
KENYATTA NATIONAL HOSPITAL BOARD



PUBLIC PRIVATE PARTNERSHIP (PPP) PROJECT

KNH PRIVATE HOSPITAL PPP PROJECT

**DESIGN, BUILD, FINANCE, EQUIP, OPERATE, MAINTAIN AND TRANSFER OF
THE PROPOSED KNH PRIVATE HOSPITAL PPP PROJECT**

Tender Number: KNH PPP /RFQ/01/2019-2020

REQUEST FOR QUALIFICATION (RFQ)

DATED: 8 OCTOBER 2019

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1 DISCLAIMER

- 1.1 The information provided to Prospective Bidders in this (Request for Qualification (**RFQ**) and any other information, whether verbal or written, provided by Kenyatta National Hospital Board (**KNHB**) or any of its employees or advisors, or on behalf of KNHB, 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 by KNHB. Capitalised terms used in this Disclaimer have the meaning assigned to such terms in this RFQ.
- 1.2 This RFQ is not an agreement and is neither an offer nor an invitation by KNHB to Prospective Bidders or any other person. KNHB, 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 KNHB 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 KNHB, 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.
- 1.3 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. KNHB accepts no responsibility for the accuracy or otherwise of any opinion or interpretation of law expressed herein.
- 1.4 KNHB, its employees and advisors make no undertaking, assurance, representation or warranty and shall have no liability to any person, including to 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.
- 1.5 KNHB 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, KNHB, its employees and/or advisors shall not be liable to any Prospective Bidder (including to any 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.
- 1.6 The issuance of the RFQ does not imply that KNHB is bound to shortlist, select or to appoint one or more Prospective Bidders for the PPP Project.

- 1.7 Notwithstanding anything contained in this RFQ, in accordance with the Applicable Law, KNHB 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. . In the event that KNHB 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 KNHB rejects all the Pre-Qualified Bidders or Bids, it may, in its sole discretion, invite the Pre-Qualified Bidders to submit fresh Bids.
- 1.8 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 KNHB 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.
- 1.9 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 KNHB than that provided in the Qualification Documents.

2 INTRODUCTION

- 2.1 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 Partnership 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 and the Public Private Partnership Act, 2013.
- 2.2 The Kenyatta National Hospital Board (**KNHB**) (the **Contracting Authority (CA)**) with the support of the PPP Unit, wishes to develop a minimum 300 Bed Private Hospital under a PPP arrangement.
- 2.3 Kenya National Hospital (**KNH**) is a teaching and referral hospital providing specialized medical care, training and research. Its mission is to optimize patient experience through innovative, evidence based specialized healthcare; facilitate training and research; and participate in national health policy formulation. KNH was established in 1901 and is currently the largest hospital in Kenya and the East African region with a capacity of over 2,000 beds. KNH initially operated as a department under the Ministry of Health (**MoH**) up to 1987 when the KNHB Order, 1987(KNHB Order) was enacted effectively conferring the KNHB the status of a state corporation.
- 2.4 In 1981, KNH established a Private Wing within the main hospital that serves the market for fee paying private patients providing a source of additional funding to support the Main Hospital. In March 2012, KNHB began exploring opportunities for private sector participation to upgrade and expand the private wing. KNHB now wishes to have developed a separate private hospital (**the Project**) under a Public Private Partnership (**PPP**) arrangement, allowing the Private Wing to be freed up to support its public service mission. This Project is part of Kenya Vision 2030.
- 2.5 The proposed project will operate as a stand-alone facility with a different operating platform to the Main Hospital. However, some of the non-core services (for example laundry) could be shared, if deemed appropriate to reduce operating costs, but only in such a way as to not compromise the quality and efficiency of services offered by the two hospitals.
- 2.6 Following the successful completion of a detailed feasibility study, KNHB, with the approval of the Public Private Partnership Committee (**PPP Committee**), has decided to proceed to the procurement phase of the Project. A brief description of the Project is contained in the Project Information Memorandum (**PIM**) available with this RFQ.
- 2.7 Brief particulars of the Project are as follows:

Component	Description
a) Site	<ul style="list-style-type: none"> The proposed site for the Project is adjacent to the existing KNH and on land owned by KNHB and is described more fully in the PIM.
b) Available land size	<ul style="list-style-type: none"> Approximately 36,000 square metres (3.6 hectares).
c) Hospital facility	<ul style="list-style-type: none"> A Level 6 facility with a minimum 300 bed capacity.
d) Hospital services	<ul style="list-style-type: none"> Level 6 clinical services including the following: <ul style="list-style-type: none"> General Practice Internal Medicine General Surgery and Specialist Surgery Transplant Units Orthopaedic surgery

Component	Description
	<ul style="list-style-type: none"> ○ Emergency Medical Services ○ Obstetrics and Gynaecology ○ Ophthalmology ○ Nephrology ○ Paediatrics ○ Multi-disciplinary ○ Urology ○ Pathology ○ Intensive Care Unit (ICU) ○ ENT ○ Dentistry ○ Dermatology ○ Psychiatry ○ Rehabilitation/physical therapy and other support services ○ Radiology and imaging services ○ Specialty Outpatient services & Maternity services. ○ Day-care services
e) Other facilities	<ul style="list-style-type: none"> ● Central doctors' plaza. ● High density parking solution for a minimum 500 cars. ● Primary access road through a 12 – meter wide road

2.8 KNHB hereby invites Prospective Bidders to apply for Qualification for the design, build, finance, equipping, operation and maintenance of the Project including the delivery of clinical services and the procurement of necessary equipment, pursuant to a two-stage open competitive bidding process in accordance with the PPP Act, the PPP Regulations and other applicable provisions which are incorporated into this RFQ by reference.

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

2.10 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 PIM; and
- c) any Addendum/Clarification issued by KNHB from the date of the first publication of this RFQ in accordance with this RFQ.

3 DEFINITIONS

- 3.1 The following capitalised terms and expressions in this RFQ shall, unless the context otherwise requires, have the meaning assigned hereunder:
- 3.1.1 **Addendum/Clarification** means written instructions or guidance issued by KNHB including, but not limited to, further instructions, scheduling changes, information updates, clarifications and responses to any queries raised by interested parties in relation to this RFQ.
- 3.1.2 **Affiliate** means, in relation to a Prospective Bidder or a Consortium Member, any person having Control of that Prospective Bidder or Consortium Member, or any person over which such Prospective Bidder or Consortium Member has Control or is under the common Control with such person. For the avoidance of doubt, a Subsidiary of a Prospective Bidder or a Consortium Member is also an Affiliate.
- 3.1.3 **Audited Financial Statements** means the financial statements of an Entity, prepared in accordance with International Financial Reporting Standards (IFRS), duly attested by an auditor licensed by a relevant regulatory authority and in accordance with International Standards on Auditing to provide a true and fair view in accordance with IFRS. For an Entity that does not have its financial statements prepared in accordance with IFRS, Audited Financial Statements shall mean the financial statements prepared on a non-IFRS basis and certified by an auditor licensed by the relevant regulatory authority. KNHB reserves the right to make adjustments to non-IFRS financial information in order to make it comparable.
- 3.1.4 **Bid** means the documents in their entirety submitted by a Pre-Qualified Bidder to KNHB in response to the RFP.
- 3.1.5 **Bidding Documents** means 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 KNHB;
- a) the draft Project Agreement together with all its schedules, annexes, appendices and attachments; and
 - b) such other documents as may be provided by KNHB in relation to the RFP.
- 3.1.6 **Bidding Process** means the two-stage procurement process for the selection of a Successful Bidder commencing on the date this RFQ is issued and expiring on the Effective Date or such other date as may be determined by KNHB.
- 3.1.7 **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 KNHB.
- 3.1.8 **Bid Stage Schedule** means the indicative schedule for the Bid Stage as set out in Table 2 in Section 4 of this RFQ.
- 3.1.9 **Bid Submission Date** means the last date and time by which Pre-Qualified Bidders must submit their Bids to KNHB in accordance with the terms of the RFP.
- 3.1.10 **Business Day** means standard days for conducting business, excluding national holiday or gazetted public holiday in Kenya and weekends.

- 3.1.11 **Companies Act** means the Kenyan Companies Act, Act No. 17 of 2015.
- 3.1.12 **Competitive Dialogue** means the competitive dialogue procedure to be carried out in accordance with section 45 of the PPP Act.
- 3.1.13 **Consortium** means an association of two or more Entities bound by a consortium agreement entered into by them for the purpose of Pre-Qualifying to Bid for the PPP Project and shall include any designated Contractor.
- 3.1.14 **Consortium Member** means an Entity that is a member of a Consortium and which is a party to the consortium agreement.
- 3.1.15 **Construction Contractor** means an Entity proposed by the Pre-Qualified Bidder in the Qualification Documents to undertake a part of the construction works under the Project Agreement.
- 3.1.16 **Construction Experience** means the experience described under Section 6.2.3.
- 3.1.17 **Construction Project** means a project for the construction of a Level 6 hospital and the related facilities as defined in this RFQ.
- 3.1.18 **Contractor** means either of:
- a) the Design Contractor
 - b) the Construction Contractor; or
 - c) the Hospital Operator.
- 3.1.19 **Control** means in relation to a person:
- a) holding or controlling, directly or indirectly, a majority of voting rights exercisable at shareholder meetings (or the equivalent) of that person; or
 - b) having, directly or indirectly, the ability to appoint or remove a majority of the directors or partners; or
 - c) 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
 - d) 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
 - e) the terms controlled, controlling and majority shareholding shall be construed accordingly.
- 3.1.20 **Conflict of Interest** has the meaning ascribed to it under Section 5.2.
- 3.1.21 **Corrupt, Fraudulent or Dishonest, Collusive, Coercive, Undesirable, and Restrictive Practice** are defined in Section 5.5.
- 3.1.22 **Day** means a calendar day, unless otherwise specified.

- 3.1.23 **Design Contractor** means an Entity proposed by the Prospective Bidder in the Qualification Documents to undertake the design works under the Project Agreement
- 3.1.24 **Design Experience** means the experience described under Section 6.2.2.
- 3.1.25 **Design Project** means a project for the design of a Level 6 hospital and the related facilities as defined in this RFQ.
- 3.1.26 **Eligible Construction Project** means a Construction Project within the healthcare sector for a Level 6 hospital or specialised hospital of at least 300 beds whether private or publicly owned, carried out by the Prospective Bidder or a Qualifying Shareholder or a Construction Contractor, in each case as the main or principal contractor in which the construction has been completed in the ten (10) years preceding the RFQ Submission Date.
- 3.1.27 **Eligible Design Project** means a Design Project within the healthcare sector for a Level 6 hospital or specialised hospital of at least 300 beds whether private or publicly owned, carried out by the Prospective Bidder or a Qualifying Shareholder or a Design Contractor, in each case as the main or principal contractor in which the construction has been completed in the ten (10) years preceding the RFQ Submission Date.
- 3.1.28 **Eligible Hospital Operator Project** means a project where the Prospective Bidder or a Qualifying Shareholder or a Hospital Operator acted as a hospital operator, for not less than five (5) years in the ten (10) years preceding the RFQ Submission Date, in a performance based Level 6 specialist healthcare facility PPP contract or a privately-run Level 6 specialist healthcare facility with a minimum of 300 beds. The scope of responsibilities of the hospital operator shall include, as a minimum:
- a) Management, administration and maintenance;
 - b) Procurement and installation of medical equipment and other medical facilities; and
 - c) Delivery of clinical services.
- 3.1.29 **Eligible PPP Project** means a Project in the health sector with a capital value of at least USD 150 million procured as a PPP for design, construct, equip, finance, operate and maintain project having been in operation (post-construction completion) for not less than one (1) year preceding the RFQ Submission Date in which the Prospective Bidder or a Qualifying Shareholder or their Affiliate held a minimum twenty six percent (26%) 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.
- 3.1.30 **Eligible Project** means an Eligible Design Project, or Eligible Construction Project, or an Eligible Hospital Operator Project or an Eligible PPP Project.
- 3.1.31 **Eligible SPV** means a project company formed as a special purpose vehicle where the Prospective Bidder or the Qualifying Shareholder holds or held no less than 26% (twenty six percent) shares and the special purpose vehicle is directly rendering or has rendered Hospital Operator services on an Eligible Hospital Operations Project.
- 3.1.32 **Entity** means any legal entity and includes a company, partnership or corporation.
- 3.1.33 **Evaluation Criteria** means the criteria set out in the RFP, including the technical and financial criteria.

- 3.1.34 **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.
- 3.1.35 **Financial Qualification Requirements** means all the requirements as set out in Section 6.2.5.
- 3.1.36 **Financial Proposal** means, inter-alia, the Financial Model, Financing Plan and the Bid Amount submitted by a Pre-Qualified Bidder as part of its Bid.
- 3.1.37 **Financing Documents** means the documents, drawn by or in favour of Qualifying Bank(s) 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.
- 3.1.38 **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 KNHB regarding Pre-Qualification, or selection of the Preferred Bidder or Successful Bidder.
- 3.1.39 **Fund** means the Project Facilitation Fund established under Section 68 of the PPP Act.
- 3.1.40 **Hospital Construction Experience** means the experience described under Section 6.2.3.
- 3.1.41 **Hospital Design Experience** means the experience described under Section 6.2.2.
- 3.1.42 **Hospital Operator** means an Entity proposed by the Prospective Bidder in the Qualification Documents to undertake:
- a) Procurement and installation of medical equipment and other medical facilities for the Project;
 - b) Management, administration and maintenance services of the health facilities post construction (completion);
 - c) Delivery of clinical services (post-construction completion) for the Project.
- 3.1.43 **Hospital Operator Experience** means the experience described under Section 6.2.4.
- 3.1.44 **KNH** means Kenyatta National Hospital managed by the KNHB.
- 3.1.45 **KNHB** means the Kenyatta National Hospital Board established by the Kenya Gazette Notice No. 109 of 1987 and shall include the Pre-Qualification Committee or any other committee or group or team or board that KNHB 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.
- 3.1.46 **KNHB Staff** means personnel employed by KNH or KNHB on permanent or temporary contracts.
- 3.1.47 **Kenya Shillings (KES)** means the legal currency for the time being of the Republic of Kenya.

- 3.1.48 **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.
- 3.1.49 **Lead Member** means with reference to a Prospective Bidder which is formed of a Consortium, a Consortium Member who undertakes to hold not less than twenty six percent (26%) of the shares in the Project Company and is named as the Lead Member in the form at Annex QD-1C.
- 3.1.50 **Level 6 facility** means a hospital categorised under the 1st Schedule of the Health Act No. 21 of 2017 and the Medical Practitioners and Dentists (Private Medical Institutions) Rules, 2000 as amended by and read together with the Medical Practitioners and Dentists (Private Medical Institutions) (Amendment) Rules, 2017.
- 3.1.51 **Letter of Award** means the letter issued by KNHB to the Successful Bidder, including inter alia, the listing of any further requirements to be fulfilled prior to signing the Project Agreement.
- 3.1.52 **Lock-In Period** means the period of five (5) 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.
- 3.1.53 **Main Hospital** means KNH operated by the Contracting Authority as a national referral public hospital.
- 3.1.54 **Minimum Qualification Requirements** means the Technical Qualification Requirements and Financial Qualification Requirements set out in Section 6.
- 3.1.55 **Net Worth** means:
- a) where the Prospective Bidder is an Entity, the amount by which the total assets of such an Entity and its Affiliates exceed its total liabilities based on its Latest Audited Financial Statements; Provided however, that only an Affiliate whose Net Worth exceeds USD 50 million shall be considered as counting towards the Minimum Financial Requirements;
 - b) where the Prospective Bidder is a Consortium, the amount by which the aggregate assets of the Qualifying Shareholders and their Affiliates exceed their aggregate liabilities based on their Latest Audited Financial Statements; Provided however, only a Qualifying Shareholder or Affiliate whose net Worth exceeds USD 50 million shall be considered as counting towards the Minimum Financial Requirements;
 - c) with reference to a Prospective Bidder or a Qualifying Shareholder or an Affiliate which is a closed investment fund, the available funds which have yet to be committed to projects shall be provided as evidence of Net Worth together with a declaration by its authorised representative that the anticipated investment in the PPP 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. However, if in the Financial Statements of an Entity the Net Worth of its Affiliate has already been considered and consolidated, then for the purposes of calculating the Net Worth of such Entity, the Net Worth of the Affiliate weighted by the percentage of shareholding of such Entity in the Affiliate will not be counted towards the calculation of Net Worth.

- 3.1.56 **Participation Fee** means a non-refundable fee, in an amount of KES 100,000 (Kenyan Shillings One hundred thousand), to be paid to KNHB by a Prospective Bidder in accordance with the requirements as set out in section 5.7.
- 3.1.57 **PPP** means a public private partnership as defined under the Public Private Partnerships Act 2013.
- 3.1.58 **PPP Act** means the Public Private Partnerships Act (Act No. 15 of 2013), as may be amended or substituted from time to time.
- 3.1.59 **PPP Committee** means the committee established under Section 4 of the PPP Act.
- 3.1.60 **PPP Experience** means the experience described under Section 6.2.1.
- 3.1.61 **PPP Project** means the design, construction, financing, equipping, operation and maintenance of the Project.
- 3.1.62 **PPP Regulations** means the Public Private Partnerships Regulations, 2014, enacted pursuant to the PPP Act, as may be amended or substituted from time to time.
- 3.1.63 **PPP Unit** means the unit established under Section 11 of the PPP Act.
- 3.1.64 **Preferred Bidder** means the Pre-Qualified Bidder whose Bid has been evaluated by KNHB to be the best in accordance with the Evaluation Criteria and with whom KNHB may hold further negotiations in accordance with the PPP Act and the terms of the RFP.
- 3.1.65 **Pre-Bid Conference** means the meeting (if any) to be convened by KNHB pursuant to the issuance of the RFP, the date, time and venue of which will be advised in writing to the Pre-Qualified Bidders.
- 3.1.66 **Project Information Memorandum (PIM)** means the document describing the Project available to Prospective Bidders with this RFQ.
- 3.1.67 **Pre-Qualified Bidder** means a Prospective Bidder who has pre-qualified to participate in the Bidding Process for the PPP Project in accordance with the terms of this RFQ.
- 3.1.68 **Pre-Qualification Committee** means the committee established pursuant to Section 39 of the PPP Act.
- 3.1.69 **Pre-Qualification Conference** means the meeting to be convened by KNHB pursuant to the issuance of this RFQ, the date, time and venue of which is specified in Section 5.14.
- 3.1.70 **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.
- 3.1.71 **Private Wing** means KNH private wing that provides private market rate fee paying patients with clinical services.
- 3.1.72 **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 and:

- a) 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;
- b) 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
- c) is listed on an official 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
- d) 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
- e) is a person from a country with which the Republic of Kenya is at war; or
- f) 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.

3.1.73 **Project** means the minimum 300 bed private hospital as is described in more detail in the Project Information Memorandum.

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

3.1.75 **Project Company** means a special purpose vehicle (SPV) established under the Companies Act, by the Successful Bidder, in accordance with the provisions of the PPP Act, for the sole purpose of entering into the Project Agreement with KNHB and implementing the PPP Project in accordance with the terms thereof.

3.1.76 **Project Team** means representatives of KNHB together with the Transaction Advisor and any other person as may be designated in accordance with the PPP Act or PPP Regulations.

3.1.77 **Prospective Bidder** means any Entity or Consortium that is considering submitting or submits a response to this RFQ.

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

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

- 3.1.80 **Qualifying Bank and Financial Institution** means banks and financial institutions that have loaned debt finance to private sector parties for at least three (3) infrastructure projects in emerging market economies with minimum debt finance of USD 25 million each at any time during the 10 years preceding the RFQ Submission Date with the repayment period for such debt being ten (10) 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 the purposes of calculating the minimum debt finance where the currency of debt financed is other than USD, refer to Section 5.16 for the applicable exchange rate.
- 3.1.81 **Qualifying Shareholder** means, with reference to a Prospective Bidder which is formed of a Consortium, a Consortium Member who undertakes to hold not less than ten percent (10%) of the shares in the Project Company and is named as a Qualifying Shareholder in the form at Annex QD-1C.
- 3.1.82 **Request for Proposal or RFP** means the request for proposal document, including all its annexures, schedules and appendices that may be issued to the Pre-Qualified Bidders at the Bid Stage and shall be deemed to include all amendments, revisions or alterations thereto.
- 3.1.83 **Reserve Bidder** means a Pre-Qualified Bidder whose Bid is ranked second to the Preferred Bidder in accordance with the Evaluation Criteria.
- 3.1.84 **RFQ Submission Date** means the last date and time by which Bidders must submit their Qualification Documents to KNHB in accordance with the terms of the RFQ and the schedule set out in Table 1 of Section 4.2
- 3.1.85 **Site** means the land described in PIM.
- 3.1.86 **Successful Bidder** means the Preferred Bidder or the Reserve Bidder to whom a Letter of Award is issued in accordance with the terms of the PPP Act and the PPP Regulations.
- 3.1.87 **Subsidiary** means in relation to an Entity (the “Holding Entity”), any other Entity (the “Subsidiary Entity”) in which such Holding Entity holds, whether directly or indirectly, holds more than 50% of shares or voting rights of the Subsidiary Entity.
- 3.1.88 **Transaction Advisor** means the advisory team led by Ernst & Young LLP (EY).
- 3.1.89 **USD** means the legal currency of the United States of America.
- 3.2 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.
- 3.3 General Rules of Interpretation
- 3.3.1 In case of ambiguities or discrepancies within this RFQ, the following rules of interpretation shall apply:
- 3.3.1.1 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;
- 3.3.1.2 between the Sections of this RFQ and the Annexes, the Sections shall prevail;

- 3.3.1.3 between any two Annexes, the Annex relevant to the issue shall prevail; and
- 3.3.1.4 between any value written in numerals and that in words, the latter shall prevail.
- 3.3.2 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.
- 3.3.3 Unless the context otherwise requires:
 - 3.3.3.1 “**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;
 - 3.3.3.2 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;
 - 3.3.3.3 reference to a person includes and Entity and also such person’s successors and permitted assigns;
 - 3.3.3.4 references to any gender include all genders, and references to the singular include the plural, and vice versa;
 - 3.3.3.5 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;
 - 3.3.3.6 headings are for convenience only and shall not affect the interpretation or construction of any provision;
 - 3.3.3.7 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.
- 3.3.4 The interpretation and construction of this RFQ shall rest solely with KNHB. KNHB 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.

4 THE BIDDING PROCESS

- 4.1 The open competitive public bidding for the PPP Project shall be conducted in accordance with the rules and procedures for public bidding set out under the PPP Act and the PPP Regulations, the applicable provisions of which are incorporated herein by reference.
- 4.2 An indicative timeline for the Bidding Process is shown in the following tables and may be subject to change by KNHB.

Table 1: Pre-Qualification Stage Schedule

	Event/Activity Description	Responsible Party	Target date/time period
	PRE-QUALIFICATION STAGE		
a)	Publication of the Procurement Notice (PQ) and issuance of the RFQ	KNHB	8 October 2019
b)	Pre-Qualification Conference	KNHB	30 October 2019
c)	Last date for submission of queries on the RFQ	Prospective Bidders	Fourteen (14) Business Days before the RFQ Submission Date
d)	Last date for replying to the queries of the Prospective Bidders	KNHB	Seven (7) Business Days before the RFQ Submission Date
e)	RFQ Submission Date	Prospective Bidders	11 December 2019
f)	Opening of all Qualification Documents received	KNHB	11 December 2019
g)	Publication of the short list of Pre-Qualified Bidders	KNHB	January 2019

Table 2: Indicative Bid Stage Schedule

	Event/Activity Description	Responsible Party	Target date/time period
	BID STAGE		
a)	Issuance of the Request for Proposal Document (RFP) together with the draft Project Agreement including Schedules thereto	KNHB	January 2019
b)	Bidder Due Diligence Period starts	KNHB	January 2019
c)	Site Visit	KNHB/Pre-Qualified Bidder	January 2019

	Event/Activity Description	Responsible Party	Target date/time period
d)	Pre-Bid Conference (if applicable)	KNHB	January 2020
e)	Competitive Dialogue meetings with Pre-Qualified Bidders ¹	KNHB, Pre-Qualified Bidders	February 2020
f)	Issuance of final RFP together with the final Project Agreement including Schedules thereto	KNHB	February 2020
g)	Last date for submission of queries on the Bidding Documents prior to Bud Submission	Pre-Qualified Bidders	Fourteen (14) Business Days before the RFQ Submission Date
h)	Last date for replying to the queries of the Pre-Qualified Bidders	KNHB	Seven (7) Business Days before the RFQ Submission Date
i)	Bid Submission Date	Pre-Qualified Bidders	April 2020
j)	Opening of Technical Proposals	KNHB	April 2020
k)	Notification of the results of the evaluation of the Technical Proposals	KNHB	April 2020
l)	Opening of Financial Proposals	KNHB	May 2020
m)	Completion of Evaluation of Financial Proposals and Ranking of Bidders	KNHB	May 2020
n)	PPP Committee Approval of the Proposal Evaluation Report and KNHB entering into negotiations with the Successful Bidder	PPP Committee	May 2020
o)	Finalisation of negotiations between KNHB and the Successful Bidder	KNHB & Successful Bidder	September 2020
p)	Preparation of the PPP Project report specifying negotiated terms and recommendations	KNHB	September 2020
q)	Approval of the Project and risk assessment report	PPP Committee	September 2020
r)	Issuance of the Letter of Award to the Successful Bidder	KNHB	September 2020
s)	Compliance by the Successful Bidder of the Post-Award Requirements	Successful Bidder	October 2020
t)	Issuance of notice of compliance with all Post-Award Requirements	KNHB	October 2020

¹ KNH reserves the right to hold more than one round of CD meeting

	Event/Activity Description	Responsible Party	Target date/time period
u)	Execution of Project Agreement	KNHB and Successful Bidder	October 2020
v)	Financial Close	KNHB and Successful Bidder	March 2020
w)	Publication of the results of the Tender	KNHB	March 2020

4.3 All references to dates, days and time shall refer to Kenya Standard Time.

4.4 Modification of Pre-Qualification Stage & Bid Stage Schedule.

4.4.1 KNHB may, at its sole discretion, issue Addendum / Clarification at any time to amend, modify, and substitute the RFQ, the Pre-Qualification Stage Schedule, process or requirements, the Bid-Stage Schedule, process or requirements, including the RFQ Submission Date.

4.4.2 Prospective Bidders are encouraged and advised to refer/visit the websites (www.knh.or.ke/index.php/tenders-2/ <http://www.pppunit.go.ke/ppp-private-investor/> <http://www.treasury.go.ke/tenders.html>) regularly for any Addendum/Clarification posted by KNHB. Failure on the part of the Prospective Bidder or any Consortium Member to keep themselves updated shall not incur any liability or responsibility of KNHB towards Prospective Bidders or any Consortium Member.

4.5 Bid Stage.

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

- a) KNHB shall issue a notice to all Prospective Bidders who submitted Qualification Documents announcing the names of the Pre-Qualified Bidders who will be issued with 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 KNHB, and post-Bid submission requirements.
- b) The draft Project Agreement will be provided as part of the RFP. KNHB will invite Pre-Qualified Bidders to comment and seek clarification on the Project Agreement and related documents generally through the bidding process including in advance of and during any Pre-Bid Conference and Competitive Dialogue process before submission of bids (as will be defined in the RFP).

4.5.2 KNHB shall respond to queries raised by Pre-Qualified Bidders as follows:

- a) During the Pre-Bid Conference responses will be given orally and confirmed through formal Pre-Bid Conference minutes.
- b) During the Competitive Dialogue meetings queries and responses will be discussed orally, and responses will be through amended Bidding documents made available to all Bidders.
- c) Outside these formal meetings, responses to clarifications will be in writing through the issuance of Addenda/ Clarifications.

4.5.3 Pre-Qualified 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. KNHB will respond to 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 KNHB. KNHB also reserves the right not to answer any question it receives from Pre-Qualified Bidders.

- 4.5.4 Responses to Competitive Dialogue meeting discussion points and any modifications to the Bidding Documents pursuant thereto or otherwise will be made on a non- attributable basis and shall be in writing and made known to Pre-Qualified Bidders through Addendum/ Clarification published by KNHB in the Data Room only. Any Addendum/ Clarification issued by KNHB shall be deemed to be incorporated in and shall become an integral part of the Bidding Documents. KNHB reserves the right not to respond to any Competitive Dialogue meeting discussion point or provide any clarification, in its sole discretion, and nothing in the RFP shall be taken or read as compelling or obliging KNHB to respond to any Competitive Dialogue meeting discussion point or to provide any clarification.
- 4.5.5 Following the submission of Bids KNHB will firstly evaluate the Technical Proposals. KNHB 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.
- 4.5.6 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.
- 4.5.7 KNHB 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.
- 4.5.8 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.
- 4.5.9 Following analysis and evaluation of the Financial Proposals, KNHB 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.
- 4.5.10 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 Reserve Bidder to extend the validity of its Bid pending the completion of negotiations with the Preferred Bidder.
- 4.5.11 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 increase the price and shall not affect the non-negotiable terms and conditions specified as non-negotiable in the RFP, the financial structure, or conditions in respect of which there were no reservations raised by the Preferred Bidder in its Bid.
- 4.5.12 Where the negotiations with the Preferred Bidder are unsuccessful, the Negotiating Committee shall enter into negotiations with the Reserve Bidder in accordance with the PPP Act and the PPP Regulations.
- 4.5.13 After the successful conclusion of negotiations with the Preferred Bidder or the Reserve Bidder, the Negotiating Committee shall prepare and submit to KNHB a project report specifying the negotiated terms together with its recommendations.
- 4.5.14 KNHB 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.
- 4.5.15 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.

4.5.16 Where the Project is approved to be undertaken of the Project, KNHB shall finalise and execute the Project Agreement with the Successful Bidder.

5 TERMS AND CONDITIONS

5.1 Eligibility

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

5.1.2 Single Prospective Bidder.

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

5.1.2.2 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.

5.1.2.3 Pursuant to submission of its Qualification Documents, any change in form or Control of a Prospective Bidder which is a single Entity, which results in breach of any of the terms and conditions of this RFQ, the PPP Act and/or the PPP Regulations shall result in automatic disqualification from the Bidding Process of such Prospective Bidder.

5.1.3 Consortium

5.1.3.1 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 PPP Project until execution of the Project Agreement;
- e) provide 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 KNHB.

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

- 5.1.3.3 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. KNHB may, subject to the consent of the consortium, extend the validity period of the Consortium Agreement on the original terms.
- 5.1.3.4 Where a Prospective Bidder is a Consortium, the Qualification Documents are to be signed by the authorized representative of the Lead Member.
- 5.1.3.5 Proof of authorization by the Prospective Bidder of the authorized representative of a Single Bidder or of the Lead Member in case of a Consortium, to act on behalf of the Prospective Bidder 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, in case of a Consortium, and duly notarized where it is executed outside Kenya.
- 5.1.3.6 The authorised representative of the Lead Member or a designated appointee of the authorised representative of the Lead Member shall be the only person authorised to make statements on behalf of and receive instructions from KNHB on behalf of the Prospective Bidder which is a Consortium.
- 5.1.3.7 A Consortium Member shall not participate in more than one Prospective Bidder in accordance with the provisions of the PPP Act and the terms of this RFQ.
- 5.1.3.8 Change in composition, Control or form of a Prospective Bidder
- a) Pursuant to submission of its Qualification Documents, any change in composition of a Consortium or Control of a Prospective Bidder or of any Consortium Member where the Prospective Bidder is a Consortium, which results in a breach of any of the terms and conditions of this RFQ, the PPP Act and/or the PPP Regulations shall result in automatic disqualification from the Bidding Process of such Prospective Bidder.
 - b) Where a Prospective Bidder is a Consortium that undergoes a change in its composition or Control or any of its Consortium Members undergoes a change in its 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 KNHB in writing. KNHB 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 KNHB of any change in composition or Control within seven (7) days of it becoming aware of such, KNHB may in its sole discretion disqualify such Prospective Bidder from the Bidding Process.
 - c) From the date of notification of results of evaluation of the Qualification Documents until such time as the RFP is issued, KNHB 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").
 - d) A change in composition of a Pre-Qualified Bidder shall be permitted by KNHB only where:
 - i) the Lead Member continues to be the Lead Member;

- ii) the modified Consortium continues to meet the Minimum Qualification Requirements and all other terms and conditions specified under this RFQ;
- iii) the proposed Replacement Member is not a Prohibited Person;
- iv) there is no Conflict of Interest subsisting; and
- v) the Replacement Member accepts in writing to the satisfaction of KNHB, the Qualification Documents submitted on behalf of the Consortium as if it were a party to it originally and the terms of this RFQ.

KNHB reserves the right to require the relevant Pre-Qualified Bidder, 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 KNHB.

- e) Any membership changes in the Consortium under this section shall not exceed one half of the Consortium Members (excluding the Lead Member). 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 shall not be approved, and the Consortium shall be disqualified from further participation in the Pre-Qualification process.
- f) KNHB shall advise all other Prospective Bidders of the changes to the Consortium, if accepted, and such modified Consortium shall thereafter be referred to and considered as a Pre-Qualified Bidder.

5.2 Conflict of Interest

5.2.1 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.

5.2.2 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:

- a) a Prospective Bidder or any Consortium Member, is also a Consortium Member of another Prospective Bidder;
- b) 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 Consortium Member of another Prospective Bidder;
- c) a member of the board of directors, partner, officer, employee, professional advisor or agent of KNHB, who is also involved with the Bidder;
- d) 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
- e) a Prospective Bidder has the same authorized representative for the purposes of Pre-Qualification as any other Prospective Bidder or Consortium Member of another Prospective Bidder.
- f) Any two or more Prospective Bidders, or Consortium Members of any two or more Prospective Bidders, or any Affiliates of two or more Prospective Bidders or any of the Consortium Members, or any of their Contractors are Public Entities of Kenya or public institutions or public sector undertakings belonging to the same country.
- g) a Prospective Bidder, or any of its Consortium Members, who has been directly engaged as a consultant by KNHB in the preparation of the RFQ, RFP or any other relevant document or the design, or technical specifications of the PPP Project or in connection with the Bidding Process; or

- h) a Prospective Bidder, or any of its Consortium Members who engages any legal, financial, or technical advisor or consultant who is or was an employee of KNHB or Government of Kenya and was engaged in any manner for matters related to or incidental to the PPP 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 three years prior to the date of issue of this RFQ;
- i) a Prospective Bidder, or 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, or any of its Consortium Members, or has provided any subsidy, grant, concessional loan or subordinated debt to any other Prospective Bidder, or any of its Consortium Members.

5.2.3 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.

5.3 Warranties

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

- a) no Conflicts of Interest exist;
- b) 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);
- c) 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;
- d) 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
- e) 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 KNHB/Government of Kenya; or (ii) was in the employment of the Transaction Advisor or of KNHB/Government of Kenya and was involved in the PPP Project in any manner or capacity in the past three (3) years preceding the RFQ Submission Date.

5.3.2 No representation or warranty

5.3.2.1 Each Prospective Bidder acknowledges by its submission of a response that it has investigated and satisfied itself of every condition that affects the PPP Project.

5.3.2.2 Each Prospective Bidder acknowledges and represents that its investigations have been based on its own examination, knowledge, information and judgment, and not upon any statement, representation or information made or given by KNHB, the contact person or any advisor to KNHB, other than the information contained in this RFQ. Submission of a response is deemed to be conclusive evidence that the Prospective Bidder has made such investigations and that the Prospective Bidder is willing to assume, and does assume, all risks affecting the PPP Project, except as otherwise specifically stated in this RFQ. KNHB accepts no responsibility for any respondent lacking any information.

5.4 Ownership of Documents

5.4.1 All information and data submitted by a Prospective Bidder shall become the property of KNHB, 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 KNHB and hold it harmless from any loss, damage, liabilities, claims, actions, proceedings, demands, costs, charges or expenses of whatsoever nature suffered by KNHB 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.

5.4.2 This RFQ is being made available to Prospective Bidders exclusively in connection with the PPP 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 KNHB only to employees and advisers employed or engaged by it, and persons employed or engaged by a Public Entity which is involved or connected in any manner with the Bidding Process and the evaluation of Qualification Documents submitted by Prospective Bidders.

5.5 Corrupt, Fraudulent or Dishonest, Collusive, Coercive, Undesirable and Restricted Practices

5.5.1 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, KNHB shall:

- a) 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 to any other person;
- b) seek to impose the maximum penalties for civil and criminal liability available under the applicable law on persons involved in such practices; and
- c) without limitation of time prohibit or disqualify persons involved in such practices from participating in any bidding process run by the Government of Kenya from the date that they are found to have directly or indirectly engaged in any such practices.

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

- a) **“Corrupt Practice”** means any of the prohibited acts and omissions punishable under the laws of Kenya and relevant rules and procedures, by which a person improperly or 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;
- b) **“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;
- c) **“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 KNHB or its advisers or other Public Entity involved in the Bidding Process, designed to establish the Bid Amount at an artificial, or non-competitive level or otherwise to restrict competition in the Bidding Process;
- d) **“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;
- e) **“Undesirable Practice”** means (i) establishing contact with any person connected with or employed or engaged by KNHB with the objective of canvassing or lobbying or (ii) in any manner influencing or attempting to influence the Bidding Process; and
- f) **“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.

5.6 Statement as to the accuracy of the Qualification Documents

- 5.6.1 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.
- 5.6.2 If the information provided by any Prospective Bidder is found to be untrue or inaccurate, KNHB (in its sole discretion) shall disqualify such Prospective Bidder and KNHB shall be entitled to claim damages for any loss suffered by it as a result thereof.

5.7 Participation Fees

- 5.7.1 Prospective Bidders wishing to submit Qualification Documents will be required to pay a non-refundable Participation Fees of KES 100,000 (One hundred thousand).

- 5.7.2 The Participation Fee may be paid in the form of a banker's cheque from a bank registered in Kenya, or through online transfer to the bank account of KNHB, the details of which are provided below:

Bank: National Bank of Kenya
Branch: Hospital Branch
Branch Code: 12025
Account Name: Kenyatta National Hospital - Revenue
Reference: KNH PPP Project
Account No: 01003058005200
Swift code : NBKEKENXXX

- 5.7.2.1 A Prospective Bidder's Qualification Documents shall be accompanied by either a valid bankers' cheque for the Participation Fee in favour of 'Kenyatta National Hospital Board' or proof of its prior payment in the form of a banking slip or remittance advice to KNHB.
- 5.7.2.2 The Qualification Documents submitted by a Prospective Bidder who has not paid the Participation Fee or whose submission does not contain proof of payment will be rejected by KNHB and the Prospective Bidder disqualified from the Bidding Process. The Participation Fee shall be required to have cleared on RFQ Submission Date. KNHB reserves the right to disqualify any Prospective Bidder whose funds shall not have cleared by the said date.

5.8 Queries, Requests for Clarifications and Contact Policy

- 5.8.1 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:

Kenyatta National Hospital Board (KNHB)

Attention: **The Project Manager**
Email: ppp@knh.or.ke

Transaction Advisor

Attention: **Transaction Advisor**
knhta@ke.ey.com

- 5.8.2 All queries and requests for clarification shall be submitted in English.
- 5.8.3 All queries and requests for clarification shall be submitted via email to the email addresses provided in this RFQ and Prospective Bidders must use the MS Excel template provided in Schedule 1 for all queries/comments.
- 5.8.4 All queries and requests for clarification must clearly indicate the name of the signatory and his position/title with respect to the Prospective Bidder making the query.
- 5.8.5 No information or clarification may be requested by a Prospective Bidder (including any Consortium Member) from any member of the Project Team, the employees or advisers of KNHB or any other public official who may be associated with the PPP Project, other than from the Project Manager and in the manner set out in this RFQ.
- 5.8.6 Although KNHB will attempt to respond to all reasonable queries and requests for clarification before the RFQ Submission Date, KNHB 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. KNHB shall not reveal the identity of the Prospective Bidder who made the query to which such Addendum/Clarification has responded.
- 5.9 Non-Compliance
- 5.9.1 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.
- 5.9.2 KNHB may, in its sole discretion, reject any non-compliant Qualification Documents without further evaluation of the remaining Qualification Documents, whether compliant or not.
- 5.10 Language and foreign documents
- 5.10.1 The Qualification Documents, and all correspondence and documents relating to this RFQ, shall be prepared and written in the English language.
- 5.10.2 All documents executed in a foreign country must be notarized by a notary public in that country.
- 5.10.3 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 the 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.
- 5.11 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.
- 5.12 Responsibilities of Prospective Bidders
- 5.12.1 Notwithstanding any information expressed or implied in this RFQ, or in any additional communications issued by KNHB, including any Addendum/Clarification, it is the sole responsibility of any Prospective Bidder to:
- a) fully acquaint itself with the requirements, terms, and conditions of the Bidding Process;

- b) examine this RFQ, and other documents to verify the completeness and accuracy of the information contained in such documents;
- c) 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 PPP Project; and
- d) 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 PPP Project, including but not limited to the demand for the new private hospital, the healthcare requirements, the Site, existing and planned above ground and sub-level utilities on the Site; existing or threatened legal disputes or issues; environmental and social concerns and issues; aggregate sources, availability of doctors, nurses and other relevant professions to develop and operate the PPP Project, water, power, access road and other relevant factors; the financial viability of the PPP Project; risks and contingencies that may affect the cost, duration, execution and completion of the PPP Project.

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

5.13 No Obligation to Proceed

5.13.1 This RFQ does not commit KNHB in any way to proceed to the RFP stage or award a contract, and KNHB reserves the complete right to, at any time, reject all responses and to terminate the competitive selection process established by this RFQ and proceed with the PPP Project in some other manner as KNHB may decide in its sole discretion.

5.14 Pre-Qualification Conference

5.14.1 KNHB will 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: 30 October 2019
Time: 9.00 am
Venue: Nairobi Kenya

- 5.14.2 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 KNHB subsequently.
- 5.14.3 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.
- 5.14.4 The failure by KNHB to conduct a Pre-Qualification Conference shall not preclude Prospective Bidders from raising queries or seeking clarifications as set out in Section 5.7.
- 5.15 Frivolous and Vexatious Petition
- 5.15.1 KNHB 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.
- 5.16 Applicable exchange rate for currency conversion to USD
- 5.16.1 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 International Monetary Fund as on RFQ Submission Date.
- 5.16.2 Where the exchange rate is not published for any currency by the International Monetary Fund, the exchange rate published by the central bank of the country of which the currency is to be converted into USD shall be deemed to be the relevant exchange rate.
- 5.16.3 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.
- 5.16.4 In the event that the Audited Financial Statements of a Prospective Bidder/ Consortium Member are prepared in any currency other than USD, then:
- a) Net Worth figures presented in the Qualification Documents shall be converted by the Prospective Bidder/Consortium Member into USD at the relevant exchange rate on the financial year end date to which the Latest Audited Financial Statements were drawn up; and
 - b) 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.

6 MINIMUM QUALIFICATION REQUIREMENTS

6.1 General

- 6.1.1 KNHB 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.
- 6.1.2 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 subject to the following:
- a) 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;
 - b) 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; and
 - c) an Eligible Project may qualify as one or more of an Eligible PPP Project, an Eligible Design, Eligible Construction Project, and Eligible Hospital Operator Project.

6.2 Technical Qualification Requirements

6.2.1 PPP Experience

- 6.2.1.1 The Prospective Bidder shall demonstrate that in the last five (5) years preceding the RFQ Submission Date, it has experience of undertaking one Eligible PPP Project in accordance with the environmental and social sustainability laws / policies applicable to the PPP Project, being either the national laws/policies of the implementing authority of the PPP Project or the Equator Principles, the International Finance Corporation (IFC) Performance Standards on Environmental and Social Sustainability or the World Bank Group Environmental, Health and Safety Guidelines, where these have been accepted by the implementing authority. The Prospective Bidder shall confirm that there has not been any fine, out of court settlement or conviction in relation to environmental and social issues arising from the Eligible PPP Projects with respect to the obligations of the developer / project proponent.
- 6.2.1.2 Eligible PPP Experience as defined under section 3.1.29 above of this RFQ.
- 6.2.1.3 The Entity whose Eligible PPP Project is proposed must provide documents evidencing that it holds or has held a share of not less than twenty-six (26%) in the project company responsible for the Eligible PPP Project.
- 6.2.1.4 The Entity proposed to meet the PPP Experience may be any of the following, holding the minimum share as stated above:

- a) The Prospective Bidder itself or its Subsidiary(ies) or Affiliate(s) (being other than Subsidiary(ies));or
- b) A Qualifying Shareholder or its Subsidiary(ies) or Affiliate(s) (being other than Subsidiary(ies), if the Prospective Bidder is a Consortium:

Provided that in each case the PPP Experience of Affiliates (being other than Subsidiaries) does not exceed one (1) of the Eligible PPP Projects counting towards the Technical Qualification Requirements presented in the Qualification Documents.

6.2.2 Design Experience

6.2.2.1 The Prospective Bidder shall demonstrate that in the ten (10) years preceding the RFQ Submission Date, the Prospective Bidder or the Entity whose Eligible Design Experience is proposed has undertaken one (1) Eligible Design Projects.

6.2.2.2 Prospective Bidders may demonstrate Design Experience proposed by any of the following Entities, strictly acting as main or principal design contractor for the Eligible Design Projects:

- a) The Prospective Bidder itself; or
- b) A Qualifying Shareholder if the Prospective Bidder is a Consortium; or
- c) The Design Contractor, provided that the number of Design Contractors claiming the requisite experience shall not exceed one (1).

6.2.3 Construction Experience

6.2.3.1 The Prospective Bidder shall demonstrate that in the ten (10) years preceding the RFQ Submission Date, the Prospective Bidder or the Entity whose Eligible Construction Experience is proposed has undertaken one (1) Eligible Construction Project.

6.2.3.2 Prospective Bidders may demonstrate Construction Experience proposed by any of the following Entities, strictly acting as main or principal construction contractor for the Eligible Construction Projects:

- a) The Prospective Bidder itself; or
- b) A Qualifying Shareholder if the Prospective Bidder is a Consortium; or
- c) The Construction Contractor(s), provided that the number of Construction Contractors claiming the requisite experience shall not exceed one (1).

6.2.3.3 The Entity(ies) proposed to meet the Construction Experience requirements must also meet the turnover requirements specified under the Financial Qualification Requirements.

6.2.4 Hospital Operator Experience

6.2.4.1 The Prospective Bidder shall demonstrate that in the five (5) years preceding the RFQ Submission Date, the Prospective Bidder or the Entity whose Eligible Hospital Operator Project Experience is proposed has undertaken one (1) Eligible Hospital Operator Project.

6.2.4.2 Prospective Bidders may demonstrate Hospital Operator Experience by any of the following Entities, acting strictly as main or principal contractor:

- a) The Prospective Bidder itself, or its Subsidiary(ies) or Eligible SPV(s); or
- b) A Qualifying Shareholder, if the Prospective Bidder is a Consortium, or its Subsidiary(ies) or Eligible SPV(s); or
- c) The Hospital Operator.

6.2.5 Financial Qualification Requirements

6.2.5.1 A Prospective Bidder shall demonstrate Net Worth of not less than USD 200 million, as per its Latest Audited Financial Statements.

6.2.5.2 The Entity proposed to meet the Net Worth requirements may be any of the following:

- a) The Prospective Bidder itself or its Subsidiary(ies) or Affiliate(s) (being other than Subsidiaries); or
- b) A Qualifying Shareholder itself or its Subsidiary(ies) or Affiliate(s) (being other than Subsidiaries), if the Prospective Bidder is a Consortium,

Provided that such Affiliate(s) of the Prospective Bidder or the Qualifying Shareholder, as the case may be, shall comply with the requirements under Section 6.2.5.1.

6.2.5.3 The Entity(ies) proposed to meet the Construction Experience requirement must have an aggregate average annual turnover from construction activities of not less than USD300m over the three (3) years preceding the RFQ Submission Date (as reflected in the Latest Audited Financial Statements and the Audited Financial Statements for the two financial years immediately preceding the year of the Latest Audited Financial Statements).

6.2.6 Other Qualification Requirements

6.2.6.1 Where a Prospective Bidder or a Qualifying Shareholder has relied upon its Affiliate(s) to satisfy the PPP Experience or the Net Worth:

- a) The Prospective Bidder shall submit to KNHB as a part of the Qualification Documents a signed financial letter of support in the form at Annex QD-8 from each such Affiliate confirming that the Affiliate shall extend all necessary support to the Prospective Bidder or the Qualifying Shareholder in meeting the equity commitment of such Prospective Bidder or the Qualifying Shareholder, as the case may be, in the Project Company; provided however that a letter of support shall not be required to be provided by a Subsidiary whose experience or credentials have only been used towards meeting the PPP Experience. A copy of the authorization in favour of the authorized representative of the Affiliate signing the financial letter of support shall be provided together with the financial letter of support.
 - b) Failure on the part of a Prospective Bidder or a Qualifying Shareholder to furnish the financial letter of support from its Affiliate(s) as required under (a) above will result in the said PPP Experience or Net Worth not being counted towards satisfaction of its Minimum Qualification Requirements. Failure on the part of the Affiliate(s) to comply with any requirements provided in or substituted by the Bidding Documents may lead to disqualification of the Pre-Qualified Bidder and where such Pre-Qualified Bidder is the Successful Bidder, failure on part of the Affiliate(s) to comply with the requirements as may be provided in or substituted by the Bidding Documents may lead to disqualification of the Successful Bidder, withdrawal of the Letter of Award and forfeiture of the Successful Bidder's Bid Security. In the event such a default occurs pursuant to signing of the Project Agreement, then the same may, at KNHB's option, be terminated and the Performance Security of the Project Company forfeited.
- 6.2.6.2 Prospective Bidders are required to submit as a part of their Qualification Documents, indicative letters of support from two or more Qualifying Banks and Financial Institutions regarding the provision of debt finance for the Project substantially in the form provided at Annex QD-9A.
- 6.2.6.3 A single Prospective Bidder is required to submit, as a part of its Qualification Documents, a Letter of Commitment using the format in Annex QD-9B stating that its minimum intended level of equity contribution to the Project Company will not be less than USD 40 million.
- 6.2.6.4 Where the Prospective Bidder is a Consortium, the Letters of Commitment using the format in Annex QD-9B shall be given by all the Consortium Members stating their individual minimum intended equity contribution and that the aggregate of the minimum intended equity contributions of all the Consortium Members in the Project Company will not be less than USD 40 million.
- 6.2.6.5 A summary of the Minimum Qualification Requirements is enclosed as Appendix 1. The same (i.e. Appendix 1) should be read in conjunction with Section 6 and in the event of any conflict, the provisions of this Section 6 shall prevail.

7 QUALIFICATION DOCUMENTS

- 7.1 The Prospective Bidder shall, in pursuance of this RFQ, submit the Qualification Documents consisting of the following documents:
- 7.1.1 Notarized Application to Pre-Qualify, using the form in **Annex QD-1A** and attaching proof of payment of the **Participation Fee**.
- 7.1.2 Notarized Authority to Apply to Pre-Qualify and designate an Authorized Representative
- 7.1.2.1 If the Prospective Bidder is a single Prospective Bidder, it must submit a Notarized Authority to using the form in **Annex QD-1B**.
- 7.1.2.2 If the Prospective Bidder is a Consortium, each Consortium Member must submit a Notarized Authority to Participate in Consortium jointly and severally and apply to Pre-Qualify, and designate the Lead Member and other Consortium Members of the Consortium, using the form in **Annex QD- 1C**. The Lead Member shall submit a Notarized Authority using the form in **Annex QD-1B** in favour of its authorized representative. Provided however, the Consortium shall be required to submit a joint bidding agreement executed between all Consortium Members for the purposes of jointly participating in the Bidding Process for the PPP Project at the RFP stage.
- 7.1.3 Business Structure, using the form in **Annex QD-2A** for a single Prospective Bidder and **Annex QD-2B** for Consortia.
- 7.1.3.1 The Business Structure (in both Annex **QD-2A** and **QD-2B**) must also indicate the Entity(ies) proposed to satisfy each and every Minimum Qualification Requirement set out in Section 6.
- 7.1.3.2 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 between the Consortium Members in the Project Company shall also be enclosed with **Annex QD-2B**.
- 7.1.4 Basic Information Sheet, using the form in **Annex QD-3**.
- 7.1.4.1 The Basic Information Sheet must be submitted by all Entities identified in the Business Structure.
- 7.1.4.2 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; and
 - 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.

7.1.5 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:

- a) Documentary evidence from each Eligible PPP Project owner regarding the status of the operation phase of the Eligible PPP Project or confirming that the design and 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 the Eligible PPP Project is presented; and
- b) 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, client name and contact details, and details including percentage shareholding of such Entity in the Eligible PPP Project.

7.1.6 Hospital Design Experience, using the form in **Annex QD-5A**. The following must be provided by an Entity proposed to meet the Hospital Design Experience requirements, as identified in the Business Structure:

- a) Documentary evidence from each Eligible Hospital Design owner confirming that the construction of such Hospital Design Project has been completed and accepted by the project owner specifying the date of completion and acceptance of such Eligible Hospital Design Project (e.g. completion certificate).
- b) Documentary evidence for each Eligible Hospital Design Project shall be accompanied by a statement certified by the authorized representative of the Entity.

7.1.7 Hospital Construction Experience, using the form in **Annex QD-5B**. The following must be provided by an Entity proposed to meet the Hospital Construction Experience requirements, as identified in the Business Structure:

- a) Documentary evidence from each Eligible Construction Project owner confirming that the construction of such Hospital Construction Project has been completed and accepted by the project owner specifying the date of completion and acceptance of such Eligible Hospital Construction Project (e.g. completion certificate). The documentary evidence for each Eligible Hospital Construction Project shall be accompanied by a statement certified by the authorized representative of the Entity.

- b) Copies of Audited Financial Statements of the last three (3) years preceding the RFQ Submission Date of each Entity duly certified by the authorised representative of the respective Entity.

7.1.8 Hospital Operator Experience using the form in **Annex QD-6**

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

- a) Certification for the Eligible Hospital Operator Project that the Hospital Operator
 - i) managed the equipment procurement and installation for the Eligible Project and
 - ii) has been operating and managing (or continues to operate and manage) the Eligible Project including the provision of clinical services and maintenance of the hospital 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 Hospital Operator Project is not less than five (5) years.
- b) **Annex QD-6** shall specify the name and location of the Eligible Hospital Operator Project including the hospital number of beds, client name and contact details.

7.1.9 Statement of Financial Qualification

7.1.9.1 The Prospective Bidder shall submit a statement of financial qualification using the form in **Annex QD-7** and a duly certified true copy of the Latest Audited Financial Statements. If the Prospective Bidder is a Consortium, a 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 uncommitted 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.

7.1.9.2 Financial letter of support in the form provided at **Annex QD-8** by each of the Affiliate(s) whose experience / credentials have been relied upon by the Prospective Bidder or the Qualifying Shareholder to satisfy the PPP Experience or the Financial Qualification Requirements. Where the experience or credentials of an Affiliate is used by the Prospective Bidder or a Qualifying Shareholder, a copy of the Latest Audited Financial Statements of such Affiliate shall be submitted together with a summary table detailing its Net Worth. The copy of the Latest Audited Financial Statements shall be certified by the Affiliate's authorized representative who will also sign the financial letter of support to be furnished under Section 6.2.6.

- 7.1.9.3 Indicative letter of support from at least two Qualifying Banks and Financial Institutions for lending of debt finance for the PPP Project, substantially in the form provided at **Annex QD-9A**.
- 7.1.9.4 Letter of Commitment, using the format in **Annex QD-9B**, from a Single Prospective Bidder stating that the minimum intended level of equity contribution in the Project Company will not be less than USD 40 million. Where such Prospective Bidder is a Consortium, the Letters of Commitment using the format in Annex QD-9B shall be given by each of the Consortium Members stating their individual minimum intended equity contribution and that the aggregate minimum intended equity contribution of all the Consortium Members in the Project Company will not be less than USD 40 million.
- 7.1.9.5 Certification of Absence of Unsatisfactory Performance Record using the **Annex QD-10** by a single Prospective Bidder and all Consortium Members where the Prospective Bidder is a Consortium.
- 7.1.9.6 Information, using the form in **Annex ID-1**. 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.

8 SUBMISSION AND VALIDITY OF QUALIFICATION DOCUMENTS

8.1 Format of submission of Qualification Documents

8.1.1 A Prospective Bidder must submit its Qualification Documents in the following form:

8.1.1.1 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;

8.1.1.2 Two (2) sets of photocopies, clearly marked on the cover page as “QUALIFICATION DOCUMENTS-COPY NO. ___”; and

8.1.1.3 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 Excel 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.

8.1.2 Each page of the original set of Qualification Documents, including any required attachments, shall be serially numbered and initialled (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.

8.1.3 Each set of the Qualification Documents should contain a table of contents.

8.1.4 Whenever possible, Qualification Documents should be printed either in standard A4 or letter size (8 ½” x 11”) paper and book bound together in ring binders or folders of appropriate size. Documents must be paginated and text must be at least of 12-font size.

8.1.5 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:

THE CHIEF EXECUTIVE OFFICER
KENYATTA NATIONAL HOSPITAL BOARD
KNH PRIVATE HOSPITAL PPP PROJECT
TENDER NUMBER: KNH PPP /RFQ/01/2019-2020
[ORIGINAL/COPY NO. ()/ CDs. No. ()
[STATE NAME, ADDRESS, TELEPHONE NUMBER (WITH
COUNTRY AND CITY CODE) AND EMAIL OF PROSPECTIVE
BIDDER
DO NOT OPEN UNTIL [DATE]

- 8.1.6 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:

THE CHIEF EXECUTIVE OFFICER
KENYATTA NATIONAL HOSPITAL BOARD
KNH PRIVATE HOSPITAL PPP PROJECT
QUALIFICATION DOCUMENTS
TENDER NUMBER: KNH PPP /RFQ/01/2019-2020
[STATE NAME, ADDRESS, TELEPHONE NUMBER (WITH COUNTRY
AND CITY CODE) AND EMAIL OF PROSPECTIVE BIDDER
DO NOT OPEN UNTIL [DATE]

- 2.1.1. If any of the envelopes are not sealed and marked as required, KNHB 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 KNHB shall be rejected.

8.2 Place and deadline of submission of Qualification Documents and their validity

- 8.2.1 Each Prospective Bidders' Qualification Documents are to be submitted no later than 12:00 pm, Kenya Standard Time, on RFQ Submission Date by hand or courier (at the Prospective Bidder's absolute risk as to timely delivery) to:

**The Chief Executive Officer
Kenyatta National Hospital Board
Hospital Road, Off Ngong Road, Nairobi
Administration Block
Supply Chain Management Offices, Room No 12**

By: 11 December 2019

- 8.2.2 KNHB shall not receive a Prospective Bidder's couriered Qualification Documents where such couriered delivery occurs after the date and time indicated above.
- 8.2.3 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 KNHB.
- 8.2.4 Any Qualification Documents received after the RFQ Submission Date will be automatically rejected and not accepted.
- 8.2.5 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 KNHB.
- 8.2.6 Qualification Documents shall remain valid for a period of one hundred and fifty (150) days after the RFQ Submission Date. The Prospective Bidder may extend the validity of the Qualification Documents if so required by KNHB. Failure on the part of the Prospective Bidder to extend or agree to extend the validity period of the Qualification Documents as may be requested by KNHB shall result in rejection of the Bid of such Pre-Qualified Bidder.

9 OPENING OF QUALIFICATION DOCUMENTS

- 9.1 At 2.00 pm on the RFQ Submission Date, KNHB will commence the opening proceedings by announcing the names of the Prospective Bidders who have submitted Qualification Documents. KNHB shall then open the envelope of each Prospective Bidder, one at a time, in the order in which the Qualification Documents were received by KNHB.
- 9.2 KNHB 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, KNHB may (in its own sole discretion) disqualify the Prospective Bidder.
- 9.3 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.
- 9.4 KNHB shall evaluate the Qualifications Documents submitted in accordance with Section 10 below.

10 EVALUATION OF QUALIFICATION DOCUMENTS

- 10.1 KNHB shall evaluate the Qualification Documents after the RFQ Submission Date. The detailed evaluation against the Minimum Qualification Requirements of each Prospective Bidder for the PPP Project shall be based exclusively upon the submitted Qualification Documents.
- 10.2 KNHB 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. KNHB may make requests for clarification in writing to the authorized representative of the Prospective Bidder.
- 10.3 All information submitted and any clarifications received by KNHB shall be evaluated against the Minimum Qualification Requirements and evaluated strictly on a pass-or-fail basis. A 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 KNHB shall have produced a satisfactory response and all other requirements of the RFQ have been complied with. A 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 KNHB receives an unsatisfactory response to any enquiries it has made in respect of a Prospective Bidder's Qualification Documents.

11 DISQUALIFICATION OF PROSPECTIVE BIDDERS

- 11.1 A Prospective Bidder may be disqualified from participating in the Bidding Process for any of the following reasons in addition to the grounds for disqualification described above in section 10.3.
- 11.2 A Prospective Bidder shall be disqualified if:
- 11.2.1 it is a Prohibited Person, or if any Contractor is a Prohibited Person, or if any entity which Controls the Prospective Bidder or a Consortium Member is a Prohibited Person;
 - 11.2.2 it submits false, inaccurate or incomplete information in relation to its qualifications;
 - 11.2.3 it involves itself in any Corrupt, Fraudulent or Dishonest, Collusive, Coercive, Undesirable, or Restrictive Practice;
 - 11.2.4 it has a Conflict of Interest as described in Section 5.2;
 - 11.2.5 it contravenes the provisions of the PPP Act, PPP Regulations or any other written law, inter-alia, in order to gain an unfair advantage over other Prospective Bidders;
 - 11.2.6 it fails to pass the Minimum Qualification Requirements as per the evaluation criteria set out at Section 10.2;
 - 11.2.7 it makes a wilful misrepresentation in the Qualification Documents; or
 - 11.2.8 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.
- 11.3 For the avoidance of doubt grounds for disqualification shall apply to all Prospective Bidders, Consortium Members, Affiliates, Eligible SPVs and Contractors proposed by the Prospective Bidder to fulfil any of the Minimum Qualification Requirements.
- 11.4 Any Prospective Bidder who is aggrieved by the decision of KNHB to disqualify or not to pre-qualify it may petition the PPP Petition Committee substantially in the form in Annex 1D-2 and upon payment of the prescribed fees as specified in Annex 1D-3.

12 PRE-QUALIFIED BIDDERS AND NOTICE OF QUALIFICATION

- 12.1 A Prospective Bidder who is declared as having 'passed' under Section 10 and is not disqualified in accordance with Section 11, 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.
- 12.2 KNHB 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. KNHB shall also publish the list of the Pre-Qualified Bidders in the Gazette and in at least two newspapers of national circulation.

13 ACCEPTANCE OF TERMS AND CONDITIONS OF GOVERNING LAW

- 13.1 By submitting the Qualification Documents, the Prospective Bidder agrees to be bound by:
- 13.1.1 all the terms and conditions contained in this RFQ; and
 - 13.1.2 the laws of Kenya applicable to: (i) the issuance of this RFQ by KNHB; and (ii) the submission of the Qualification Documents by the Prospective Bidder.

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

[Letterhead]

Date: []

The Secretary,
Pre-Qualification Committee
Kenyatta National Hospital Board
P.O. Box 20723-00202
NAIROBI

TENDER NO: [*]

PRE-QUALIFICATION FOR THE KNH PRIVATE HOSPITAL 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 KNH Private Hospital 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 KNHB 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 KNHB 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 KNHB/Government of Kenya; or (ii) was in the employment of the Transaction Advisor or of KNHB/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 KNHB and hold it harmless from any loss, damage, liabilities, claims, actions, proceedings, demands, costs, charges or expenses of whatsoever nature suffered by KNHB 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.

15 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
Kenyatta National Hospital Board
P.O. Box 20723-00202
NAIROBI

TENDER NO: [*]

PRE-QUALIFICATION FOR KNH PRIVATE HOSPITAL 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 KNH Private Hospital 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 / brackets

16 Annex QD-1C: CONSORTIUM MEMBER'S NOTARIZED AUTHORITY TO PARTICIPATE IN CONSORTIUM AND APPLY TO PRE-QUALIFY, AND DESIGNATE LEAD MEMBER AND OTHER CONSORTIUM MEMBERS

For a Prospective Bidder which is a Consortium; to be submitted by each Consortium Member.

[Letterhead]

To,

The Secretary
 Pre-Qualification Committee
 Kenyatta National Hospital Board
 P.O. Box 20723-00202
 NAIROBI

TENDER NO: [*]

PRE-QUALIFICATION FOR KNH PRIVATE HOSPITAL PPP PROJECT

I, (name of authorized representative), after having been duly sworn according to law, hereby depose and state that:

1. I am a citizen of (state and nationality), of legal age and a resident of (address);
2. I am duly appointed authorized representative of (name of Consortium Member), a (provide the legal structure i.e. Company, partnership, or corporation) organized and existing under and by virtue of the laws of (the place of incorporation/registration);
3. At a meeting of the (board of directors/partners) of (name of Consortium Member), held on (date) at (place), in which meeting a quorum was present throughout, the following resolutions were unanimously passed and approved:

a) RESOLVED, AS IT IS HEREBY RESOLVED, that the (name of Consortium Member) be, and is, authorized to participate in the Bidding Process as a Consortium Member and apply for Pre-Qualification for the KNH Private Hospital PPP Project (the "Project") through a Consortium consisting of the following Consortium Members;

Name of all Consortium Members	Nationality	Role [i.e Lead Member/ Qualifying Shareholder/ Others (please specify)]	Proposed percentage (%) of share holding in the Project Company, if any

b) RESOLVED, FURTHER, that the (name of Consortium Member) in exercise of its interest in the Consortium hereby designates (name of Lead Member of Consortium) as Lead Member of the Consortium with the authority to represent the Consortium on all matters whatsoever during the Pre-Qualification Stage and the Bid Stage for the Project, with the power to appoint and sub-delegate any powers herein to any of its director, partner, officer or employee to act as the authorized representative of the Consortium and

who shall have the authority to make submissions/statements, commit, undertake, declare, execute, sign, certify, submit the Qualification Documents/Bid and receive any requests for clarification, additional information, authentication or verification and otherwise act on our behalf and in the name of the Consortium.

c) RESOLVED, FURTHER, that any and all act done or performed by (name of Lead Member of Consortium) and its authorized representative under and by virtue of this resolution be, as they are hereby, confirmed and ratified.

d) RESOLVED, FURTHER, that in the event the Consortium is declared as the Successful Bidder, the (name of Consortium Member) will cooperate with the other Consortium Members to register the Project Company as per the PPP Act, as amended or substituted from time to time, for implementation of the Project and shall hold (%) shares in the Project Company.

e) RESOLVED, FURTHER, that (name of the Consortium Member) binds itself jointly and severally for all the obligations of the Prospective Bidder under the RFQ.

f) RESOLVED, FINALLY, that (name of the authorized representative of the Consortium Member) be and is hereby authorized to sign and issue all documents on behalf of (name of the Consortium Member) as may be required as a Consortium Member for submission of or in relation to the Qualification Documents.

4. These resolutions have not been revoked, amended or modified and remain valid and binding on the (Consortium Member); and

5. The above resolutions are in accordance with the records of the (name of the Consortium Member).

Capitalized terms used herein but not defined herein will have the meaning assigned to such term in the Request for Qualification, for Tender 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 / brackets.

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

1. Single Prospective Bidder who will satisfy the PPP Experience Requirement

a. Name of the Entity being the Prospective Bidder	
b. Net worth in USD as per the Latest Audited Financial Statements	
c. Address	
d. Website	
e. Contact person	
i. Telephone	
ii. Fax	
iii. Email	

2. Affiliate (including Subsidiary) of Prospective Bidder, if any, who will satisfy the PPP Experience Requirement

a. Name of the Affiliate	
b. Net worth in USD as per the Latest Audited Financial Statements	
c. Address	
d. Website	
e. Contact person	
i. Telephone	
ii. Fax	
iii. Email	

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

3. Single Prospective Bidder who will satisfy the Design Experience Requirement

a. Name of the Entity being the Prospective Bidder	
c. Address	
d. Website	
e. Contact person	
i. Telephone	
ii. Fax	
iii. Email	

4. Design Contractor proposed by the Prospective Bidder as fulfilling the Design Experience Requirement

a. Name of the Design Contractor	
c. Address	
d. Website	
e. Contact person	
i. Telephone	
ii. Fax	
iii. Email	

Requirement, replicate table above.

5. Single Prospective Bidder who will satisfy the Construction Experience Requirement

a. Name of the Entity being the Prospective Bidder	
b. Average annual turnover from construction activities in the last 3 years prior to the RFQ Submission Date in USD	

c. Address	
d. Website	
e. Contact person	
i. Telephone	
ii. Fax	
iii. Email	

6. Construction Contractor proposed by the Prospective Bidder as fulfilling the Construction Experience Requirement

a. Name of the Design Contractor	
b. Average annual turnover from construction activities in the last 3 years prior to the RFQ Submission Date in USD	
c. Address	
d. Website	
e. Contact person	
i. Telephone	
ii. Fax	
iii. Email	

[Note: If more than one Construction Contractor(s) fulfils the Construction Experience

7. Single Prospective Bidder who will satisfy the Hospital Operator Experience Requirement

a. Name of Entity	
b. Address	
c. Website	
d. Contact person	
i. Telephone	
ii. Fax	
iii. Email	

8. Subsidiary of the Prospective Bidder, if any, who will satisfy the Hospital Operator Experience Requirement

a. Name of the Subsidiary	
b. Address	
c. Website	
d. Contact person	
i. Telephone	
ii. Fax	
iii. Email	

[Note: If more than one Subsidiary fulfils the Hospital Operator Experience Requirement, replicate table above.]

9. Eligible SPV of the Prospective Bidder, if any, who will satisfy the Hospital Operator Experience Requirement

a. Name of the Eligible SPV	
b. Address	
c. Website	
d. Contact person	

i. Telephone	
ii. Fax	
iii. Email	

[Note: If more than one Eligible SPV fulfils the Hospital Operator Experience Requirement, replicate table above.]

10. Hospital Operator Contractor proposed by the Prospective Bidder as fulfilling the Hospital Operator Experience Requirement

a. Name of Entity	
b. Address	
c. Website	
d. Contact person	
i. Telephone	
ii. Fax	
iii. Email	

11. Prospective Bidder who will fulfil the Financial Qualification Requirement

a. Name of Entity	
b. Net worth in USD as per the Latest Audited Financial Statements	
c. Address	
d. Website	
e. Contact person	
i. Telephone	
ii. Fax	
iii. Email	

12. Affiliate (including Subsidiary) of the Prospective Bidder proposed as fulfilling the Financial Qualification Requirement

a. Name of Entity	
b. Net worth in USD as per the Latest Audited Financial Statements	
c. Shareholding of the Affiliate in the Prospective Bidder, if any	
d. Shareholding of the Prospective Bidder in the Affiliate, if any	
e. Address	
f. Website	
g. Contact person	
i. Telephone	
ii. Fax	
iii. Email	

[Note: If more than one Affiliate is proposed to fulfil the Financial Qualification Requirement, replicate table above.]

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.

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

1. Consortium Members

Name of Consortium Member				
Proposed shareholding in the Project Company				
Role in Consortium (such as Lead Member/Consortium Member/ Qualifying Shareholder whose credentials or experience is used/ any other,)				

2. Contact Information of Consortium Members

a. Name of Consortium Member)	
b. Address	
c. Website	
d. Contact (Name and Designation)	
i. Telephone	
ii. Fax	
iii. Email	

[Note: Replicate table above for all Consortium Members.]

3. Qualifying Shareholder which fulfils the PPP Experience Requirement

a. Name of Qualifying Shareholder	
b. Net Worth in USD as per the Latest Audited Financial Statements	
c. Proposed share holding in the Project Company	
d. Address	
e. Website	
f. Contact (Name and Designation)	
i. Telephone	
ii. Fax	
iii. Email	

[Note: If more than one Qualifying Shareholder fulfils the PPP Experience Requirement, replicate table above

4. Affiliates (including Subsidiaries), if any, of the Qualifying Shareholder(s) nominated to satisfy the PPP Experience Requirement

a. Name of Affiliate	
b. Qualifying Shareholder with whom It Is Affiliated	
c. Net Worth in USD as per the Latest Audited Financial Statements	
d. Address	
e. Website	
e. Contact (Name and Designation)	
i. Telephone	
ii. Fax	
iii. Email	

[Note: If more than one Affiliate fulfils the PPP Experience Requirement, replicate table above.

5. Qualifying Shareholder(s), if any, which fulfils the Design Experience requirement:

a. Name of Qualifying Shareholder	
-----------------------------------	--

c. Proposed shareholding in the Project Company	
d. Address	
e. Website	
f. Contact (Name and Designation)	
i. Telephone	
ii. Fax	
iii. Email	

[Note: If more than one Qualifying Shareholder fulfils the Design Experience Requirement, replicate table above.]

6. Design Contractor, if any, nominated by the Prospective Bidder to satisfy the Design Experience Requirement

a. Name of the Construction Contractor	
c. Address	
d. Website	
e. Contact person	
i. Telephone	
ii. Fax	
iii. Email	

7. Qualifying Shareholder(s), if any, which fulfils the Construction Experience requirement:

a. Name of Qualifying Shareholder	
b. Average annual turnover from the construction activities over the last 3 years prior to the RFQ Submission Date in USD	
c. Proposed share holding in the Project Company	
d. Address	
e. Website	
f. Contact (Name and Designation)	
i. Telephone	
ii. Fax	
iii. Email	

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

8. Construction Contractor, if any, nominated by the Prospective Bidder to satisfy the Construction Experience Requirement

a. Name of the Construction Contractor	
b. Average annual turnover from the construction activities over the last 3 years prior to the RFQ Submission Date in USD	
c. Address	
d. Website	
e. Contact person	
i. Telephone	
ii. Fax	
iii. Email	

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

9. Qualifying Shareholder(s), if any, which fulfil/s the Hospital Operator Experience

a. Name of Qualifying Shareholder	
b. Proposed share holding in the Project Company	
c. Address	
d. Website	
e. Contact (Name and Designation)	
i. Telephone	
ii. Fax	
iii. Email	

[Note: If more than one Qualifying Shareholder fulfils the Hospital Operator Experience Requirement, replicate table above.]

10. Subsidiary if any, of the Qualifying Shareholder(s) nominated to satisfy the Hospital Operator Experience Requirement

a. Name of Qualifying Shareholder	
b. Proposed share holding in the Project Company	
c. Address	
d. Website	
e. Contact (Name and Designation)	
i. Telephone	
ii. Fax	
iii. Email	

[Note: If more than one Eligible SPV fulfils the Hospital Operator Experience Requirement, replicate table above.]

9. Eligible SPV, if any, of the Qualifying Shareholder(s) nominated to satisfy the Hospital Operator Experience Requirement

a. Name of Eligible SPV	
b. Qualifying Shareholder with whom Eligible SPV is affiliated	
c. Address	
d. Website	
e. Contact (Name and Designation)	
i. Telephone	
ii. Fax	
iii. Email	

[Note: If more than one Eligible SPV fulfils the Hospital Operator Experience Requirement, replicate table above.]

10. Hospital Operator Contractor, if any, nominated by the Prospective Bidder to satisfy the Hospital Operator Experience Requirement

a. Name of the Hospital Operator Contractor	
b. Address	
c. Website	
d. Contact person	
i. Telephone	
ii. Fax	
iii. Email	

11. Qualifying Shareholder(s) which fulfils the Financial Qualification Requirements

a. Name of Qualifying Shareholder	
b. Net Worth in USD as per the Latest Audited Financial Statements	
c. Proposed share holding in the Project Company	
d. Address	
e. Website	
f. Contact (Name and Designation)	
i. Telephone	
ii. Fax	
iii. Email	

[Note: If more than one Qualifying Shareholder fulfils the Financial Qualification Requirement, replicate table above.]

12. Affiliates (including Subsidiaries), if any, of the Qualifying Shareholder(s) nominated to satisfy the Financial Qualification Requirement

a. Name of Affiliate	
b. Qualifying Shareholder with whom It Is Affiliated	
c. Net Worth in USD as per the Latest Audited Financial Statements	
d. Shareholding of the Affiliate in the Qualifying Shareholder, if any	
e. Shareholding of the Qualifying Shareholder in the Affiliate, if any	
f. Address	
g. Website	
g. Contact (Name and Designation)	
i. Telephone	
ii. Fax	
iii. Email	

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

Required Attachments:

- 1) Enclose/attach a copy of the consortium agreement, clearly setting out the relationship between the Consortium Members and the proposed shareholding in the Project Company of each of the Consortium Member.

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

(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.

19 Annex QD-3: BASIC INFORMATION SHEET

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

1. Name of Entity	
2. Single Prospective Bidder?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. Consortium Member?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. Qualifying Shareholder?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5. Subsidiary of the Prospective Bidder	<input type="checkbox"/> Yes <input type="checkbox"/> No
6. Subsidiary of the Qualifying Shareholder	<input type="checkbox"/> Yes <input type="checkbox"/> No
7. Affiliate of the Prospective Bidder	<input type="checkbox"/> Yes <input type="checkbox"/> No
8. Affiliate of the Qualifying Shareholder	<input type="checkbox"/> Yes <input type="checkbox"/> No
7. Eligible SPV of the Prospective Bidder	<input type="checkbox"/> Yes <input type="checkbox"/> No
8. Eligible SPV of the Qualifying Shareholder	<input type="checkbox"/> Yes <input type="checkbox"/> No
9. Construction Contractor	<input type="checkbox"/> Yes <input type="checkbox"/> No
10. Hospital Operator Contractor	<input type="checkbox"/> Yes <input type="checkbox"/> No
11. Place of Incorporation or Registration	
12. Year of Incorporation or Registration	

Shareholder/s or Partner/s Information

Name of Shareholder/s, or Partner/s of the Entity	Nationality	Total percentage shareholding or partnership interest
1.		
2.		
3.		
4.		
5.		

(Insert rows as necessary)

Required attachments:

For an Entity which is incorporated or registered in Kenya: (i) a copy of the Certificate of Incorporation, or where such Entity is not a Company, a 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 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.

A copy of the authorization given by the Entity in favour of the authorized representative signing the Qualification Documents shall be provided where such Entity is other than the Prospective Bidder/Qualifying Shareholder.

For and on behalf of (Name of Entity) _____

(Signature of authorized representative) _____

(Name, Title, and Date) _____

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.*

20 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 (<i>i.e. single Prospective Bidder itself/ Qualifying Shareholder/ Subsidiary/ Affiliate other than a Subsidiary</i>)

List of Eligible PPP projects

Ref #	Name of Entity meeting the PPP Experience	Name of project	Capital Value USD
1.			
2.			
3.			
4.			

(Insert rows as necessary if additional projects provided)

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/ Qualifying Shareholder/Subsidiary/ Affiliate other than a Subsidiary in the Project Company	
Capital Value in USD	
For any project not originally denominated in USD, details of the exchange rate, reference date and source of the exchange rate used	
Confirmation that the construction and operation of the project was undertaken in compliance with the environmental and social sustainability laws / policies applicable to the project, being either the national laws/policies of the implementing authority of the project or the Equator Principles, the International Finance Corporation (IFC) Performance Standards on Environmental and Social Sustainability or the World Bank Group Environmental, Health and Safety Guidelines where these have been	<i>[Confirmation to include statement of which type of environmental and social laws/policies were applicable].</i>

accepted by the implementing authority. Confirmation that there has not been any fine, out of court settlement or conviction in relation to environmental and social issues arising from the project with respect to the obligations of the developer / project proponent.	
Date of PPP contract	
Date of Completion of Construction	

[Note: For each project submitted, replicate table above.] [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 of the information furnished should be done in the following manner:

<p>Certificate from the authorized representative</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 Prospective Bidder/if Consortium, Name of Consortium and Lead Member)

(Signature of authorized representative)
(Name, Title, and Date)

(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.

21 Annex QD-5A: DESIGN EXPERIENCE

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

Name of Prospective Bidder	
----------------------------	--

Name of Entity meeting the Design Experience	Relationship to the Prospective Bidder (<i>i.e. single Prospective Bidder itself/ Qualifying Shareholder/ Construction Contractor</i>)

List of Eligible Hospital Design Projects (under 4.2.1(B)(i)(a) of RFQ)

Ref #	Name of Entity(ies) meeting the Design Experience	Name of project	Hospital Beds	Project Capital Value (USD)
1.				
2.				

(Insert rows as necessary if additional projects provided)

Description of each Eligible Hospital Design Project (under 4.2.1(B)(i)(a) of RFQ)

Ref #	
Name of project	
Country	
Description	
Name of contracting authority	
Name and contact details of contracting authority's contact person	
Name of Entity/ which completed the Project (<i>i.e. single Prospective Bidder/Qualifying Shareholder/ Design and Construction Contractor</i>)	
Capital Value (USD)	
For any project not originally denominated in USD, details of the exchange rate, reference date and source of the exchange rate used	
Date of Certificate of Completion or alike	

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

Required Attachments:

- a. Documentary evidence for each Eligible Design Project that the construction of such Eligible Design Project has been completed and accepted by the project owner specifying the date of completion and acceptance of such Eligible Design Project (e.g. completion certificate).
- b. Certification from the authorized representative of the Entity for correctness of the information furnished in Annex QD-5A, which should be done in the manner provided below

<p>Certificate from the authorized representative</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.*

22 Annex QD-5B: 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 Entity meeting the Construction Experience	Relationship to the Prospective Bidder (<i>i.e. single Prospective Bidder itself/ Qualifying Shareholder/ Construction Contractor</i>)

List of Eligible Hospital Construction Projects (under 4.2.1(B)(i)(a) of RFQ)

Ref #	Name of Entity(ies) meeting the Construction Experience	Name of project	Hospital Beds	Project Capital Value (USD)
1.				
2.				

(Insert rows as necessary if additional projects provided)

Description of each Eligible Hospital Construction Project (under 4.2.1(B)(i)(a) of RFQ)

Ref #	
Name of project	
Country	
Description	
Name of contracting authority	
Name and contact details of contracting authority's contact person	
Name of Entity/ which completed the Project (<i>i.e. single Prospective Bidder/Qualifying Shareholder/ Construction Contractor</i>)	
Capital Value (USD)	
For any project not originally denominated in USD, details of the exchange rate, reference date and source of the exchange rate used	
Date of Certificate of Completion or alike	

[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 Entity	Relationship <i>(i.e Prospective Bidder itself/ Qualifying Shareholders/ Construction Contractor)</i>	Annual turnover		
		Financial Year () (please mention the year)	Financial Year () (please mention the year)	Financial Year () (please mention the year)
1.				
2.				
3.				

(Insert rows as necessary)

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

Month end exchange rate	Financial Year () (please mention the year)	Financial Year () (please mention the year)	Financial 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 for each Eligible Construction Project 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. Copies of Audited Financial Statements of last 3 (three) years preceding the RFQ Submission Date of each Entity duly certified by the authorized representative of the Entity
- c. Certification from the authorized representative of the Entity for correctness of the information furnished in Annex QD-5B, which should be done in the manner provided below

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.*

23 Annex QD-6: HOSPITAL OPERATOR EXPERIENCE

To be submitted by the Entity proposed as fulfilling the Hospital Operator 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 Hospital Operator Experience Requirement	Relationship to the Prospective Bidder <i>(i.e. single Prospective Bidder itself/ Qualifying Shareholder/ Subsidiary/ Eligible SPV/ Hospital Operator Contractor)</i>

List of Eligible Hospital Operator projects

Ref #	Name of Entity proposed as meeting the Hospital Operator Experience	Name of project	Hospitals No. of Beds
1.			
2.			
3.			
Sum of No. of Beds			

(Insert rows as necessary)

Description of each Eligible Hospital Operator project

Ref #	
Name of Hospital	
Location	
Description of scope of work (indicate entities responsible for equipment procurement and installation, hospital administration and provision of clinical services if different from the Hospital Operator)	
Name of Contracting Authority	
Name and contact details of Contracting Authority's contact person	
Name of Entity which is the Hospital Operator of the Hospital <i>i.e. single Prospective Bidder/Qualifying Shareholder/ Subsidiary/ Eligible SPV/ Hospital Operator Contractor)</i>	
Number of Hospital Beds in the project	
Start Date of Hospital Operator Period	
End Date of Hospital Operator Period	

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

Required Attachments:

- a. Certification for the Eligible Hospital Operator Project that the Hospital 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 statement issued by the authorized representative of the Entity which fulfils the Hospital Operator Experience Requirement that such copy is a true and correct reproduction of the original certificate.
- b.
- c. Certification from the authorized representative of the Entity for correctness of the information furnished in Annex QD-6, which should be done in the manner provided below:

<p>Certificate from the authorized representative</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 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.*

24 Annex QD-7: FINANCIAL QUALIFICATION

CERTIFIED STATEMENT OF FINANCIAL QUALIFICATION

To be submitted by each 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 <i>(i.e. single Prospective Bidder or its Subsidiary or Affiliate (other than a Subsidiary)/ Qualifying Shareholder(s) in case of Consortium or their Subsidiary(ies) or Affiliate(s) (other than a Subsidiary))</i>	1. 2. 3. 4. <i>(and so on)</i>

I, *(name)*, *(citizenship)*, of legal age, with an office address at *(address)*, as the *(position/designation)* of *(name of Qualifying Shareholder(s)/ Affiliate 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/Qualifying Shareholder(s)/ Affiliate 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/Qualifying Shareholder(s)/ Affiliate meeting the Financial Qualification Requirement)* has a minimum unrestricted Net Worth equivalent to at least United States Dollars (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 copy of which, is attached to this certificate.
2. The *financial summary of (name of Entity) which is the Prospective Bidder itself / Qualifying Shareholder(s) / Subsidiary/ Affiliate (other than a Subsidiary) meeting the Financial Qualification Requirements is as follows:*

Financial Information (in USD)	Financial Year () <i>(please mention the year)</i>	Provide the Exchange rate, reference date and source of the exchange rate for the currency used.
<i>(indicate last day of accounting year)</i>		
1. Total Assets		
2. Total Liabilities		
3. Total Net Worth		

3. The available funds which are yet to be committed to projects of the (name of Prospective Bidder / Qualifying Shareholder(s)) being an investment fund is as follows:

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

4. I declare on behalf of the (name of the investment fund) (being the Prospective Bidder/Qualifying Shareholder(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 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 Entity))

(Signature of authorized representative) (Name)

(Designation)

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. Copy of the Latest Audited Financial Statements.
3. Where the experience or credentials of an Affiliate is used by the Prospective Bidder or a

Qualifying Shareholder to satisfy the PPP Experience requirements, a copy of the Latest Audited Financial Statement of such Affiliate shall be submitted which shall be certified by the Affiliate's authorized representative signing the financial letter of support to be furnished under this Section.

4. The investment fund shall provide a 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 Entity (either as a Qualifying Shareholder and/ or Affiliate) 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/ Qualifying Shareholder is not an investment fund.*

25 Annex QD-8: FINANCIAL LETTER OF SUPPORT

Dear Sir,

We, *(name of the Affiliate)*, a *(company/partnership/corporation)* registered under the laws of *(state and country)* and having our registered place of business at *(address)*, being an Affiliate of *(name of the Prospective Bidder/Qualifying Shareholder)* whose experience and credentials are relied upon by *(name of the Prospective Bidder / Qualifying Shareholder)* to meet the *(PPP Experience requirements specified in 4.2.1 (A)) / (Net Worth Requirements specified under Section 4.2.2 (i))*, having gone through and understood the requirements of the RFQ for the "Design, Construction, Financing, Equipping, Operation and Maintenance of the KNH Private PPP Hospital" and the Addendums and Clarifications issued, do hereby declare and undertake in terms of the requirements under this RFQ:

1. We have studied the RFQ Document carefully and are fully aware of the obligations placed upon us as an Affiliate to the *(Prospective Bidder / Qualifying Shareholders)* under the RFQ.
2. We undertake to provide all necessary financial support to *(name of the Prospective Bidder or the Qualifying Shareholder)*, being the *(Prospective Bidder / Qualifying Shareholder in the Consortium, being the Prospective Bidder)* in meeting its equity commitment to the Project Company.

Sincerely yours,

(Signature of the authorized
representative of the Affiliate) (Name)
(Designation)

Required Attachments:

1. The Affiliate shall also provide a summary table providing aggregate of its Net Worth and provide a copy of the Latest Audited Financial Statements. The Exchange rate, reference date and source of the exchange rate for the currency shall also be provided.

Notes:

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

A copy of the authorization in favour of the authorized representative of the Affiliate signing this letter shall be provided together with this letter.

26 Annex QD-9: 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 KNH Private Hospital 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 KNHB 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.*

27 Annex QD-9B LETTER OF COMMITMENT FROM PROSPECTIVE BIDDER/ CONSORTIUM MEMBER

< On Prospective Bidder's / each Consortium

Member's Letter Head> Date:

Letter of Commitment

In connection with the participation of (*name of Prospective Bidder/ Consortium*) in the Bidding Process for the KNH Private PPP Hospital (the "Project"), we, (*name of single Prospective Bidder/ Consortium Member*), subject to the terms of our Bid, commit to subscribe a minimum equity contribution of USD [** million*] in the Project Company that we shall incorporate if declared the Successful Bidder for the purpose of implementing the Project [*so that the aggregate equity contribution of all the Consortium Members shall be at least USD 40 million in the Project Company*]**.

Sincerely yours,

<*Name of Prospective Bidder/ the*

Consortium Member> By:

(Full Name of the authorized representative of the *Prospective Bidder / Consortium Member*) (Designation)

** Please provide the amount of contribution. In case of a single Prospective Bidder, this amount shall be at least 50 million USD.*

*** To be retained only in case of Consortium Members and shall be deleted in case of a single Prospective Bidder.*

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.

28 Annex-QD-10: 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.*

29 Annex ID-1: PROJECT MANAGEMENT

FOR INFORMATION PURPOSES ONLY

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

Role	Name and Designation	Name of Organization (full title)
Prospective Bidder's authorised representative		
Subsidiary No.1* authorised representative <i>(please mention name of the Consortium member)</i>		
Affiliate No.1* authorised representative <i>(please mention name of the Consortium member)</i>		
Consortium Member No.1* authorised representative <i>(please mention name of the Consortium member)</i>		
Construction Contractor No.1* authorised representative <i>(please mention name of the Construction Contractor)</i>		
Hospital Operator Contractor* authorised representative <i>(please mention name of the Hospital Operator Contractor)</i>		
Eligible SPV No 1* authorised representative <i>(please mention name of the Eligible SPV)</i>		
Designers and technical advisors		
Legal advisor(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 /Subsidiary / Affiliate / Construction Contractor / Advisor*

30 Annex-ID-2: 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

31 Annex-ID-3: 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.	

32 APPENDIX 1: MINIMUM QUALIFICATION REQUIREMENTS

PPP EXPERIENCE					
Criteria	Satisfying Party	Eligible Project	Eligible Period	Minimum threshold for Eligible Project	Threshold to be achieved
Hospital PPP project	<p>Prospective Bidder</p> <p>Qualifying Shareholder</p> <p>Subsidiary(ies) of the Prospective Bidder</p> <p>Subsidiary(ies) of the Qualifying Shareholder</p> <p>Affiliate(s), other than Subsidiary(ies) of the Prospective Bidder</p> <p>Affiliate(s), other than Subsidiary(ies) of the Qualifying Shareholder</p> <p>Holding or held an equity shareholding of not less than five percent (5%) in the project company responsible for the Eligible PPP Project.</p> <p>PPP Experience of Affiliates (being other than Subsidiaries)</p>	<p>Hospital PPP design, construct, equip, finance, operate and maintain</p> <p>Projects in accordance with the environmental and social sustainability laws / policies applicable to the project, being either the national laws/policies of the implementing authority of the project or the Equator Principles, the International Finance Corporation (IFC) Performance Standards on Environmental and Social Sustainability or the World Bank Group Environmental, Health and Safety Guidelines, where these have been accepted by the implementing authority</p>	<p>Been in operation for at least 1 year prior to RFQ Submission Date</p>	<p>Minimum No of Beds 300</p>	<p>1 project</p>

PPP EXPERIENCE					
Criteria	Satisfying Party	Eligible Project	Eligible Period	Minimum threshold for Eligible Project	Threshold to be achieved
	Affiliate(s) [other than Subsidiary(ies)] to submit financial letter of support and Latest Audited Financial Statement				

DESIGN EXPERIENCE					
Criteria	Satisfying Party	Eligible Project	Eligible Period	Minimum threshold for Eligible Project	Threshold to be achieved
Hospital project design	Prospective Bidder Qualifying Shareholders	Eligible Hospital Design Project	Design and construction completed within 10 years prior to RFQ Submission Date	Capital value USD 150 million	A facility of >=300

CONSTRUCTION EXPERIENCE					
Criteria	Satisfying Party	Eligible Project	Eligible Period	Minimum threshold for Eligible Project	Threshold to be achieved
Hospital project construction	Prospective Bidder Qualifying Shareholders Up to two Construction Contractors	Eligible Hospital Construction Project	Construction completed within 10 years prior to RFQ Submission Date	Capital value USD 150 million	No. of Beds >=300

HOSPITAL OPERATOR EXPERIENCE					
Criteria	Satisfying Party	Eligible Project	Eligible Period	Minimum threshold for Eligible Project	Threshold to be achieved
No. of Hospital Beds	Prospective Bidder	Contract for performance-based Hospital Operator	During the 5 years immediately prior to RFQ Submission Date.	Minimum contract length of 5 years.	300 No. of Beds.
	Qualifying Shareholders				
	Subsidiary(ies) of Prospective Bidder				
	Subsidiary(ies) of Qualifying Shareholder				
	Eligible SPV of Prospective Bidder				
	Eligible SPV of Qualifying Shareholders				
	Hospital Operator Contractor				

FINANCIAL CAPABILITY					
Criteria	Satisfying Party	Eligible Project	Eligible Period	Minimum threshold for Eligible Project	Threshold to be achieved
Net Worth	Prospective Bidder Qualifying Shareholders Subsidiaries of the Prospective Bidder Subsidiaries of the Qualifying Shareholder	NA	Latest Audited Financial Statements with year end not earlier than 15 months prior to RFQ Submission Date	USD 50 million	USD 200 million
	Affiliate(s) other than Subsidiary(ies) of the Prospective Bidder Affiliate(s) other than Subsidiary(ies) of the Qualifying Shareholder Affiliates other than Subsidiary(ies) will submit financial letter of support				
Annual Turnover	Entities meeting Construction Experience	N/A	3 financial year ends prior to RFQ Submission Date.		USD 300 Million.

OTHER QUALIFYING CRITERIA					
Criteria	Satisfying Party	Eligible Project	Eligible Period	Minimum threshold for Eligible Project	Threshold to be achieve
Indicative Letters of Support from Qualifying Bank and Financial Institution	Prospective Bidder Qualifying Bank and Financial Institution	N/A	N/A	N/A	From two or more Qualifying Bank and Financial Institution
Equity Commitment Letters	Prospective Bidder Consortium Members	N/A	N/A	N/A	Aggregate of USD 40 Million.
Signed copy of financial letter of support	Affiliate/s	N/A	N/A	N/A	N/A

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

NAME OF INTERESTED BIDDER:

DATE:

1. RFQ DOCUMENT

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

* Leave blank.

2. PROJECT INFORMATION MEMORANDUM

Reference No.*	Section No. of PIM	Question or Comment

* Leave blank.