

ORIGINAL

KENYATTA NATIONAL HOSPITAL



**PREQUALIFICATION OF LEGAL SERVICES FOR
A PERIOD OF TWO (2) YEARS**

TENDER NO.KNH/PQ/01/2022-2024

**ALL LAW FIRMS ARE ADVISED TO READ CAREFULLY THIS TENDER DOCUMENT IN ITS
ENTIRETY BEFORE MAKING ANY BID**

SEPTEMBER 2022

ABBREVIATIONS AND ACRONYMS

CLE	: Council of Legal Education
GCA	: General Conditions of Appointment
ICPAK	: Institute of Certified Public Accountants of Kenya
ITT	: Instructions to Tenderers
KRA	: Kenya Revenue Authority
KSL	: Kenya School of Law
LSK	: Law Society of Kenya
ODPP	: Office of the Director of Public Prosecutions
PPAD 2015	: Public Procurement and Asset Disposal Act, 2015
PPRA	: Public Procurement Regulator Authority.
SLA	: Service Level Agreement

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SECTION I: INVITATION TO TENDER

Kenyatta National Hospital (KNH) invites bids from eligible law firms to be placed in our Panel of Advocates for a period of two (2) years and who may from time to time be appointed to **provide legal services (hereinafter referred to as 'the Services')**.

Interested law firms may obtain further information from the office of the Director, Supply Chain Management, located at the Hospital's Main Administration Room 6, P.O. Box 20723-00202, Nairobi, Kenya; procurement@knh.or.ke.

Tender documents with detailed specifications and conditions detailing the requirements may be obtained from the KNH Supply Chain Management office from **Monday to Friday between 9.00am to 4.00pm** upon payment of a non-refundable fee of **KES.1000.00** per document via **Mpesa Paybill No.626088, Account Number-Name of Tenderer** and obtain an official receipt from the Cash Office (Administration Block) or bankers cheque made payable to Kenyatta National Hospital. Alternatively, the tender document can be viewed and downloaded from the KNH website www.knh.or.ke; or <https://supplier.treasury.go.ke>; or [IFMIS portal](#), free of charge. All bidders will be required to email their name, email address, physical address and telephone contact to procurement@knh.or.ke.

Completed Tender documents should be submitted and deposited in the Tender Box situated at the Kenyatta National Hospital, Administration Block, Supply Chain Department entrance on or before **6th October,2022** at **10.00 am addressed to:**

**The Chief Executive Officer,
Kenyatta National Hospital,
P.O. Box 20723-00202
NAIROBI.**

Tenders will be opened on **6th October,2022** at 10.00 am in the presence of the Tenderer's or their representatives at a venue to be communicated by the Opening Committee.

The bidders are also encouraged to demonstrate high degrees of integrity, fidelity, and honesty in the information supplied to KNH as part of their bids. The information should be as clear and concise as possible.

SECTION II: TENDER SUBMISSION CHECKLIST

This order and arrangement shall be considered as the Tender Submission Format. Law firms shall tick against each item indicating that they have provided it.

No.	Item	Tick where Provided
1	Duly completed Tender Form	
2	Copy of Law firm's Registration Certificate	
3*	Copy of Law firm's PIN Certificate	
4*	Copy of the law firm's Valid Tax Compliance or Clearance Certificate	
5	Duly completed Confidential Business Questionnaire (CBQ)	
6	Five letters of recommendation from your corporate clients	
8	Certified copy of current Practicing Certificates of all Partners and Associates	
9	Professional Indemnity Cover	
10	Curriculum Vitae of Partners, Associates, Consultants (if any) and staff together with their professional/academic certificates	
11	Proof of evidence of physical address and premises through e.g. copy of utility bills i.e. electricity, water, telephone; copy of title deed; lease or tenancy agreement etc.	
12	Declaration Form	
13	Any other document or item required by the Pre-Q Tender Document (The Law firm shall specify such other documents or items it has submitted)	

***Notes to Law Firms on Tender Submission Checklist**

1. Valid TCC shall be one issued by KRA and must have been valid prior to **6th October, 2022**
2. All law firms are required to provide the Personal Identification Number (PIN Certificate).

SECTION III: INFORMATION TO TENDERERS

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INFORMATION TO TENDERERS

3.1 Introduction

- 3.1.1 KNH invites eligible prospective Tenderers for the provision of Legal Services to undertake the assignments described herein for two (2) years.
- 3.1.2 The prequalification of legal service providers does not constitute a retainer.
- 3.1.3 The Tender document and the Tenderers response thereof shall be the basis for qualification to be placed in the Panel of Advocates. Tenderers must familiarize themselves with the requirements described in this document including all attachments and take them into account while preparing their response.
- 3.1.4 Tenderers will be informed in writing of the results of their application.
- 3.1.5 Tenderers will meet all costs associated with preparation and submission of their applications.
- 3.1.6 Tenderers who have previously been on the KNH panel of Advocates should also apply for reconsideration.
- 3.1.7 It is KNH's policy to require that Tenderers observe the highest standards of ethics and professionalism in the procurement process and execution of Service Level Agreements. In pursuance of this policy, KNH:
 - a. Defines, for the purpose of this provision, the terms set forth below: "**Corrupt and Fraudulent practice**" meaning as defined in **Appendix I**.
 - b. Will reject a Tender if it determines that a Tenderer has engaged in corrupt or fraudulent activities in competing for the tender in question;
 - c. Will declare a Tenderer ineligible, if at any time it determines that Tenderer has engaged in corrupt or fraudulent practices in competing for, or in executing, a similar tender;
 - d. Will have the right to examine financial or other records relating to the performance of such services to determine capability; and
 - e. Will have the right to inspect the business premises of the Tenderer.
- 3.1.8 Tenderers shall furnish information as described in the Tender document.
- 3.1.9 Tenderers shall be aware of the provisions on fraud and corruption stated in herein after.

3.2 Professional Qualifications

The Advocates must be active members of the Law Society of Kenya with current Practicing Certificates. They should not have any pending disciplinary cases. Due diligence will be carried out to ensure that they have not been disbarred.

3.3 Professional Insurance Indemnity

KNH may classify the firms of advocates for purposes of determination of the suitability of each firm for any particular assignment, based on the risk involved and the technical expertise required. The classification, as defined by KNH, shall be as follows:-

- i) **Category A law firms (Super-size):** Has a Professional Indemnity Cover of not less than KES.200million.
- ii) **Category B law firms (Large):** Has a Professional Indemnity Cover of KES.100million but not more than KES.200million.
- iii) **Category C law firms (Medium):** Has a Professional Indemnity Cover of KES.50million but not more than KES.100million.
- iv) **Category D law firms (Standard):** Has a Professional Indemnity Cover of KES.10million but not more than KES.50million

3.4 Expertise

The law firms must be ranked highly by their peers as well as have proven experience of the issues in question. While it is important for the lead partners to be experienced the qualification of other members of the firm who will be performing, the majority of the legal services should also be of high standard. This includes associates, research assistants and paralegals.

3.5 Scope of Legal Services

3.5.1 The legal services being procured include but not limited to: Civil Litigation and Practice, Commercial Law, Construction Law, Public Procurement and Disposal Law, Labour Law, Constitutional Law, Arbitration & Alternative Dispute Resolution Law and Practice, Tax Law, Land Law & Conveyancing, Public Private Partnership Law, International Law, Project Finance, and Environmental Law.

3.5.2 The law firms should attach their profiles stating the type of cases/matters handled and their success rate in litigation and commercial transactions. The profile should indicate experience in handling matters before the different courts and Tribunals including Arbitrations and Adjudications handled.

3.5.3 The firms should also provide a list of clients handled which should include government departments and parastatals, international companies and private organizations; and the type of matters handled.

3.6 Firm Profile

Provide firm profile showing names of Partners, Associates and their biasness in practice; Certification by regulatory/affiliation bodies (provide copies of the Partnership Deed/Certificate of Registration of Business Name/ LLP Certificate, current Practicing Certificates etc.); Letters from the Advocates Complaints Commission and the Disciplinary Committee on the status of partners/firm in regard to complaints; and whether the firm is a member of an international consortium of lawyers or member of international legal bodies.

3.7 Facilities

The firm should possess facilities like a modern legal library, access to online law reports or other legal resources, computers, internet connectivity etc. to enable them provide adequate services and facilitate real-time communication.

3.8 Payment of Fees/Costs

3.8.1 KNH will consider law firm's that offer the right balance of value for money as measured by the quality of legal service offered. Law firms will be required to identify ways in which legal costs for any significant or complex matter can be mitigated and be willing to negotiate on the same.

3.8.2 The payment of fees will be based on the Advocates Remuneration Order, capped or as may be agreed between the firm and KNH. The mode of billing shall be as per the terms of the Service Level Agreement between the firm and KNH and subject to prior agreement between the firm and KNH.

3.9 Litigation against KNH

The firm should disclose if they are engaged with past or pending litigation against KNH and the nature of the litigation in order to avoid conflict of interest. The firm should declare any conflict of interest.

3.10 Ability to Work Closely with the Corporation Secretary

The selected law firms will be required to work closely with the Office of Corporation Secretary. To ensure effective communication, the selected firms are required to put in place the necessary mechanism to facilitate continuous communication and to ensure timely feedback/reporting on the progress of matters being handled. Quarterly reports will be required in respect of litigation matters to be submitted no later than the first week of every quarter.

3.11 Monitoring and Evaluation

The selected law firms must agree to be monitored through regular client satisfaction surveys in order to ensure that they maintain high standards of service. The firms must give regular reports to KNH. The Law firms must enter into Service Level Agreements with the Procuring Entity once they are formally instructed.

3.12 Clarifications of Tender Document

Tenderers may request a clarification on the Tender document up to seven (7) days before the Tender submission date. Any request for clarification must be sent in writing by postal mail or electronic mail to the KNH's address procurement@knh.or.ke. KNH will respond in writing by normal postal mail or electronic mail to such requests and will send copies of the response to all Tenderers who intend to submit tenders.

3.13 Preparation of Tender Documents

- 3.13.1 Tenderers are requested to submit a Tender written in English language.
- 3.13.2 Tenderers are expected to examine the Tender documents in detail. Material deficiencies in providing the information requested may result in rejection of a Tender.
- 3.13.3 Tenderers are required to meet the evaluation criteria stipulated hereinafter. Those who do not meet the requirements need not submit tenders. Only tenders, which fulfill these requirements, will be considered for detailed evaluation.

3.14 Period of Validity

The Tender for prequalification of legal services must remain valid for not less than one hundred and twenty (120) days from the date of submission. KNH will make best effort to complete the evaluation and communicate within this period.

3.15 Qualification Criteria

Qualification will be based on meeting the minimum requirements to pass in the criteria set as shown below:

- (i) Submission of duly completed Tender Form.
- (ii) A certified copy of Certificate of Registration/Incorporation.
- (iii) Three letters of recommendation from your corporate clients.
- (iv) Certified valid Tax Compliance Certificate.
- (v) Duly Completed Confidential Business Questionnaire.
- (vi) Evidence of physical address and premises (attach copies of utility bills e.g. electricity/water or lease agreement/Title.
- (vii) Certified copy of current Practicing Certificates for all partners and associates.
- (viii) Attach CV's of Partners, Associates and Consultants if any.
- (ix) Currently taken out a Professional Insurance Indemnity Cover for a minimum of ten million Kenya Shillings (KES.10,000,000.00) only subject to review depending on the brief at hand.
- (x) The declaration will be either pass or fail regarding the applicant's general and particular experience, personnel and equipment capabilities as demonstrated by the applicant's response in the forms provided. The procuring entity reserves the right to waive minor deviations if they do not materially affect the capability of an applicant to perform the services.
- (xi) An applicant shall as part of his application submit a registered Power of Attorney authorizing the signatory of the applicant to commit the applicant and update any information submitted with their applications for Prequalification, which may have changed, and update in any case the information indicated in the schedules and continue to meet the minimum threshold criteria set out in the Prequalification documents.

3.16 Submission, Receipt, and Opening of Prequalification Document

3.16.1 The original Tender Document shall be prepared in indelible ink. It shall contain no interlineations or overwriting, except as necessary to correct errors made by the applicant. Any such corrections must be initialed by the person or persons who sign (s) the Prequalification Document.

3.16.2 An authorized representative of the Applicants should initial all pages of the tender document.

3.16.3 The Tender document should be prepared and submitted in duplicate in a plain sealed envelope marked:

"PREQUALIFICATION OF LEGAL SERVICES"

and delivered to:

The Chief Executive Officer,
Kenyatta National Hospital,
P.O. Box 20723-00202
NAIROBI.

3.17 Tender Submission

3.17.1 Submission Time:

The closing time for the submission of the Prequalification Document shall be **6th October,2022** at 10.00am and shall be sent to the above address. Documents shall be marked on top "**DO NOT OPEN BEFORE 6th October,2022** at 10.00am.

3.17.2 Late Submission

Any Prequalification Document received after the deadline shall be rejected as a late tender and shall not be considered.

3.17.3 Tender Opening

An Opening Committee shall open the applications immediately after the closing time for submission of the Prequalification Document. KNH will prepare a record of the Tender Document opening.

3.17.4 KNH will examine the tenders to determine completeness, general orderliness and sufficiency in responsiveness.

3.17.5 Tenderers must paginate their Tender document consistent with the table of contents to facilitate ease of reference during evaluation.

3.17.6 Applicants shall not contact KNH on the matter relating to their Tender Document from the time of opening to the time the evaluation is finalized unless official communication is sent to them. Any effort by the Applicant to influence

KNH in the Tender Document evaluation shall result in the rejection of their application.

3.17.7 Prequalification will be based on meeting the following minimum criteria regarding the Applicant's legal status, general and particular experience, personnel and financial position as demonstrated by the responses in the attached forms.

3.17.8 The Applicants should have registered offices and KNH reserves the discretion of visiting physical premises from which the applicant conducts business if so desired to confirm existence and capability to deliver the said services.

3.17.9 Applicants who qualify according to the selection criteria will be required to offer various legal services as and when required within the two (2) years.

3.17.10 KNH reserves the right to accept or reject any or all Tender Documents without the obligation to assign any reason(s) for its decision thereof.

3.18 Evaluation Criteria

PART I – MANDATORY CRITERIA			
Bidders must attach evidence to fulfill the following requirements: -			
NO	REQUIREMENT	MAXIMUM SCORE	YES/NO
A	Duly completed Tender Form	Mandatory	
B	Duly completed and signed Confidential Business Questionnaire	Mandatory	
C	A copy of the Certificate of Registration of the Law Firm	Mandatory	
D	Evidence of Physical Address	Mandatory	
E	Certified copies of practicing certificates of all advocates of the Law Firm	Mandatory	
F	Valid Tax Compliance Certificate	Mandatory	
G	Copy of PIN Certificate	Mandatory	
H	Evidence of firm's professional insurance indemnity of a minimum of KES.10,000,000.00	Mandatory	
I	Certificate of good standing from LSK and ACC	Mandatory	
J	Copy of Registration with Ministry of National Treasury/County Treasury <i>(Applicable only for</i>	Mandatory	

	<i>disadvantaged group, youth, women and persons with disability).</i>		
A bid shall be rejected at this stage if it does not respond to the mandatory requirements. Bids that respond to the mandatory requirements will proceed to Technical Evaluation			

PART II – TECHNICAL CRITERIA			
NO	REQUIREMENT	PARAMETER	MAXIMUM SCORE
A	Experience in advising public institutions or large commercial enterprises (attach evidence)	<ul style="list-style-type: none"> • Give two clients with annual turnover of KES.15billion (20mks) • Give two clients with annual turnover of between KES.100million and KES.15billion (15mks) • Give two clients with annual turnover of between KES.20million KES.100million (10mks) 	20 max
B	Value of Professional Indemnity	<ul style="list-style-type: none"> • KES.10 million and over 	10 max
C	Capacity		
	C1 Advocates Qualifications & Experience: Qualifications and experience of practice of key professional staff (attach CVs for the advocates)	<p>Qualification: Current practicing certificate for all advocates</p> <p>Experience Senior Partners</p> <ul style="list-style-type: none"> • Over 15 years (10mks) • 11-15 years (7mks) • Less than 10 years (5ks) <p>Associates</p> <ul style="list-style-type: none"> • Over 8 years (4mks) • 3-7 years (2mks) • Under 3 years (1mk) 	<p>6 max</p> <p>10 max</p> <p>4 max</p>
	C2 Size Number of Partners	<ul style="list-style-type: none"> • 6 and above(5mks) • 3-5 (3mks) • 1-2 (2mks) 	5 max

	Number of Associates	<ul style="list-style-type: none"> • 6 and above(5mks) • 3-5 (3mks) • 1-2 (2mks) 	5 max
	C3 Firm Profile	Firm Brochure	5 max
NO	REQUIREMENT	PARAMETER	MAXIMUM SCORE
D	Ten (10) major litigation brief successfully handled in terms of value and subject matter in the last five (5) year including Arbitration/Adjudication/PPP Petition/PPARB Request for Review in the format indicated in Schedule IX.	Provide the schedule/summary of the briefs	30 max
E	Completeness of bid documents	Pagination and bound document (no loose document)	5 max
TOTAL SCORE			100
Each responsive bid will be given a Technical Score. A bid shall be rejected at this stage if it does not respond to important aspects of the Criteria or if it fails to achieve the minimum Technical Score of 70points.			

3.19 Confidentiality

Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the Tenderers who submitted the proposals or to other persons not officially concerned with the process, until the winning firm has been notified that it has been prequalified for the services.

3.20 Notification of Award

3.20.1 KNH will promptly notify the successful Candidates.

3.20.2 The selected Candidates will be expected to commence any allocated assignment on receipt of any instructions from KNH.

3.20.3 Upon Award, KNH does not bind itself to assign any case to any of the qualified law firms/lawyers but shall endeavor to ensure equitable distribution of the available briefs among the qualified law firms/lawyers taking into account the experience and qualification of the individual firms.

SECTION IV: PREFERRED AREAS OF PRACTICE

Please indicate as appropriate the areas of specialization of practice where you wish to be considered for provision of legal services.

No	Areas Of Practice & Legal Knowledge	Name of Personnel attached to the area	Brief of any recent experience in an assignment of the specific nature (not more than 3 years old)
1	Judicial Review		
2	Conveyancing		
3	Company & Commercial Law		
4	Intellectual Property Law		
5	Public Private Partnership/PPP Committee Petition		
6	Insurance Claims		
7	Public Procurement & Disposal Law/PPARB Request for Review		
8	Environmental and Land Court		
9	Constitutional and Human Rights Litigation		
10	General Civil Litigation		
11	Criminal Law		
12	Adjudication/Arbitration		
13	Any relevant Law concerning Construction		

Any others: Please specify
Firms are free to indicate all the areas

SECTION V: FIRM REFERENCES

NO	COMPANY	CONTACTS
1		
2		
3		
4		
5		

Note: Current recommendation letters from the clients listed MUST be provided.

SECTION VI: FORMAT OF CURRICULUM VITAE FOR PROFESSIONAL STAFF

Full name of lawyer: _____

Position in firm i.e. Partner or Associate _____

Years and months with Law Firm: _____

Membership (and status) in Professional Bodies: _____

Key Qualifications

(Give an outline of lawyer's key experience and training most pertinent to the Services going not more than five (5) years prior to the date of the Tender Document. Indicate degree of responsibility held by the lawyer on relevant previous assignments and give dates and locations. For experience in last six (6) years, also give types of activities performed and client references, where appropriate).

Preferred areas of practice if appointed to KNH panel

(Give an outline of lawyer's preferred areas of practice relevant to the Service and any two (2) outstanding achievements in that area going not more than five (5) years prior to date of Tender Document. Give client references, where possible).

Employment Record

(Starting with present position, list in reverse order every employment held in the last ten (10) years. List all positions held by the lawyer giving dates, name of employing organization, titles of positions held, and locations of assignments).

Certification

I, the undersigned certify that to the best of my knowledge and belief the information above correctly describes me, my qualifications and my experience.

(Signature of lawyer) Date: _____

Yours sincerely

Full name of Law Firm

Signature of duly authorized person signing the Tender

Name and Capacity of duly authorized person signing the Tender

Stamp of the Law Firm

SECTION VII: TENDER SUBMISSION FORM

Date: _____

Tender No.: _____

To:
The Chief Executive Officer
Kenyatta National Hospital
P.O. Box 20723-00202
NAIROBI.

Dear Sir,

Having read, examined and understood the Pre-qualification Tender Document including all Addenda, receipt of which we hereby acknowledge, we, the undersigned law firm, offer to provide Legal Services for the sums as may be ascertained in accordance with Clause 3.8 of the Tender Document.

If our bid is acceptable, we shall be pleased to be included in list of KNH Panel of Lawyers.

Yours sincerely,

Authorized Signature: _____

Name & Title of Signatory: _____
(Name of person duly authorized to sign Tender)

Name of Tenderer: _____

Stamp or Seal of Tenderer: _____

SECTION VIII: CONFIDENTIAL BUSINESS QUESTIONNAIRE

You are requested to **duly** complete the form giving the particulars indicated in Part 1; and either Part 2(a), 2(b) or 2 (c) whichever applies to your type of business; and Part 3. You are advised that it is a serious offence to give false information on this form.

PART 1 – GENERAL	
Business Name
Location of business premises.
Plot No.....	Street/Road
Postal Address	Tel No.Company Mobile
Email address.....	Contact PersonMobile.....
Nature of Business,.....
Registration Certificate No.
Maximum value of business which you can handle at any one time –KES.
Name of your Bankers	Branch.

PART 2 (a) – SOLE PROPRIETOR	
Your name in full	Age
Nationality	Country of origin
Citizenship details	
NB: If a Kenya Citizen, indicate under "Citizenship Details" whether by Birth, Naturalization or Registration.	

PART 2 (b) PARTNERSHIP			
Given details of partners as follows:			
Name	Nationality	Citizenship Details	Shares
1.
2.
3.
4.
5.

PART 2 (c) REGISTERED COMPANY PRIVATE OR PUBLIC

State the nominal and issued capital of company:

Nominal KES.

Issued KES.

Given details of all directors as follows

	Name	Nationality	Citizenship Details	Shares
1.
2.
3.
4.
5.

PART 2 (d) ASSOCIATE FIRMS

Indicate whether your firm associates or collaborates with any international law firms. If so, kindly indicate the name(s) of the firm(s) and their expertise. This is for informational purposes and shall not be scored.

PART 2 (e) DEBARMENT

I / We declare that I/ we have not been debarred from any procurement process and shall not engage in any fraudulent or corrupt acts with regard to this or any other tender by KNH and any other public or private institutions.

Full Names:

(Name of person duly authorized to sign Tender)

Signature.....

Dated this.....day of2022

In the capacity of.....

Duly authorized to sign Tender for and on behalf of.....

PART 2 (f) CRIMINAL OFFENCE

I/We, individually or jointly have not been convicted of any criminal offence relating to professional (mis)conduct or the making of false statements or misrepresentations as to my/our qualifications to enter into a procurement contract within a period of five (5) years preceding the commencement of this Prequalification procurement.

Full Names:

(Name of person duly authorized to sign Tender)

Signature.....

Dated this.....day of2022

In the capacity of.....

Duly authorized to sign Tender for and on behalf of.....

PART 3 CONFLICT OF INTEREST

1. I/We, the undersigned state that I/we have no conflict of interest in relation to this Tender

.....
.....
.....
.....

For and on behalf of

In the capacity of.....

Dated this.....day of.....2022

Law firm's Official Rubber Stamp.....

2. Does any person/person in KNH have interest in the firm? Yes_____ No_____. If answer is YES give details.....

.....
.....
.....
.....
.....

3. Are you under a declaration of ineligibility for corrupt and fraudulent practices? YES_____ No_____. If answer in '3.4' above is YES give details:.....

.....
.....
.....
.....

I / We DECLARE that the information given on this form is correct to the best of my/our knowledge and belief and that I/We give KNH authority to seek any other references concerning my/our firm from whatever sources deemed relevant.

Full Names:

(Name of person duly authorized to sign Tender)

Signature.....

Dated this.....day of2022

In the capacity of.....

Duly authorized to sign Tender for and on behalf of.....

PART 4 INTEREST IN THE FIRM

Is there any person/persons in KNH who has interest in the Firm? Yes /No? If YES indicate their details:

	Name	Title
1.
2.
3.
4.
5.

PART 5 EXPERIENCE

Please list here below 3 major companies/clients you have acted for in the last two (2) years.

No.	Company Name	Value (KES.)

PART 6 DECLARATION

I/We the undersigned state that the above information is correct and that I/We give the Kenyatta National Hospital, authority to seek any other references concerning my/our firm from whatever sources deemed relevant e.g. Office of the Registrar of Companies, Bankers etc.

Full Names:

(Name of person duly authorized to sign Tender)

Signature.....

Dated this.....day of2022

In the capacity of.....

Duly authorized to sign Tender for and on behalf of.....

Stamp or Seal of Tenderer: _____

SECTION IX: LITIGATION HISTORY

Applicants, should provide information of ten (10) major litigation brief successfully handled in terms of value and subject matter in the last five (5) year including Arbitration/Adjudication/PPP Petition/PPARB Request for Review.

Year	Award FOR or AGAINST Applicant	Name of client, cause of litigation and matter in dispute	Disputed amount (Current value KES.)

SECTION X: SELF DECLARATION FORMS

REPUBLIC OF KENYA

PUBLIC PROCUREMENT REGULATORY AUTHORITY

SELF-DECLARATION THAT THE PERSON/TENDERER IS NOT DEBARRED

**IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015.
(Section 62)**

I, of P.O. Box..... being a resident of..... in the Republic of Kenya do hereby make a statement as follows: -

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

Authorized Signature: _____

Name & Title of Signatory: _____
(Name of person duly authorized to sign Tender)

Name of Tenderer: _____

Stamp or Seal of Tenderer: _____

REPUBLIC OF KENYA

PUBLIC PROCUREMENT REGULATORY AUTHORITY

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

**IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015.
(Section 62)**

I, of P.O. Box..... being a resident of..... in the Republic of Kenya do hereby make a statement as follows: -

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

Authorized Signature: _____

Name & Title of Signatory: _____
(Name of person duly authorized to sign Tender)

Name of Tenderer: _____

Stamp or Seal of Tenderer: _____

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

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

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

Authorized Signature: _____

Name & Title of Signatory: _____
(Name of person duly authorized to sign Tender)

Name of Tenderer: _____

Stamp or Seal of Tenderer: _____

Witness Name: _____

Signature: _____

APPENDIX I: FRAUD AND CORRUPTION

1. Purpose

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

2. Requirements

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

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

- i) A person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
- ii) A person referred to under subsection (1) who contravenes the provisions of that sub-section commits an offence;
- iii) Without limiting the generality of the subsection (1) and (2), the person shall be: -
 - (a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
 - (b) if a contract has already been entered into with the person, the contract shall be voidable;
- iv) The voiding of a contract by the procuring entity under subsection (7) does

- not limit any legal remedy the procuring entity may have;
- v) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement—
- (a) Shall not take part in the procurement proceedings;
 - (b) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
 - (c) shall not be a subcontractor for the tenderer to whom was awarded contract, or a member of the group of tenderers of whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.
- vi) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;
- vii) If a person contravenes subsection (1) with respect to a conflict of interest described in subsection (5)(a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer etc.

Incompliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:

- (a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
- i) "**corrupt practice**" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - ii) "**fraudulent practice**" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
 - iii) "**collusive practice**" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - iv) "**coercive practice**" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - v) "**obstructive practice**" is:
 - Deliberately destroying, falsifying, altering, or concealing of

evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/ or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

- acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3(e) below.

(b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.

(c) Rejects a proposal for award¹ of a contract if PPR A determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;

(d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or debar or recommend to appropriate authority(ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;

(e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or

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

any other appropriate authority appointed by Government of Kenya to inspect² all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and

- (f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a "Self-Declaration Form" as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

² Inspections in this context usually are investigative (i.e. forensic) in nature. They involve fact-finding activities undertaken by the Investigating Authority or persons appointed by the Procuring Entity to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible accessing and examining a firm's or individual's financial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/audit, and making copies thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.