

# **DEVELOPMENT OF HOSPITALITY AND COMMERCIAL COMPONENTS OF THE BOMAS INTERNATIONAL CONVENTION COMPLEX AT BOMAS OF KENYA**

**TENDER No. BOK/RFP/02/2024-2025**

**JUNE 2025**

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**CHIEF EXECUTIVE OFFICER  
BOMAS OF KENYA  
P.O BOX 40689-00100  
NAIROBI**

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## INVITATION TO TENDER

**TENDER NO. BOK/RFP/02/2024-2025**

**Date: 10th June 2025**

**CONTRACT NAME: DEVELOPMENT OF HOSPITALITY AND COMMERCIAL COMPONENTS OF THE BOMAS INTERNATIONAL CONVENTION COMPLEX AT BOMAS OF KENYA**

1. Bomas of Kenya (Bomas) invites from qualified developers sealed tenders for the development teams to plan, design, finance, construct, and operate and transfer..’ Two 5-star and 4-star hotels and a shopping mall facility on leased property within the grounds of Bomas of Kenya in Lang’ata, Nairobi, Kenya.

### 2. Procuring Entity Information

The Procuring Entity is a state corporation registered under the State Corporations Act CAP 446 Laws of Kenya and operates facilities to promote economic benefit to the Republic of Kenya at the Bomas of Kenya. The Bomas of Kenya facilities host a wide variety of cultural conventions, consumer/trade shows and corporate events each year. Located in Langata Nairobi, the Bomas of Kenya Convention Centre will feature a number of facilities including prime exhibit space, exhibit halls, conference meeting rooms, auditoriums, restaurants and grand ballrooms together (together the Facilities).

The Procuring Entity oversees operations of the 79-acre premises registered in the name of the Procuring Entity (the Property) that includes the Facilities. The Facilities have sufficient parking spaces for vehicles.

### 3. Project Goals

The Procuring Entity seeks to procure the services of a developer(s)/operator(s) for the development, design, financing, construction, and operation and transfer..’ of two 5-star hotels, one 4-star hotel, and a shopping mall (the Developments) which if developed, are to be an immediate enhancement to the financial viability and dynamism of surrounding facilities of the Bomas of Kenya , and to the City of Nairobi and the Republic of Kenya generally. These Developments are part of a long-term development program for the modernisation of Bomas of Kenya.

The Procuring Entity expects that the Developments will illustrate exceptional architecture that complements the balance of the Bomas of Kenya convention and entertainment activities with the vitality of the City of Nairobi. The Developments should function serve and support the activities and events of Bomas of Kenya.

It is envisioned that the Developments should create and support new demand for Bomas of Kenya facilities, promote larger events in adjacent areas of Bomas of Kenya, and possibly spur additional development in the area. The Developments will also demonstrate environmentally sustainable technology related to design, construction, and efficient operation. The eventual development and design of the Hotel should allow for maximum flexibility to respond to changes in community and market needs over the coming decades.

### 4. Structure of Project

The Procuring entity envisions a long-term lease structure, under the Public Procurement and Asset Disposal Act, 2015 and its attendant regulations, of at least 40 years in favour of the Successful Bidder. The Successful Bidder shall obtain an exclusive lease over the specified parcel of the Property (the Parcel) for purposes of the Developments.

In consideration, the Successful Bidder shall be expected to pay an annual lease payment for the Parcel.

The Tender is in four lots as indicated below:

TENDER NO	DESCRIPTION
BOK/RFP/02/2024-2025-LOT 1	5-STAR HOTEL No. 1 on a 3-acre plot of land
BOK/RFP/02/2024-2025-LOT 2	5-STAR HOTEL No. 2 on a 3-acre plot of land
BOK/RFP/02/2024-2025-LOT 3	4-STAR HOTEL on a 3-acre plot of land
BOK/RFP/02/2024-2025-LOT 4	SHOPPING MALL on a 9-acre plot of land

5. Tendering will be conducted under Open International Competitive method using a standardized tender document. Tendering is open to all qualified and interested Tenderers.
- 6.
7. Qualified and interested tenderers may obtain further information during office hours *[0800 to 1300 hours and 1400 to 1700 hours]* at the address given below.

Supply Chain Manager,

Bomas of Kenya

Forest Edge Road, Off Langata Road

P.O Box 40689-00100 Nairobi

Email: [procurement@bomasofkenya.co.ke](mailto:procurement@bomasofkenya.co.ke).

A.

8. A complete set of tender documents may be obtained electronically from the Website(s) [www.bomasofkenya.co.ke](http://www.bomasofkenya.co.ke) and [www.tenders.go.ke](http://www.tenders.go.ke). Tender documents obtained electronically will be free of charge.
9. Tender documents may be viewed and downloaded for free from the website [www.bomasofkenya.co.ke](http://www.bomasofkenya.co.ke). Tenderers who download the tender document must forward their particulars immediately to [procurement@bomasofkenya.co.ke](mailto:procurement@bomasofkenya.co.ke), 0208891575/802/408, and P.O.BOX 40689-00100 to facilitate any further clarification or addendum.
10. Tenders shall be quoted in Kenya Shillings and shall include all taxes. Tenders shall remain valid for 126 days from the date of opening of tenders.
11. All Tenders must be accompanied by a tender Security of **Kenya Shillings 50,000,000**
12. The Tenderer shall chronologically serialize all pages of the tender documents submitted.
13. Completed tenders must be delivered to the address below on or before **30 June 2025 at 11:00am**. Electronically submitted Tenders *will not be* permitted.

14. Tenders will be opened immediately after the deadline date and time specified above or any deadline date and time specified later. Tenders will be publicly opened in the presence of the Tenderers' designated representatives who choose to attend at the address below.
15. Late tenders will be rejected.
16. The addresses referred to above are:

**A. Address for obtaining further information**

- (1) BOMAS OF KENYA LTD.
- (2) Office of the Supply Chain Manager  
Forest Edge Road, Off Langata Road P.O Box 40689-00100 Nairobi
- (3) P.O.BOX 40689-00100
- (4) Name of officer to be contacted: Email: [procurement@bomasofkenya.co.ke](mailto:procurement@bomasofkenya.co.ke).

**A. Address for Submission of Tenders.**

Chief Executive Officer  
Bomas of Kenya  
Forest Edge Road, Off Langata Road  
P.O Box 40689-00100 Nairobi  
Email: [procurement@bomasofkenya.co.ke](mailto:procurement@bomasofkenya.co.ke).

**B. Address for Opening of Tenders.**

Chief Executive Officer  
Bomas of Kenya  
Forest Edge Road, Off Langata Road  
P.O Box 40689-00100 Nairobi  
Email: [procurement@bomasofkenya.co.ke](mailto:procurement@bomasofkenya.co.ke).

***[Authorized Official (name, designation, Signature and date)]***

Name

Chief Executive Officer  
Bomas of Kenya  
Forest Edge Road, Off Langata Road  
P.O Box 40689-00100 Nairobi  
Email: [procurement@bomasofkenya.co.ke](mailto:procurement@bomasofkenya.co.ke).

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## **PART 1 - TENDERING PROCEDURES**

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## SECTION I - INSTRUCTIONS TO TENDERERS

### A General Provisions

#### 1. Scope of Tender and Definitions

1.1 The Procuring Entity as define in the Tender data sheet (TDS) invites tenders for the development of hospitality and commercial components of the bomas International Convention Complex at Bomas of Kenya any related services incidental thereto, as specified in Section VII, Schedule of Requirements. The name, identification, and number of lots (contracts) of this Tender Document are **specified in the TDS**.

1.2 Throughout this tendering document:

- a) The term “in writing” means communicated in written form (e.g. by mail, e-mail, fax, including if **specified in the TDS**, distributed or received through the electronic-procurement system used by the Procuring Entity) with proof of receipt;
- b) If the context so requires, “singular” means “plural” and vice versa;
- c) “Day” means calendar day, unless otherwise specified as “Business Day”. A Business Day is any day that is an official working day of the Procuring Entity. It excludes official public holidays.

#### 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 tender 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 sub- contractors 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 contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Tenderers shall be required to complete and sign the “Certificate of Independent Tender Determination” annexed to the Form of Tender.

2.3 Unfair Competitive Advantage - Fairness and transparency in the tender 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 tender. To that end, the Procuring Entity shall indicate in the **Data Sheet** and make available to all the firms together with this tender document all information that would in that respect give such firm any unfair competitive advantage over competing firms.

2.4 Tenderers shall permit and shall cause their agents (where declared or not), subcontractors, sub-consultants, service providers, suppliers, and their personnel, to permit the Procuring Entity to inspect all accounts, records and other documents relating to any initial selection process, prequalification process, tender submission, proposal submission, and contract performance (in the case of award), and to have them audited by auditors appointed by the Procuring Entity.

#### 3 Eligible Tenderers

3.1 A Tenderer may be a firm that is a private entity, a state-owned enterprise or institution subject to ITT 4.6, 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. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract 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 Tendering process and, in the event the JV is awarded the Contract, during contract execution. A firm

that is a Tenderer (either individually or as a JV member) may participate in more than one Tender, offering different items that meet the requirements of the Lease. A firm that is not a Tenderer or a JV member, may participate as a subcontractor in more than one Tender. Members of a joint venture may not also make an individual tender, be a subcontractor in a separate tender or be part of another joint venture for the purposes of the same Tender. The maximum number of 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 tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.
- 3.3 A Tenderer shall not have a conflict of interest. Any Tenderer found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest for the purpose of this Tendering process, if the Tenderer:
- a Directly or indirectly controls, is controlled by or is under common control with another Tenderer; or
  - b Receives or has received any direct or indirect subsidy from another Tenderer; or
  - c Has the same legal representative as another Tenderer; or
  - d Has a relationship with another Tenderer, directly or through common third parties, that puts it in a position to influence the Tender of another Tenderer, or influence the decisions of the Procuring Entity regarding this Tendering process; or
  - e Or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the Tender; or
  - f Or any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity or Procuring Entity for the Contract implementation; or
  - g would be providing Lease Items, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the TDS ITT 2.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; 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 tendering document or specifications of the Contract, and/or the Tender evaluation process of such Contract; or
    - j would be involved in the implementation or supervision of such Contract unless the conflict stemming from such relationship p has been resolved in a manner acceptable to the Procuring Entity throughout the Tendering process and execution of the Contract.
- 3.4 A Tenderer shall not be involved in corrupt, coercive, obstructive, collusive, or fraudulent practice. A tenderer that is proven to have been involved in any of these practices shall be automatically disqualified and would not be awarded a contract.
- 3.5 A firm that is a Tenderer (either individually or as a JV member) may participate in more than one Tender, offering different items that meet the requirements of the Lease. A firm that is not a Tenderer or a JV member, may participate as a subcontract or in more than one Tender.
- 3.6 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT4.9. A Tenderer shall be deemed to have the nationality of a country if the Tenderer 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 subcontractors or sub- consultants for any part of the Contract including related Services.



- 3.7 A Tenderer that has been debarred by the PPRA from participating in public procurement shall be ineligible to be prequalified for a tender or be awarded a contract. The list of debarred firms and individuals is available from the website of PPRA [www.ppra.go.ke](http://www.ppra.go.ke).
- 3.8 Tenderers that are state-owned enterprises or institutions may be eligible to compete and be awarded a Contract(s) only if they are (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.
- 3.9 Firms and individuals may be ineligible if their countries of origin (a) as a matter of law or 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 Lease Items or contracting for supply of Lease Items or services from that country, or any payments to any country, person, or entity in that country. A tenderer shall provide such documentary evidence of eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.
- 3.10 For purposes of granting a margin of preference, a tender is considered a national tenderer if it is registered in Kenya, has more than 51 percent ownership by nationals of Kenya and if it does not subcontract foreign contractors more than 10 percent of the contract price, excluding provisional sums. JVs are considered as national tenderers and eligible for national preference only if the individual member firms are registered in Kenya or have more than 51 percent ownership by nationals of Kenya, and the JV shall be registered in Kenya. The JV shall not subcontract to foreign firms more than 10 percent of the contract price, excluding provisional sums.
- 3.11 Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the Leases under this Invitation for tenders.
- 3.12 The Competition Act of Kenya requires that firms wishing to tender 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 tender, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website [www.cak.go.ke](http://www.cak.go.ke).
- 3.13 A Kenyan tenderer 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 Eligible Lease Items and Related Services**

- 4.1 All the Lease Items and Related Services to be supplied under the Contract and financed by the Procuring Entity shall have their origin from Eligible Countries in accordance with ITT 3.8.
- 4.2 For purposes of this ITT, the term “Lease Items” includes, landed properties, buildings and related accommodations, vessels (land, air and sea), vehicles, machinery, plant and equipment, “related services” including services such as insurance, installation, training, and maintenance.
- 4.3 The term “origin” means the country where the Lease Items have been sourced from, manufactured, processed, or assembled.
- 4.4 A lease item may be considered ineligible if it has items, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or

by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement.

## 5 Tenderer's Responsibilities

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

5.2 The tenderer, at the tenderer's own responsibility and risk, is encouraged to visit and examine the Site of the Works and its surroundings, and obtain all information that may be necessary for preparing the tender and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the tenderer's own expense.

5.3 The Tenderer 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. The Tenderer shall indemnify the Procuring Entity against all liability arising from personal injury, loss of or damage to property, and any other losses and expenses incurred as a result of the inspection.

5.4 The tenderer shall provide in the Form of Tender and Qualification Information, a preliminary description of the proposed work method and schedule, including charts, as necessary or required.

## 6

### 6 Clarification of Tendering Document, Site Visit and Pre-Tender Meeting

6.1 A Tenderer requiring any clarification of the Tender Document shall contact the Procuring Entity in writing at the Procuring Entity's address specified in the **TDS** or raise its enquiries during the pre-Tender meeting if provided for in accordance with ITT 6.2. 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 tenders. The Procuring Entity shall forward copies of its response to all tenderers who have acquired the Tender documents in accordance with ITT 6.4, including a description of the inquiry but without identifying its source. If so 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 Tender Documents, the Procuring Entity shall amend the Tender Documents following the procedure under ITT 7 and ITT 21.2.

6.2 The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine and inspect the site(s) of the required contracts and obtain all information that may be necessary for preparing a tender. The costs of visiting the Site shall be at the Tenderer's own expense. The Procuring Entity shall specify in the **TDS** if a pre-arranged Site visit and or a pre-tender meeting will be held, when and where. The Tenderer's designated representative is invited to attend a pre-arranged site visit and a pre-tender meeting, as the case may be. The purpose of the site visit and the pre-tender meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

6.3 The Tenderer is requested to submit any questions in writing, to reach the Procuring Entity not later than the period specified in the **TDS** before the meeting.

6.4 Minutes of a pre-arranged site visit and those of the pre-tender meeting, if applicable, including the text of the questions asked by Tenderers and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents. Minutes shall not identify the source of the questions asked.

6.5 The Procuring Entity shall also promptly publish anonymized (no names) Minutes of the pre-arranged site visit and those of the pre-tender meeting at the web page identified in the **TDS**. Any modification to the Tender Documents that may become necessary as a result of the pre-arranged site

visit and those of the pre-tender meeting shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT 7 and not through the minutes of the pre-Tender meeting. Non-attendance at the pre-arranged site visit and the pre-tender meeting will not be a cause for disqualification of a Tenderer.

## **7 Amendment of Tendering Document**

- 7.1 At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the tendering document by issuing addenda.
- 7.2 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tendering document from the Procuring Entity in accordance with ITT 5.3. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's webpage in accordance with ITT 7.1.
- 7.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders, pursuant to ITT 21.2.

## **C. Preparation of Tenders**

### **8 Cost of Tendering**

- 8.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Procuring Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.

### **9 Language of Tender**

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

## **10 Documents Comprising the Tender**

- 10.1 The Tender shall comprise the following:
  - a **Form of Tender** prepared in accordance with ITT 11;
  - b **Price Schedules:** completed in accordance with ITT 11 and ITT 13;
  - c **Tender Security or Tender – Securing Declaration**, in accordance with ITT 18.1;
  - d **Alternative Tender:** if permissible, in accordance with ITT 12;
  - e **Authorization:** written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 19.3;
  - f **Qualifications:** documentary evidence in accordance with ITT 16 establishing the Tenderer qualifications to perform the Contract if its Tender is accepted;
  - g **Tenderer Eligibility:** documentary evidence in accordance with ITT 16 establishing the Tenderer eligibility to tender;
  - h **Eligibility of Lease Items and Related Services:** documentary evidence in accordance with ITT 15, establishing the eligibility of the Lease Items and Related Services to be supplied by the Tenderer;
  - i **Conformity:** documentary evidence in accordance with ITT 15 and 28, that the Lease Items and Related Services conform to the tendering document; and
  - j Any other document required **in the TDS**.

- 10.2 In addition to the requirements under ITT 13.1, Tenders 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 Tender shall be signed by all members and submitted with the Tender, together with a copy of the proposed Agreement.
- 10.3 The Tenderer shall furnish in the Form of Tender information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Tender.

## **11 Form of Tender and Price Schedules**

- 11.1 The Form of Tender and Price Schedules shall be prepared using the relevant forms furnished in Section IV, Tendering 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. The Tenderer shall chronologically serialize pages of all tender documents submitted.
- 11.2 Each item on the Schedule of Requirements must be priced separately in the Price Schedules and for full quantities required. Items not priced for full quantity on the Schedule of Requirements will be rejected. TENDERERS MAY QUOTE FOR ONE OR MORE OF THE ITEMS ON THE SCHEDULE OF REQUIREMENTS. Tenders will be evaluated and awarded on basis of each item.
- 11.3 Where tenders are being invited for individual Items/lots (contracts) or for any combination of lots (packages), tenderers wishing to offer discounts for the award of more than one Contract shall specify so in their Tender the price reductions applicable to each Item or alternatively, to individual items. Discounts shall be submitted in accordance with ITT 13.1, provided the Tenders for all lots (contracts) are opened at the same time.
- 11.4 All duties, taxes, and other levies payable by the Contract or under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of Tenders, shall be included in the rates and prices and the total Tender Price submitted by the Tenderer.

## **12 Alternative Tenders**

- 12.1 Unless otherwise specified **in the TDS**, alternative Tenders shall not be considered.

## **13 Tender Prices and Discounts**

- 13.1 The prices and discounts quoted by the Tenderer in the Form of Tender and in the Price Schedules shall conform to the requirements specified below.
- 13.2 The price to be quoted in the Form of Tender in accordance with ITT 11.1 shall be the total price of all the items but the attachment of the Schedule of prices, excluding any discounts offered.
- 13.3 The Tenderer shall quote any discounts and indicate the methodology for their application in the Form of Tender, in accordance with ITT 14.1.
- 13.4 Prices quoted by the Tenderer shall be fixed during the time of the Lease under the Contract and not subject to variation on any account, unless otherwise specified **in the TDS**. A Tender submitted with an adjustable price quotation shall be treated as non-responsive and shall be rejected, pursuant to ITT 29. However, if in accordance with **the TDS**, prices quoted by the Tenderer shall be subject to adjustment during the Lease under the Contract, a Tender submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.
- 13.5 If so specified in ITT 1.1, Tenders are being invited for individual lots (contracts) or for any combination of lots (packages). Prices quoted shall correspond to 100 % of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Tenderers wishing to offer discounts for the award of more than one Contract shall specify in their Tender the price reductions applicable to each package, or alternatively, to individual Contracts with in the package. Discounts shall be submitted in accordance with ITT 13.4 provided the Tenders for all lots (contracts) are opened at the same time.

- 13.6 Prices shall be quoted as specified in each Price Schedule included in Section IV, Tendering Forms. The disaggregation of price components is required solely for the purpose of facilitating the comparison of Tenders by the Procuring Entity. This shall not in any way limit the Procuring Entity's right to contract on any of the terms offered. The Tenderer may obtain insurance services from any eligible country in accordance with ITT 3, Eligible Tenders. The tender shall include Related Services required to maintain the leased item as specified in the Schedule of Requirements (inclusive of any applicable taxes).

#### **14 Currencies of Tender and Payment**

- 14.1 The currency(ies) of the Tender and the currency(ies) of payments shall be the same. The Tenderer shall quote in Kenya shillings unless otherwise specified **in the TDS**.

#### **15 Documents Establishing the Eligibility and Conformity of the Lease Items and Related Services.**

- 15.1 To establish the eligibility of the lease items and Related Services in accordance with ITT 5, Tenderers shall complete the country-of-origin declarations in the Price Schedule Forms, included in Section IV, Tendering Forms.
- 15.2 To establish the conformity of the Lease items and Related Services to the tendering document, the Tenderer shall furnish as part of its Tender the documentary evidence that the Lease Items conform to the technical specifications and standards specified in Section VII, Schedule of Requirements.
- 15.3 The documentary evidence may be in the form of literature, drawings or data, and shall consist of a detailed item by item description of the essential technical and performance characteristics of the Lease Items and Related Services, demonstrating substantial responsiveness of the Lease Items and Related Services to the technical specification, and if applicable, a statement of deviations and exceptions to the provisions of the Section VII, Schedule of Requirements.
- 15.4 The Tenderer shall also furnish a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the Lease Items during the period **specified in the TDS** following commencement of the use of the Lease Items by the Procuring Entity.
- 15.5 Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by the Procuring Entity in the Schedule of Requirements, are intended to be descriptive only and not restrictive. The Tenderer may offer other standards of quality, brand names, and/or catalogue numbers, provided that it demonstrates, to the Procuring Entity's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Section VII, Schedule of Requirements.

#### **16 Documents Establishing the Eligibility and Qualifications of the Tenderer**

- 16.1 To establish Tenderer eligibility in accordance with ITT 3, Tenderers shall complete the Form of Tender, included in Section IV, Tendering Forms.
- 16.2 The documentary evidence of the Tenderer qualifications to perform the Contract if its Tender is accepted shall establish to the Procuring Entity's satisfaction:
- (a) that, if required **in the TDS**, a Tenderer that does not own the Lease Items it offers shall submit the Owner's Authorization using the form included in Section IV, Tendering Forms to demonstrate that it has been duly authorized by the Owner of the Lease Items.
  - (b) that, if required **in the TDS**, in case of a Tenderer not doing business within Kenya, the Tenderer is or will be (if awarded the Contract) represented by an Agent in the country equipped and able to carry out the related services of the leased items as obligations prescribed in the Conditions of Contract and/or Technical Specifications; and
  - (c) that the Tenderer meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.



- 16.3 Tenderers 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 particular lessor or group of lessors 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 contract management processes, or a possibility of collusion between tenderers, and thereby help to prevent any corrupt influence in relation to the procurement process or contract management.
- 16.4 The purpose of the information described in ITT 16.3 above overrides any claims to confidentiality which a tenderer may have. There can be no circumstances in which it would be justified for a tenderer to keep information relating to its ownership and control confidential where it is tendering 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 Tenderer's failure to disclose, or failure to provide required information on its ownership and control.
- 16.5 The Tenderer 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 tenderer under ITT 16.3. The obligations to require this information shall continue for the duration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.
- 16.6 All information provided by the tenderer 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 Tenderer shall warrant that the information submitted is complete, current and accurate as at the date of submission to the Procuring Entity.
- 16.7 If a tenderer fails to submit the information required by these requirements, its tender 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 tenderer pursuant to these requirements, then the tender will be rejected.
- 16.8 If information submitted by a tenderer 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 the tenderer in relation to the procurement or contract management process, then:
- i) If the procurement process is still ongoing, the tenderer will be disqualified from the procurement process.
  - ii) If the contract has been awarded to that tenderer, the contract award will be set aside.
  - iii) the tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other persons have committed any criminal offence.
- 16.9 If a tenderer 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 16.8 will ensue unless the tenderer 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 tenderer.

## **17 Period of Validity of Tenders**

- 17.1 Tenders shall remain valid for the Tender Validity period specified **in the TDS**. The Tender Validity period starts from the date fixed for the Tender submission deadline (as prescribed by the Procuring Entity in accordance with ITT 21.1). A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.
- 17.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 18, it shall also be extended for a corresponding period. A Tenderer may refuse the request without

forfeiting its Tender Security. A Tenderer granting the request shall not be required or permitted to modify its Tender, except as provided in ITT 23.1.

## **18 Tender Security**

- 18.1 The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender Security, as specified **in the TDS**, in original form and, in the case of a Tender Security, in the amount and currency specified **in the TDS**. In this case a Tender-Securing Declaration or a Tender Security shall be for each item. Alternatively, a tenderer may aggregate all the Items tendered for and provide one Tender-Securing Declaration or a Tender Security in the required amounts, as the case may be.
- 18.2 A Tender Securing Declaration shall use the form included in Section IV, Tendering Forms.
- 18.3 If a Tender Security is specified pursuant to ITT 19.1, the Tender Security shall be a demand bank guarantee in any of the following forms at the Tenderer option:
- i. cash;
  - ii. a bank guarantee;
  - iii. a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority; or
  - iv. a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya.
  - v. Any other form specified in the **TDS**.
- 18.4 If an unconditional guarantee is issued by a non-Bank financial institution located outside Kenya, the issuing non-Bank financial institution shall have a correspondent financial institution located in Kenya to make it enforceable unless the Procuring Entity has agreed in writing, prior to Tender submission, that a correspondent financial institution is not required. In the case of a bank guarantee, the Tender Security shall be submitted either using the Tender Security Form included in Section IV, Tendering Forms, or in another substantially similar format approved by the Procuring Entity prior to Tender submission. The Tender Security shall be valid for twenty-eight (28) days beyond the original validity period of the Tender, or beyond any period of extension if requested under ITT 18.2.
- 18.5 If a Tender Security is specified pursuant to ITT 18.1, any Tender not accompanied by a substantially responsive Tender Security shall be rejected by the Procuring Entity as non-responsive.
- 18.6 If a Tender Security is specified pursuant to ITT 18.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer signing the Contract and furnishing the Performance Security pursuant to ITT 44.
- 18.7 The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract. The Procurement Entity shall also return tender security to the tenderers where;
- a. The procurement proceedings are terminated
  - b. All tenders were determined non-responsive and
  - c. Where a bidder declines to extend the tender validity period.
- 18.8 The Tender Security may be forfeited or the Tender Securing Declaration executed:
- a) If a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer in the Form of Tender, or any extension thereto provided by the Tenderer; or
    - i) If the successful Tenderer fails to sign the Contract in accordance with ITT 43; or
    - ii) Furnish or make available the Leased items.

- 18.9 The Tender Security or Tender- Securing Declaration of a JV must be in the name of the JV that submits the Tender. If the JV has not been legally constituted into a legally enforceable JV at the time of Tendering, the Tender Security or Tender-Securing Declaration shall be in the names of all future members as named in the letter of intent referred to in ITT 3.1 and ITT 10.2.
- 18.10 Where the Tender-Securing Declaration is executed the Procuring Entity will recommend to the PPRA that PPRA debars the Tenderer from participating in public procurement as provided in the law.
- 18.11 A tenderer shall not issue a tender security to guarantee itself.

## **19 Format and Signing of Tender**

- 19.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 11 and clearly mark it “ORIGINAL.” Alternative Tenders, if permitted in accordance with ITT 13, shall be clearly marked “ALTERNATIVE.” In addition, the Tenderer shall submit copies of the Tender, 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.
- 19.2 Tenderers shall mark as “CONFIDENTIAL” information in their Tenders which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.
- 19.3 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation **as specified in the TDS** and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person signing the Tender.
- 19.4 In case the Tenderer is a JV, the Tender shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.
- 19.5 Any inter-lineation, erasures, or over writing shall be valid only if they are signed or initialed by the person signing the Tender.

## **D. Submission and Opening of Tenders**

### **20 Sealing and Marking of Tenders**

- 20.1 The Tenderer shall deliver the Tender 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 Tender, addressed to the Procuring Entity and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, the Tenderer shall place the following separate, sealed envelopes:
- a in an envelope or package or container marked “ORIGINAL”, all documents comprising the Tender, as described in ITT11; and
  - b in an envelope or package or container marked “COPIES”, all required copies of the Tender; and
  - c if alternative Tenders are permitted in accordance with ITT 13, and if relevant:
    - i. in an envelope or package or container marked “ORIGINAL –ALTERNATIVE TENDER”, the alternative Tender; and
    - ii. in the envelope or package or container marked “COPIES- ALTERNATIVE TENDER”, all required copies of the alternative Tender.

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 Tenderer; and
- c) Bear the name and Reference number of the Tender.

20.2 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 Tender. Tenders that are misplaced or opened prematurely will not be accepted.

## **21 Deadline for Submission of Tenders**

21.1 Tenders must be received by the Procuring Entity at the address and no later than the date and time specified **in the TDS**. When so specified in the TDS, Tenderers shall have the option of submitting their Tenders electronically. Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedures **specified in the TDS**.

21.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the tendering document in accordance with ITT 7, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

## **22 Late Tenders**

22.1 The Procuring Entity shall not consider any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT 21. Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

## **23 Withdrawal, Substitution, and Modification of Tenders**

23.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization (the power of attorney) in accordance with ITT 19.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:

- a prepared and submitted in accordance with ITT 19 and 20 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL,” “SUBSTITUTION,” or “MODIFICATION;” and
- b received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT 21.

23.2 Tenders requested to be withdrawn in accordance with ITT 23.1 shall be returned unopened to the Tenderers.

23.3 No Tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Tenderer on the Form of Tender or any extension thereof.

## **24 Tender Opening**

24.1 Except as in the cases specified in ITT 22 and ITT 23.2, the Procuring Entity shall, at the Tender opening, publicly open and read out all Tenders received by the deadline at the date, time and place specified **in the TDS** in the presence of Tenderers' designated representatives and anyone who chooses to attend Any specific electronic Tender opening procedures required if electronic tendering is permitted in accordance with ITT 21.1, shall be as specified **in the TDS**.

24.2 First, envelopes marked “WITHDRAWAL” shall be opened and read out and the envelope with the corresponding Tender shall not be opened, but returned to the Tenderer. If the withdrawal envelope does not contain a copy of the “power of attorney” confirming the signature as a person duly authorized to sign on behalf of the Tenderer, the corresponding Tender will be opened. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Tender opening.

- 24.3 Next, envelopes marked “SUBSTITUTION” shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening.
- 24.4 Next, envelopes marked “MODIFICATION” shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening.
- 24.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the total Tender Prices, per lot (contract) if applicable, including any discounts and alternative Tenders; the presence or absence of a Tender Security, if required; and any other details as the Procuring Entity may consider appropriate.
- 24.6** Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further in the evaluation. The Form of Tender and the Price Schedules are to be initialed by representatives of the Procuring Entity attending Tender opening in the manner specified **in the TDS**.
- 24.7 The Procuring Entity shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT 22.1).
- 24.8 The Procuring Entity shall prepare a record of the Tender opening that shall include, as a minimum:
- a The name of the Tenderer and whether there is a withdrawal, substitution, or modification;
  - b The Tender Price, per lot (contract) if applicable, including any discounts;
  - c Any alternative Tenders;
  - d The presence or absence of a Tender Security or Tender-Securing Declaration, if one was required.
- 24.9 The Tenderers' representatives who are present shall be requested to sign the record. The omission of a Tenderer signature on the record shall not invalidate the contents and effect of the record. A copy of the opening register shall be distributed to all Tenderers upon request.

## **E. Evaluation and Comparison of Tenders**

### **25 Confidentiality**

- 25.1 Information relating to the evaluation of Tenders and recommendation of contract award, shall not be disclosed to Tenderers or any other persons not officially concerned with the Tendering process until the information on Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 39.
- 25.2 Any effort by a Tenderer to influence the Procuring Entity in the evaluation or contract award decisions may result in the rejection of its Tender.
- 25.3 Notwithstanding ITT 26.2, from the time of Tender opening to the time of Contract Award, if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tendering process, it should do so in writing.

### **26 Clarification of Tenders**

- 26.1 To assist in the examination, evaluation, comparison of the Tenders, and qualification of the Tenderers, the Procuring Entity may, at its discretion, ask any Tenderer for a clarification of its Tender. Any clarification submitted by a Tenderer in respect to its Tender and 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 Tender shall besought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the Evaluation of the Tenders, in accordance with ITT 30.

- 26.2 If a Tenderer does not provide clarifications of its Tender by the date and time set in the Procuring Entity's request for clarification, its Tender may be rejected.

## **27 Deviations, Reservations, and Omissions**

27.1 During the evaluation of Tenders, the following definitions apply:

- a "Deviation" is a departure from the requirements specified in the Tendering document;
- b "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the tendering document; and
- c "Omission" is the failure to submit part or all of the information or documentation required in the tendering document.

## **28 Determination of Responsiveness**

- 28.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT 10.
- 28.2 A substantially responsive Tender is one that meets the requirements of the tendering document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:
- a If accepted, would:
    - i. Affect in any substantial way the scope, quality, or performance of the Lease Items and Related Services specified in the Contract; or
    - ii. Limit in any substantial way, in consistent with the tendering document, the Procuring Entity's rights or the Tenderer obligations under the Contract; or
  - b if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.
- 28.3 The Procuring Entity shall examine the technical aspects of the Tender submitted in accordance with ITT 15 and ITT 16, in particular, to confirm that all requirements of Section VII, Schedule of Requirements have been met without any material deviation or reservation, or omission.
- 28.4 If a Tender is not substantially responsive to the requirements of tendering 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-conformities, Errors and Omissions**

- 29.1 Provided that a Tender is substantially responsive, the Procuring Entity may waive any non-conformities in the Tender.
- 29.2 Provided that a Tender is substantially responsive, the Procuring Entity may request that the Tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial non- conformities or omissions in the Tender related to documentation requirements. Such omission shall not be related to any aspect of the price of the Tender. Failure of the Tenderer to comply with the request may result in the rejection of its Tender.
- 29.3 Provided that a Tender is substantially responsive, the Procuring Entity shall rectify quantifiable nonmaterial non-conformities related to the Tender Price. To this effect, the Tender 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 Correction of Arithmetical Errors**

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

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

- a Any error detected if considered a major deviation that affects the substance of the tender, shall lead to disqualification of the tender as non-responsive.
- b Any errors in the submitted tender arising from a miscalculation of unit price, quantity, subtotal and total bid price shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of the tender as non-responsive. and
- c If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail

### **31 Conversion to Single Currency**

31.1 No conversion to single currency is expected since all tenders will be in Kenya shillings.

### **32 Margin of Preference and reservations**

32.1 No Margin of Preference and Reservations shall be allowed in this tender.

### **33 Evaluation of Tenders**

33.1 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 Most Advantageous Tender. This is the Tender of the Tenderer that meets the qualification criteria and whose Tender has been determined to be:

- a Substantially responsive to the tendering document; and
- b The best evaluated cost.

33.2 To evaluate a Tender, the Procuring Entity shall consider the following:

- a Price adjustment due to discounts offered in accordance with ITT 13;
- b Price adjustment due to quantifiable non material non-conformities in accordance with ITT 29.3; and
- c The additional evaluation factors are specified in Section III, Evaluation and Qualification Criteria.

33.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of the Lease Contract, shall not be considered in Tender evaluation.

33.4 In the case of multiple contracts or lots, Tenderers are allowed to tender for one or more lots and the methodology to determine the best evaluated cost of the lot (contract) and for combinations, including any discounts offered in the Form of Tender, is specified in Section III, Evaluation and Qualification Criteria.

33.5 The Procuring Entity's evaluation of a Tender will include and consider:

- a taxes, which will be payable on the Lease Items if a contract is awarded to the Tenderer;
- b any allowance for price adjustment during the period of the Lease contract, if provided in the Tender.

33.6 The Procuring Entity's evaluation of a Tender may require the consideration of other factors, in addition to the Tender Price quoted in accordance with ITT 13. These factors may be related to the characteristics, performance, and terms and conditions of Lease and Related Services. The effect of the factors selected, if any, shall be expressed in monetary terms to facilitate comparison of Tenders, unless otherwise specified **in the TDS** from amongst those set out in Section III, Evaluation and Qualification Criteria. The criteria and methodologies to be used shall be as specified in ITT 33.2 (f).

## **34 Comparison of Tenders**

- 34.1 The Procuring Entity shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 33.2 to determine the Tender that has the best evaluated cost. The comparison shall be on the basis of total cost for all Lease Items, and related services, together with prices for any required installation, training, commissioning and other services.

## **35 Abnormally Low Tenders and Abnormally High**

### **Tenders Abnormally Low Tenders**

- 35.1 An Abnormally Low Tender is one where the Tender price, in combination with other elements of the Tender, appears so low that it raises material concerns as to the capability of the Tenderer in regards to the Tenderer's ability to perform the Contract for the offered Tender Price.
- 35.2 In the event of identification of a potentially Abnormally Low Tender, the Procuring Entity shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Tender document.
- 35.3 After evaluation of the price analyses, in the event that the Procuring Entity determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, the Procuring Entity shall reject the Tender.

### **Abnormally High Tenders**

- 35.4 An abnormally high tender price is one where the tender price, in combination with other constituent elements of the Tender, 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 contract compared with market prices or that genuine competition between Tenderers is compromised.
- 35.5 In case of an abnormally high price, the Procuring Entity shall make a survey of the market prices, check if the estimated cost of the contract is correct and review the Tender Documents to check if the specifications, scope of work and conditions of contract are contributory to the abnormally high tenders. The Procuring Entity may also seek written clarification from the tenderer on the reason for the high tender price. The Procuring Entity shall proceed as follows:
- i) If the tender price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the tender depending on the Procuring Entity's budget considerations.
  - ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, the Procuring Entity shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work and conditions of contract, as the case may be.
- 35.6 If the Procuring Entity determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (*often due to collusion, corruption or other manipulations*), the Procuring Entity shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before retendering.

## **36 Qualification of the Tenderer**

- 36.1 The Procuring Entity shall determine, to its satisfaction, whether the eligible Tenderer that is selected as having submitted the best evaluated cost and substantially responsive Tender, meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.
- 36.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer qualifications submitted by the Tenderer, pursuant to ITT 17. The determination shall not take into



consideration the qualifications of other firms such as the Tenderer subsidiaries, parent entities, affiliates, subcontractors (other than specialized subcontractors if permitted in the tendering document), or any other firm(s) different from the Tenderer.

- 36.3 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event the Procuring Entity shall proceed to the Tenderer who offers a substantially responsive Tender with the next best evaluated cost to make a similar determination of that Tenderer qualifications to perform satisfactorily.

### **37 Procuring Entity's Right to Accept Any Tender, and to Reject Any or All Tenders**

- 37.1 The Procuring Entity reserves the right to accept or reject any Tender, and to annul the Tendering process and reject all Tenders at any time prior to Contract Award, without there by incurring any liability to Tenderers. In case of annulment, all Tenders submitted and specifically, tender securities, shall be promptly returned to the Tenderers.

## **F. Award of Contract**

### **38. Award Criteria**

- 38.1 The Procuring Entity shall award the Contract to the successful tenderer whose tender has been determined to be the Best Evaluated Tender.

### **39. Notice of Intention to enter into a Contract/Notification of award**

- 39.1 Upon award of the contract and prior to the expiry of the Tender Validity Period the Procuring Entity shall issue a Notification of Intention to Enter into a Contract/Notification of award to all tenderers which shall contain, at a minimum, the following information:

- a) The name and address of the Tenderer submitting the successful tender;
- b) The Contract price of the successful tender;
- c) a statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was unsuccessful, unless the price information in (b) 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;

### **40. Standstill Period**

- 40.1 The Contract shall not be signed earlier than the expiry of a Standstill Period of 14 days to allow any dissatisfied tender to launch a complaint. Where only one Tender is submitted, the Standstill Period shall not apply.
- 40.2 Where a Standstill Period applies, it shall commence when the Procuring Entity has transmitted to each Tenderer the Notification of Intention to Enter into a Contract with the successful Tenderer.

### **41 Debriefing by the Procuring Entity**

- 41.1 On receipt of the Procuring Entity's Notification of Intention to Enter into a Contract referred to in ITT 39, an unsuccessful tenderer may make a written request to the Procuring Entity for a debriefing on specific issues or concerns regarding their tender. The Procuring Entity shall provide the debriefing within five days of receipt of the request. .2 Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending such a debriefing meeting.

### **42 Letter of Award**

- 42.1 Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 40.1, upon addressing a complaint that has been filed within the Standstill Period, the Procuring Entity shall transmit the Letter of Award to the successful Tenderer. The letter of award shall request the successful tenderer to furnish the Performance Security within 21 days of the date of the letter.

### **43 Signing of Contract**

- 43.1 Upon the expiry of the fourteen days of the Notification of Intention to enter into contract and upon the parties meeting their respective statutory requirements, the Procuring Entity shall send the successful Tenderer the Contract Agreement.
- 43.2 Within fourteen (14) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to the Procuring Entity.
- 43.3 The written contract shall be entered into within the period specified in the notification of award and before expiry of the tender validity period.

### **44 Performance Security**

- 44.1 Within twenty-one (21) days of the receipt of Letter of Acceptance from the Procuring Entity, the successful Tenderer, if required, shall furnish the Performance Security in accordance with the GCC 15, using for that purpose the Performance Security Form included in Section IV, Contract Forms, or another Form acceptable to the Procuring Entity. If the Performance Security furnished by the successful Tenderer is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Tenderer to be acceptable to the Procuring Entity. A foreign institution providing a bond shall have a correspondent financial institution located in Kenya, unless the Procuring Entity has agreed in writing that a correspondent financial institution is not required.
- 44.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security. In that event the Procuring Entity may award the Contract to the Tenderer offering the next Most Advantageous Tender.
- 44.3 Performance security shall not be required for contracts estimated to cost less than Kenya shillings five million shillings.

### **45 Publication of Procurement Contract**

- 45.1 Within fourteen days after signing the contract, the Procuring Entity shall publish the awarded contract at its notice boards and websites; and on the Website of Bomas. 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 contract being awarded, a summary of its scope and the selection method used;
  - c) the name of the successful Tenderer, the final total contract price, the contract duration.
  - d) dates of signature, commencement and completion of contract;
  - e) names of all Tenderers that submitted Tenders, and their Tender prices as read out at Tender opening.

### **46 Procurement Related Complaint and Administrative Review**

- 46.1 The procedures for making a Procurement-related Complaint are as specified in the **TDS**.
- 46.2 A request for administrative review shall be made in the form provided under contract forms.

## SECTION II - TENDER DATA SHEET (TDS)

The following specific data shall complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT). Whenever there is a conflict, the provisions herein shall prevail over those in ITT.

ITT Reference	PARTICULARS OF APENDIX TO INSTRUCTION TO TENDERS										
<b>A. General</b>											
ITT 1.1	<p>The reference number of the Invitation for Tenders is: <b>BOK/RFR/02/2024-2025</b></p> <p>The Procuring Entity is: <b>BOMAS OF KENYA</b></p> <p>The name of the Contract is: <b>DEVELOPMENT OF HOSPITALITY AND COMMERCIAL COMPONENTS OF THE BOMAS INTERNATIONAL CONVENTION COMPLEX AT BOMAS OF KENYA</b></p> <p>The number and identification of lots (contracts) comprising this Invitation for Tenders is:</p> <table border="1" data-bbox="320 797 1449 1261"> <thead> <tr> <th>TENDER NO</th><th>DESCRIPTION</th></tr> </thead> <tbody> <tr> <td>BOK/RFP/02/2024-2025-LOT 1</td><td>5-STAR HOTEL No. 1 on a 3-acre plot of land</td></tr> <tr> <td>BOK/RFP/02/2024-2025-LOT 2</td><td>5-STAR HOTEL No. 2 on a 3-acre plot of land</td></tr> <tr> <td>BOK/RFP/02/2024-2025-LOT 3</td><td>4-STAR HOTEL on a 3-acre plot of land</td></tr> <tr> <td>BOK/RFP/02/2024-2025-LOT 4</td><td>SHOPPING MALL on a 9-acre plot of land</td></tr> </tbody> </table> <p>Detailed requirements are in SECTION IV – SCHEDULE OF REQUIREMENTS</p>	TENDER NO	DESCRIPTION	BOK/RFP/02/2024-2025-LOT 1	5-STAR HOTEL No. 1 on a 3-acre plot of land	BOK/RFP/02/2024-2025-LOT 2	5-STAR HOTEL No. 2 on a 3-acre plot of land	BOK/RFP/02/2024-2025-LOT 3	4-STAR HOTEL on a 3-acre plot of land	BOK/RFP/02/2024-2025-LOT 4	SHOPPING MALL on a 9-acre plot of land
TENDER NO	DESCRIPTION										
BOK/RFP/02/2024-2025-LOT 1	5-STAR HOTEL No. 1 on a 3-acre plot of land										
BOK/RFP/02/2024-2025-LOT 2	5-STAR HOTEL No. 2 on a 3-acre plot of land										
BOK/RFP/02/2024-2025-LOT 3	4-STAR HOTEL on a 3-acre plot of land										
BOK/RFP/02/2024-2025-LOT 4	SHOPPING MALL on a 9-acre plot of land										
ITT 2.2	Tenders shall be required to complete and sign the “Certificate of Independent Tender Determination” annexed to the Form of Tender.										
ITT 3.1	<p>Could be a Joint Venture or Teaming Arrangement between Property developers, Hotel and Shopping Mall Operators, operating with hotels and shopping malls ready to enter into Joint Venture or Teaming Arrangements with local companies.</p> <p><b><i>Those bidding under Joint Venture or Teaming Arrangements MUST submit Joint Venture Agreement or Teaming Agreement or a letter of intent to execute a Joint Venture Agreement/Teaming Agreement in the event of a successful Tender shall be signed by all members and submitted with the Tender, together with a copy of the proposed Agreement.</i></b></p>										
<b>B. Contents of Tendering Document</b>											
ITT 6.1	<p>i. The Tenderer will submit any request for clarifications in writing at the Address:  <b>The Supply Chain Manager</b>  Forest Edge Road, Off Langata Road <b>P.O Box 40689-00100</b> Nairobi  Name of officer to be contacted: <b>Supply Chain Manager</b> Email:</p>										



ITT Reference	PARTICULARS OF APENDIX TO INSTRUCTION TO TENDERS
	<p><b>procurement@bomasofkenya.co.ke.</b></p> <p>ii. All such requests for clarification must be received in writing by the Procuring Entity not later than <b>20 June 2025 at 5:00pm</b></p> <p>iii. The Procuring Entity shall send responses in writing to all Tenderers within <b>5(five) working days</b> of receiving requests for clarifications.</p> <p>iv. The Procuring Entity shall also publish its responses at the website <a href="http://www.bomasofkenya.co.ke">www.bomasofkenya.co.ke</a>. and <a href="http://www.tenders.go.ke">www.tenders.go.ke</a>.</p>
ITT 6.2	<p>i. A <b>Pre-arranged Site Visit</b> and <b>Pre-Tender Meeting</b> shall take place on <b>17 June 2025 at 10:00am.</b></p> <p>ii. Tenderers shall congregate for the site visit at the Procuring Entity's premises at the address below:  <b>The Supply Chain Manager</b>  Bomas of Kenya  Forest Edge Road, Off Langata Road  <b>Email: procurement@bomasofkenya.co.ke</b></p>
ITT 6.3	All such questions or requests for clarification must be received by the Procuring Entity not later than <b>20 June 2025 at 5:00pm.</b>
ITT 6.5	Minutes of the Pre-Arranged Site Visit and those of the Pre-Tender Meeting shall be posted in the Procuring Entity's website: <a href="http://www.bomasofkenya.co.ke">www.bomasofkenya.co.ke</a> .
	<b>C. Preparation of Tenders</b>
ITT 10 (j)	The tenderer shall submit additional information as provided in the evaluation criteria
ITT 12.1	Alternative Tenders <b>shall not</b> be considered.
ITT 13.4	Prices quoted by the Tenderer <b>shall be</b> subject to adjustment during the Lease under the Contract.
ITT 14.1	Tenderers <b>Shall</b> tender in <b>Kenya Shillings.</b>
ITT 15.4	N/A
ITT 16.2 (b)	<b>"required"</b>
ITT 17.1	The Tender Validity period shall be <b>126 days</b> from the deadline for the tender submission.
ITT 18.1	<p><b>Tender Security shall be of amount: Kenya shillings Fifty Million KES 50,000,000.00 or equivalent in US Dollars</b></p> <p>The tender security shall be in any of the following forms:</p> <ul style="list-style-type: none"> <li>i. Cash or;</li> <li>ii. a bank guarantee or;</li> <li>iii. a guarantee by an insurance company registered and licensed by the Insurance</li> </ul>

ITT Reference	PARTICULARS OF APENDIX TO INSTRUCTION TO TENDERS
	<p>Regulatory Authority listed by the PPRA; and</p> <p>iv. a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya.</p> <p><b><i>The Tender Security shall be valid for 156 days from the date of tender opening. NB: The tender security shall be from a bank or financial institution with a local representation in Kenya</i></b></p>
<b>ITT 18.3 (v)</b>	<p>Other types of acceptable securities:</p> <p><u>N/A</u></p>
<b>ITT 19.1</b>	No. of copies of the Tender that shall be submitted: <b>2 (two)</b>
<b>ITT 19.3</b>	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of: <u>Power of Attorney certified by a Commissioner of Oath / Notary Public</u>
	<b>D. Submission and Opening of Tenders</b>
<b>ITT 21.1</b>	<p>(A) For Tender submission purposes only, the Procuring Entity's address is:</p> <p>BOMAS OF KENYA LTD.</p> <p>The Supply Chain Manager</p> <p>Forest Edge Road, Off Langata Road P.O Box 40689-00100 Nairobi</p> <p>P.O.BOX 40689-00100</p> <p>Tenders shall not submit tenders electronically.</p> <p>All Tenders must be received by the Procuring Entity on <b>30 June 2025 at 11:00am.</b></p>
<b>ITT 24.1</b>	<p>The Tender opening shall take place at the time and the address for Opening of Tenders Provided below:</p> <p>BOMAS OF KENYA LTD.</p> <p>The Supply Chain Manager</p> <p>Forest Edge Road, Off Langata Road P.O Box 40689-00100 Nairobi</p> <p>All Tenders must be received by the Procuring Entity on <b>30 June 2025 at 11:00am.</b></p>
<b>E. Evaluation and Comparison of Tenders</b>	
	<b>Evaluation of Tenders</b>
<b>ITT 33.6</b>	N/A
<b>F. Award of Contract</b>	
<b>ITT 38.1</b>	<p>The successful bidder/s shall;</p> <p>i. Have met all mandatory requirements and</p> <p>ii. Have attained the highest marks as evaluated under the following criteria:</p> <ol style="list-style-type: none"> <li>Organisational qualifications and experience (20 points)</li> <li>Conceptual Design (15 points)</li> <li>Financial Capacity (30 points)</li> <li>Technical and team capacity (10 points)</li> <li>Financial proposal in terms of Total Minimum lease payments. (25 points)</li> </ol>

ITT Reference	PARTICULARS OF APENDIX TO INSTRUCTION TO TENDERS
<b>ITT 46.1</b>	<p>The procedures for making a Procurement-related Complaint are available from the “Notification of Intention to Award – Paragraph 5” and from the PPRA website <a href="http://www.ppra.go.ke">www.ppra.go.ke</a></p> <p>If a Tenderer wishes to make a Procurement –related Complaint, the Tenderer should submit its complaint following these procedures, in writing by the quickest means available, that is either by hand delivery or email to:</p> <p style="padding-left: 40px;">BOMAS OF KENYA LTD. The Supply Chain Manager Forest Edge Road, Off Langata Road P.O Box 40689-00100 Nairobi Email address: <a href="mailto:procurement@bomasofkenya.co.ke">procurement@bomasofkenya.co.ke</a></p> <p>Complainants may challenge any of the following:</p> <ul style="list-style-type: none"> <li>(i) The terms of the Tender Documents; and</li> <li>(ii) The Procuring Entity’s decision to award the contract</li> </ul>

## SECTION III - EVALUATION AND QUALIFICATION CRITERIA

### 1. General Provision

- 1.1 Wherever a Tenderer is required to state a monetary amount, Tenderers should indicate the Kenya Shilling equivalent using the rate of exchange determined as follows:
- For business turnover or financial data required for each Year-Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year is to be converted) was originally established.
  - Value of single contract- Exchange rate prevailing on the date of the contract signature.
  - Exchange rates shall be taken from the publicly available source identified in the ITT. Any error in determining the exchange rates in the Tender may be corrected by the Procuring Entity.
- 1.2 This section contains the criteria that the Employer shall use to evaluate tender and qualify tenderers. No other factors, methods or criteria shall be used other than specified in this tender document. The Tenderer shall provide all the information requested in the forms included in Section IV, Tendering Forms. The Procuring Entity should use the evaluation criteria as specified in this Tender Document.
- 1.3 **Report for Goods and Works** for evaluating Tenders. N/A
- 1.4 **Evaluation and contract award Criteria**

The Procuring Entity shall use the criteria and methodologies listed in this Section to evaluate tenders and arrive at the Best Evaluated Tender. **The tender that (i) meets the qualification criteria, (ii) has been determined to be substantially responsive to the Tender Documents, and (iii) is determined to have the Best Evaluated Tender price shall be selected for award of contract.**

### 2 Preliminary examination for Determination of Responsiveness

- 2.1 The Procuring Entity will start by examining all tenders to ensure they meet in all respects the eligibility criteria and other mandatory requirements in the ITT, and that the tender is complete in all aspects in meeting the requirements provided for in the preliminary evaluation criteria outlined below. The Standard Tender Evaluation Report Document for Goods and Works for evaluating Tenders provides very clear guide on how to deal with review of these requirements. Tenders that do not pass the Preliminary Examination will be considered non- responsive and will not be considered further.

#### Part I: Preliminary Evaluation Criteria, Mandatory requirements.

No	Requirement	
1	Copy of certificate of Registration/Incorporation or partnership deed to show that the applicant is a registered company and legally authorized to do business in their jurisdiction of each of the participating companies.	Must Meet
2.	Duly filled, signed and stamped form of tender <ul style="list-style-type: none"><li>Not having been declared ineligible by the PPRA as described in ITT 3.7</li></ul> No conflicts of interest in accordance with ITT3.3	Must Meet
3.	Tender Security amounting of Kenya shillings FiftyMillion ( <b>Ksh. 50,000,000.00</b> ) or the equivalent in US Dollars in the prescribed format valid for <b>156</b> days from the tender opening date.	Must Meet

4	The Firm is from an Eligible country i.e. the Firm is not from a country that Kenya prohibits commercial relations with that country, including those sanctioned by the United Nations Security Council, taken under Chapter VII of the Charter of the United Nations.	Must Meet
5	The firm's line of business fits in with the requirements of the assignment.	Must Meet
6	Firm is not debarred from participating in procurement by PPRA or by any National agency or an International Organization. The Key individuals listed by the Firm's Team Leader are also not debarred.	Must Meet
7	A written power of Attorney authorizing the signatory of the tender to commit the Tenderer, certified by a commissioner for oath.	Must Meet
8	Duly filled Confidential Business Questionnaire form duly signed by each of the participating companies. To be filled out for each of the participating company.	Must Meet
9	Provide copy of official company search (CR 12 for Kenyan companies) for each of the participating company, providing a list of directors and shareholding status. Where one or more of the shareholders is a company (Beneficial Ownership), the official company search of such a company shall be provided.  However, where the official company search of the beneficial shareholders is not available, as at the time of the tender submission, the successful bidder shall be required to submit it before execution of the contract. This requirement is not applicable to sole proprietorships and partnerships registered under Business Names.	Must Meet
10	Tender Document to be sequentially serialized from the first to the last page including all the attachments in numerical digits format.	Must Meet
11	Duly filled <i>Certificate</i> of Independent Tender Determination Form. To be filled for each of the participating company.	Must Meet
12	Duly filled Self Declaration Form that the Person/Tenderer is not Debarred in the Matter of the Public Procurement And Asset Disposal Act 2015. To be filled for each of the participating company.	Must Meet
13	Duly filled and stamped Self Declaration Form that the Person/Tenderer will not engage in any corrupt or fraudulent practice. To be filled for each of the participating company.	Must Meet
14	Duly filled Declaration and commitment to the Code of Ethics Form. To be filled for each of the participating company.	Must Meet
15	Copy of a valid business permits for year 2025 for each of the participating companies where applicable.	Must Meet

**N/B: Failure to comply/ submit any of the above requirements shall lead to automatic disqualification from further evaluation.**

## **Part II: Evaluation of Tenderer's Technical Requirements**

Having met the mandatory requirements, the firms shall be subjected to a technical evaluation based on the criteria below.

ITEM	REQUIREMENT Firms MUST have:
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1	Qualifications and Experience (20 points)	<p><b>Hospitality Development</b></p> <p>a) <b>Past Experience with Comparable Projects (6 points):</b>  Proposers shall submit evidence of successful development financing and delivery of at least one 4- or 5-star hotel project in the recent past. Details to be provided should include:</p> <ul style="list-style-type: none"> <li>○ No of rooms</li> <li>○ Investment value</li> <li>○ Details required: <ul style="list-style-type: none"> <li>i. Project name and location</li> <li>ii. Year completed or status</li> <li>iii. Role of Proposer (developer, investor, operator)</li> <li>iv. Brand/flag and operator (if applicable)</li> </ul> </li> </ul> <p>b) Documented experience in the recent past in designing, constructing and operating luxury 5-star, or 4-star hotel or equivalent high-end hospitality facilities, or other similar projects such as hotels and office buildings to international standards, either directly or through a qualified third-party hotel operator or franchise partner, preferably in comparable emerging or frontier markets. <b>(4 points)</b></p> <p>c) Identification of the intended recognised hotel brand or management partner, including evidence of the franchise or management agreement (or letter of intent) if applicable. <b>(4 points)</b></p> <p>d) Detailed project portfolio showcasing past and current developments, including location, scale, budget, completion timeline, scope of work, and client/partner references. <b>(4 points)</b></p> <p>e) Experience in successfully delivering projects under a, long-term lease, or similar contractual arrangement with a government, cultural institution, or public/private agency. <b>(2 points)</b></p> <p><b>Commercial Development</b></p> <p>a) <b>Past Experience with Comparable Projects (6 points):</b> The Proposer (or lead mall development entity) must have done the following in the recent past:</p> <ul style="list-style-type: none"> <li>• Successfully developed or owned at a shopping mall (indicate size)</li> <li>• Experience managing multi-tenant leasing, anchor tenant acquisition, and property operations</li> <li>• Proposers shall include: <ul style="list-style-type: none"> <li>i. Project name, size, and location</li> <li>ii. Role played (developer, owner, investor)</li> <li>iii. Completion year and occupancy levels</li> <li>iv. Investment size and tenant profile</li> </ul> </li> </ul> <p>b) Documented experience in the recent past in designing, constructing and operating a shopping mall or equivalent</p>
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		<p>facilities, or other similar projects such as retail centres international standards, either directly or through a qualified third-party hotel operator or franchise partner, preferably in comparable emerging or frontier markets. <b>(4 points)</b></p> <p>c) Identification of the intended shopping mall or retail brand or management partner, including evidence of the franchise or management agreement (or letter of intent) if applicable. <b>(4 points)</b></p> <p>d) Detailed project portfolio showcasing past and current developments, including location, scale, budget, completion timeline, scope of work, and client/partner references. <b>(4 points)</b></p> <p>e) Experience in successfully delivering projects under a, long-term lease, or similar contractual arrangement with a government, cultural institution, or public/private agency. <b>(2 points)</b></p>
2	Concept Design and Delivery Schedule as per the schedule of requirements <b>(section VI)</b> <b>(15 points)</b>	<ul style="list-style-type: none"> <li>Propose a compelling, innovative conceptual design, financing, and operational plan. <b>(2 points)</b></li> <li>Aligns with Bomas’ cultural, commercial, and strategic objectives. <b>(3 points)</b></li> <li>Proposers must indicate the total project cost and demonstrates a commitment to quality, sustainability, and financial viability <b>(3 points)</b></li> <li>Propose a delivery and completion schedule in accordance with the requirements detailed in SECTION IV- SCHEDULE OF REQUIREMENTS <b>(7 points)</b></li> </ul>
3	Financial Capacity (30 points)	<p>The Sponsor (or lead consortium member responsible for the Developments must provide credible evidence of financial capacity to undertake a project valued at not less than <b>KES 5.2 billion</b> for the hotel (approximately USD 40 million) and <b>KES 9.1 billion</b> (approximately USD 70 million) for the shopping mall.</p> <p><b>(a) Minimum Liquid Assets Requirement</b></p> <p>An unqualified access to liquid assets of not less than <b>KES 2.6 billion</b> (approximately USD 20 million) for the hotel developments and <b>KES 3.9 billion</b> (approximately USD 30 million) for the shopping mall. This shall be evidenced by any of the following (14 points):</p> <p>(i) Cash at hand in a recognised financial institution</p> <p>(ii) Letter of line of credit from approved financial institution specific to this tender and indicating the amount available.</p> <p>(iii) Overdraft facility from a commercial bank specifically for this project and indicating the amount to be availed</p> <p><b>(b) Audited Financial Statements</b></p> <p>Bidders must submit audited financial statements for the last three (3) financial years. (2 points)</p>

		<p><b>(c) Bank Letter of Support</b></p> <p>Bidders shall provide confirmation from their respective local bank(s) duly licensed by the Central Bank of Kenya. However, international bidders will be required to provide confirmation from their corresponding bank(s) in Kenya confirming:</p> <p>(i) Their commitment to finance or provide credit facilities for the remainder of the cost of the Developments over and above the Minimum Liquid Assets Requirement in (a) above (10 points).</p> <p>(ii) That the Sponsor is in good financial standing and has the capacity to finance the total cost of the project through both debt and/or equity. (4 points)</p>
4	Technical and Team Capacity (15 points)	<ul style="list-style-type: none"> <li>Organizational structure, leadership team, key personnel, and technical experts proposed for the Bomas Development, along with their roles, qualifications, and relevant experience. This may include outsourced people. (5 points)</li> <li>Identification of the lead design, engineering, construction firms, and hotel/mall operator, including evidence of their prior work on large-scale hospitality or cultural projects. (7 points)</li> <li>Description of the project management approach, including quality control, risk management, sustainability, and delivery assurance strategies. (3 points)</li> </ul>

**NB: Bidders who do not meet a minimum of 50 points on any of the above requirements will be disqualified and not evaluated further.**

### **PART III: Evaluation of Tenderer's Financial Proposal**

<b>FINANCIAL REQUIREMENTS</b>			
<b>Minimum Lease Payments</b>	<b>Annual</b>	Bidders shall be expected to propose an annual minimum lease payments payments to the Procuring Entity as specified in the Form of Tender	<b>Total Price per Annum</b>

- Successful Bidder/s will be given a moratorium on the lease payments of 24 months during construction prior to commencement of lease payments.
- The highest total price per annum shall be scored 25 points and other bids shall be awarded scores on a pro rate basis
- The successful bidder/s shall;
  - Have met all mandatory requirements and
  - Have attained the highest marks as evaluated under the following criteria:
    - Organisational qualifications and experience (20 points)
    - Conceptual Design (15 points)
    - Financial Capacity (30 points)
    - Technical and team capacity (10 points)
    - Financial proposal in terms of Total Minimum lease payments. (25 points)
- The successful bidder may be subjected to due diligence. Any false information provided by the bidder will lead to automatic disqualification.



3 **Price evaluation for each item:** in addition to the criteria listed in ITT 33.2 (a)–(d) the following criteria shall apply:

a) Any additional evaluation factors as per ITT 33.2 (e) specified as follows:

**N/A – evaluation criteria is given above**

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b) **Deviation in payment schedule.** *[insert one of the following]* – N/A

i) *Tenderers shall state their Tender price for the payment schedule outlined in the SCC. Tenders shall be evaluated on the basis of this base price. Tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in Tender price they wish to offer for such alternative payment schedule. The Procuring Entity may consider the alternative payment schedule and the reduced Tender price offered by the tenderer selected on the basis of the base price for the payment schedule outlined in the SCC.*

**or**

ii) *The SCC stipulates the payment schedule specified by the Procuring Entity. If a Tender deviate from the schedule and if such deviation is considered acceptable to the Procuring Entity, the Tender will be evaluated by calculating interest earned for any earlier payments involved in the terms outlined in the Tender as compared with those stipulated in the SCC, at the rate per annum **[insert adjustment rate]**.*

#### 4 **Multiple Contracts (ITT 33.4)**

Multiple contracts will be permitted in accordance with ITT 33.4. Tenderers are evaluated on basis of Lots and the best evaluated tenderer identified for each Lot. The Procuring Entity will select one Option of the two Options listed below for award of Contracts.

##### **OPTION 1**

- i) If a tenderer wins only one Lot, the tenderer will be awarded a contract for that Lot, provided the tenderer meets the Eligibility and Qualification Criteria for that Lot.
- ii) If a tenderer wins more than one Lot, the tenderer will be awarded contracts for a maximum of 2 Lots, provided the tenderer meets the aggregate Eligibility and Qualification Criteria for the Lots. The tenderer will be awarded the combination of maximum 2 lots for which the tenderer qualifies and the others will be considered for award to second best tenderers.

##### **OPTION 2**

The Procuring Entity will consider all possible combinations of won Lots [contract(s)] and determine the combinations with the best evaluated price. Tenders will then be awarded to the Tenderer or Tenderers in the combinations provided the tenderer meets the aggregate Eligibility and Qualification Criteria for all the won Lots.

#### 5 **Alternative Tenders (ITT 12.1) – NOT APPLICABLE**

*An alternative if permitted under ITT 12.1, will be evaluated as follows:*

“A tenderer may submit an alternative Tender with or without a Tender for the base case. The Procuring Entity shall consider Tenders offered for alternatives as specified in the Technical Specifications of Section VII, Schedule of Requirements. All Tenders received, for the base case, as well as alternative Tenders meeting the specified requirements, shall be evaluated on their own merits in accordance with the same procedures, as specified in the ITT 34 to determine the best Evaluated Tender.”

**6 Qualification (ITT 35) – This has been addressed in section 2 above.**

6.1 After determining the substantially responsive Tender which offers the best-evaluated cost in accordance with ITT 33, and, if applicable, the assessment of any Abnormally Low or high Tender (in accordance with ITT35) the Procuring Entity shall carry out the post-qualification of the tenderer in accordance with ITT36, using only the requirements specified. Requirements not included in the text below shall not be used in the evaluation of the Tenderer qualifications.

**6.2 For lease of infrastructural facilities (real estate) – Refer to the schedule of requirement section IV.**

List the requirements (*e.g. the property is in the right location, it is in good status of maintenance, there are proper services for water, power, etc., the space is adequate, access, there is case of lease litigation, etc.*

Make a physical check to ensure that each listed item is met. Determine if the facility is acceptable or not acceptable.

**6.3 For lease of plant/equipment, vehicles (movable assets) – Not Applicable**

- i) Confirm the offered items meet the specifications, and the capacity, age etc.
- ii) Confirm their availability, etc.
- iii) **Financial Capability** - The tenderer shall furnish documentary evidence that it meets the following financial requirement(s): *[list the requirement(s) including period]*
- iv) **Documentary Evidence**- The tenderer shall furnish documentary evidence to demonstrate that the Lease Items it offers meet the following usage requirement: *[list the requirement(s)]*

Make a physical check to ensure that each listed item is met. Determine if the facility is acceptable or not acceptable.

6.4 After determining the substantially responsive Tender which offers the highest Total Minimum Annual lease payments meets the requirements in Items 6.2 and 6.3 above, the Procuring Entity shall carry out the post-qualification using the following criteria:

**a) History of non-performing lease contracts:**

Tenderer and each member of JV in case the Tenderer is a JV, shall demonstrate that Non-performance of a contract did not occur because of the default of the Tenderer, or the member of a JV in the last (*specify years*). The required information shall be furnished in the appropriate form.

**b) Pending Litigation**

Financial position and prospective long-term profitability of the Single Tenderer, and in the case the Tenderer is a JV, of each member of the JV, shall remain sound according to criteria established with respect to Financial Capability under Paragraph (a) above if all pending litigation will be resolved against the Tenderer. Tenderer shall provide information on pending litigations in the appropriate form.

**c) Litigation History**

There shall be no consistent history of court/arbitral award decisions against the Tenderer, in the last **5 years**). All parties to the contract shall furnish the information in the appropriate form about

any litigation or arbitration resulting from contracts completed or ongoing under its execution over the years specified. A consistent history of awards against the Tenderer or any member of a JV may result in rejection of the tender.

## **SECTION IV - TENDERING FORMS**

- i) Form of Tender
- ii) Tenderer Information Form
- iii) Tenderer JV Members Information Form
- iv) Price Schedule -Schedule of Requirements (Lease Items).
- v) Form of Tender Security – Demand Guarantee
- vi) Form of Tender Security (Insurance Guarantee)
- vii) Form of Tender- Securing Declaration
- viii) Owner's Authorization

### **Other Forms to be completed**

- i) Tenderer's Eligibility- Confidential Business Questionnaire
- ii) Certificate of Independent Tender Determination
- iii) Self-Declaration Form
- iv) Appendix 1- Fraud and Corruption
- v) Pending Litigation Form
- vi) Litigation History Form

## FORM OF TENDER

### INSTRUCTIONS TO TENDERERS

- i) *The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address.*
- ii) *All italicized text is to help Tenderer in preparing this form.*
- iii) *Tenderer must complete and sign and TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE, CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELF DECLARATION OF THE TENDERER, all attached to this Form of Tender.*
- iv) *The Form of Tender shall include the following Forms duly completed and signed by the Tenderer.*
  - *Tenderer's Eligibility- Confidential Business Questionnaire*
  - *Certificate of Independent Tender Determination*
  - *Self-Declaration of the Tenderer*

**Date of this Tender submission: 30<sup>th</sup> June 2025 at 11:00 am**

### ***DEVELOPMENT OF HOSPITALITY AND COMMERCIAL COMPONENTS OF THE BOMAS INTERNATIONAL CONVENTION COMPLEX AT BOMAS OF KENYA.***

**TENDER No. BOK/RFP/02/2024-2025**

**Alternative No.:** .....N/A.....[insert identification No if this is a Tender for an alternative]

**To: Bomas of Kenya**

- a) **No reservations:** We have examined and have no reservations to the Tendering document, including Addenda issued in accordance with Instructions to tenderers (ITT 7);
- b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with ITT 3;
- c) **Tender/Proposal- Securing Declaration:**  
We have not been debarred by Bomas based on execution of a Tender-Securing Declaration or Tender Securing Declaration in Kenya in accordance with ITT 3.7;
- d) **Performance Security:** If our Tender is accepted, we commit to obtain a performance security in accordance with the Tendering document;
- e) **Conformity:** We offer to lease in conformity with the Tendering Document and in accordance with the lease periods, the Lease items specified in the Schedule below:

*[insert completed LIST OF LEASE ITEMS AND PRICES]*

- f) **Tender Price:** The total price of our Tender, excluding any discounts offered in item (f) in the table below is:

Lot	Lease Payments per Annum (KSh)
Lot 1	
Lot 2	
Lot 3	
Lot 4	

**Option 1**, in case of one lot: Total price is: .....N/A.....*[insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies];*

or

**Option 2**, in case of lots: (a) Total price of each lot *[insert the total price of each lot in words and figures, indicating the various amounts and the respective currencies];* and (b) Total price of all lots (sum of all lots) *[insert the total price of all lots in words and figures, indicating the various amounts and the respective currencies];* N/A

- g) **Discounts:** The discounts offered and the methodology for their application are:
- i) The discounts offered are: *[Specify in detail each discount offered.]*
  - ii) The exact method of calculations to determine the net price after application of discounts are shown below:  
*[Specify in detail the method that shall be used to apply the discounts];*
- h) **Tender Validity Period:** Our Tender shall be valid for the period specified in ITT 17.1 (as amended, if applicable) from the date fixed for the Tender submission deadline specified in TDS 21.1 (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- i) **Performance Security:** If our Tender is accepted, we commit to obtain a performance security in accordance with the Tendering document;
- j) **Suspension and Debarment:** We, along with any of our subcontractors, Lessors, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the Procuring Entity. Further, we are not ineligible under the Kenya laws or official regulations or pursuant to a decision of the United Nations Security Council;
- k) **State-owned enterprise or institution:** *[select the appropriate option and delete the other] [We are not a state-owned enterprise or institution]/ [We are a state-owned enterprise or institution but meet the requirements of ITT 3.8];*
- l) **Commissions, gratuities, fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the Tendering process or execution of the Contract: *[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity].*

Name of Recipient	Address	Reason	Amount

(If none has been paid or is to be paid, indicate “none.”)

- m) **Binding Contract:** We understand that this Tender, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- n) **Procuring Entity Not Bound to Accept:** We understand that you are not bound to accept the highest evaluated Tender, the Most Advantageous Tender or any other Tender that you may receive; and

- o) **Fraud and Corruption:** We here by certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption.
- p) **Collusive practices:** We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the “Certificate of Independent Tender Determination” attached below.
- q) **Code of Ethical Conduct:** We undertake to adhere by the Code of Ethical Conduct for Persons Participating in Public Procurement and Asset Disposal Activities in Kenya, copy available from [www.pppra.go.ke](http://www.pppra.go.ke) during the procurement process and the execution of any resulting contract.
- r) We, the Tenderer, have completed fully and signed the following Forms as part of our Tender:
  - i) Tenderer's Eligibility; Confidential Business Questionnaire – to establish we are not in any conflict to interest.
  - ii) Certificate of Independent Tender Determination – to declare that we completed the tender without colluding with other tenderers.
  - iii) Self-Declaration of the Tenderer—to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.
  - iv) Declaration and commitment to the code of ethics for Persons Participating in Public Procurement and Asset Disposal Activities in Kenya,

Further, we confirm that we have read and understood the full content and scope of fraud and corruption as informed in

**“Appendix 1- Fraud and Corruption”** attached to the Form of Tender.

**Name of the tenderer:** \*[insert complete name of the tenderer]

**Name of the person duly authorized to sign the Tender on behalf of the tenderer:** \*\* [insert complete name of person duly authorized to sign the Tender]

**Title of the person signing the Tender:** [insert complete title of the person signing the Tender]

**Signature of the person named above:** [insert signature of person whose name and capacity are

shown above] **Date signed** [insert date of signing] **day of** [insert month], [insert year]

\*: In the case of the Tender submitted by a Joint Venture specify the name of the Joint Venture as tenderer.

\*\*: Person signing the Tender shall have the power of attorney given by the tenderer. The power of attorney shall be attached with the Tender Schedules.

## TENDERER'S ELIGIBILITY - CONFIDENTIAL BUSINESS QUESTIONNAIRE

### Instruction to Tenderer

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

#### a) Tenderer's details

	ITEM	DESCRIPTION
1	Name of the Procuring Entity	<b>BOMAS OF KENYA</b>
2	Reference Number of the Tender	<b>DEVELOPMENT OF HOSPITALITY AND COMMERCIAL COMPONENTS OF THE BOMAS INTERNATIONAL CONVENTION COMPLEX AT BOMAS OF KENYA</b>
3	Date and Time of Tender Opening	
4	Name of the Tenderer	
5	Full Address and Contact Details of the Tenderer.	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 Tenderer handles.	
10	State if Tenders Company is listed in stock exchange, give name and full address ( <i>postal and physical addresses, email, and telephone number</i> ) of state which stock exchange	

#### General and Specific Details

#### 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.

	<b>Names of Director</b>	<b>Nationality</b>	<b>Citizenship</b>	<b>% Shares owned</b>
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.

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

**ii) Conflict of interest disclosure**

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

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

**f) Certification**

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

Full Name\_\_\_\_\_

Title or Designation\_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

## CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

I, the undersigned, in submitting the accompanying Letter of Tender to the\_\_\_\_[Name of Procuring Entity] for: \_\_\_\_\_[Name and number of tenders] in response to the request for tenders made by: \_\_\_\_\_[Name of Tenderer] do hereby make the following statements that I certify to be true and complete in every respect:

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

1. I have read and I understand the contents of this Certificate;
2. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;
4. For the purposes of this Certificate and the Tender, I understand that the word “competitor” shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:
  - a) Has been requested to submit a Tender in response to this request for tenders;
  - b) could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;
5. The Tenderer discloses that [check one of the following, as applicable]:
  - a) The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
  - b) The Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements;
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 tender; or
  - d) the submission of a tender which does not meet the specifications of the request for Tenders; 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 works or services to which this request for tenders relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph (5) (b) above;
8. The terms of the Tender have not been, and will not be, knowingly disclosed by the Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official tender opening, or of the awarding of the Contract, 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 Tenderer and Date]

## SELF-DECLARATION FORMS

### FORM SD1

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

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

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

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

Bidder's Official Stamp

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

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

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

Email.....

Name of the Firm/Company.....

Date.....

***(Company Seal/ Rubber Stamp where applicable)***

Witness

Name.....

Sign.....

Date.....

## APPENDIX 1- FRAUD AND CORRUPTION

*(Appendix 1 shall not be modified)*

### 1. Purpose

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

### 2. Requirements

- 2.1 The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts, and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1 above.
- 2.2 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 contract for a procurement or asset disposal proceeding; or
    - b) if a contract has already been entered into with the person, the contract shall be voidable;
  4. The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
  5. An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement—
    - a) Shall not take part in the procurement proceedings;
    - b) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
    - c) shall not be a subcontractor for the tenderer to whom was awarded contract, or a member of the group of tenderers to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.
  - 7 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;
  - 8 If a person contravenes subsection (1) with respect to a conflict of interest described in subsection (5) (a) and the contract is awarded to the person or his relative or to another person



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

- 2.3 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 contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.

- c) Rejects a proposal for award<sup>1</sup> of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or recommend to appropriate authority (ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;
- e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub- consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect<sup>2</sup> all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and
- f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a “Self-Declaration Form” as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

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

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

## TENDERER INFORMATION FORM

*[The tenderer shall fill in this Form in accordance with the instructions indicated below. No alterations to its format shall be permitted and no substitutions shall be accepted.]*

Date: ..... *[insert date (as day, month and year) of Tender submission]*

**Tender Name and Identification:** ..... *[insert identification]*

1. Tenderer's Name <i>[insert Tenderer's legal name]</i>
2. In case of JV/TA, legal name of each member: <i>[insert legal name of each member in JV/TA]</i>
3. Tenderer's actual or intended country of registration: <i>[insert actual or intended country of registration]</i>
4. Tenderer's year of registration: <i>[insert Tenderer's year of registration]</i>
5. Tenderer's Address in country of registration: <i>[insert Tenderer's legal address in country of registration]</i>
6. Tenderer's Authorized Representative Information Name: <i>[insert Authorized Representative's name]</i> Address: <i>[insert Authorized Representative's Address]</i> Telephone/Fax numbers: <i>[insert Authorized Representative's telephone/fax numbers]</i> Email Address: <i>[insert Authorized Representative's email address]</i>
7. Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i> <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 3.1. <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 3.1. <input type="checkbox"/> Tax Obligations for Kenyan Tenderers, attach copy of current tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 4.14. <input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with ITT 3.8 documents establishing: (i) Legal and financial autonomy (ii) Operation under commercial law  1. Establishing that the tenderer 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.

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## TENDERER'S JV/TEAMING AGREEMENT MEMBERS INFORMATION FORM

*[The tenderer shall fill in this Form in accordance with the instructions indicated below. The following table shall be filled in for the tenderer and for each member of a Joint Venture]].*

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

**Tender Name and Identification:** for..... (insert tender title/description) for.....

*[insert identification Alternative No.: [insert identification No if this is a Tender for an alternative]N/A*

Page \_\_\_\_\_ of \_\_\_\_\_ pages

1.	Tenderer's Name: <i>[insert Tenderer's legal name]</i>
2.	Tenderer's JV/TA Member's name: <i>[insert JV's Member legal name]</i>
3.	Tenderer's JV/TA Member's country of registration: <i>[insert JV's Member country of registration]</i>
4.	Tenderer's JV/TA Member's year of registration: <i>[insert JV's/TA's Member year of registration]</i>
5.	Tenderer's JV/TA Member's legal address in country of registration: <i>[insert JV's/TA's Member legal address in country of registration]</i>
6.	Tenderer's JV/TA Member's authorized representative information Name: <i>[insert name of JV's/TA's Member authorized representative]</i> Address: <i>[insert address of JV's/TA's Member authorized representative]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers of JV's/TA's Member authorized representative]</i> Email Address: <i>[insert email address of JV's/TA's Member authorized representative]</i>
7.	Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i> <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 3.1  <input type="checkbox"/> Tax Obligations for Kenyan Tenderers, attach copy of current tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 3.14. <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.
8.	Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

## LIST OF LEASE ITEMS AND PRICES

*[The tenderer shall fill in this Price Schedule in accordance and insert in Form of Tender as instructed. The list of line items in Columns 1 and 2 of the Price Schedules shall coincide with the List of Lease Items and Related Services specified by the Procuring Entity in the Schedule of Requirements.]*

1	2	3	4	4	5	6
Lot Item N°	Description of Lease Item and Related Services.	Quantity and physical unit	Location of Use	Duration of Lease (in Months)	Unit Price per Month (ksh)	Total price for whole lease period (ksh)
No 1					<i>[to be completed by Tenderer]</i>	<i>[to be completed by Tenderer]</i>
No 2						
No 3						
No 4						

Name of Tenderer\_\_\_\_\_

Signed by the Tenderer\_\_\_\_\_

Dated\_\_\_\_\_



## 16 FORM OF TENDER SECURITY- [Option 1–Demand Bank Guarantee]

**Beneficiary:** \_\_\_\_\_

**Request for Tenders No:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**TENDER GUARANTEE No.:** \_\_\_\_\_

**Guarantor:** \_\_\_\_\_

1. We have been informed that \_\_\_\_\_ (here inafter called "the Applicant") has submitted or will submit to the Beneficiary its Tender (here inafter called" the Tender") for the execution of \_\_\_\_\_  
under Request for Tenders No. \_\_\_\_\_ ("the ITT").
2. Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender 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 Tender during the period of Tender validity set forth in the Applicant's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Applicant; or
  - b) having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension there to provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the Performance.
4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) thirty days after the end of the Tender Validity Period.
5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

\_\_\_\_\_  
[signature(s)]

***Note: All italicized text is for use in preparing this form and shall be deleted from the final product.***

## FORMAT OF TENDER SECURITY [Option 2–Insurance Guarantee]

TENDER GUARANTEE No.: \_\_\_\_\_

1. Whereas ..... [*Name of the tenderer*] (hereinafter called “the tenderer”) has submitted its tender dated ..... [*Date of submission of tender*] for the ..... [*Name and/or description of the tender*] (hereinafter called “the Tender”) for the execution of \_\_\_\_\_ under Request for Tenders No. \_\_\_\_\_ (“the ITT”).
2. KNOW ALL PEOPLE by these presents that WE ..... of ..... [**Name of Insurance Company**] having our registered office at ..... (hereinafter called “the Guarantor”), are bound unto ..... [*Name of Procuring Entity*] (hereinafter called “the Procuring Entity”) in the sum of ..... (Currency and guarantee amount) for which payment well and truly to be made to the said Procuring Entity, the Guarantor binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with the Common Seal of the said Guarantor this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

3. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Applicant:
  - a) has withdrawn its Tender during the period of Tender validity set forth in the Principal's Letter of Tender (“the Tender Validity Period”), or any extension thereto provided by the Principal; or
  - b) having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity Period or any extension thereto provided by the Principal; (i) failed to execute the Contract agreement; or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to tenderers (“ITT”) of the Procuring Entity's Tendering document. then the guarantee undertakes to immediately pay to the Procuring Entity up to the above amount upon receipt of the Procuring Entity's first written demand, without the Procuring Entity having to substantiate its demand, provided that in its demand the Procuring Entity shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.
4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) twenty-eight days after the end of the Tender Validity Period.
5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

\_\_\_\_\_  
[Date]

\_\_\_\_\_  
[Witness]

\_\_\_\_\_  
[Signature of the Guarantor]

\_\_\_\_\_  
[Seal]

*Note: All italicized text is for use in preparing this form and shall be deleted from the final product.*

## **TENDER-SECURING DECLARATION FORM {r 46 and 155(2)}**

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

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

Tender No.:

I/We, the undersigned, declare that:

1. I/We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.
2. I/We accept that I/we will automatically be suspended from being eligible for tendering in any contract 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 tender during the period of tender validity specified by us in the Tendering 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 Contract, if required, or(ii)fail or refuse to furnish the Performance Security, in accordance with the instructions to tenders.
3. I/We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer(s), upon the earlier of:
  - a) Our receipt of a copy of your notification of the name of the successful Tenderer; or
  - b) Thirty days after the expiration of our Tender.
4. I/We understand that if I am/we are/in a Joint Venture, the Tender 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 Tender 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*

*Tenderer]* Dated on ..... day of ....., ..... *[Insert date of signing]*

Seal or stamp

***[Note: In case of a Joint Venture, the Tender-Securing Declaration must be in the name of all members to the Joint Venture that submits the Tender.]***

## OWNER'S AUTHORIZATION

*[The tenderer shall require the Owner to fill in this Form in accordance with the instructions indicated. This letter of authorization should be on the letterhead of the Owner and should be signed by a person with the proper authority to sign documents that are binding on the Owner. The tenderer shall include it in its Tender, if so indicated in the **TDS**.]*

Date: .....*[insert date (as day, month and year) of Tender submission]*

ITT No.: .....*insert number of ITT process]*

Alternative No.: .....*N/A.....[insert identification No if this is a Tender for an alternative]*

To: .....Bomas of Kenya.....*[insert complete*

*name of Procuring Entity]* WHEREAS

We.....*[insert complete name of Manufacturer]*, who are official manufacturers of.....*[insert type of Lease Items manufactured]*, having factories at.....*[insert full address of Manufacturer's factories]*, do hereby authorize.....*[insert complete name of tenderer]* to submit a Tender the purpose of which is to provide the following Lease Items, manufactured by us *[insert name and or brief description of the Lease Items]*, and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 28 of the General Conditions of Contract, with respect to the Lease Items offered by the above firm.

Signed: .....*[insert signature(s) of authorized representative(s) of the Owner]*

Name: .....*[insert complete name(s) of authorized representative(s) of the Owner]*

Title: ..... *[insert title]*

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_*[insert date of signing]*

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## **PART 2 – DEVELOPMENT REQUIREMENTS**

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## **SCHEDULE OF REQUIREMENT**

### **1. INTRODUCTION**

#### **Request for Proposals (RFP) - DEVELOPMENT OF HOSPITALITY AND COMMERCIAL COMPONENTS OF THE BOMAS INTERNATIONAL CONVENTION COMPLEX AT BOMAS OF KENYA**

##### **Overview**

The Bomas International Convention Complex when fully developed will be a state-of-the-art facility designed to serve as a hub for international gatherings with its versatile spaces, it shall offer a unique platform for knowledge exchange, networking, and entertainment. The complex's strategic location, coupled with its commitment to sustainability and technological advancements, positions it as a premier destination for both local and international events.

The proposed development will serve as a flagship anchor within the broader Bomas expansion, complementing the existing cultural, commercial, and event-oriented activities. By situating high-end accommodations and retail spaces within the Bomas complex, the development will meet the growing demand for on-site hospitality and leisure services, particularly for international conference participants, cultural tourists, government officials, and corporate guests.

This project forms part of Bomas' strategic master plan to enhance its cultural and conference offerings. As Nairobi's premier cultural hub, Bomas attracts thousands of visitors annually through performances, conferences, and cultural showcases. This development aims to bolster the city's capacity to host high-end conferences and provide world-class hospitality.

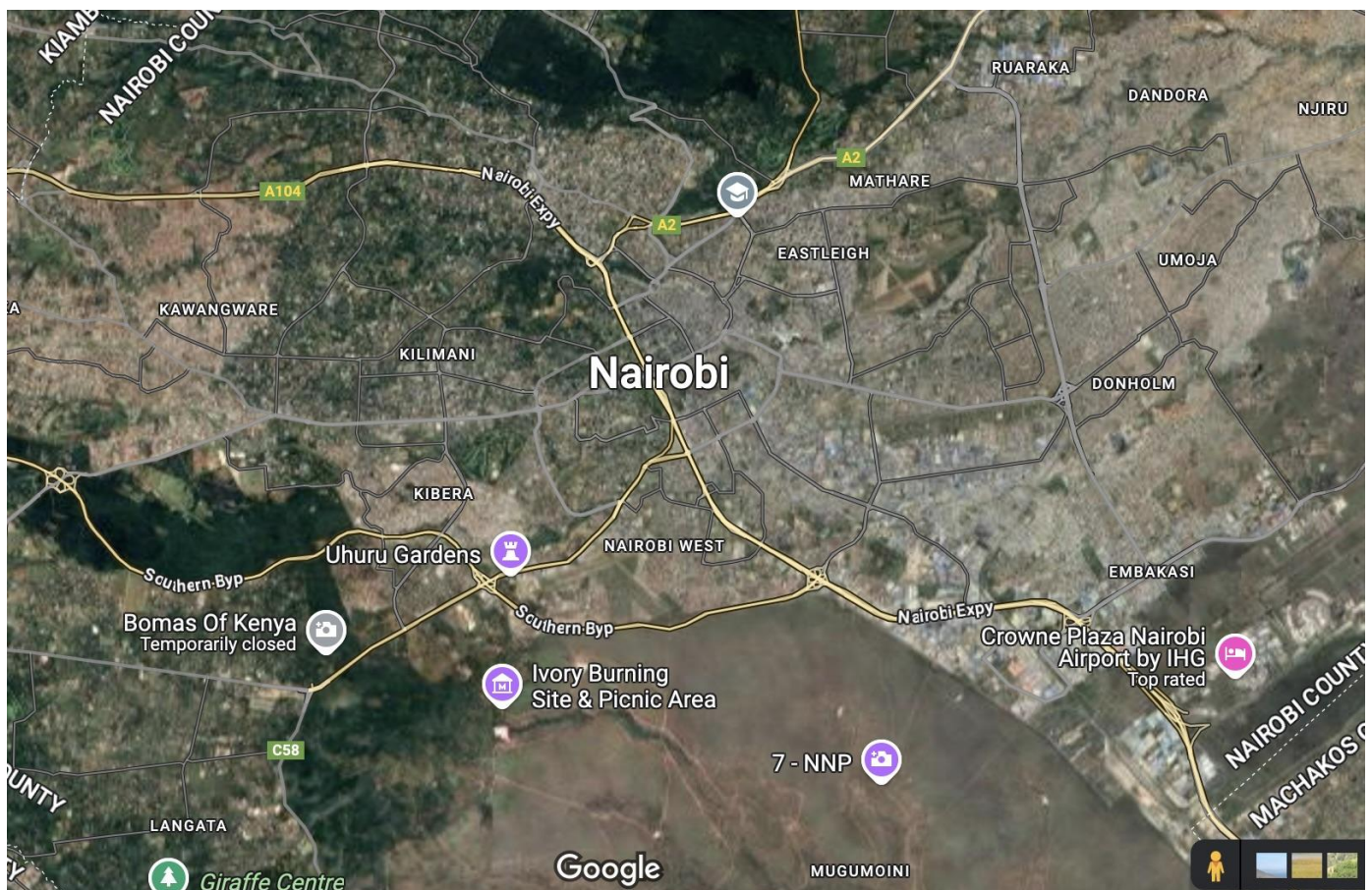
Located on over 79 acres of prime land in Lang'ata, Nairobi, Bomas of Kenya is adjacent to Nairobi National Park, the Galleria Shopping Mall, and Kenya Wildlife Service headquarters. The site is approximately 15 km from Jomo Kenyatta International Airport (JKIA) and 10 km from Nairobi's central business district, accessible via Lang'ata Road, a major arterial route. The property is well-serviced with essential infrastructure, including power, water, and telecommunications.

The selected developer will have the opportunity to create an iconic addition to one of Kenya's premier cultural and conference destinations, leveraging Bomas' strategic location and existing cultural positioning.

The Development will include:

- No. 5-star hotels and 4-star hotel accommodations.
- A modern shopping mall with diverse retail and leisure facilities.





Map showing location of Bomas of Kenya

## Description of Development

The Development will serve as a **principal feature of the Bomas of Kenya complex**, one of Kenya's premier cultural, tourism, and conference destinations. Bomas of Kenya, under the oversight of the Ministry of Tourism and Wildlife, sits on over 80 acres of prime land in Lang'ata, Nairobi, and has long been renowned for showcasing Kenya's diverse cultural heritage through music, dance, art, and architecture. Its existing conference facilities, amphitheatre, and cultural performance spaces attract thousands of domestic and international visitors each year, including corporate events, government functions, cultural delegations, and tourists.

Importantly, **Bomas is currently undergoing significant expansion**, with plans to enhance its role as a comprehensive cultural, hospitality, and commercial hub. The expansion will include:

- Larger and upgraded **conference and event facilities** to accommodate major local, regional, and international gatherings;
- A new **shopping mall and retail centre**, adding modern leisure, dining, and shopping experiences;
- **Office and commercial spaces** targeting regional businesses, diplomatic offices, and professional service providers; and
- Enhanced **public spaces and infrastructure** to improve visitor experience, circulation, and integration with surrounding developments.

Currently, the nearest high-end accommodations are located several kilometres away in Nairobi's central business district or other suburban hotel clusters. There is a **clear and growing demand for on-site accommodation, meeting, and leisure spaces** to serve international conference participants, cultural tourists, government and diplomatic guests, and corporate clients engaging with Bomas' expanding programming.



To address this need, Bomas is issuing this RFP to invite responses from private developers to **finance, design, construct, operate, and maintain** hospitality and commercial facilities at Bomas of Kenya. Additional information about Bomas of Kenya is available at: [Insert Official Bomas Website Link]

## Objectives of the RFP

Bomas aims to lease the property to a developer who:

- Proposes a compelling, innovative design, financing, and operational plan.
- Aligns with Bomas’ cultural, commercial, and strategic objectives.
- Demonstrates a commitment to quality, sustainability, and financial viability.

Proposals that do not adhere strictly to the terms outlined in this RFP may be rejected.

Bomas is committed to inclusive participation, welcoming proposals from Kenyan nationals, women, youth, persons with disabilities, and qualified international developers.

Currently, high-end accommodations are several kilometers away from the Bomas complex, highlighting the need for convenient, on-site lodging to enhance the guest experience.

## Submission Guidelines

Developers must provide comprehensive proposals addressing:

- Concept and design plans.
- Financial strategy and sustainability.
- Operational management approach.
- Integration with Bomas International Convention Complex objectives.

Submissions will be evaluated based on innovation, feasibility, financial soundness, and alignment with Bomas International Convention Complex Objectives.

## SUMMARY OF KEY TERMS AND CONDITIONS

Below is a summary of the key terms and conditions that will be offered to the successful bidder(s):

1	Terms of the Lease	40 year with an option to renew once only for a similar period.	
2	Consideration	Annual Lease Payments to be paid to the Procuring Entity	
3	Payment terms	Lease payments to be paid for five (5) years in advance at the beginning of each 5-year period.	
4.	Escalation of Annual Lease	The annual lease payments shall be increased by 10% once every five years	
5	Sizes of plots of land on offer	<ul style="list-style-type: none"><li>• =</li></ul>	
		LOT	PLOT SIZE
		LOT 1 - 5-STAR HOTEL	3-acre plot of land
		LOT 2 - 5-STAR HOTEL	3-acre plot of land
		LOT 3 - 4-STAR HOTEL	3-acre plot of land

		LOT 4 - SHOPPING MALL	9-acre plot of land
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Additional details about the proposed terms and conditions are in SECTION VII - GENERAL CONDITIONS OF CONTRACT and SECTION VIII - SPECIAL CONDITIONS OF CONTRACT.

## GENERAL REQUIREMENTS

### 1. Investment Requirements

#### Investment Requirements

1. **Financial Capability:**
  - Demonstrate the financial strength to execute a project of this magnitude, including verifiable evidence of sufficient capital investment and robust financial backing.
  - Provide audited financial statements covering the last three years to establish credibility and financial stability.
2. **Funding Structure:**
  - Present a well-defined financing model that clearly articulates the blend of funding sources, such as equity, debt, public-private partnerships, or alternative financing mechanisms.
  - Include a rationale for the chosen structure, highlighting how it aligns with the project's financial and operational goals.
3. **Cost Estimates:**
  - Submit a comprehensive breakdown of projected development costs, encompassing design, construction, equipment procurement, and initial operational expenditures.
  - Clearly outline contingencies and allowances for unexpected expenses.
4. **Return on Investment (ROI):**
  - Provide a detailed financial analysis, projecting the expected return on investment, payback period, and long-term profitability.
  - Include sensitivity analyses to demonstrate the project's financial resilience under various economic scenarios.
5. **Risk Mitigation:**
  - Identify potential financial risks associated with the project and outline strategies to mitigate each identified risk.
  - Highlight risk management practices and contingency plans to ensure financial sustainability.
6. **Implementation Plan:**
  - A clear project timeline with phased investments and cash flow projections.
  - A breakdown of funding allocation at each project phase.

### 2. Technical Requirements

The Developer is expected to adhere to the following enhanced planning and siting criteria when preparing conceptual designs and proposals:

#### (a) Site Utilization and Integration

- The hotel and shopping mall must be strategically designed to optimize visibility, accessibility, and operational functionality while harmonizing with the existing Bomas cultural and conference facilities.
- The development should complement rather than obstruct existing public spaces or cultural venues, preserving the aesthetic and cultural integrity of the area.
- Designs should ensure seamless integration between independent and shared access points for the hotel, mall, and conference center, promoting user convenience.
- A well-defined spatial hierarchy should guide the arrangement of the built environment, prioritizing human-centric design principles.

## **(b) Vehicular and Pedestrian Access**

- Primary vehicular access shall be facilitated via Lang'ata Road, through the main Bomas entrance.
- Designated pick-up and drop-off zones, loading bays, and fire tender access must be strategically located to enhance operational efficiency and safety.
- Pedestrian-friendly pathways must be integrated, encouraging walkability and safe pedestrian movement between the hotel, mall, and cultural facilities.

## **(c) Building Orientation and Massing**

- The hotel and mall should be oriented to maximize panoramic views of the surrounding environment while minimizing exposure to noise from the road.
- Vertical and horizontal massing should respect the visual context, maintaining the existing skyline and allowing for landscaped transition zones.
- Building envelopes should incorporate passive solar design principles to reduce energy consumption and enhance thermal comfort.
- The roof shall be pitched and not flat
- The maximum height of all structures must be less than 40m from ground level.

## **(d) Cultural and Environmental Considerations**

- Architectural themes must be inspired by Kenyan cultural heritage, reinforcing Bomas' identity as a cultural institution.
- The project should embrace sustainable building practices, including the use of indigenous plant species, rainwater harvesting, natural ventilation, and eco-friendly materials.
- Landscaping must include native flora to support local biodiversity and visually integrate the new development with the natural setting, including Nairobi National Park.

## **(e) Parking and Servicing**

- Sufficient parking bays must be provided through underground, surface, or structured parking, with clear zoning for hotel guests, mall visitors, staff, and service vehicles.
- Adequate space for electric vehicle (EV) charging stations should be incorporated, supporting sustainable transportation.
- Utility and waste management areas should be discreetly integrated, with noise and odor control measures in place to ensure a pleasant environment.

## **(g) Safety and Security**

- Robust safety measures, including CCTV surveillance, emergency exits, fire suppression systems, and designated assembly points, must be incorporated.
- Security protocols should align with Bomas' existing infrastructure, maintaining a cohesive safety strategy.
- Inclusive security measures should ensure accessibility and protection for all users, including those with disabilities.

## **(h) 11.0 Regulatory Compliance**

All proposed developments must fully comply with the following regulations and standards:

- Nairobi County Physical Planning and Building Regulations.
- National Construction Authority (NCA) requirements.
- Environmental Management and Coordination Act (EMCA) and National Environment Management Authority (NEMA) regulations.
- Fire and Life Safety Codes.
- Public Health and Accessibility Standards.
- Guidelines for Sustainable Urban Development as prescribed by relevant authorities.

- Kenya Civil Aviation Authority Guidelines.

Bomas reserves the right to review and approve all final designs before the issuance of construction permits, ensuring adherence to both local regulations and institutional standards.

## 1.0 MINIMUM REQUIREMENTS FOR THE 5-STAR HOTELS

A 5-star hotel should offer exceptional luxury, personalized service, premium amenities, and superior comfort across all guest experiences, meeting internationally recognized standards of excellence. The 5-star hotel must meet the requirements of 5-star hotels of global standards. Tenderers can consider incorporating the following facilities and amenities and other appropriate facilities and amenities. The layout should be scalable within the designated **3-acre site each** :**(BOK/RFP/02/2024-2025-LOT-1 & BOK/RFP/02/2024-2025-LOT-2)**

### a. Guest Accommodation:

- **Rooms:** Minimum of **250 luxury guest rooms**, including suites and presidential suites.
- **Room Features:** Spacious layouts, en-suite bathrooms, premium bedding, luxury toiletries, climate control, soundproofing, and in-room entertainment (smart TVs, streaming services).
- **Exclusive Suites:** Presidential, executive, and VIP suites with private lounges and personalized services.
- **Accessibility:** Rooms and amenities designed to accommodate guests with disabilities, adhering to the Persons with Disabilities Act (Kenya).

### b. Dining and Culinary Experiences:

- **Signature Restaurants:** At least three specialty restaurants offering international and local cuisines.
- **Bars and Lounges:** Multiple bars (rooftop, poolside, lobby).
- **Café and Bakery:** Serving gourmet coffee, teas, and freshly baked pastries.
- **Private Dining Options:** Exclusive spaces for VIP guests or private events.

### c. Leisure and Recreation:

- **Swimming Pool:** Outdoor heated pool with sun loungers, cabanas, and a poolside bar.
- **Spa and Wellness Center:** Full-service spa offering massages, therapies, sauna, steam rooms, and relaxation areas.
- **Fitness Center:** State-of-the-art gym with cardio and strength training equipment, fitness classes, and personal trainers.
- **Entertainment Zone:** Private cinema, gaming lounge, and live music venues.

### d. Conference and Banquet Facilities:

- **Ballroom:** Grand hall with a seating capacity of at least 500, equipped with audiovisual technology.
- **Meeting Rooms:** Multiple rooms with flexible configurations and modern conferencing equipment.
- **Business Center:** Workstations, printing, scanning, high-speed internet, and meeting support staff.

## 2.0 DELIVERY AND COMPLETION SCHEDULE FOR THE 5-STAR HOTELS

The Proposer shall submit a detailed delivery schedule outlining the expected timelines for the design, approvals, construction, and operationalization of the 5-star hotel component. The following milestones must be addressed clearly, with proposed dates and durations for each phase:

### 1. Financial Close

- Execution of all financing agreements

- Equity mobilization and debt disbursement readiness
- **Target: Within three (3) months from lease execution**

## 2. Design and Approvals Phase

- Completion of preliminary design and submission of detailed drawings
- Acquisition of all statutory approvals (e.g., NCA, NEMA, county permits, TRA consultation if applicable)
- **Target: Within three (3) months from lease execution**

## 3. Construction Period

- Site mobilization and groundbreaking
- Foundation, structural works, and superstructure completion
- Interior works, fit-out, and finishing to 5-star specifications
- Testing and commissioning of all systems
- **Target completion: Within eighteen (18) months from construction start**

## 4. Operational Readiness

- Recruitment and training of staff
- Installation of IT, reservations, and security systems
- Branding and soft launch preparations in line with hotel operator/franchise standards
- **Target: Within three (3) months from completion of construction**

## 5. Full Commercial Opening

- The hotel must be fully operational and open to the public no later than **twenty four (24) months** from the effective date of the Ground Lease Agreement.

**Proposers are expected to include a Gantt chart or milestone schedule** reflecting these and any additional internal timelines necessary for delivery assurance. Bidders proposing an accelerated timeline are encouraged to clearly state so and must demonstrate capacity to meet expedited milestones.

Bomas reserves the right to incorporate key delivery milestones into the final lease agreement as binding obligations, subject to performance monitoring and penalties for undue delay.

### 3.0 MINIMUM REQUIREMENTS FOR THE 4-STAR HOTELS

A **4-star** hotel should offer comfort, quality, and a high level of service while balancing luxury with functionality. The 4-star hotel must meet the requirements of 5-star hotels as defined by the Tourism Regulatory Authority in Kenya. In addition, Tenderers should consider incorporating the following facilities and amenities. The layout should be scalable within the designated **3-acre site : (BOK/RFP/02/2024-2025-LOT-3)**

#### a. Guest Accommodation:

- **Rooms: Minimum 300:** Standard rooms, deluxe rooms, junior suites, executive suites, and family rooms.
- **Room Features:**
  - Modern furnishings, ergonomic workstations, and high-quality bedding.
  - En-suite bathrooms with walk-in showers or bathtubs, premium toiletries, hairdryers, and bathrobes.
  - Smart TVs with satellite channels, free high-speed Wi-Fi, air conditioning, tea/coffee making facilities, mini-bar, and in-room safe.

- Adapted rooms for differently-abled guests, complying with the Persons with Disabilities Act (Kenya).

#### **b. Food and Beverage (F&B) Outlets:**

- **Restaurant:**
  - All-day dining with a focus on local and international cuisine, including buffet and à la carte options.
  - Capacity to serve both in-house guests and external visitors.
- **Specialty Dining:**
  - At least one signature restaurant offering a unique culinary experience (e.g., African fusion or continental).
- **Bar and Lounge:**
  - Comfortable setting with a wide selection of beverages and light snacks.
  - Rooftop or terrace bar with city views.
- **Café:**
  - Casual coffee shop with light bites and locally sourced coffee.
- **In-Room Dining:**
  - 24/7 room service offering a selection of meals and drinks.

#### **c. Recreational Facilities:**

- **Swimming Pool:**
  - Medium-sized, outdoor, temperature-controlled, with sun loungers and a poolside bar.
- **Fitness Center:**
  - Modern gym equipment (cardio machines, weights) and space for fitness classes.
- **Spa and Wellness Center:**
  - Basic spa facilities offering massages, facials, and relaxation treatments.
- **Entertainment Facilities:**
  - Indoor game room (pool table, board games) and outdoor relaxation area.

#### **d. Business and Event Facilities:**

- **Meeting Rooms:**
  - Flexible meeting spaces equipped with AV technology, projectors, and high-speed internet.
- **Conference Hall:**
  - Medium-sized banquet hall for corporate events, seminars, and social functions.
- **Business Center:**
  - Workstations, printing, photocopying, and secretarial services.

**NB: Must adhere to Global Hospitality Standards**

### **4.0 DELIVERY AND COMPLETION SCHEDULE FOR THE 4-STAR HOTEL**

The Proposer shall submit a detailed delivery schedule outlining the expected timelines for the design, approvals, construction, and operationalization of the 4-star hotel component. The following milestones must be addressed clearly, with proposed dates and durations for each phase:

#### **Financial Close**

- Execution of all financing agreements
- Equity mobilization and debt disbursement readiness
- **Target: Within three (3) months from execution of lease agreement**

#### **2. Design and Approvals Phase**

- Completion of preliminary design and submission of detailed drawings

- Acquisition of all statutory approvals (e.g., NCA, NEMA, county permits, TRA consultation if applicable)
- **Target: Within three (3) months from execution of lease agreement**

### 3. Construction Period

- Site mobilization and groundbreaking
- Foundation, structural works, and superstructure completion
- Interior works, fit-out, and finishing to 4-star specifications
- Testing and commissioning of all systems
- **Target: Within eighteen (18) months from construction start**

### 4. Operational Readiness

- Recruitment and training of staff
- Installation of IT, reservations, and security systems
- Branding and soft launch preparations in line with hotel operator/franchise standards
- **Target: Within three (3) months from completion of construction**

### 5. Full Commercial Opening

- The hotel must be fully operational and open to the public no later than **twenty-four (24) months** from the effective date of the Ground Lease Agreement.

**Proposers are expected to include a Gantt chart or milestone schedule** reflecting these and any additional internal timelines necessary for delivery assurance. Bidders proposing an accelerated timeline are encouraged to clearly state so and must demonstrate capacity to meet expedited milestones.

Bomas reserves the right to incorporate key delivery milestones into the final lease agreement as binding obligations, subject to performance monitoring and penalties for undue delay.

## 5.0 MINIMUM REQUIREMENTS FOR THE SHOPPING MALL (BOK/RFP/02/2024-2025-LOT 4)

To support the ongoing development of the Bomas International Convention Complex, Bomas of Kenya seeks proposals for a modern, multifunctional shopping mall that complements the cultural and hospitality facilities. The shopping mall will enhance the visitor experience by integrating retail, leisure, and cultural elements within the Bomas ecosystem.

### 1. Gross Lettable Area (GLA)

- A minimum of 70,000 square meters of Gross Lettable Area (GLA) to accommodate diverse retail and leisure spaces.
- The layout should be scalable within the designated **9-acre site** or integrated vertically as a multi-level structure with efficient parking solutions.
- Designs that demonstrate vertical integration to maximize space efficiency will be prioritized.

### 2. Anchor Tenants

- At least one major anchor tenant (e.g., a supermarket).
- A minimum of two secondary anchor tenants (e.g., fashion, electronics, or entertainment brands), each occupying at least 800 sqm.
- Proposals with letters of intent or MOUs from prospective anchor tenants will be given preference, as they demonstrate market viability.

### 3. Retail Mix



- Sufficient retail outlets, offering a diverse and balanced mix, including:
  - Food & beverage: restaurants, cafes, fast food outlets
  - Fashion and apparel: local and international brands
  - Beauty, wellness, and personal care stores
  - Electronics and digital product retailers
  - Gift shops, bookstores, and lifestyle outlets
  - Cultural and artisan retail spaces that align with Bomas' heritage and promote local craftsmanship

#### **4. Entertainment Facilities**

- At least one family entertainment center (e.g., a children's zone, arcade, or gaming center).
- A multiplex cinema or similar entertainment anchor with at least three screens or 800 seats (optional but strongly encouraged).

#### **5. Parking Facilities**

- Sufficient parking bays for retail customers, provided as underground, structured, or surface parking.
- Shared parking arrangements with the hotel complex may be considered if design efficiency is demonstrated.

#### **6. Accessibility and Circulation**

- Separate public access points from Lang'ata Road and internal Bomas circulation loops.
- Safe pedestrian walkways, elevators/escalators, disability access, and comprehensive wayfinding systems.

#### **7. Green and Sustainable Design**

- Integration of energy-efficient lighting and HVAC systems.
- Provisions for solar power generation, rainwater harvesting, and solid waste segregation.
- Incorporation of green spaces, internal landscaping, and eco-friendly building materials.

#### **8. Cultural Integration**

- A minimum of 500 sqm dedicated to curated Kenyan heritage and artisan retail, or exhibition spaces showcasing local brands, artists, or cultural institutions.
- Emphasis on promoting Kenyan identity through architectural features, decor, and tenant selection.

### **6.0 DELIVERY AND COMPLETION SCHEDULE FOR THE SHOPPING MALL (BOK/RFP/02/2024-2025-LOT 4)**

The Proposer shall provide a comprehensive delivery schedule detailing the phased implementation of the shopping mall component, from financing through to full operational launch. The schedule must be realistic, time-bound, and aligned with best practices for large-scale commercial real estate development.

e delivery schedule detailing the phased implementation of the shopping mall component, from financing through to full operational launch. The schedule must be realistic, time-bound, and aligned with best practices for large-scale commercial real estate development.

The following key milestones must be included and clearly dated:

#### **1. Financial Close**

- Execution of equity and debt financing agreements

- Evidence of capital mobilization and drawdown schedules
- **Target: Within three (3) months of lease execution**

## 2. Design and Approvals

- Completion of conceptual and detailed architectural design
- Submission and approval of statutory documents, including building permits, NCA registration, NEMA clearance, and any Nairobi City County planning approvals
- **Target: Within three (3) months of lease execution**

## 3. Anchor Tenant Pre-Leasing

- Identification and negotiation with anchor tenants (e.g., supermarket, cinema, department store, etc.)
- Signed Letters of Intent (LOIs) or Memoranda of Understanding (MoUs) for not less than 30% of Gross Lettable Area (GLA)
- **Target: Before commencement of construction**

## 4. Construction Phase

- Groundbreaking and site mobilization
- Structural works, MEP installation, façade and roofing
- Interior fit-out of common areas and shell space for tenants
- Compliance with fire safety, accessibility, and environmental standards
- Target completion: **Within eighteen (18) months from construction commencement**

## 5. Tenant Fit-Out & Operational Testing

- Tenant-specific works (by landlord or tenant, as per lease terms)
- Utility connections, systems commissioning, and regulatory inspections
- Marketing and leasing completion for remaining GLA
- Target: **Within three (3) months of construction completion**

## 6. Full Commercial Opening

- The mall must be fully operational and open to the public no later than **twenty-four (24) months** from the date of lease execution.

**Proposers shall attach a detailed implementation schedule, preferably in Gantt chart format**, indicating dependencies, critical paths, and risk mitigation plans. Proposals with clear evidence of speed to market—especially backed by tenant commitments or phased construction—will be viewed favorably.

Bomas reserves the right to make certain milestones legally binding through the lease agreement and may impose penalties or step-in provisions in the event of unjustified delays.

### **PART 3 - CONTRACT**

## **SECTION VII - GENERAL CONDITIONS OF CONTRACT**

### **1. Definitions**

- 1.1 The following words and expressions shall have the meanings hereby assigned to them:
- a) “Contract” means the Contract Agreement entered into between the Procuring Entity and the Lessee, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
  - b) “Contract Documents” means the documents listed in the Contract Agreement, including any amendments thereto.
  - c) “Contract Price” means the price payable to the Lessee as specified in the Contract Agreement, subject to such additions and adjustments there to or deductions there from, as may be made pursuant to the Contract.
  - d) “Day” means calendar day.
  - e) “Completion” means the fulfillment of the Related Services by the Lessee in accordance with the terms and conditions set forth in the Contract.
  - f) “GCC” means the General Conditions of Contract.
  - g) “Lease Items” means all of the infrastructural facilities, plant/equipment vehicles or such other physical items the Lessee is required to lease to the Procuring Entity under the Contract.
  - h) “Procuring Entity” means the Procuring Entity purchasing the Lease Items and Related Services, as specified in the SCC.
  - i) “Related Services” means the services incidental to the supply of the Lease Items, such as insurance, installation, training and initial maintenance and other such obligations of the Lessee under the Contract.
  - j) “SCC” means the Special Conditions of Contract.
  - k) “Subcontractor” means any person, private or government entity, or a combination of the above, to whom any part of the Lease Items to be supplied or execution of any part of the Related Services is subcontracted by the Lessee.
  - l) “Lessee” means the person, private or government entity, or a combination of the above, whose Tender for the Lease Contract has been accepted by the Procuring Entity and is named as such in the Contract Agreement.
  - m) “Lessor” means the Procuring Entity whose has accepted the Tender for the Lease Contract and is named as such in the Contract Agreement as “Procuring Entity”.

### **2. Contract Documents**

- 2.1 Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

### **3. Fraud and Corruption**

- 3.1 The Government of Kenya requires compliance with anti-corruption laws and guidelines and its prevailing sanctions policies and procedures as set forth in Laws of Kenya.
- 3.2 The Procuring Entity requires the Lessee to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the Tendering process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

### **4 Interpretation**

- 1.1 If the context so requires it, singular means plural and vice versa.
- 1.2 **Entire Agreement-** The Contract constitutes the entire agreement between the Procuring Entity and the Lessee. and supersedes all communications, negotiations and agreements (whether written or oral) of the parties with respect thereto made prior to the date of Contract.

1.3 **Amendment**

No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.

1.4 **Non-waiver**

- a Subject to GCC Sub-Clause 4.5 (b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
- b Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

1.5 **Severability**

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

**2 Language**

- 2.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Lessee and the Procuring Entity, shall be written in the **English Language**. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the **English Language**, in which case, for purposes of interpretation of the Contract, this translation shall govern.
- 2.2 The Lessee shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Lessor.

**3 Joint Venture, Consortium or Association**

- 3.1 If the Lessee is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Procuring Entity for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Procuring Entity.

**4 Eligibility**

- 8.1 The Lessee and its Subcontractors shall have the nationality of an eligible country. A Lessee or Sub-Lessee shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.

**5 Notices**

- 5.1 Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the **SCC**. The term “in writing” means communicated in written form with proof of receipt.
- 5.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

## **6 Governing Law**

The Contract shall be governed by and interpreted in accordance with the laws of Kenya. Throughout the execution of the Contract, the Lessee shall comply with the import of Lease Items and services prohibitions in Kenya:

- a) as a matter of law or 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 Lease Items from that country or any payments to any country, person, or entity in that country.

## **7 Settlement of Disputes**

- 7.1 The Procuring Entity and the Lessee shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.
- 7.2 If, after twenty-eight (28) days, the parties have failed to resolve their dispute or difference by such mutual consultation, the neither the Procuring Entity or the Lessor may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Lease Items under the Contract. Arbitration proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 7.3 Notwithstanding any reference to arbitration herein,
- a the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
  - b the Procuring Entity shall pay the Lessor any monies due to the Lessee.

## **8 Inspections and Audit by the Procuring Entity**

- 8.1 The Lessee shall keep, and shall make all reasonable efforts to cause its Subcontractors to keep, accurate and systematic accounts and records in respect of the Lease Items in such form and details as will clearly identify relevant time changes and costs.
- 8.2 The Lessee shall permit and shall cause its subcontractors and sub consultants to permit, the Procuring Entity and/or persons appointed by the Procuring Entity or by other statutory bodies of the Government to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by the Procuring Entity. The Lessee's and its Subcontractors' and sub consultants' attention is drawn to Sub-Clause 3.1 which provides, inter alia, that acts intended to materially impede the exercise of the Procuring Entity's inspection and audit rights constitute a prohibited practice subject to contract termination, as well as to a determination of ineligibility.

## **9 Scope of Lease Supply**

- 9.1 The Lease Items and Related Services to be supplied shall be as specified in the Schedule of Requirements.

## **10 Delivery and Documents**

- 10.1 Subject to GCC Sub-Clause 33.1, the Delivery of the Lease Items and Completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in the Schedule of Requirements. The details of Lease and other documents to be furnished by the Lessee are specified in the SCC.

## **11 Lessee's Responsibilities**

11.1 The Lessee shall supply the Lease Items and Related Services included in the Scope of Supply in accordance with GCC Clause 12, and the Delivery and Completion Schedule, as per GCC Clause 13.

## **12 Contract Price**

12.1 Prices charged by the Lessee for the Lease Items supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Lessee in its Tender, with the exception of any price adjustments authorized in the SCC.

## **13 Terms of Payment**

13.1 The Contract Price, including any Advance Payments, if applicable, shall be paid as specified below and in the SCC. The currencies in which payments shall be made to the Lessee under this Contract shall be those in which the Tender price is expressed.

13.2 The Procuring Entity shall pay to Lessee the advance payment stated in the SCC upon or before taking possession of the property. Thereafter, the Procuring Entity shall pay the Lessee the sum of stated in the SCC on or before the day of each month as stated in the SCC until the expiration of this lease.

13.3 If the Procuring Entity fails to pay all amounts due within the number of days specified in the SCC of their due dates, then the Lessee may terminate the contract under this lease and take back possession and control of the Lease Item(s). In the event of termination for non-payment, the Procuring Entity shall remain liable for the balance due under this lease.

13.4 If the Procuring Entity fails to make a payment on or before its due date, a late fee of an amount specified in the SCC shall be due and payable immediately to Lessee.

13.5 In the event that the Procuring Entity fails to pay the Lessee any payment by its due date or within the period set forth in the SCC, the Procuring Entity shall pay to the Lessee interest on the amount of such delayed payment at the rate shown in the SCC, for the period of delay until payment has been made in full, whether before or after judgment or arbitration award.

## **14 Taxes and Duties**

14.1 The Lessee shall be responsible for paying all taxes levied in Kenya.

## **15 Performance Security**

15.1 If required as specified in the SCC, the Lessee shall, within twenty-eight (28) days of the notification of contract award, provide a performance security for the performance of the Contract in the amount specified in the SCC.

15.2 The proceeds of the Performance Security shall be payable to the Procuring Entity as compensation for any loss resulting from the Lessee's failure to complete its obligations under the Contract.

15.3 As specified in **the SCC**, the Performance Security, if required, shall be denominated in Kenya Shillings; and shall be in one of the formats stipulated by the Procuring Entity in **the SCC**, or in another form at acceptable to the Procuring Entity.

15.4 The Performance Security shall be discharged by the Procuring Entity and returned to the Lessee not later than twenty-eight (28) days following the date of Completion of the Lessee's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the SCC.

## **16 Copyright**

16.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Procuring Entity by the Lessee herein shall remain vested in the Lessee, or, if they are furnished to the Procuring Entity directly or through the Lessee by any third party, including Lessees of materials, the copyright in such materials shall remain vested in such third party



## **17 Confidential Information**

- 17.1 The Procuring Entity and the Lessee shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Lessee may furnish to its Sub-Lessee such documents, data, and other information it receives from the Procuring Entity to the extent required for the Sub Lessee to perform its work under the Contract, in which event the Lessee shall obtain from such Sub Lessee an undertaking of confidentiality similar to that imposed on the Lessee under GCC Clause 20.
- 17.2 The Procuring Entity shall not use such documents, data, and other information received from the Lessee for any purposes unrelated to the contract. Similarly, the Lessee shall not use such documents, data, and other information received from the Procuring Entity for any purpose other than the performance of the Contract.
- 17.3 The obligation of a party under GCC Sub-Clauses 20.1 and 20.2 above, however, shall not apply to information that:
- a the Procuring Entity or the Lessee need to share with other arms of Government or other bodies participating in the financing of the Contract; such parties shall be disclosed in the SCC;
  - b now or hereafter enters the public domain through no fault of that party;
  - c can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
  - d otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
- 17.4 The above provisions of GCC Clause 20 shall not in any way modify any undertaking of confidentiality given by either of the parties here to prior to the date of the Contract in respect of the Supply or any part thereof.
- 17.5 The provisions of GCC Clause 20 shall survive completion or termination, for whatever reason, of the Contract.

## **18 Subcontracting**

- 18.1 The Lessee shall notify the Procuring Entity in writing of all subcontracts awarded under the Contract if not already specified in the Tender. Such notification, in the original Tender or later shall not relieve the Lessee from any of its obligations, duties, responsibilities, or liability under the Contract.
- 18.2 Subcontracts shall comply with the provisions of GCC Clauses 3 and 7.

## **19 Specifications and Standards**

### **Technical Specifications and Drawings**

- a) The Lease Items and Related Services supplied under this Contract shall conform to the technical specifications and standards mentioned in Section VI, Schedule of Requirements and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the Lease Items' country of origin.
- b) The Lessee shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Procuring Entity, by giving a notice of such disclaimer to the Procuring Entity.
- c) Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Schedule of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Procuring Entity and shall be treated in accordance with GCC Clause 33.

## **20 Packing and Documents**

No packing services and documents are needed, and if any, they are specified **in the SCC**, and in any other instructions ordered by the Procuring Entity.

## **21 Insurance**

22.1 Unless otherwise specified in the **SCC**, the Lease Items supplied under the Contract shall be fully insured by the Lessee - in a freely convertible currency from an eligible country - against loss or damage incidental to use, transportation, storage, and delivery, in a manner specified in the **SCC**.

## **22 Transportation and Incidental Services**

- 22.1 The Lessee may be required to provide any or all of the following services, including additional services, if any, specified **in SCC**:
- a Performance or supervision of on-site assembly and/or start-up of the supplied Lease Items;
  - b Furnishing of tools required for assembly and/or maintenance of the supplied Lease Items;
  - c furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied Lease Items;
  - d performance or supervision or maintenance and/or repair of the supplied Lease Items, for a period of time agreed by the parties, provided that this service shall not relieve the Lessee of any warranty obligations under this Contract; and
  - e training of the Procuring Entity's personnel, at the Lessor's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied Lease Items.
- 22.2 Prices charged by the Lessee for incidental services, if not included in the Contract Price for the Lease Items, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Lessee for similar services

## **23 Inspections and Tests**

- 23.1 The Lessee shall at its own expense and at no cost to the Procuring Entity carry out all such tests and/or inspections of the Lease Items and Related Services as are specified in the **SCC**.
- 23.2 The inspections and tests may be conducted on the premises of the Lessee or its Subcontractor, at point of delivery, and/or at the Lease Items' final destination, or in another place in Kenya as specified in the **SCC**. Subject to GCC Sub-Clause 26.3, if conducted on the premises of the Lessee or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring Entity.
- 23.3 The Procuring Entity or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 26.2, provided that the Procuring Entity bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.
- 23.4 Whenever the Lessee is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Procuring Entity. The Lessee shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Procuring Entity or its designated representative to attend the test and/or inspection.
- 23.5 The Procuring Entity may require the Lessee to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Lease Items comply with the technical specification codes and standards under the Contract, provided that the Lessee's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Lessee's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.

- 23.6 The Lessee shall provide the Procuring Entity with a part of the results of any such test and/or inspection.
- 23.7 The Procuring Entity may reject any Lease Items or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Lessee shall either rectify or replace such rejected Lease Items or parts thereof or make alterations necessary to meet the specifications at no cost to the Procuring Entity, and shall repeat the test and/or inspection, at no cost to the Procuring Entity, upon giving a notice pursuant to GCC Sub-Clause 26.4.
- 23.8 The Lessee agrees that neither the execution of a test and/or inspection of the Lease Items or any part thereof, nor the attendance by the Procuring Entity or its representative, nor the issue of any report pursuant to GCC Sub-Clause 26.6, shall release the Lessee from any warranties or other obligations under the Contract.

## **24 Liquidated Damages**

- 25.1 Except as provided under GCC Clause 32, if the Lessee fails to deliver any or all of the Lease Items by the Date(s) of delivery or perform the Related Services within the period specified in the Contract, the Procuring Entity may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the SCC of the delivered price of the delayed Lease Items or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those SCC. Once the maximum is reached, the Procuring Entity may terminate the Contract pursuant to GCC Clause 35.

## **25 Warranty**

- 25.1 The Lessee warrants that all the Lease Items are in conformity with the specifications of the Lease Items and are in good condition for use under the Lease agreement.
- 25.2 The Procuring Entity will be entitled to refuse acceptance of any Lease Items not meeting the warranty under ITT 28.1 and demand for replacements.

## **26 Patent Indemnity**

- 26.1 The Lessee shall, subject to the Procuring Entity's compliance with GCC Sub-Clause 29.2, indemnify and hold harmless the Procuring Entity and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Procuring Entity may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:
- a The installation of the Lease Items by the Lessee or the use of the Lease Items in the country where the Site is located; and
  - b the sale in any country of the products produced by the Lease Items.
- Such indemnity shall not cover any use of the Lease Items or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Lease Items or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Lessor, pursuant to the Contract.
- 26.2 If any proceedings are brought or any claim is made against the Procuring Entity arising out of the matters referred to in GCC Sub-Clause 29.1, the Procuring Entity shall promptly give the Lessee a notice thereof, and the Lessee may at its own expense and in the Procuring Entity's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.
- 26.3 If the Lessee fails to notify the Procuring Entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Procuring Entity shall be free to conduct the same on its own behalf.

- 26.4 The Procuring Entity shall, at the Lessee's request, afford all available assistance to the Lessee in conducting such proceedings or claim, and shall be reimbursed by the Lessee for all reasonable expenses incurred in so doing.
- 26.5 The Procuring Entity shall indemnify and hold harmless the Lessee and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Lessee may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Procuring Entity.

## **27 Limitation of Liability**

- 27.1 Except in cases of criminal negligence or willful misconduct,
- a The Lessee shall not be liable to the Procuring Entity, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Lessee to pay liquidated damages to the Procuring Entity, and
  - b The aggregate liability of the Lessee to the Procuring Entity, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Lessee to indemnify the Procuring Entity with respect to patent infringement.

## **28 Change in Laws and Regulations**

- 29.1 Unless otherwise specified in the Contract, if after the date of 28 days prior to date of Tender submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in Kenya (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Lessee has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Clause 15.

## **29 Force Majeure**

- 29.1 The Lessee shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 29.2 For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Lessee that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Lessee. Such events may include, but not be limited to, acts of the Procuring Entity in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 29.3 If a Force Majeure situation arises, the Lessee shall promptly notify the Procuring Entity in writing of such condition and the cause thereof. Unless otherwise directed by the Procuring Entity in writing, the Lessee shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

## **30 Change Orders and Contract Amendments**

- 30.1 The Procuring Entity may at any time order the Lessee through notice in accordance GCC Clause 8, to make changes within the general scope of the Contract in any one or more of the following:
- a drawings, designs, or specifications, where Lease Items to be furnished under the Contract are to be specifically manufactured for the Procuring Entity;
  - b the method of shipment or packing;
  - c the place of delivery; and
  - d the Related Services to be provided by the Lessee.
- 30.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Lessee's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Lessee for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Lessee's receipt of the Procuring Entity's change order.
- 30.3 Prices to be charged by the Lessee for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Lessee for similar services.
- 30.4 **Value Engineering:** The Lessee may prepare, at its own cost, a value engineering proposal at any time during the performance of the contract. The value engineering proposal shall, at a minimum, include the following:
- a the proposed change(s), and a description of the difference to the existing contract requirements;
  - b a full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (including life cycle costs) the Procuring Entity may incur in implementing the value engineering proposal; and
  - c a description of any effect(s) of the change on performance/functionality.
- 30.5 The Procuring Entity may accept the value engineering proposal if the proposal demonstrates benefits that:
- a accelerates the delivery period; or
  - b reduces the Contract Price or the life cycle costs to the Procuring Entity; or
  - c improves the quality, efficiency or sustainability of the Lease Items; or
  - d yields any other benefits to the Procuring Entity, without compromising the necessary functions of the Facilities.
- 30.6 If the value engineering proposal is approved by the Procuring Entity and results in:
- a a reduction of the Contract Price; the amount to be paid to the Lessee shall be the percentage specified **in the SCC** of the reduction in the Contract Price; or
  - b an increase in the Contract Price; but results in a reduction in lifecycle costs due to any benefit described in
  - c to (d) above, the amount to be paid to the Lessee shall be the full increase in the Contract Price.
- 30.7 Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

## **31 Extensions of Time**

- 31.1 If at any time during performance of the Contract, the Lessee or its subcontractors should encounter conditions impeding timely delivery of the Lease Items or completion of Related Services pursuant to GCC Clause 13, the Lessee shall promptly notify the Procuring Entity in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Lessee's notice, the Procuring Entity shall evaluate the situation and may at its discretion extend the Lessee's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.



- 31.2 Except in case of Force Majeure, as provided under GCC Clause 32, a delay by the Lessee in the performance of its Delivery and Completion obligations shall render the Lessee liable to the imposition of liquidated damages pursuant to GCC Clause 26, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 34.1.

## **32 Termination**

### **32.1 Termination for Default**

- a The Procuring Entity, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Lessee, may terminate the Contract in whole or in part:
  - i. if the Lessee fails to deliver any or all of the Lease Items within the period specified in the Contract, or within any extension thereof granted by the Procuring Entity pursuant to GCC Clause 34;
  - ii. if the Lessee fails to perform any other obligation under the Contract; or
  - iii. if the Lessee, in the judgment of the Procuring Entity has engaged in Fraud and Corruption, as defined in paragraph 2.2a of the Appendix to the GCC, in competing for or in executing the Contract.
- b In the event the Procuring Entity terminates the Contract in whole or in part, pursuant to GCC Clause 35.1(a), the Procuring Entity may procure, upon such terms and in such manner as it deems appropriate, Lease Items or Related Services similar to those undelivered or not performed, and the Lessee shall be liable to the Procuring Entity for any additional costs for such similar Lease Items or Related Services. However, the Lessee shall continue performance of the Contract to the extent not terminated.

### **32.2 Termination for Insolvency.**

The Procuring Entity may at any time terminate the Contract by giving notice to the Lessee if the Lessee becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Lessee, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Procuring Entity

### **32.3 Termination for Convenience.**

- a) The Procuring Entity, by notice sent to the Lessee, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Procuring Entity's convenience, the extent to which performance of the Lessee under the Contract is terminated, and the date upon which such termination becomes effective.
- b) The Lease Items that are complete and ready for shipment within twenty-eight (28) days after the Lessee's receipt of notice of termination shall be accepted by the Procuring Entity at the Contract terms and prices. For the remaining Lease Items, the Procuring Entity may elect:
  - i) to have any portion completed and delivered at the Contract terms and prices; and/or
  - ii) to cancel the remainder and pay to the Lessee an agreed amount for partially completed Lease Items and Related Services and for materials and parts previously procured by the Lessee.

## **33 Assignment**

- 36.1 Neither the Procuring Entity nor the Lessee shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

## **34 Import Restrictions**

- 37.1 Notwithstanding any obligation under the Contract to complete all import formalities, any import restrictions attributable to the Procuring Entity, to Kenya, or to the use of the products/Lease Items, systems or services to be supplied, which arise from trade regulations from a country supplying those products/Lease Items, systems or services, and which substantially impede the Lessee from

meeting its obligations under the Contract, shall release the Lessee from the obligation to provide deliveries or services, always provided, however, that the Lessee can demonstrate to the satisfaction of the Procuring Entity that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the import of the products/Lease Items, systems or services under the terms of the Contract. Termination of the Contract on this basis shall be for the Procuring Entity's convenience pursuant to Sub-Clause 35.3.



## SECTION VIII - SPECIAL CONDITIONS OF CONTRACT

The following Special Conditions of Contract (SCC) shall supplement and/or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

*[The Procuring Entity shall select insert the appropriate wording using the samples below or other acceptable wording, and delete the text in italics],*

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
GCC 1.1(h)	The Procuring Entity (Lessor) is: BOMAS OF KENYA LIMITED
	The Final Destination(s) is/are: The Supply Chain Manager Forest Edge Road, Off Langata Road P.O Box 40689-00100 Nairobi
	The Lessee is the Bidder for purposes of this Tender Document
GCC 5.1	For <b><u>notices</u></b> , the Procuring Entity's address shall be: Attention: The Supply Chain Manager Postal address P.O Box 40689-00100 Nairobi Physical Address (Forest Edge Road, Off Langata Road Telephone: Tel: 020-8068400 Electronic mail address: <a href="mailto:procurement@bomasofkenya.co.ke">procurement@bomasofkenya.co.ke</a> .
GCC 7.2	<p>The rules of procedure for arbitration proceedings pursuant to GCC Clause 10.2 shall be as follows:</p> <p><i>[The Tendering document should contain one clause to be retained in the event of a Contract with a foreign Lessee and one clause to be retained in the event of a Contract with a Lessee who is a national of Kenya. At the time of finalizing the Contract, the respective applicable clause should be retained in the Contract. The following explanatory note should therefore be inserted as a header to GCC 10.2 in the Tendering document.</i></p> <p><i>"Clause 10.2 (a) shall be retained in the case of a Contract with a foreign Lessee and clause 10.2 (b) shall be retained in the case of a Contract with a national of Kenya"]</i></p> <p><b>(a) Contract with foreign Lessee:</b> <i>[For contracts entered into with foreign Lessees, International commercial arbitration may have practical advantages over other dispute settlement methods. Among the rules to govern the arbitration proceedings, the Procuring Entity may wish to consider the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules of 1976, the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC), the Rules of the London Court of International Arbitration or the Rules of Arbitration Institute of the Stockholm Chamber of Commerce.]</i></p> <p><b>(i) If the Procuring Entity chooses the UNCITRAL Arbitration Rules, the following sample clause should be inserted:</b></p> <p>GCC 10.2 (a)—Any dispute, controversy or claim arising out of or relating to this Contract, or breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.</p> <p>There shall be one (1) arbitrator, who shall be appointed by the appointing authority selected by the parties. If the parties fail to agree on the choice of an appointing</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>authority within thirty (30) days after the proposal or request has been received by all other parties, any party may request the Secretary-General of the Permanent Court of Arbitration to designate the appointing authority.</p> <p>The place and seat of arbitration shall be Nairobi, Kenya.</p> <p>The language of arbitration shall be English.</p> <p>(ii) <i>If the Procuring Entity chooses the Rules of ICC, the following sample clause should be inserted: N/A</i></p> <p>GCC 10.2 (a)—All disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules.</p> <p>(iii) <i>If the Procuring Entity chooses the Rules of Arbitration Institute of Stockholm Chamber of Commerce, the following sample clause should be inserted: N/A</i></p> <p>GCC 10.2 (a)—Any dispute, controversy or claim arising out of or in connection with this Contract, or the breach termination or invalidity thereof, shall be settled by arbitration in accordance with the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.</p> <p>(iv) <i>If the Procuring Entity chooses the Rules of the London Court of International Arbitration, the following clause should be inserted: N/A</i></p> <p>GCC 10.2 (a)—Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which rules are deemed to be incorporated by reference to this clause.</p> <p><b><i>(b) Contracts with Lessee who is a national of Kenya:</i></b></p> <p>In the case of a dispute between the Procuring Entity and a Lessee who is a national of Kenya, the dispute shall be referred to arbitration in accordance with the laws of Kenya.</p> <p><u>Such arbitration shall be resolved under the provisions of the Kenya Arbitration Act 1995 (as amended from time to time).</u></p> <p><u>The arbitration tribunal shall consist of one (1) arbitrator who shall be a Chartered Arbitrator to be agreed upon between the parties failing which such arbitrator shall be appointed by the Chairman for the time being of the Chartered Institute of Arbitrators, Kenya Branch upon application by any party.</u></p> <p><u>The place and seat of arbitration shall be Nairobi, Kenya and the language of arbitration shall be English.</u></p> <p><u>The award of the arbitration tribunal shall be final and binding upon the parties to the extent permitted by law and either party may apply to a court of competent jurisdiction for enforcement of such award.</u></p>
GCC 10.1	The details of the Lease and other documents to be furnished are as follows:

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
<b>GCC 12.1</b>	The annual lease payments shall be increased by 10% once after every 5 years
<b>.1</b>	The annual lease payments I shall be KES _____ exclusive of all taxes._
<b>GCC 13.2</b>	The annual lease payments shall be paid for every 5-year period, in advance and shall be paid on or before the 5 <sup>th</sup> day of the beginning of every 5 year period until the expiration of this lease.
<b>GCC 13.3</b>	The Lessor may terminate the contract if the Lessee fails to pay all amounts due within <b>90 days</b> .
<b>GCC 13.4</b>	The late fee calculated at <b>10% of the amount outstanding</b> shall be due and payable immediately to the Lessor after the expiration of 90 days.
<b>GCC 13.5</b>	The payment-delay period after which the Lessee shall pay penalty interest to the Lessee shall be <b>90 days</b> .  The penalty interest rate that shall be applied is <b>5 % per month</b> to the amount outstanding
<b>GCC 15.1</b>	A Performance Security shall be required.  The successful Proposer shall furnish the Procuring Entity with an unconditional performance bond issued by a reputable bank or insurance company licensed in Kenya, equivalent to <b>5% of the total estimated construction cost</b> . Before commencement of construction, the amount of the performance bond shall be adjusted to reflect the revised estimated construction cost.  The beneficiary of the Performance Bond shall be the Procuring Authority.
<b>GCC 15.3</b>	The Performance Security shall be in Kenya Shillings and in a format acceptable to the Procuring Entity.
<b>GCC 15.4</b>	Discharge of the Performance Security shall take place 6 months after the Project Completion Certificate is issued and may be extended if the completion is delayed for reasons attributable to the Developer.
<b>GCC 17.3</b>	The Procuring Authority shall notify the Lessee in writing if confidential information is required by a Government or other party as and when the need arises
<b>GCC 20</b>	N/A
<b>GCC 21.1</b>	The Lessee shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained, throughout the Term of this Agreement, insurance policies with financially sound and reputable insurers, in respect of the Leased Premises and its operations thereon. Such insurance shall be maintained in

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	amounts and against risks as would be maintained by prudent operators of similar facilities and in accordance with Applicable Law.
GCC 22.1	The Lessee may be required to provide any or all of these services as may be necessary to operate hospitality and/or commercial facilities.
GCC 23.1	<p>The Lessee shall, at its sole cost and expense, conduct all tests, inspections, certifications, calibrations, surveys, and monitoring activities that may be required:</p> <ul style="list-style-type: none"> <li>a) Under Applicable Law, including those imposed by public health, safety, environmental, or fire authorities;</li> <li>b) By the standards and good industry practices applicable to the Lessee's operations;</li> <li>c) As may be reasonably required by the Lessor or any competent regulatory authority; or</li> <li>d) Under the terms of any permits, licenses, or approvals relating to the Leased Premises.</li> </ul>
GCC 23.2	<p>Such tests and inspections shall be conducted:</p> <ul style="list-style-type: none"> <li>• At the commencement of operations, periodically during the Term, and prior to any material modifications;</li> <li>• By qualified and duly certified professionals, laboratories, or inspectors approved where required by law or regulation;</li> <li>• In accordance with internationally recognized standards and procedures, unless otherwise specified by Applicable Law.</li> </ul>
GCC 25.1	If the Lessee fails to achieve Substantial Completion of the Project Works by the Scheduled Completion Date, it shall pay liquidated damages to the Lessor at the rate of <b>the monthly lease payment</b> for each month of delay.
GCC 30.6	N/A
GCC	<p><b>Build Own Operate and Transfer</b></p> <p>The land lease would be for an initial peiroad of 40 years, with an option to renew only once for the same period, on terms and conditions to be mutually agreed.. The Lessee shall construct the Developments according to the terms and conditions in this Agreement. Upon expiration of the second term of the lease where the lease is now renewed, the Lessee shall transfer the ownership of the Development to the Procuring Entity at no charge, free and clear of any encumbrances.</p>

## **SECTION IX - CONTRACT FORMS**

This Section contains forms which, once completed, will form part of the Contract. The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful tenderer after contract award.

### **Table of Forms**

Notification of Intention to Award

Request for Review

Letter of Award

Contract Agreement

Performance Security

Advance Payment Security

Beneficial Ownership Disclosure

## FORM No 1: NOTIFICATION OF INTENTION TO AWARD

This Notification of Intention to Award shall be sent to each Tenderer that submitted a Tender. Send this Notification to the Tenderer's Authorized Representative named in the Tender Information Form on the format below.

-----

### **FORMAT**

1. For the attention of Tenderer's Authorized Representative

- i) Name: .....[insert Authorized Representative's name]
- ii) Address: .....[insert Authorized Representative's Address]
- iii) Telephone: .....[insert Authorized Representative's telephone/fax numbers]
- iv) Email Address: .....[insert Authorized Representative's email address]

*[IMPORTANT: insert the date that this Notification is transmitted to Tenderers. The Notification must be sent to all Tenderers simultaneously. This means on the same date and as close to the same time as possible.]*

2. Date of transmission: ..... [email] \_\_\_\_\_ on.....[date] \_\_\_\_\_ (local time)

This Notification is sent by (Name and designation) \_\_\_\_\_

\_\_\_\_\_

3. Notification of Intention to Award

- i) Procuring Entity: .....[insert the name of the Procuring Entity]
- ii) Project: .....[insert name of project]
- iii) Contract title: .....[insert the name of the contract]
- iv) Country: .....[insert country where ITT is issued]
- v) ITT No: .....[insert ITT reference number from Procurement Plan]

This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period. During the Standstill Period, you may:

4. Request a debriefing in relation to the evaluation of your tender

Submit a Procurement-related Complaint in relation to the decision to award the contract.

a) The successful tenderer

i) Name of successful Tender \_\_\_\_\_

\_\_\_\_\_

ii) Address of the successful Tender \_\_\_\_\_

\_\_\_\_\_

iii) Contract price of the successful Tender Kenya Shillings \_\_\_\_\_  
(in words \_\_\_\_\_)

b) Other Tenderers

Names of all Tenderers that submitted a Tender. If the Tender's price was evaluated include the evaluated price as well as the Tender price as read out. For Tenders not evaluated, give one main reason the Tender was unsuccessful.

Lease Item N°	Description of Lease Item and Related Services.	Tender Price as read out	Tender's evaluated price (Note a)	One Reason Why not Evaluated
1				
2				
3				
4				
5				

(Note a) State NE if not evaluated

5. How to request a debriefing

- a) DEADLINE: The deadline to request a debriefing expires at midnight on [*insert date*] (*local time*).
- b) You may request a debriefing in relation to the results of the evaluation of your Tender. If you decide to request a debriefing your written request must be made within three (5) Business Days of receipt of this Notification of Intention to Award.
- c) Provide the contract name, reference number, name of the Tenderer, contact details; and address the request for debriefing as follows:
  - i) Attention: [*insert full name of person, if applicable*]
  - ii) Title/position: [*insert title/position*]
  - iii) Agency: [*insert name of Procuring Entity*]
  - iv) Email address: [*insert email address*]
- d) If your request for a debriefing is received within the 3 Days deadline, we will provide the debriefing within five (3) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (3) Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.
- e) The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.
- f) If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Days from the date of publication of the Contract Award Notice.

6. How to make a complaint

- a) Period: Procurement-related Complaint challenging the decision to award shall be submitted by midnight, [*insert date*] (*local time*).
- b) Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-related Complaint as follows:
  - i) Attention: [*insert full name of person, if applicable*]
  - ii) Title/position: [*insert title/position*]
  - iii) Agency: [*insert name of Procuring Entity*]



- iv) Email address: *[insert email address]*
- c) At this point in the procurement process, you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.
- d) Further information: For more information refer to the Public Procurement and Disposals Act 2015 and its Regulations available from the Website [www.ppra.go.ke](http://www.ppra.go.ke) or email [complaints@ppra.go.ke](mailto:complaints@ppra.go.ke).

You should read these documents before preparing and submitting your complaint.

- e) There are four essential requirements:
  - i) You must be an 'interested party'. In this case, that means a Tenderer who submitted a Tender in this tendering process, and is the recipient of a Notification of Intention to Award.
  - ii) The complaint can only challenge the decision to award the contract.
  - iii) You must submit the complaint within the period stated above.
  - iv) You must include, in your complaint, all of the information required to support your complaint.

## 7. **Standstill Period**

- i) DEADLINE: The Standstill Period is due to end at midnight on *[insert date]* (local time).
- ii) The Standstill Period lasts ten (14) Days after the date of transmission of this Notification of Intention to Award.
- iii) The Standstill Period may be extended as stated in paragraph Section 5 (d) above.

If you have any questions regarding this Notification please do not hesitate to contact us. On behalf of the Procuring Entity:

**Signature:**\_\_\_\_\_

**Name:**\_\_\_\_\_

**Title/position:**\_\_\_\_\_

**Telephone:**\_\_\_\_\_

**Email:**\_\_\_\_\_

**FORM No 2 - REQUEST FOR REVIEW**

**FORM FOR REVIEW(r.203(1))**

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**APPLICATION NO.....OF.....20.....**

**BETWEEN**

**.....APPLICANT**

**AND**

**.....RESPONDENT (Procuring Entity)**

Request for review of the decision of the..... (Name of the Procuring Entity of .....dated the...day of .....20.....in the matter of Tender No.....of .....20..... for .....(Tender description).

**REQUEST FOR REVIEW**

I/We.....,the above named Applicant(s), of address: Physical address.....P. O. Box No..... Tel. No.....Email ....., hereby request the Public Procurement Administrative Review Board to review the whole/part of the above mentioned decision on the following grounds , namely:

- 1.
- 2.

By this memorandum, the Applicant requests the Board for an order/orders that:

- 1.
- 2.

SIGNED .....(Applicant) Dated on.....day of ...../...20.....

---

FOR OFFICIAL USE ONLY Lodged with the Secretary Public Procurement Administrative Review Board on.....day of .....20.....

**SIGNED**

**Board Secretary**

### FORM No 3: LETTER OF AWARD

*[letter head paper of the Procuring Entity]*

.....*[date]*

To: .....*[name and address of the Contractor]*

This is to notify you that your Tender dated *[date]* for execution of the..... *[name of the Contract and identification number, as given in the Contract Data]* for the Accepted Contract Amount..... *[amount in numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers, is hereby accepted by..... *(name of Procuring Entity)*.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using, for that purpose, one of the Performance Security Forms included in Section VIII, Contract Forms, of the Tender Document.

Authorized Signature: .....

Name and Title of Signatory: .....

Name of Procuring Entity: .....

Attachment: *Contract Agreement*

## FORM No 4 LETTER OF AWARD

*[use letterhead paper of the Procuring Entity]*

.....*[date]*

To: .....*[name and address of the Lessor]*

Subject: **Notification of Award Contract No**.....

This is to notify you that your Tender dated.....*[insert date]* for the Lease Items on the list below is hereby accepted by our Agency.

### **OFFERED ITEMS AND PRICES**

<b>1</b>	<b>2</b>	<b>3</b>
<b>Lease Item N°</b>	<b>Description of Lease Item and Related Services.</b>	<b>Tender Price</b>
1		
2		
3		
4		
<b>Total Tender Price</b>		<b>Xxxx</b>

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose the of the Performance Security Form included in Section X, Contract Forms, of the Tendering document.

Authorized Signature: .....

Name and Title of Signatory: .....

Name of Agency: .....

**Attachment: Contract Agreement**

## FORM No 5 - CONTRACT AGREEMENT

*[The successful tenderer shall fill in this form in accordance with the instructions indicated]*

THIS AGREEMENT made the *[insert: **number**]* day of *[insert: **month**]*, *[insert: **year**]*.

BETWEEN

- (1) *[insert complete name of Procuring Entity]* and having its principal place of business at *[insert: address of Procuring Entity]* (herein after called “Procuring Entity”), of the one part;  
and
- (2) *[insert name of Lessee]*, a corporation incorporated under the laws of *[insert: country of Lessee]* and having its principal place of business at *[insert: address of Lessee]* (herein after called “the Lessee”), of the other part.
3. WHEREAS the Procuring Entity invited Tenders for certain Lease Items and ancillary services, viz., *[insert brief description of Lease Items and Services]* and has accepted a Tender by the Lessee for the supply of those Lease Items and Services, the Procuring Entity and the Lessee agree as follows:
  - i) In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
  - ii) The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other contract documents.
    - a) the Letter of Acceptance
    - b) the Letter of Tender
    - c) the Addenda Nos. \_\_\_\_ (if any)
    - d) Special Conditions of Contract
    - e) General Conditions of Contract
    - f) the Specification (including Schedule of Requirements and Technical Specifications)
    - g) the completed Schedules (including Price Schedules)
    - h) any other document listed in GCC as forming part of the Contract
  - iii) In consideration of the payments to be made by the Procuring Entity to the Lessee as specified in this Agreement, the Lessee hereby covenants with the Procuring Entity to provide the Lease Items and Services and to remedy defects the rein inconformity in all respects with the provisions of the Contract.
4. The Procuring Entity hereby covenants to pay the Lessee in consideration of the provision of the Lease Items and Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.
5. IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Kenya on the day, month and year indicated above.

For and on behalf of the Procuring Entity

Signed: .....*[insert signature]* in the capacity of .....*[insert title or other appropriate designation]*

In the presence of .....*[insert identification of official witness]*

For and on behalf of the Lessee Signed: .....*[insert signature of authorized representative(s) of the Lessee]*  
in the capacity of .....*[insert title or other appropriate designation]*  
in the presence of .....*[insert identification of official witness]*

**FORM No 6 - PERFORMANCE SECURITY [Option 1 - Unconditional Demand Bank Guarantee]**

*[Guarantor letterhead]*

**Beneficiary:** \_\_\_\_\_ *[insert name and Address of Procuring*

Entity] **Date:** \_\_\_\_\_ *[Insert date of issue]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letter head]*

1. We have been informed that \_\_\_\_\_ (hereinafter called "the Contractor") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with (name of Procuring Entity) \_\_\_\_\_ (the Procuring Entity as the Beneficiary), for the execution of \_\_\_\_\_ (herein after called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.
3. At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_  
(in words ),<sup>1</sup> such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.
4. This guarantee shall expire, no later than the ..... Day of ....., 2.....<sup>2</sup>, and any demand for payment under it must be received by us at the office indicated above on or before that date.
5. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months] [one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

\_\_\_\_\_  
*[Name of Authorized Official, signature(s) and seals/stamps]*

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***



<sup>1</sup>The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency of the Contract or a freely convertible currency acceptable to the Beneficiary.

<sup>2</sup>Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9. The Procurement Entity should note that in the event of an Extension of this date for completion of the Contract, the Procurement Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.

## FORM No 7 - PERFORMANCE SECURITY [Option 2– Performance Bond]

*[Note: Procuring Entities are advised to use Performance Security–Unconditional Demand Bank Guarantee instead of Performance Bond due to difficulties involved in calling Bond holder to action]*

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** \_\_\_\_\_ *[insert name and Address of Procuring Entity]*  
**Date:** \_\_\_\_\_ *[Insert date of issue]*

**PERFORMANCE BOND No.:** \_\_\_\_\_

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

1. By this Bond \_\_\_\_\_ as Principal (hereinafter called “the Contractor”) and \_\_\_\_\_ as Surety (hereinafter called “the Surety”), are held and firmly bound unto \_\_\_\_\_ as Obligee (hereinafter called “the Procuring Entity”) in the amount of \_\_\_\_\_ for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.
2. WHEREAS the Contractor has entered into a written Agreement with the Procuring Entity dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.
3. NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Procuring Entity to be, in default under the Contract, the Procuring Entity having performed the Procuring Entity's obligations there under, the Surety may promptly remedy the default, or shall promptly:
  - 1) complete the Contract in accordance with its terms and conditions; or
  - 2) obtain a tender or tenders from qualified tenderers for submission to the Procuring Entity for completing the Contract in accordance with its terms and conditions, and upon determination by the Procuring Entity and the Surety of the best responsive Tenderers, arrange for a Contract between such Tenderer, and Procuring Entity and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term “Balance of the Contract Price,” as used in this paragraph, shall mean the total amount payable by Procuring Entity to Contractor under the Contract, less the amount properly paid by Procuring Entity to Contractor; or
  - 3) pay the Procuring Entity the amount required by Procuring Entity to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.
4. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.
5. Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking - Over Certificate. No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Procuring Entity named herein or the heirs, executors, administrators, successors, and assigns of the Procuring Entity.

- 6 In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this day \_\_\_\_\_ of \_\_\_\_\_ 20.

SIGNED ON \_\_\_\_\_ on behalf of  
by \_\_\_\_\_ in the capacity  
of in the presence of

SIGNED ON \_\_\_\_\_ on behalf  
of by \_\_\_\_\_ in the capacity  
of in the presence of

**FORM No 8 - ADVANCE PAYMENT SECURITY [Demand Bank Guarantee]**

*[Guarantor letterhead]*

**Beneficiary:** \_\_\_\_\_ *[Insert name and Address of Procuring Entity]*

**Date:** \_\_\_\_\_ *[Insert date of issue]*

**ADVANCE PAYMENT GUARANTEE No.:** \_\_\_\_\_ *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letter head]*

1. We have been informed that \_\_\_\_\_ (hereinafter called "the Contractor") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_ (herein after called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum \_\_\_\_\_ (in words \_\_\_\_\_) is to be made against an advance payment guarantee.
3. At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ (in words \_\_\_\_\_) <sup>1</sup> upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:
  - (a) has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or
  - (b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.
4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Contract or on its account number at.....
5. The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the day of \_\_, 2, 2, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.
6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months]* *[one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

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*[Name of Authorized Official, signature(s) and seals/stamps]*

**Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.**

<sup>1</sup>*The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency of the advance payment as specified in the Contract.*

<sup>2</sup>*Insert the expected expiration date of the Time for Completion. The Procurement Entity should note that in the event of an extension of the time for completion of the Contract, the Procurement Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.*

## **FORM NO. 9 BENEFICIAL OWNERSHIP DISCLOSURE**

### **INSTRUCTIONS TO TENDERERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE FORM**

*This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful tenderer. In case of joint venture, the tenderer must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.*

*For the purposes of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the Tenderer by meeting one or more of the following conditions:*

- Directly or indirectly holding 25% or more of the shares.*
- Directly or in directly holding 25% or more of the voting rights.*
- Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer.*

Tender Reference No.: \_\_\_\_\_ [insert identification

no] Name of the Assignment: \_\_\_\_\_ [insert name of the assignment]

to: \_\_\_\_\_ [insert complete name of Procuring Entity]

In response to your notification of award dated \_\_\_\_\_ [insert date of notification of award] to furnish additional information on beneficial ownership: \_\_\_\_\_ [select one option as applicable and delete the options that are not applicable]

I) We here by provide the following beneficial ownership information.

Details of beneficial ownership

<b>Identity of Beneficial Owner</b>	<b>Directly or indirectly holding 25% or more of the shares (Yes / No)</b>	<b>Directly or indirectly holding 25 % or more of the Voting Rights (Yes / No)</b>	<b>Directly or indirectly having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer (Yes / No)</b>

<i>[include full name (last, middle, first), nationality, country of residence]</i>			

OR

- ii) *We declare that there is no Beneficial Owner meeting one or more of the following conditions: directly or indirectly holding 25% or more of the shares. Directly or indirectly holding 25% or more of the voting rights. Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer.*

OR

*We declare that we are unable to identify any Beneficial Owner meeting one or more of the following conditions. [If this option is selected, the Tenderer shall provide explanation on why it is unable to identify any Beneficial Owner]*

*Directly or indirectly holding 25% or more of the shares. Directly or indirectly holding 25% or more of the voting rights.*

*Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer]*

*Name of the Tenderer: .....\*[insert complete name of the Tenderer]\_\_\_\_\_*

*Name of the person duly authorized to sign the Tender on behalf of the Tenderer: \*\* [insert complete name of person duly authorized to sign the Tender]*

*Title of the person signing the Tender: ..... [insert complete title of the person signing the Tender]*

*Signature of the person named above: ..... [insert signature of person whose name and capacity are shown above]*

*Date signed ..... [insert date of signing] day of..... [Insert month], [insert year]*



