



Kenya National Highways Authority

Quality Highways, Better Connections

REQUEST FOR QUALIFICATION (RFQ)
FOR THE
SELECTION OF THE INDEPENDENT EXPERT
FOR

NAIROBI – NAKURU – MAU SUMMIT HIGHWAY

DESIGN, BUILD, FINANCE, OPERATE, MAINTAIN AND TRANSFER

Tender Number: KeNHA/PPP/2355/2020

17th November, 2020

Rift Valley Highway Limited
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THE DIRECTOR GENERAL
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DISCLAIMER

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

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

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

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

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

The Employer may, in its absolute discretion but without being under any obligation

to do so, update, amend or supplement the information, assessment or assumptions contained in this RFQ.

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

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

1. INTRODUCTION

1.1 Background

- 1.1.1 The Kenya National Highways Authority (the “**Contracting Authority**”) is engaged in the development of highways in Kenya and as part of this endeavour, the Contracting Authority has decided to undertake development and operation/ maintenance of the Nairobi-Nakuru-Mau Summit Highway PPP Project (the “**Project**”) through Public-Private Partnership (the “**PPP**”) on Design, Build, Finance, Operate and Transfer (the “**DBFOT**”) basis, more particularly defined under Schedule-1 to this Request for Qualification (“**RFQ**”).
- 1.1.2 As a result of a competitive bidding process, the Contracting Authority awarded the Project to Rift Valley Highway Limited (the “**Project Company**” or “**PC**”). On 30 September 2020, the Contracting Authority and the Project Company executed the project agreement for the purpose of implementation of the Project (the “**Project Agreement**” or “**PA**”).
- 1.1.3 In accordance with the terms and conditions of the Project Agreement, the Contracting Authority and the Project Company engaged to jointly appoint a private entity for the role of independent expert (the “**IE**”), which must be a reputable experienced firm with extensive international and Kenyan experience with the role of independent expert in comparable PPP projects, as further described in clause 3.2. For the purpose of this RFQ, the Contracting Authority and the Project Company shall be referred to as “**Employer**”.
- 1.1.4 A brief Scope of Work of the IE has been described under Clause 1.1.3 of this RFQ. The PA shall be shared with the selected IE. The IE will be involved in both the Construction Period and the Operations Period of the Project (as these terms are defined under the PA). The contract/ agreement for the appointment of the IE (the “**IE Agreement**”) shall be for an initial duration of 5 (five) years and 6 (six) months after the Effective Date (as defined below).
- 1.1.5 This appointment will take place through an open international competitive 2 (two) stage bidding process (the “**Bidding Process**”), more specifically described under Clause 1.4 (Brief Description of the Bidding Process) which shall be managed by the Contracting Authority pursuant to the provisions of the Project Agreement and PPDA in conjunction with the PC. This stage is the first stage determining the pre-qualification of the Applicants in terms of this RFQ (the “**Pre-Qualification Stage**”) whereby the Employer intends to pre-qualify and short-list suitable applicants (the “**Applicants**”) who will be eligible for participation in the Bid Stage (*defined below*). The Applicants who shall be shortlisted pursuant to the evaluation of their Applications at the Pre-Qualification Stage shall be eligible to enter into the next stage wherein a detailed Request for Proposals (the “**RFP**”) shall be issued to the shortlisted Applicants, who shall be permitted to submit their bids through an open competitive bidding process which shall be carried out in terms of the said RFP.

Amongst these shortlisted Applicants, who shall submit their bids (the “**Bids**”), the selected bidder shall be declared and the said selected bidder shall be issued a Letter of Award (“**LOA**”) for the appointment as IE in respect of the Project in accordance with the procedure set out there in the said RFP. The intention of the Employer is that such appointment of the IE should take place prior to Effective Date (as defined below) of the Project.

1.1.6 The scope of work of the IE will broadly include:

- a) supporting the successful implementation of the Project through the provision of *inter alia* independent certification, review, monitoring, supervision of the Project throughout its term, approval of the invoices of the PC and mediation services such as **under fast track dispute resolution for technical matters**, in accordance with the terms and conditions of the PA, the PPP Act and the PPP Regulations.
- b) Generally the role of the IE shall be in respect of:
 - i. Design Review, inspection and monitoring of the implementation of the PA;
 - ii. Inspection and monitoring of the PC’s compliance with the Performance Standards as set out under the PA;
 - iii. Providing certification of key milestones as specified in the PA, including the:
 1. Sectional Provisional Completion Certificates;
 2. Sectional Completion Certificates; and
 3. Final Completion Certificate;
- c) Preparing periodic reports to the CA and the PC on the PA implementation;
- d) Submitting reports on the PA implementation to the CA and the PC to inform the CA’s reports to the PPP Committee in June and December in each year of the Term of the Project.
- e) The negotiation of changes and variations will primarily be the responsibility of the CA and the PC, but the IE may be required to express an opinion on the reasonableness of proposals or determine related disputes. The IE, will also be required to record, track and amend its IE Execution plan, in accordance with changes to the Project Company Construction Plan and associated documents in the PC’s Programme, as well as to reflect the impact of agreed contract changes or variations.
- f) The CA and the PC have in place structures and processes via the terms of the PA to resolve issues that arise and also to negotiate and finalize any changes and variations; the PA describes the IE’s role in such processes.

A comprehensive description of the roles and responsibilities of the IE in form of a detailed Terms of Reference (the “**ToR**”) shall be shared as part of the RFP at the Bid Stage.

1.1.7 The Employer shall receive Applications pursuant to this RFQ in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time

by the Employer, and all Applications shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.5 for submission of Applications (the “**Application Due Date**”).

1.2 Definitions

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

- (a) **Act of Subversion** means any act of supporting, propagating (otherwise than with intent to attempt to procure by lawful means the alteration, correction, defeat, avoidance or punishment thereof) or advocating any act or thing materially prejudicial to the security of the Republic of Kenya.
- (b) **Affiliate** means in relation to the Applicant/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Applicant/ Consortium Member. As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.
- (c) **Applicant** means the interested parties/ consortia who make an Application in accordance with the provisions of this RFQ (Expression shall, unless repugnant to the context, include the Members of the Consortium).
- (d) **Application Due Date** means the date specified in Clause 1.5 for submission of Application.
- (e) **Bids** means the technical and financial offers submitted by the Bidders in accordance with the RFP.
- (f) **Bid Due Date** means the date specified as Bid Due Date in Clause 1.5.
- (g) **Bidders** means the applicants pre-qualified and shortlisted by the Employer and eligible to participate in the Bid Stage.
- (h) **Bidding Documents** shall include the Bids submitted in accordance with this RFP and other documents to be provided by the Employer.
- (i) **Bidding Process** means the two-stage procurement process for the selection of an Independent Expert commencing on the date this RFQ is published and expiring on the date of execution of the IE agreement or such other date as may be determined by the Employer.
- (j) **Bid Stage** means the second stage of the Bidding Process after the Employer announce a short-list of suitable pre-qualified Applicants who shall be eligible for participation in the Second Stage of the Bidding Process.
- (k) **BOT** shall mean Build, Operate and Transfer.
- (l) **BOLT** shall mean Build, Operate, Lease and Transfer.
- (m) **BOO shall mean Build, Own and Operate.**
- (n) **BOOT** shall mean Build, Own, Operate and Transfer.

- (o) **Conflict of Interest** shall be as described under Clause 2.2.1(c) of this RFQ.
- (p) **Consortium** means an association of two or more entities for the purpose of Pre-Qualifying to Bid.
- (q) **Construction Period** shall mean the period commencing from the Effective Date (which shall be the date of satisfaction of all conditions precedents for both the parties to the Project Agreement) for a duration of 42 (forty two) months including all the periods of extensions granted to the Project Company by the Contracting Authority in terms of the Project Agreement.
- (r) **Contracting Authority** means the Kenya National Highways Authority.
- (s) **DBFOT** means Design, Build, Finance, Operate and Transfer.
- (t) **EAT** means the East Africa Time.
- (u) **Eligible Experience** means the experience specified in categories as mentioned in Clause 3.2.1.
- (v) **Eligible Projects** means the project as stipulated in Clause 3.2.3 and 3.2.4.
- (w) **Employer** means the Contracting Authority and the Project Company.
- (x) **Experience Score** means the score allotted for the Applicant's Experience for an Eligible Project in the given category.
- (y) **Financial Capacity** means that the Applicant shall have (i) a minimum annual turnover of USD 100 million for each of the last 3 (three) financial years preceding the Applications Due Date, and (ii) a professional liability insurance policy covering its professional activities in on-going projects, as well as those of its employees and any person working on its behalf. The quantum of such insurance shall be no less than USD 20 million.
- (z) **Effective date** means the date of satisfaction of all conditions precedents for both the parties to the Project Agreement.
- (aa) **Frivolous or Vexatious Petition** means a petition which is determined as frivolous or vexatious by the Public Procurement Review Board as established under section 28 of the PPDA, or by the High Court pursuant to any judicial review application that an Applicant may institute against any decision of the Contracting Authority regarding Pre-Qualification Stage.
- (bb) **Government** means the Government of Kenya.
- (cc) **Highways Sector** would be deemed to include highways, expressways, bridges, and tunnels.
- (dd) **Lead Member** means the member nominated by the members of the Consortium whose experience on Eligible Projects corresponds to at least 50% of the Eligible Score of the Consortium, and who fulfills 100% of requirements as stated regarding the eligibility of the Consortium under Clause 2.2.2 (B).
- (ee) **LOA** means the Letter of Award.
- (ff) **Online Portal** means the e-procurement portal of the Contracting Authority accessible at https://www.kenha.co.ke/index.php?option=com_formmaker&view=formmaker&id=31&Itemid=31

[emid=462](#), which shall be used for the submission of the Applications by the Applicants.

(gg) PPP shall mean Public Private Partnership.

(hh) PPDA shall mean **Public Procurement and Disposal Act, 2015 (revised edition 2016)**

(ii) Prohibited Person means, in relation to (i) an Applicant or any of its Consortium Members, or (iii) an Affiliate, 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 named in any list or document 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 and such listing is justified by the involvement in terrorism, money laundering, international narcotics traffic, activities related to the proliferation of weapons of mass destruction or Act of Subversion; or
- (iv) is a person who has had their service or project contracts terminated 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.

(jj) Project Company (PC) shall be Rift Valley Highway Limited.

(kk) Project Agreement (PA) shall be the project agreement for the Design, Build, Finance, Operate and Transfer Nairobi - Nakuru – Mau Summit Highway PPP Project entered into between the Contracting Authority and the Project Company on 30 September 2020.

(ll) Project means Nairobi-Nakuru Mau Summit Highway PPP Project.

(mm) KSH means Kenyan Shilling.

(nn) RFP shall be Request for Proposal to be issued to the shortlisted Applicants at the Bid Stage.

(oo) RFQ means this RFQ bearing Ref. No. KeNHA/PPP/2355/2020 dated 17th November, 2020.

(pp) Successful Bidder shall mean the Bidder to whom a Letter of Award is issued in

accordance with the terms of the PPP Act and the PPP Regulations.

(qq) Technical Capacity means the Applicant shall, over the past 5 (five) years preceding the Application Due Date, have carried out the Categories 1 and 2 Project(s) as specified in Clause 3.2.1 of this RFQ and shall, over the past 10 (ten) years preceding the Application Due Date, have carried out the Categories 3 Project(s) as specified in Clause 3.2.1 of this RFQ.

(rr) ToR shall mean the detailed Terms of Reference for the IE which shall be provided to the shortlisted Applicants at the Bid Stage as part of the RFP;

(ss) Unsatisfactory Performance means in relation to any Eligible Project, the failure or expulsion of, or the breach of obligations by an Applicant or by any of its Consortium Members, or by a proposed Affiliate whose experience is relied upon by the Applicant to meet the Technical and Financial Capacity. Notwithstanding the generality of the foregoing, Unsatisfactory Performance shall include:

- (i) the failure of such Applicant, any of its Consortium Members, or a proposed Affiliate 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 Applicant, any of its Consortium Members, or a proposed Affiliate 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 Applicant, any of its Consortium Members, or a proposed Affiliate resulting in the termination or suspension of any such Eligible Project.
- (iv) a record of significant performance-linked litigation, penalties or other sanctions-based impositions over the ten (10) years immediately preceding the Application Due Date of the Applicant, any of its Consortium Members or a proposed Affiliate.

(tt) USD means the legal currency of United States of America.

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 Applicant 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 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 **“day”** shall be to a calendar day, 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 the Employer. The Employer shall not assume any responsibility for any erroneous interpretations or conclusions by any Applicant or person out of data furnished or indicated in the RFQ.

1.4 Brief description of Bidding Process

As stated in Clause 1.1.2 above, the Employer has adopted a 2 (two) stage Bidding Process for selection of the IE. The first stage i.e. the Pre-Qualification Stage of the process involves pre-qualification of interested parties/ consortia who shall submit an Application in accordance with the provisions of this RFQ i.e. the Applicant, which expression shall, unless repugnant to the context, shall include the members of the Consortium.

- 1.4.1 At the end of this stage, the Employer expect to announce a short-list of suitable pre-qualified Applicants who shall be eligible for participation in the second stage of the Bidding Process i.e. the Bid Stage comprising of issuance of the Request for Proposals i.e. (the RFP).
- 1.4.2 The Employer shall be entitled to disqualify an Applicant in accordance with this RFQ and the provisions of the PPDA, at any stage of the Bidding Process. In the Qualification Stage, Applicants would be required to furnish all the information specified in this RFQ. Only those Applicants that are pre-qualified and short-listed by the Employer shall be invited to submit their Bids for the Project. In case the Applicants want to visit the site, they can do so at their own cost and expense and by their own arrangements. The Employer shall not be liable for bearing any cost for such site visit or making any arrangements for the same, provided however, the Contracting Authority shall provide reasonable assistance in form of granting necessary permissions etc. for such site visits.
- 1.4.3 In the Bid Stage, the Bidders will be called upon to submit their technical proposals as well as their financial proposals as part of their Bids in accordance with the RFP and other documents to be provided by the Employer (collectively the "**Bidding Documents**"). At the Bid Stage, the selection of the IE shall be based on the quality and costs of the bids.
- 1.4.4 During the Bid Stage, Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids.
- 1.4.5 At the Bid Stage, as part of the Bidding Documents, the Employer will provide the PA and other information pertaining/ relevant to the Project available with it.
- 1.4.6 Further and other details of the process to be followed at the Bid Stage and the terms thereof will be spelt out in the Bidding Documents.
- 1.4.7 Any queries or request for additional information concerning this RFQ shall be submitted via e-mail to the following:

a) **Attention:**

1) **Eng. Kefa Seda, Kenya National Highways Authority (KeNHA)**

Project Manager,
Nairobi-Nakuru-Mau Summit Highway
Email: k.seda@kenha.co.ke, ppp@kenha.co.ke

2) **Ms Cécile Brandão - Rift Valley Highway Limited**

Board Director,
Email: cecile.brandao@vinci-concessions.com

- 3) **Mr. Allan Munyua, - Rift Valley Highway Limited**
 Board Director,
 Email: a.munyua@meridiam.com

b) **Copied to:**

- 4) **Mr. Amandeep Singh Virk, - Intercontinental Consultants and Technocrats Pvt. Ltd.**
 PPP Advisor
 Email: ads.virk@ictonline.com

The communications shall clearly bear the following identification/ title:

“Queries/ Request for Additional Information: RFQ for Appointment of an Independent Expert (IE) for the Nairobi Nakuru Mau Summit Project”.

1.5 **Schedule of Bidding Process**

The Employer shall endeavour to adhere to the following schedule:

Event Description	Date
Qualification Stage	
Issuance of Pre-Qualification Notice (PQ Notice) and RFQ by the Employer	17 ^h November, 2020
Last date for receiving queries from the Applicants	[25 days from date of issuance of PQ Notice and the RFQ]
Employer response to queries latest by	[35 days from date of RFQ]
Application Due Date	[45 days from date of RFQ]
Announcement of short-listed Bidders	Within 30 days of Application Due Date
Bid-Stage¹	
Issuance of Bid Documents	[To be specified]
Last date for receiving queries	[To be specified]

¹ The dates specified for various events for the Bid Stage are tentative and may undergo change in the RFP.

Event Description	Date
Pre-Bid meeting	[To be specified]
Employer response to queries latest by	[To be specified]
Bid Due Date	[To be specified]
Opening of Bids	On Bid DueDate
Letter of Award (LOA)	Within 30 days of Bid Due Date
Validity of Bids	120 days of Bid Due Date
Signing of IE Agreement	Within 30 days of award of LOA

2. INSTRUCTIONS TO APPLICANTS

A. GENERAL

2.1 Scope of Application

- 2.1.1 The Employer wishes to receive Applications for Qualification in order to short- list experienced and capable Applicants for the Bid Stage.
- 2.1.2 Short-listed Applicants may be subsequently invited to submit the Bids for the Project.

2.2 Eligibility of Applicants

- 2.2.1 For determining the eligibility of Applicants for their pre-qualification hereunder, the following shall apply:
- (a) The Applicant for pre-qualification may be a single entity or a group of entities (the “**Consortium**”). However, no Applicant applying individually or as a member of a Consortium, as the case may be, can be member of another Applicant. The term Applicant used herein would apply to both a single entity and a Consortium.
 - (b) An Applicant may be a private entity or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.5 below.
 - (c) Applicants must have no conflicts of interest which may impair their ability or perceived ability to act independently in the provision of IE services. Accordingly, the Applicants must disclose all ongoing and recent (within the last

3 (three) years) relationships and engagement with any of the Contracting Authority and the Project Company or any of its shareholders or its affiliates or its proposed construction or O&M contractors. The Project Company consists of the following shareholders: VINCI Highways, Meridiam Infrastructure Africa Fund (MIAF), Meridiam Infrastructure Africa Parallel Fund (MIAPF) and VINCI Concessions. The Project Company's construction contractor is the unincorporated joint venture formed by SOGEA-SATOM and VINCI Construction Terrassement and/or its affiliate. The Project's Company O&M contractor is expected to be VINCI Highways or an affiliate of VINCI Highways.

Applicants shall be considered to have a conflict of interest impairing their ability – or perceived ability – to act independently in the provision of IE services under any or all of the following circumstances:

- An Applicant is also a Project Company's shareholder or an affiliate of any Project Company's shareholder or the proposed O&M or construction contractor;
 - An Applicant has common shareholders exceeding ten percent (10%), with a Project Company's shareholder or an affiliate of any Project Company's shareholder or the proposed O&M or construction contractor, indicating presence of a common economic interest;
 - An Applicant has been directly engaged as a consultant or independent expert by the Contracting Authority or the Project Company in the preparation of the bidding documents or any other relevant design or technical document or in the provision of certification, review, monitoring and supervision services in connection with the Project;
 - An Applicant engages any legal, financial, or technical advisor or consultant who is or was an employee of the Contracting Authority or the Government of Kenya and was involved in any road project implemented by the Contracting Authority in any manner or capacity at any time in the last 3 years;
 - An Applicant receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from a Project Company's shareholder or an affiliate of any Project Company's shareholder or the proposed O&M or construction contractor.
- (d) An Applicant shall be furthermore liable for disqualification if any legal, financial or technical adviser of the Contracting Authority in relation to the Project is engaged by the Applicant, its Member or any Affiliate thereof, as the case may be, in any manner for matters related to or incidental to the Project.

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

- (e) Consulting firms meeting the following criteria and not in Conflict of Interest as specified above are only eligible for applying for this assignment. Firms not meeting these criteria need not apply.

2.2.2 To be eligible for pre-qualification and short-listing, an Applicant shall fulfil the following conditions of eligibility:

- (A) **Technical Capacity:** For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Applicant shall, over the past 5 (five) financial years preceding the Application Due Date, have experience in carrying out the Category 1 and 2 Project(s) as specified in Clause 3.2.1 of this RFQ, and shall, over the past 10 (ten) financial years preceding the Application Due Date, have experience in carrying out the Category 3 Project(s) as specified in Clause 3.2.1 of this RFQ.
- (B) **Financial Capacity:** The Applicant shall have (i) a minimum annual turnover of USD 100 million over each of the last 3 (three) financial years preceding the Application Due Date, and (ii) a professional liability insurance policy covering its professional activities in on-going projects, as well as those of its employees and any person working on its behalf, the quantum of such insurance shall be no less than USD 20 million (the “**Financial Capacity**”). In case of an Applicant which is a Consortium, only the annual turnover and the professional liability insurance policy of the Lead Member shall be evaluated.

2.2.3 The Applicants shall enclose all the required attachments as mentioned in the Annexes with its Application, to be submitted as per the format(s) at Appendix-I.

2.2.4 In case the Applicant is a Consortium, it shall comply with the following additional requirements:

- (a) Number of members in a consortium shall not exceed 3 (three);
- (b) subject to the provisions of sub-clause (a) above, the Application should contain the information required for each member of the Consortium;
- (c) members of the Consortium shall nominate one member as the lead member (the “**Lead Member**”), whose experience on Eligible Projects corresponds to at least 50% of the Eligible Score of the Consortium, and who must fulfill 100% of requirements as stated regarding the eligibility under Clause 2.2.2 (B) read with Clause 3 and the rest of the criteria shall be fulfilled by the other Consortium Members;
- (d) the Application should include a brief description of the roles and responsibilities of individual members;
- (e) an individual Applicant cannot at the same time be member of a Consortium applying for pre-qualification. Further, a member of a particular Applicant Consortium cannot be member of any other Applicant Consortium applying for pre-qualification;

- (f) members of the Consortium shall submit a copy of joint bidding agreement (the “**Joint. Bidding Agreement**”), for the purpose of making the Application and submitting a Bid in the event of being short-listed. The Joint Bidding Agreement, to be submitted along with the Application, shall, *inter alia*:
 - (i) clearly outline the proposed roles and responsibilities, if any, of each member;
 - (ii) include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Consortium in relation to the Project until the Effective Date is achieved in accordance with the PA; and
- (g) except as provided under this RFQ and the Bidding Documents, there shall not be any amendment to the Joint Bidding Agreement without the prior written consent of the Employer.

2.2.5 Any entity which shall fall under the definition of a Prohibited Person as on the date of Application, would not be eligible to submit an Application, either individually or as member of a Consortium and during the evaluation, if it is discovered that the Applicant, its members of Consortium or Affiliates fall under the definition of Prohibited Person as mentioned in this RFQ, then the said Applicant shall be disqualified from the Qualification Stage.

2.2.6 An Applicant including any Consortium Member or Affiliate should, in the last 3 (three) years, have not shown any Unsatisfactory Performance as defined under this RFQ and undertaken to that effect in the Annex QD-5 by the Applicant.

2.2.7 In computing the Technical Capacity of the Applicant/ Consortium Members under Clauses 2.2.2, 2.2.3 and 3.2, the Technical Capacity of their respective Affiliates would also be eligible hereunder. In computing the Financial Capacity of the Applicant/ Lead Member under Clauses 2.2.2, 2.2.3 and 3.4, the Financial Capacity of their respective Affiliates would not be eligible hereunder.

2.2.8 The following conditions shall be adhered to while submitting an Application:

- (a) Applicants should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Applicants may format the prescribed forms making due provision for incorporation of the requested information;
- (b) information supplied by an Applicant (or other constituent Member if the Applicant is a Consortium) must apply to the Applicant, Member or Associate named in the Application and not, unless specifically requested, to other associated companies or firms. Invitation to submit Bids will be issued only to Applicants whose identity and/ or constitution is identical to that at pre-

qualification;

- (c) in responding to the pre-qualification submissions, Applicants should demonstrate their capabilities in accordance with Clause 3.1 below; and
- (d) in case the Applicant is a Consortium, each Member should substantially satisfy the pre-qualification requirements to the extent specified herein.

2.2.9 Notwithstanding anything to the contrary contained herein, in the event that the Application Due Date falls within 3 (three) months of the closing of the latest financial year of an Applicant, it shall ignore such financial year for the purposes of its Application and furnish all its information and certification with reference to the Financial Capacity in respect of 3 (three) years preceding the Application Due Date. For the avoidance of doubt, financial year shall, for the purposes of an Application hereunder, mean the accounting year followed by the Applicant in the course of its normal business in its respective jurisdiction.

2.3 Change in composition of the Consortium

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

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

- (a) the application for such change is made no later than 15 (fifteen) days prior to the Bid Due Date;
- (b) the Lead Member continues to be the Lead Member of the Consortium;
- (c) the substitute is at least equal, in terms of Technical Capacity, to the Consortium Member who is sought to be substituted and the modified Consortium shall continue to meet the pre-qualification and short-listing criteria for Applicants and the new Consortium shall meet the eligibility criteria as set out under Clause 2.2.2 read with Clause 3 of this RFQ after such substitution;
- (d) the new Member(s) expressly adopt(s) the Application already made on behalf of the Consortium as if it were a party to it originally, and is not an Applicant/Member/Affiliate of any other Consortium bidding for this Project.

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

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

2.4 Number of Applications and costs thereof

- 2.4.1 No Applicant shall submit more than 1 (one) Application for the Project. An applicant applying individually or as a member of a Consortium shall not be entitled to submit another application either individually or as a member of any Consortium, as the case may be.
- 2.4.2 The Applicants shall be responsible for all of the costs associated with the preparation of their Applications and their participation in the Bid Process. The Employer will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.5 Site visit and verification of information

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

2.6 Acknowledgement by Applicant

- 2.6.1 It shall be deemed that by submitting the Application, the Applicant has:
- (a) made a complete and careful examination of the RFQ;
 - (b) received all relevant information requested from the Employer;
 - (c) accepted the risk of inadequacy, error or mistake in the information provided in the RFQ or furnished by or on behalf of the Employer relating to any of the matters referred to in Clause 2.5 above; and
 - (d) agreed to be bound by the undertakings provided by it under and in terms hereof.
- 2.6.2 The Employer shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the RFQ or the Bidding Process, including any error or mistake therein or in any information or data given by the Employer.

2.7 Right to accept or reject any or all Applications

- 2.7.1 Notwithstanding anything contained in this RFQ, the Employer reserves the right to accept or reject any Application and to annul the Bidding Process at this Pre-Qualification Stage and reject all Applications, at any time without any liability or any obligation for such acceptance, rejection or annulment. In the event that the Employer rejects or annuls all the Applications, it may, in its discretion, invite all eligible

Applicants to submit fresh Applications hereunder.

2.7.2 The Employer reserves the right to reject any Application if:

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

2.7.3 In case it is found during the evaluation or at any time before signing of the IE Agreement or after its execution and during the period of subsistence thereof, that one or more of the pre-qualification conditions have not been met by the Applicant, or the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet appointed as the IE either by issue of the LOA or entering into of the IE Agreement, and if the Applicant has already been issued the LOA or has entered into the IE Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFQ, be liable to be terminated, by a communication in writing by the Employer to the Applicant, without the Employer being liable in any manner whatsoever to the Applicant and without prejudice to any other right or remedy which the Employer may have under this RFQ, the Bidding Documents, the IE Agreement or under applicable law of Kenya.

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

2.8 Clarifications

2.8.1 Applicants requiring any clarification on the RFQ may notify the Employer in writing or by e-mail etc. in the format as provided under Schedule-2. They should send in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.5 to the following:

a) **Attention:**

1) Eng. Kefa Seda, Kenya National Highways Authority (KeNHA)

Project Manager,
Nairobi-Nakuru-Mau Summit Highway
Email: k.seda@kenha.co.ke, ppp@kenha.co.ke

2) Ms Cécile Brandão, Rift Valley Highway Limited

Board Director
Email: cecile.brandao@vinci-concessions.com

3) Mr. Allan Munyua,
Board Director
Email: a.munyua@meridiam.com

b) Copied to:

4) Mr. Amandeep Singh Virk, Intercontinental Consultants and Technocrats Pvt. Ltd.
PPP Advisor
Email: ads.virk@ictonline.com

2.8.2 The Employer shall endeavour to respond to the queries within the period specified therein, but no later than 10 (ten) days prior to the Application Due Date.

2.8.3 The Employer shall endeavour to respond to the questions raised or clarifications sought by the Applicants. However, the Employer reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Employer to respond to any question or to provide any clarification.

2.8.4 The Employer may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Applicants. All clarifications and interpretations issued by the Employer shall be deemed to be part of the RFQ. Verbal clarifications and information given by the Employer or its employees or representatives shall not in any way or manner be binding on the Employer.

2.9 Amendment of RFQ

2.9.1 At any time prior to the deadline for submission of Application, the Employer may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the RFQ by the issuance of Addenda.

2.9.2 In order to afford the Applicants a reasonable time for taking an Addendum into account, or for any other reason, the Employer may, in its sole discretion, extend the Application Due Date.

B. PREPARATION AND SUBMISSION OF APPLICATION

2.10 Language and foreign documents

2.10.1 The Application, and all correspondence and documents relating to this RFQ, shall be prepared and written in the English language. All certified statements, regardless of the place of execution, must be notarized.

2.10.2 All documents issued or executed in a foreign country must be notarized by a notary public in that country. Wherever copies of the original documents are required to

be submitted as a part of the Application, same shall also be duly notarized as true copies of the originals.

2.10.3 Supporting documents and printed literature furnished by Applicants along with the Application 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. Additionally, the Applicants shall duly certify the translation as true and genuine and the same shall also be duly notarized by a notary public of that country.

2.10.4 If the document was issued by a foreign authority, the Applicant should also submit a certified true copy of such document issued by such foreign authority along with a duly translated English copy of such document by a translator who shall certify the translation as true and genuine. Additionally, the Applicant shall duly certify the translation as true and genuine and the same shall also be duly notarized by a notary public of that country.

2.11 Format and signing of Application

2.11.1 The Applicant shall provide all the information sought under this RFQ. The Employer will evaluate only those Applications that are received in the required formats and complete in all respects through the Online Portal. Incomplete and /or conditional Applications shall be liable to rejection.

2.11.2 The Applicant shall prepare 1 (one) original set of the Application (together with originals/ copies of documents required to be submitted along therewith pursuant to this RFQ) and upload the password protected scanned version of the same on the Online Portal i.e. https://www.kenha.co.ke/index.php?option=com_formmaker&view=formmaker&id=31&Itemid=462. The Application shall be typed in indelible ink, stamped and signed by the authorized representative of the Applicant (wherever necessary) who shall also initial each page in blue ink. In case of printed and published documents, only the cover/ first page shall be initialed. All the alterations, omissions, additions or any other amendments made to the Application shall be initialed by the person(s) signing the said Application. Each document within the set of scanned Application uploaded by the Applicants shall have pagination in continuous sequential order.

2.11.3 The maximum size of Application to be uploaded shall be not more than 100 MB. Applicants may zip/compress their Application to keep its size up to 100 MB.

2.11.4 Applications submitted shall be password protected and if any Applicant submits any Application which are not password protected, then the said Applicant shall be declared as disqualified.

2.12 Submission of Applications

2.12.1 The Applicant shall submit the Application in the format specified at Appendix-I, together with the documents specified in Clause 2.12.2.

2.12.2 Each Application shall be in the prescribed format (Appendix-I) along with Annexes and relevant documentary evidence:

- (a) 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 Applicant is a single entity, it must submit a Notarized Authority using the form in Annex QD-1B.
 - (ii) If the Applicant is a Consortium, each Consortium Member must submit a Notarized Authority 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.
- (c) Basic details of the Applicant, using the form in Annex QD-2 for both the single Applicant as well as Consortia. Required attachments shall include the following:
 - (i) If the Applicant is a Consortium, a copy of the Joint Bidding Agreement identifying each member's role and setting out their relationship duly certified by the authorized representative of the Lead Member;
 - (ii) For an entity incorporated or registered in Kenya, (i) a certified true copy of the Certificate of Incorporation, or where such entity is not a company, a certified true 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;
 - (iii) For an entity incorporated or registered outside Kenya, (i) a certified true 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.

(d) **Details of Technical Capacity:**

The Applicants must provide the necessary information relating to Technical Capacity as per format at Annex QD-3A, Annex QD-3B and Annex QD-3C of Appendix-I. The Applicant should furnish the details of Eligible Experience for the last 5(five) years immediately preceding the Application Due Date using the form in Annex QD-3A and Annex QD-3B for Eligible Projects in Category 1 and Category 2 respectively, along with respective documentary evidence from each Eligible Project owner for Categories 1 and 2 that the Applicant has successfully completed its assignment. The Applicant should furnish the details of Eligible Experience for the last 10 (ten) years immediately preceding the Application Due Date using the form in Annex QD-3C for Eligible Projects in Category 3, along with respective documentary evidence

from each Eligible Project owner for Category 3 that the Applicant has successfully completed its assignment.

The documentary evidence for each Eligible Project under Categories 1, 2 and 3 shall be accompanied by a statement from the authorized representative of the Applicant claiming the Eligible Experience that the documentary evidence provided is the standard form of project acceptance in the jurisdiction from which the Eligible Project is presented.

(e) Details of Financial Capacity:

Statement of Financial Capacity shall be submitted using the form in Annex QD-4 by the Applicant. Duly certified true copy of the latest Audited Annual Reports/ Financial Statements for the last 3 (three) financial years preceding the Application Due Date, duly certified by the statutory auditor or in case of an entity other than a company, a letter from an independent auditor, must be submitted by the Applicant and, in case the Applicant is a Consortium, by the Lead Member. Statement of Financial Capacity shall also be evidenced through the provision by the Applicant and, in case the Applicant is a Consortium, by the Lead Member, of a duly certified true copy of a an insurance company or insurance broker's certificate for the professional indemnity insurance policy. In the event such latest Audited Annual Reports/ Financial Statements or insurance company or insurance broker's certificate for the professional indemnity insurance policy 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. Additionally, the Applicant shall duly certify the translation as true and genuine.

(f) Certification of Absence of Unsatisfactory Performance Record using the Annex QD-5 by a single Applicant and all Consortium Members in case of Applicant Consortium.

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

2.13 Application Due Date

2.13.1 Applications should be uploaded on the Online Portal on or before 10:00 Hrs EAT on the Application Due Date, at the address/link provided in Clause 2.11.2 in the manner and form as detailed in this RFQ.

2.13.2 The Employer may, in its sole discretion, extend the Application Due Date by issuing an Addendum in accordance with Clause 2.9 uniformly for all Applicants.

2.14 Late Applications

Applications received by the Employer after the specified time on the Application Due Date shall not be eligible for consideration and shall be summarily rejected.

2.15 Modifications/ substitution/ withdrawal of Applications

2.15.1 The Applicants shall not be permitted to modify, substitute or withdraw their Application after submission on or after the Application Due Date.

C. EVALUATION PROCESS

2.16 Opening and Evaluation of Applications

2.16.1 The Employer shall open the electronic Applications at 11:00Hrs EAT on the Application Due Date.

2.16.2 Between 10:00 Hrs to 10:30 Hrs EAT on the Application Due Date, all the Applicants who have submitted the Application shall send the respective passwords required to open their Application at the email addresses set out below:

1) **Kenya National Highways Authority (KeNHA)**

Attention: Eng. Kefa Seda,
Project Manager,
Nairobi-Nakuru-Mau Summit Highway
Email: k.seda@kenha.co.ke

2) **Rift Valley Highway Limited**

Attention: Ms Cécile Brandão
Board Director
Email: cecile.brandao@vinci-concessions.com

2.16.3 At 11:00Hrs EAT on the Application Due Date, the Employer will commence the opening proceedings by announcing the names of the Applicants who have submitted the Applications. The representatives of the Employer shall download and open the Applications for each Applicant who has submitted the same, for the purposes of evaluation. The Employer reserves its right to disallow the opening of those Applications, whose respective passwords have not been sent to the email addresses mentioned above within the prescribed timeline as set out above for sharing the passwords on the Application Due Date.

2.16.4 The Employer shall examine the contents of each folder/file containing the Application as uploaded by the Applicant to determine whether it contains all of the documents required. If the contents of the folders/files uploaded by an Applicant are found to be incomplete, the Employer shall disqualify the said Applicant.

2.16.5 A representative of each Applicant will be allowed to witness the opening of the Application through video conferencing in the manner as prescribed by the Employer. The Employer shall record the attendance of the representatives of the Applicants who choose to attend the opening of the Applications through video conferencing or any

other manner as prescribed by the Employer. An Applicant whose representative is not present to witness the opening proceedings shall be deemed to have waived the opportunity to witness the opening.

- 2.16.6 Applications for which a notice of withdrawal has been submitted in accordance with Clause 2.15 shall not be opened.
- 2.16.7 The Employer will subsequently examine and evaluate Applications in accordance with the provisions set out in Clause 3.
- 2.16.8 Applicants are advised that pre-qualification of Applicants will be entirely at the discretion of the Employer. The Employer without any liability whatsoever shall communicate to the disqualified Applicants about their disqualification with reasons in writing.
- 2.16.9 Any information contained in the Application shall not in any way be construed as binding on the Employer, its agents, successors or assigns, but shall be binding against the Applicant if the appointment of IE is subsequently done on the basis of such information.
- 2.16.10 The Employer reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Application(s).
- 2.16.11 If any information furnished by the Applicant is found to be incomplete, or contained in formats other than those specified herein, the Employer may, in its sole discretion, exclude the relevant project from computation of the Eligible Score of the Applicant.
- 2.16.12 In the event that an Applicant claims credit for an Eligible Project, and such claim is determined by the Employer as incorrect or erroneous, the Employer shall reject such claim and exclude the same from computation of the Eligible Score, and may also, while computing the aggregate Experience Score of the Applicant, make a further deduction equivalent to the claim rejected hereunder. Where any information is found to be patently false or amounting to a material misrepresentation, the Employer reserve the right to reject the Application and/ or Bid in accordance with the provisions of Clauses 2.7.2 and 2.7.3.

2.17 Confidentiality

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

privilege of the statutory entity and/ or the Employer or as may be required by law or in connection with any legal process.

2.18 Tests of responsiveness of the Application

2.18.1 Prior to evaluation of Applications, the Employer shall determine whether each Application is responsive to the requirements as set out in this Clause 2.18.1. An Application shall be considered responsive only if:

- (a) it is received as per format at Appendix-I.
- (b) it is received by the Application Due Date including any extension thereof pursuant to Clause 2.13.2;
- (c) it has been duly uploaded on the Online Portal in accordance with Clause 2.11 and is password protected;
- (d) it contains all the information and documents (complete in all respects) as requested in this RFQ;
- (e) it contains information in formats same as those specified in this RFQ;
- (f) it contains certificates from its statutory auditors in the formats specified at Appendix-I of the RFQ for each Eligible Project;
- (g) it is accompanied by the Joint Bidding Agreement (for Consortium), specific to the Project, as stipulated in Clause 2.2.5(g);
- (h) it does not contain any condition or qualification;
- (i) it does not contain any conflict of interest in terms of this RFQ;
- (j) it has not been declared as a Prohibited Person in terms of this RFQ; and
- (k) it is not non-responsive in terms hereof.

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

2.19 Clarifications

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

2.19.2 If an Applicant does not provide clarifications sought under Clause 2.19.1 above within the prescribed time, its Application shall be liable to be rejected. In case the Application is not rejected, the Employer may proceed to evaluate the Application by construing the particulars requiring clarification to the best of its understanding, and the Applicant shall be barred from subsequently questioning such interpretation of the Employer.

D. QUALIFICATION AND BIDDING

2.20 Short-listing and notification

After the evaluation of Applications, the Employer would announce a list of short-listed pre-qualified Applicants (Bidders) who will be eligible for participation in the Bid Stage. At the same time, the Employer would notify the other Applicants that they have not been short-listed. The Employer will not entertain any query or clarification from Applicants who fail to qualify.

2.21 Proprietary data

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

2.22 Correspondence with the Applicant

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

3. CRITERIA FOR EVALUATION

3.1 Evaluation parameters

3.1.1 Only those Applicants who meet the eligibility criteria specified in Clause 2.2.2 above shall qualify for evaluation under this Section 3. Applications of firms/ consortia who do not meet these criteria shall be rejected.

3.1.2 The Applicant's competence and capability is proposed to be established by the following parameters:

- (a) Technical Capacity; and
- (b) Financial Capacity.

3.2 Technical Capacity for purposes of evaluation

3.2.1 Subject to the provisions of Clause 2.2, the following categories of experience would qualify as Technical Capacity and eligible experience (the "**Eligible Experience**") in relation to eligible projects as stipulated in Clauses 3.2.3 and 3.2.4 (the "**Eligible Projects**"):

Category 1: Experience on Eligible Projects successfully implemented and completed in the Highways Sector wherein the entity should have completed detailed project report or feasibility study report including preparation of project design; and

Category 2: Experience on Eligible Projects successfully implemented and completed in the Highways Sector with capital expenditures of at least USD 500 million wherein the firm should have experience of completing IE services *inter alia* project supervision during the construction period as well as operations period/ issuance of completion certifications/ approval of invoices of the concessionaire or project company/ playing arbiter role in resolving technical issues between contracting authorities and the concessionaires or project companies etc.

Category 3: Experience on Eligible Projects successfully implemented and completed in the Highways Sector located in Kenya wherein the entity should have completed detailed design and construction supervision. For the avoidance of doubt, the Eligible Projects should have been successfully implemented and constructed on the basis of the detailed design or design review performed by the Applicant;

For the purpose of this RFQ, "**Highways Sector**" would be deemed to include highways, expressways, bridges, and tunnels.

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

3.2.3 For a project to qualify as an Eligible Project under Categories 1 and 2, the Applicant should demonstrate successful completed experience as prime consultant in the last 5 (five) years preceding the Applications Due Date in respect of a PPP project on BOT, BOLT, BOO, BOOT, DBOT, DBOFMT format or other similar variant/format of PPP in Highways Sector with a minimum 4 (four) lane highway configuration and minimum length of 400 lane km. For a project to qualify as an Eligible Project under Category 3, the Applicant should demonstrate successful completed experience as prime consultant in the last 10 (ten) years preceding the Applications Due Date in respect of a project in Highways Sector with a minimum length of 100 lane km.

- 3.2.4 The Applicant shall quote experience in respect of a particular Eligible Project under each category as specified under Clause 3.2.1 above, even though the Applicant (either individually or along with a member of the Consortium) may have played multiple roles in the cited project. Double counting for a particular Eligible Project shall not be permitted in any form.
- 3.2.5 Under each category as specified above, every Applicant is open to submit Eligible Projects subject to the requirements of the said project as specified in the respective category. Each Eligible Project as specified under the respective category shall be awarded score as per the factors specified under Table below. Aggregate of the said scores awarded to each Eligible Projects as cited by an Applicant shall be used to determine its final score i.e. “**Eligible Score**”. Accordingly, the ranking of the Applicants shall be prepared in accordance with Clause 3.5 below.

Table: Factors for Experience across categories

Categories	Factor
Category 1	1.00
Category 2	2.00
Category 3	1.00

- 3.2.6 Experience for any activity relating to an Eligible Project under Category 1, 2 and 3 shall not be claimed by 2 (two) or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.

3.3 Details of Experience

The Applicants must provide the necessary information relating to Technical Capacity as per format at Annex QD-3A, Annex QD-3B and Annex QD-3C of Appendix-I along with relevant documentary evidence as specified at Clause 2.12.2 (d) and the Annex QD-3A, Annex QD-3B and Annex QD-3C.

3.4 Financial information for purposes of evaluation

- 3.4.1 The Application must be accompanied by (i) the latest audited Annual Reports/ Financial Statements of the Applicant (of the Lead Member in case of a Consortium) for the last 3 (three) financial years, preceding the year in which the Application is made and by (ii) a duly certified true copy of an insurance company or insurance broker’s certificate for the professional indemnity insurance policy of the Applicant (of the Lead Member in case of a Consortium).
- 3.4.2 In case the annual accounts for the latest financial year are not audited and therefore the Applicant cannot make it available, the Applicant shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Applicant shall provide the audited Annual Reports/ Financial Statements

for 3 (three) years preceding the year for which the audited Annual Report/ Financial Statement is not being provided.

- 3.4.3 The Applicant must furnish the details of annual turnover of at least USD 100 million over the last 3 (three) financial years preceding the Applications Due Date as specified in Clause 2.2.2 (B), and provide details as per format at Annex-QD5 of Appendix-I along with relevant documentary evidence as specified at Clause 2.12.2.

3.5 Short-listing of Applicants

- 3.5.1 The credentials of eligible Applicants shall be measured in terms of their Experience Score. The sum total of the Experience Scores for all Eligible Projects under Category 1, 2 and 3 shall be the “**Eligible Score**” of a particular Applicant. In case of a Consortium, the aggregate experience score of each of its Members shall be summed up for arriving at the combined Eligible Score of the Consortium.
- 3.5.2 The Applicants shall then be ranked on the basis of their respective Eligible Scores and short-listed for submission of Bids. The Applicant who shall be awarded the highest score shall be ranked first and then the shortlist of the Applicants shall be prepared in descending order.
- 3.5.3 The Employer may, in its discretion, maintain a reserve list of pre-qualified Applicants who may be invited to substitute the short-listed Applicants in the event of their withdrawal from the Bid Process or upon their failure to conform to the conditions specified herein; provided that a substituted Applicant shall be given at least 30 (thirty) days to submit its Bid.

4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, the Employer may reject an Application without being liable in any manner whatsoever to the Applicant if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.
- 4.2 Without prejudice to the rights of the Contracting Authority under Clause 4.1 hereinabove, if an Applicant is found by the Contracting Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Applicant shall not be eligible to participate in any tender or RFQ issued by the Contracting Authority during a period of 2 (two) years from the date such Applicant is found by the Contracting Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as

the case may be.

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

- (a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Contracting Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the IE Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of 1 (one) year from the date such official resigns or retires from or otherwise ceases to be in the service of the Contracting Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under sub clause (d) of Clause 2.2.1, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the IE Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the IE Agreement, who at any time has been or is a legal, financial or technical adviser of the Contracting Authority or the PC in relation to any matter concerning the Project;
- (b) **“fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
- (c) **“coercive practice”** means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
- (d) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by the Contracting Authority or the PC with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- (e) **“restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

5. MISCELLANEOUS

5.1. Applicable exchange rate for currency conversion to USD

- (a) Unless otherwise specified, for expressing the value of any currency other than USD in USD equivalent, the applicable exchange rate shall be the mean daily representative exchange rates published by the International Monetary Fund as on the date the RFQ is published.
- (b) 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 deemed to be the relevant exchange rate.
- (c) The Applicant shall, together with its Application, state all the exchange rates, the reference date and the definitive source of the exchange rate for the currency used.
- (d) In the event that the audited Annual Reports/ Financial Statements of an Applicant/ its Lead Member are prepared in any currency other than USD, then annual turnover figures presented in the Application shall be converted by the Applicant into USD at the relevant exchange rate for the financial year end date to which the latest audited Annual Reports/ Financial Statements were drawn up.

5.2. Frivolous and Vexatious Petition

The Employer reserves the right to seek damages from an Applicant in the event the Pre-Qualification Stage is delayed as a result of a Frivolous or Vexatious Petition filed by such Applicant.

5.3. Governing Law

The Bidding Process shall be governed by, and construed in accordance with, the laws of Kenya and the Courts at Nairobi shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.

5.4. Other Provisions

The Employer, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;

- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
- (b) consult with any Applicant in order to receive clarification or further information;

- (c) pre-qualify or not to pre-qualify any Applicant and/ or to consult with any Applicant in order to receive clarification or further information;
- (d) retain any information and/ or evidence submitted to the Contracting Authority by, on behalf of, and/ or in relation to any Applicant; and/or
- (e) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Applicant.

5.5. It shall be deemed that by submitting the Application, the Applicant agrees and releases the Contracting Authority, its employees, agents and advisers, and the Project Company, its shareholders, directors, officers, employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the this RFQ, pursuant hereto, and/ or in connection with the Bidding Process, to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

Appendix-I
Annex QD-1A
APPLICATION FOR PRE-QUALIFICATION

[Letterhead]

Date: [●]

To,
The Secretary
Pre-Qualification Committee
Kenya National Highways Authority
Barabara Plaza, Jomo Kenyatta International Airport (JKIA),
Off Airport South Road, along Mazao Road
P.O. Box 49712-00100,
NAIROBI

and

Rift Valley Highway Limited
9th Floor, Williamson House, 4th Ngong Avenue,
Post Office 40111 – 00100
NAIROBI

TENDER NO: KeNHA/PPP/2355/2020

**PRE-QUALIFICATION FOR THE SELECTION OF AN INDEPENDENT EXPERT FOR NAIROBI-NAKURU MAU
SUMMIT HIGHWAY PPP PROJECT**

I, (name), (citizenship), of legal age, with the office address at (address), acting as the authorized representative of (name of single Applicant/Lead Member), a (company, partnership, or corporation) having its registered office at (address), being the Applicant / 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 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 Consortium Member/s²), after having been duly sworn according to law, hereby declare and certify for and on behalf of (name of the Applicant) that:

Capitalized terms used but not defined herein will have the meaning assigned to such term in the Request

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

for Qualification, No: KeNHA/PPP/2355/2020 ("RFQ").

1. The Application to Pre-Qualify to Bid for the Selection of an Independent Expert for Nairobi-Nakuru Mau Summit Highway PPP Project are hereby submitted after fully reviewing and understanding the contents of the RFQ.
2. The Application submitted is unqualified and unconditional.
3. All statements made and the information and documents provided by us, being the Applicant [and all the Consortium Members, the Affiliates of the Applicant and the Consortium Members] in or as any part of the Application, are true and correct and any misrepresentation or false statement made therein shall be a ground for our disqualification from the Bidding Process at this Pre-Qualification Stage.
4. We, the Applicant, authorize the Employer to make enquiries to authenticate the statements, documents and information submitted in our Application, and to seek clarification from us and, as applicable, from our board of directors / partners, Consortium Members, Affiliates, advisors, clients or bankers regarding any legal, technical and financial aspects.
5. We acknowledge the right of the Employer to reject our Application and to cancel the Bidding Process at any time in accordance with section 63 of the PPDA, without incurring any liability, and accept all the terms and conditions of the RFQ.
6. We, the Applicants, [including any of the Consortium Member/ Affiliate(s) named in the Application as complying with the terms of the RFQ], have not at any time engaged in any Corrupt, Fraudulent or Dishonest, Coercive, Undesirable or Restrictive Practices.
7. We, the Applicants [all the Consortium Members/ the Affiliate(s)] are not Prohibited Person.
8. We, the Applicant, confirm and warrant that:
 - (a) the Application has been prepared without consultation, communication or agreement for restricting competition with any other Applicant (including the Consortium Members/ the Affiliates of such other Applicant or their Consortium Members);
 - (b) the Application have not been disclosed, nor will they be disclosed to any other Applicant, or Consortium Member of any other Applicant, or any of their Affiliates;
 - (c) no attempt has been made nor will be made by us to induce any other person to submit or not to submit their Application;
 - (d) we (including any Consortium Member or the Affiliates) have no conflicts of interest which may impair our ability or perceived ability to act independently in the provision of IE services as defined in clause 2.2.1 (c) of RFQ. Except those disclosed in accordance with clause 2.2.1 (c) of RFQ, as the case may be, we have no ongoing and recent (within the last 3 (three) years) relationships and engagement with any of the Contracting Authority and Project Company or any of its shareholders or its affiliates or its proposed construction or O&M contractors. The Project Company consists of the

following shareholders: VINCI Highways, Meridiam Infrastructure Africa Fund (MIAF), Meridiam Infrastructure Africa Parallel Fund (MIAPF), and VINCI Concessions. The Project Company's construction contractor is the unincorporated joint venture formed by SOGEA-SATOM and VINCI Construction Terrassement and/or its affiliate. The Project's Company O&M contractor is expected to be VINCI Highways or an affiliate of VINCI Highways.

9. We, the Applicant [and all the Consortium Members, the Affiliates of the Applicant or the Consortium Members] undertake to indemnify the Employer and hold it harmless from any loss, damage, liabilities, claims, actions, proceedings, demands, costs, charges or expenses of whatsoever nature suffered by the Employer 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 Applicant [and all the Consortium Members/ the Affiliates] confirm that the Application shall remain valid for a period of one hundred and twenty (120) days after the relevant Application Due Date.
11. We, the Applicant shall undertake that in the event we are declared as the selected bidder, we [Lead Member in case of a Consortium] shall undertake that we [Lead Member in case of a Consortium] shall obtain a professional liability insurance policy covering our professional activities specifically with respect to the Project, as well as those of our employees and any person working on our behalf in the scope of the services for the IE role on the Project as it will be specified in the RFP. The quantum of such insurance shall be no less than USD 20 million.
12. We, the Applicant shall undertake that in the event we become the Successful Bidder and are asked to execute the IE Agreement, we shall, pursuant to the provisions of the PPDA, as amended or substituted from time to time and we shall comply with all other requirements under the RFQ and the subsequent RFP.

For and on behalf of (*Name of Applicant / 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)]

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 an Applicant which is a single Applicant or by the Lead Member

[Letterhead]

Date: [●]

To:

The Secretary
Pre-Qualification Committee
Kenya National Highways Authority
Barabara Plaza, Jomo Kenyatta International Airport (JKIA),
Off Airport South Road, along Mazao Road
P.O. Box 49712-00100,
NAIROBI

and

Rift Valley Highway Limited
9th Floor, Williamson House, 4th Ngong Avenue,
Post Office 40111 – 00100
NAIROBI

TENDER NO: KeNHA/PPP/2355/2020

PRE-QUALIFICATION FOR SELECTION OF AN INDEPENDENT EXPERT FOR NAIROBI-NAKURU MAU SUMMIT HIGHWAY PPP PROJECT

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

1. I am a citizen of (*state and nationality*), of legal age and a resident of (*address*);
2. (*Name of single Applicant /Consortium*) (the " Applicant "), 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 Applicant / 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 Applicant /Lead Member*) is, authorized to apply for Pre-Qualification as (*a single Applicant /Lead Member of the [name] Consortium*) for the selection of an Independent Expert for the Project; and

3.2 that (*name of representative and designation*) is hereby appointed as the authorized representative of the (Applicant /Lead Member) to make submissions/statements, commit, undertake, declare,, execute, sign, certify, submit the Application and receive any requests for clarification, additional information, authentication or verification and otherwise act in the name of, the (Applicant /Lead Member and the Applicant) 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 Applicant; and

5. The above resolutions are in accordance with the records of the (Applicant /Lead Member).

Capitalized terms used herein but not defined herein will have the meaning assigned to such term in the Request for Qualification, No: KeNHA/PPP/2355/2020 ("**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 an Applicant which is a Consortium; to be submitted by each Consortium Member.

[Letterhead]

To,
The Secretary
Pre-Qualification Committee
Kenya National Highways Authority
Barabara Plaza, Jomo Kenyatta International Airport (JKIA),
Off Airport South Road, along Mazao Road
P.O. Box 49712-00100,
NAIROBI

and

Rift Valley Highway Limited
9th Floor, Williamson House, 4th Ngong Avenue,
Post Office 40111 – 00100
NAIROBI

TENDER NO: KeNHA/PPP/2355/2020

PRE-QUALIFICATION FOR SELECTION OF AN INDEPENDENT EXPERT FOR THE NAIROBI-NAKURU MAU SUMMIT HIGHWAY PPP PROJECT

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 selection of an Independent Expert for the Project through a Consortium consisting of the following Consortium Members;

Name of Consortium Members	Nationality	Role [i.e. Lead Member/ Consortium Members/ Others (please specify)]

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 Application 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 operate as an Independent Expert in the terms of the IE Agreement, the PA and the provisions of the PPP Act and PPP Regulations (as amended from time to time).

RESOLVED, FURTHER, that (name of the Consortium Member) binds itself jointly and severally for all the obligations of the Applicant 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 Application.

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, No: KeNHA/PPP/2355/2020 ("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-2
DETAILS OF THE APPLICANT**

1. Following are the basic details of the Applicant:

a. Name of Applicant	
b. Single Applicant/Consortium	
c. Place of incorporation or registration	
d. Year of incorporation or registration	
e. Address	
f. Website	
g. Contact person	
i. Telephone	
ii. Fax	
iii. Email	

2. Contact Information of Consortium Members

1. Name of Consortium Member	
2. Role in Consortium (such as Lead Member/Consortium Member)	
3. Place of incorporation or registration	
4. Year of incorporation or registration	
5. Address	
6. Website	
7. Contact (Name and Designation)	
i. Telephone	
ii. Fax	
iii. Email	

[Note: Replicate table above for all Consortium Members]

3. Affiliates, if any, of the Single Applicant/ any of the Consortium Member(s)

a. Name of Affiliate	
b. With whom Affiliated	
c. Place of incorporation or registration	
d. Year of incorporation or registration	
e. Address	
f. Website	
8. Contact (Name and Designation)	
i. Telephone	
ii. Fax	
iii. Email	

[Note: If the experience of more than one Affiliates, replicate table above]

For and on behalf of (Name of Applicant)

(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.

Enclosures:

- In case of a Consortium, a copy of the Joint Bidding Agreement, clearly setting out the relationship between the Consortium Members of each of the Consortium Member duly certified by the authorized representative of the Lead Member;
- For an Applicant which is incorporated or registered in Kenya: (i) a certified true copy of the Certificate of Incorporation, or where such Applicant is not a Company, a certified true copy of the registration certificate issued by an appropriate authority evidencing legal existence of such

Applicant and a letter from Applicant's authorized representative to the effect that the Applicant is not insolvent, in receivership, bankrupt or in the process of being wound up;

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

**Annex QD-3A
ELIGIBLE EXPERIENCE FOR CATEGORY 1**

To be submitted by the Applicant proposed as fulfilling the Eligible Experience requirement, as identified in the Annex QD-2:

Name of the Applicant	
Name of the entity proposed as fulfilling the Eligible Experience requirement	Relationship to the Applicant <i>(Single Applicant itself/ Lead Member/ Consortium Member/ Affiliate)</i>

List of Eligible Projects in respect of Category 1 under Clause 3.2.1

Ref #	Name of entity proposed as meeting the Eligible Experience under Category 1	Experience claimed by Single Applicant itself/ Lead Member/ Consortium Member/ Affiliate	Name of Eligible Project	Length of road/highway (in lane Km)
1.				
2.				
3.				
Total number of Eligible Projects in respect of Category 1 under Clause 3.2.1				

(Insert rows as necessary)

Description of each Eligible Project for Category 1

Ref #	
Name of Road	
Location	
Description of scope of work/ Terms of Reference	
Name of Eligible Project owner	
Name and contact details of contracting authority's contact person	
Name of entity which has completed the assignment referred under Category 1 under Clause 3.2.1 <i>(Single Applicant/Consortium Member/ Affiliate)</i>	
Whether	

Length of the project in kilometres (indicate per section if necessary)	
Start Date of services	
End Date of services	

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

Required Attachments:

- 1) Documentary evidence from each Eligible Project owner that the preparation of detailed project report or pre-feasibility study/ feasibility study report including preparation of project design in respect of such Eligible Project has been completed and accepted by the project owner specifying the date of completion and acceptance of such detailed project report/feasibility study cum preliminary design report (e.g. completion certificate).
- 2) Documentary evidence from each Eligible Project owner that the project has been implemented and completed specifying the date of completion of the project (e.g. project completion certificate).
- 3) Statement from the authorized representative of the Applicant claiming the Eligible Experience that the documentary evidence provided is the standard form of project acceptance in the jurisdiction from which Eligible Project is presented.
- 4) Extracts of the Terms of Reference of each Eligible Project cited in this QD-3A.
- 5) Certification from the authorized representative of the Applicant for correctness of the information furnished should be done in the following manner :

Certificate from the authorized representative
This is to certify that the abovementioned information provided by _____ (<i>Details of the Applicant</i>) 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 Applicant)

For and on behalf of (Name of the Applicant/if Consortium, Name of Consortium and Lead Member)

(Signature of authorized representative) (Signature of authorized representative)

(Name, Title, and Date)

(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-3B
ELIGIBLE EXPERIENCE FOR CATEGORY 2

To be submitted by the Applicant proposed as fulfilling the Eligible Experience requirement, as identified in the Annex QD-2:

Name of the Applicant	
Name of the entity proposed as fulfilling the Eligible Experience requirement	Relationship to the Applicant <i>(Single Applicant itself/ Lead Member/ Consortium Member/ Affiliate)</i>

List of Eligible Projects in respect of Category 2 under Clause 3.2.1

Ref #	Name of entity proposed as meeting the Eligible Experience under Category 2	Experience claimed by Single Applicant itself/ Lead Member/ Consortium Member/ Affiliate	Name of Eligible Project	Length of road/highway (in lane Km)	Capital expenditure (in USD million)	Country
1.						
2.						
3.						
Total number of Eligible Projects in respect of Category 2 under Clause 3.2.1						

(Insert rows as necessary)

Description of each Eligible Project for Category 2

Ref #	
Name of Road	
Location	
Description of scope of work/ Terms of Reference	
Name of Eligible Project owner	
Name and contact details of contracting authority's contact person	
Name of entity which has completed the assignment referred under Category 2 under Clause 3.2.1 <i>(Single Applicant/Consortium Member/ Affiliate)</i>	

Whether	
Length of the project in kilometres (indicate per section if necessary)	
Start Date of services	
End Date of services	

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

Required Attachments:

- 1) Documentary evidence from each Eligible Project owner that the Applicant has undertaken supervision during the construction period as well as operations period/ issuance of completion certifications/ approval of invoices of the concessionaire or project company/ playing arbiter role in resolving technical issues in respect of such Eligible Project has been completed and accepted by the project owner specifying the date of completion.
- 2) Documentary evidence from each Eligible Project owner that the project has been implemented and completed specifying the date of completion of the project (e.g. project completion certificate).
- 3) Statement from the authorized representative of the Applicant claiming the Eligible Experience that the documentary evidence provided is the standard form of project acceptance in the jurisdiction from which Eligible Project is presented.
- 4) Extracts of the Terms of Reference of each Eligible Project cited in this QD-3B.
- 5) Certification from the authorized representative of the Applicant for correctness of the information furnished should be done in the following manner :

Certificate from the authorized representative
This is to certify that the abovementioned information provided by _____ (<i>Details of the Applicant</i>) 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 Applicant)

For and on behalf of (Name of the Applicant/if Consortium, Name of Consortium and Lead Member)

(Signature of authorized representative) (Signature of authorized representative)

(Name, Title, and Date)

(Name, Title, and Date)

**Annex QD-3C
ELIGIBLE EXPERIENCE FOR CATEGORY 3**

To be submitted by the Applicant proposed as fulfilling the Eligible Experience requirement, as identified in the Annex QD-2:

Name of the Applicant	
Name of the entity proposed as fulfilling the Eligible Experience requirement	Relationship to the Applicant <i>(Single Applicant itself/ Lead Member/ Consortium Member/ Affiliate)</i>

List of Eligible Projects in respect of Category 3 under Clause 3.2.1

Ref #	Name of entity proposed as meeting the Eligible Experience under Category 3	Experience claimed by Single Applicant itself/ Lead Member/ Consortium Member/ Affiliate	Name of Eligible Project	Length of road/highway (in lane Km)
1.				
2.				
3.				
Total number of Eligible Projects in respect of Category 3 under Clause 3.2.1				

(Insert rows as necessary)

Description of each Eligible Project for Category 3

Ref #	
Name of Road	
Location	
Description of scope of work/ Terms of Reference	
Name of Eligible Project owner	
Name and contact details of contracting authority's contact person	
Name of entity which has completed the assignment referred under Category 3 under Clause 3.2.1 <i>(Single Applicant/Consortium Member/ Affiliate)</i>	
Whether	
Length of the project in kilometres (indicate per section if necessary)	

Start Date of services	
End Date of services	

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

Required Attachments:

- 1) Documentary evidence from each Eligible Project owner that the preparation of detailed design has been completed and accepted by the project owner specifying the date of completion and acceptance of such detailed design (e.g. completion certificate).
- 2) Documentary evidence from each Eligible Project owner that the project has been implemented and completed specifying the date of completion of the project (e.g. project completion certificate).
- 3) Statement from the authorized representative of the Applicant claiming the Eligible Experience that the documentary evidence provided is the standard form of project acceptance in the jurisdiction from which Eligible Project is presented.
- 4) Extracts of the Terms of Reference of each Eligible Project cited in this QD-3C.
- 5) Certification from the authorized representative of the Applicant for correctness of the information furnished should be done in the following manner :

Certificate from the authorized representative
This is to certify that the abovementioned information provided by _____ (<i>Details of the Applicant</i>) 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 Applicant)

For and on behalf of (Name of the Applicant/if Consortium, Name of Consortium and Lead Member)

(Signature of authorized representative) (Signature of authorized representative)

(Name, Title, and Date)

(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
STATEMENT OF FINANCIAL CAPACITY

To be submitted by each of the Applicant proposed to fulfil the Financial Capacity, as identified in Annex QD-2:

Name of Applicant	
Single Applicant or Consortium	
Name of the Applicant proposed to fulfil the Financial Capacity requirements <i>(Single Applicant /Lead Member in case of Consortium)</i>	1. 2. 3.

I, *(name)*, *(citizenship)*, of legal age, with an office address at *(address)*, as the *(position/designation)* of *(name of Applicant/ Lead Member meeting the Financial Capacity)*, 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 Applicant/ Lead Member meeting the Financial Capacity)* that the information stated in this Statement of Financial Capacity is true and that the attached documents are genuine and true copies of the original.

1. The *(name of Applicant/ Lead Member meeting the Financial Capacity)* has an annual turnover of United States Dollars (USD) of at least 100 million or its equivalent as per its latest Audited Annual Reports/ Financial Statements for each of the last 3 (three) years preceding the Application Due Date, a certified true copy of which is attached to this certificate.
2. The *financial summary of (name of Application) which is the Application itself / Lead Member meeting the Financial Capacity is as follows:*

Name of the entity	Whether Single Applicant itself/ Lead Member	Annual Turnover (in USD)			Provide the exchange rate (s), reference date(s) and source of the exchange rate for the currency used
		Financial Year 1 [mention the duration]	Financial Year 2 [mention the duration]	Financial Year 3 [mention the duration]	

Date and Place of Execution.

For and on behalf of (Name of Applicant))

(Signature of authorized representative)

(Name)

(Designation)

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

(Signature of authorized representative)

Required Attachments:

1. Certified copy of the latest Audited Annual Reports/ Financial Statements for the last 3 (three) years preceding the Application Due Date.

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.

Annex QD-5

CERTIFICATION OF ABSENCE OF UNSATISFACTORY PERFORMANCE RECORD

Note: To be submitted by a single Applicant/ Consortium Member and Affiliates, as identified in Annex QD-2

Name of Applicant	
Name of entity which fulfils Technical/ Financial Capacity	
Requirement being met	
Relationship to the Applicant	<i>(i.e. Applicant/ Consortium Member /Affiliate of Applicant or Consortium Member)</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 for the last 3 (three) year preceding the Application Due Date.

Date and Place of Execution

For and on behalf of (Name of Applicant)

(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.*

SCHEDULE- 1: PROJECT DESCRIPTION

The brief description of the Project is provided in below Table 1 and Figure 1, respectively.

S. No	Project Road Section	Road ID	Homogenous Section number	Homogenous Sections	Approximate Length (Km)
1	Rironi Interchange to Mau Summit turnoff. Nakuru Town	A8	1	Rironi – Naivasha	58.6
			2	Naivasha – Elementaita Road	55.8
			3	Elementaita Road – Njoro Turnoff (Nakuru Town)	15.2
			4	Njoro Turnoff – Mau Summit	45.3
2	Rironi Interchange - Mai Mahiu – Naivasha Interchange	A8-South	5	Rironi – Mai Mahiu	19.75
			6	Mai Mahiu - Naivasha	37.43
Total Length (km)					232.08

Figure 1: Index map of the Project Road



SCHEDULE 2: TEMPLATE FOR QUERIES AND COMMENTS ON RFQ

NAME OF APPLICANT:

DATE:

1. RFQ DOCUMENT

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

* Leave blank.