



## **KENYA INFRASTRUCTURE AND PPP PROJECT**

### **UNIVERSITY OF EMBU HOSTELS PPP PROJECT**

#### **DEVELOPMENT, OPERATION AND MAINTENANCE**

Tender Number: UoEm/20/2017-2018

#### **REQUEST FOR QUALIFICATION (RFQ)**

**RFQ SUBMISSION DATE: 28<sup>th</sup> February, 2018 TIME: 2:00pm EAST AFRICA TIME**

11<sup>th</sup> December, 2017

## Table of Contents

DISCLAIMER .....	2
1. INTRODUCTION.....	1
2. DEFINITIONS.....	2
3. THE BIDDING PROCESS .....	10
4. TERMS AND CONDITIONS .....	15
5. MINIMUM QUALIFICATION REQUIREMENTS.....	27
6. QUALIFICATION DOCUMENTS .....	29
7. SUBMISSION AND VALIDITY OF QUALIFICATION DOCUMENTS .....	32
8. OPENING OF QUALIFICATION DOCUMENTS .....	35
9. EVALUATION OF QUALIFICATION DOCUMENTS .....	35
10. DISQUALIFICATION OF PROSPECTIVE BIDDERS.....	36
11. PRE-QUALIFIED BIDDERS AND NOTICE OF QUALIFICATION .....	37
12. ACCEPTANCE OF TERMS AND CONDITIONS AND OF GOVERNING LAW .....	37
Annex QD-1A: NOTARIZED APPLICATION FOR PRE-QUALIFICATION.....	38
Annex QD-1B: NOTARIZED AUTHORITY TO APPLY TO PRE-QUALIFY AND DESIGNATE AN AUTHORIZED REPRESENTATIVE .....	41
Annex QD-2A: BUSINESS STRUCTURE (FOR A PROSPECTIVE BIDDER WHICH IS A SINGLE PROSPECTIVE BIDDER) .....	43
Annex QD-2B: BUSINESS STRUCTURE (FOR A PROSPECTIVE BIDDER WHICH IS A CONSORTIUM).....	46
Annex QD-3: BASIC INFORMATION SHEET.....	49
Annex QD-4: PPP EXPERIENCE .....	52
Annex QD-5: CONSTRUCTION EXPERIENCE .....	54
Annex QD-6: OPERATIONS AND MAINTENANCE EXPERIENCE.....	58
Annex QD-7: FINANCIAL QUALIFICATION .....	61
Annex QD-8: INDICATIVE FORM OF LETTER OF SUPPORT FROM QUALIFYING BANK AND FINANCIAL INSTITUTION .....	64
Annex-QD-9: CERTIFICATION OF ABSENCE OF UNSATISFACTORY PERFORMANCE RECORD.....	65
Annex QD-10: PROJECT MANAGEMENT .....	66
Annex-QD-11: INDICATIVE FORM OF LETTER OF COMMITMENT TO KNOWLEDGE TRANSFER AND LOCAL PARTICIPATION .....	67
Annex-QD-12: FORM OF PETITION.....	69
Annex-QD-13: FEES FOR PETITIONS .....	70
APPENDIX 1: MINIMUM QUALIFICATION REQUIREMENTS .....	71
SCHEDULE 1: TEMPLATE FOR QUERIES AND COMMENTS ON RFQ AND PIM.....	74

## **DISCLAIMER**

The information provided to Prospective Bidders, in this RFQ and any other information, whether verbal or written, provided by University of Embu (**UoEm**) or any of its employees or advisors, or on behalf of UoEm, is provided to Prospective Bidders on the terms and conditions set out in this RFQ and such other terms and conditions as may be set out from time to time. Capitalised terms used in this Disclaimer have the meaning assigned to such terms in this RFQ.

This RFQ is not an agreement and is neither an offer nor an invitation by UoEm to the Prospective Bidders or any other person. UoEm, its employees and/or advisors are not bound by any of the contents of the RFQ. The purpose of the RFQ is to provide interested parties with information that may be useful to them in preparing their Qualification Documents pursuant to the RFQ. The RFQ includes statements that reflect various assumptions and assessments arrived at by UoEm in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Prospective Bidder may require. The RFQ may not be appropriate for all persons, and it is not possible for UoEm, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses the RFQ. The assumptions, assessments, statements and information contained in the RFQ and any other associated documents may not be complete, adequate, accurate or correct. Each Prospective Bidder should, therefore, conduct its own investigations and analysis and should check the completeness, adequacy, accuracy, correctness, and reliability of the assumptions, assessments, statements and information contained in the RFQ and obtain independent advice from appropriate sources.

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

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

UoEm may, in its absolute discretion, but without being under any obligation to do so, amend, update, or supplement the information, assessments or assumptions contained in the RFQ. However, UoEm, its employees and/or advisors shall not be liable to any Prospective Bidder (including to the Pre-Qualified Bidders) in respect of any failure to (i) disclose or make available any information, documents or data; (ii)

amend, update, or supplement the RFQ; or (iii) provide any information regarding any inaccuracy, error, omission, defect or inadequacy in the RFQ.

The issuance of the RFQ does not imply that UoEm is bound to shortlist, select or to appoint one or more Pre-Qualified Bidders for the Project.

Notwithstanding anything contained in this RFQ, UoEm reserves the right to accept or reject all or any of the Prospective Bidders or Qualification Documents or to annul the Bidding Process, at any time without any liability or obligation for such acceptance, rejection or annulment, and without giving any reasons thereof. In the event that UoEm rejects all the Prospective Bidders or Qualification Documents or annuls the Bidding Process, it may, in its sole discretion, invite Prospective Bidders to submit fresh Qualification Documents. In the event that UoEm rejects all the Pre-Qualified Bidders or Bids, it may, in its sole discretion, invite the Pre-Qualified Bidders to submit fresh Bids.

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

Each Prospective Bidder shall comply with the Qualification Documents' parameters, terms and conditions provided therein. In no case shall any Prospective Bidder be allowed to modify the Qualification Documents' parameters even if, in its opinion, it offers better terms to UoEm than that provided herein.

## 1. INTRODUCTION

The Ministry of Education, Science and Technology (**MOEST**) is mandated to provide efficient delivery of technological and other educational services.

In Kenya, university student enrolment has continually increased over the years, putting pressure on university facilities. The Government of Kenya has pledged to finance construction of the required lecture theatres to address the increased numbers. However, provision of student hostels remain the responsibility of the universities. While establishment of private hostels off-campus was initially perceived as a solution to accommodation of the students, the real estate developers have taken advantage of the high demand by developing substandard accommodation for students. To address this challenge, universities are seeking private investors to partner with in the development of student hostels to reduce student accommodation shortage and eliminate the exploitation of students.

The Government of Kenya (**GoK**) has made infrastructure development through Public Private Partnerships (**PPPs**) a priority as a mechanism that can help in addressing the major infrastructure gaps in the country. The Public Private Partnerships Unit (**PPPU**) has been tasked with the responsibility to oversee the implementation of the GoK PPP Programme as set out in the National PPP Policy.

The PPPU, in consultation with five public universities (who serve as the Contracting Authorities (**CAs**)), is currently engaged on a project aiming to develop, operate and maintain five separate student hostels for the following institutions:

- Egerton University;
- University of Embu (UoEm);
- Kenya Technical Trainers College (KTTC);
- Moi University (MU); and
- South-Eastern Kenya University (SEKU).

Following the successful completion of a detailed feasibility study, UoEm and the PPPU have decided to proceed to the procurement phase of the project. Separate procurement phases will be conducted for each of the above named institutions. A brief description of the Project is contained in the Project Information Memorandum (**PIM**) available at UoEm's website [www.embuni.ac.ke](http://www.embuni.ac.ke).

Brief particulars of the Project are as follows:

**Location:** UoEm is located approximately 3 km from Embu town

**Available land size:** Approximately 240 acres

**Bed space capacity:** 4 000 (including 3,500 undergraduate and 500 postgraduate)

**Other amenities:** Dining halls and commercial facilities

UoEm hereby invites Prospective Bidders to apply for Qualification and submit Bids for the development, operation and maintenance of the Project, pursuant to a two-

stage open competitive bidding process in accordance with the PPP Act and the PPP Regulations, the applicable provisions of which are incorporated herein by reference.

This RFQ describes the process, procedures and requirements for the preparation and submission of the Qualification Documents by Prospective Bidders and the process to be followed by UoEm in its evaluation of the Qualification Documents and the shortlisting of Pre-Qualified Bidders.

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

- a) This RFQ document together with all its Appendices;
- b) The Project Information Memorandum; and
- c) Any Addendum/Clarification issued by UoEm from the date of the first publication of this RFQ.

## 2. DEFINITIONS

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

**Addendum/Clarification** means written instructions or guidance issued by UoEm including, but not limited to, further instructions, scheduling changes, information updates, clarifications and the response to any queries made by the Prospective Bidders in relation to this RFQ and made available online by UoEm at [www.embuni.ac.ke](http://www.embuni.ac.ke).

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

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

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

**Bidding Documents** means:

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

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

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

**Bid Stage** means the period commencing on the date that the RFP is issued to Pre-Qualified Bidders and expiring on the Effective Date or such other date as may be determined by UoEm.

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

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

**BLT** means a Build-Lease-Transfer scheme where a contracting authority authorizes a private party to finance and construct an infrastructure or development facility and upon its completion lease it to the contracting authority for a specified period and upon the expiry of which the ownership of the facility automatically transfers from the private party to the contracting party.

**BOO** means a Build-Own-Operate scheme where a private party designs, finances, constructs, operates and maintains the infrastructure facility and provides services for a specified period of time.

**BOT** means a Build-Operate-Transfer scheme where the private party finances, constructs, operates and maintains an infrastructure facility and transfers the facility to the contracting authority at the end of a specified period.

**BOOT** means a Build-Own-Operate-Transfer scheme where the private party designs, finances, constructs, operates and maintains the infrastructure facility and transfers the facility to the contracting authority at the end of a specified term.

**Business Day** means any day other than a Saturday, Sunday, national holiday or gazetted public holiday in Kenya in which banks are generally open for business in Kenya.

**Consortium** means an association of two or more Entities for the purpose of Pre-Qualifying to Bid for the Project.

**Consortium Member** means an Entity that is a member of a Consortium and may include a Contractor, but excludes a Qualifying Bank and Financial Institution.

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

**Construction Experience** means the experience described under Section 5.2.2.

**Construction Project** means a project for the construction, development, rehabilitation, operation or management of an asset or facility in a real estate development which include, among others, the development of residential housing units forming part of a real estate complex, offices, hotels as well as projects that incorporate a mixed use within the development.

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

**Control** means in relation to a person:

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

And the terms **controlled**, **controlling** and **majority shareholding** shall be construed accordingly.

**Conditions Precedent** means the conditions stipulated in the Project, to be met or otherwise waived, by each party to the Project Agreement before the Project Agreement comes into effect.

**Conflict of Interest** has the meaning ascribed to it under Section 4.2.

**Corrupt, Fraudulent or Dishonest, Collusive, Coercive, Undesirable, and Restrictive Practice** are defined in Section 4.5.

**Day** means a calendar day, unless otherwise specified.

**Eligible Construction Project** means an Eligible Project carried out by the Prospective Bidder or a Consortium Member who is a Construction Contractor, in each case as the main or principal contractor, in which construction has been completed in ten (10) years preceding the RFQ Submission Date valued at not less than USD 40 million. For the purposes of calculating the Eligible Construction Project value where the currency is other than USD, refer to Section 4.14 for the applicable exchange rate.

**Eligible O&M Project** means an Eligible Project carried out by the Prospective Bidder or a Consortium Member who is an O&M Contractor under a performance based O&M contract, in each case as the main or principal contractor, with an operation and maintenance period of not less than five (5) years (post-construction completion) ongoing or completed in the ten (10) years preceding the RFQ Submission Date, valued at not less than USD 10 million.



For the purposes of calculating the Eligible O&M Project where the currency is other than USD, refer to Section 4.14 for the applicable exchange rate.

**Eligible PPP Project** means an Eligible Project procured as a PPP design, construct, finance, operate and maintain project having been in operation (post-construction completion) for not less than one (1) year preceding the RFQ Submission Date and valued at not less than USD 30 million in which the Prospective Bidder or a Consortium Member held a minimum thirty percent (30%) shares in the project company responsible for the Eligible PPP Project at any time during the five (5) year period preceding the RFQ Submission Date. For the purposes of calculating the Eligible PPP Project where the value is other than USD, refer to Section 4.14 for the applicable exchange rate.

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

**Entity** means any legal entity and includes a company, partnership or corporation.

**Evaluation Criteria** means those technical and financial criteria set-out in the RFP.

**Financial Close** means the date on which the Financing Documents have become effective and the Project Company has immediate and unconditional access to such funding under the Financing Documents.

**Financial Qualification Requirements** means all the requirements as set out in Section 5.3.

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

**Financing Documents** means the documents, drawn by or in favour of Qualifying Bank and Financial Institution(s), providing funding for the complete debt component of the financing requirements for the Project together with the binding commitment for the Successful Bidder's equity investment, as per the terms and conditions of the Project Agreement.

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

**Fund** means the Project Facilitation Fund established under Section 68 of the PPP Act.

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

**Lead Member** means with reference to a Prospective Bidder which is formed of a Consortium, a Consortium Member who is named as the Lead Member in the memorandum of association entered into between the Consortium Members.

**Letter of Award** means the letter issued by UoEm to the Successful Bidder, including inter alia, the listing of any further requirements to be fulfilled prior to signing the Project Agreement.

**Lock-In Period** means the period of 2 -3 years specified under the Project Agreement in accordance with the requirements of Section 59 of the PPP Act during which, inter alia, the Lead Member and the Consortium Members shall hold and maintain a minimum level of equity in the Project Company.

**Minimum Qualification Requirements** means the Technical Qualification Requirements and Financial Qualification Requirements set out in Section 5 including experience in building or running of services relating to PPP hostel and student accommodation projects in Kenya or outside Kenya.

**Negotiations Committee** means the committee constituted by UoEm in accordance with Section 59(2) of the PPP Act.

**Net Worth** means:

- (i) with reference to a Prospective Bidder which is a single Entity, the amount by which the total assets of such an Entity exceed its total liabilities based on its Latest Audited Financial Statements;
- (ii) with reference to a Prospective Bidder which is formed of a Consortium, the amount by which the aggregate assets of the Consortium Members exceed their aggregate liabilities based on their Latest Audited Financial Statements;
- (iii) with reference to a Prospective Bidder which is a closed Investment Fund, evidence of the available funds shall be provided as evidence of Net Worth together with a declaration by its authorised representative that the anticipated investment in the Project by such Investment Fund falls within the Investment Fund's country and sectoral limits, taking into account investments held as on the RFQ Submission Date. Certified copies of its charter documents should be provided as a true and correct copy by the authorized representative.

**Operation & Maintenance Contractor** or **O&M Contractor** means an Entity proposed by the Prospective Bidder in the Qualification Documents to undertake the operation and maintenance of the Project.

**Operation and Maintenance (O&M) Experience** means the experience described under Section 5.2.2.3.

**PPP Act** means the Public Private Partnerships Act (Laws of Kenya), as amended or substituted from time to time.

**PPP Committee** means the Committee established under Section 4 of the PPP Act.

**PPP Experience** means the experience described under Section 5.2.1.

**PPP Regulations** means the Public Private Partnerships Regulations, 2014, enacted pursuant to the PPP Act, as amended from time to time.

**PPP Unit** means the unit established under Section 11 of the PPP Act.

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

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

**Pre-Qualified Bidder** means a Prospective Bidder who has Pre-Qualified to participate in the Bidding Process for the Project in accordance with the terms of this RFQ.

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

**Pre-Qualification Conference** means the meeting to be convened by UoEm pursuant to the issuance of this RFQ, the date, time and venue of which is specified in Section 4.11.

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

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

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

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

**Project** means the development, maintenance and operation of students' hostels as is described in more detail in the PIM.

**Project Agreement** means the contract to be entered into between UoEm and the Project Company.

**Project Company** means a special purpose vehicle (SPV) established under the Companies Act, Act No. 17 of 2015, by the Successful Bidder, in accordance with the provisions of the PPP Act, for the sole purpose of entering into the Project Agreement with UoEm and implementing the Project in terms thereof.

**Project Information Memorandum ("PIM")** means the document describing the Project available online at [www.embuni.ac.ke](http://www.embuni.ac.ke).

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

**Prospective Bidder** means any Entity or Consortium that submits a response to this RFQ and excludes a Qualifying Bank and Financial Institution.

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

**Qualification Documents** means the documents listed at Section 6 of this RFQ.

**Qualifying Bank and Financial Institution** means banks and financial institutions that have loaned debt finance to private sector parties for at least three (3) Construction Projects in emerging market economies with minimum debt finance of USD 50 million each at any time during the 10 years preceding the RFQ Submission Date with the repayment period for such debt being five years or more. An emerging market economy means the countries falling under (i) Upper middle income, (ii) Lower middle income and (iii) Low Income; as categorised under the World Bank Country and Lending Groups. (Ref: <https://datahelpdesk.worldbank.org/knowledgebase/topics/19280-country-classification>). For purposes of calculating the minimum debt finance where the currency of debt financed is other than USD, refer Section 4.14 for the applicable exchange rate.

**Request for Proposal or RFP** means the Request for Proposal document, including all its annexures, schedules and appendices that may be issued to the Prequalified Bidders at the Bid Stage and shall deem to include all amendments, revisions or alterations thereto.

**Reserved Bidder** means a Pre-Qualified Bidder whose Bid is ranked second to the Preferred Bidder in accordance with the Evaluation Criteria.

**RFQ Submission Date** means the last date and time by which Bidders must submit their Qualification Documents to UoEm in accordance with the terms of the RFQ and the schedule set out in Table 1 of Section 3.2.

**Success Fee** means an amount equivalent to the Transaction Advisor's fees, which the PPP Committee may impose on the Successful Bidder, and which shall be payable by the Project Company to the Fund on achieving financial close of the Project.

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

**Transaction Advisor** means the consortium led by Genesis Analytics Pty and consisting of Lexicon, Lloyd Masika, MMC Africa Law, PKF Consulting and Tandem and Stark.

**Universities Hostels PPP Projects** means the together the projects for the development, maintenance and operation of students' hostels under PPP models by Kenya Technical Trainers College, Moi University, South Eastern Kenya University and Egerton University, and each, a **University Hostels PPP Project**.

**UoEm** means University of Embu and shall include the Pre-Qualification Committee or any other committee or group or team or board that UoEm may set up in relation to the Bidding Process or for any purpose thereof pursuant to the provisions of the PPP Act and the PPP Regulations.

**UoEm Staff** means staff of University of Embu involved in maintenance and other services relating to running existing student accommodation.

**USD** means the legal currency of the United States of America.

2.2. The words and expressions beginning with capital letters and not defined herein, but defined in the PPP Act or PPP Regulations, shall unless repugnant to the context herein bear the meaning ascribed thereto under the PPP Act or the PPP Regulations.

### 2.3. General Rules of Interpretation

2.3.1. In case of ambiguities or discrepancies within this RFQ, the following rules of interpretation shall apply:

- (1) between two or more Sections of this RFQ, the provisions of a specific Section relevant to the issue under consideration shall prevail over those in other Sections;
- (2) between the Sections of this RFQ and the Annexes, the Sections shall prevail;
- (3) between any two Annexes, the Annex relevant to the issue shall prevail; and
- (4) between any value written in numerals and that in words, the latter shall prevail.

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

1.3.2 Unless the context otherwise requires:

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

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

### **3. THE BIDDING PROCESS**

3.1 The open competitive public bidding for the Project shall be conducted in accordance with the rules and procedures for public bidding set under the PPP Act and the PPP Regulations, the applicable provisions of which are incorporated herein by reference.

3.2 UoEm reserves the right to apply negotiation, competitive dialogue, and other procedures at any stage of the Bidding Process in conformity with the PPP Act and PPP Regulations.

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

**Table 1: Pre-Qualification Stage Schedule**

<b>Event/Activity Description</b>	<b>Responsible Party</b>	<b>Target date/time period</b>
<b>PRE-QUALIFICATION STAGE</b>		
Publication of the RFQ	UoEm	11 <sup>th</sup> December, 2017
Pre-Qualification Conference	UoEm	23 <sup>rd</sup> January, 2018
Last date for submission of queries on the RFQ	Prospective Bidders	14 <sup>th</sup> February, 2018
Last date for replying to the queries of the Prospective Bidders	UoEm	21 <sup>st</sup> February, 2018
RFQ Submission Date	Prospective Bidders	28 <sup>th</sup> February, 2018
Opening of all Qualification Documents received	UoEm	28 <sup>th</sup> February, 2018
Publication of the short list of Pre-Qualified Bidders	UoEm	April, 2018

**Table 2: Indicative Bid Stage Schedule**

<b>Event/Activity Description</b>	<b>Responsible Party</b>	<b>Target date/time period</b>
<b>BID STAGE</b>		
Issuance of the Request for Proposal Document (RFP) together with the draft Project Agreement including Schedules thereto	UoEm	April, 2018
Pre-Bid Conference	UoEm	May, 2018
Last date for submission of queries on the Bidding Documents	Pre-Qualified Bidders	June, 2018

Last date for replying to the queries of the Pre-Qualified Bidders	UoEm	June, 2018
Bid Submission Date	Pre-Qualified Bidders	June, 2018
Opening of Technical Proposals	UoEm	June, 2018
Notification of the results of the evaluation of the Technical Proposals	UoEm	July, 2018
Opening of Financial Proposals	UoEm	July, 2018
Completion of Evaluation of Financial Proposals and Ranking of Bidders	UoEm	July, 2018
PPP Committee Approval of the Proposal Evaluation Report and UoEm entering into negotiations with the Successful Bidder	PPP Committee	August, 2018
Finalisation of negotiations between UoEm and the Successful Bidder	UoEm & Successful Bidder	September, 2018
Preparation of the Project report specifying negotiated terms and recommendations	UoEm	September, 2018
Approval of the Project and risk assessment report	PPP Committee	October, 2018
Approval of the Project and risk assessment report	Cabinet	November, 2018
Issuance of the Letter of Award to the Successful Bidder	UoEm	November, 2018
Execution of Project Agreement	UoEm and Successful Bidder	December, 2018
Financial Close	UoEm, PPP Unit and Successful Bidder	Second Quarter, 2019

3.4 All references to dates, days and time shall refer to Kenya Standard Time (KST).



### **3.5 Modification of Pre-Qualification Stage & Bid Stage Schedule**

UoEm may, at its sole discretion, issue Addendum / Clarification at any time to amend, modify, and substitute the RFQ, the Pre-Qualification Stage process and requirements, the Bid-Stage process and requirements, the Pre-Qualification Stage Schedule and/or the Bid-Stage Schedule set out above, including the RFQ Submission Date. Prospective Bidders are encouraged and advised to refer/visit the websites ([www.embuni.ac.ke](http://www.embuni.ac.ke)) regularly for any Addendum / Clarification posted by UoEm and failure on part of the Prospective Bidder or any Consortium Member to keep themselves updated shall not incur any liability or responsibility of UoEm towards Prospective Bidder or any Consortium Member.

### **3.6 Bid Stage**

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

- (a) UoEm shall issue a notice to all Prospective Bidders announcing the names of the Pre-Qualified Bidders who will be issued the RFP. The RFP will provide details on the form and content of the Bid and procedures to be followed for the Bid preparation, submission, and evaluation by UoEm, and post-Bid submission requirements.
- (b) The draft Project Agreement will be provided as part of the RFP and UoEm will invite Pre-Qualified Bidders to comment, seek clarification and raise queries on the Project Agreement in advance of and during the Pre-Bid Conference and any subsequent negotiation or Competitive Dialogue process (as defined in the RFP).
- (c) UoEm will also announce the date, time and venue of the Pre-Bid Conference, to which all Pre-Qualified Bidders will be invited.
- (d) UoEm shall respond in writing to queries raised during the Pre-Bid Conference and Competitive Dialogue meetings at any other time specified in the RFP.
- (e) Bidders may submit written queries and requests for clarifications on the RFP up to the date falling fourteen (14) days before the Bid Submission Date. UoEm will respond to all requests for clarification by way of Addendum/Clarification omitting the identity of the Pre-Qualified Bidder that sought the clarification, save that any query submitted during the Competitive Dialogue Process shall be deemed confidential as between each Pre-Qualified Bidder and UoEm.

- (f) Following the submission of Bids UoEm will firstly review the Technical Proposals. UoEm will return the Financial Proposal of all Pre-Qualified Bidders whose Technical Proposal does not meet the minimum technical parameters as prescribed in the RFP.
- (g) Only those Bids containing Technical Proposals that are compliant and are assessed as being capable of meeting the standards specified in the RFP shall progress to the evaluation of the Financial Proposal.
- (h) UoEm will announce the date, time and venue of the opening of the Financial Proposals, to which all Pre-Qualified Bidders whose Technical Proposals meet the standards specified in the RFP will be invited.
- (i) The Financial Proposal evaluation will include the analysis, evaluation and comparison of the Financial Proposals of the Pre-Qualified Bidders, based on the parameters set out in the RFP.
- (j) Following analysis and evaluation of the Financial Proposals, UoEm shall prepare an evaluation report ranking the Bids in accordance with the parameters stated in the RFP to determine the Preferred Bidder and forward this report to the PPP Committee for approval.
- (k) Where the PPP Committee approves the evaluation report, the Negotiating Committee may, with the approval of the PPP Committee, enter into negotiations with the Preferred Bidder and request the Reserved Bidder to extend the validity of its Bid pending the completion of negotiations with the Preferred Bidder.
- (l) The Negotiating Committee shall enter into negotiations with the Preferred Bidder on the technical and financial terms of the Project Agreement, provided that the negotiations shall not affect the non-negotiable terms and conditions specified as non-negotiable conditions in the Project Agreement, the financial structure, or conditions in respect of which there were no reservations raised by the Preferred Bidder in its Bid.
- (m) Where the negotiations with the Preferred Bidder are unsuccessful, the Negotiating Committee shall enter into negotiations with the Reserved Bidder in accordance with the PPP Act and the PPP Regulations.
- (n) After the successful conclusion of negotiations with the Preferred Bidder or the Reserved Bidder, the Negotiating Committee shall prepare and submit to UoEm a project report specifying the negotiated terms together with its recommendations.
- (o) UoEm shall review the project report and submit it to the PPP Unit, which shall further review the project report and

- submit it together with its recommendations to the PPP Committee.
- (p) The PPP Committee shall consider the project report and prepare a report on its recommendations as to whether the Project may be undertaken as a public private partnership under the PPP Act, for approval by the Cabinet.
  - (q) Where the Cabinet approves undertaking of the Project, UoEm shall finalize and execute the Project Agreement with the Successful Bidder.

## **4. TERMS AND CONDITIONS**

### **4.1 Eligibility**

In order to be eligible for Pre-Qualification, a Prospective Bidder must be either an Entity or a Consortium.

#### **4.1.1 Single Prospective Bidder**

4.1.1.1 Where a Prospective Bidder is an Entity, its Qualification Documents shall be signed by the authorized representative who can duly bind such Prospective Bidder.

4.1.1.2 As proof of authority of the authorized representative to bind the Prospective Bidder, the Prospective Bidder shall provide an executed copy, in the form set out in **Annex QD-1B**, of the resolution of the board of directors, partners or its equivalent, of such Prospective Bidder authorizing the representative to sign the Qualification Documents on its behalf, which shall be notarized if executed outside Kenya.

#### **Change in composition, Control or form of a Single Prospective Bidder**

4.1.1.3 Pursuant to submission of its Qualification Documents, any change in composition or Control of a Prospective Bidder which is a single Entity may result in automatic disqualification from the Bidding Process of such Prospective Bidder.

4.1.1.4 A single Prospective Bidder shall not be replaced by another Prospective Bidder being a single Prospective Bidder or a Consortium.

4.1.1.5 In the event that any Prospective Bidder breaches clause 4.7.5, UoEm may (in its sole discretion) disqualify such a Prospective Bidder.

4.1.1.6 Where a Prospective Bidder which is a single Entity is selected as the Successful Bidder, the Prospective Bidder shall incorporate the Project Company and execute the Project Agreement. The PPP Committee may impose a Success Fee on such a Successful Bidder.

#### 4.1.2 Consortium

4.1.2.1 Where a Prospective Bidder is a Consortium, the Consortium Members shall enter into a consortium agreement specific to this Project (**Consortium Agreement**) for the purpose of submitting the Qualification Documents and submitting a Bid in the event of being short-listed. The Consortium Agreement, to be submitted together with the Qualification Documents, shall:

- (a) clearly specify the reasons for forming the Consortium;
- (b) clearly outline the proposed roles and responsibilities of each Consortium Member;
- (c) designate one of the Consortium Members to be the Lead Member;
- (d) include a statement to the effect that all Consortium Members shall be jointly and severally liable for all obligations of the Lead Member in relation to the Project until the Financial Close of the Project is achieved in accordance with the Project Agreement;
- (e) provide that the Lead Member shall be responsible for arranging financing for the Project Company, including, among others, liaising with the Qualifying Bank and Financial Institutions for purposes of mobilising debt resources for the Project and ensuring that each Consortium Member honours its obligations,

provided that, except as provided under this RFQ and the Bidding Documents, there shall be no amendment to the Consortium Agreement without the prior written consent of UoEm.

4.1.2.2 The Consortium Agreement shall be duly signed by each Consortium Member.

4.1.2.3 The Consortium Agreement shall be valid for the duration of the Bidding Process or, if the Consortium is the Successful Bidder, on the date that all the obligations of all the Consortium Members are discharged, whichever is later. UoEm may, at its sole discretion, extend the validity period of the Consortium Agreement on the original terms.

4.1.2.4 Where a Prospective Bidder is a Consortium, the Qualification Documents are to be signed by the authorized representative of the Lead Member.

- 4.1.2.5 Proof of authorization by the Consortium Members of the authorized representative of the Lead Member to act on behalf of the Consortium is to be included in the Qualification Documents, in the form set out in **Annex QD-1B**, duly signed by the authorized representatives of each Consortium Member and duly notarized where it is executed outside Kenya.
- 4.1.2.6 The authorized representative of the Lead Member shall be the only person authorized to make statements on behalf of and receive instructions from UoEm on behalf of the Prospective Bidder which is a Consortium.
- 4.1.2.7 A Consortium Member shall not participate through more than one Prospective Bidder for the purpose of pre-qualifying in terms of the PPP Act and this RFQ.

**Change in composition, Control or form of a Prospective Bidder which is a Consortium**

- 4.1.2.8 Pursuant to submission of its Qualification Documents, any change in composition or Control of a Prospective Bidder or any Consortium Member where the Prospective Bidder is a Consortium, may result in disqualification from the Bidding Process of such Prospective Bidder.
- 4.1.2.9 Where a Prospective Bidder or any of its Consortium Members undergoes a change in its composition or Control post submission of the Qualification Documents, it shall immediately following such change and in no event later than seven (7) days following such change, notify UoEm in writing. UoEm reserves the right to require the relevant Prospective Bidder to resubmit any Qualification Documents or provide such information with regard to the proposed change. Should any Prospective Bidder fail to advise UoEm of any change in composition or Control within seven (7) days of it becoming aware of such, UoEm may in its sole discretion disqualify such Prospective Bidder from the Bidding Process.
- 4.1.2.10 From the date of notification of results of evaluation of the Qualification Documents till such time as the RFP may be issued, UoEm may, in circumstances where a Pre-Qualified Bidder experiences a change in its composition due to a Consortium Member withdrawing (the "Withdrawing Member"), permit the replacement of the Withdrawing Member with another Entity, (the "Replacement Member").
- 4.1.2.11 Change in composition of a Pre-Qualified Bidder shall be permitted by UoEm only where:

- (a) the Lead Member continues to be the Lead Member;
- (b) the modified Consortium continues to meet the Minimum Qualification Requirements and all other terms and conditions specified under this RFQ;
- (c) the proposed Replacement Member is not a Prohibited Person;
- (d) there is no Conflict of Interest subsisting; and
- (e) the Replacement Member accepts in writing to the satisfaction of UoEm, the Qualification Documents submitted on behalf of the Consortium as if it were a party to it originally.

4.1.2.12 UoEm shall advise all other Prospective Bidders of the changes to the Consortium and such modified Consortium shall thereafter be referred to and considered as a Pre-Qualified Bidder.

4.1.2.13 UoEm reserves the right to require the relevant Prospective Bidder or the Pre-Qualified Bidder, as the case may be, which has undergone a change in composition or Control to submit such information with regard to the proposed change (including any Qualification Documents) so as to enable it to fully evaluate the consequences of such change and to determine whether the Pre-Qualified Bidder is required to re-qualify under the terms of the RFQ. All approvals for change in control or composition of a Consortium shall be given in writing by UoEm.

4.1.2.14 Any membership changes in the Consortium under this section shall not exceed one half of the Consortium Members (excluding Lead Member) – and where such proposed membership changes exceed more than half of the total originally named Consortium Members, regardless of its/their role in the Consortium, the change may not be approved, and the Consortium may be disqualified from further participation in the Pre-Qualification process.

4.1.2.15 A Prospective Bidder being a Consortium should not be replaced by a single Prospective Bidder or another Consortium.

4.1.2.16 For the avoidance of doubt UoEm is not obliged to extend the RFQ Submission Date or amend the Pre-Qualification Stage Schedule or the Bid Stage Schedule to accommodate any change in the composition or Control of a Prospective Bidder.

4.1.2.17 In the event that any Prospective Bidder breaches clause 4.7.5, UoEm may (in its sole discretion) disqualify such a Prospective Bidder. In the event it is demonstrated to the satisfaction of UoEm that a Consortium Member is acting alone with respect to a breach under this provision, such Consortium of which the offending Consortium Member is a part may be offered the opportunity to

disengage the offending Consortium Member and UoEm in its sole discretion may allow the Consortium to continue in the Bidding Process provided that removal of the offending Consortium Member does not result in the Prospective Bidder failing to meet or surpass the Minimum Qualification Requirements. For the avoidance of doubt, this provision may not be construed as a mechanism for instituting changes to the membership of consortia under the PPP Act.

4.1.2.18 Where a Prospective Bidder which is a Consortium is selected as the Successful Bidder, the Prospective Bidder shall incorporate the Project Company with all the Lead Member as the majority shareholder, and execute the Project Agreement. The PPP Committee may impose a Success Fee on such a Successful Bidder.

#### **4.2 Conflict of Interest**

4.2.1 Prospective Bidders and Consortium Members (if the Prospective Bidder is a Consortium) must not have any Conflict of Interest. The assessment of the existence of a Conflict of Interest shall be based on the specific facts of each case.

4.2.2 Without limiting the generality of what would constitute a Conflict of Interest, a Prospective Bidder shall be considered to have a Conflict of Interest, under any or all of the following circumstances:

4.2.2.1 a Prospective Bidder or any Consortium Member, is also a Consortium Member of another Prospective Bidder;

4.2.2.2 a Prospective Bidder or any Consortium Member has common shareholder(s) that holds in excess of ten percent (10%), of the shares or voting rights of another Prospective Bidder or a Consortium Member;

4.2.2.3 a member of the board of directors, partner, officer, employee, professional advisor or agent of a Prospective Bidder, or any Consortium Member who is directly or indirectly involved in the Bidding Process, is also directly or indirectly involved in any capacity related to the Bidding Process for another Prospective Bidder, or any Consortium Member of any other Prospective Bidder; and

4.2.2.4 a Prospective Bidder has the same authorized representative for the purposes of Pre-Qualification as any other Prospective Bidder.

4.2.3 Without limiting the generality of what constitutes Conflict of Interest, any of the following shall also be considered a Conflict of Interest:

4.2.3.1 a Prospective Bidder, or any of its Consortium Members, has been directly engaged as a consultant by UoEm in the preparation of RFQ, RFP or any other relevant document or the

design, or technical specifications of the Project or in connection with the Bidding Process; or

4.2.3.2 a Prospective Bidder, or any of its Consortium Members engages any legal, financial, or technical advisor or consultant who is or was an employee of UoEm or Government of Kenya and was engaged in any manner for matters related to or incidental to the Project unless such advisor or consultant was engaged by that Prospective Bidder, or any of its Consortium Members, in the past but its assignment expired or was terminated 6 months prior to the date of issue of this RFQ;

4.2.3.3 a Prospective Bidder, any of its Consortium Members, receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Prospective Bidder, any of its Consortium Members, or has provided any subsidy, grant, concessional loan or subordinated debt to any other Prospective Bidder, any of its Consortium Members.

4.2.4 If a Prospective Bidder, or any Consortium Member of a Prospective Bidder, is found to have a Conflict of Interest as defined herein, the Prospective Bidder shall be disqualified from further participation in the Bidding Process. If the Conflict of Interest involves another Prospective Bidder or any of its Consortium Members, such Prospective Bidder shall also be disqualified.

#### **4.3 Warranties**

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

4.3.1.1 No Conflicts of Interest exists;

4.3.1.2 Its Qualification Documents have been prepared without consultation, communication or agreement for restricting competition with any other Prospective Bidder (including the Consortium Members if the other Prospective Bidder is a Consortium);

4.3.1.3 Its Qualification Documents have not been disclosed, nor will they be disclosed to any other Prospective Bidder or Consortium Member of any other Prospective Bidder if the other Prospective Bidder is a Consortium;

4.3.1.4 No attempt has been made nor will be made by it to induce any other person to submit or not to submit Qualification Documents; and

4.3.1.5 It (including any of its Consortium Members) has not engaged or consulted with, including by way of gratuitous consultations, any person who (i) is currently in the employment of the Transaction Advisor or of UoEm/Government of Kenya; or (ii) was in the



employment of the Transaction Advisor or of UoEm/Government of Kenya and was involved in the Project in any manner or capacity at any time preceding the RFQ Submission Date.

#### **4.4 Ownership of Documents**

4.4.1 All information and data submitted by a Prospective Bidder shall become the property of UoEm, with the exception of material protected by copyright, trade secrets or other proprietary information clearly identified as such by the Prospective Bidder. Prospective Bidders agree to indemnify UoEm and hold it harmless from any loss, damage, liabilities, claims, actions, proceedings, demands, costs, charges or expenses of whatsoever nature suffered by UoEm for its refusal to disclose materials marked as being copyright material, trade secrets or other proprietary information to any person seeking the disclosure of such materials.

4.4.2 This RFQ is being made available to Prospective Bidders exclusively in connection with the Project and shall not be used for any purpose other than the Bidding Process. The Qualification Documents provided by Prospective Bidders and any confidential information contained therein shall be disclosed by UoEm only to employees and advisers employed or engaged by it, and persons employed or engaged by a Public Entity who is involved or connected in any manner with the Bidding Process and the evaluation of Qualification Documents submitted by Prospective Bidders.

#### **4.5 Corrupt, Fraudulent or Dishonest, Collusive, Coercive, Undesirable and Restricted Practices**

4.5.1 If a Prospective Bidder or any Consortium Member is found to have, directly or indirectly, engaged in any Corrupt, Fraudulent or Dishonest, Collusive, Coercive, Undesirable or Restrictive Practice during the Bidding Process, UoEm shall:

4.5.1.1 disqualify the Prospective Bidder or rescind the Letter of Award, without liability whatsoever towards the Prospective Bidder or the Successful Bidder, as the case may be or any other person;

4.5.1.2 seek to impose the maximum penalties for civil and criminal liability available under the applicable law on person involved in such practices; and

4.5.1.3 without limitation of time prohibit or disqualify persons involved in such practices from participating in any bidding process run by UoEm or the Government of Kenya from the date that they are found to have directly or indirectly engaged in any such practices.

4.5.2 For the purposes of this Section, the following terms shall have the meanings hereinafter assigned to them:

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

#### 4.6 Statement as to the accuracy of the Qualification Documents

The Qualification Documents shall include a statement, in the form of **Annex QD-1A** by the signatories to the Qualification Documents, to the effect that all information and documentation forming part of the Qualification Documents are true and accurate and that the Prospective Bidder (and all of its

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

#### **4.7 Queries, Requests for Clarifications and Contact Policy**

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

4.7.1.1 **University of Embu (UoEm)**

Attention: Huria Karugu

Project Liaison Officer

[huria.karugu@embuni.ac.ke](mailto:huria.karugu@embuni.ac.ke)

4.7.1.2 **Genesis Analytics Pty**

Attention: Joel Barnor

Transaction Advisor

[joelb@genesis-analytics.com](mailto:joelb@genesis-analytics.com)

4.7.2 All queries and requests for clarifications shall be submitted in English.

4.7.3 All queries, requests for clarifications and comments by the Prospective Bidders shall be submitted via email to the email addresses provided in this RFQ and the Prospective Bidders must use the MS Excel template provided in **Schedule 1** for all queries/comments.

4.7.4 All queries must clearly indicate the name of the signatory and his position/title with respect to the Prospective Bidder making the query.

4.7.5 No information or clarification may be requested by a Prospective Bidder (including any Consortium Member) from any member of the Project Team, the employees of UoEm or any other public official who may be associated with the Project, other than from the Project Managers.

4.7.6 Although UoEm will attempt to respond to all reasonable queries before the RFQ Submission Date, UoEm is under no obligation to do so. Responses to queries and any modifications to the RFQ will be made available to all Prospective Bidders through issue of Addendum/Clarification. UoEm shall not reveal the identity of the Prospective Bidder who made the query to which such Addendum/Clarification has responded.

## **4.8 Non-Compliance**

- 4.8.1 Any material failure on the part of a Prospective Bidder to comply with the terms of this RFQ will result in its Qualification Documents being treated as non-compliant.
- 4.8.2 UoEm may, in its own discretion, reject any non-compliant Qualification Documents without further evaluation of the remaining Qualification Documents, whether compliant or not.

## **4.9 Language and foreign documents**

- 4.9.1 The Qualification Documents, and all correspondence and documents relating to this RFQ, shall be prepared and written in the English language.
- 4.9.2 All documents executed in a foreign country must be notarized by a notary public in that country. Wherever copies of the original documents are required to be submitted as a part of the Qualification Documents, the same shall also be duly certified as true copies of the originals.
- 4.9.3 If the document was issued by a foreign authority, the Prospective Bidder should also submit a certified true copy of such document issued by such foreign authority and, where the original of such document was in a language other than English, the Prospective Bidder will attach a duly translated English copy of such document by a translator who shall certify the translation as true and genuine.

## **4.10 Responsibilities of Prospective Bidders**

- 4.10.1 Notwithstanding any information expressed or implied in this RFQ, any additional communications issued by UoEm, including any Addendum/Clarification, it is the sole responsibility of any Prospective Bidder to:
  - 4.10.1.1 fully acquaint itself with the requirements, terms, and conditions of the Bidding Process;
  - 4.10.1.2 examine this RFQ, and other documents to verify the completeness and accuracy of the information contained in such documents;
  - 4.10.1.3 familiarize itself with all the applicable laws and administrative issuances and regulations of Kenya, whether national or local, that may affect the Bidding Process and the Project;
  - 4.10.1.4 determine and satisfy itself, at its own cost, expense and risk, and by such means as it considers necessary or desirable, as to all matters pertaining to the execution of the Project,

including but not limited to the location and nature of the Project; the terrain, geological, meteorological, and hydrological conditions; existing works and plans for future works in the area; existing and planned above ground and sub-level utilities; easements; existing or threatened legal disputes or issues; environmental and social concerns and issues; the requirement and availability of labour, materials, equipment, aggregate sources, water, power, roads, communications and other relevant factors; resource requirements; traffic projections; the financial viability of the Project; risks and contingencies that may affect the cost, duration, execution and completion of the Project.

4.10.2 By submitting the Qualification Documents, a Prospective Bidder shall be deemed to have accepted all of the terms and conditions of this RFQ.

#### **4.11 Pre-Qualification Conference**

4.11.1 UoEm may conduct a Pre-Qualification Conference on the date indicated in Table 1. The purpose of the Pre-Qualification Conference is to clarify any part of the RFQ or the Bidding Process and to answer any relevant questions Prospective Bidders may raise. The details of the Pre-Qualification Conference are as follows:

**Date: 23<sup>rd</sup> January, 2018**

**Time: 9:00 am – 4:00 pm**

**Venue: Nairobi, Kenya**

4.11.2 No provisions, terms, or conditions of this RFQ shall be modified by statements made at the Pre-Qualification Conference unless these are made in writing and contained in an Addendum / Clarification issued by UoEm.

4.11.3 Attendance at the Pre-Qualification Conference shall not be mandatory, and non-attendance by a Prospective Bidder shall not constitute a ground for any valid claim with respect to the requirement to satisfy all conditions of this RFQ.

#### **4.12 Frivolous and Vexatious Petition**

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

#### **4.13 Other Universities Hostels PPP Projects**

4.13.1 Prospective Bidders may seek pre-qualification for any other University Hostels PPP Project or other PPP projects that may be procured by UoEm or any other contracting authority (as defined under the PPP Act), in addition to Pre-Qualification for this Project.

4.13.2 A Prospective Bidder who seeks pre-qualification for any other University Hostels PPP Project or PPP project in addition to this Pre-Qualification for this Project will be required to meet the cumulative applicable Minimum Qualification Requirements for this Project and for any other such University Hostels PPP Project or PPP project, as per the illustration in Appendix 1.

4.13.3 In the event that, following the evaluation process based on the Evaluation Criteria, a Prospective Bidder is Pre-Qualified for any other University Hostels PPP Project, UoEm reserves the right to require such Pre-Qualified Bidder to demonstrate that they have the necessary technical and/or financial resources to undertake and perform the required works, services and other obligations on the Project and any such other University Project without imposing additional risk on UoEm.

#### **4.14 Applicable exchange rate for currency conversion to USD**

4.14.1 Unless otherwise specified, for expressing the value of any currency other than USD in USD equivalent, the applicable exchange rate shall be the daily representative exchange rates published by the Central Bank of Kenya as on 11<sup>th</sup> December, 2017.

4.14.2 Where the exchange rate is not published for any currency by the Central Bank of Kenya, the exchange rate published by the central bank of the country of which the currency is to be converted into USD shall be deemed to be the relevant exchange rate.

4.14.3 The Prospective Bidder shall, together with its Qualification Documents, state all the exchange rates, the reference date and the definitive source of the exchange rate for the currency used.

4.14.4 In the event that the Audited Financial Statements of a Prospective Bidder/ Consortium Member are prepared in any currency other than USD, then:

4.14.4.1 Net Worth figures presented in the Qualification Documents shall be converted by the Prospective Bidder/Consortium Member into USD at the relevant exchange rate for the financial year end date to which the Latest Audited Financial Statements were drawn up; and

4.14.4.2 turnover figures presented in the Qualification Documents shall be converted by the Prospective Bidder/Consortium Member into USD at the average of the relevant 12-month end exchange rates for each of the 3 financial years for which turnover information is required.

## **5. MINIMUM QUALIFICATION REQUIREMENTS**

5.1 UoEm has established the following Minimum Qualification Requirements that Prospective Bidders must meet (or surpass) in order to Pre-Qualify. Evaluation of Prospective Bidder's credentials against the Minimum Qualification Requirements will be strictly on a pass/ fail basis. In the event a Prospective Bidder fails to meet any of the Minimum Qualification Requirements, its Qualification Documents will not be considered further and such Prospective Bidder will have failed to Pre-Qualify for the next stage of the Bidding Process. Where the Prospective Bidder is a Consortium, the aggregate of the technical and financial qualifications of the Qualifying Shareholders shall meet or surpass the Minimum Qualification Requirements as specified below:

- 5.1.1 Two members of the same Consortium who have worked together on the same Eligible Project may not both use such Eligible Project in their experience statements. Such a project will only be counted once towards the Qualification Requirements.
- 5.1.2 Two Consortium Members of competing Prospective Bidders who have worked together on the same Eligible Project may both use such Eligible Project in their Qualification Documents.
- 5.1.3 An Eligible Project may qualify as one or more of an Eligible PPP Project, an Eligible Construction Project and an Eligible O&M Project.

### **5.2 Technical Qualifications Requirements**

#### **5.2.1 PPP Experience**

- 5.2.1.1 The Prospective Bidder shall demonstrate that in the five (5) years preceding the RFQ Submission Date, the Entity whose Eligible PPP Project is proposed has:
  - (a) undertaken Eligible PPP Projects whose value in aggregate exceeds USD 30 million;
  - (b) experience of undertaking Eligible PPP Projects on BOT, BLT, BOO, BOOT or other similar basis for providing its output or services to a public sector entity;
  - (c) paid for the development of the Eligible PPP Project (excluding the cost of the land); or
  - (d) collected and appropriated the revenues from third parties accessing the fixed assets of the Eligible PPP Project.

5.2.1.2 The Entity whose Eligible PPP Project is proposed must provide documents evidencing that it holds or has held a share of not less than thirty percent (30%) in the project company responsible for the Eligible PPP Project.

## **5.2.2 Construction Experience**

5.2.2.1 The Prospective Bidder shall demonstrate that in the ten (10) years preceding the RFQ Submission Date, it has undertaken Eligible Construction Projects whose value in aggregate exceeds USD 40 million.

5.2.2.2 For avoidance of doubt, Construction Experience shall not include supply of goods or equipment except where such goods or equipment form part of a turn-key construction contract for the project.

5.2.2.3 The Entity proposed to meet the Construction Experience requirement must have an average annual turnover from construction activities of not less than USD 20 million over the five (5) years preceding the RFQ Submission Date as reflected in the Latest Audited Financial Statements and the Audited Financial Statements for the five (5) financial years immediately preceding the year of the Latest Audited Financial Statements.

## **5.2.3 Operation and Maintenance (O&M) Experience**

5.2.3.1 The Prospective Bidder shall demonstrate that in the ten (10) years preceding the RFQ Submission Date, the Entity whose Eligible O&M Project is proposed has:

- (a) experience of undertaking Eligible O&M Projects whose value in aggregate exceeds USD 10 million;
- (b) experience of undertaking Eligible O&M Project in the Kenyan and international fields; or
- (c) experience of managing a combination of hard and soft services relevant to the Project.

## **5.3 Financial Qualification Requirements**

5.3.1 A Prospective Bidder shall demonstrate that it has strong credit backing, banking support (including indicative term sheets and letters of interest for the provision of debt finance) and can directly or indirectly successfully arrange financing for the Project, and arrange the required security on completion and performance, by providing:

- (a) evidence of the Prospective Bidder's specific experience, as project sponsor, in raising the equivalent of at least USD 45 million in total financing for a previous project in the five (5) years preceding the RFQ Submission Date, including a description of the projects, the role of the project sponsor in obtaining financing, a summary of the



amounts and types of financing raised, names of key individuals or authorities involved who can verify the information (name, title, organization, address, telephone number);

- (b) complete disclosure of any incidents of default on projects where the Prospective Bidder or related entity acted as project sponsor and the current status of such incidents; and
- (c) complete disclosure of any liabilities, contingent liabilities, obligations, charges and liens, covenants, off-balance sheet financing arrangements, defaults, legal action pending, or other matters that might prevent the Prospective Bidder from implementing the Project.

5.3.2 A Prospective Bidder shall demonstrate Net Worth of not less than USD 50 million, as per its Latest Audited Financial Statements.

## 6. QUALIFICATION DOCUMENTS

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

- 6.1.1 Notarized Application to Pre-Qualify, using the form in **Annex QD-1A**.
- 6.1.2 Notarized Authority to Apply to Pre-Qualify and designate an Authorized Representative.
  - 6.1.2.1 If the Prospective Bidder is a single Prospective Bidder, it must submit a Notarized Authority using the form in **Annex QD-1B**.
  - 6.1.2.2 If the Prospective Bidder is a Consortium, the Lead Member shall submit a Notarized Authority using the form in **Annex QD-1B** in favour of its authorized representative.
- 6.1.3 Business Structure, using the form in **Annex QD-2A** for a single Prospective Bidder and **Annex QD-2B** for Consortia.
  - 6.1.3.1 The Business Structure (in both Annex **QD-2A** and **QD-2B**) must also indicate the Entity proposed to satisfy each and every Minimum Qualification Requirement set out in Section 5.
  - 6.1.3.2 With reference to Annex **QD-2B**, a Prospective Bidder which is a Consortium must show the Lead Member and all the Consortium Members. A copy of the Consortium Agreement setting out the relationship the Consortium Members in the Project Company shall also be enclosed with **Annex QD-2B**.
- 6.1.4 Basic Information Sheet, using the form in **Annex QD-3**.
  - 6.1.4.1 The Basic Information Sheet must be submitted by all Entities identified in the Business Structure.
  - 6.1.4.2 Required attachments for each of the Entities in the Business Structure include the following :

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

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

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

- 6.1.5.1 Documentary evidence from each Eligible PPP Project owner regarding the status of the operation phase of the Eligible PPP Project or confirming that the construction of such Eligible PPP Project has been completed and accepted by the project owner and specifying the date of completion and acceptance of such Eligible PPP Project (e.g. completion certificate). The documentary evidence for each Eligible PPP Project shall be accompanied by a certified statement from the authorized representative of the Entity claiming the PPP Experience that the documentary evidence provided is the standard form of project acceptance in the jurisdiction from which Eligible Project is presented; and
- 6.1.5.2 project data sheets specifying the name and location of the Eligible PPP Project, the total development cost specifying the amount of debt and the amount of equity used to finance the project, and economic return(s) achieved, client name and contact details, and details including percentage shareholding of such Entity in the Eligible PPP Project.

6.1.6 Construction Experience, using the form in **Annex QD-5**.

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

- 6.1.6.1 Documentary evidence from each Eligible Construction Project owner regarding the status of the operation phase of the Eligible Construction Project or confirming that the construction of such Eligible Construction Project has been completed and accepted by the project owner specifying the date of completion and acceptance of such Eligible Construction Project (e.g. completion certificate). The documentary evidence for each Eligible Construction Project shall be accompanied by a statement certified by the authorized representative of the Entity.
  - 6.1.6.2 Certification by the authorized representative of the Entity specifying that the average annual turnover from construction activity of the Entity meeting the Construction Experience requirements is equal to or greater than USD 20 million over the last five (5) years preceding the RFQ Submission Date, together with the Audited Financial Statements of the last 5 years in support thereof as prescribed under Section 5.2.2.2.
- 6.1.7 O&M Experience, using the form in **Annex QD-6**.  
The following must be provided by the Entity proposed to meet the O&M Experience requirements, as identified in the Business Structure:
- 6.1.7.1 Confirmation from the Eligible O&M Project owner that the Eligible O&M Project has been (or continues to be) operated and maintained by that Entity in the ten (10) years preceding the RFQ Submission Date and that the period for which that Entity has to operate and maintain the Eligible O&M Project is not less than five (5) years.
  - 6.1.7.2 Project data sheets specifying the name and location of the Eligible O&M Project including, the value of the project, the client name and contact details.
- 6.1.8 Statement of Financial Capacity, using the form in **Annex QD-7** by the Prospective Bidder. If the Prospective Bidder is a Consortium, duly certified true copy of the Latest Audited Financial Statements must be submitted by each Consortium Member proposed as meeting the Financial Qualification Requirements. In the event such Audited Financial Statements are in a language other than English, the same shall be accompanied by an accurate English translation of such document duly translated into English by a translator who shall certify the translation as true and genuine. In addition to the above requirements, where a Prospective Bidder or a Consortium Member is an Entity which is a closed Investment Fund, evidence of the available funds shall be provided as evidence of Net Worth together with a declaration by its authorised representative that the anticipated investment in the Project by such Investment Fund falls within the

Investment Fund's country and sectoral limits, taking into account investments held as on the RFQ Submission Date. A certified copy of its charter documents should be provided as a true and correct copy by the authorized representative of the closed Investment Fund.

- 6.1.9 Indicative letter of support from Qualifying Bank and Financial Institution for lending of debt finance for the Project, substantially in the form provided at **Annex QD-8**.
- 6.1.10 Certification of Absence of Unsatisfactory Performance Record using the **Annex QD-9** by a single Prospective Bidder and all Consortium Members where the Prospective Bidder is a Consortium.
- 6.1.11 Information, using the form in **Annex QD-10**  
For information purposes only, Prospective Bidders shall provide the names of the key team members (and their employers) who are intended to be involved in the management of the Bid.
- 6.1.12 Prospective Bidders are required to submit as part of their Qualification Documents, the letter using the format in **Annex QD-11** stating commitment to transfer knowledge to UoEm staff and its requirements regarding the transfer of any UoEm staff to the site of the Project, ensure local participation in the Project and demonstrating that it has understood and reflected on the needs of the Project from an education perspective and the Project's integration with the rest of the UoEm infrastructure.
- 6.1.13 The summary of Minimum Qualification Requirements is enclosed as **Appendix 1**. The same (i.e. Appendix 1) should be read in conjunction with Section 5 and in the event of any conflict, the provisions of Section 5 shall prevail.

## **7. SUBMISSION AND VALIDITY OF QUALIFICATION DOCUMENTS**

### **7.1 Format of Submission of Qualification Documents**

- 7.1.1 A Prospective Bidder must submit its Qualification Documents in the following form:
  - 7.1.1.1 One (1) complete original set, clearly marked on the cover page as "QUALIFICATION DOCUMENTS-ORIGINAL," and each document must have pagination in continuous sequential order;
  - 7.1.1.2 Two (2) sets of photocopies, clearly marked on the cover page as "QUALIFICATION DOCUMENTS-COPY NO. \_\_\_"; and
  - 7.1.1.3 Two (2) readable compact discs (CD-R), each containing electronic files of all the documents comprising the

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

- 7.1.2 Each page of the original set of Qualification Documents, including any required attachments, shall be serially numbered and initialled using blue ink (on the right margin) by the Prospective Bidder's authorized representative as identified in the form in **Annex QD-1B**. In case of conflict between the original set and the photocopies, the original set shall prevail.
- 7.1.3 Each set of the Qualification Documents should contain a table of contents.
- 7.1.4 Whenever possible, Qualification Documents must be printed either in standard A4 or letter size (8 ½" x 11") paper and bound together in ring binders or folders of appropriate size. Documents must be paginated and text must be at least of 12-font size.
- 7.1.5 Each set of the Qualification Documents must be placed in an envelope. The two (2) CDs should also be placed in two separate envelopes. Each of the three (3) envelopes containing the Qualification Documents and the two envelopes containing the two (2) CDs must be sealed and appropriately addressed and marked as follows:

<p>UNIVERSITY OF EMBU</p> <p>PUBLIC PRIVATE PARTNERSHIP FOR THE UNIVERSITY OF EMBU HOSTELS PROJECT</p> <p>[TENDER NUMBER]</p> <p>[ORIGINAL/COPY NO. ( )/ CDs. No. ( )]</p> <p>[STATE NAME, ADDRESS, TELEPHONE NUMBER (WITH COUNTRY AND CITY CODE) AND EMAIL OF PROSPECTIVE BIDDER</p> <p>DO NOT OPEN UNTIL [RFQ SUBMISSION DATE]</p>
--

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

<p>UNIVERSITY OF EMBU</p> <p>PUBLIC PRIVATE PARTNERSHIP FOR THE UNIVERSITY OF EMBU HOSTELS PROJECT</p> <p>QUALIFICATION DOCUMENTS</p> <p>[TENDER NUMBER]</p> <p>[STATE NAME, ADDRESS, TELEPHONE NUMBER (WITH COUNTRY AND CITY CODE) AND EMAIL OF PROSPECTIVE BIDDER</p> <p>DO NOT OPEN UNTIL [RFQ SUBMISSION DATE]</p>
--

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

**7.2 Place and deadline of submission of Qualification Documents and their validity**

7.2.1 Each Prospective Bidders' Qualification Documents are to be deposited no later than 2:00 pm, Kenya Standard Time, on RFQ Submission Date in the tender box at **University of Embu in Embu** or addressed (at the Prospective Bidder's absolute risk as to timely delivery) to:

**The Vice Chancellor  
University of Embu  
P.O. Box 6-60100  
Embu**

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

7.2.2 The Qualification Documents submitted by Prospective Bidders shall be stamped with the date and time of receipt (Kenya Standard Time) which shall be recorded in a register maintained for that purpose by UoEm.

7.2.3 Any Qualification Documents received after the RFQ Submission Date will be automatically rejected and not accepted.

7.2.4 Qualification Documents cannot be modified, altered, substituted or withdrawn after the RFQ Submission Date. For avoidance of doubt, it

is clarified that Qualification Documents can be substituted by the Prospective Bidder any time prior to the RFQ Submission Date by written notification to UoEm.

7.2.5 Qualification Documents shall remain valid for a period of one hundred twenty (120) days after the RFQ Submission Date. The Prospective Bidder may extend the validity of the Qualification Documents if so required by UoEm. Failure on part of the Prospective Bidder to extend or agree to extend the validity period of the Qualification Documents as may be requested by UoEm shall result in rejection of the Bid of such Pre-Qualified Bidder.

## **8. OPENING OF QUALIFICATION DOCUMENTS**

8.1 At 3:00pm on the RFQ Submission Date, UoEm will commence the opening proceedings by announcing the names of the Prospective Bidders who have submitted Qualification Documents. UoEm shall then open the envelope of each Prospective Bidder, one at a time, in the order in which the Qualification Documents were received by UoEm.

8.2 UoEm shall examine the contents of each Prospective Bidder's envelope to determine whether it contains all of the Qualification Documents required. If the contents of the envelope are found to be incomplete, UoEm may (in its own sole discretion) disqualify the Prospective Bidder.

8.3 A representative of each Prospective Bidder will be allowed to witness the opening of the Qualifications Documents. Such representative shall sign the register confirming their attendance. A Prospective Bidder who does not send a representative to witness the opening of the envelope shall be deemed to have waived the opportunity to witness the opening.

8.4 UoEm shall evaluate the Qualifications Documents submitted in accordance with Section 9.

## **9. EVALUATION OF QUALIFICATION DOCUMENTS**

9.1 UoEm shall evaluate the Qualification Documents after the RFQ Submission Date. The detailed evaluation of the Minimum Qualification Requirements of each Prospective Bidder for the Project shall be based exclusively upon the submitted Qualification Documents.

9.2 UoEm reserves the right to make enquiries or seek clarification or any additional information it may find necessary or desirable to clarify or authenticate the statements made and information provided in the Qualification Documents by any Prospective Bidder. UoEm may make requests for clarification in writing to the authorized representative of the Prospective Bidder.

9.3 All information submitted and any clarifications received by UoEm shall be evaluated against the Minimum Qualification Requirements and evaluated strictly on a pass-or-fail basis. The Prospective Bidder will be considered as Pre-Qualified if all Qualification Requirements are rated “passed” and all required Qualification Documents and attachments are completely submitted in the proper form and any other enquiries made by UoEm shall have produced a satisfactory response and all other requirements of the RFQ have been complied with. The Prospective Bidder shall be considered as disqualified if any Qualification Requirement is rated failed or if any required Qualification Document is missing or not in the proper form or UoEm receives an unsatisfactory response to any enquiries it has made in respect of a Prospective Bidder’s Qualification Documents.

## **10. DISQUALIFICATION OF PROSPECTIVE BIDDERS**

10.1 A Prospective Bidder may be disqualified from participating in the Bidding for any of the following reasons in addition to the grounds for disqualification described above in section 9.2.

10.2 A Prospective Bidder shall be disqualified if:

10.2.1 it is a Prohibited Person; or

10.2.2 it submits false, inaccurate or incomplete information in relation to its qualifications; or

10.2.3 it involves itself in any Corrupt, Fraudulent or Dishonest, Collusive, Coercive, Undesirable, or Restrictive Practice;

10.2.4 it has a Conflict of Interest as described in Section 4.2;

10.2.5 it contravenes the provisions of the PPP Act, PPP Regulations or any other written law, inter-alia, in order to have an unfair advantage over the other Prospective Bidders;

10.2.6 it fails to pass the Minimum Qualification Requirements as per the evaluation criteria set out at Section 9.3;

10.2.7 it makes a wilful misrepresentation in the Qualification Documents; or

10.2.8 it participates in any illegal activity or attempts to influence the Pre-Qualification Committee’s evaluation of the Qualification Documents or otherwise interferes with the Pre-Qualification process.

10.3 For the avoidance of doubt grounds for disqualification shall apply to all Prospective Bidders and Consortium Members proposed by the Prospective Bidder to fulfil any of the Minimum Qualification Requirements.

10.4 Any Prospective Bidder who is aggrieved by the decision of MU to disqualify or not to pre-qualify it may petition the PPP Petition Committee substantially in the form in Annex QD-12 and upon payment of the prescribed fees as specified in Annex QD-13.



## **11. PRE-QUALIFIED BIDDERS AND NOTICE OF QUALIFICATION**

11.1 A Prospective Bidder who is declared as having 'passed' under Section 9 shall be deemed to have Pre-Qualified and is designated a Pre-Qualified Bidder and eligible to participate in the Bid Stage of the Bidding Process.

11.2 UoEm shall notify all Prospective Bidders in writing following completion of the evaluation of all submitted Qualification Documents and shall advise each Prospective Bidder individually as to whether or not they have Pre-Qualified. UoEm shall also publish the list of the Pre-Qualified Bidders in the Gazette and in at least two newspapers of national circulation.

## **12. ACCEPTANCE OF TERMS AND CONDITIONS AND OF GOVERNING LAW**

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

12.1.1 all the terms and conditions contained in this RFQ; and

12.1.2 the laws of Kenya applicable to:(i) the issuance of this RFQ by UoEm; and (ii) the submission of the Qualification Documents by the Prospective Bidder.

## Annex QD-1A: NOTARIZED APPLICATION FOR PRE-QUALIFICATION

*[Letterhead]*

Date: [ ]

To,  
The Secretary,  
Pre-Qualification Committee  
University of Embu  
P.O. Box 6-60100  
Embu

**TENDER NO: [\*]**

### **PRE-QUALIFICATION FOR THE UNIVERSITY OF EMBU HOSTELS PPP PROJECT**

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

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

1. The Qualification Documents to Pre-Qualify to Bid for the University of Embu Hostels PPP Project are hereby submitted after fully reviewing and understanding the contents of the RFQ and the Qualification Documents.
2. The Qualification Documents are unqualified and unconditional.
3. All statements made and the information and documents provided by us, being the Prospective Bidder in or as any part of the Qualification Documents are true and correct and any misrepresentation or false statement made therein shall be a ground for our disqualification from the Bidding Process.
4. We, the Prospective Bidder, authorize UoEm to make enquiries to authenticate the statements, documents and information submitted in our Qualification

Documents, and to seek clarification from us and, as applicable, from our board of directors / partners, [Consortium Members], advisors, clients or bankers regarding any legal, technical and financial aspects.

5. We acknowledge the right of UoEm to reject our Qualification Documents and to cancel the Bidding Process at any time in accordance with Section 58 of the PPP Act, without incurring any liability, and accept all the terms and conditions of the RFQ.
6. We, the Prospective Bidder, have not at any time engaged in any Corrupt, Fraudulent or Dishonest, Coercive, Undesirable or Restrictive Practices.
7. We, the Prospective Bidder, are neither Prohibited Person nor do we have any Conflict of Interest.
8. We, the Prospective Bidder, confirm and warrant that
  - (a) the Qualification Documents have been prepared without consultation, communication or agreement for restricting competition with any other Prospective Bidder, or Consortium Member of any other Prospective Bidder;
  - (b) the Qualification Documents have not been disclosed, nor will they be disclosed to any other Prospective Bidder, or Consortium Member of any other Prospective Bidder;
  - (c) no attempt has been made nor will be made by us to induce any other person to submit or not to submit their Qualification Documents;
  - (d) we have not hired and engaged or been advised by or consulted with, including by way of gratuitous consultations, any person who is (i) currently in the employment of the Transaction Advisor or of UoEm/Government of Kenya; or (ii) was in the employment of the Transaction Advisor or of UoEm/Government of Kenya and was involved in the Project in any manner or capacity in the last 3 years preceding the RFQ Submission Date.
9. We, the Prospective Bidder, undertake to indemnify UoEm and hold it harmless from any loss, damage, liabilities, claims, actions, proceedings, demands, costs, charges or expenses of whatsoever nature suffered by UoEm for its refusal to disclose materials marked as being copyright material, trade secrets or other proprietary information to any person seeking the disclosure of such materials.
10. We, the Prospective Bidder confirm that the Qualification Documents shall remain valid throughout the Bidding Process period.
11. We, the Prospective Bidder undertake that in the event the we become the Successful Bidder and are asked to execute the Project Agreement, we shall, pursuant to the provisions of the PPP Act, establish a Project Company in accordance with the PPP Act and Companies Act, 2015, as amended or substituted from time to time and we shall comply with the World Bank policies and guidelines relevant to the Project all other requirements under the RFQ and shall retain the agreed shareholding in the Project Company for the duration of the Lock-In Period.

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

(Signature of authorized representative)

(Name)

(Designation)

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

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

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

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

[Letterhead]

Date: [●]

To,  
The Secretary,  
Pre-Qualification Committee  
University of Embu  
P.O. Box 6-60100  
Embu

**TENDER NO: [\*]**

**PRE-QUALIFICATION FOR UNIVERSITY OF EMBU HOSTELS PPP PROJECT**

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

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

NOW IS IT HEREBY RESOLVED

- 3.1 that *(name of single Prospective Bidder/Lead Member)* is, authorized to apply for Pre-Qualification as *(a single Prospective Bidder /Lead Member of the [name of single Prospective Bidder/Consortium])* for the University of Embu Hostels PPP Project "the Project";

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

3.3 that any and all acts performed by (*name of representative*) under and by virtue of this Resolution are hereby, confirmed and ratified.

4. These resolutions have not been revoked, amended or modified and remain valid and binding on the Prospective Bidder; and

5. The above resolutions are in accordance with the records of the (Prospective Bidder).

Capitalized terms used herein but not defined herein will have the meaning assigned to such term in the Request for Qualification, No: [\*] ("**RFQ**").

*Place, Date of Execution.*

(Signature of authorized representative)

(Name)

(Designation) [(Name of Entity

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

Notary Public

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

## **Annex QD-2A: BUSINESS STRUCTURE (FOR A PROSPECTIVE BIDDER WHICH IS A SINGLE PROSPECTIVE BIDDER)**

### 1. General Information

Name of the Entity

Type of Entity (company, partnership...)

Physical Address

Website

Contact Person's Name

Contact Person's Telephone Number

Contact Person's Email address

### 2. PPP Experience

Aggregate value of Eligible PPP Projects undertaken in the last 3 years prior to the RFQ Submission Date in USD

Summary of experience in undertaking Eligible PPP Projects on BOT, BLT, BOO, BOOT or other similar basis for providing output or services to a public sector entity

Aggregate value of payments made for the development of the Eligible PPP Projects (excluding the cost of the land)

Aggregate revenues collected from third parties accessing the fixed assets of the Eligible PPP Projects

*\*Please provide documentation in support of the PPP Experience above.*

### 3. Construction Experience

Average annual turnover from construction activities in the last 3 years prior to the RFQ Submission Date in USD

Aggregate value of Eligible Construction Projects undertaken in the last 10 years prior to the RFQ Submission Date in USD

*\*Please provide documentation in support of the Construction Experience above.*

#### 4. O& M Experience

Aggregate value of Eligible O&M Projects in the last 10 years prior to the RFQ Submission Date in USD  
Summary of undertaking Eligible O&M Projects in the Kenyan and international fields  
Summary of experience managing a combination of hard and soft services relevant to the Project

#### 5. Financial Qualification

Net Worth in USD as per the Latest Audited Financial Statements  
Provide the Exchange rate, reference date and source of the exchange rate if the currency used is a currency other than USD

Specific experience as project sponsor in raising financing for previous projects in the 10 years preceding the RFQ Submission Date, including a description of the projects, the role played, a summary of the amounts and types of financing raised and names and contact details of key individuals or authorities involved

Disclosure on any incidents of defaults on projects where the Prospective Bidder acted as project sponsor and the current status of such incidents

Disclosure of any liabilities of any liabilities, contingent liabilities, obligations, charges and liens, covenants, off-balance sheet financing arrangements, default, legal action pending, or other matters that may prevent the



Prospective Bidder from  
implementing the Project.

[Note: Replicate tables above for each project proposed to satisfy the relevant experience]

For and on behalf of (Name of Prospective Bidder)

(Signature of authorized representative)

(Name, Title, and Date)

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

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

1. Consortium Members

Name of Consortium Member

Role in Consortium (such as Lead Member/Consortium

Member/Qualifying Shareholder whose credentials or experience is used/ any other)

[Note: Replicate table above for all Consortium Members]

2. Contact Information of Consortium Members

Name of Consortium Member

Address

Website

Name and Designation of Contact

Contact's Telephone Number

Contact's Email address

[Note: Replicate table above for all Consortium Members]

3. Consortium Member who fulfils the PPP Experience Requirement

Name of the Consortium Member

Aggregate value of Eligible PPP Projects undertaken in the last 3 years prior to the RFQ Submission Date in USD

Summary of experience in undertaking Eligible PPP Projects on BOT, BLT, BOO, BOOT or other similar basis for providing output or services to a public sector entity

Aggregate value of payments made for the development of the Eligible PPP Projects (excluding the cost of the land)

Aggregate revenues collected from third parties accessing the fixed assets of the Eligible PPP Projects

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

4. Consortium Member(s) or Construction Contractor, if any, which fulfils the Construction Experience Requirement

Name of Consortium

Member/Construction Contractor

Average annual turnover from construction activities in the last 3 years prior to the RFQ Submission

Date in USD

Aggregate value of Eligible

Construction Projects undertaken in the last 10 years prior to the RFQ

Submission Date in USD

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

5. Consortium Member or O&M Contractor, if any, nominated by the Prospective Bidder to satisfy the O&M Experience Requirement

Name of Consortium Member

Aggregate value of Eligible O&M Projects in the last 10 years prior to the RFQ Submission Date in USD

Summary of undertaking Eligible O&M Projects in the Kenyan and international fields

Summary of experience managing a combination of hard and soft services relevant to the Project

6. Consortium Member(s) nominated by the Prospective Bidder to satisfy the Financial Qualification Requirement

Name of Consortium Member

Net Worth in USD as per the Latest Audited Financial Statements

Provide the Exchange rate, reference date and source of the exchange rate if the currency used is a currency other than USD

Specific experience as project sponsor in raising financing for previous projects in the 10 years preceding the RFQ Submission Date, including a description of the projects, the role played, a summary of the amounts and types of financing raised and names and

contact details of key individuals or authorities involved

Disclosure on any incidents of defaults on projects where the Prospective Bidder acted as project sponsor and the current status of such incidents

Disclosure of any liabilities of any liabilities, contingent liabilities, obligations, charges and liens, covenants, off-balance sheet financing arrangements, default, legal action pending, or other matters that may prevent the Prospective Bidder from implementing the Project.

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

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

(Signature of authorized representative)

(Name, Title, and Date)

**Annex QD-3: BASIC INFORMATION SHEET**

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

Each Entity is required to provide the particulars indicated in Part 1, either Part 2(a), 2(b) or 2 (c), whichever is applicable, and Part 3. It is a serious offence to give false information on this form.

*Part 1 – General:*

Business Name  
 .....  
 .....

Location of business premises.  
 .....

Plot No..... Street/Road  
 .....

Postal Address ..... Tel No. .... Fax  
 ..... E mail .....

Nature of Business  
 ;.....

Registration Certificate No.  
 .....

Maximum value of business which you can handle at any one time – Kshs.  
 .....

Name of your bankers ..... Branch  
 .....

**Part 2 (a) – Sole Proprietor**

Your name in full ..... Age  
 .....

Nationality ..... Country of origin  
 .....

- Citizenship details  
 .....
- .....

**Part 2 (b) Partnership**

Given details of partners as follows:

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

Private	Part 2 (c) – Registered Company or	Public
.....		
State the nominal and issued capital of company-		
Nominal Kshs. ....		
Issued Kshs. ....		
Given details of all directors as follows		
Name	Nationality	Citizenship Details
Shares		
1.....		
.....		
2.		
.....		
.....		
3.		
.....		
.....		
4.		
.....		
.....		
5		
.....		
.....		

*Part 3 – Type of the Entity (Please indicate Yes or No)*

- Single Prospective Bidder?
- Consortium Member?
- Construction Contractor?
- O&M Contractor?

*Part 4 – Declaration Not to Engage in Corruption*

We hereby declare that we will not engage in corrupt or fraudulent practices and we have not been debarred from participating in procurement proceedings.

**SIGNED** by the authorized representative of the Entity.....

**NAME** of the authorized representative of the Entity.....

**POSITION** of the authorized representative of the Entity.....

**DATE**.....

**STAMP**.....

Required attachments:

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

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

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

(Signature of authorized representative\*)

(Name, Title, and Date)

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

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

## Annex QD-4: PPP EXPERIENCE

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

Name of Prospective Bidder

Name of the Entity proposed as fulfilling PPP Experience Requirement	Relationship to the Prospective Bidder (Single Prospective Bidder itself/Consortium Member)
--	---

### List of Eligible PPP projects

Name of Entity meeting the PPP Experience	Name of project	Value of the project
---	-----------------	----------------------

(Insert rows as necessary)

### Description of each Eligible PPP project

Ref #

Name of project

Country

Description

Name of contracting authority

Name and contact details of contracting authority's contact person

Name of Entity undertaking the project



Percentage shareholding by Single  
Prospective Bidder/Consortium  
Member in the Project Company

Value of the project

Date of PPP Contract

Date of Completion of Construction

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

Required Attachments:

- a. Documentary evidence from each Eligible PPP Project owner that the construction of such Eligible PPP Project has been completed and accepted by the project owner and specifying the date of completion and acceptance of such Eligible PPP Project (e.g. completion certificate).
- b. Certification from the authorized representative of the Entity for correctness

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

of the information furnished should be done in the following manner:

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

(Signature of authorized representative) (Signature of authorized representative\*)

(Name, Title, and Date)

(Name, Title, and Date)

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

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

## **Annex QD-5: CONSTRUCTION EXPERIENCE**

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

Name of Prospective Bidder

Name of the Entity meeting the Construction Experience Requirement	Relationship to the Prospective Bidder (Single Prospective Bidder itself/ Consortium Member)
--	--

### **List of Eligible Construction Project**

<b>Name of Entity meeting the Construction Experience</b>	<b>Name of project</b>	<b>Value of the project</b>
---	------------------------	-----------------------------

(Insert rows as necessary)

### **Description of each Eligible Construction Project**

Ref #

Name of project

Country

Description

Name of contracting authority

Name and contact details of contracting authority's contact person

Name of Entity undertaking the project

Percentage shareholding by  
Single Prospective  
Bidder/Consortium Member in the  
Project Company

Value of the project

Date of Completion of  
Construction

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

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

Name of the Entity	Relationship to the Prospective Bidder (Single Prospective Bidder itself/Consortium Member)	Annual turnover		
		Financial Year ( )	Financial Year ( )	Financial Year ( )
		Please mention the year	Please mention the year	Please mention the year

(Insert rows as necessary)

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

Month end exchange rate	Annual turnover		
	Financial Year ( )	Financial Year ( )	Financial Year ( )
	Please mention the year	Please mention the year	Please mention the year

Month end 1

Month end 2

Month end 3  
Month end 4  
Month end 5  
Month end 6  
Month end 7  
Month end 8  
Month end 9  
Month end 10  
Month end 11  
Month end 12 (equals Financial Year  
end)

Required Attachments:

- a. Documentary evidence from each Eligible Construction Project owner that the construction of such Eligible Construction Project has been completed and accepted by the project owner specifying the date of completion and acceptance of such Eligible Construction Project (e.g. completion certificate).
- b. Certification by the authorized representative of the Entity certifying that the Average annual turnover from the construction activity of the Entity meeting the Construction Experience, over the last 3 (three) years preceding RFQ Submission Date, is equal to or more than [AMOUNT].
- c. Copies of Audited Financial Statement of last 3 (three) years preceding RFQ Submission Date duly certified by the authorized representative.
- d. Certification from the authorized representative of the Entity required under a. and b. above should be done in the following manner:

**Certificate from the authorized representative**

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

Name:

Seal/stamp (if any):

Date:

(Signature)

For and on behalf of:

(Name of Entity)

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

(Signature of authorized representative) (Signature of authorized representative\*)

(Name, Title, and Date)

(Name, Title, and Date)

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

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

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

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

Name of Prospective Bidder

Name of the Entity proposed as fulfilling the O&M Experience Requirement

Relationship to the Prospective Bidder (Single Prospective Bidder itself/Consortium Member)

### **List of Eligible O&M projects**

**Name of Entity meeting the O&M Experience**

**Name of project**

**Value of the project**

(Insert rows as necessary)

### **Description of each Eligible O&M project**

Ref #

Name of project

Country

Description

Name of contracting authority

Name and contact details of contracting authority's contact person

Name of Entity undertaking the project

Name of Entity which is Operating and Maintaining the project

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

Required Attachments:

- 1) Certification from the project owner's that the project is being or has been operated and maintained by the Entity within the last ten (10) years preceding the RFQ Submission Date with an operation and maintenance period of not less than five (5) years (post-construction completion or a copy thereof accompanied by a certification issued by the authorized representative of the Entity which fulfils the O&M Experience Requirement that such copy is a true and correct reproduction of the original certificate
  
- 2) Certification from the authorized representative of the Entity should be done in the following manner:

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

For and on behalf of:

(Name of Entity)

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

(Signature of authorized representative) (Signature of authorized representative\*)

(Name, Title, and Date)

(Name, Title, and Date)

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

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



## Annex QD-7: FINANCIAL QUALIFICATION

### STATEMENT OF FINANCIAL QUALIFICATION

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

Name of Prospective Bidder

Single Prospective Bidder or Consortium

Name of the Entity proposed to fulfil the Financial Qualification Requirements 1.

2.

3.

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

1. The (*name of Prospective Bidder/Consortium Member meeting the Financial Qualification Requirement*) has a minimum unrestricted Net Worth equivalent to at least \_\_\_ Kenya Shillings (USD) or its equivalent as of its Latest Audited Financial Statements for the period not earlier than 15 months preceding the RFQ Submission Date, a certified true copy of which is attached to this certificate.
2. The financial summary of (*name of Entity*) which is the Prospective Bidder itself / Consortium Member meeting the Financial Qualification Requirements is as follows:

Financial Information (in USD)

(indicate last day of accounting year)

Total Assets

Total Liabilities

Financial Year ( )

Please mention the year

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

Total Net Worth

[3. The available funds which are committed to projects of the (name of Prospective Bidder/ Consortium Member(s)) being an Investment Fund is as follows:

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

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

*Date and Place of Execution.*

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

(Signature of authorized representative\*)

Required Attachments:

1. The Prospective Bidder shall also provide a summary table providing aggregate of the Net Worth of all Entities relied on for Financial Qualification Requirement with the total aggregate Net Worth given at the bottom of the table in **BOLD** figures and shall also provide the Exchange rate, reference date and source of the exchange rate for the currency used.

2. Certified copy of the Latest Audited Financial Statements.

3. Where the experience or credentials of a Consortium Member is used by the Prospective Bidder to satisfy the PPP Experience requirements, a certified copy of the Latest Audited Financial Statement of such Consortium Member shall be submitted which shall be certified by the Consortium Member's authorized representative signing the financial letter of support to be furnished under Section 4.2.3 (i).

4. The Investment Fund shall provide a certified copy of its charter documents as evidence that the anticipated investment in the Project by such Investment Fund falls within the permitted activities and limits.

Note: 1. Replicate this Annex, if the Net Worth credentials of more than one Consortium Member, where the Prospective Bidder is a Consortium, is being relied on to meet the Financial Qualification Requirements.

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

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

\*\*The details under Sr. No. 3 and 4 are only required in case of an Entity being an Investment Fund. The same shall be deleted where the Prospective Bidder/ Consortium Member is not an Investment Fund.

**Annex QD-8: INDICATIVE FORM OF LETTER OF SUPPORT FROM QUALIFYING BANK AND FINANCIAL INSTITUTION**

<Qualifying Bank and Financial Institution Letter Head>

Letter of Support

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

Sincerely yours,

<Name of Qualifying Bank and Financial Institution>

By:

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

Date:

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

**Annex-QD-9: CERTIFICATION OF ABSENCE OF UNSATISFACTORY PERFORMANCE RECORD**

Note: To be submitted by a single Prospective Bidder /Lead Member which fulfil any of the Qualification Requirements, as identified in the Business Structure (Annex QD-2A or QD-2B).

Name of Prospective Bidder	
Name of Entity which fulfils any Qualification Requirement	
Qualification Requirement being met	

**Certification of Absence of Unsatisfactory Performance Record**

I, *(name of authorized representative)*, *(citizenship)*, of legal age, with office address at *(address)*, as the *(position/designation)* of *(name of Entity represented)*, a *(the legal structure i.e. Company, partnership, or corporation)* *[organized and existing under and by virtue of the laws of (name of State and Country)]* do hereby certify, for and on behalf of *(name of Entity represented)*, that *(name of Entity represented)* does not have any record of Unsatisfactory Performance, as defined in Section 1 of the Request for Qualification.

Date and Place of Execution

For and on behalf of (Name of Prospective Bidder)

(Signature of authorized representative)

\_\_\_\_\_

(Name of authorized representative) (Designation)

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

## Annex QD-10: PROJECT MANAGEMENT

### FOR INFORMATION PURPOSES ONLY

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

Role	Name and Designation	Name of Organisations (full title)	Experience of Individual
Prospective Bidder's authorised representative			
Consortium Member No.1* Authorised representative (please mention name of the consortium member)			
Construction Contractor No 1* Authorised representative (please mention name of the Construction Contractor)			
O&M Contractor No. 1 Authorised representative (please mention name of the O&M Contractor)			
Legal advisors(s), if appointed			
Financial advisor(s), if appointed			
Others (please specify role)			

\*Please add rows, as necessary where there are more than one Consortium Member /Construction Contractor / O&M Contractor.

**Annex-QD-11: INDICATIVE FORM OF LETTER OF COMMITMENT TO  
KNOWLEDGE TRANSFER AND LOCAL PARTICIPATION**

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

[Letterhead]

Date: [●]

To,  
The Secretary,  
Pre-Qualification Committee  
University of Embu  
P.O. Box 6-60100  
Embu

**TENDER NO: [\*]**

**PRE-QUALIFICATION FOR UNIVERSITY OF EMBU HOSTELS PPP PROJECT**

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

1. *(Prospective Bidder)* shall ensure that knowledge and experience is transferred to UoEm staff.
2. *(Prospective Bidder)* will require the following *[support/information include the requirements to enable Prospective Bidder to transfer UoEm staff to the Project Site]*
3. *(Prospective Bidder)* understands the need of UoEm under the Project to be as follows: *[include a summary of the needs as understood by the Prospective Bidder from an educational perspective]*.
4. *(Prospective Bidder)* intends to integrate the Project with the rest of the UoEm infrastructure as follows;  
*[include a concise statement of how the Prospective Bidder intends to integrate the Project with the rest of the UoEm infrastructure]*.
5. *(Prospective Bidder)* intends to integrate the following methodology in Project to ensure local participation;  
*[include a concise statement of how the Prospective Bidder intends use local participation in materials, employment, training and skills transfer]*.

*Place, Date of Execution.*

(Signature of authorized representative)

(Name)

(Designation) [(Name of Entity)]

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



**Annex-QD-12: FORM OF PETITION**

PETITION NO..... OF ..... 20 .....

BETWEEN

.....  
APPLICANT

AND

[CONTRACTING  
AUTHORITY].....RESPONDENT

Request for review of the decision of ..... (*Name of the Contracting Authority*) of ..... dated the ..... day of ..... 20 ..... in the matter of Tender No ..... of 20 .....

**PETITION NOTICE**

I/We ....., the above named Applicant(s), of address: .....

Physical address ..... Fax No.....  
Tel.No..... Email ....., Country .....

hereby request the Public Private Partnerships Petition Committee to review the whole/part of the above mentioned decision on the following grounds, namely:

1. ....  
.....
2. ....  
.....

By this memorandum, the Applicant(s) request the Petition Committee for order or orders that:

1. ....  
.....
2. ....  
.....

SIGNED ..... (Applicant)

Dated on ..... day of ..... 20 .....

## Annex-QD-13: FEES FOR PETITIONS

1. Administrative fee KES. 20,000

2. Upon filing a Petition, the fees payable shall be as follows:

<i>Subject of Petition</i>	<i>Fees</i>
Short-listing of bidders under section 40(1) of the PPP Act	0.01% of the estimate project cost, as established in the project feasibility study undertaken pursuant to section 33(1) of the PPP Act, but not less than KES. 250,000
The disqualification of a private party under section 40(2) of the PPP Act	0.01% of the estimate project cost, as established in the project feasibility study undertaken pursuant to section 33(1) of the PPP Act, but not less than KES. 250,000
The prequalification of bidders on the basis of the bidders' technical bids under section 47 of the PPP Act	0.03% of the estimate project cost, as established in the project feasibility study undertaken pursuant to section 33(1) of the PPP Act, but not less than KES. 500,000
The decision of the contracting authority to enter into negotiations with a successful bidder under section 52(1) of the PPP Act	0.05% of the estimate project cost, as established in the project feasibility study undertaken pursuant to section 33(1) of the PPP Act, but not less than KES. 750,000
Upon grant of an adjournment to a party by the PPP Petition Committee	KES. 125,000
Fee for filing preliminary objection	KES. 125,000
Fee for filing a defence or a Reply or an Affidavit	KEs. 15,000

The Secretary may demand additional fee if the fee paid at the time of filing is less than that ascertained to be chargeable.

## APPENDIX 1: MINIMUM QUALIFICATION REQUIREMENTS

### 1. General Requirements

- a. Notarized Application to Pre-Qualify in Annex QD-1A.
- b. Notarized Authority to Apply to Pre-Qualify in Annex QD-1B.
- c. Business Structure in Annex QD-2A (for single Prospective Bidder).
- d. Business Structure in Annex QD-2B (for Prospective Bidder which is a Consortium).
- e. Consortium Agreement signed by all Consortium Members (for Prospective Bidder which is a Consortium).
- f. Basic Information Sheet in Annex QD-3 together with the following documents attached:
  - i. Certified copies of certificate of incorporation;
  - ii. Certified copy of Kenya Revenue Authority Personal Identity Number (for local Entities);
  - iii. Certified copy of valid tax compliance certificate from Kenya Revenue Authority (for local Entities).
- g. Letter from the authorized representative of the Entity to the effect that the Entity is not insolvent, in receivership, bankrupt or in the process of being wound up.
- h. Project Management team in Annex QD-10.

### 2. Technical Qualifications

- a. PPP Experience
  - i. Aggregate value of Eligible PPP Projects undertaken exceeds USD 30 million in the last 5 years.
  - ii. Experience in undertaking Eligible PPP Projects on BOT, BLT, BOOT or other similar basis for providing its output or services to a public sector entity in the last 5 years.
  - iii. Evidence of payments made for Eligible PPP Projects in the last 5 years.
  - iv. Evidence of revenue collected from third parties accessing the fixed assets of the Eligible PPP Project in the last 5 years.
  - v. Evidence of shareholding above 30% in the project company responsible for the Eligible PPP Project in the last 5 years.
  - vi. Completion Certificate or documentary evidence from each Eligible PPP Project owner.
  - vii. Certification from the authorized representative of the Entity for correctness of the information furnished in the prescribed form.
  - viii. Project data sheets specifying the details of the Eligible PPP Project.

- b. Construction Experience
  - i. Eligible Construction Projects whose value in aggregate exceeds USD 40 million in the last 10 years.
  - ii. Average annual turnover from construction activities of not less than USD 20 million over the five (5) years preceding the RFQ Submission Date.
  - iii. Completion Certificate or documentary evidence from each Eligible Construction Project owner.
  - iv. Certification from the authorized representative of the Entity for correctness of the information furnished in the prescribed form.
  - v. Project data sheets specifying the details of the Eligible Construction Project.
  
- c. O&M Experience
  - i. Evidence of experience of undertaking Eligible O&M Projects whose value in aggregate exceeds USD 10 million in the last 10 years.
  - ii. Experience of undertaking Eligible O&M Projects whose value in aggregate exceeds USD 10 million.
  - iii. Experience of managing a combination of hard and soft services relevant to the Project.
  - iv. Completion Certificate or documentary evidence from each Eligible O&M Project owner.
  - v. Certification from the authorized representative of the Entity for correctness of the information furnished in the prescribed form.
  - vi. Project data sheets specifying the details of the Eligible O&M Project.

### 3. Financial Qualifications

- a. Provide certified Audited Financial Statements in USD for the last 3 years preceding the RFQ Submission Date.
- b. Specific experience in raising the equivalent of at least USD 45 million in total financing for a previous project in the five (5) years preceding the RFQ Submission Date.
- c. Net Worth of not less than USD 50 million, as per its Latest Audited Financial Statements.
- d. Statement of Financial Capacity in Annex QD-7.
- e. Letter of Support from Qualifying Bank and Financial Institution in Annex QD-8.
- f. Certification of Absence of Unsatisfactory Performance Record in Annex QD-9.

4. Minimum Qualification Requirements for more than one University Hostels PPP Project

*Illustration:*

*Where a Prospective Bidder wishes to apply for pre-qualification for more than one University Hostels PPP Project, the minimum qualification requirements shall be as the cumulative value of the minimum qualification requirements of each University Project within the prescribed time period as follows:*

	<i>Project 1</i>	<i>Project 2</i>	<i>Minimum Qualification</i>
<i>Construction Experience</i>	<i>USD 100M</i>	<i>USD 200M</i>	<i>USD 300M</i>
<i>O&amp;M Experience</i>	<i>USD 80M</i>	<i>USD 70M</i>	<i>USD 150M</i>
<i>PPP Experience</i>	<i>USD 150M</i>	<i>USD 180M</i>	<i>USD 330M</i>

**SCHEDULE 1: TEMPLATE FOR QUERIES AND COMMENTS ON RFQ AND PIM**

**NAME OF PROSPECTIVE BIDDER:**

**DATE:**

**1. RFQ DOCUMENT**

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

\* Leave blank.

**2. PROJECT INFORMATION MEMORANDUM**

<b>Reference No.*</b>	<b>Section No. of PIM</b>	<b>Question or Comment</b>

\* Leave blank.