

HREPUBLIC OF KENYA



**COUNTY GOVERNMENT OF KIRINYAGA
P.O. BOX 260 - 10304,
KUTUS.**

OPEN TENDER

FOR

REGISTRATION OF SUPPLIERS FOR PROVISION OF LEGAL SERVICES

FINANCIAL YEARS 2022-2023/2023-2024

**APPLICATION/PREQUALIFICATION/REG NO: CGK/PQ/002/2022-
2023/2023-2024**

CLOSING DATE: 23RD NOVEMBER, 2022

TIME: 11:00AM

Table of Contents

REGISTRATION FORM	4
INVITATION TO APPLY FOR REGISTRATION	6
PART 1 - APPLICATIONING PROCEDURES.....	7
SECTION I: INSTRUCTIONS TO APPLICANTS.....	8
A General Provisions.....	8
1. Scope of Application	8
2. Fraud and Corruption	8
3. Eligible Applicants.....	8
4. Services.....	10
5. Applicants Responsibilities.....	10
6. B. Contents of Application Documents	10
2. Sections of Application Document	10
PART 1 Applicationing Procedures	11
PART 2 Conditions of Registration and Registration Forms.....	11
Section II - Registration Data Sheet (TDS).....	25
SECTION III - QUALIFICATION CRITERIA AND REQUIREMENTS	27
STAGE 1. MANDATORY/PRELIMINARY REQUIREMENTS	28
NOTE: Only applicants who pass preliminary stage will proceed to the technical evaluation stage.	28
STAGE 2. TECHNICAL EVALUATION	29
C. POST QUALIFICATION	29
1. QUALIFICATION FORM SUMMARY.....	30
QUALIFICATION FORMS	34
51.Servicer's Representative and Key Personnel Schedule	34
52.Servicer' Representative and Key Personnel	34
3. FORM PER-2:	36
53.Declaration.....	37
Applicant's QUALIFICATION WITHOUT PRE-QUALIFICATION	38
4.1 FORM ELI -1.1	38
4.2 FORM ELI -1.2	39
4.3 FORM CON – 2.....	40
4.4 FORM FIN – 3.1:	42
4.5 FORM FIN – 3.2:	44
4.6 FORM FIN – 3.3:	44
4.7 FORM FIN – 3.4:	45
5. No.	45

7. Procuring Entity's	45
4.8 FORM EXP - 4.1	46
4.9 FORM EXP - 4.2(a)	47
4.10 FORM EXP - 4.2 (a) (cont.)	47
4.11 FORM EXP - 4.2(b)	48
APPLICANTS ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE	50
Instruction to Applicants	50
(a) Applicants details.....	50
General and Specific Details	51
(e) DISCLOSURE OF INTEREST- Interest of the Firm in the Procuring Entity.	51
ii) Conflict of interest disclosure.....	51
CERTIFICATE OF INDEPENDENT APPLICATION DETERMINATION.....	53
SELF - DECLARATION FORMS.....	54
FORM SD1	54
FORM SD2	55
SELF DECLARATION THAT THE PERSON/APPLICANTS WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE.....	55
DECLARATION AND COMMITMENT TO THE CODE OF ETHICS.....	56
B. APPENDIX 1- FRAUD AND CORRUPTION	57
1. Purpose	57
3. Requirements	57
FORM OF APPLICATION SECURITY- [Option 1–Demand Bank Guarantee]	59
APPLICATION-SECURING DECLARATION FORM	60
Appendix to Application.....	61
Schedule of Currency requirements	61

REGISTRATION FORM

NAME OF THE FIRM

IFMIS. NO......

CATEGORY

REFERENCE NO......

IF AGPO registered firm, please specify the category: -YOUTH _____

WOMEN_____

PWD _____

APPLICANTS & CONSULTANTS

FYs 2022-2023/2023-2024

PLEASE FILL ALL THE DETAILS IN THIS PAGE:

1. Company Name _____

2. Physical Location	_____

3. PO Box	_____

4. Telephone No.(s)- Landline _____

5.Contact Person _____

Mobile

6.Category _____

Mobile

INVITATION TO APPLY FOR REGISTRATION

REGISTRATION OF SUPPLIERS FOR PROVISION OF LEGAL SERVICES - CGK/PQ/002/2022-2023/2023-2024

The County Government of Kirinyaga intends to register Suppliers for Provision of Legal Services for the Year 2022-2023/2023-2024.

Application will be conducted through (National Open Application) procedures using a standardized Application document and will be open to all applicants who register.

Interested and eligible Applicants may obtain detailed information and inspect the Registration Document at Kirinyaga County Headquarters, Kutus, **Supply Chain Management Office, Room B15** during normal working hours. Interested and eligible Applicants may obtain further information from and inspect the Application documents at **Director Supply Chain Management Office, 1st Floor, Kirinyaga County Headquarters, Kutus during normal working hours.**

A complete set of Application documents may be obtained by interested bidders from the Public Procurement Information Portal website <http://Application.go.ke> or the County website www.kirinyaga.go.ke. Bidders who download the documents from the website **MUST** forward their particulars (Name, contacts, physical address and the Application no./ description) immediately to procurement@kirinyaga.go.ke for recording and any further clarifications or addendums.

Completed registration document should be enclosed in plain sealed envelopes marked with Registration reference number and be deposited in the Application Box located at **1st Floor, County Government of Kirinyaga Headquarters, Kutus Town** or be addressed and mailed to:

**The County Secretary & Head of Public Service,
County Headquarters,
P.O Box 260 – 10304,
Kutus.**

so as to be received on or before, on or before **Wednesday 23rd November, 2022 AT 11.00 AM.**

Applications will be opened immediately thereafter in the presence of the bidders or their representatives who choose to attend the opening at The County Headquarters, 3rd Floor, Conference Room.

Late bids **SHALL NOT** be accepted.

Note: This is a tender for registration of suppliers and NOT for provision of services.

PART 1 - APPLICATIONING PROCEDURES

SECTION I: INSTRUCTIONS TO APPLICANTS

A General Provisions

1. Scope of Application

- 1.1 The Procuring Entity as defined in the Appendix to Conditions of Registration invites Applications for Services Registration as described in the Application documents. The name, identification, and number of lots (Registration s) of this Application Document are **specified in the TDS**.

2. Fraud and Corruption

- 2.1 The Procuring Entity requires compliance with the provisions of the Public Procurement and Asset Disposal Act, 2015, Section 62 “Declaration not to engage in corruption”. The Application submitted by a person shall include a declaration that the person shall not engage in any corrupt or fraudulent practice and a declaration that the person or his or her applicants are not debarred from participating in public procurement proceedings.
- 2.2 The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in Registration ing. Any Applicants found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Applications shall be required to complete and sign the “Certificate of Independent Application Determination” annexed to the Form of Application.
- 2.3 Unfair Competitive Advantage - Fairness and transparency in the Application process require that the firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting Services related to this Application. To that end, the Procuring Entity shall indicate in the **Data Sheet** and make available to all the firms together with this Application document all information that would in that respect give such firm any unfair competitive advantage over competing firms.
- 2.4 Unfair Competitive Advantage -Fairness and transparency in the Application process require that the Firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting Services related to this Application being applied for. The Procuring Entity shall indicate in the **TDS** firms (if any) that provided consulting Services for the Registration being applied for. The Procuring Entity shall check whether the owners or controllers of the Applicants are same as those that provided consulting Services. The Procuring Entity shall, upon request, make available to any Applicants information that would give such firm unfair competitive advantage over competing firms.

3. Eligible Applicants

- 3.1 Applicants may be a firm that is a private entity, a state-owned enterprise or institution subject to ITT 3.7 or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. Public employees and their close relatives (*spouses, children, brothers, sisters and uncles and aunts*) are not eligible to participate in the Application. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Registration in accordance with the Registration terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the Applicationing process and, in the event the JV is awarded the Registration, during Registration execution. The maximum number of JV members shall be specified in the **TDS**.
- 3.2 Public Officers of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to Application or be awarded a Registration . Public Officers are also not allowed to participate in any procurement proceedings.

interest shall be disqualified. A Applicants may be considered to have a conflict of interest for the purpose of this Applicationing process, if the Applicants:

- a) Directly or indirectly controls, is controlled by or is under common control with another Applicants; or
- b) Receives or has received any direct or indirect subsidy from another Applicants; or
- c) Has the same legal representative as another Applicants; or
- d) Has a relationship with another Applicants, directly or through common third parties, that puts it in a position to influence the Application of another Applicants, or influence the decisions of the Procuring Entity regarding this Applicationing process; or
- e) Any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the Services that are the subject of the Application; or
- f) any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity as Engineer for the Registration implementation; or
- g) Would be providing goods, works, or non-consulting Services resulting from or directly related to consulting Services for the preparation or implementation of the Registration specified in this Application Document or
- h) Has a close business or family relationship with a professional staff of the Procuring Entity who:
 - i) are directly or indirectly involved in the preparation of the Application document or specifications of the Registration , and/or the Application evaluation process of such Registration ; or
 - ii) would be involved in the implementation or supervision of such Registration unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the Applicationing process and execution of the Registration .

3.4 Applicants shall not be involved in corrupt, coercive, obstructive, collusive or fraudulent practice. Applicants that is proven to have been involved any of these practices shall be automatically disqualified.

3.5 Applicants (either individually or as a JV member) shall not participate in more than one Application, except for permitted alternative Applications. This includes participation as a sub Registration or in other Applications. Such participation shall result in the disqualification of all Applications in which the firm is involved. A firm that is not a Applicants or a JV member may participate as a sub Registration or in more than one Application. Members of a joint venture may not also make an individual Application, be a sub Registration or in a separate Application or be part of another joint venture for the purposes of the same Application.

3.6A Applicants may have the nationality of any country, subject to the restrictions pursuant to ITT 4.8.A Applicants shall be deemed to have the nationality of a country if the Applicants is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed sub applicants or sub- consultants for any part of the Registration including related Services.

3.7 Applicants that has been debarred from participating in public procurement shall be ineligible to Application or be awarded a Registration. The list of debarred firms and individuals is available from the website of PPRA www.ppra.go.ke.

3.8 Applicants that are state-owned enterprises or institutions may be eligible to compete and be awarded a Registration (s) only if they are accredited by PPRA to be (i) a legal public entity of the state Government and/or public administration, (ii) financially autonomous and not receiving any significant subsidies or budget support from any public entity or Government, and (iii) operating under commercial law and vested with legal rights and liabilities similar to any commercial enterprise to enable it compete with firms in the private sector on an equal basis.

official regulations, Kenya prohibits commercial relations with that country, or (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or Registration ing of Services from that country, or any payments to any country, person, or entity in that country. A Applicants shall provide such documentary evidence of eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.

3.10 Foreign Applicants are required to source at least forty (40%) percent of their Registration inputs (in supplies, sub Registrations and labor) from national suppliers and Applicants. To this end, a foreign Applicants shall provide in its Application documentary evidence that this requirement is met. Foreign Applicants not meeting this criterion will be automatically disqualified. Information required to enable the Procuring Entity determine if this condition is met shall be provided in for this purpose is be provided in “*SECTION III - EVALUATION AND QUALIFICATION CRITERIA, Item 9*”.

3.11 Pursuant to the eligibility requirements of ITT 4.10, Application is considered a foreign Applicants, if the Applicants is not registered in Kenya or if the Applicants is registered in Kenya and has less than 51 percent ownership by Kenyan Citizens. JVs are considered as foreign Applicants if the individual member firms are not registered in Kenya or if are registered in Kenya and have less than 51 percent ownership by Kenyan citizens. The JV shall not sub Registration to foreign firms more than 10 percent of the Registration price, excluding provisional sums.

3.12 The Competition Act of Kenya requires that firms wishing to Application as Joint Venture undertakings which may prevent, distort or lessen competition in provision of Services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for Application, but it shall be a condition of Registration award and signature. A JV Applicants shall be given opportunity to seek such exemption as a condition of award and signature of Registration. Application for exemption from the Competition Authority of Kenya may be accessed from the website www.cak.go.ke

3.13 A Kenyan Applicants shall provide evidence of having fulfilled his/her tax obligations by producing a valid tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority.

4. Services

4.1 Services to be applied under the Registration may have their origin in any country that is not eligible under ITT 3.9. At the Procuring Entity's request, Applicants may be required to provide evidence of the origin of Services.

5. Applicants Responsibilities

5.1 The Applicants shall bear all costs associated with the preparation and submission of his/her Application, and the Procuring Entity will in no case be responsible or liable for those costs.

5.2 The Applicants, at the Application own responsibility and risk, is encouraged to visit and examine the Services, and obtain all information that may be necessary for preparing the Application and entering into a Registration for Service.

5.3 The Applicants and any of its personnel or agents will be granted permission by the Procuring Entity to enter upon its premises and lands for the purpose of such visit.

5.4 The Applicants shall provide in the Form of Application and Qualification Information, a preliminary description of the proposed service, as necessary or required.

6. B. Contents of Application Documents

6.1 The Application document consists of Parts 1, 2, and 3, which includes all the sections specified below, and which should be read in conjunction with any Addenda issued in accordance with ITT 8.

PART 1 Applicationing Procedures

- i) Section I - Instructions to Applicants (ITT)
- ii) Section II - Application Data Sheet (TDS)
- iii) Section III - Evaluation and Qualification Criteria
- iv) Section IV - Applicationing Forms

PART 2 Conditions of Registration and Registration Forms

- i) Section VIII - General Conditions of Registration (GCC)
- ii) Section IX - Special Conditions of Registration (SC)
- iii) Section X - Registration Forms

6.2 The Invitation to Application Document (ITT) issued by the Procuring Entity is not part of the Registration documents.

6.3 Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of the Application document, responses to requests for clarification, the minutes of the pre-Application meeting (if any), or Addenda to the Application document in accordance with ITT 8. In case of any contradiction, documents obtained directly from the Procuring Entity shall prevail.

The Applicants is expected to examine all instructions, forms, terms, in the Application Document and to furnish with its Application all information and documentation as is required by the Application document.

7. Clarification and amendments of Application Documents

9.7 Applicants requiring any clarification of the Application Document shall contact the Procuring Entity in writing at the Procuring Entity's address specified in the **TDS**. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the **TDS** prior to the deadline for submission of Applications. The Procuring Entity shall forward copies of its response to all Applicants who have acquired the Application Documents in accordance with ITT 6.3, including a description of the inquiry but without identifying its source. If specified in the **TDS**, the Procuring Entity shall also promptly publish its response at the web page identified in the **TDS**. Should the clarification result in changes to the essential elements of the Application Documents, the Procuring Entity shall amend the Application Documents appropriately following the procedure under ITT 8.4.

8. Amendment of Applicationing Document

10.1 At any time prior to the deadline for submission of Applications, the Procuring Entity may amend the Applicationing document by issuing addenda.

10.2 Any addendum issued shall be part of the Applicationing document and shall be communicated in writing to all who have obtained the Applicationing document from the Procuring Entity in accordance with ITT 6.3. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's web page in accordance with ITT 8.4.

10.3 To give prospective Applicants reasonable time in which to take an addendum into account in preparing their Applications, the Procuring Entity shall extend, as necessary, the deadline for submission of Applications, in accordance with ITT 25.2 below.

9. C. Preparation of Applications

Cost of Applicationing

- 11.1 The Applicants shall bear all costs associated with the preparation and submission of its Application, and the Procuring Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the Applicationing process.

10. Language of Application

- 12.1 The Application, as well as all correspondence and documents relating to the Application exchanged by the Applicants and the Procuring Entity, shall be written in the English Language. Supporting documents and printed literature that are part of the Application may be in another language provided they are accompanied by an accurate and notarized translation of the relevant passages into the English Language, in which case, for purposes of interpretation of the Application, such translation shall govern.

11. Documents Comprising the Application

- 13.1 The Application shall comprise the following:
- a) Form of Application prepared in accordance with ITT 14;
 - b) Application Security or Application-Securing Declaration, in accordance with ITT 21.1;
 - c) Alternative Application, if permissible, in accordance with ITT 15;
 - d) Authorization: written confirmation authorizing the signatory of the Application to commit the Applicants, in accordance with ITT 22.3;
 - e) Qualifications: documentary evidence in accordance with ITT 19 establishing the Applicants qualifications to perform the Registration if its Application is accepted;
 - f) Conformity: a technical proposal in accordance with ITT 18;
 - g) Any other document required in the **TDS**.
- 13.2 In addition to the requirements under ITT 11.1, Applications submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful Application shall be signed by all members and submitted with the Application, together with a copy of the proposed Agreement. The Applicants shall chronologically serialize pages of all Application documents submitted.
- 13.3 The Applicants shall furnish in the Form of Application information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Application.

12. Form of Application a

- 14.1 The Form of Application shall be prepared using the relevant forms furnished in Section IV, Applicationing Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITT 20.3. All blank spaces shall be filled in with the information requested.

13. Alternative Applications

- 15.1 Unless otherwise specified in the **TDS**, alternative Applications shall not be considered.
- 15.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the **TDS**, and the method of evaluating different alternative times for completion will be described in Section III, Evaluation and Qualification Criteria.

14. Currencies of Application and Payment

- 17.1 Applicants shall quote entirely in Kenya Shillings. The unit rates and the prices shall be quoted by the Applicants in the Bill of Quantities, entirely in Kenya shillings. Applicants expecting to incur expenditures in other currencies for inputs to the Services applied from outside Kenya shall device own ways of getting foreign currency to meet those expenditures

15. Documents Comprising the Technical Proposal

- 18.1 The Applicants shall furnish a technical proposal including a statement of service methods, personnel, schedule and any other information as stipulated in Section IV, Application Forms, in sufficient detail to demonstrate the adequacy of the Applicants proposal to meet the service requirements and the completion time.

16. Documents Establishing the Eligibility and Qualifications of the Applicants

- 19.1 Applicants shall complete the Form of Application, included in Section IV, Application Forms, to establish Applicants eligibility in accordance with ITT 4.
- 19.2 In accordance with Section III, Evaluation and Qualification Criteria, to establish its qualifications to perform the Registration the Applicants shall provide the information requested in the corresponding information sheets included in Section IV, Application Forms.
- 19.3 A margin of preference will not be allowed. Preference and reservations will be allowed, individually or in joint ventures. Applying for eligibility for Preference and reservations shall supply all information required to satisfy the criteria for eligibility specified in accordance with ITT 33.1.
- 19.4 Applicants shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a Registration or or group of APPLICANTS qualifies for a margin of preference. Further the information will enable the Procuring Entity identify any actual or potential conflict of interest in relation to the procurement and/or Registration management processes, or a possibility of collusion between Applicants , and thereby help to prevent any corrupt influence in relation to the procurement process or Registration management.
- 19.5 The purpose of the information described in ITT 19.4 above overrides any claims to confidentiality which a Applicants may have. There can be no circumstances in which it would be justified for a Applicants to keep information relating to its ownership and control confidential where it is Applicationing to undertake public sector work and receive public sector funds. Thus, confidentiality will not be accepted by the Procuring Entity as a justification for a Applicants failure to disclose, or failure to provide required information on its ownership and control.
- 19.6 The Applicants shall provide further documentary proof, information or authorizations that the Procuring Entity may request in relation to ownership and control which information on any changes to the information which was provided by the Applicants under ITT 6.3. The obligations to require this information shall continue for the duration of the procurement process and Registration performance and after completion of the Registration, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the Registration.
- 19.7 All information provided by the Applicants pursuant to these requirements must be complete, current and accurate as at the date of provision to the Procuring Entity. In submitting the information required pursuant to these requirements, the Applicants shall warrant that the information submitted is complete, current and accurate as at the date of submission to the Procuring Entity.
- 19.8 If a Applicants fails to submit the information required by these requirements, its Application will be rejected. Similarly, if the Procuring Entity is unable, after taking reasonable steps, to verify to a reasonable degree the information submitted by a Applicants pursuant to these requirements, then the Application will be rejected.
- 19.9 If information submitted by a Applicants pursuant to these requirements, or obtained by the Procuring Entity (whether through its own enquiries, through notification by the public or otherwise) shows any conflict of interest which could materially and improperly benefit

17.

- i) if the procurement process is still ongoing, the Applicants will be disqualified from the procurement process,
- ii) if the Registration has been awarded to that Applicants, the Registration award will be set aside,
- iii) the Applicants will be referred to the relevant law enforcement authorities for investigation of whether the Applicants or any other persons have committed any criminal offence.

19.10 If a Applicants submits information pursuant to these requirements that is incomplete, inaccurate or out-of-date, or attempts to obstruct the verification process, then the consequences ITT 6.7 will ensue unless the Applicants can show to the reasonable satisfaction of the Procuring Entity that any such act was not material, or was due to genuine error which was not attributable to the intentional act, negligence or recklessness of the Applicants.

18. Period of Validity of Applications

20.1 Applications shall remain valid for the Application Validity period specified in the **TDS**. The Application Validity period starts from the date fixed for the Application submission deadline (as prescribed by the Procuring Entity in accordance with ITT 24). A Application valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.

20.2 In exceptional circumstances, prior to the expiration of the Application validity period, the Procuring Entity may request Applicants to extend the period of validity of their Applications. The request and the responses shall be made in writing. If a Application Security is requested in accordance with ITT 21.1, it shall also be extended for thirty (30) days beyond the deadline of the extended validity period. A Applicants may refuse the request without forfeiting its Application security. A Applicants granting the request shall not be required or permitted to modify its Application, except as provided in ITT 20.3.

20.3 If the award is delayed by a period exceeding the number of days to be specified in the **TDS** days beyond the expiry of the initial Application validity period, the Registration shall be determined as follows:

- a) in the case of **fixed price** Registrations, the Registration price shall be the Application price adjusted by the factor specified in the **TDS**;
- b) in the case of **adjustable price** Registrations, no adjustment shall be made; or in any case, Application evaluation shall be based on the Application price without taking into consideration the applicable correction from those indicated above.

3. Application Security

21.1 The Applicants shall furnish as part of its Application, either a Application-Securing Declaration or a Application Security as specified in the **TDS**, in original form and, in the case of a Application Security, in the amount and currency specified in the **TDS**. A Application-Securing Declaration shall use the form included in Section IV, Application Forms.

21.2 If a Application Security is specified pursuant to ITT 19.1, the Application Security shall be a demand guarantee in any of the following forms at the Applicants option:

- a) an unconditional Bank Guarantee issued by reputable commercial bank); or
- b) an irrevocable letter of credit;
- c) a Banker's cheque issued by a reputable commercial bank; or
- d) another security specified **in the TDS**,

21.3 If an unconditional bank guarantee is issued by a bank located outside Kenya, the issuing bank shall have a correspondent bank located in Kenya to make it enforceable. The Application Security shall be valid for thirty (30) days beyond the original validity period of the Application, or beyond any period of extension if requested under ITT 20.2.

21.4 If a Application Security or Application Securing Declaration is specified pursuant to ITT

19.1, any Application not accompanied by a substantially responsive Application Security or Application-Securing Declaration shall be rejected by the Procuring Entity as non-responsive.

21.5 If a Application Security is specified pursuant to ITT 21.1, the Application Security of unsuccessful Applicants shall be returned as promptly as possible upon the successful Applicants signing the Registration and furnishing the Performance Security and any other documents required in the **TDS**. The Procuring Entity shall also promptly return the Application security to the Applicants where the procurement proceedings are terminated, all Applications were determined nonresponsive or a bidder declines to extend Application validity period.

21.6 The Application Security of the successful Applicants shall be returned as promptly as possible once the successful Applicants has signed the Registration and furnished the required Performance Security, and any other documents required in the **TDS**.

21.7 The Application Security may be forfeited or the Application-Securing Declaration executed:

- e) if a Applicants withdraws its Application during the period of Application validity specified by the Applicants on the Form of Application, or any extension thereto provided by the Applicants; or
- f) if the successful Applicants fails to:
 - i) sign the Registration in accordance with ITT 50; or
 - ii) furnish a Performance Security and if required in the **TDS**, and any other documents required in the **TDS**.

21.8 Where Application securing declaration is executed, the Procuring Entity shall recommend to the PPRA that PPRA debars the Applicants from participating in public procurement as provided in the law.

21.9 The Application Security or the Application-Securing Declaration of a JV shall be in the name of the JV that submits the Application. If the JV has not been legally constituted into a legally enforceable JV at the time of Applicationing, the Application Security or the Application-Securing Declaration shall be in the names of all future members as named in the letter of intent referred to in ITT 4.1 and ITT 11.2.

21.10 A Applicants shall not issue a Application security to guarantee itself.

19. Format and Signing of Application

22.1 The Applicants shall prepare one original of the documents comprising the Application as described in ITT 13 and clearly mark it "ORIGINAL." Alternative Applications, if permitted in accordance with ITT 15, shall be clearly marked "ALTERNATIVE." In addition, the Applicants shall submit copies of the Application, in the number specified in the **TDS** and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.

22.2 Applicants shall mark as "CONFIDENTIAL" all information in their Applications which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.

22.3 The original and all copies of the Application shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Applicants. This authorization shall consist of a written confirmation as specified in the **TDS** and shall be attached to the Application. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Application where entries or amendments have been made shall be signed or initialed by the person signing the Application.

22.4 In case the Applicants is a JV, the Application shall be signed by an authorized representative of the JV on behalf of the JV, and to be legally binding on all the members as

22.5 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Application.

20. D. Submission and Opening of Applications

4. Sealing and Marking of Applications

23.1 Depending on the sizes or quantities or weight of the Application documents, a Applicants may use an envelope, package or container. The Applicants shall deliver the Application in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Application, addressed to the Procuring Entity and a warning not to open before the time and date for Application opening date. Within the single envelope, package or container, the Applicants shall place the following separate, sealed envelopes:

- a) in an envelope or package or container marked “ORIGINAL”, all documents comprising the Application, as described in ITT 11; and
- b) in an envelope or package or container marked “COPIES”, all required copies of the Application; and
- c) if alternative Applications are permitted in accordance with ITT 15, and if relevant:
 - i) in an envelope or package or container marked “ORIGINAL –ALTERNATIVE APPLICATION”, the alternative Application; and
 - ii) in the envelope or package or container marked “COPIES- ALTERNATIVE APPLICATION”, all required copies of the alternative Application.

The inner envelopes or packages or containers shall:

- a) bear the name and address of the Procuring Entity.
- b) bear the name and address of the Applicants; and
- c) bear the name and Reference number of the Application.

23.2 If an envelope or package or container is not sealed and marked as required, the *Procuring Entity* will assume no responsibility for the misplacement or premature opening of the Application. Applications that are misplaced or opened prematurely will not be accepted.

21. Deadline for Submission of Applications

24.1 Applications must be received by the Procuring Entity at the address specified in the **TDS** and no later than the date and time also specified in the **TDS**. When so specified in the **TDS**, Applicants shall have the option of submitting their Applicants submitting Applications shall follow the electronic Application submission procedures specified in the **TDS**.

24.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of Applications by amending the Application Documents in accordance with ITT 8, in which case all rights and obligations of the Procuring Entity and Applicants previously subject to the deadline shall thereafter be subject to the deadline as extended.

22. Late Applications

25.1 The Procuring Entity shall not consider any Application that arrives after the deadline for submission of Applications, in accordance with ITT 24. Any Application received by the Procuring Entity after the deadline for submission of Applications shall be declared late, rejected, and returned unopened to the Applicants.

23. Withdrawal, Substitution, and Modification of Applications

26.1 A Applicants may withdraw, substitute, or modify its Application after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITT 22.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Application must accompany the respective written notice. All notices must be:

notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," "MODIFICATION;" and

- e) Received by the Procuring Entity prior to the deadline prescribed for submission of Applications, in accordance with ITT 24.

26.2 Applications requested to be withdrawn in accordance with ITT 26.1 shall be returned unopened to the Applicants.

26.3 No Application may be withdrawn, substituted, or modified in the interval between the deadline for submission of Applications and the expiration of the period of Application validity specified by the Applicants on the Form of Application or any extension thereof.

24. Application Opening

27.1 Except in the cases specified in ITT 23 and ITT 26.2, the Procuring Entity shall publicly open and read out all Applications received by the deadline, at the date, time and place specified in the **TDS**, in the presence of Applicants' designated representatives who chooses to attend. Any specific electronic Application opening procedures required if electronic Applicationing is permitted in accordance with ITT 24.1, shall be as specified in the **TDS**.

27.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelopes with the corresponding Application shall not be opened, but returned to the Applicants. No Application withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Application opening.

27.3 Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Application being substituted, and the substituted Application shall not be opened, but returned to the Applicants. No Application substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Application opening.

27.4 Next, envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Application. No Application modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Application opening.

27.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Applicants and whether there is a modification; the total Application Price, per lot (Registration) if applicable, including any discounts and alternative Applications; the presence or absence of a Application Security or Application-Securing Declaration, if required; and any other details as the Procuring Entity may consider appropriate.

27.6 Only Applications, alternative Applications and discounts that are opened and read out at Application opening shall be considered further for evaluation. The Form of Application and pages of the Bills of Quantities are to be initialed by the members of the Application opening committee attending the opening. The number of representatives of the Procuring Entity to sign shall be specified in the **TDS**.

27.7 At the Application Opening, the Procuring Entity shall neither discuss the merits of any Application nor reject any Application (except for late Applications, in accordance with ITT 25.1).

27.8 The Procuring **Entity shall prepare minutes of the Application Opening that shall include, as a minimum:**

- f) the name of the Applicants and whether there is a withdrawal, substitution, or modification;
- g) the Application Price, per lot (Registration) if applicable, including any discounts;
- h) any alternative Applications ;

- j) number of pages of each Application document submitted.

27.9 The Applicants' representatives who are present shall be requested to sign the minutes. The omission of a Applicants signature on the minutes shall not invalidate the contents and effect of the minutes. A copy of the Application opening register shall be distributed to all Applicants upon request.

25. E. Evaluation and Comparison of Applications

Confidentiality

28.1 Information relating to the evaluation of Applications and recommendation of Registration award shall not be disclosed to Applicants or any other persons not officially concerned with the Application process until information on Intention to Award the Registration is transmitted to all Applicants in accordance with ITT 46.

28.2 Any effort by a Applicants to influence the Procuring Entity in the evaluation of the Applications or Registration award decisions may result in the rejection of its Application.

28.3 Notwithstanding ITT 28.2, from the time of Application opening to the time of Registration award, if a Applicants wishes to contact the Procuring Entity on any **matter related to the Applicationing process, it shall do so in writing.**

26. Clarification of Applications

29.1 To assist in the examination, evaluation, and comparison of the Applications, and qualification of the Applicants, the Procuring Entity may, at its discretion, ask any Applicants for a clarification of its Application, given a reasonable time for a response. Any clarification submitted by a Applicants that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Application shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the Applications, in accordance with ITT 33.

29.2 If a Applicants does not provide clarifications of its Application by the date and time set in the Procuring Entity's request for clarification, its Application may be rejected.

27. Deviations, Reservations, and Omissions

30.1 During the evaluation of Applications, the following definitions apply:

- k) "Deviation" is a departure from the requirements specified in the Application document;
- l) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Application document; and
- m) "Omission" is the failure to submit part or all of the information or documentation required in the Application document.

28. Determination of Responsiveness

31.1 The Procuring Entity's determination of a Application's responsiveness is to be based on the contents of the Application itself, as defined in ITT 13.

31.2 A substantially responsive Application is one that meets the requirements of the Application document without material deviation, **reservation, or omission. A material deviation, reservation, or omission is one that, if accepted, would:**

- n) affect in any substantial way the scope, quality, or performance of the Services specified in the Registration ; or
- o) limit in any substantial way, inconsistent with the Application document, the

- ; or
- p) if rectified, would unfairly affect the competitive position of other Applicants presenting substantially responsive Applications .

31.3 The Procuring Entity shall examine the technical aspects of the Application submitted in accordance with ITT 18, to confirm that all requirements of Section VII, Works' Requirements have been met without any material deviation, reservation or omission.

31.4 If a Application is not substantially responsive to the requirements of the Application document, it shall be rejected by the Procuring Entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

29. Non-material Non-conformities

32.1 Provided that a Application is substantially responsive, the Procuring Entity may waive any non-conformities in the Application.

32.2 Provided that a Application is substantially responsive, the Procuring Entity may request that the Applicants submit the necessary information or documentation, within a reasonable period, to rectify nonmaterial non-conformities in the Application related to documentation requirements. Requesting information or documentation on such non- conformities shall not be related to any aspect of the price of the Application. Failure of the Applicants to comply with the request may result in the rejection of its Application.

32.3 Provided that a Application is substantially responsive, the Procuring Entity shall rectify quantifiable nonmaterial non-conformities related to the Application Price. To this effect, the Application Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified in the **TDS**.

30. Arithmetical Errors

33.1 The Application sum as submitted and read out during the Application opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.

33.2 Provided that the Application is substantially responsive, the Procuring Entity shall handle errors on the following basis:

- q) Any error detected if considered a major deviation that affects the substance of the Application, shall lead to disqualification of the Application as non-responsive.
- r) Any errors in the submitted Application arising from a miscalculation of unit price, quantity, and subtotal and total bid price shall be considered as a major deviation that affects the substance of the Application and shall lead to disqualification of the Application as non-responsive. and
- s) if there is a discrepancy between words and figures, the amount in words shall prevail

33.3 Applicants shall be notified of any error detected in their bid during the notification of a ward.

31. Currency provisions

34.1 Applications will priced be in Kenya Shillings only. Applicants quoting in currencies other than in Kenya shillings will be determined non-responsive and rejected.

32. Margin of Preference and Reservations

35.1 No margin of preference shall be allowed on Registration for Service

35.2 Where it is intended to reserve the Registration to specific groups under Small and Medium Enterprises, or enterprise of women, youth and/or persons living with disability, who are appropriately registered as such by the authority to be specified in the **TDS**, a procuring entity shall ensure that the invitation to Application specifically indicates that only businesses /firms

stated, the invitation will be open to all Applicants.

33. Evaluation of Applications

37.1 The Procuring Entity shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies the Procuring Entity shall determine the Best Evaluated Application in accordance with ITT 40.

37.2 To evaluate a Application, the Procuring Entity shall consider the following:

- t) price adjustment due to discounts offered in accordance with ITT 16;
- u) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT 39;
- v) price adjustment due to quantifiable nonmaterial non-conformities in accordance with ITT 30.3; and
- w) any additional evaluation factors specified **in the TDS** and Section III, Evaluation and Qualification Criteria.

37.3 The estimated effect of the price adjustment provisions of the Conditions of Registration, applied over the period of execution of the Registration, shall not be considered in Application evaluation.

37.4 In the case of multiple Registrations or lots, Applicants shall be allowed to Application for one or more lots and the methodology to determine the lowest evaluated cost of the lot (Registration) combinations, including any discounts offered in the **Form of Application, is specified in Section III, Evaluation and Qualification Criteria.**

34. Comparison of Applications

38.1 The Procuring Entity shall compare the evaluated costs of all substantially responsive Applications established in accordance with ITT 38.2 to determine the Application that has the lowest evaluated cost.

35. Abnormally Low Applications

39.1 An Abnormally Low Application is one where the Application price, in combination with other elements of the Application, appears so low that it raises material concerns as to the capability of the Applicants in regards to the Applicants ability to perform the Registration for the offered Application Price or that genuine competition between Applicants is compromised.

39.2 In the event of identification of a potentially Abnormally Low Application, the Procuring Entity shall seek written clarifications from the Applicants, including detailed price analyses of its Application price in relation to the subject matter of the Registration , scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Application document.

39.3 After evaluation of the price analyses, in the event that the Procuring Entity determines that the Applicants has failed to demonstrate its capability to perform the Registration for the offered Application Price, the Procuring Entity shall reject the Application.

36. Abnormally High Applications

40.1 An abnormally high price is one where the Application price, in combination with other constituent elements of the Application, appears unreasonably too high to the extent that the Procuring Entity is concerned that it (the Procuring Entity) may not be getting value for money or it may be paying too high a price for the Registration compared with market prices or that genuine competition between Applicants is compromised.

40.2 In case of an abnormally high Application price, the Procuring Entity shall make a survey

Application Documents to check if the specifications, scope of work and conditions of Registration are contributory to the abnormally high Applications. The Procuring Entity may also seek written clarification from the Applicants on the reason for the high Application price. The Procuring Entity shall proceed as follows:

- i) If the Application price is abnormally high based on wrong estimated cost of the Registration, the Procuring Entity may accept or not accept the Application depending on the Procuring Entity's budget considerations.
- ii) If specifications, scope of work and/or conditions of Registration are contributory to the abnormally high Application prices, the Procuring Entity shall reject all Applications and may reapplication for the Registration based on revised estimates, specifications, scope of work and conditions of Registration , as the case may be.

40.3 If the Procuring Entity determines that the Application Price is abnormally too high because genuine competition between Applicants is compromised (*often due to collusion, corruption or other manipulations*), the Procuring Entity shall reject all Applications and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before reApplicating.

37. Unbalanced and/or Front-Loaded Applications

41.1 If in the Procuring Entity's opinion, the Application that is evaluated as the lowest evaluated price is seriously unbalanced and/or front loaded, the Procuring Entity may require the Applicants to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the Application prices with the scope of works, proposed methodology, schedule and any other requirements of the Application document.

41.2 After the evaluation of the information and detailed price analyses presented by the Applicants, the Procuring Entity may as appropriate:

- x) accept the Application; or
- y) require that the total amount of the Performance Security be increased at the expense of the Applicants to a level not exceeding a 30% of the Registration Price; or
- z) agree on a payment mode that eliminates the inherent risk of the Procuring Entity paying too much for undelivered works; or
- aa) reject the Application,

38. Qualifications of the Applicants

42.1 The Procuring Entity shall determine to its satisfaction whether the eligible Applicants that is selected as having submitted the lowest evaluated cost and substantially responsive Application, meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

42.2 The determination shall be based upon an examination of the documentary evidence of the Applicants qualifications submitted by the Applicants, pursuant to ITT 19. The determination shall not take into consideration the qualifications of other firms such as the Applicants subsidiaries, parent entities, affiliates, applicants (other than Specialized Applicants if permitted in the Application document), or any other firm(s) different from the Applicants.

42.3 An affirmative determination shall be a prerequisite for award of the Registration to the Applicants. A negative determination shall result in disqualification of the Application, in which event the Procuring Entity shall proceed to the Applicants who offers a substantially responsive Application with the next lowest evaluated price to make a similar determination of that Applicants qualifications to perform satisfactorily.

42.4 An Abnormally Low Application is one where the Application price, in combination with other elements of the Application, appears so low that it raises material concerns as to the capability of the Applicants in regards to the Applicants ability to perform the Registration for the offered Application Price.

42.5 In the event of identification of a potentially Abnormally Low Application, the Procuring Entity shall seek written clarifications from the Applicants, including detailed price analyses of its Application price in relation to the subject matter of the Registration, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Application document.

42.6 After evaluation of the price analyses, if the Procuring Entity determines that the Applicants has failed to demonstrate its capability to perform the Registration for the offered Application Price, the Procuring Entity shall reject the Application.

39. Best Evaluated Application

43.1 Having compared the evaluated prices of Applications, the Procuring Entity shall determine the Best Evaluated Application. The Best Evaluated Application is the Application of the Applicants that meets the Qualification Criteria and whose Application has been determined to be:

- bb) Most responsive to the Application document; and
- cc) the lowest evaluated price.

40. Procuring Entity's Right to Accept Any Application, and to Reject Any or All Applications.

44.1 The Procuring Entity reserves the right to accept or reject any Application and to annul the Application process and reject all Applications at any time prior to Registration Award, without thereby incurring any liability to Applicants. In case of annulment, all Applicants shall be notified with reasons and all Applications submitted and specifically, Application securities, shall be promptly returned to the Applicants.

41. F. Award of Registration

Award Criteria

45.1 The Procuring Entity shall award the Registration to the successful Applicants whose Application has been determined to be the Lowest Evaluated Application.

42. Notice of Intention to enter into a Registration

46.1 Upon award of the Registration and Prior to the expiry of the Application Validity Period the Procuring Entity shall issue a Notification of Intention to Enter into a Registration / Notification of award to all Applicants which shall contain, at a minimum, the following information:

- a) the name and address of the Applicants submitting the successful Application;
- b) the Registration price of the successful Application;
- c) a statement of the reason(s) the Application of the unsuccessful Applicants to whom the letter is addressed was unsuccessful, unless the price information in (c) above already reveals the reason;
- d) the expiry date of the Standstill Period; and
- e) instructions on how to request a debriefing and/or submit a complaint during the standstill period;

43. Standstill Period

47.1 The Registration shall not be signed earlier than the expiry of a Standstill Period of 14 days to allow any dissatisfied Application to launch a complaint. Where only one Application is submitted, the Standstill Period shall not apply.

47.2 Where a Standstill Period applies, it shall commence when the Procuring Entity has transmitted to each Applicants the Notification of Intention to Enter **into a Registration with the successful Applicants.**

44. Debriefing by the Procuring Entity

- 48.1 On receipt of the Procuring Entity's Notification of Intention to Enter into a Registration referred to in ITT 46, an unsuccessful Applicants may make a written request to the Procuring Entity for a debriefing on specific issues or concerns regarding their Application. The Procuring Entity shall provide the debriefing within five days of receipt of the request.
- 48.2 Debriefings of unsuccessful Applicants may be done in writing or verbally. The Applicants shall bear its own costs of attending **such a debriefing meeting**.

45. Letter of Award

- 49.1 Prior to the expiry of the Application Validity Period and upon expiry of the Standstill Period specified in ITT 42.1, upon addressing a complaint that has been filed within the Standstill Period, the Procuring Entity shall transmit the Letter of Award to the successful Applicants. The letter of award shall request the successful Applicants to furnish the Performance Security within 21 days of the date of the letter.

46. Signing of Registration

- 50.1 Upon the expiry of the fourteen days of the Notification of Intention to enter into Registration and upon the parties meeting their respective statutory requirements, the Procuring Entity shall send the successful Applicants the Registration Agreement.
- 50.2 Within fourteen (14) days of receipt of the Registration Agreement, the successful Applicants shall sign, date, and return it to the Procuring Entity.
- 50.3 The written Registration shall be entered into within the period specified in the notification of award and before expiry of the Application validity period

47. Appointment of Adjudicator

- 51.1 The Procuring Entity proposes the person named in the **TDS** to be appointed as Adjudicator under the Registration, at the hourly fee specified in the **TDS**, plus reimbursable expenses. If the Applicants disagrees with this proposal, the Applicants should so state in his Application. If, in the Letter of Acceptance, the Procuring Entity does not agree on the appointment of the Adjudicator, the Procuring Entity will request the Appointing Authority designated in the Special Conditions of Registration (SCC) pursuant to Clause 23.1 of the General Conditions of Registration (GCC), to appoint the Adjudicator.

48. Performance Security

- 52.1 Within twenty-one (21) days of the receipt of the Letter of Acceptance from the Procuring Entity, the successful Applicants shall furnish the Performance Security and, any other documents required in the **TDS**, in accordance with the General Conditions of Registration, subject to ITT 40.2 (b), using the Performance Security and other Forms included in Section X, Registration Forms, or another form acceptable to the Procuring Entity. A foreign institution providing a bank guarantee shall have a correspondent financial institution located in Kenya, unless the Procuring Entity has agreed in writing that a correspondent bank is not required.
- 52.2 Failure of the successful Applicants to submit the above-mentioned Performance Security and other documents required in the **TDS**, or sign the Registration shall constitute sufficient grounds for the annulment of the award and forfeiture of the Application Security. In that event the Procuring Entity may award the Registration to the Applicants offering the next Best Evaluated Application.
- 52.3 Performance security shall not be required for Registration s estimated to cost less than

49. Publication of Procurement Registration

53.1 Within fourteen days after signing the Registration, the Procuring Entity shall publish the awarded Registration at its notice boards and websites; and on the Website of the Authority. At the minimum, the notice shall contain the following information:

- a) name and address of the Procuring Entity;
- b) name and reference number of the Registration being awarded, a summary of its scope and the selection method used;
- c) the name of the successful Applicants, the final total Registration price, the Registration duration.
- d) dates of signature, commencement and completion of Registration ;
- e) names of all Applicants that submitted Applications , and their Application prices as read out at Application opening.

50. Procurement Related Complaints and Administrative Review

54.1 The procedures for making Procurement-related Complaints are as specified in the **TDS**.

54.2 A request for administrative review shall be made in the form provided under Registration forms.

Section II - Registration Data Sheet (TDS)

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO APPLICANTS
A. General	
ITT 1.1	The Procuring Entity is: COUNTY GOVERNMENT OF KIRINYAGA The identification of the Invitation for Registration is: _Registration of Suppliers for Provision Of Legal Services -CGK/PQ/002/2022-2023/2023-2024
ITT 2.2	The Information made available on competing firms is as follows: The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding <u>collusive practices</u> in Registration
B. Contents of Application Document	
ITT 7.1	(i) The Applicants will submit any request for clarifications in writing at the Address _____ The County Secretary & Head of Public Service, County Headquarters, P.O Box 260 – 10304, Kutus to reach the Procuring Entity not later than Wednesday 23rd November, 2022 at 11.00AM.
ITT 7.3	The Applicants will submit any questions in writing, to reach the Procuring Entity not later than Seven (7) days before submission date at Supply Chain Management Offices, 1 st Floor, Kirinyaga County Headquarters during normal working hours. Any request for clarification done in writing must be addressed to: The County Secretary & Head of Public Service, County Headquarters, P.O Box 260 – 10304, Kutus. Tel: +254 20 21553369 Email: procurement@kirinyaga.go.ke
ITT 9.1	For Clarification of Application purposes, for obtaining further information and for purchasing Application documents, the Procuring Entity's address is: COUNTY GOVERNMENT OF KIRINYAGA 1st Floor, County Government of Kirinyaga Headquarters, Kutus Town Postal Address P.O Box 260 – 10304, Kutus. procurement@kirinyaga.go.ke
C. Preparation of Applications	
ITA 12.1 (d)	The Applicant shall submit with its Application, the following additional documents:
D. Submission and Opening of Applications	

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO APPLICANTS
ITT 22.1	<p>(A) For <u>Application submission purposes only</u>, the Procuring Entity's address is:</p> <p>(1) Name of Procuring Entity: COUNTY GOVERNMENT OF KIRINYAGA</p> <p>(2) Postal Address P.O Box 260 – 10304, Kutus.</p> <p>(3) Physical address for hand Courier Delivery to an office or Application Box 1st Floor, County Government of Kirinyaga Headquarters, Kutus Town</p> <p>(4) Date and time for submission of Applications is Wednesday 23/11/2022 at 11.00 AM</p> <p>(5) Applications shall submit Applications Manually.</p>
ITT 25.1	<p>The Applications opening shall take place at the time and the address for Opening of Applications provided below:</p> <p>(1) Name of Procuring Entity: COUNTY GOVERNMENT OF KIRINYAGA</p> <p>(2) Physical address for the location 1st Floor, County Government of Kirinyaga Headquarters, Kutus Town)</p> <p>(3) Wednesday 23/11/2022 at 11.00 AM</p>
E. Evaluation, and Comparison of Applications	
ITA 24.1	A margin of preference [“shall not”] apply.
ITA 25.1	At this time the Procuring Entity [insert “intends” or “does not intend”] to execute certain specific parts of the Services by applicants selected in advance.
ITT 33.4	The application is OPEN to all eligible and qualified applicants.



SECTION III - QUALIFICATION CRITERIA AND REQUIREMENTS

1. This section contains all the methods, criteria, and requirements that the Procuring Entity shall use to evaluate Applications, all in one Form “Eligibility and Qualification Criteria”. The information to be provided in relation to each requirement and the definitions of the corresponding terms are included in the Form.
2. This form is generic and refers to Service.

STAGE 1. MANDATORY/PRELIMINARY REQUIREMENTS

NO.	DESCRIPTION	YES/NO
1	Copy of Certificate of Incorporation/Business Name Certified by commissioner of oaths. (Mandatory) .	
2	Must submit a copy of CR12 for sole proprietor & partnership companies to provide copies of director's id. (Mandatory) .	
3	Valid tax compliance certificate issued by Kenya Revenue Authority (KRA). (Mandatory) .	
4	Application documents must be paginated/serialized. All bidders are required to submit their documents paginated in a continuous ascending order from the first page to the last in this format; (i.e. 1,2,3..... n where n is the last page). (Mandatory) .	
5	Duly completed and signed Application Submission Letter (Mandatory) .	
6	Duly completed and signed Form ELI -1.1 - Applicant Information Form (Mandatory) .	
7	A written power of Attorney declaration form. (The written confirmation of authorization to sign on behalf of the Applicants) (Mandatory) .	
8	Duly filled, signed and stamped Application Securing Declaration Form (Mandatory) .	
9	Duly filled, signed and stamped Confidential Business Questionnaire by an individual entrusted with the powers of attorney (Mandatory) .	
10	Duly filled, signed and stamped self-declaration forms (r 62). (Mandatory) .	

NOTE: Only applicants who pass preliminary stage will proceed to the technical evaluation stage.

STAGE 2. TECHNICAL EVALUATION

Applicants are required to submit the following **MANDATORY** documents:

S/NO	(Mandatory Requirements)	YES/NO
1	Provide evidence of Current Practicing license from LSK (Mandatory) .	
2	Attach a copy of previous Registration s or LPOs for similar service (Mandatory) .	
3	Attach a copy of reference letters for supplies undertaken (Mandatory) .	

NOTE: Only applicants who pass technical stage will be registered subject to passing the post qualification

C. POST QUALIFICATION

- ☐ This will be conducted for successful Applicants

1. QUALIFICATION FORM SUMMARY

1	2	3	4	5
Item No.	Qualification Subject	Qualification Requirement	Document To be Completed by Applicants	For Procuring Entity's Use (Qualification met or Not Met)
1	Nationality	Nationality in accordance with ITT 3.6	Forms ELI – 1.1 and 1.2, with attachments	
2	Tax Obligations for Kenyan Applicants	Has produced a current tax clearance certificate or tax exemption certificate issued by the the Kenya Revenue Authority in accordance with ITT 3.14.	Form of Application	
3	Conflict of Interest	No conflicts of interest in accordance with ITT 3.3	Form of Application	
4	PPRA Eligibility	Not having been declared ineligible by the PPRA as described in ITT 3.8	Form of Application	
5	State- owned Enterprise	Meets conditions of ITT 3.7	Forms ELI – 1.1 and 1.2, with attachments	
6	Goods, equipment and Services to be applied under the Registration	To have their origin in any country that is not determined ineligible under ITT 4.1	Forms ELI – 1.1 and 1.2, with attachments	
7	History of Non-Performing Registrations	Non-performance of a Registration did not occur as a result of Registration or default since 1 st January [.....]/.	Form CON-2	
8	Suspension Based on Execution of Application/Proposal Securing Declaration by the Procuring Entity	Not under suspension based on-execution of a Application/Proposal Securing Declaration pursuant to ITT 19.9	Form of Application	
9	Pending Litigation	Applicant's financial position and prospective long-term profitability still sound according to criteria established in 3.1 and assuming that all pending litigation will NOT be resolved against the Applicants.	Form CON – 2	
10	Litigation History	No consistent history of court/arbitral award decisions against the Applicants since 1 st January [insert year]	Form CON – 2	
11	Financial	(i) The Applicants shall demonstrate that it has	Form FIN – 3.1, with	

1	2	3	4	5
Item No.	Qualification Subject	Qualification Requirement	Document To be Completed by Applicants	For Procuring Entity's Use (Qualification met or Not Met)
	Capabilities	<p>access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any Registration ual advance payment) sufficient to meet the Service cash flow requirements estimated as Kenya Shillings <i>[insert amount]</i> equivalent for the subject Registration (s) net of the Applicants other commitments.</p> <p>(ii) The Applicant's shall also demonstrate, to the satisfaction of the Procuring Entity, that it has adequate sources of finance to meet the cash flow requirements on Services currently in progress and for future Registration commitments.</p> <p>(iii) The audited balance sheets or, if not required by the laws of the Applicant's country, other financial statements acceptable to the Procuring Entity, for the last <i>[insert number of years]</i> years shall be submitted and must demonstrate the current soundness of the Applicants financial position and indicate its prospective long-term profitability.</p>	attachments	
12	Average Annual Service Turnover	Minimum average annual Service turnover of Kenya Shillings <i>[insert amount]</i> , equivalent calculated as total certified payments received for Registration s in progress and/or completed within the last <i>[insert of year]</i> years, divided by <i>[insert number of years]</i> years	Form FIN – 3.2	
13	General Service Experience	Experience under Service Registration s in the role of prime Registration or, JV member, sub-Registration or, or management Registration or for at least the last <i>[insert number of years]</i>	Form EXP – 4.1	

1	2	3	4	5
Item No.	Qualification Subject	Qualification Requirement	Document To be Completed by Applicants	For Procuring Entity's Use (Qualification met or Not Met)
		years, starting 1 st January <i>[insert year]</i> .		
	Specific Service & Registration Management Experience	<p>A minimum number of <i>[state the number]</i> similar Registrations specified below that have been satisfactorily and substantially completed as a prime Registration or, joint venture member, management Registration or or sub-Registration or between 1st January <i>[insert year]</i> and Application submission deadline i.e. (number) Registrations, each of minimum value Kenya shillings..... equivalent.</p> <p><i>[In case the Services are to be Application as individual Registrations under multiple Registration procedure, the minimum number of Registrations required for purposes of evaluating qualification shall be selected from the options mentioned in ITT 35.4]</i></p> <p>The similarity of the Registrations shall be based on the following: <i>[Based on Section VII, Scope of Works, specify the minimum key requirements in terms of physical size, complexity, Service method, technology and/or other characteristics including part of the requirements that may be met by specialized subapplicantS, if permitted in accordance with ITT 34.3]</i></p>	Form EXP 4.2(a)	

QUALIFICATION FORMS

51. Servicer's Representative and Key Personnel Schedule

Applicants should provide the names and details of the suitably qualified Servicer's Representative and Key Personnel to perform the Registration. The data on their experience should be applied using the Form PER-2 below for each candidate.

52. Servicer' Representative and Key Personnel

1.	Title of position: Servicer's Representative	
	Name of candidate:	
	Duration of appointment:	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	Time commitment: for this position:	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	Expected time schedule for this position:	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
2.	Title of position: [_____]	
	Name of candidate:	
	Duration of appointment:	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	Time commitment: for this position:	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	Expected time schedule for this position:	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
3.	Title of position: [_____]	
	Name of candidate:	
	Duration of appointment:	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	Time commitment: for this position:	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	Expected time schedule for this position:	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
4.	Title of position: [_____]	
	Name of candidate:	
	Duration of appointment:	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	Time commitment: for this position:	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	Expected time schedule for this position:	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
5.	Title of position: <i>[insert title]</i>	
	Name of candidate	
	Duration of appointment:	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>

**Time
commitment: for
this position:**

*[insert the number of days/week/months/ that has been
scheduled for this position]*

**Expected time
schedule for this
position:**

*[insert the expected time schedule for this position (e.g. attach high
level Gantt chart)]*

3. FORM PER-2:

Resume and Declaration - Servicer's Representative and Key Personnel.

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

Name of Applicants

Position [# 1]: <i>[title of position from Form PER-1]</i>		
Personnel information	Name:	Date of birth:
	Address:	E-mail:
	Professional qualifications:	
	Academic qualifications:	
	Language proficiency: <i>[language and levels of speaking, reading and writing skills]</i>	
Details	Address of Procuring Entity:	
	Telephone:	Contact (manager / personnel officer):
	Fax:	
	Job title:	Years with present Procuring Entity:

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

Project	Role	Duration of involvement	Relevant experience
<i>[main project details]</i>	<i>[role and responsibilities on the project]</i>	<i>[time in role]</i>	<i>[describe the experience relevant to this position]</i>

53. Declaration

I, the undersigned *[insert either "Servicer's Representative" or "Key Personnel" as applicable]*, certify that to the best of my knowledge and belief, the information contained in this Form PER-2 correctly describes myself, my qualifications and my experience.

I confirm that I am available as certified in the following table and throughout the expected time schedule for this position as provided in the Application:

Commitment	Details
Commitment to duration of Registration :	<i>[insert period (start and end dates) for which this Servicer's Representative or Key Personnel is available to work on this Registration]</i>
Time commitment:	<i>[insert period (start and end dates) for which this Servicer's Representative or Key Personnel is available to work on this Registration]</i>

I understand that any misrepresentation or omission in this Form may:

- a) be taken into consideration during Application evaluation;
- b) result in my disqualification from participating in the Application;
- c) result in my dismissal from the Registration .

Name of Servicer's Representative or Key Personnel: *[insert name]*

Signature: _____

Date: (day month year): _____

Countersignature of authorized representative of the Applicants:

Signature: _____ Date: (day

month year): _____

Applicant's QUALIFICATION WITHOUT PRE-QUALIFICATION

4.1 FORM ELI -1.1

Applicants Information Form

Date: _____

ITT No. and title: _____

Applicant's name
In case of Joint Venture (JV), name of each member:
Applicants actual or intended country of registration: <i>[indicate country of Constitution]</i>
Applicants actual or intended year of incorporation:
Applicants legal address [in country of registration]:
Applicants authorized representative information Name: _____ Address: _____ Telephone/Fax numbers: _____ E-mail address: _____
1. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 3.6 <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 3.5 <input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with ITT 3.8, documents establishing: <ul style="list-style-type: none">• Legal and financial autonomy• Operation under commercial law• Establishing that the Applicants is not under the supervision of the Procuring Entity 2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

4.2 FORM ELI -1.2

Applicants JV Information Form (to be completed for each member of Applicants JV)

Date: _____

ITT No. and title: _____

Applicants JV name:
JV member's name:
JV member's country of registration:
JV member's year of constitution:
JV member's legal address in country of constitution:
JV member's authorized representative information Name: _____ Address: _____ Telephone/Fax numbers: _____ E-mail address: _____
<p>1. Attached are copies of original documents of</p> <p><input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITT 3.6.</p> <p><input type="checkbox"/> In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not under the supervision of the Procuring Entity, in accordance with ITT 3.8.</p> <p>2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.</p>

4.3 FORM CON – 2

Historical Registration Non-Performance, Pending Litigation and Litigation History

Applicants Name: _____

Date: _____

JV Member's Name _____

ITT No. and title: _____

Non-Performed Registrations in accordance with Section III, Evaluation and Qualification Criteria

☐ Registration non-performance did not occur since 1st January *[insert year]* specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.1.

☐ Registration (s) not performed since 1st January *[insert year]* specified in Section III, Evaluation and Qualification Criteria, requirement 2.1

Year	Non-performed portion of Registration	Registration Identification	Total Registration Amount (current value, currency, exchange rate and Kenya Shilling equivalent)
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Registration Identification: <i>[indicate complete Registration name/ number, and any other identification]</i> Name of Procuring Entity: <i>[insert full name]</i> Address of Procuring Entity: <i>[insert street/ city/ country]</i> Reason(s) for nonperformance: <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>

Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria

☐ No pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.

☐ Pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3 as indicated below.

Year of dispute	Amount in dispute (currency)	Registration Identification	Total Registration Amount (currency), Kenya Shilling Equivalent (exchange rate)

		Registration Identification: _____ Name of Procuring Entity: _____ Address of Procuring Entity: _____ Matter in dispute: _____ Party who initiated the dispute: _____ Status of dispute: _____	
		Registration Identification: Name of Procuring Entity: Address of Procuring Entity: Matter in dispute: Party who initiated the dispute: Status of dispute:	
Litigation History in accordance with Section III, Evaluation and Qualification Criteria			
<input type="checkbox"/> No Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4. <input type="checkbox"/> Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4 as indicated below.			
Year of award	Outcome as percentage of Net Worth	Registration Identification	Total Registration Amount (currency), Kenya Shilling Equivalent (exchange rate)
<i>[insert year]</i>	<i>[insert percentage]</i>	Registration Identification: <i>[indicate complete Registration name, number, and any other identification]</i> Name of Procuring Entity: <i>[insert full name]</i> Address of Procuring Entity: <i>[insert street/city/country]</i> Matter in dispute: <i>[indicate main issues in dispute]</i> Party who initiated the dispute: <i>[indicate "Procuring Entity" or "Registration or"]</i> Reason(s) for Litigation and award decision <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>

4.4 FORM FIN – 3.1:

Financial Situation and Performance

Applicants Name: _____

Date: _____

JV Member's Name _____

ITT No. and title: _____

4.4.1. Financial Data

Type of Financial information in _____ (currency)	Historic information for previous _____ years, _____ (amount in currency, currency, exchange rate*, USD equivalent)				
	Year 1	Year 2	Year 3	Year 4	Year 5
Statement of Financial Position (Information from Balance Sheet)					
Total Assets (TA)					
Total Liabilities (TL)					
Total Equity/Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
Working Capital (WC)					
Information from Income Statement					
Total Revenue (TR)					
Profits Before Taxes (PBT)					
Cash Flow Information					
Cash Flow from Operating Activities					

*Refer to ITT 15 for the exchange rate

4.4.2 Sources of Finance

Specify sources of finance to meet the cash flow requirements on Services currently in progress and for future Registration commitments.

No.	Source of finance	Amount (Kenya Shilling equivalent)
1		
2		
3		

4.4.3 Financial documents

The Applicants and its parties shall provide copies of financial statements for _____years pursuant Section III, Evaluation and Qualifications Criteria, Sub-factor 3.1. The financial statements shall:

- (a) reflect the financial situation of the Applicants or in case of JV member, and not an affiliated entity (such as parent company or group member).
- (b) be independently audited or certified in accordance with local legislation.
- (c) be complete, including all notes to the financial statements.
- (d) correspond to accounting periods already completed and audited.

☐ Attached are copies of financial statements¹ for the _____years required above; and complying with the requirements

4.5 FORM FIN – 3.2:

Average Annual Service Turnover

Applicants Name: _____

Date: _____

JV Member's Name _____

ITT No. and title: _____

		Annual turnover data (Service only)	
Year	Amount Currency	Exchange rate	Kenya Shilling equivalent
<i>[indicate year]</i>	<i>[insert amount and indicate currency]</i>		
Average Annual Service Turnover *			

* See Section III, Evaluation and Qualification Criteria, Sub-Factor 3.2.

4.6 FORM FIN – 3.3:

Financial Resources

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total Service cash flow demands of the subject Registration or Registrations as specified in Section III, Evaluation and Qualification Criteria

Financial Resources		
No.	Source of financing	Amount (Kenya Shilling equivalent)
1		
2		
3		

4.7 FORM FIN – 3.4:

Current Registration Commitments / Services in Progress

Applicant's and each member to a JV should provide information on their current commitments on all Registrations that have been awarded, or for which a letter of intent or acceptance has been received, or for Registrations approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

Current Registration Commitments					
	Name of Registration	Procuring Entity's Contact Address, Tel,	Value of Outstanding Work [Current Kenya Shilling /month Equivalent]	Estimated Completion Date	Average Monthly Invoicing Over Last Six Months [Kenya Shilling /month]
1					
2					
3					
4					
5					

4.8 FORM EXP - 4.1

General Service Experience

Applicants Name: _____

Date: _____

JV Member's Name _____

ITT No. and title: _____

Page _____ of _____ pages

Starting Year	Ending Year	Registration Identification	Role of Applicants
		Registration name: _____ Brief Description of the Services performed by the Applicants: _____ Amount of Registration : _____ Name of Procuring Entity: _____ Address: _____	
		Registration name: _____ Brief Description of the Services performed by the Applicants: _____ Amount of Registration : _____ Name of Procuring Entity: _____ Address: _____	
		Registration name: _____ Brief Description of the Services performed by the Applicants: _____ Amount of Registration : _____ Name of Procuring Entity: _____ Address: _____	

4.9 FORM EXP - 4.2(a)**Specific Service and Registration Management Experience**

Applicants Name: _____

Date: _____

JV Member's Name _____

ITT No. and title: _____

Similar Registration No.	Information			
Registration Identification				
Award date				
Completion date				
Role in Registration	Prime Registration or <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management Registration or <input type="checkbox"/>	Sub- Registrati on or <input type="checkbox"/>
Total Registration Amount				Kenya Shilling
If member in a JV or sub- Registration or, specify participation in total Registration amount				
Procuring Entity's Name:				
Address:				
Telephone/fax number				
E-mail:				

4.10 FORM EXP - 4.2 (a) (cont.)**Specific Service and Registration Management Experience (cont.)**

Similar Registration No.	Information
Description of the similarity in accordance with Sub-Factor 4.2(a) of Section III:	
1. Amount	
2. Physical size of required Services items	
3. Complexity	
4. Methods/Technology	
5. Service rate for key activities	
6. Other Characteristics	

Service Experience in Key Activities

Applicants Name: _____

Date: _____

Applicants JV Member Name: _____

Sub-Servicer's Name² (as per ITT 34): _____

ITT No. and title: _____

All Applicants for key activities must complete the information in this form as per ITT 34 and Section III, Evaluation and Qualification Criteria, Sub-Factor 4.2.

1. Key Activity No One: _

Information				
Registration Identification				
Award date				
Completion date				
Role in Registration	Prime Registration or <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Managemen t Registration <input type="checkbox"/>	Sub- Registration or <input type="checkbox"/>
Total Registration Amount	Kenya Shilling			
Quantity (Volume, number or rate of production, as applicable) performed under the Registration per year or part of the year	Total quantity in the Registration (i)	Percentage participation (ii)		Actual Quantity Performed (i) x (ii)
Year 1				
Year 2				
Year 3				
Year 4				
Procuring Entity's Name:				
Address: Telephone/fax number E-mail:				



	Information
Description of the key activities in accordance with Sub-Factor 4.2(b) of Section III:	

- 2. Activity No. Two
- 3.

APPLICANTS ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE

Instruction to Applicants

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

(a) Applicants details

	ITEM	DESCRIPTION
1	Name of the Procuring Entity	
2	Reference Number of the Application	
3	Date and Time of Application Opening	
4	Name of the Applicants	
5	Full Address and Contact Details of the Applicants.	1. Country 2. City 3. Location 4. Building 5. Floor 6. Postal Address 7. Name and email of contact person.
6	Current Trade License Registration Number and Expiring date	
7	Name, country and full address (<i>postal and physical addresses, email, and telephone number</i>) of Registering Body/Agency	
8	Description of Nature of Business	
9	Maximum value of business which the Applicants handles.	
10	State if Applications Company is listed in stock exchange, give name and full address (<i>postal and physical addresses, email, and telephone number</i>) of state which stock exchange	

General and Specific Details

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

Name in full _____ Age _____ Nationality _____
Country of Origin _____ Citizenship _____

c) **Partnership**, provide the following details.

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

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

i) Private or public Company _____

ii) State the nominal and issued capital of the Company _____

Nominal Kenya Shillings

(Equivalent)..... Issued Kenya

Shillings (Equivalent).....

iii) Give details of Directors as follows.

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

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

i) Are there any person/persons in (Name of Procuring Entity) who has/have an interest or relationship in this firm? Yes/No.....

If yes, provide details as follows.

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

ii) **Conflict of interest disclosure**

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Applicants
1	Applicants is directly or indirectly controls, is controlled by or is under common control with another Applicants.		
2	Applicants receives or has received any direct or indirect subsidy from another Applicants.		

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Applicants
	another Applicants		
4	Application has a relationship with another Applicants, directly or through common third parties, that puts it in a position to influence the Application of another Applicants, or influence the decisions of the Procuring Entity regarding this Applicationing process.		
5	Any of the Applicants affiliates participated as a consultant in the preparation of the design or technical specifications of the Services that are the subject of the Application.		
6	Applicants would be providing Services or during implementation of the Registration specified in this Application Document.		
7	Applicants has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in the preparation of the Application document or specifications of the Registration, and/or the Application evaluation process of such Registration.		
8	Applicants has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision of the such Registration.		
9	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the Applicationing process and execution of the Registration?		

f) Certification

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

Full Name_____ Title

or Designation_____

(Signature)

(Date)

CERTIFICATE OF INDEPENDENT APPLICATION DETERMINATION

I, the undersigned, in submitting the accompanying Letter of Application to the _____
for: _____ [Name of Procuring Entity]
Application] in response to the request for Applications made by: _____ [Name and number of Applicants] do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of _____ [Name of Applicants] that:

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

Name _____ Title_ Date _____

[Name, title and signature of authorized agent of Applicants and Date].

SELF - DECLARATION FORMS

FORM SD1

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

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

1. THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Director of *(insert name of the Company)* who is a Bidder in respect of Application No. for *(insert Application 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 sub applicants have not been debarred from participating in procurement proceeding under Part IV of the Act.
3. THAT what is deposed to herein above is true to the best of my knowledge, information and belief.

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

Bidder Official Stamp

FORM SD2

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

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

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of (*insert name of the Company*) who is a Bidder in respect of Application No. for (*insert Application 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 /sub Applicants 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 /sub applicants have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of (name of the procuring entity)
4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject Application
5. THAT what is deponed to herein above is true to the best of my knowledge information and belief.

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

Bidder's Official Stamp

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

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

Name of Authorized signatory.....

Sign.....

Position.....
.....

Office address.....

Telephone..... E-

mail.....
.....

Name of the
Firm/Company.....
.....

Date..... (Company

Seal/ Rubber Stamp where applicable)

Witness

Name Sign.....

Date.....

B. APPENDIX 1- FRAUD AND CORRUPTION

(Appendix 1 shall not be modified)

1. Purpose

- 2.** 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 Registrations that are governed by the laws of Kenya.

3. Requirements

The Government of Kenya requires that all parties including Procuring Entities, Applicants, (applicants/proposers), Consultants, APPLICANTS and Suppliers; any Applicants, 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 Registration execution of all Registrations, and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1 above.

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

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

relative or to another person in whom one of them had a direct or indirect pecuniary interest, the Registration shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer. Etc.

In compliance 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 Registration to the detriment of the procuring entity or the Applicants or the Registration or, and includes collusive practices amongst Applicants prior to or after Application submission designed to establish Application 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 Registration if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, applicants, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the Registration in question;
- d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction 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 Application documents and Request for Proposal documents requiring (i) (applicants/proposers), Consultants, Applicants, and and their Applicants, Sub-consultants, Service providers, Agents personnel, permit the PPRA or 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 Registration execution, and to have them

appointed by Government of Kenya; and

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

FORM OF APPLICATION SECURITY- [Option 1-Demand Bank Guarantee]

Beneficiary:_____

Request for Applications No:

Date:_____

APPLICATION GUARANTEE No.:_____

Guarantor: _____

1. We have been informed that _____ (here inafter called "the Applicant") has submitted or will submit to the Beneficiary its Application (here inafter called" the Application") for the execution of ___ under Request for Applications No. ("the ITT").
2. Furthermore, we understand that, according to the Beneficiary's conditions, Applications must be supported by a Application guarantee.
3. At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of ___(_____) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:
 - (a) has withdrawn its Application during the period of Application validity set forth in the Applicant's Letter of Application ("the Application Validity Period"), or any extension thereto provided by the Applicant; or
 - b) having been notified of the acceptance of its Application by the Beneficiary during the Application Validity Period or any extension there to provide by the Applicant, (i) has failed to execute the Registration agreement, or (ii) has failed to furnish the Performance.
4. This guarantee will expire: (a) if the Applicant is the successful Applicants, upon our receipt of copies of the Registration agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Applicants, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Applicationing process; or (ii) thirty days after the end of the Application Validity Period.
5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above onor before that date.

APPLICATION-SECURING DECLARATION FORM

[The Bidder shall complete this Form in accordance with the instructions indicated]

Date:*[insert date (as day, month and year) of Application Submission]*

Application No.:*[insert number of Applicationing process]*

To: *[insert complete name of Purchaser]* I/We, the undersigned, declare

that:

1. I/We understand that, according to your conditions, bids must be supported by a Application-Securing Declaration.
2. I/We accept that I/we will automatically be suspended from being eligible for Applicationing in any Registration with the Purchaser for the period of time of *[insert number of months or years]* starting on *[insert date]*, if we are in breach of our obligation(s) under the bid conditions, because we – (a) have withdrawn our Application during the period of Application validity specified by us in the Applicationing Data Sheet; or (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Registration , if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the instructions to Applications .
3. I/We understand that this Application Securing Declaration shall expire if we are not the successful Applicants(s), upon the earlier of:
 - a) our receipt of a copy of your notification of the name of the successful Applicants; or
 - b) thirty days after the expiration of our Application.
4. I/We understand that if I am/we are/in a Joint Venture, the Application Securing Declaration must be in the name of the Joint Venture that submits the bid, and the Joint Venture has not been legally constituted at the time of bidding, the Application Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed:..... Capacity / title (director
or partner or sole proprietor, etc.) Name:

..... Duly authorized to sign the

bid for and on behalf of: *[insert complete name of Applicants]*

Dated on day of *[Insert date of signing]* Seal or stamp

Appendix to Application

Schedule of Currency requirements

Summary of currencies of the Application for _____ *[insert name of Section]*

<i>Name of currency</i>	<i>Amounts payable</i>
Local currency: _____	
Foreign currency #1: _____	
Foreign currency #2: _____	
Foreign currency #3: _____	
Provisional sums expressed in local currency _____	[To be entered by the Procuring Entity]
