Business Structure include the following:
 - 1) For an Entity incorporated or registered in Kenya, (i) a copy of the Certificate of Incorporation, or where such Entity is not a Company, a copy of the registration certificate issued by an appropriate authority evidencing legal existence of such Entity; and (ii) a letter from the authorized representative of the Entity to the effect that the Entity is not insolvent, in receivership, bankrupt or in the process of being wound up;
 - 2) For an Entity incorporated or registered outside Kenya, (i) a copy of the Certificate of Incorporation or an equivalent document issued by the appropriate authority in that

country, evidencing legal existence of such Entity; and (ii) a letter from the Entity's authorized representative, to the effect that the Entity is not insolvent, in receivership, bankrupt or in the process of being wound up.

- 3) A copy of the authorization given by the Entity in favour of the authorized representative signing the Qualification Documents shall be provided where such Entity is other than the Prospective Bidder / Qualifying Shareholder.

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

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

- (i) Documentary Evidence for each Eligible PPP Project that the construction of such Eligible PPP Project has been completed and accepted by the project owner and specifying the date of completion and acceptance of such Eligible PPP Project (e.g. completion certificate); and
- (ii) Annex QD-4 the name and location of the Eligible PPP Project; description; capital value in USD; client name and contact details; confirmation that the Eligible PPP Project was undertaken in accordance with the environmental and social sustainability laws / policies applicable to the project, being either the national laws/policies of the implementing authority of the project or the Equator Principles, the International Finance Corporation (IFC) Performance Standards on Environmental and Social Sustainability or the World Bank Group Environmental, Health and Safety Guidelines, where these have been accepted by the implementing authority, and that there has not been any fine, out of court settlement or conviction in relation to environmental and social issues in relation to such project; and other details including percentage shareholding of such Entity in the Eligible PPP Project.

f. Construction Experience using the form in Annex QD-5

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

- (i) Documentary evidence for each Eligible Construction Project owner that the construction of such Eligible Construction Project has been completed and accepted by the project owner and specifying the date of completion and acceptance of such Eligible Construction Project (e.g. completion certificate); and
- (ii) Copies of Audited Financial Statements of the last three (3) years preceding the RFQ Submission Date of each Entity duly certified by the authorised representative of the respective Entity.

g. O&M Experience, using the form in **Annex QD-6**.

The following must be provided by the Entity proposed to meet the O&M Experience requirements, as identified in the Business Structure:

- (i) Certification for the Eligible O&M Project that the road has been (or continues to be) operated and maintained by that Entity in the ten (10) years preceding the RFQ Submission Date and that the period for which that Entity has to operate and maintain the Eligible O&M Project road is not less than five (5) years..
- (ii) Annex QD-6 shall specify the name and location of the Eligible O&M Project including, Lane km in an Urban Environment being operated and maintained, length of road in an Urban Environment, number of Lanes, client name and contact details.

- h. Certified Statement of Financial Qualification, using the form in **Annex QD-7** by the Prospective Bidder. If the Prospective Bidder is a Consortium, a copy of the Latest Audited Financial Statements, must be submitted by each Qualifying Shareholder proposed as meeting the Financial Qualification Requirements. In the event such Audited Financial Statements are in a language other than English, the same shall be accompanied by an accurate English translation of such document duly translated into English by a translator who shall certify the translation as true and genuine. In addition, to the above requirements, where a Prospective Bidder or a Qualifying Shareholder is an Entity which is a closed investment fund, the available funds which have yet to be committed to projects shall be provided as evidence of Net Worth together with a declaration by its authorised representative that the anticipated investment in the Project by such investment fund falls within the investment fund's country and sectoral limits, taking into account investments held as on the RFQ Submission Date. A copy of its charter documents should be provided as a true and correct copy by the authorized representative of the closed investment fund.
- i. Financial letter of support in the form provided at **Annex QD-8** by each of the Affiliate(s) whose experience / credentials have been relied upon by the Prospective Bidder or the Qualifying Shareholder to satisfy the PPP Experience or the Financial Qualification Requirements. Where the experience or credentials of an Affiliate is used by the Prospective Bidder or a Qualifying Shareholder, a copy of the Latest Audited Financial Statements of such Affiliate shall be submitted together with a summary table providing aggregate of its Net Worth. The copy of the Latest Audited Financial Statements shall be certified by the Affiliate's authorized representative who will also sign the financial letter of support to be furnished under Section 4.2.3 (i).
- j. Indicative letter of support from Relevant Bank and Financial Institution for lending of debt finance for the Project, substantially in the form provided at **Annex QD-9A**.
- k. Letter of Commitment, using the format in Annex QD-9B, from a single Prospective Bidder stating that the minimum intended level of equity contribution in the Project Company will not be less than USD 50 million. Where such Prospective Bidder is a Consortium, the Letters of Commitment using the format in Annex QD-9B shall be given by each of the Consortium Members stating their individual minimum intended equity contribution and that the aggregate minimum intended equity contribution of all the Consortium Members in the Project Company will not be less than USD 50 million.
- l. Certification of Absence of Unsatisfactory Performance Record using the **Annex QD-10** by a single Prospective Bidder and all Qualifying Shareholders, Affiliates, Eligible SPVs and Contractors.
- m. Information, using the form in **Annex ID-1**.

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

6. SUBMISSION AND VALIDITY OF QUALIFICATION DOCUMENTS

6.1 FORMAT OF SUBMISSION OF QUALIFICATION DOCUMENTS

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

- (a) One (1) complete original set, clearly marked on the cover page as "QUALIFICATION DOCUMENTS-ORIGINAL," and each document must have pagination in continuous sequential order;
- (b) two (2) sets of photocopies, clearly marked on the cover page as "QUALIFICATION DOCUMENTS-COPY NO. __"; and
- (c) two (2) memory sticks each containing electronic files of all the documents comprising the

Qualification Documents in Portable Document Format (.pdf), except for spreadsheets and charts, if any, which may be submitted in Microsoft Excel or Microsoft Word application as appropriate, with the pages arranged in exactly the same sequence as the sequence in the original set of the Qualification Documents; provided that in the event of any conflict between the printed (paper) copies and the electronic copies, the original printed (paper) copies shall prevail.

- 6.1.2 For ease of reference, Prospective Bidders are requested to ensure that each page of the original set of Qualification Documents, including any required attachments, is serially numbered and initialled (on the right margin) by the Prospective Bidder's authorized representative as identified in the form in **Annex QD-1B or QD-1C**. In case of conflict between the original set and the photocopies, the original set shall prevail. For the avoidance of doubt, e-signatures of the authorized representatives shall be acceptable for purposes of the initialisation.
- 6.1.3 Each set of the Qualification Documents should contain a table of contents.
- 6.1.4 Whenever possible, Qualification Documents must be printed either in standard A4 or letter size (8 ½" x 11") paper and bound together in ring binders or folders of appropriate size. Documents must be paginated and text must be at least of 12-font size.
- 6.1.5 Each set of the Qualification Documents must be placed in an envelope. The two (2) Memory Sticks should also be placed in another envelope. Each of the three (3) envelopes containing the Qualification Documents and the two envelopes containing the two (2) Memory Sticks must be sealed and appropriately addressed and marked as follows:

KENYA URBAN ROADS AUTHORITY

PUBLIC PRIVATE PARTNERSHIP FOR THE 2nd NYALI BRIDGE PPP
QUALIFICATION DOCUMENTS
Tender: KURA/PPP/HQ/002/2017-2018
[ORIGINAL/ COPY NO. ()/ Memory Stick No. ()

*[STATE NAME, ADDRESS, TELEPHONE NUMBER (WITH COUNTRY AND CITY CODE), E-MAIL AND
FACSIMILE NUMBER OF PROSPECTIVE BIDDER]*

DO NOT OPEN UNTIL 9th November 2017

6.2 FORMAT OF SUBMISSION OF QUALIFICATION DOCUMENTS BY THE RFQ SUBMISSION DATE

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

KENYA URBAN ROADS AUTHORITY

PUBLIC PRIVATE PARTNERSHIP FOR THE
2ND NYALI BRIDGE

QUALIFICATION DOCUMENTS
Tender: KURA/PPP/HQ/002/2017-2018

*[STATE NAME, ADDRESS, TELEPHONE NUMBER (WITH COUNTRY AND CITY CODE), E-MAIL AND
FACSIMILE NUMBER OF PROSPECTIVE BIDDER]*

DO NOT OPEN UNTIL 9th November 2017

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

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

- 6.3.1 Each Prospective Bidder's Qualification Documents are to be submitted no later than 2:00 pm, Kenya Standard Time, by hand or courier (at the Prospective Bidder's absolute risk as to timely delivery) on or before the date mentioned in the Pre-Qualification Schedule as the date for submission of the Qualification Documents ("RFQ Submission Date"). The Qualification Documents shall be received latest as above at the following address:

**The Pre-Qualification Committee for 2nd Nyali Bridge PPP
Kenya Urban Roads Authority
4th Floor, Tower B
IKM Place
5th Ngong Avenue
Nairobi, Kenya**

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

- 6.3.2 The Qualification Documents submitted by Prospective Bidders shall be stamped with the date and time of receipt (Kenya Standard Time) which shall be recorded in a register maintained for that purpose by KURA.
- 6.3.3 Any Qualification Documents received after the RFQ Submission Date will be automatically rejected and not accepted.
- 6.3.4 Qualification Documents cannot be modified, altered, substituted or withdrawn after the RFQ Submission Date. For avoidance of doubt, it is clarified that Qualification Documents can be substituted by the Prospective Bidder any time prior to the RFQ Submission Date by written notification to KURA.
- 6.3.5 Qualification Documents shall remain valid for a period of one hundred twenty (120) Days after the RFQ Submission Date. The Prospective Bidder may extend the validity of the Qualification Documents if so required by KURA. Failure on part of the Prospective Bidder to extend or agree to extend the validity period of the Qualification Documents as may be requested by KURA may result in rejection of the Bid of such Pre-Qualified Bidder.

7. OPENING OF QUALIFICATION DOCUMENTS

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

KURA shall evaluate the Qualifications Documents submitted in accordance with Section 8.

8. EVALUATION OF QUALIFICATION DOCUMENTS

- 8.1 KURA shall evaluate the Qualification Documents after the RFQ Submission Date. The detailed evaluation

of the Minimum Qualification Requirements of each Prospective Bidder for the Project shall be based exclusively upon the submitted Qualification Documents.

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

9. DISQUALIFICATION OF PROSPECTIVE BIDDERS

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

10. PRE-QUALIFIED BIDDERS AND NOTICE OF QUALIFICATION

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

have Pre-Qualified. KURA shall also publish the list of the Pre-Qualified Bidders in the Gazette and in at least two newspapers of national circulation.

11. ACCEPTANCE OF TERMS AND CONDITIONS AND OF GOVERNING LAW

11.1 By submitting the Qualification Documents, the Prospective Bidder agrees to be bound by:

- (a) all the terms and conditions contained in this RFQ; and
- (b) the laws of Kenya applicable to:
 - (i) the issuance of this RFQ by KURA; and
 - (ii) the submission of the Qualification Documents by the Prospective Bidder.

Annex QD-1A
NOTARIZED APPLICATION FOR PRE-QUALIFICATION

[Letterhead]

Date: []

To,
The Secretary
Pre-Qualification Committee
Kenya Urban Roads Authority
IKM Place, 5th Ngong Avenue
NAIROBI

TENDER NO: KURA/PPP/HQ/002/2017-2018

PRE-QUALIFICATION FOR THE 2nd NYALI BRIDGE

I, (name), (citizenship), of legal age, with the office address at (address), acting as the authorized representative of (name of single Prospective Bidder/Lead Member), a (company, partnership, or corporation) having its registered office at (address) , being the Prospective Bidder / Lead Member of [name of the Consortium] comprising of name of all Consortium Members) (organized and existing under the laws of [State and Country] / organized by an agreement among the Consortium Members], as indicated by the authorization certificate attached as QD-1B being the notarized authority to apply to Pre-Qualify and designate the authorized representative (and QD-1C being the Consortium Member's notarized authority to participate in Consortium and apply to Pre-Qualify, and designation of Lead Member and Qualifying Shareholder/s²], after having been duly sworn according to law, hereby declare and certify for and on behalf of (name of Prospective Bidder) that:

Capitalized terms used but not defined herein will have the meaning assigned to such term in the Request for Qualification ("**RFQ**").

1. The Qualification Documents to Pre-Qualify to Bid for the 2nd Nyalı Bridge are hereby submitted after fully reviewing and understanding the contents of the RFQ and the Qualification Documents.
2. The Qualification Documents are unqualified and unconditional.
3. All statements made and the information and documents provided by us, being the Prospective Bidder [and all the Consortium Members/Qualifying Shareholders, the Subsidiaries, Affiliates, Eligible SPVs and Contractors of the Prospective Bidder and Qualifying Shareholders] in or as any part of the Qualification Documents, are true and correct and any misrepresentation or false statement made therein shall be a ground for our disqualification from the Bidding Process.
4. We, the Prospective Bidder, authorize KURA to make enquiries to authenticate the statements, documents and information submitted in our Qualification Documents, and to seek clarification from us and, as applicable, from our board of directors / partners, Consortium Members, Subsidiaries, Affiliates, Eligible SPVs, Contractors, advisors, clients or bankers regarding any legal, technical and financial aspects.
5. We acknowledge the right of KURA to reject our Qualification Documents and to cancel the Bidding Process at any time in accordance with Section 58 of the PPP Act, without incurring any liability, and accept all the terms and conditions of the RFQ.
6. We, the Prospective Bidder, [including any of the Consortium Member/ Qualifying Shareholder(s)/, Subsidiaries, Affiliate(s), Eligible SPV(s) and Contractors named in the Qualifying Documents as complying

²For a Consortium only, to be submitted by each Consortium Member.

with the Minimum Qualification Requirements under this RFQ], have not at any time engaged in any Corrupt, Fraudulent or Dishonest, Coercive, Undesirable or Restrictive Practices.

7. We, the Prospective Bidder [all the Consortium Members/Qualifying Shareholders, the Subsidiaries, Eligible SPVs, Affiliates or Contractors of the Prospective Bidder/ Qualifying Shareholders] are neither Prohibited Persons nor do we have any Conflict of Interest.
8. We, the Prospective Bidder, confirm and warrant that:
 - (a) the Qualification Documents have been prepared without consultation, communication or agreement for restricting competition with any other Prospective Bidder (including the Consortium Members/ Qualifying Shareholders, Subsidiaries, Eligible SPVs Affiliates or Contractors of such other Prospective Bidder or Qualifying Shareholder(s));
 - (b) the Qualification Documents have not been disclosed, nor will they be disclosed to any other Prospective Bidder, or Consortium Member of any other Prospective Bidder, or any of their Affiliates or Contractors;
 - (c) no attempt has been made nor will be made by us to induce any other person to submit or not to submit their Qualification Documents;
 - (d) we (including any Consortium Member /Qualifying Shareholders, the Subsidiaries, Eligible SPVs, Affiliates and Contractors)) have not hired and engaged or been advised by or consulted with, including by way of gratuitous consultations, any person who is (i) currently in the employment of the Transaction Advisor or of KURA / KeNHA/Government of Kenya; or (ii) was in the employment of the Transaction Advisor or of KURA/ KeNHA/Government of Kenya and was involved in the Project in any manner or capacity in the last 3 years preceding the RFQ Submission Date.
9. We, the Prospective Bidder [and all the Consortium Members, the Subsidiaries, Eligible SPVs, Affiliates and Contractors of the Prospective Bidder or the Qualifying Shareholders] undertake to indemnify KURA and hold it harmless from any loss, damage, liabilities, claims, actions, proceedings, demands, costs, charges or expenses of whatsoever nature suffered by KURA for its refusal to disclose materials marked as being copyright material, trade secrets or other proprietary information to any person seeking the disclosure of such materials.
10. We, the Prospective Bidder [and all the Consortium Members/Qualifying Shareholders, the Subsidiaries, Eligible SPVs, Affiliates and Contractors of the Prospective Bidder and the Qualifying Shareholders] confirm that the Qualification Documents shall remain valid for a period of one hundred and twenty (120) Days after the relevant RFQ Submission Date.
11. We, the Prospective Bidder being a single Prospective Bidder undertake that in the event the we become the Successful Bidder and are asked to execute the Project Agreement, we shall, pursuant to the provisions of the PPP Act, establish a Project Company in accordance with the Companies Act, 2015, as amended or substituted from time to time and we shall comply with all other requirements under the RFQ and shall be the Project Company's sole shareholder for the duration of the Lock-In Period .OR

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

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

(Signature of authorized representative)

(Name)

(Designation)

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

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

Notary Public

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

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

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

[Letterhead]

Date: []

To:
The Secretary
Pre-Qualification Committee
Kenya Urban Roads Authority
IKM Place, 5th Ngong Avenue

NAIROBI

TENDER NO: KURA/PPP/HQ/002/2017-2018

PRE-QUALIFICATION FOR THE 2nd NYALI BRIDGE

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

1. I am a citizen of (*state and nationality*), of legal age and a resident of (*address*);
2. (*Name of single Prospective Bidder/Consortium*) (the "Prospective Bidder"), is a (*provide the legal structure i.e. Company, partnership or corporation/Consortium*) (duly organized and existing under the laws of (*State and Country/* organized by an agreement among the Consortium Members) (of which [*name of Lead Member*] is the Lead Member);
3. At a meeting of the (*board of directors/partners*) of the (*single Prospective Bidder/ Lead Member*), held on (*date*) at (*place*), in which meeting a quorum was present throughout, the following Resolutions were unanimously passed and approved:

NOW IS IT HEREBY RESOLVED

- 3.1 that (*name of single Prospective Bidder /Lead Member*) is, authorized to apply for Pre-Qualification as (*a single Prospective Bidder /Lead Member of the [name] Consortium*) for the 2nd Nyali Bridge "the Project"; and
- 3.2 that (*name of representative and designation*) is hereby appointed as the authorized representative of the (Prospective Bidder/Lead Member) to make submissions/statements, commit, undertake, declare, execute, sign, certify, submit the Qualification Documents / Bid and receive any requests for clarification, additional information, authentication or verification and otherwise act in the name of, the (Prospective Bidder/Lead Member and the Prospective Bidder) in relation to the Pre-Qualification; and
- 3.3 that any and all acts performed by (*name of representative*) under and by virtue of this Resolution are hereby confirmed and ratified.
4. These resolutions have not been revoked, amended or modified and remain valid and binding on the Prospective Bidder; and
5. The above resolutions are in accordance with the records of the (Prospective Bidder/Lead Member).

Capitalized terms used herein but not defined herein will have the meaning assigned to such term in the Request for Qualification, for Tender No: KURA/PPP/HQ/002/2017-2018 ("**RFQ**"),
Place, Date of Execution.

(Signature of authorized representative)

(Name)

(Designation)

(Name of Entity)

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

Notary Public

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

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

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

To,
 The Secretary
 Pre-Qualification Committee
 Kenya Urban Roads Authority
 IKM Place, 5th Ngong Avenue

NAIROBI

TENDER NO: KURA/PPP/HQ/002/2017-2018

PRE-QUALIFICATION FOR THE 2nd NYALI BRIDGE

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

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

RESOLVED, AS IT IS HEREBY RESOLVED, that the (*name of Consortium Member*) be, and is, authorized to participate in the Bidding Process as a Consortium Member and apply for Pre-Qualification for the 2nd Nyali Bridge (the "Project") through a Consortium consisting of the following Consortium Members;

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

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

clarification, additional information, authentication or verification and otherwise act on our behalf and in the name of the Consortium.

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

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

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

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

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

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

Capitalized terms used herein but not defined herein will have the meaning assigned to such term in the Request for Qualification, for Tender No: **KURA/PPP/HQ/002/2017-2018 ("RFQ")**,

Place, Date of Execution.

(Signature of authorized representative)

(Name)

(Designation)

(Name of Entity)

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

Notary Public

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

Annex QD-2A

BUSINESS STRUCTURE (FOR A PROSPECTIVE BIDDER WHICH IS A SINGLE PROSPECTIVE BIDDER)

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

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

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

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

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

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

a. Name of the Entity being the Prospective Bidder	
b. Average annual turnover from construction activities in the last 3 years prior to the RFQ Submission Date in USD	
c. Address	
d. Website	
e. Contact person	

i. Telephone	
ii. Fax	
iii. Email	

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

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

[Note: If more than one Construction Contractor(s) fulfils the Construction Experience Requirement, replicate table above.]

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

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

6. Subsidiary of the Prospective Bidder, if any, who will satisfy the O&M Experience Requirement

a. Name of the Subsidiary	
b. Address	
c. Website	
d. Contact person	

i. Telephone	
ii. Fax	
iii. Email	

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

7. Eligible SPV of the Prospective Bidder, if any, who will satisfy the O&M Experience Requirement

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

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

8. O&M Contractor proposed by the Prospective Bidder as fulfilling the O&M Experience Requirement

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

9. Prospective Bidder who will fulfil the Financial Qualification Requirement

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

ii. Fax	
iii. Email	

10. Affiliate (including Subsidiary) of the Prospective Bidder proposed as fulfilling the Financial Qualification Requirement

a. Name of Entity	
b. Net worth in USD as per the Latest Audited Financial Statements	
c. Shareholding of the Affiliate in the Prospective Bidder, if any	
d. Shareholding of the Prospective Bidder in the Affiliate, if any	
e. Address	
f. Website	
g. Contact person	
i. Telephone	
ii. Fax	
iii. Email	

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

For and on behalf of (Name of Prospective Bidder)

(Signature of authorized representative)
(Name, Title, and Date)

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

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

1. Consortium Members

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

2. Contact Information of Consortium Members

a. Name of Consortium Member)	
b. Address	
c. Website	
d. Contact (Name and Designation)	
i. Telephone	
ii. Fax	
iii. Email	

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

3. Qualifying Shareholder which fulfils the PPP Experience Requirement

a. Name of Qualifying Shareholder	
b. Net Worth in USD as per the Latest Audited Financial Statements	
c. Proposed share holding in the Project Company	
d. Address	
e. Website	
f. Contact (Name and Designation)	
i. Telephone	
ii. Fax	
iii. Email	

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

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

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

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

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

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

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

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

a. Name of the Construction Contractor	
b. Average annual turnover from the construction activities over the last 3 years prior to the RFQ Submission Date in USD	

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

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

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

a. Name of Qualifying Shareholder	
b. Proposed share holding in the Project Company	
c. Address	
d. Website	
e. Contact (Name and Designation)	
i. Telephone	
ii. Fax	
iii. Email	

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

8. Subsidiary if any, of the Qualifying Shareholder(s) nominated to satisfy the O&M Experience Requirement

a. Name of Subsidiary	
b. Qualifying Shareholder of whom the Entity is a Subsidiary	
c. Address	
d. Website	
e. Contact (Name and Designation)	
i. Telephone	
ii. Fax	
iii. Email	

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

9. Eligible SPV, if any, of the Qualifying Shareholder(s) nominated to satisfy the O&M Experience Requirement

a. Name of Eligible SPV	
b. Qualifying Shareholder with whom Eligible SPV is affiliated	
c. Address	
d. Website	
e. Contact (Name and Designation)	
i. Telephone	
ii. Fax	
iii. Email	

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

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

a. Name of the O&M Contractor	
b. Address	
c. Website	
d. Contact person	
i. Telephone	
ii. Fax	
iii. Email	

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

a. Name of Qualifying Shareholder	
b. Net Worth in USD as per the Latest Audited Financial Statements	
c. Proposed share holding in the Project Company	
d. Address	
e. Website	
f. Contact (Name and Designation)	
i. Telephone	
ii. Fax	
iii. Email	

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

12. Affiliates (including Subsidiaries), if any, of the Qualifying Shareholder(s) nominated to satisfy the Financial Qualification Requirement

a. Name of Affiliate	
b. Qualifying Shareholder with whom It Is Affiliated	
c. Net Worth in USD as per the Latest Audited Financial Statements	
d. Shareholding of the Affiliate in the Qualifying Shareholder, if any	
e. Shareholding of the Qualifying Shareholder in the Affiliate, if any	
f. Address	
g. Website	
g. Contact (Name and Designation)	
i. Telephone	
ii. Fax	
iii. Email	

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

Required Attachments:

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

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

(Signature of authorized representative)

(Name, Title, and Date

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

**Annex QD-3
BASIC INFORMATION SHEET**

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

1. Name of Entity	
2. Single Prospective Bidder?	Yes No
3. Consortium Member?	Yes No
4. Qualifying Shareholder?	Yes No
5. Subsidiary of the Prospective Bidder	Yes No
6. Subsidiary of the Qualifying Shareholder	Yes No
7. Affiliate of the Prospective Bidder	Yes No
8. Affiliate of the Qualifying Shareholder	Yes No
7. Eligible SPV of the Prospective Bidder	Yes No
8. Eligible SPV of the Qualifying Shareholder	Yes No
9. Construction Contractor	Yes No
10. O&M Contractor	Yes No
11. Place of Incorporation or Registration	
12. Year of Incorporation or Registration	

Shareholder/s or Partner/s Information

Name of Shareholder/s, or Partner/s of the Entity	Nationality	Total percentage shareholding or partnership interest
---	-------------	---

1.		
2.		
3.		
4.		
5.		

(Insert rows as necessary)

Required attachments:

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

For an Entity which is incorporated or registered outside Kenya, (i) a copy of the Certificate of Incorporation or an equivalent document issued by the appropriate authority in that country evidencing legal existence of such Entity and a letter from the Entity's authorized representative to the effect that the Entity is not insolvent, in receivership, bankrupt or in the process of being wound up.

A copy of the authorization given by the Entity in favour of the authorized representative signing the Qualification Documents shall be provided where such Entity is other than the Prospective Bidder/Qualifying Shareholder.

For and on behalf of (Name of Entity)

(Signature of authorized representative)

(Name, Title, and Date)

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

(Signature of authorized representative*)

(Name, Title, and Date)

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

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

**Annex QD-4
PPP EXPERIENCE**

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

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

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

List of Eligible PPP projects

Ref #	Name of Entity meeting the PPP Experience	Name of project	Capital Value USD
1.			
2.			
3.			
4.			

(Insert rows as necessary if additional projects provided)

Description of each Eligible PPP project

Ref #	
Name of project	
Country	
Description	
Name of contracting authority	
Name and contact details of contracting authority's contact person	
Name of Entity undertaking the project	
Percentage share holding by single Prospective Bidder/ Qualifying Shareholder/ Subsidiary/ Affiliate other than a Subsidiary in the Project Company	
Capital Value in USD	

For any project not originally denominated in USD, details of the exchange rate, reference date and source of the exchange rate used	
Confirmation that the construction and operation of the project was undertaken in compliance with the environmental and social sustainability laws / policies applicable to the project, being either the national laws/policies of the implementing authority of the project or the Equator Principles, the International Finance Corporation (IFC) Performance Standards on Environmental and Social Sustainability or the World Bank Group Environmental, Health and Safety Guidelines where these have been accepted by the implementing authority. Confirmation that there has not been any fine, out of court settlement or conviction in relation to environmental and social issues arising from the project with respect to the obligations of the developer / project proponent.	<i>[Confirmation to include statement of which type of environmental and social laws/policies were applicable].</i>
Date of PPP contract	
Date of Completion of Construction	

[Note: For each project submitted, replicate table above.]

Required Attachments:

- a. Documentary evidence for each Eligible PPP Project that the construction of such Eligible PPP Project has been completed and accepted by the project owner and specifying the date of completion and acceptance of such Eligible PPP Project (e.g. completion certificate).
- b. Certification from the authorized representative of the Entity for correctness of the information furnished in Annex QD-4, which should be done in the manner provided below.

Certificate from the authorized representative
<p>This is to certify that the abovementioned information provided by _____ (<i>Details of the Entity</i>) are true and correct based on the authenticated record of the (Company/Corporation/Partnership).</p> <p>Name:</p> <p>Seal/stamp (if any):</p> <p>Date:</p> <p>(Signature)</p>

For and on behalf of:

(Name of Entity)

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

(Signature of authorized representative)
(Name, Title, and Date)

(Signature of authorized representative*)
(Name, Title, and Date)

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

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

**Annex QD-5
CONSTRUCTION EXPERIENCE**

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

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

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

List of Eligible Bridge Construction Projects (under 4.2.1(B)(i)(a) of RFQ)

Ref #	Name of Entity(ies) meeting the Construction Experience	Name of project	Bridge Length Metres	Length of longest bridge span Metres	
1.					
2.					

(Insert rows as necessary if additional projects provided)

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

Ref #	
Name of project	
Country	
Description	
Name of contracting authority	
Name and contact details of contracting authority's contact person	
Name of Entity/ which completed the Project <i>(i.e. single Prospective Bidder/Qualifying Shareholder/ Construction Contractor)</i>	

Date of Certificate of Completion or alike	

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

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

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

(Insert rows as necessary)

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

Month end exchange rate	Financial Year () (please mention the year)	Financial Year () (please mention the year)	Financial Year () (please mention the year)
Month end 1			
Month end 2			
Month end 3			
Month end 4			
Month end 5			
Month end 6			
Month end 7			
Month end 8			
Month end 9			
Month end 10			
Month end 11			
Month end 12 (equals Financial Year end)			

List of Eligible Urban Road Construction Projects (under 4.2.1(B)(i)(b) of RFQ)

Ref #	Name of Entity(ies) meeting the Eligible Urban Road Construction experience	Name of project	Lane-km of road in an Urban Environment
1.			
2.			

3.			
Sum of Lane-km			

(Insert rows as necessary)

Description of each Eligible Urban Road Construction Project (under 4.2.1(B)(i)(b) of RFQ)

Ref #	
Name of project	
Country	
Description	
Name of contracting authority	
Name and contact details of contracting authority's contact person	
Name of Entity/ which constructed the urban Road <i>(i.e. single Prospective Bidder itself/Qualifying Shareholder/ Construction Contractor)</i>	
Capital Value (USD)	
For any project not originally denominated in USD, details of the exchange rate, reference date and source of the exchange rate used	
Number of Lane-km of road in an Urban Environment	
Date of Certificate of Completion or alike	

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

Required Attachments:

- a. Documentary evidence for each Eligible Construction Project that the construction of such Eligible Construction Project has been completed and accepted by the project owner specifying the date of completion and acceptance of such Eligible Construction Project (e.g. completion certificate).
- b. Copies of Audited Financial Statements of last 3 (three) years preceding the RFQ Submission Date of each Entity duly certified by the authorized representative of the Entity
- c. Certification from the authorized representative of the Entity for correctness of the information furnished in Annex QD-5, which should be done in the manner provided below.

Certificate from the authorized representative

This is to certify that the abovementioned information provided by _____ (*Details of the Entity*) are true and correct based on the authenticated record of the (Company/Corporation/Partnership).

Name:

Seal/stamp (if any):

Date:

(Signature)

For and on behalf of:

(Name of Entity)

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

(Signature of authorized representative)
(Name, Title, and Date)

(Signature of authorized representative*)
(Name, Title, and Date)

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

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

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

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

Name of the Entity proposed as fulfilling the O&M Experience Requirement	Relationship to the Prospective Bidder <i>(i.e. single Prospective Bidder itself/ Qualifying Shareholder/ Subsidiary/ Eligible SPV/ O&M Contractor)</i>

List of Eligible O&M projects

Ref #	Name of Entity proposed as meeting the O&M Experience	Name of project	Operation and maintenance of road in an Urban Environment Lane-km
1.			
2.			
3.			
Sum of Lane-km			

(Insert rows as necessary)

Description of each Eligible O&M project

Ref #	
Name of Road	
Location	
Description of scope of work	
Name of Contracting Authority	
Name and contact details of Contracting Authority's contact person	
Name of Entity which is Operating and Maintaining the Road	

(i.e. single Prospective Bidder/Qualifying Shareholder/ Subsidiary/ Eligible SPV/ O&M Contractor)	
Number of Lane kilometres in an Urban Environment encompassing the project	
Length of the project in an Urban Environment in kilometres (indicate per section if necessary)	
Number of Lanes (per section if applicable)	
Start Date of O&M Period	
End Date of O&M Period	

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

Required Attachments:

- 1) Certification for the Eligible O&M Project that the road is being or has been operated and maintained by the Entity within the last ten (10) years preceding the RFQ Submission Date with an operation and maintenance period of not less than five (5) years (post-construction completion) or a copy thereof accompanied by a statement issued by the authorized representative of the Entity which fulfils the O&M Experience Requirement that such copy is a true and correct reproduction of the original certificate.
- 2) Certification from the authorized representative of the Entity for correctness of the information furnished in Annex QD-6, which should be done in the manner provided below:

Certificate from the authorized representative
<p>This is to certify that the abovementioned information provided by _____ (<i>Details of the Entity</i>) are true and correct based on the authenticated record of the (Company/Corporation/Partnership)</p> <p>Name: Seal /stamp (if any)::</p> <p>Date:</p> <div style="text-align: right; margin-top: 20px;">(Signature)</div>

For and on behalf of:

(Name of Entity)	For and on behalf of (Name of Prospective Bidder/if Consortium, Name of Consortium and Lead Member)
(Signature of authorized representative) (Name, Title, and Date)	(Signature of authorized representative) (Name, Title, and Date)

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

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

**Annex QD-7
FINANCIAL QUALIFICATION**

CERTIFIED STATEMENT OF FINANCIAL QUALIFICATION

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

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

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

- The *(name of Prospective Bidder/Qualifying Shareholder(s)/ Affiliate meeting the Financial Qualification Requirement)* has a minimum unrestricted Net Worth equivalent to at least ____ United States Dollars (USD) or its equivalent as of its Latest Audited Financial Statements for the period not earlier than 15 months preceding the RFQ Submission Date, a copy of which, is attached to this certificate.
- The *financial summary of (name of Entity) which is the Prospective Bidder itself / Qualifying Shareholder(s) / Subsidiary/ Affiliate (other than a Subsidiary) meeting the Financial Qualification Requirements is as follows:*

Financial Information (in USD)	Financial Year () <i>(please mention the year)</i>	Provide the Exchange rate, reference date and source of the exchange rate for the currency used.
(indicate last day of accounting year)		
1. Total Assets		
2. Total Liabilities		
3. Total Net Worth		

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

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

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

Date and Place of Execution.

For and on behalf of (Name of Entity))

(Signature of authorized representative)

(Name)
(Designation)

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

(Signature of authorized representative*)

Required Attachments:

1. The Prospective Bidder shall also provide a summary table providing aggregate of the Net Worth of all Entities relied on for Financial Qualification Requirement with the total aggregate Net Worth given at the bottom of the table in **BOLD** figures and shall also provide the Exchange rate, reference date and source of the exchange rate for the currency used.
2. Copy of the Latest Audited Financial Statements.
3. Where the experience or credentials of an Affiliate is used by the Prospective Bidder or a Qualifying Shareholder to satisfy the PPP Experience requirements, a copy of the Latest Audited Financial Statement of such Affiliate shall be submitted which shall be certified by the Affiliate's authorized representative signing the financial letter of support to be furnished under Section 4.2.3 (i).
4. The investment fund shall provide a copy of its charter documents as evidence that the anticipated investment in the Project by such investment fund falls within the permitted activities and limits.

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

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

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

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

Annex QD-8: FINANCIAL LETTER OF SUPPORT

Dear Sir,

We, *(name of the Affiliate)*, a *(company/partnership/corporation)* registered under the laws of *(state and country)* and having our registered place of business at *(address)*, being an Affiliate of *(name of the Prospective Bidder/Qualifying Shareholder)* whose experience and credentials are relied upon by *(name of the Prospective Bidder / Qualifying Shareholder)* to meet the *(PPP Experience requirements specified in 4.2.1 (A)) / (Net Worth Requirements specified under Section 4.2.2 (i))*, having gone through and understood the requirements of the RFQ for the "Design, Construction, Financing, Operation and Maintenance of the 2nd Nyali Bridge" and the Addendums and Clarifications issued, do hereby declare and undertake in terms of the requirements under the RFQ including Section 4.2.3 (i) read with 5 (i) as follows:

1. We have studied the RFQ Document carefully and are fully aware of the obligations placed upon us as an Affiliate to the *(Prospective Bidder / Qualifying Shareholders)* under the RFQ.

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

Sincerely yours,

(Signature of the authorized representative of the Affiliate)
(Name)
(Designation)

Required Attachments:

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

Notes:

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

A copy of the authorization in favour of the authorized representative of the Affiliate signing this letter shall be provided together with this letter.

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

<Relevant Bank and Financial Institution Letter Head>

Letter of Support

In connection with the participation of (*name of Prospective Bidder*) in the Bidding Process for the 2nd Nyali Bridge (the "Project"), we wish to confirm that we meet the criteria of a Relevant Bank and Financial Institution as prescribed under the RFQ and express our interest and willingness, subject to the conduct of our internal due diligence processes, to provide or arrange the credit facility/facilities as may be required for the Project Company that the [***name of the Prospective Bidder/Consortium***] will incorporate for the purpose of implementation of the Project, if and when it is declared by KURA as the Successful Bidder.

Sincerely yours,

<Name of Relevant Bank and Financial Institution>

By:

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

Date:

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

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

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

Date:

Letter of Commitment

In connection with the participation of (*name of Prospective Bidder/ Consortium*) in the Bidding Process for the 2nd Nyali Bridge (the "Project"), we, (*name of single Prospective Bidder/ Consortium Member*), subject to the terms of our Bid, commit to subscribe a minimum equity contribution of USD [* *million*] in the Project Company that we shall incorporate if declared the Successful Bidder for the purpose of implementing the Project [*so that the aggregate equity contribution of all the Consortium Members shall be at least USD 50 million in the Project Company*]**.

Sincerely yours,

<Name of *Prospective Bidder/ the Consortium Member*>

By:

(Full Name of the authorized representative of the *Prospective Bidder / Consortium Member*)
(Designation)

** Please provide the amount of contribution. In case of a single Prospective Bidder, this amount shall be at least 50 million USD.*

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

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

Annex QD-10 CERTIFICATION OF ABSENCE OF UNSATISFACTORY PERFORMANCE RECORD

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

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

Certification of Absence of Unsatisfactory Performance Record

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

Date and Place of Execution

For and on behalf of (Name of Entity)

(Signature of authorized representative)

(Name of authorized representative)

(Designation)

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

**Annex ID-1
PROJECT MANAGEMENT**

FOR INFORMATION PURPOSES ONLY

1. Provide the names and designations of the key team members who are to be involved in the Project.

Role	Name and Designation	Name of Organisations (full title)
Prospective Bidder's authorised representative		
Subsidiary No.1* authorised representative <i>(please mention name of the Consortium member)</i>		
Affiliate No.1* authorised representative <i>(please mention name of the Consortium member)</i>		
Consortium Member No.1* authorised representative <i>(please mention name of the Consortium member)</i>		
Construction Contractor No.1* authorised representative <i>(please mention name of the Construction Contractor)</i>		
O&M Contractor* authorised representative <i>(please mention name of the O&M Contractor)</i>		
Eligible SPV No 1* authorised representative <i>(please mention name of the Eligible SPV)</i>		
Designers and technical advisors		

Role	Name and Designation	Name of Organisations (full title)
Legal advisor(s), if appointed		
Financial advisor(s) if appointed		
Others (please specify role)		

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

SCHEDULE 1: TEMPLATE FOR QUERIES AND COMMENTS ON RFQ

NAME OF PROSPECTIVE BIDDER:

DATE:

1. RFQ DOCUMENT

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

* Leave blank.

2. PROJECT INFORMATION MEMORANDUM

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

* Leave blank.

APPENDIX-1: SUMMARY OF MINIMUM QUALIFICATION REQUIREMENTS

Criteria	Satisfying Party	Eligible Project	Eligible Period	Minimum threshold for Eligible Project	Threshold to be achieve
PPP EXPERIENCE					
Highway sector PPP project	Prospective Bidder Qualifying Shareholder Subsidiary(ies) of the Prospective Bidder Subsidiary(ies) of the Qualifying Shareholder Affiliate(s), other than Subsidiary(ies) of the Prospective Bidder Affiliate(s), other than Subsidiary(ies) of the Qualifying Shareholder Holding or held an equity shareholding of not less than five percent (5%) in the project company responsible for the Eligible PPP Project. PPP Experience of Affiliates (being other than Subsidiaries)	Highway Sector PPP design, construct, finance, operate and maintain Projects in accordance with the environmental and social sustainability laws / policies applicable to the project, being either the national laws/policies of the implementing authority of the project or the Equator Principles, the International Finance Corporation (IFC) Performance Standards on Environmental and Social Sustainability or the World Bank Group Environmental, Health and Safety Guidelines, where these have been accepted by the implementing authority	Been in operation for at least 1 year prior to RFQ Submission Date	Capital value USD 150m	4 projects

	does not exceed 1 of the the projects counting towards the total PPP Experience				
	Affiliate(s) [other than Subsidiary(ies)] to submit financial letter of support and Latest Audited Financial Statement				
CONSTRUCTION EXPERIENCE					
Lane-km of road project construction in an Urban Environment	Prospective Bidder Qualifying Shareholders Up to two Construction Contractors	Eligible Urban Road Construction Project	Construction completed within 10 years prior to RFQ Submission Date	Capital value USD 20 million	Aggregate of 100 Lane-km in an Urban Environment
Bridge over waterways	Prospective Bidder Qualifying Shareholders Up to two Construction Contractors	Eligible Bridge Construction Project	Construction completed within 10 years prior to RFQ Submission Date	Bridge length of 400 metres; and Bridge's longest span of 200 metres.	2 bridges, of which at least 1 must be in a marine environment
O&M EXPERIENCE					
Lane-km of road project O&M in an	Prospective Bidder	Contract for performance based O&M of	During the 10 years immediately	Minimum contract length of 5 years.	Aggregate of 150 Lane-km in an

Urban Environment	Qualifying Shareholders	roads in an Urban Environment	prior to RFQ Submission Date		Urban Environment
	Subsidiary(ies) of Prospective Bidder				
	Subsidiary(ies) of Qualifying Shareholder				
	Eligible SPV of Prospective Bidder				
	Eligible SPV of Qualifying Shareholders				
	O&M Contractor				
FINANCIAL CAPABILITY					
Net Worth	Prospective Bidder	NA	Latest Audited Financial Statements with year end not earlier than 15 months prior to RFQ Submission Date	USD 50 million	USD 300 million
	Qualifying Shareholders				
	Subsidiaries of the Prospective Bidder				
	Subsidiaries of the Qualifying Shareholder				
	Affiliate(s) other than Subsidiary(ies) of the Prospective Bidder				

	Affiliate(s) other than Subsidiary(ies) of the Qualifying Shareholder				
	Affiliates other than Subsidiary(ies) will submit financial letter of support				
Average Annual Turnover	Entities meeting Construction Experience	N/A	3 financial year ends prior to RFQ Submission Date		USD 250 million
OTHER QUALIFYING CRITERIA					
Indicative Letters of Support from Relevant Bank and Financial Institution	Prospective Bidder Relevant Bank and Financial Institution	N/A	N/A	N/A	From two or more Relevant Bank and Financial Institution
Equity Commitment Letters	Prospective Bidder Consortium Members	N/A	N/A	N/A	Aggregate of USD 50 million
Signed copy of financial letter of support	Affiliate/s	N/A	N/A	N/A	N/A