

## NAIROBI CITY COUNTY



**REQUEST FOR PROPOSAL  
FOR  
REDEVELOPMENT OF OLD HOUSING ESTATES  
WITHIN  
NAIROBI CITY COUNTY  
THROUGH  
JOINT VENTURE PARTNERSHIP.**

**NGONG ROAD ESTATE- PHASE 2**

**TENDER NO: NCC/UR&H/RFP/526/2018-2019**

**JUNE 2019**

## TABLE OF CONTENTS

	<b><u>Page</u></b>
DEFINITIONS .....	3
SECTION I INTRODUCTION .....	8
SECTION II INVITATION TO SUBMIT BID (S).....	16
SECTION III INSTRUCTIONS TO BIDDERS .....	18
SECTION IV PROJECT OUTPUT SPECIFICATIONS .....	49
SECTION VI FINANCIAL PROPOSAL .....	64
SECTION VII GENERAL OUTLINE OF THE CONDITIONS OF THE JOINT VENTURE AGREEMENT .....	73
SECTION VIII SITE CADASTRAL MAP .....	139
APPENDIX TO INSTRUCTIONS TO BIDDERS.....	45
MANDATORY AND ELIGIBILITY REQUIREMENTS .....	55
FINANCIAL BID FORMS.....	68
STANDARD FORMS.....	120

## DEFINITIONS

The following terms used in these Bid Documents shall have the meaning given to them unless otherwise defined herein below:

TERM	DEFINITION
<b>Bid</b>	Shall mean this proposal containing the <b>Mandatory Requirement, Technical Proposal</b> and <b>Financial Proposal</b> as submitted by the Bidder in response to this RFP Document.
<b>Bidding Company</b>	Shall mean a single entity (Sole Proprietorship/Company) or partnership firm which has submitted a bid
<b>Bidding Consortium (BC)</b>	Shall mean a group of companies or self-proprietors who shall jointly submit a bid for the project
<b>Bid Documents</b>	Shall mean this Request for Proposal (RFP) together with all its attached Annexes and Standard Forms.
<b>Bid Security</b>	Shall have a meaning as referred to in Section 3.12 of this RFP.
<b>Bid Submission Deadline</b>	Shall mean the final date and time to submit Bids as noted in Annex A (Appendix to Instructions to Bidders).
<b>Bid Validity Period</b>	Shall mean the period during which Bids must remain valid as determined under Annex A (Appendix to Instructions to Bidders).

<b>Clause</b>	A Clause of these Bid Documents. Request for Proposals.
<b>Consortium Member</b>	Each entity in the Bidding Consortium shall be referred to a “Consortium Member”.
<b>Contract Period</b>	Shall mean 36 months or any other period agreed between the two Parties and defined in the contract agreement to be signed by both Parties.
<b>Contracting Authority</b>	Shall mean the Nairobi City County (NCC).
<b>Development Cost</b>	Shall mean the development cost offered by the Bidder in the Financial Proposal for the development of the Project which shall include the construction costs, all taxes and Value Added Tax (V.A.T) payable, and profits expected from the Project by the development partner.
<b>Development Partner</b>	Shall mean the Successful consortium or single entity that offers the best evaluated technical and financial bid and which shall by itself or through a Special Purpose Vehicle enter into a joint venture Agreement with NCC to develop the Project.
<b>Financial Proposal</b>	Shall mean the Financial plan as submitted by a bidder as per the format specified under Section VI in the Request for Proposal.
<b>JBA</b>	Means the Joint Bidding Agreement outlined in Standard Form IX to be entered into among the members forming the Bidding Consortium.
<b>JVA</b>	Means the Joint Venture Agreement to be entered into by NCC and the Successful Development

	Partner. <b>“Joint Venture Agreement”, “Contract”</b> and <b>“Development Contract”</b> are synonymous.
<b>Lead Consortium Member (LCM)</b>	Shall mean the Lead Consortium Member who shall be vested with the prime responsibility by the other consortium members of developing the Project.
<b>Letter of Offer (LOO)</b>	Shall mean the letter issued by NCC to the Successful Development Partner and shall be as per terms mentioned in Clause 3.26
<b>NCC</b>	Shall mean the Nairobi City County.
<b>Project</b>	Shall mean the Redevelopment of Old Housing Estates within Nairobi City County under Joint Venture Partnership: Ngong Road Estate—PHASE 2.
<b>Project Facilities</b>	Shall mean collectively all the facilities to be developed by the Successful Development Partner at the Project Site in accordance with provisions of the Joint Venture Agreement.
<b>Project Site</b>	Shall mean the parcel of land at Ngong Road Estate PHASE 2 on L.R. No. 11927/59 whose site Survey Map is herewith attached in Section VIII.
<b>RFP</b>	Means this Request for Proposal Document.
<b>Technical Proposal</b>	Shall mean the Technical plan as submitted by the bidder as per the format specified under Section V in the Request for Proposal.

## **DISCLAIMER**

The Nairobi City County (NCC) has taken adequate care in the preparation of this Request for Proposal (RFP). Nevertheless, the Bidder should satisfy itself that the RFP is complete in all respects.

Neither NCC, nor its employees, consultants, advisors accept any liability or responsibility for the accuracy or completeness of, nor make any representation or warranty – express or implied, with respect to the information contained in the RFP, or on which the RFP is based, or any other information or representations supplied or made in connection with the Selection Process.

Neither NCC, nor its employees, consultants or advisors will have any liability to any Bidder or any other person under any law, statute, rules or regulations or otherwise for any loss, expense or damage which may arise from or be incurred or suffered in connection with any information contained in this RFP, the award of the Project, the information and any other information supplied by or on behalf of NCC or their employees, any consultants or otherwise arising in any way from the selection process for the Project.

The RFP does not address concerns relating to diverse investment objectives, financial situation and particular needs of each party. The RFP is not intended to provide the basis for any investment decision and each prospective Bidder must make its / their own independent assessment in respect of various aspects of the feasibilities of the Project. No person has been authorized by NCC to give any information or to make any representation not contained in the RFP document.

Nothing in this RFP is, or should be relied on, as a promise or representation as to the future. In furnishing the RFP, neither NCC, nor its employees, advisors undertake to provide the recipient with access to any additional information or to update the RFP or to correct any perceived inaccuracies therein.

NCC or its authorized officers / representatives / advisors reserve the right, without prior notice, to change the procedure for the selection of the Successful Development Partner or terminate discussions and the delivery of information at any time before the signing of any agreement for the Project, without assigning reasons thereof.

NCC reserves the right to reject any or all of the Bids submitted in response to the RFP at any stage without assigning any reasons whatsoever.

NCC reserves the right to change any or all of the provisions of the RFP. Such changes will be intimated to all the Bidders.

NCC reserves the right to change, modify, add to or alter the selection process including of additional evaluation criteria. Any change in the selection process shall be communicated to all Bidders.

## **SECTION I: INTRODUCTION**

Nairobi City County (NCC) (the “Contracting Authority”) in line with its responsibility for urban management as vested to it under the Urban Areas and Cities Act 2011 intends to undertake an aggressive programme aimed at urban regeneration and renewal of its old estates within the County. In this regard, the Redevelopment of Old Housing Estates within Nairobi City County (the “Project”) is to be undertaken with the objective of renewing dilapidated buildings in the City into modern and affordable houses for the Nairobi residents to rent or buy.

The County has already awarded several contracts to other development partners to undertake redevelopment of other sites and is now desirous of redeveloping its Greenfield site along Ngong road.

The County therefore seeks development partners from the Construction Industry, Banking Industry, Pension Funds/Schemes, Real Estate Developers and other investors to redevelop this estate together.

The Bidder is requested to provide a comprehensive master plan of the proposed development including all activities as outlined in this Request for Proposal Document and any services and amenities necessary for the proper functioning of the Project.



## **PROJECT IMPLEMENTATION STRATEGY**

The project will be implemented on a Joint Venture arrangement basis. Bidders have the opportunity to enjoy high returns expected from the project as the current prohibitive cost of land in Nairobi City County will not hinder their participation.

The formation of the Joint Venture (JV) partnership is contemplated under Section 6 (5) of the County Governments Act No. 27 of 2012 as read together with Section 74 of the same Act. The relationship between NCC and the development Partner shall be governed by a Joint Venture Agreement. Parties' obligations as set out under the Agreement shall be monitored by an Independent Technical Expert and an Independent Financial Expert to be appointed by both parties before commencement of the Project.

### **Project Structure**

1. Bidders will be expected to provide their best design solutions for the Site and offer competitive prices for developing the units.
2. The bidding parameter will be based on the Technical viability of the bidders proposal and the Prices a bidder will quote for developing each unit constructed.
3. Both the Contracting Authority and the Successful Development Partner will determine the number of units out of the development to be allocated to the County .The development partner will, depending on the basis of the level of upgrading required on the existing offsite infrastructure facilities to support the increased development densities and with the approval of the County, marginally adjust the price of the units during negotiations to cover for the cost of the offsite infrastructure works. The final selling prices of the units shall

be determined after negotiations.

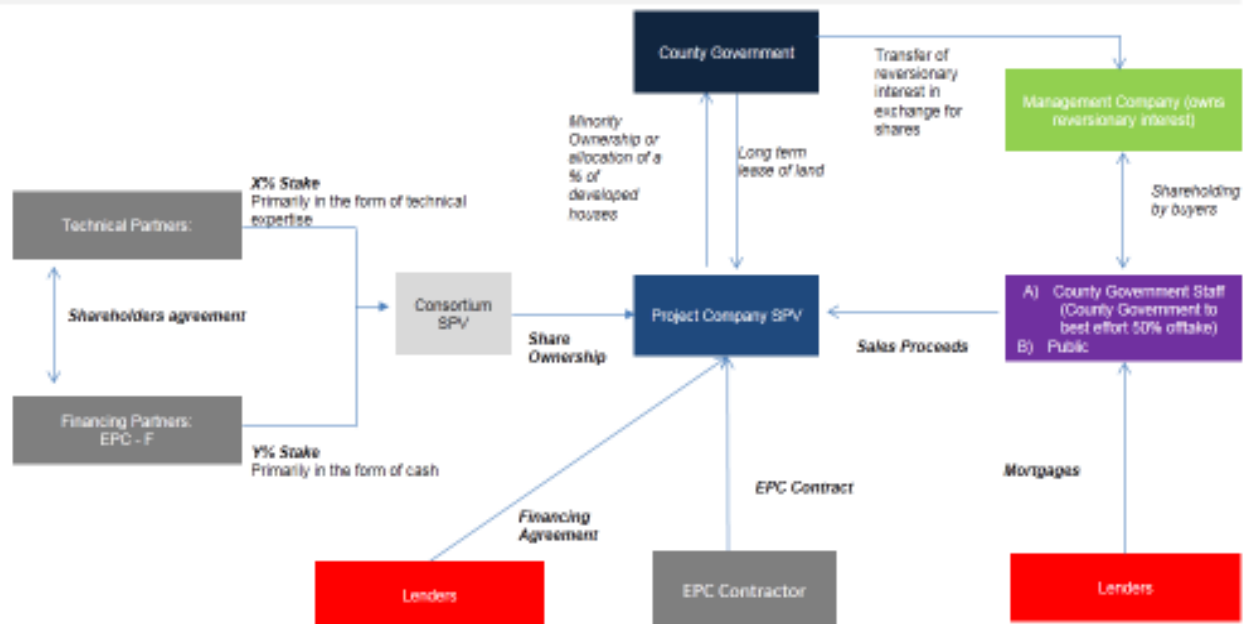
4. The Contracting Authority will then proceed to enter into a Joint Venture Agreement with the successful Development Partner to undertake the development of the Project.
5. The Successful Development Partner by itself or through a Special Purpose Vehicle comprising of the consortium members submitting the bid will be allowed to charge the sublease granted to the SPV but on condition that all funds raised by charging the sublease shall be deposited into an escrow account where NCC or the Independent financial Expert will be a signatory and such funds shall only be used for the purposes of developing the project facilities.
6. The subleases or sectional titles for the developed units shall be registered in the name of the development partner and will only be transferred to the eventual house buyers upon payment of the full purchase price of the unit. Members of the Public interested in purchasing the units shall be directed to deposit purchase money at the appointed escrow bank. Upon completion of payments the development partner shall issue the buyers with their respective subleases.

Purchasers intending to purchase the houses through mortgages shall make their mortgage repayments into their respective mortgage companies who will then be expected to remit the full purchase price into the Escrow Account. The Mortgage Companies offering Mortgages will be entitled to hold the sub-leases as security for tenants who purchase the houses in this manner.

**The figure below shows the Joint Venture Structure.**

## Project Structure

Partnering with county government to offer affordable housing to staff and the public



APRIL 2018

## **EXISTING TENANTS**

The Contracting Authority will hand over a vacant site to the Development partner before the construction starts. The services/departments currently on the plot to be developed shall be relocated to a preferred site to be given by the County Government.

## **MANAGEMENT COMPANY**

The development partner will be required to register the subleases with the aim of dividing the buildings into units to be owned by individual proprietors and common property to be owned by Proprietors of the units as Home owners in Common and to provide for the use and management of the units and common Property and for connected Purposes.

The Development Partner will facilitate the formation of a Management Company to be incorporated under the Sectional Properties Act which shall manage the property on behalf of all the purchasers. The Management Company shall consist of all those persons who are the owners of units in the parcel, the Sectional Plan relates, and who are entitled to the parcel when the sectional arrangement is terminated under the Sectional Properties Act.

## **REPRESENTATIVES OF THE PARTIES**

### **NAIROBI CITY COUNTY'S REPRESENTATIVE(S)**

The Nairobi City County (NCC) shall have the right to appoint one or more representative(s) to carry out the following:

- i. Inspect the performance of the Project in all its stages for the Contract duration; and
- ii. Have authority to act on its behalf and issue binding decisions under

this Contract within his/her given authority.

NCC shall notify the Development Partner of the name(s) of NCC's Representative(s) and their delegated authorities and powers. The identity of the person or its replacement appointed by NCC to act as NCC's Representative will be made in a separate written notification to the Development Partner Ten (10) days prior to their appointment.

### **DEVELOPMENT PARTNER'S REPRESENTATIVE(S)**

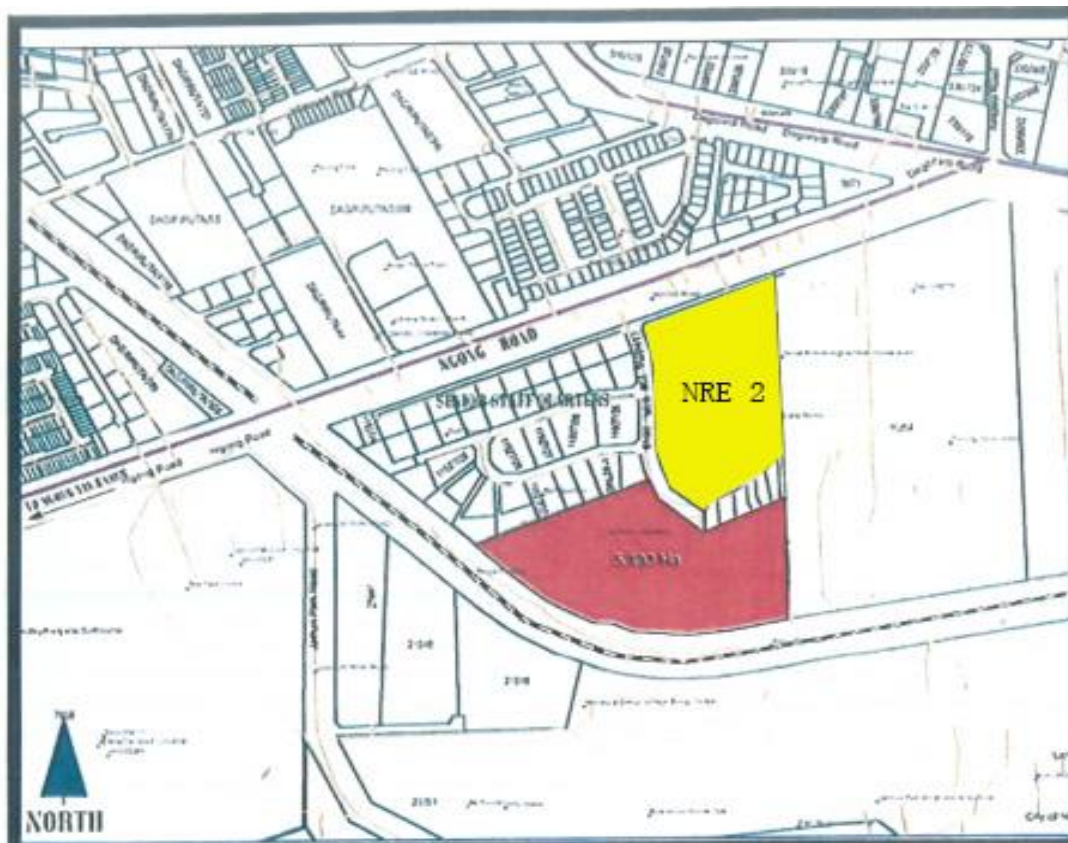
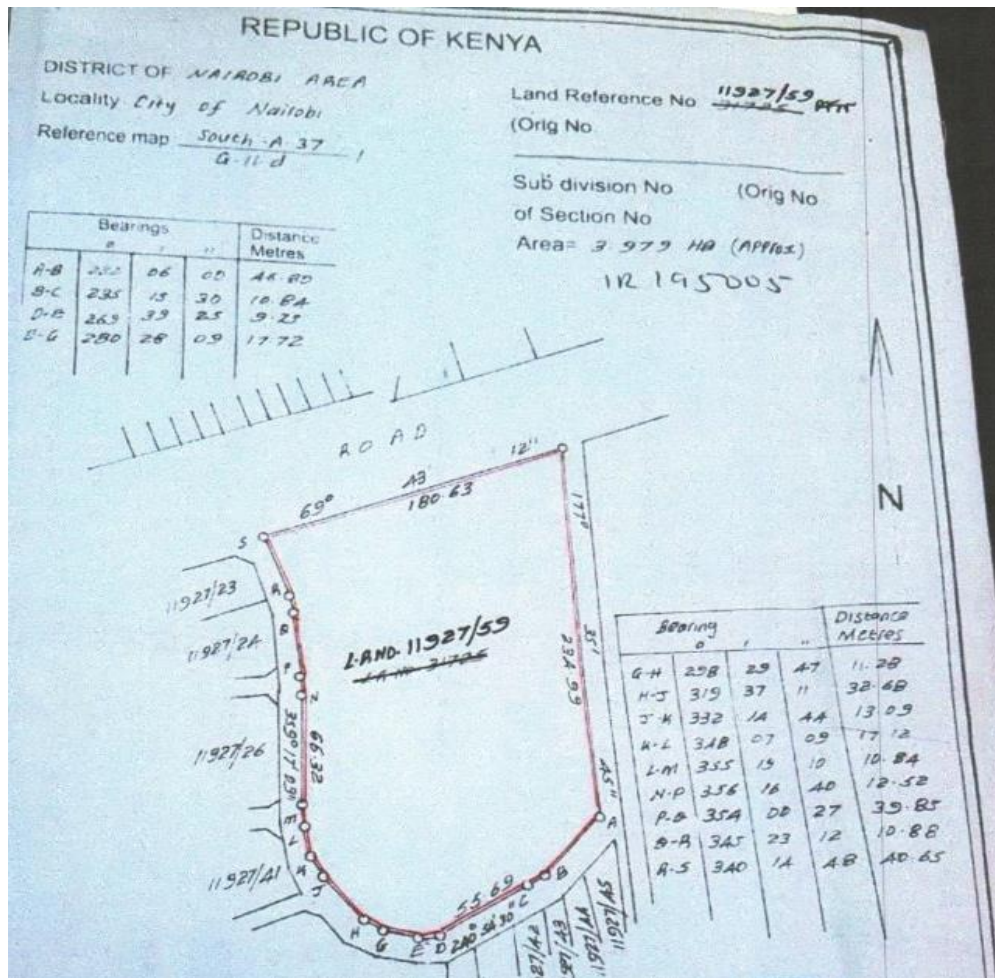
The Development Partner shall have the right to appoint one or more representative(s) with the authority to act on its behalf and issue binding decisions under this Contract within his/her given authority. The Development Partner shall notify NCC of the name(s) of any Development Partner Representative(s) and their delegated authorities and powers. The identity of the person or its replacement appointed by Development Partner to act as Development Partner Representative shall be made in a separate written notification to NCC Ten (10) days prior to their appointment.

## **NGONG ROAD ESTATE PHASE TWO**

### **Site Overview**

The Site is approximately 10 Acres. It is located on Ngong Road near the Kenya Meteorological Department Headquarters. Within its proximity there are schools, health facilities and shopping facilities which are at Dagoretti Corner and The Junction.





LOCATION PLAN

The proposed redevelopment is to construct a minimum of 2,500 modern and affordable housing units to be developed in the following ratios:

1BR: 15%

2BR: 60%

3BR: 25%

The Project shall integrate the following Planning Principles:

**Densification:** To ensure the highest and best use of land.

**Compact Development:** To optimize on land use, the Project is expected to adopt a vertical development approach.

**Mixed Income Groups:** The intended solution of the Project is to cater for different income groups.

**Self-Reliance:** The Project shall include support services such as playgrounds, schools or community halls.

**Environmental Sustainability:** The developers shall ensure the use of Green technology and energy conservation in developing the Project.

**Human Centered Development:** The proposed redevelopment shall take into account the needs of the residents and the larger public and as such, the designs of the units shall adequately address those needs.

## SECTION II: INVITATION TO SUBMIT BID (S)

**TENDER NO. NCC/UR&H/RFP/526/2018-2019:**

Bid Name **REDEVELOPMENT OF NGONG ROAD PHASE 2 ESTATE WITHIIN NAIROBI CITY COUNTY THROUGH JOINT VENTURE PARTNERSHIP(RE-TENDER).**

1.1 The Nairobi City County hereby invites Bids from Bidders to undertake the urban regeneration and renewal of **Ngong Road Estate PHASE 2** within the County on a Joint Venture arrangement basis.

1.2 The Request for Proposal (RFP) includes the following documents:

Section II	Invitation to Submit Bid (s)
Section III	Instructions to Bidders
Section IV	Project Output Specifications
Section V	Technical Proposal
Section VI	Financial Proposal
Section VII	General Outline of the Conditions of Contract

1.3 Bidders may obtain further information and inspect the Request for Proposal documents at the address given in the Appendix to Instructions to Bidders.

1.4 The Request for Proposal (RFP) document can be downloaded from [www.nairobi.go.ke](http://www.nairobi.go.ke) free of charge.



1.5 Completed Technical and Financial Bid documents should be submitted accompanied by a Bid Security issued in favor of Nairobi City County from the Bidder in the form of an unconditional and irrevocable bank guarantee issued by a Kenyan bank (or an internationally recognized bank or insurance company) registered with the Central Bank of Kenya to be received on or before Friday 28<sup>th</sup> June **2019 at 1200 noon East African Time**. Failure to provide Bid Security will lead to automatic disqualification.

1.6 Completed Technical and Financial Bid documents shall be submitted in plain sealed envelopes clearly marked **“TENDER NO. NCC/UR&H/RFP/526/2018-2019: REDEVELOPMENT OF NGONG ROAD PHASE TWO ESTATE WITHIN NAIROBI CITY COUNTY THROUGH JOINT VENTURE PARTNERSHIP”** and marked **“DO NOT OPEN BEFORE FRIDAY 28<sup>th</sup> JUNE 2019 at 12 noon.”** and addressed to the procuring entity as per the Instructions to the Bidders.

1.7 Technical Bid document will be opened immediately after the closing time in the presence of Bidders or their representatives who choose to attend the opening at the Office of the Head Supply Chain Management, City Hall Annex, First Floor, Room 105.

Yours Sincerely,

**County Secretary and Head of County Public Service,  
Nairobi City County  
P.O. Box 30075 – 00100  
NAIROBI.**

## **SECTION III: INSTRUCTIONS TO BIDDERS**

### **TABLE OF CONTENTS**

#### **Clause Numbers**

#### **A: GENERAL**

- 3.1 Purpose of this Document
- 3.2 Eligibility and Qualification Requirements
- 3.3 Cost of Bidding
- 3.4 Site Visit

#### **B: BID DOCUMENTS**

- 3.5 Contents of Bid Documents
- 3.6 Inquiries by Bidders
- 3.7 Amendments of Bid Documents

#### **C: PREPARATION OF BIDS**

- 3.8 Language of Bid
- 3.9 Documents Comprising the Bid
- 3.10 Currencies of Bid
- 3.11 Bid Validity
- 3.12 Bid Security
- 3.13 Project development fee
- 3.14 No Alternative Offers
- 3.15 Pre-bid Meeting
- 3.16 Format and Signing of Bids

## **D: SUBMISSION OF BIDS**

- 3.17 Sealing and Marking of Bids
- 3.18 Deadline and Submission of Bids
- 3.19 Modification and Withdrawal of Bids

## **E: BID OPENING AND EVALUATION**

- 3.20 Bid Opening
- 3.21 Process to be Confidential
- 3.22 Clarification of Bids
- 3.23 Determination of Responsiveness
- 3.24 Evaluation of Bids

## **F: AWARD OF CONTRACT**

- 3.25 Award
- 3.26 Notification of award and Signing of Joint Venture Agreement
- 3.27 Performance Guarantee
- 3.28 Corrupt or Fraudulent Practices
- 3.29 Appendix to Instructions to Bidders

## **A GENERAL**

### **3.1 Purpose of this Document**

This RFP is issue to Bidders to provide instructions and regulations regarding the preparation and the evaluation of Bids.

### **3.2 Eligibility and Qualification Requirements:**

#### **3.2.1 Mandatory Requirements**

Bidders are strongly advised that only bids meeting the following mandatory requirements will be evaluated.

The following are mandatory requirements;

- a) Bid Security for the Project in accordance with Annex A (Appendix to Instructions to Bidders) and Standard Form IX.
- b) A covering letter in accordance with Standard Form I.
- c) The Bidders Information Sheet in Accordance with Standard Form II.
- d) In case of a Bidding Consortium (BC), the Power of Attorney for designating the Lead Consortium Member in accordance with Standard Form V.
- e) Power of Attorney to the Bid Signatory in accordance with Standard Form VI.
- f) The Certificate of Bidder's visit to site in accordance with Standard Form IV.
- g) An undertaking in accordance with Standard Form VII.
- h) In case of a Bidding Consortium (BC), the Joint Bidding Agreement in accordance with Standard Form VIII.

- i) Bidders must prove that they have undertaken at least three project(s) in Kenya with a cumulative number of at least 2,000 housing units of similar nature on a JV, single Entity or any other partnership agreements (Enclose copy of agreement with the client, which clearly mentions the total contract value of project or Completion Certificate from the client for the development).
- j) Demonstrate the ability to put together a project management team to deliver the project within a maximum period of 36 months. (Provide CV's and Certificates, both professional and educational, of key personnel to be involved in the project and their roles).
- k) Bidders shall demonstrate ability to raise equity for deployment of the Project to the extent of **USD 50 Million**. In case of consortium, the Bidder has to demonstrate the ability of each member's contributions towards the above amount and demonstrate the equity available for deployment towards the project.
- l) Demonstrate capacity and ability to raise funds for the project to the tune of **USD 100 Million** besides the minimum equity contribution stated in item (k) above.
- m) Demonstrate a Sound Net worth of the entity of **USD 65 Million**
- n) The requisite number of copies of Bid documents as stipulated in the RFP.

### 3.2.2 Bidding Consortium

Bids submitted by a bidding consortium shall comply with the following requirements;

- (a) A copy of the Joint Bidding Agreement entered into by the bidding consortium partners in the format outlined in Standard Form VIII shall be submitted with the bid
- (b) One of the partners shall be nominated as being the Lead Consortium Member and who shall be authorized to give and receive instructions for and on behalf of any and all the partners of the joint venture, and the execution of the contract;
- (c) All partners of the Bidding Consortium shall be liable jointly and severally for the execution of the contract in accordance with the contract terms.

### 3.2.3 Constituent Parts of the Mandatory Requirements

Mandatory Requirements	
Part 1	A covering letter in accordance with Standard Form I
Part 2	A Bid Security for the Project in accordance with Annex A (Appendix to Instructions to Bidders and Standard Form IX
Part 3	A Power of Attorney in accordance with Clause 3.2.1 and Standard Form VI
Part 4	The Bidder's information Sheet in accordance with standard Form II
Part 5	In case of a Bidding Consortium (BC), the Information Sheet for each BC Party in accordance with Standard Form III
Part 6	The Certificate of Bidder's visit to site in accordance with Standard Form IV
Part 7	In case of a Bidding Consortium (BC), the Power of Attorney for designating the Lead Consortium Member in accordance with Standard Form V

Part 8	An undertaking in accordance with Standard Form VII
Part 9	In case of a Bidding Consortium (BC), the Joint Bidding Agreement in accordance with Standard Form VIII.
Part 10	Bidders must prove that they have undertaken at least three project(s) in Kenya with a cumulative number of at least 2,000 housing units of similar nature on a JV, single Entity or any other partnership agreements (Enclose copy of agreement with the client, which clearly mentions the total contract value of project or Completion Certificate from the client for the development).
Part 11	Demonstrate the ability to put together a project management team to deliver the project within a maximum period of 36 months. (Provide CV's and Certificates, both professional and educational, of key personnel to be involved in the project and their roles).
Part 12	Bidders shall demonstrate ability to raise equity for deployment of the Project to the extent of <b>USD 50 Million</b> . In case of consortium, the Bidder has to demonstrate the ability of each member's contributions towards the above amount and demonstrate the equity available for deployment towards the project.
Part 13	Demonstrate capacity and ability to raise funds for the project to the tune of <b>USD 100 Million</b> besides the minimum equity contribution stated in item (k) above.
Part 14	Demonstrate a Sound Net worth of the entity of <b>USD 65 Million</b>
Part 15	The requisite number of copies stipulated in this RFP.

### 3.2.4 Eligibility:

The NCC's officials, representatives, employees, and their relatives

(spouse and children) are not eligible to participate in the bid.

**3.2.5 Falsified Information:**

A Bidder who gives false information in the bid document about their qualification, or who refuses to enter into a contract after notification of award of contract shall be considered for debarment from participating in future public procurement.

**3.3 Cost of Bidding**

3.3.1 The Bidder shall bear all costs associated with the preparation and submission of its bid and of negotiating the Contract including any visit to the Sites. NCC will in no case be liable for those costs, regardless of the conduct or outcome of the bidding process.

**3.4 Site Visit**

3.4.1 The Bidder is advised to visit and examine the sites and their surrounding and obtain for itself at its own cost and responsibility, all information that may be necessary for preparing the bid(s) and entering into a contract.

3.4.2 The Bidder and any of its personnel or agents will be granted permission by NCC to access the land for the purpose of such visit, but only upon the express condition that the Bidder, its personnel or agents, will release and indemnify NCC from and against all liability in respect of and will be responsible for personal injury (whether fatal or otherwise), loss of or damage to property and any other loss, damage, costs and expenses however caused, which but for the exercise of such permission,



would not have arisen.

3.4.3 NCC shall organize site visits at certain dates as indicated in the Appendix to Instructions to Bidders. A designated representative of NCC will be available to meet the visiting Bidders at the sites. The representative(s) will not be available at any other time for site inspection visits. Bidders must provide their own transport.

#### 3.4.4 **Project Development Fee:**

The Bidders shall include in their Financial Bids, an amount equivalent to 0.75% of the Total Project Development Cost as payment to be paid to NCC's Lead Project Consultants to be paid by the Successful Development Partner within Thirty (30) days upon execution of the Joint Venture Agreement.

## **B BID DOCUMENTS**

### **3.5 Contents of Bid Documents**

3.5.1 The bid documents comprise the documents listed here below and should be read together with any addendum issued in accordance with Clause 3.7 of these Instructions to Bidders. The bid document consists of six (6) main parts, namely: -

**SECTION II "INVITATION TO SUBMIT BID (S)"**

**SECTION III "INSTRUCTIONS TO BIDDERS"**

**SECTION IV "PROJECT OUTPUT SPECIFICATIONS"**

**SECTION V "TECHNICAL PROPOSAL"**

**SECTION VI "FINANCIAL PROPOSAL"**

**SECTION VII "GENERAL OUTLINE OF THE CONDITIONS**

## OF CONTRACT”

- 3.5.2 The Bidder is expected to examine carefully all instructions, conditions and forms in the bid document. Failure to comply with the requirements for bid submission will be at the Bidder’s risk.

Pursuant to Clauses 3.2.1, 3.2.2 & 3.2.3 of Instructions to Bidders, bids which are not substantially responsive to the requirements of the bid documents will be rejected.

- 3.5.3 All recipients of documents for the proposed contract for the purpose of submitting a bid (whether they submit a bid or not) shall treat the details of the documents as “Private and Confidential”.

### 3.6 **Inquiries by Bidders:**

- 3.6.1 A Bidder making an inquiry relating to the bid documents may notify NCC in writing by fax or email at NCC’s mailing address indicated in the invitation to submit bid(s). NCC will respond in writing to any request for clarification which is received earlier than **seven (7) days** prior to the deadline for the submission of bids. Written copies of NCC’s response (including the inquiry but without identifying the source of the entity) will be sent to all Bidders who have been invited to bid. If a Bidder sends an inquiry after the stated days, NCC shall have the option of either responding to the inquiry and extension of the date of submission of bids or ignoring it.

- 3.6.2 The Bid Evaluation Committee shall evaluate the bid(s) within

30 days from the date of opening the bid(s).

- 3.6.3 NCC shall reply to any clarifications sought by the Bidder within three (3) days of receiving the request to enable the Bidder to make timely submission of its bid(s).

### **3.7 Amendment of Bid Documents**

- 3.7.1 At any time prior to the deadline for submission of bids, NCC may, for any reason, whether at its own initiative or in response to a clarification requested by a Bidder, modify the bid documents by issuing an addendum.
- 3.7.2 Any addendum will be notified in writing or by cable, telex or facsimile to all prospective Bidders who have been invited to bid and will be binding upon them.
- 3.7.3 In order to allow prospective Bidders reasonable time in which to take the addendum into account in preparing their bids, NCC may, at its discretion, extend the deadline for the submission of bids.

## **C PREPARATION OF BIDS**

### **3.8 Language of the Bid:**

- 3.8.1 The bid and all correspondence and documents relating to the bid exchanged between the Bidder and NCC shall be written in the English language. Supporting documents and printed literature furnished by the Bidder with the bid may be in another language provided they are accompanied by an appropriate

translation of pertinent passages in the above stated language. For the purpose of interpretation of the bid, the English language shall prevail.

### **3.9 Documents Comprising the Bid:**

- 3.9.1 The Forms submitted with the bid documents shall be used without exception subject to extensions of the schedules in the same format and to the provisions of Clause 3.14.2 regarding the alternative forms of bid security.

### **3.10 Currencies of the Bid:**

- 3.10.1 The currency for the purpose of the Bid shall be Kenya Shillings (KShs). The conversion to Kenya Shillings shall be based on the corresponding Exchange rate specified by the Central Bank of Kenya, on the closing date of bid submission.

### **3.11 Bid Validity:**

- 3.11.1 The bid shall remain valid and open for acceptance for a period of ninety (90) days from the date of Bid opening or from the extended date of Bid opening.
- 3.11.2 In exceptional circumstances prior to expiry of the original bid validity period, NCC may request Bidders for a specified extension of the period of validity. The request and the responses thereto shall be made in writing or by cable, telex, email or facsimile. A Bidder may refuse the request without forfeiting the Bid Bond. A Bidder agreeing to the request will not be required nor permitted to modify its bid, but will be required to extend the validity of the Bid Bond correspondingly.

### **3.12 Bid Security:**

- 3.12.1 As part of its bid, the Bidder shall furnish to NCC a Bid Security of Kenya Shillings Ten Million (KShs. 10,000,000) from an established and reputable bank or Insurance Company, located

in the Republic of Kenya or internationally recognized.

- 3.12.2 The Bid Security shall be valid for at least One Hundred and Twenty (120) days from the date of Bid opening or from the extended date of Bid opening.
- 3.12.3 Any Bid not accompanied by an acceptable Bid Security will be rejected by NCC as non-responsive.
- 3.12.4 The Bid Securities of unsuccessful Bidders will be returned as promptly as possible as but not later than **twenty-eight (28) days** after concluding the Contract execution and after a Performance Security has been furnished by the Successful Bidder to NCC. The Bid security of the Successful Development Partner will be returned upon the Bidder executing the Contract and furnishing NCC with the required Performance Security.
- 3.12.5 NCC shall reserve the right to forfeit the Bid Security under the following circumstances:
- a) If the Bidder withdraws it's Bid at any time during the stipulated period of Bid validity (or as may be extended).
  - b) If the Bidder, for the period of Bid Validity, in NCC's opinion, commits material breach of any of the terms and / or conditions contained in the RFP Document and / or subsequent communication from NCC in this regard.
  - c) In the case of a Successful Development Partner, if he fails:
    - i. To accept the Letter of offer, or

- ii. To sign the Agreement, or
- iii. To furnish the necessary Performance Security.

3.12.6 In the event that the bid is declared non-responsive, the Bid Security in such cases shall be returned to the respective Bidder within 30 days from such cessation without interest.

3.12.7 The Bid Security of the unsuccessful Bidders will be returned after 30 days without any interest, following the signing of the Joint Venture Agreement by the Successful Development Partner.

3.12.8 The Bid Security of the Successful Development Partner shall be required to be maintained till the signing of the Joint Venture Agreement.

### **3.13 Project Development Fee:**

The Bidders shall include in their Financial Bids, an amount equivalent to 0.75% of the Total Project Development Cost as payment to be paid to NCC's Lead Project Consultants to be paid by the Successful Development Partner within Thirty (30) days upon execution of the Joint Venture Agreement.

### **3.14 No Alternative Offers:**

3.14.1 The Bidder shall submit an offer which complies fully with the requirements of the bid documents unless otherwise provided for in the appendix. Only one bid may be submitted by each Bidder either by itself or as partner in a bidding consortium.

- 3.14.2 The Bidder shall not attach any conditions of its own to its bid. Any Bidder who fails to comply with this Clause will be disqualified.

### **3.15 Pre-Bid Meeting**

- 3.15.1 There will be no pre-bid meeting and incase one will be required the time, date and venue of the meeting will be communicated to all Bidders. The purpose of the meeting will be to clarify any issues in the RFP and propose any amendments to the Bid Documents.
- 3.15.2 The Bidder is requested as far as possible to submit any questions in writing or by cable, to reach NCC not later than seven (7) days before the meeting. It may not be practicable at the meeting to answer questions received late, but questions and responses will be transmitted in accordance with the following:
- a) Minutes of the meeting including the text of the questions raised and the responses given together with any responses prepared after the meeting will be transmitted without delay to all the Bidders. Any modification of the bid documents listed in which may become necessary as a result of the pre-bid meeting shall be made by NCC exclusively through the issue of a bid notice and not through the minutes of the pre-bid meeting.
  - b) None attendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

### **3.16 Format and Signing of Bid**

- 3.16.1 The Bidder shall prepare the bid as outlined in Clause 3.16 and mark appropriately one set “ORIGINAL “ and the other “COPY”.
- 3.16.2 The copy of the bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Bidder. All pages of the bid where amendments have been made shall be initialed by the person or persons signing the bid.
- 3.16.3 The complete bid shall be without alterations, interlineations or erasures, except as necessary to correct errors made by the bid, in which case such corrections shall be initialed by the person or persons signing the bid.

## **D SUBMISSION OF BIDS**

### **3.17 Sealing and Marking of Bids**

- 3.17.1 The Bidder shall place one (1) original plus three (3) copies of their Mandatory Requirements in a sealed envelope clearly marked “**MANDATORY REQUIREMENTS**”. The Bidder shall clearly mark the original document as “ORIGINAL” and the 3 copies as “COPY”.

The Bidder shall place one (1) original plus (3) copies of their Technical Proposal in a sealed envelope clearly marked “**TECHNICAL PROPOSAL**”. The Bidder shall clearly mark the original document as “ORIGINAL” and the 3 copies as “COPY”.

The Bidder shall place one (1) original of their Financial



Proposal in a sealed envelope clearly marked “**FINANCIAL PROPOSAL**”. The Bidder shall clearly mark the original document as “ORIGINAL” and the 3 copies as “COPY”.

In the event of discrepancy between the original and the copy, the original shall prevail.

The three envelopes should then be sealed in one common outer envelope marked “**TENDER NO. NCC/UR&H/RFP/526/2018-2019:**

**REDEVELOPMENT OF NGONG ROAD PHASE TWO ESTATE WITHIN NAIROBI CITY COUNTY UNDER JOINT VENTURE PARTNERSHIP**”.

3.17.2 The inner and outer envelopes shall be addressed to NCC at the address stated in the Appendix to Instructions to Bidders and bear the name and identification of the Contract stated in the said Appendix with a warning not to open before the date and time for opening of bids as stated in the said Appendix.

3.17.3 The inner envelopes shall each indicate the name and address of the Bidder to enable the bid to be returned unopened in case it is declared “late”, while the outer envelope shall bear no mark indicating the identity of the Bidder.

3.17.4 If the outer envelope is not sealed and marked as instructed above, NCC will assume no responsibility for the misplacement or premature opening of the bid. A bid opened prematurely for this cause will be rejected by NCC and returned to the Bidder.

### **3.18 Deadline for Submission of Bids**

- 3.18.1 Bids must be received by NCC at the address specified in the Instructions to Bidders and on the date and time as specified in the Invitation to Submit Bid(s).

Bids delivered by hand must be placed in the Bid Box on **1<sup>st</sup> Floor at the Office of the Head Supply Chain Management, City Hall Annex, Room 105** so as to be received not later than **Friday 28<sup>th</sup> JUNE 2019 at 12.00 noon East African Time (G.M.T. +3).**

Proof of posting will not be accepted as proof of delivery and any bid delivered after the above stipulated time, from whatever cause arising will not be considered.

Bulky bids which cannot be placed in the Bid box will be received by NCC on **1<sup>st</sup> Floor in the Head of Supply Chain Management office, Room 105.**

Ensure that the documents are officially received before closing time and entered into the register for inclusion during Bid opening.

- 3.18.2 NCC may at its discretion, extend the deadline for the submission of bids through the issue of an Addendum in accordance with Clause 3.7 of the Instruction to Bidders, in which case all rights and obligations of NCC and the Bidders previously subject to the original deadline shall thereafter be subjected to the new deadline as extended.

- 3.18.3 Any bid received by NCC after the prescribed deadline for submission of bids will be returned unopened.

### **3.19 Modification and Withdrawal of Bids**

- 3.19.1 The Bidder may modify or withdraw its bid after bid submission, provided that written notice of the modification or withdrawal is received by NCC prior to the prescribed deadline for submission of bids.
- 3.19.2 The Bidder's modification or withdrawal notice shall be prepared, sealed, marked and dispatched in accordance with the provisions for the submission of bids, with the inner and outer envelopes additionally marked "**MODIFICATION**" or "**WITHDRAWAL**" as appropriate.
- 3.19.3 No bid may be modified subsequent to the deadline for submission of bids.
- 3.19.4 No bid may be withdrawn in the interval between the deadline for submission of bids and the period of bid validity specified on the bid form. Withdrawal of a bid during this interval will result in the forfeiture of the Bid Surety.
- 3.19.5 Subsequent to the expiry of the bid validity period prescribed by NCC, and the Bidder having not been notified by NCC of the award of the Contract or the Bidder does not intend to conform with the request of NCC to extend the period of bid validity, the Bidder may withdraw its bid without risk of forfeiture of the Bid Bond.

## **E BID OPENING AND EVALUATION**

### **3.20 Bid Opening**

- 3.20.1 NCC will open the outer envelope and the inner envelopes containing the **“MANDATORY REQUIREMENTS”** & **“TECHNICAL PROPOSAL”** in the presence of the Bidders’ Representatives who choose to attend at the time and location indicated in the Invitation to Bid. The Bidders’ representatives who are present shall sign a register evidencing their attendance.
- 3.20.2 Bids for which an acceptable notice of withdrawal has been submitted, pursuant to Clause 3.19 will not be opened. NCC will examine the bids to determine whether they are complete, whether the requisite Bid Securities have been furnished, whether the documents have been properly signed and whether the bids are generally in order.
- 3.20.3 At the bid opening, NCC will announce the Bidder’s names, the presence of the requisite Bid Security and such other details as NCC, at its discretion, may consider appropriate. No bid shall be rejected at the bid opening except for late bids.
- 3.20.4 NCC shall prepare minutes of the bid opening including the information disclosed to those present.
- 3.20.5 Bids not opened and read out at bid opening shall not be considered for further evaluation, irrespective of the circumstances. Any bid recited after the deadline for submission

of bid shall be returned to the Bidder unopened.

### **3.21 Process to be Confidential**

3.21.1 After the public opening of bids, information relating to the examination, clarification, evaluation and comparisons of bids and recommendations concerning the award of Contract shall

not be disclosed to Bidders or other persons not officially concerned with such process until the award of Contract is announced.

3.21.2 Any effort by a Bidder to influence NCC in the process of examination, evaluation and comparison of bids and decisions concerning award of Contract may result in the rejection of the Bidder's bid.

### **3.22 Clarification of Bids**

3.22.1 To assist in the examination, evaluation and comparison of bids, NCC may ask Bidders individually for clarification of their bids. The request for clarification of the response shall be in writing or by cable, facsimile or telex, but no change in the price or substance of the bid shall be sought, offered or permitted except as required to confirm the correction of arithmetical errors discovered by NCC during the evaluation of the bid.

3.22.2 No Bidder shall contact NCC on any matter relating to its bid from the time of the bid opening to the time the Contract is awarded. If the Bidder wishes to bring additional information to the notice of NCC, he shall do so in writing.

### **3.23 Determination of Responsiveness**

3.23.1 Prior to the detailed evaluation of bids, NCC will determine whether each bid is substantially responsive to the requirements of the bid documents. A bid may be deemed non-responsive if it does not satisfy any of the following conditions:

- a) It is not accompanied by a valid Bid Security.
- b) It does not contain sufficient information for it to be evaluated and / or is not in the specific formats.
- c) It is not signed and / or sealed in the manner and to the extent indicated in Section 3.17 of this RFP.

3.23.2 For the purpose of this clause, a substantially responsive bid is one which conforms to all the preceding terms, conditions and specification of the bid documents without material deviation or reservation. A material deviation or reservation is one which affects in any substantial way the scope, quality, or performance of the contract, or which limits in any substantial way inconsistent with the bid documents, NCC's rights or the Bidder's obligations under the Contract and the rectification of which would affect unfairly the competitive position of other Bidders who have presented substantially responsive bids.

3.23.3 A bid determined to be not substantially responsive will be rejected by NCC and may not subsequently be made responsive by the Bidder by correction of the non-conforming deviation or reservation.

### **3.24 Evaluation of Bids**

3.24.1 NCC will only evaluate bids determined to be substantially responsive to the requirements of the bid documents in accordance with Clause 3.2.

Responsive Bids will be evaluated in the following steps;

#### **Step 1: Evaluation of Mandatory Requirements**

Evaluation of Mandatory Requirements will be assessed. The Bidder will be expected to meet the minimum eligibility in accordance with Clause 3.2.1.

The Bidders should furnish all supporting evidence to support their technical and financial capability. Any Bidder found to be non-responsive shall not be eligible for the next stage of the evaluation process.

The “TECHNICAL PROPOSAL” and “FINANCIAL PROPOSAL” of such Bidders shall be returned unopened.

#### **Step 2: Evaluation of Technical Proposal**

In this stage the Bidders’ technical proposal will be assessed. The Bidders should furnish all supporting evidence to support their technical proposal.

The evaluation shall be done by the Evaluation Committee in accordance with Clause 3.2.1, 3.2.2 & 3.2.3 of the Instructions to Bidders and Standard Forms contained in this RFP. Technical Proposals will be assessed in accordance with the following parameters:

- a) The overall development concept and designs;
- b) Conformity of the development concept to applicable laws

and regulations;

- c) Appropriateness of proposed construction methods and technology;
- d) Adherence to the planning principles outlined in the RFP;

**Bidders found to be technically incapable shall not be eligible for the next stage of the evaluation process. Their Financial Proposals shall be returned unopened.**

A technical score (TS) shall be awarded to each evaluated Bidder who has attained the required cut off marks at the technical evaluation stage. All such Bidders shall be eligible for the next stage of evaluation.

### **Step 3: Evaluation of Financial Proposal**

In this stage the Bidders' Financial Proposal will be assessed in accordance with the following parameters:

- a) Cost of development of individual units (1 BR, 2 BR & 3 BR);
- b) Number of housing units to be developed;
- c) Overall development cost;
- d) Proposed mortgage facility / Tenant Purchase Scheme to be offered by the Developer to end buyers;
- e) Marketing strategies of the constructed houses.

A Financial Score (FS) shall be awarded to each evaluated Bidder. The final score for each Bidder shall be arrived at by aggregating the Technical and Financial scores.

3.24.2 The bid evaluation committee shall evaluate the bid within 30



days of the validity period from the date of opening of the bids.

- 3.24.3 NCC may at any time terminate procurement proceedings before award and shall not be liable to any person for the termination.
- 3.24.4 NCC shall give prompt notice of the termination to the Bidders and on request give its reasons for termination within 14 days of receiving the request from any Bidder.
- 3.24.5 Persons not officially involved in the evaluation of the bids shall not attempt in any way to influence the evaluation.
- 3.24.6 Any person who has a conflict of interest with respect to the procurement shall not participate in the procurement proceedings.

## **F AWARD OF CONTRACT**

### **3.25 Award**

- 3.25.1 Subject to Clause 3.26, NCC will award the bid and enter into a Joint Venture Agreement with the Successful Development Partner:
- a) Whose bid is determined to be substantially responsive to the bid documents, and
  - b) Who has been assessed as being technically and financially capable, and
  - c) **Who has attained the highest aggregated score in the TECHNICAL and FINANCIAL evaluation.**
- 3.25.2 NCC reserves the right to accept or reject any bid, and to annul

the bidding process and reject all bids, at any time prior to award of Contract, without thereby incurring any liability to the affected Bidders or any obligation to inform the affected Bidders of the grounds for NCC's action.

### **3.26 Notification of Award and Signing of the Joint Venture Agreement**

- 3.26.1 Prior to the expiry of the bid validity period prescribed by NCC, NCC will issue the Successful Development Partner by cable, email or telex and confirmed in writing by registered letter that its Bid has been accepted. This letter hereinafter and in all contract documents shall be called "Letter of offer".
- 3.26.2 Within fourteen (14) days of receipt of the Letter of offer from NCC, the Successful Development Partner shall send a written acknowledgement agreeing to comply with the conditions set out therein and for the execution of the development contract. This notification of award will constitute the formation of the Contract subject to the parties signing the Joint Venture Agreement.
- 3.26.3 The Successful Development Partner shall sign the Joint Venture Agreement from NCC within twenty-eight (28) days from the date of receipt of the Joint Venture Agreement and return it to NCC together with the required Performance Security.
- 3.26.4 Upon the furnishing of the Performance Security by the Successful Development Partner to NCC, NCC will promptly

notify other Bidders that their proposals have been unsuccessful and their bid security will be returned within 30 days without interest upon signing of the Joint Venture Agreement with the Successful Development Partner.

3.26.5 The parties to the contract shall have it signed within thirty (30) days from the date of notification of contract award unless there is an administrative review request.

3.26.6 In the absence of an administrative review request, failure of the Successful Development Partner to enter into Joint Venture Agreement within the stipulated period shall constitute sufficient grounds for the annulment of the Letter of offer (LOO) and forfeiture of the bid security. In such event, NCC reserves the right to invite the second best evaluated Bidder for negotiations or, call for fresh Bids OR take any such measures as may be deemed fit in the sole discretion of NCC including annulment of the bidding process.

### **3.27 Performance Guarantee**

3.27.1 Within twenty-eight (28) days of receipt of the notification of award from NCC, the Successful Development Partner shall furnish NCC with a Performance Security in an amount stated in the Appendix to Instructions to Bidders.

3.27.2 The Performance Security to be provided by the Successful Development Partner shall be an unconditional Guarantee issued at the Successful Development Partner's option by an established and reputable Bank or Insurance Company

approved by NCC and located in the Republic of Kenya or an internationally recognized bank approved by NCC.

**3.28 Corrupt or Fraudulent Practices:**

NCC requires that Bidders observe the highest standards of ethics during the procurement process and execution of contract. A Bidder shall sign a declaration form that he / she has not and will not be involved in any corrupt and fraudulent practices.

**3.29 Appendix to Instructions to Bidders:**

The following information regarding the particulars of the bid shall complement, supplement or amend the provisions of the Instructions to Bidders. Whenever there is a conflict between the provisions of the Instructions to Bidders and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the Instructions to Bidders.

## ANNEX A - APPENDIX TO INSTRUCTIONS TO BIDDERS

1.	Project Name	<b>Redevelopment of Ngong Road Estate PHASE 2 within Nairobi City County under Joint Venture Partnership. TENDER NO. NCC/UR&amp;H/RFP/526/2018-2019:</b>
2.	Contracting Authority	Nairobi City County
3.	Location of Purchase for these Bid Documents	<p>Bid Documents are to be obtained from the following address or downloaded from <a href="http://www.tenders.go.ke">www.tenders.go.ke</a></p> <p><b>Office of the Head Supply Chain Management, City Hall Annex, First Floor, Room 105, Nairobi, Kenya.</b></p>
5.	Address for Submission of Bids	<p>Office of the Head Supply Chain Management</p> <p>Nairobi City County</p> <p>1<sup>st</sup> Floor, Room 105</p> <p>City Hall annex</p> <p>P.O. Box 30075 – 00100</p> <p>Nairobi, Kenya</p>
6.	Bid Submission Deadline, Location of the Technical Bids Envelopes Opening	<p>Bid Submission Deadline will be on Friday <b>28<sup>th</sup> JUNE 2019 at 12:00 Noon, East African Time</b>, which will be the date on which the Bid Opening Committee convenes to open Technical Bids Envelopes.</p> <p>Location: Office of the Head Supply Chain Management, City Hall Annex, 1<sup>st</sup> Floor, Room 105, Nairobi, Kenya.</p>

7.	Location, Time and Date for Financial Bids Envelopes Opening	<p>Time and Date: All Bidders Whose Technical Bids will be successful will be notified, in writing, of the time, date, and venue of Financial Bid Envelopes opening.</p> <p>Location: Office of the Head Supply Chain Management, City Hall Annex, 1<sup>st</sup> Floor, Room 105, Nairobi, Kenya.</p>
8.	Bid Currency	Shall be in Kenya Shillings (KShs.)
9.	Language of Bid	All Bids, correspondence and documents required under or related to the Bid Process shall be made in the English language. Bidders may submit Bids, correspondence and documents in any other language, provided that the same are accompanied by an English translation duly signed by the Authorized Representative of the Bidder. In case of discrepancy between the other language and English texts, the English text shall prevail.
10.	Bid Validity Period	Submitted Bids shall remain effective for Ninety (90) Days from and including the date of the Bid Submission Deadline.
11.	Amount of Bid Security	<p>Bidders shall furnish to NCC a Bid Security of Kenya Shillings Ten Million (KShs. 10,000,000) from an established and reputable Bank or Insurance Company, located in the Republic of Kenya or internationally recognized.</p> <p>Value of Bid Security</p>

		<table><tr><td>Project Name</td><td>Bid Security (KShs)</td></tr><tr><td>Ngong Road Estate Phase Two</td><td>10,000,000</td></tr></table>	Project Name	Bid Security (KShs)	Ngong Road Estate Phase Two	10,000,000
Project Name	Bid Security (KShs)					
Ngong Road Estate Phase Two	10,000,000					
12.	Performance Security	Within Twenty Eight (28) Days of receipt of the Notification of Award from NCC, the Successful Development Partner shall furnish to NCC with a Performance Security equivalent to 5% of the Contract Price issued by an established and reputable bank or Insurance company, located in the Republic of Kenya or internationally recognized.				
13.	Number of Copies of the Bid	<p>Bids shall be made in three envelopes: the first containing the <b>“MANDATORY REQUIREMENTS”</b>, the second containing the <b>“TECHNICAL PROPOSAL”</b>, and the third containing the <b>“FINANCIAL PROPOSAL”</b> labeled and sealed as illustrated below:-</p> <p><b>Envelope “A”</b></p> <p>Contain one (1) original and three (3) copies of the Mandatory Requirements.</p> <p><b>Envelope “B”</b></p> <p>Contain one (1) original and three (3) copies of the Technical Proposal.</p> <p><b>Envelope “C”</b></p> <p>Contain one (1) original of the Financial Proposal.</p>				

		All to be sealed in a plain outer envelope clearly marked as in '1' above.
14.	Site Visit	Each bidding Entity should make arrangements with the Head Supply Chain Management office to arrange for a site visit



## **SECTION IV                      PROJECT OUTPUT SPECIFICATIONS**

### **Physical Design**

Project units must provide modest, self-contained accommodation of suitable space and size to meet household needs. Bidders shall ensure modest design including unit sizes, features, and amenities in accordance with the Project Output Specifications in the RFP Document. The Bidder is expected to develop a minimum of 2,500 units on the site.

The Project should utilize green technologies that promote the conservation of non-renewable resources, minimize environmental impact, and/or include building components that contribute to the economic efficiency of the facility over the long term.

The development shall comprise residential units of various types and configuration with all the attendant social amenities to support the Estate.

- The Estate should comprise of one bed roomed, two bed roomed and three bed roomed housing units.
- Bidders are to provide brief written description of design concept and construction approach and appropriate technology and material use.
- Bidders are to demonstrate adaptation of the design in response to user needs and requirements
- Bidders are to include innovative and green building solutions
- Bidders are to demonstrate clear understanding of the project functional requirements, observe good relationships between internal

and external functional space, economy of design and user space, circulation, security and safety.

- Bidders are to provide written description with the proposed structural design.

**N/B: Due to the vertical scale, care must be taken to ensure adequate lighting and air circulation to the lower floors.**

The design & Supervision will take into consideration the following aspects of the project goals, to assist in adaptable design solutions-;

- To blend into the surrounding, buildings within the urban environment, taking into consideration the expansion programs of growth, present and future.
- To develop flexible building plans with facilities that cater for change and growth and accept the fast and dramatic progress in computerization and building automation so as to utilize the latest technological methods in administration, organization, communication networks and services.
- To develop an innovative functional design solution that is sensitive to traditions, culture and local environmental - climatic conditions
- To provide productive, comfortable and aesthetically pleasing work environment
- To provide an environment with acoustics, lighting, climate control, access to computer technology.
- To provide durable facilities with long structural and functional lives and low operation and maintenance costs.

- To develop access for the handicapped.
- To provide physical and electronic security measures compatible
- with the importance of the project while being easy to operate, maintain and upgrade.
- To ensure the quality of construction compatible with the intended design.

Particulars of the proposed housing units are as stated in the table below:

Unit Type	Minimum Plinth Area	Spaces to be Accommodated
1 Bedroom	50 sq. metres	Lounge, kitchen/kitchenette, bedroom, wc/shower
2 Bedroom	75 sq. metres	Lounge, kitchen, kitchen yard, two bedrooms, wc/shower, balcony
3 Bedroom	100 sq. metres	Lounge/dining, kitchen/kitchen yard, two bedrooms, one ensuite bedroom wc/shower, balcony

**NB: The unit areas above are provided as guidelines and bidders are allowed to come up with different unit areas as long as the units are functional.**

- Units of different sizes will be considered, however proposed unit sizes should be generally consistent with unit sizes for rental properties within that geographical area.

- Floor areas for units designed for an individual living with a disability may exceed the minimum unit sizes proposed but they should be
- consistent with Affordable Rents for that geographical area, to accommodate mobility requirements.
- Where a design incorporates stacked townhouses with grade access, the minimum gross floor area should be increased by the space required for the additional stairway.

### Modesty Standards

- Notwithstanding the unit size guidelines above, projects should generally reflect modest accommodation.
- The assessment of projects will be based on the overall qualities of the Project and suites relative to the needs of the client group to be housed and proposed sale or rental prices.

### Communal Facilities (preferable modern integrated models)

1. Neighborhood playing fields.
2. Open Grounds.
3. Social Halls.
4. Commercial Centre.

### Layout

- The Bidder is to prepare a Master Plan for the Site that outlines clearly the proposed development.
- The Bidder is to determine and clearly indicate the number of units and house-types to be developed.
- The Bidder is to determine which Communal Facility to put up in the Site.

## Roads

- The Development to have a properly designated network of primary distributor roads, local distributor roads, major and minor access roads and footpaths.
- Roads to have storm water drainage and a pedestrian pavement on at least one side.
- Roads to have street and footpath lighting.

## Other preferred community facilities which may be considered

- Storm water, boreholes and roof harvesting facilities to complement normal water supply.
- Use of renewable energy and solar power as well as power back-ups facilities

## SECTION V TECHNICAL PROPOSAL

The Technical Proposal shall constitute the following:

Constituent Parts of the Technical Bid	
Part 1	The Technical Bid submitted in accordance with Annex B (Technical Bid Requirements)

### **Technical Proposal Evaluation**

The Technical Proposal shall be evaluated and scored using a scale of 100% allocated according to the quality, thoroughness and credibility of the Technical Proposal elements as defined in Annex B (Technical Bid Requirements). The available total points and relative weights for these elements are presented in the following table:

**N.B. Bidders who will attain an overall Technical score of 70% and above in the Technical Evaluation shall proceed to the Financial Evaluation stage. Those who do not attain the score shall be considered non-responsive and shall not be considered for financial evaluation.**

**The Technical marks shall have a weight of 40% in the overall aggregated score which will be calculated as below:**

$$T_x = TS \times 40\%$$

Where:

TS is the Technical score obtained in Annex B; and

T<sub>x</sub> is the weighted overall Technical Score.

## ANNEX B – MANDATORY AND ELIGIBILITY REQUIREMENTS

Mandatory and Eligibility Requirements Form		Yes	No
Part 1	A covering letter in accordance with Standard Form I		
Part 2	A Bid Security for the Project in accordance with Annex A (Appendix to Instructions to Bidders and Standard Form IX		
Part 3	A Power of Attorney in accordance with Clause 3.2.1 and Standard Form VI		
Part 4	The Bidder's information Sheet in accordance with standard Form II		
Part 5	In case of a Bidding Consortium (BC), the Information Sheet for each BC Party in accordance with Standard Form III		
Part 6	The Certificate of Bidder's visit to site in accordance with Standard Form IV		
Part 7	In case of a Bidding Consortium (BC), the Power of Attorney for designating the Lead Consortium Member in accordance with Standard Form V		
Part 8	An undertaking in accordance with Standard Form VII		
Part 9	In case of a Bidding Consortium (BC), the Joint Bidding Agreement in accordance with Standard Form VIII.		
Part 10	Bidders must prove that they have undertaken at least three project(s) with a cumulative number		

	of at least 2,000 housing units in Kenya over a period of 36 months, on a Joint Venture, single Entity or any other partnership agreements (Enclose copy of agreement with the client, which clearly mentions the total contract value of project, Number of units or Completion Certificate from the client for the development).		
Part 11	Demonstrate the ability to put together a project management team to deliver the project within a maximum period of 36 months. (Provide CV's and Certificates, both professional and educational, of key personnel to be involved in the project and their roles).		
Part 12	Bidders shall demonstrate ability to raise equity for deployment of the Project to the extent of <b>USD 50 Million</b> . In case of consortium, the Bidder has to demonstrate the ability of each member's contributions towards the above amount and demonstrate the equity available for deployment towards the project.		
Part 13	Demonstrate capacity and ability to raise funds for the project to the tune of <b>USD 100 Million</b> besides the minimum equity contribution stated in item (k) above.		
Part 14	Demonstrate a Sound Net worth of the entity of <b>USD 65 Million</b>		
Part 15	The requisite number of copies stipulated in this RFP.		



## **ANNEX C – TECHNICAL BID REQUIREMENTS**

<b>Technical Bid Reference</b>	<b>Evaluation Elements</b>	<b>Sub-Percentages (out of 100)</b>	<b>Notes</b>
1.0	Architectural design concept and approach to the Site	30%	<p>Demonstrates a coherent conceptual approach and orientation that meets the requirements of the CA. the design proposal will demonstrate the following:</p> <ul style="list-style-type: none"> <li>a) Clarity in presentation</li> <li>b) Design functionality</li> <li>c) Innovativeness</li> <li>d) Aesthetical values</li> <li>e) Site accessibility</li> <li>f) Environmental effectiveness</li> <li>g) Cost effectiveness</li> <li>h) “Green buildings” solutions</li> </ul>

1.1	Design report detailing the functional content of the conceptual design	8%	Sufficient detail and adequate rationale is provided to support the proposed design in relation to:  a) Net and Gross areas;  b) Project planning;  c) Design concepts and
1.2	Floor plans for individual housing units, commercial centre and/or any other communal facilities.	2%	Functional, accurate and complete drawings are provided and should comply with minimum area requirements specified in the Project Output Specifications.

Technical Bid Reference #	Evaluation Elements	Sub-Percentage s (out of 100)	Notes
1.3	Comprehensive Site Plan. To include Elevations and sections	4%	Accurate and complete drawings are provided and should provide reasonable building height and ceiling heights.
1.4	Exterior and interior perspectives	2%	Accurate and complete drawings that exhibit clear building volume and massing of buildings on site.

1.5	Landscape designs  To include recreational green spaces	3%	Functional, accurate and complete drawings are provided.
1.6	Design for vehicular parking and drive ways and parking ratios preferably one parking space per unit	5%	Accurate and complete drawings should be provided specifying parking lot requirements and markings.
1.7	Innovative use of Key materials and schedule of finishes.  Demonstrate use of maintenance free materials	5%	Detailed and accurate schedule provided.
1.8	Construction Works Program	5%	Detailed construction plans (text and drawings) is provided that includes: details of the proposed approach to commissioning; and Key phasing and decommissioning.

1.9	Construction works specifications	5%	Sufficiently detailed written description adequately addressing:  a) construction method statement;  b) Project management plan;
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Technical Bid Reference #	Evaluation Elements	Sub-Percentages (out of 100)	Notes
			c) impacts on existing engineering services and buildings;  d) key materials and products; refurbishment within the overall construction;  e) safety strategies;  f) quality control;  g) utilities and building services strategies
2.0	Schedule of Accommodation	5%	Bidder is to provide the detailed Schedule of Accommodation with all functional units in accordance with the requirements of the design and overall technical proposal

2.1	Proposed Structural design system	3%	Sufficiently detailed written description of the structural system to be provided. .
2.2	Electrical and electronic design system	3%	Sufficiently detailed written description provided.
2.3	Mechanical services Design system	3%	Sufficiently detailed written description provided.
2.4	Mobilization plans, construction Staff organization, and list of Project equipment	5%	Detailed mobilization plans, construction Staff organization, and list of Project equipment are provided.
2.5	Use of non-renewable resources and green technologies	2%	Accurate and complete drawings are provided.

Technical Bid Reference #	Evaluation Elements	Sub-Percentage s (out of	Notes
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2.6	Design Program	5%	<p>Bidders are to provide an outline of design and construction programme for the completion of the construction works and commissioning of the Housing Units. This construction programme should detail key deliverables and a critical path graph (with use of Primavera - or equivalent - software).</p> <p>This timetable should demonstrate that the units required will be available and operational on the scheduled date.</p>
2.7	Project Management Team	5%	<p>Bidders are to provide the Project Management Team Organization chart and CVs for the project Architectural firm, Quantity Surveying firm, Civil &amp; Structural Engineering firm, Electrical and Mechanical Engineering firm, Construction Manager, Project Manager and Facilities Manager. Each project design team member should have a <b>minimum experience of ten years</b> and above in handling housing projects of similar size as the project</p>
	<b>Total</b>	<b>100%</b>	

**There are 100 maximum possible points. Any features that Bidders wish to include over and above NCC's stated requirements will not receive any additional points.**

**Only those Bidders who shall have an overall aggregate of 70% of the evaluated Technical Proposal, shall proceed to the Financial proposal evaluation stage.**

## SECTION VI FINANCIAL PROPOSAL

### 6.1 The Financial Bid

6.1.1 Each Bidder shall submit a complete Financial Bid, by duly completing the forms provided in Annex D, E and F (Financial Bid Forms), for the Project. The Bidders shall not amend or change the Financial Bid Forms, in any way whatsoever, other than for duly filling the required data. Any Bid which does include amendments or additions of whatsoever nature to the Financial Bid Forms shall be rejected.

6.1.2 The Financial Bid shall comprise the following documents:

Constituent Parts of the Financial Bid	
Financial Bid	The Project Financial Package in accordance with Annex D - Financial Bid Form 1.
	The Proposed Mortgage Facility to be offered to End Buyers in accordance with Annex E – Financial Bid Form 2.
	Marketing Plan in accordance with Annex F – Financial Bid Form 3.

6.1.3 The Bidder shall submit the above mentioned documents in accordance with the following conditions and instructions:



#### **6.1.4 Financial Bid Form 1**

In Financial Bid Form 1 (Annex D), the Bidder shall provide the number of units proposed to be developed for the Project, the Development Cost per unit in Kenya Shillings, and the Development Cost per Square Metre and Total Development Cost.

#### **6.1.5 Financial Bid Form 2**

In Financial Bid Form 2 (Annex E), the Bidder shall provide the Mortgage Facility proposed to be offered to end buyers without reflecting any inflation rate adjustments.

#### **6.1.6 Financial Bid Form 3**

In Financial Bid Form 3 (Annex F), the Bidder shall provide the proposed Marketing Plan for the housing units.

#### **6.1.7 Memorandum of Understanding between the Bidder and the Lender(s)**

Should the Bidder require financing for the Project from Lender(s), as part of the Financial Bid, the Bidder shall submit a signed MoU between the Bidder and the Lender(s) expressing the Lender's interest in financing the Project in case the Bidder becomes the Successful Bidder.

#### **6.1.8 Financial Bid Envelope**

The Financial Bid (Forms 1, 2, and 3) together with the MoU executed with the Lender(s) for financing of the Project shall be

enclosed in separate envelopes with the following inscription: “Financial Bid for Project (Name and Bid No.)”. All the Financial Bid envelopes for the Site(s) Project shall then be enclosed in the Financial Bid Envelope in accordance with Clause 3.17 of the RFP Document.

#### **6.1.9 Financial Bid Basic Conditions**

6.1.9.1 Any Financial Bid including any basis or conditions of the Financial Bid or any additional document of whatsoever nature other than those required under Section VI of this RFP Document shall be rejected.

6.1.9.2 Any Financial Bid including any conditions, provisions, restrictions, basis of Financial Bid calculations or assumptions of whatsoever nature presented in any form shall be rejected.

6.1.9.3 Any Financial Bid including any alterations, amendments or changes in the Financial Bid Forms 1, 2 or 3 other than filling these forms as indicated, shall be rejected.

6.1.9.4 In the event of any discrepancy between words and figures in the Financial Bid Forms, the amounts indicated in words shall prevail. The Financial Bid shall be evaluated against three Financial Sections as follows:

- i. Project Financial Package as provided by the Bidders in Annex D – Financial Bid Form 1 (75 points)
- ii. Proposed End Buyer Mortgage Facility/ Tenant Purchase Scheme as provided by the Bidders in Annex E – Financial

iii. Bid Form 2 (15 points)

iv. Proposed Marketing Plan as provided by the Bidders in Annex

F – Financial Bid Form 3 (10 points)

**Table 1**  
**Financial Score Summary**

Evaluation Attributes	Maximum Score	Bidder Score
Project Financial Package	75	
Proposed Mortgage Facility / Tenant Purchase Scheme	15	
Marketing Plan	10	
<b>Total Score</b>	<b>100</b>	

## FINANCIAL BID FORMS

### ANNEX D - FINANCIAL BID FORM 1

#### (A) Number of proposed Units

Unit Type	Number of Units Proposed
1 Bedroom	
2 Bedroom	
3 Bedroom	
Total	

#### (B) Development Cost per Unit (Kshs)

Unit Type	Development Cost (Kshs)
1 BR	
2 BR	
3 BR	

#### (C) Development Cost per Square Metre and the Total development Cost

Development Cost per Square Metre	Total Development Cost (Kshs.)

#### NOTE:

Table A - Insert the number of Proposed Units to be Developed

Table B - Insert the Development Cost for Each Proposed Unit

Table C - Insert the Development Cost per Square Metre and indicate the Total Development Cost

## **ANNEX E - FINANCIAL BID FORM 2**

### **Proposed Mortgage Facility / Tenant Purchase Scheme**

Proposed Mortgage Interest Rate / Tenant Purchase Scheme	Tenure (Years)

### **ANNEX F - FINANCIAL BID FORM 3**

#### **Marketing Plan including affirmative marketing and outreach to Potential Tenants**

The Bidders shall be required to develop a marketing plan for the Project.

Bidders shall provide information on how to they intend to market the housing units to potential Tenants. The Marketing Proposal shall be in the form of a written plan **not exceeding Two Thousand Five Hundred (2,500) words** detailing the marketing strategies and operations of the Bidder.

## **FINANCIAL EVALUATION CRITERIA**

### **(A) Number of proposed Units - 20 points Maximum**

Number of Units	Total Score
Attained maximum optimum possible number of units with corresponding adequate parking per unit and adequate green areas	20

### **(B) Development Cost per Unit (Kshs) - 30 Points Maximum**

Unit Type	Development Cost (Kshs)	Total Score
1 BR	2 Million and Below	30
	Above 2 Million	20
2 BR	4 Million and Below	30
	Above 4 Million	20
3 BR	6 Million and Below	30
	Above 6 Million	20

### **(C) Development Cost per Square Metre and the Total development Cost - 25 Points Maximum**

Development Cost per Square Metre	Total Score	Total Development Cost (Kshs.)
Between Kshs 50,000 - Kshs. 60,000	25	
Above Kshs. 60,000	15	

**Proposed Mortgage Facility / Tenant Purchase Scheme – 15 Points Maximum**

Proposed Mortgage Interest Rate / Tenant Purchase Schemes	Tenure (Years)	Points
Interest Below 10%	20 Years and Above	15
Interest Above 10 % but Below 15%	10 - 15 Years	10
Interest Above 15%	Below 15 Years	5
Other Tenant Purchase Schemes	( Specify details)	To be determined but not to exceed 15 Points

**Marketing Plan including affirmative marketing and outreach to Potential Tenants - 10 Points Maximum**

- Failure to provide a marketing and outreach plan (0 points).
- Provided a general description of outreach to potential buyers (10 points).

**There are 100 maximum possible points to be scored in the financial evaluation. The financial points shall have a weight of 60% in the overall aggregate score.**

**Financial Marks shall have an overall weight of 60%.**

$$F_x = FS \times 60\%$$

Where:

FS is the Financial score obtained in Table 1; and

F<sub>x</sub> is the weighted average Financial Score

$$\text{Overall Aggregate Score} = T_x + F_x$$

**The Bidder who shall have attained the highest overall aggregate**



**score shall be the Successful Bidder.**

## SECTION VII GENERAL OUTLINE OF THE CONDITIONS OF THE JOINT VENTURE AGREEMENT

Page

### A PROPOSALS

- 7.1 Duty to carefully examine these Instructions
- 7.2 Careful Examination of Site Plan, Specifications
- 7.3 Clarification During Bidding
- 7.4 Proposal Documents
- 7.5 Competitive Bidding

### B DESIGN REQUIREMENTS

- 7.6 Scope of Work
- 7.7 Intent of Contract Documents
- 7.8 Laws and Codes
- 7.9 Drawings & Specifications
- 7.10 Approvals Prior to Construction
- 7.11 Submittals
- 7.12 Divisions of the Performance Specifications
- 7.13 Layout of the Work

### C CONDUCT OF CONSTRUCTION WORK

- 7.14 Laws to be Observed – Generally
- 7.15 Laws to be Observed – Regarding Labour
- 7.16 Environmental Requirements
- 7.17 Substitution of Sub – Contractors
- 7.18 Successful Development Partner's Responsibility for the Works
- 7.19 Occupancy by Employer Prior to Acceptance
- 7.20 Responsibility to Secure and Pay for Permits,

Licenses, Utility Connections, Etc

- 7.21 Patented or Copyrighted Materials
- 7.22 Property Rights in Materials and Equipment
- 7.23 Taxes
- 7.24 Contract Time
- 7.25 Labour Force and Foremen
- 7.26 Limitation of Construction Operations
- 7.27 Drawings Reflecting Actual Construction
- 7.28 Access for Inspection
- 7.29 Clean – up of Project Site
- 7.30 Project Sign, Advertising

## **D INTERPRETATION OF AND ADHERENCE TO CONTRACT REQUIREMENTS**

- 7.31 Interpretation of Contract Requirements
- 7.32 Issuance of Interpretations, Clarifications, Additional Instructions
- 7.33 Product and Reference Standards
- 7.34 Shop Drawings, Samples, Alterations or Equals And Substitutions
- 7.35 Quality of Materials, Articles and Equipment
- 7.36 Testing Materials, Articles, Equipment and Work
- 7.37 Rejection
- 7.38 Responsibility of Quality
- 7.39 Guarantee

## **GENERAL OUTLINE OF THE CONDITIONS OF THE JOINT VENTURE AGREEMENT**

**N.B:** The final terms of the Joint Venture Agreement shall be agreed upon between NCC and the Successful Development Partner before commencement of the Project. The Joint Venture Agreement shall indicate the general terms and conditions stipulated under this section of the RFP.

## **A PROPOSALS**

### **7.1 Duty to Carefully Examine these Instructions**

Bidders are advised to carefully examine the instructions contained herein and be satisfied with the conditions that must be satisfied prior to submitting a proposal and to the conditions that affect the award of the contract.

### **7.2 Necessity for Careful Examination of Site Plan, Specifications**

The Bidder shall carefully examine the project site and shall investigate and be satisfied as to the conditions to be encountered, the character and quantity of surface and sub-surface materials or obstacles to be encountered, rights of way and easements at or near the site, the work to be performed and the materials to be furnished as required by the RFP. Any failure by the Bidders to acquaint themselves with the information that is available or with reasonable investigations that may be available will not relieve them from responsibility to properly estimate the difficulty or cost to perform the works.

### **7.3 Clarification During Bidding**

The Bidder shall examine the RFP documents in preparing the Bid and shall report to NCC any omissions, discrepancies or apparent errors found in the RFP document. Prior to the date of Bid opening, the Bidder shall submit a written request to NCC as per Clause 3.6.1 for clarification and NCC may give such clarification in the form of addenda to all Bidders. Only NCC's authorized personnel is authorized to answer questions or prepare addenda relating to the project. Information obtained from any other source shall not bind

either party, may not be relied upon and shall have no standing in any event that may occur.

#### **7.4 Proposal Documents:**

Each proposal will consist of:

- I. Technical Proposal which shall also contain the Mandatory Requirements;
- II. Financial Proposal

##### **a) Proposal Package:**

Any proposal submitted that is not signed by the Bidder or the Bidder's duly authorized representative shall be rejected by NCC as non – responsive.

##### **b) Power of Attorney:**

When an agent signs the bid, a power of attorney shall be submitted with the proposal. Failure to submit the Power of Attorney may result in the rejection of the bid as being irregular and unauthorized. A Power of Attorney is however not necessary in the case of a Partner in a partnership.

#### **7.5 Competitive Bidding**

If more than one proposal is offered by an individual or business entity or combination thereof, under the same or different names, all such proposals may be rejected.

## **B DESIGN REQUIREMENTS**

### **7.6 Scope of Work:**

The Bidder shall furnish to NCC complete sets of all architectural, landscape and engineering services drawings and Bills of Quantities and detailed specifications necessary to complete the project in accordance with the requirements of the contract documents.

From the approved drawings and detailed specifications, the Bidder shall furnish all labour, materials, equipment, services and transportation necessary for the complete construction of the project, including site works, structures, utilities and landscaping.

### **7.7 Intent of Contract Documents:**

The intent of the contract documents is to provide NCC with a project that is complete in all respects. All items necessary or reasonably required are to be provided to produce a complete and operational project.

### **7.8 a) Laws and Codes**

For any item for which the above codes are not applicable, the Bidder shall comply with the requirements of the latest edition of the Kenya Building Code.

Codes and specifications incorporated by reference shall be those of the latest edition at the time of receiving proposals, unless otherwise specified.

NCC shall select a firm(s) to provide materials testing and inspection

services during construction. The testing and inspection services firms are solely responsible to NCC and the Project Managers for observation of construction, determination of adherence to the contract documents (including approved plans and specifications) and compliance with the applicable codes and standards.

**b) Plans and Specifications**

The plans and specifications shall state the design codes, standards and requirements used for the development of the plans including the edition and applicable sections.

Plans and specifications shall include a quality control programme and an implementation plan to ensure that the completed project complies in all respects to the project requirements.

The design professionals engaged by the Bidder shall specify all tests and inspections that are required by the building code and that are appropriate to achieve the project goals. The design professionals on record shall be retained to provide normal construction administration services and shall make periodic visits to site to observe the quality of the works.

The final design drawings, specifications and calculations shall be signed and stamped by the appropriate registered professionals as complying with the requirements of the applicable codes, standards, practices and regulations.

The design professionals on record shall retain full responsibility for the design.

The Successful Development Partner shall incorporate changes, if any, resulting from plan check, peer review and / or NCC's requirements into the final design without additional cost to NCC. Such final drawings and specifications shall be re-submitted to NCC for approval.

**c) Plan Approval by NCC:**

No plans shall be approved for construction without the express written approval of NCC's authorized representative.

At the discretion of NCC, the project may be approved in parts provided that each part is assessed as in full compliance with the applicable requirements and can be completed without compromising compliance of the total project.

Any changes, alterations, substitutions or modifications made to the approved plans during construction must be approved in writing by NCC's authorized representative, where they may be construed to impact on the adherence to the applicable codes, standards or regulations.

The Successful Development Partner shall incorporate without additional cost to NCC, any changes, alterations, substitutions or modifications made to the approved plans that are required during construction to satisfy code requirements, including those not previously identified in the approved plans, or to properly implement the approved plans, or where observed workmanship and / or discovered conditions so require.



The Successful Development Partner shall be responsible for payment of applicable fees and shall incorporate any modifications required in the drawings and detailed specifications without additional cost to NCC.

NCC shall issue a certificate of completion when satisfied that the approved plans have been implemented and that all inspection and technical code and standards compliance issues identified during construction have been satisfactorily resolved.

## **7.9 Drawings and Specifications:**

### **a) Quality Requirements:**

The Successful Development Partner shall submit to NCC for approval, a complete set of drawings and detailed specifications necessary to construct the project, including drawings and detailed specifications for site layout, utilities and landscaping.

It is required that these drawings and specifications be prepared by registered professionals under the law.

### **b) Plan Review and Testing / Inspection Services:**

NCC and the Successful Development Partner shall each appoint a Project Manager to oversee /co-ordinate the project. The Project Manager shall also have the responsibility for enforcement of all applicable codes, standards and related responsibilities.

NCC shall review the plans and specifications for adherence to applicable codes and standards.

NCC shall select a firm(s) to provide materials testing and inspection services during construction.

Testing and inspection services firm(s) shall be solely responsible to the Project Manager for observance of construction, determination of adherence to the contract documents (including approved plans and specifications) and compliance with the applicable codes and standards.

#### **7.10 Approvals Prior to Construction:**

Review and approval of all drawings and detailed specifications must be obtained from NCC before start of construction. However, NCC will accept a design submission for site development and if found satisfactory, will allow the Successful Development Partner to proceed with earthworks, foundations and other elements while final plans and specifications for the balance of the work are being completed.

The Successful Development Partner is responsible for final approvals and approval of portions of the work by NCC does not relieve the Successful Development Partner of responsibility for construction should changes be required due to items disapproved or changed due to plan check. The responsibility for a totally integrated design in accordance with the contract documents will remain with the Successful Development Partner.

**7.11 Submittals:**

The Successful Development Partner shall submit all detailed fabrication drawings, material list and manufacturer's equipment brochures setting forth in detail the work as it is to be performed by the Successful Development Partner. Submittals shall be approved by NCC prior to use of the materials for the works.

**7.12 Divisions of the Performance Specifications:**

The performance specifications are divided into sections for convenience as set forth in the standard format. The actual limitations of work in the various trades and/or sections of the specifications are the responsibility of the Successful Development Partner.

**7.13 Layout of the Work:**

The Successful Development Partner shall prepare surveys and design for excavations and shoring's required for the project and assure compliance with all state and local regulations.

**C CONDUCT OF CONSTRUCTION WORK**

**7.14 Laws to be Observed – Generally:**

The Successful Development Partner shall observe all Government Laws that affect the work under this contract.

The Successful Development Partner shall hold harmless defend and indemnify NCC against any claim arising from the violation of any law, whether by itself or its agents, employees or sub-contractors.

If a conflict arises between the provisions of this contract and any other law, the Successful Development Partner shall immediately notify NCC's Project Manager in writing.

“Law” as used in this paragraph includes statutes and regulations adopted as well as executive orders, authoritative interpretations and other rules and directives issued by legally constituted authority.

#### **7.15 Laws to be Observed – Regarding Labour:**

a) Labour:

- I. The Successful Development Partner shall comply with the provisions of the Kenyan Labour Laws.
- II. The Successful Development Partner shall permit access by representatives of NCC upon reasonable notice to its books, records, accounts, other sources of information and its facilities as NCC shall require to ascertain compliance with this Clause.
- III. The Successful Development Partner and its Sub-Contractors shall give written notice of their obligations under this Clause to labour organizations with which they have a collective bargaining or other agreement.

b) Prevailing Wage:

- I. Wage rates shall be minimum rates applicable as approved by the Cabinet Secretary that may be paid by the Successful Development Partner on a public works contract.

Public works also means hauling refuse from a public works site to an outside disposal location.

Nothing herein contained shall be construed as preventing the Successful Development Partner from paying more than the minimum rates set forth.

No extra compensation whatsoever will be allowed by NCC due to the inability of the Successful Development Partner to hire labour at minimum rates for the necessity for payment by the Successful Development Partner of subsistence, travel time, overtime or other added compensations, all of which possibilities are elements to be considered and ascertained to the Successful Development Partner's own satisfaction in preparing the bid.

- II. If it becomes necessary to employ crafts other than those listed, the Successful Development Partner shall notify NCC immediately and NCC shall/ will ascertain additional prevailing rates and the rates thus demanded shall be applicable as minimum from time of initial employment.
- III. The Successful Development Partner and any Sub-Contractor under the Successful Development Partner shall comply fully with all labour laws.
- IV. The Successful Development Partner and Sub-Contractors shall keep an accurate payroll record showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week and actual per diem wages paid to each journeyman, apprentice

or worker employed in connection with the works.

Each payroll record shall contain verification by written declaration that the information contained in the payroll record is true and correct and that the Successful Development Partner and Sub-Contractors have complied with the requirements.

For work performed by its employees on the project, the Successful Development Partner's and Sub-Contractor's payroll records shall be available for inspection at all reasonable hours and a certified copy shall be made available upon request to NCC's authorized representative.

- V. The Successful Development Partner is required to submit a minimum of the first two weeks of certified payroll and the Hourly Labour Rate Worksheet for its workers. Additional weeks of certified payroll records may be required at the discretion of NCC.

a) Workers' Compensation:

The Successful Development Partner shall be required to secure payment of Workers' Compensation to its employees in accordance with Labour Laws and shall file with NCC prior to performing the works, the certification required.

c) Education, Counseling and Training Programmes:

All educational, counseling and vocational guidance programmes and all apprenticeship and on-the-job training

programmes, under this contract, shall be open to all qualified persons, without regard to race, sex, colour, religion, national origin or ancestry.

Such programmes shall be conducted to encourage the fullest development of the interests, skills, aptitudes and capacities of all students and trainees with special attention to the problems of culturally deprived, educationally handicapped or economically disadvantaged persons.

Expansion of training opportunities under these programmes shall also be encouraged with a view toward involving larger numbers or participants from these segments of the labour force where the need for upgrading levels of skills is the greatest.

The Successful Development Partner shall obtain copies of such safety orders as are applicable to the type of work to be performed and shall be governed by their requirements in all construction operations. The Successful Development Partner shall fully inform each Sub-Contractor and materials supplier as to the requirements of the applicable safety orders.

#### **7.16 Environmental Requirements:**

##### **a) Air and Water Pollution Control:**

The Successful Development Partner shall comply with all air and water pollution control rules, regulations, ordinances and statutes that apply to the work performed under the contract including any air pollution control rules, regulations, ordinances

and statutes adopted under the authority of NCC.

The Successful Development Partner must be eligible to perform work for the Project Manager by not being found to be in violation of any order, resolution or regulation relating to air or water pollution adopted in accordance with Project Manager's requirements.

In the absence of any applicable air pollution control rules, regulations, ordinances or statutes governing solvents, all solvents, including but not limited to the solvent solutions of paints, thinners, curing compounds and liquid asphalt used on the project, shall comply with the applicable material requirements of the Kenya Bureau of Standards.

All containers of solvent paint, thinner, curing compound or liquid asphalt shall be labeled to indicate that the contents fully comply with these requirements.

Unless otherwise provided in the special provisions, material to be disposed of shall not be burned either inside or outside the premises.

A regular watering programme shall be initiated to adequately control the amount of fugitive dust. Exposed soil surfaces shall be sprayed with water at least daily and as needed to mitigate dust.

Trucks hauling dirt from the site shall be covered in accordance



with applicable state and local requirements. To reduce exhaust emissions, unnecessary idling of construction vehicles and equipment shall be avoided. Construction equipment shall be fitted with modern emission control devices and shall be kept in proper time.

**b) Sound Control Requirements:**

The Successful Development Partner shall comply with all sound control and noise level rules, regulations and ordinances which apply to the work.

In the absence of any such rules, regulations and ordinances, the Successful Development Partner shall conduct its work to minimize disruption to others due to sound and noise from the workers and shall be responsive to NCC's request to reduce noise levels.

Loading and unloading of construction materials will be scheduled so as to minimize disruptions to any activities. Construction activities will be scheduled to minimize disruption to the adjacent premises.

**7.17 Substitution of Sub-Contractors:**

Once the Sub-Contractors have been listed, provisions of the subletting and subcontracting to any proposed substitution of subcontractors must be approved by the Project Manager.

The Successful Development Partner must clearly advertise the specific bond requirements for the project including the

requirement of a bond and the amount of the bond, in order to be eligible to substitute a Sub-Contractor.

When requested by the Project Manager, the Successful Development Partner shall submit a Sub-Contractor Status Report, which will be compared with the list of approved contractor.

If any Sub-Contractors are still outstanding at the time of submittal, a follow-up request will be made. No substitution of any Sub-Contractors would be allowed without written approval of NCC.

## **7.18 Successful Development Partner's Responsibility for the Works:**

### **a) Generally**

The Successful Development Partner shall be fully responsible for all work performed under this contract and no Sub-Contractor will be recognized as such. For purposes of assessing responsibility to the Successful Development Partner, all persons engaged in the work shall be considered as employees of the Successful Development Partner.

The Successful Development Partner shall give its personal attention to the fulfillment of the contract and keep all phases of the work under its control. NCC will not arbitrate among Sub-Contractors nor between the Successful Development Partner and one or more Sub-Contractors concerning responsibility for performing any part of the Project.

### **b) Quality Control**

The Successful Development Partner shall be fully responsible for the quality of materials and workers still in the project. The Successful Development Partner shall not rely upon the inspection and testing provided by NCC other than those special inspections and tests performed by NCC's selected laboratories for which there are written reports.

### **c) Burden for Damage**

From the issuance of the Official Notice to Proceed until formal acceptance of the project by NCC, the Successful Development Partner shall have the charge and care of and shall bear the risk of damage to the project and materials and equipment for the project.

The Successful Development Partner, at its own expense, shall promptly rebuild, repair, restore and make good all such damage to any portion or to all of the project and materials therefore before the acceptance of the project by NCC except for such damage as is proximately caused by acts of NCC or public enemy.

In case of suspension of work from any cause whatsoever, the Successful Development Partner shall be responsible for all materials and shall properly store them, if necessary and shall

provide suitable drainage and erect temporary structures where necessary.

If the Successful Development Partner damages any property belonging to NCC, NCC may, in addition to other remedies available to it, retain from money due to the Successful Development Partner an amount sufficient to ensure repair of the damage or an amount to contribute towards repair of the damage. The Successful Development Partner shall be responsible for any damage to the project and materials and equipment for the project.

#### **d) Protection of Adjoining Facilities**

The Successful Development Partner shall protect adjoining property and nearby buildings, ~~roads~~ and other facilities and improvements from dust, dirt, debris and other nuisances arising out of Successful Development Partner's operations.

Dust shall be controlled by sprinkling water or other effective methods acceptable to NCC. An erosion and sedimentation control program shall be initiated, which includes measures addressing erosion caused by wind and water sediment in runoff from site.

A regular watering program shall be initiated to adequately control the amount of fugitive dust in accordance with applicable Law.

### **e) Safety**

The Successful Development Partner shall exercise precaution at all times for the protection of persons and their property.

The Successful Development Partner shall install adequate safety guards and protective devices for all equipment's and machinery, whether used in the work or permanently installed as part of the project.

The Successful Development Partner shall also provide and adequately maintain all proper temporary walks, roads, guards, railings, lights and warning signs. The Successful Development Partner shall comply with all applicable laws relating to safety precautions, including the safety regulations of the Project Manager.

If the Successful Development Partner designates other employees, its Foreman shall have the duty of prevention of accidents. The Successful Development Partner shall institute a safety program, which includes all trades on the site.

Renovation, expansion, or remodel work of any existing building may expose workers to lead-containing materials such as paint, flashing and pipe joints. The Successful Development Partner shall comply with all applicable laws addressing such exposure.

The Employer and the Project Manager may bring to the attention of the Successful Development Partner a possible

hazardous situation in the field regarding the safety of personnel on the site.

The Successful Development Partner shall be responsible for verifying that all local, state and Government workplace safety guidelines are being observed.

In no case shall this right to notify the Successful Development Partner absolve the Successful Development Partner of its responsibility for monitoring safety conditions.

Such notification shall not imply that anyone other than the Successful Development Partner has assumed any responsibility for field safety operations.

In the event of an accident, the Successful Development Partner shall make available to NCC, copies of its accident report to its insurance carrier.

The Successful Development Partner shall determine the cause of the accident and immediately correct any equipment, procedure or condition contributing to the accident.

#### **f) Utilities**

- i. If the Successful Development Partner discovers utility facilities not identified in the contract documents, the Successful Development Partner shall immediately notify NCC and the utility involved in writing of such discovery.

When the Successful Development Partner is required by the plans and specifications to locate, remove or relocate utility facilities not identified in the contract documents with reasonable accuracy, she/he shall be compensated for any reasonable actual added cost incurred.

The Successful Development Partner shall also be compensated for the cost of repairing any damage resulting from the discovery of such unidentified utility facility when such damage does not result from the failure of the Successful Development Partner to exercise reasonable care.

All such compensation to the Successful Development Partner shall be based on an actual cost plus Successful Development Partner and subcontractor mark-up except that both the Successful Development Partner's and subcontractor's mark-up shall be reduced by (6) percent each, where the damages results from the failure of the Successful Development Partner or sub-contractor to exercise reasonable care.

NCC or the public utility, where it is the owner of the utility facilities shall have the sole discretion to perform repairs, or relocation work or permit the Successful Development Partner to do such repairs or relocation work at a reasonable price, where such work is required to facilitate the project.

The Successful Development Partner shall not be held liable /

responsible for liquidated damages arising out of delay in the completion of the project which is caused by the failure of NCC or the owner of the utility to provide for removal or relocation of such unidentified utility facilities.

- ii. With the exception of the identification of main trunk line utility facilities in the contract documents, the foregoing provisions of sub- clause (i) shall not apply to and NCC shall have no obligation to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the project can be inferred from the presence of other visible facilities such as buildings, meter and junction boxes on or adjacent on the site of the construction.
- iii. Except as expressly provided in sub-clauses (i) and (ii) above, the Successful Development Partner shall be
- iv. Responsible at its own cost for all work, expense or special precautions caused by the existence or proximity of utilities encountered at the site or in the performance of the project work including without limitation. Repair of any damage that may result including any damage resulting from hand or exploratory excavation.

The Successful Development Partner is that the utilities encountered at the site may include communication cables or electrical cables conducting high voltage. When excavating in the vicinity of the ducts enclosing such



cables, special precautions are to be observed by the Successful Development Partner at its own cost and shall include the following:

- a) All cables and their enclosure ducts shall be exposed by careful hand excavation so as not to damage the ducts or cables nor;
  - b) Cause injury to persons and appropriate warnings signs, barricades and safety devices shall be erected.
- v. The Successful Development Partner shall provide to NCC as-built drawings of all utilities encountered and constructed indicating the size, horizontal location and vertical location based on the project bench mark or a stable datum.

#### **7.19 Occupancy by Employer Prior to Acceptance:**

NCC reserves the right to occupy all or part of the project prior to completion of the entire contract, upon issuance of a written contract change order thereof.

In such event, the Successful Development Partner shall be relieved of such responsibility for any injury or damage to such occupied part as results from NCC's occupancy or use.

If the Successful Development Partner carries insurance against damage to such premises or against liability to third persons covering premises so used and occupied by NCC and if such occupancy results in increased premiums for such

insurance, NCC will pay to the Successful Development Partner the added premium costs for such insurance during the period of occupancy.

The occupancy change order shall be the vehicle for such payment, if applicable.

NCC's occupancy shall not constitute acceptance by NCC either of the project as completed or of any portion thereof, nor will it relieve the Successful Development Partner of full responsibility for correcting defective work or materials found at any time before the formal written acceptance by NCC of the project as completed and during the full guarantee period after such acceptance, nor does it stop the assessment of liquidated damages.

However, when the project includes several separate facilities and one or more of such facilities is entirely occupied by NCC, then upon written request of the Successful Development Partner, the guarantee period for the occupied facility may commence from the date of occupancy subject to written consent thereto by NCC.

## **7.20 Responsibility to Secure and Pay for Permits, Licenses, Utility Connections Etc.**

The Successful Development Partner shall secure all permits and licenses required for any operations required under this contract and shall pay all costs relating thereto as well as all other fees and changes that are required by the Project

Manager, Telephony Company, special district or quasi-Project Managerial entity. It is the Successful Development Partner's responsibility to ascertain the necessity of such permits and licenses in preparing its Bid and include in its Bid the cost thereof as well as adjustments for any delays, which may be caused by securing permits and licenses.

#### **7.21 Patented or Copyrighted Materials:**

The Successful Development Partner shall assume all costs arising from the use of patented or copyrighted materials, equipment, devices or processes used on or incorporated in the project and agrees to save harmless, defend and indemnify NCC's Consultants, NCC's employees from all suits, actions or claims for or on account of the use of any patented or copyrighted materials, equipment, devices or processes.

#### **7.22 Property Rights in Materials and Equipment:**

Nothing in this contract shall be construed as vesting in Successful Development Partner any property in the materials or equipment after they have been attached to or permanently placed in or upon the work or soil or after payment has been made for the value of the materials or equipment delivered to the site of the work whether or not they have been so attached as placed.

All such materials or equipment shall become the property of NCC upon being so attached or placed or upon payment of the

value of the materials or equipment delivered on the site but not yet installed and the Successful Development Partner warrants that all such property shall pass to NCC free and clear of all liens, claims, security interests or encumbrances.

**7.23 Taxes:**

The Successful Development Partner shall pay all taxes imposed by law which are levied or become payable as a result of the Successful Development Partner's performance under this contract.

**7.24 Contract Time:**

a) Time is of Essence:

All time limits specified in this contract are of the essence of the contract.

b) Starting and Completion Dates:

NCC shall designate in the Notice to Proceed the starting date of the contract on which the Successful Development Partner shall immediately begin and thereafter diligently execute the work to completion.

The Successful Development Partner agrees to complete the work on the date specified for completion of the Successful Development Partner's performance in the contract unless the adjustment arises under unusual circumstances.

The Successful Development Partner may complete the work

before the completion date if it will not interfere with NCC's or other Contractors engaged in other related or adjacent work. The work shall be regarded as completed as noted on NCC's Notice of Completion.

## **7.25 Labour Force and Foremen:**

At all times the Successful Development Partner shall provide sufficient labour to properly execute the work and to ensure completion of each part in accordance with the schedule and within the contract time. The Successful Development Partner shall make certain that competent workers are employed who are skilled in the type of work required and that workmanship is of the best, regardless of the quality of material.

If in the judgment of NCC, any person is incompetent or disorderly, the Successful Development Partner shall promptly remove such person from the project and shall not re-employ such person thereon. The Successful Development Partner shall retain a competent, full time on-site Foreman to represent the Successful Development Partner and to direct the project at all times while any work under this contract is being performed.

The Foreman shall prepare a daily report, which includes worker count and work in progress and shall provide the report to NCC upon request.

The Successful Development Partner shall make certain that all Sub-Contractors employed are properly registered and are in good standing with the Project Manager's requirements.

**7.26 Limitation of Construction Operations:**

The Successful Development Partner shall limit the area and nature of the construction operations to that which is authorized in the plans and specifications or approved in writing by NCC.

The Successful Development Partner shall be responsible to others engaged in the related or adjacent work for all damage to work, to persons and to property and for loss caused by failure to complete the work within the specified time for completion. The Successful Development Partner shall co-ordinate its work with the work of others so that no discrepancies shall result in the project.

**7.27 Drawings Reflecting Actual Construction:**

During the course of construction, the Successful Development Partner shall maintain drawings daily to show the project as it is actually constructed.

Every sheet of plans and specifications, which differs from the actual construction, shall be marked and sheets so changed shall be noted on the title of the plans and specifications.

All variation orders shall be shown by reference to sketch drawings and any supplementary drawings or change order drawings shall be included.

The Successful Development Partner shall review the “as-built”

drawings with the Project Manager at least once a month to demonstrate that all changes that have occurred are being fully and accurately recorded.

The altered contract drawings shall be sufficiently detailed so that future work on the project or in adjacent areas may be conducted with a minimum of difficulty.

Prior to the completion of the project, and prior to release of the final retention payments, the “as-built” drawings and specifications shall be transmitted to the Project Manager for further handling with a copy of the transmittal to NCC. Additionally, the Successful Development Partner shall turn over to NCC a re-drafted and complete set of “as-built” drawings of the actual construction.

Final payment will not be made to the Successful Development Partner until the “as-built” drawings are received and spot checked by NCC. Corrections if any shall be made as necessary.

## **7.28 Access for Inspection:**

The Successful Development Partner shall at all times permit NCC and / or its Project Manager to visit and inspect the work and the shops where work is in preparation and shall maintain proper facilities and provide safe access for such inspection.

Work requiring testing, inspection or verification shall not be covered up without such test, inspection or approval. The

Successful Development Partner shall notify the Project Manager in writing at least 24 hours in advance of the Project Manager being required to inspect the work.

For a project with part time inspection, a minimum of 48 hours written notification by the Successful Development Partner to the Project Manager is required before whenever the Successful Development Partner intends to perform work on Saturday.

#### **7.29 Clean-Up of Project and Site:**

The Successful Development Partner shall clean up its work at frequent intervals and other times when directed by NCC. At all times while finish work is being done, floors shall be kept broom clean. Upon completion of the work, the Successful Development Partner shall promptly remove from the premises, construction equipment and any waste materials not previously disposed of leaving the premises thoroughly clean and ready for occupancy.

In the event that the Successful Development Partner does not maintain the project or the site clear of debris and rubbish in a manner acceptable to NCC, NCC may cause the project or site to be properly cleaned and may withhold the expense incurred thereof from payments due to the Successful Development Partner.

#### **7.30 Project Sign, Advertising:**



The Successful Development Partner shall furnish and install a project sign required as part of the work under the contract. As a minimum, the sign shall be 2 metres wide and 4 metres high. The sign shall identify the Project Name, the Employer, the Successful Development Partner and the Project Manager. No advertising is permitted on the project or site without written permission from NCC.

## **D INTERPRETATION AND ADHERENCE TO CONTRACT REQUIREMENTS**

### **7.31 Interpretation of Contract Requirements:**

#### **a) Correlation:**

Contract documents shall be interpreted as being complementary, requiring a complete project.

Any requirement occurring in any one of the contract documents is as binding as though occurring in all contract documents.

Generally, the specifications address quality, types of materials and contract conditions while the drawings show placement, sizes and fabrication details of materials.

#### **b) Conflicts:**

In the event of conflict in the contract documents, the following priorities shall govern:

- i. Addenda shall govern over all other contract documents and subsequent addenda shall govern prior addenda only to the extent modified.
- ii. “Contract Conditions” shall govern over all sections of the specifications.

No section of the specifications shall modify the Contract Conditions.

iii. In the event that provisions of codes, safety orders

Contract documents, referenced manufacturers specifications or industry standards are in conflict, the more restrictive or higher quality shall govern.

c) Omissions:

In the event of omissions in the contract documents, the following shall apply:

- i. If the contract documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, materials or equipment, but there exists an accepted trade standard for good and skillful construction, such detail shall be deemed to be an implied requirement of the contract documents in accordance with such standard.

“Minor Detail” shall include the concept of substantially identical components, where the price of each such component is small even though the aggregate cost or importance is substantial and shall include a single component that is incidental even though its cost or importance may be substantial.

- ii. The quality and quantity of the parts or material so supplied shall conform to trade standards and be compatible with the type, composition, strength, size and profile of the parts of materials otherwise set forth

in the contract documents.

### **7.32 Issuance of Interpretations, Clarifications, Additional Instructions:**

Should the Successful Development Partner discover any conflicts, omissions or errors in the contract or have any question concerning interpretation or clarification of the contract, the Successful Development Partner shall request in writing interpretation, clarification or additional detailed instructions before proceeding with the affected work.

The written request shall be given to the Successful Development Partner with copies to NCC and the Project Manager.

NCC shall, within a reasonable time, issue in writing the interpretation, clarification or additional detailed instructions requested.

Should the Successful Development Partner proceed with the work before receipt of the interpretation, clarification or instructions from NCC, the Successful Development Partner shall replace or adjust any work not in conformance therewith and shall be responsible for any resultant damage or added cost.

Should any interpretation, clarification or additional detailed instructions as approved by NCC and in the opinion of the Successful Development Partner, constitute work beyond the

scope of the contract, the Successful Development Partner must submit written notice thereof to NCC within seven (7) calendar days following receipt of such interpretation, clarification or additional detailed instructions and in any event prior to commencement of work thereon.

The Successful Development Partner shall send copies of such correspondence to the Project Manager. Within seven (7) calendar days after the Successful Development Partner issues its written notice, the Successful Development Partner shall submit an explanation of how the interpretation, clarification or additional detailed instruction constitutes work beyond the scope of the contract, along with a detailed cost breakdown and an explanation of any delay impacts.

If in the judgment of NCC, the notice is justified, the interpretation, clarification or additional detailed instructions shall be revised or the extra work authorized by contract change order or by Site Instruction with a change order to follow.

If NCC decides that the claim is not justified, it shall give the Successful Development Partner a written order that the claim is not justified and direct the Successful Development Partner to perform such work.

The Successful Development Partner shall proceed with the work upon receipt of the written order from NCC to do so, in accordance with NCC's interpretation of the contract requirements, but within seven (7) days of receipt of the order, the Successful Development Partner must notify NCC by letter that it protests the decision.

When performing disputed works, the Successful Development Partner shall prepare time and materials records for each day and the Site Manager shall verify these records at the conclusion of each day.

The Successful Development Partner shall have no claim for additional compensation because of such interpretation, clarification or additional detailed instruction, unless he / she gives written notice to NCC within seven (7) calendar days as specified above.

### **7.33 Product and Reference Standards:**

#### **a) Product Designation:**

When descriptive catalog designations. Including the manufacturer's product brand name, or model number are referred to in the contract, such designations shall be considered as those found in industry publications.

#### **b) Reference Standards:**

When the standards of the Project Manager, trade societies or trade associations are referred to in the contract by specific date of issue, these shall be considered as part of this contract.

When such references do not bear a date of issue, the current and most recently published edition shall be considered a part of this contract.

**7.34 Shop Drawings, Samples, Alterations or Equals, Substitutions:**

a) Submittal Procedure:

The Successful Development Partner shall review and approve all shop drawings.

“Shop drawings” include drawings, diagrams, illustrations, schedules, performance charts, brochures and catalogues and other data prepared by the Successful Development Partner or any Sub-Contractor, manufacturer, supplier or distributor, which illustrate some portion of the work.

The Successful Development Partner shall promptly review and mark the shop drawings and submit to NCC, so as to cause no delay in the work together with samples as required by the contract and shall also submit any offer of alternatives or substitutions.

The Successful Development Partner shall submit at least four copies of shop drawings with three to be retained by NCC.

All such submittals shall be sent to NCC at the address given in the Instructions to the Successful Development Partner at the job start meeting.

A letter shall accompany the submitted items which shall

contain a list of all matters submitted and shall identify all deviations in the shop drawings and samples from the requirements of the contract.

Failure by the Successful Development Partner to identify all deviations may render any action taken by NCC on the materials submitted to be void.

The letter and all items accompanying it shall be fully identified as to project name and location, the Successful Development Partner's name and contract number.

By submitting the approved shop drawings and samples, the Successful Development Partner represents that the data contained therein have been verified with conditions as they actually exist and that the shop drawings and samples have been checked and coordinated with the contract.

b) Samples:

Samples are physical examples furnished by the Successful Development Partner to illustrate materials, equipment, colour, texture or workmanship and to establish standards by which the work will be judged.

The work shall be in accordance with the samples submitted as required by the contract and reviewed by NCC.

The Successful Development Partner shall remove samples from the site when directed by NCC. Samples not removed by the Successful Development Partner at NCC's



direction will become the property of NCC or will be removed or disposed of by NCC at the Successful

Development Partner's expense.

c) Alternatives or Equals:

For convenience in designation on the plans or in the specifications, certain materials or equipment may be designated by a brand or trade name or the name of the manufacturer together with catalog designation or other identifying information, hereinafter referred to generically as "designated by brand name".

Alternative material or equipment which is of equal quality and of the required characteristics for the purpose intended may be proposed for use provided the proposer complies with the following requirements:

- i. The Proposer shall submit its proposal to NCC for an alternative as "an equal" in writing prior to the award of the contract as required by NCC.
- ii. In exceptional cases where the best interests of NCC so require, NCC may give written consent to a submittal or re-submittal received after the expiration of the time limit designated. If a Proposer desires consideration of "an equal" prior to submitting proposals, the Proposer is responsible for a timely submittal.
- iii. No proposal will be considered unless accompanied by complete information necessary to permit

determination of the equality of the offered materials or equipment. Samples shall be provided when requested by NCC.

- iv. The burden of proof as to the comparative quality and suitability of the offered materials or equipment shall be upon the Proposer.

Where the material is specified by capacity or performance, the burden of proof shall be on the Proposer to show that any particular equipment or materials meet the minimum capacities or performance requirements specified.

The Proposer shall furnish at its own expense all information necessary for a determination as to whether the minimum capacities or performance requirements will be met. NCC shall be judge of such matters. If NCC rejects the use of alternative materials or equipment, then one of the products designated by brand name shall be furnished.

If changes or delays are required for proper installation or fit of alternative materials, articles or equipment, or because of deviations from contract documents such changes or delays shall be made at the Successful Development Partner's expense without recourse for reimbursement from NCC.

d) Substitutions:

If the Successful Development Partner proposes a product that is of lesser or greater quality or performance

than the specified material or equipment, the Successful Development Partner must submit any cost impact of this substitution.

By submitting a substitute of an unequal product shall be restricted to five (5) days after the effective date on the Notice-to-Proceed unless NCC allows a longer or shorter period in writing.

### **7.35 Quality of Materials, Articles and Equipment:**

Materials, articles and equipment furnished by the Successful Development Partner for incorporation into the work shall be new.

When the contract requires that materials, articles or equipment be furnished but the quality or kind thereof is not specified, the Successful Development Partner shall furnish materials, articles or equipment at least to the kind or quality or both of materials, articles or equipment which are specified.

### **7.36 Testing Materials, Articles, Equipment and Work:**

Materials, articles and equipment requiring tests shall be delivered to the site in ample time before intended use to allow for testing and shall not be used prior to testing and receipt of written approval.

The Successful Development Partner shall be solely responsible for notifying NCC where and when materials, articles, equipment and work are ready for testing.

Should any such materials, articles and equipment or work be covered without testing and approval, if required, they shall be uncovered at the Successful Development Partner's expense.

NCC has the right to order the testing of any other materials, articles, equipment or work at any time during the progress of the work. Unless otherwise directed, all samples for testing shall be taken by NCC from materials, articles or equipment to be used on the project or from work performed.

All tests will be under the supervision of and at locations convenient to NCC.

NCC shall select the laboratories for all tests.

Decisions regarding the adequacy of materials, articles, equipment or work shall be issued to NCC in writing.

All costs of the initial required tests shall be borne by the Successful Development Partner.

NCC may decide to take further samples and tests and if the results show that the work was not defective, NCC shall bear the cost of such samples and tests.

In the event the results show that the work was defective, the Successful Development Partner shall bear the cost of such samples and tests.

Samples that are of value after testing shall remain the property of the Successful Development Partner. NCC may back charge to the Successful Development Partner all re-testing and re-inspection costs.

**7.37 Rejection:**

Should any portion of the work done or any materials, articles or equipment delivered fail to comply with the requirements of the contract, such work, materials, articles or equipment shall be rejected in writing and shall immediately be made satisfactory to NCC by the Successful Development Partner at no additional expense to NCC.

Any materials, articles or equipment, which are rejected, shall be immediately removed from the premises at the expense of the Successful Development Partner.

NCC may retain one and one-fourth times the cost of the rejected materials, articles, equipment and work from any payments due to the Successful Development Partner until such time as it is made acceptable to them (NCC).

**7.38 Responsibility of Quality:**

The testing and inspection provided by NCC shall not relieve the Successful Development Partner of its responsibility for the quality of materials and workmanship provided by the Successful Development Partner and the Successful Development Partner shall make good all defective work

discovered during or after completion of the project.

### **7.39 Guarantee:**

The Successful Development Partner hereby unconditionally guarantees the work under this Contract to be in conformance with the contract requirements and to be and remain free of defects in workmanship and materials for a period of one year from the date of acceptance of the project, unless a longer guarantee period is agreed between the parties.

By this guarantee, the Successful Development Partner agrees within the guarantee period, to repair or replace any work together with any adjacent work which may be displaced in so doing which is not in accordance with the requirements of the contract or which is defective in its workmanship or material or without any expense whatsoever to NCC.

Special guarantees that are required by the contract shall be signed by the Successful Development Partner, who is responsible for the entire work and countersigned by the Sub-Contractor who performs the work.

Contract bonds shall remain in full force and effect during the one year guarantee period, unless a longer bond period is agreed.

The Successful Development Partner further agrees that within five (5) calendar days after being notified in writing by NCC of any work not in accordance with the requirements of the contract or of any defects in the work, the Successful Development Partner shall commence and execute with diligence all work necessary to fulfill the terms of this guarantee and to complete the work in accordance with the requirements of the contract within a reasonable period of time.

In the event of failure to so comply, the Successful Development Partner does hereby authorize NCC to proceed to have the work done at the Successful Development Partner's expense and the Successful Development Partner agrees to pay the cost thereof upon demand.

NCC shall be entitled to be reimbursed by the Successful Development Partner all costs necessarily incurred upon the Successful Development Partner's refusal to pay the above cost.

Notwithstanding the foregoing paragraph, in the event of an emergency constituting an immediate hazard to health or safety of NCC, its employees, property or the public, NCC may undertake at the Successful Development Partner's expense without prior notice, all work necessary to correct any hazardous conditions caused by the work of the Successful Development Partner not being in accordance with the requirements of this contract.

## **STANDARD FORMS**

- I. Format of Covering Letter
- II. Bidder's information Sheet
- III. Information Sheet for BC Party
- IV. Certificate of Bidder's Visit to Site
- V. Format of Power of Attorney for designating LCM
- VI. Format of Power of Attorney for Authorized Representative
- VII. Format for Undertaking
- VIII. Format for Joint Bidding Agreement
- IX. Form of Bid Security



## **(I) FORMAT OF COVERING LETTER**

*(The covering letter is to be submitted by the Bidding Company or the LCM of a Bidding Consortium, along with the Bid. To be provided on respective Bidder's letterhead).*

Date:

To:

County Secretary and Head of County Public Service  
Nairobi City County  
P.O. Box 30075 – 00100

**NAIROBI.**

Dear Sir,

**REF: REDEVELOPMENT OF NGONG ROAD PHASE TWO ESTATE  
WITHIN NAIROBI CITY COUNTY THROUGH JOINT VENTURE  
PARTNERSHIP.**

Please find enclosed three (3) originals +six (6) copies of our Bid in respect of the Selection of a Development Partner for the Redevelopment of Ngong Road PHASE TWO Estate within Nairobi City County under Joint Venture Partnership, comprising of our MANDATORY REQUIREMENTS, TECHNICAL PROPOSAL and FINANCIAL PROPOSAL, in response to the Request for Proposal (“RFP”) Document issued by yourselves on \_\_\_\_\_(Date).

We hereby confirm the following:

1)The Bid is being submitted by\_\_\_\_\_ (name of the

Bidding Company/ Lead Consortium Member in case of Bidding Consortium) who is the Bidding Company / the Lead Consortium Member of the Bidding Consortium comprising

\_\_\_\_\_ (mention the names of the entities who are the consortium members), in accordance with the conditions stipulated in the RFP. (In case of a Bidding Consortium).

Our Bid includes the Power of Attorney for designating the Lead Consortium Member in the format specified in the RFP, and the Joint Bidding Agreement (as per the principles stated in the RFP)

between, \_\_\_\_\_ (mention names of the entities that are the consortium members), who are the consortium member (s) as per the conditions stipulated in the RFP.

2) We have examined in detail and have understood the terms and conditions stipulated in the RFP Document issued by NCC and in any subsequent communication sent by NCC. We agree and undertake to abide by all these terms and conditions. Our Bid is consistent with all the requirements of submission as stated in the RFP or in any of the subsequent communications from NCC.

3) The information submitted in our Bid is complete, is strictly as per the requirements as stipulated in the RFP, and is correct to the best of our knowledge and understanding. We would be solely responsible for any errors or omissions in our Bid.

4) We confirm that our Proposal does not contain any Conditions.

5) The Bidding Company / Bidding Consortium of which we are the Lead Consortium Member (Please strike out whichever is not applicable),

satisfies the legal requirements and meets all the eligibility criteria laid down in the RFP.

6) Power of Attorney from the Bidding Company / Lead Consortium Member authorizing the undersigned as the Authorized Representative who is authorized to perform all tasks including, but not limited to providing information, responding to enquiries, entering into contractual commitments on behalf of the Bidder, etc., in respect of the Project is included as a part of the Proposal.

7) We confirm that our Bid is valid for a period of 90 days from the last date of submission of the Bid.

For and on Behalf of:

Signature and Stamp:

(Authorized Representative and Signatory)

Name of the Person: .....

Designation: .....

## (II) BIDDER'S INFORMATION SHEET

Date:.....

Applicant's Legal Name: <b>[Insert full legal name]</b>
In case of BC, legal name of each party: <b>[Insert full legal name of each party in JV]</b>
Applicant's Actual Country of Constitution: <b>[Indicate Country of Constitution]</b>
Applicant's actual or year of Constitution: <b>[Indicate year of Constitution]</b>
Applicant's legal address in country of constitution: <b>[insert street/ number/ town or city/ country]</b>
Applicant's authorized representative information: Name: <b>[insert full legal name]</b>
Address: <b>[insert street/ number/ town or city/ country]</b>
Telephone/Fax No: <b>[including country and city codes]</b>

Attached are copies of original documents of:

- Certificate of Registration / Incorporation and Articles of Association or Documents of Constitution of the Legal Entity named above.
- In case of BC, a Joint Bidding Agreement, in accordance with attached form.

### **(III) INFORMATION SHEET FOR THE BIDDING CONSORTIUM (BC) PARTY**

Date:.....

Each Applicant that is a BC Party must submit this information.

BC Applicant Legal Name: <b>[insert full legal name]</b>
BC party / Sub-Contractor's Legal Name: <b>[insert full legal name of JV party]:</b>
BC Party's Country of Registration: <b>[indicate country of registration]:</b>
BC party's year of constitution: <b>[indicate year of constitution]:</b>
BC party's Legal address in country of constitution: <b>[insert street/ number/ town or city/ country];</b>
BC party authorized representative information Name: <b>[insert full legal name]</b>
Address: <b>[insert street/ number/ town or city/ country]</b>
Telephone/Fax numbers: <b>[including country and city codes]</b>

Attached are copies of original documents of:

- Articles of Incorporation or Documents of Constitution of the legal entity named above.
- In case of government owned entity, documents establishing legal and financial autonomy and compliance with commercial law.

#### (IV) CERTIFICATE OF BIDDER'S VISIT TO SITE

This is to certify that

[M/s]

.....

..... Being the authorized representative/Agent of

[Name of Bidder]

.....

.....

participated in the organized inspection visit of the site of the works for the

[Name of Contract]..... held

on

..... Day of ..... 20 .....

Signed .....

[NCC's Representative]

.....

NOTE: This form is to be completed whether the site visit is made at the time of the organized site or privately organized.

**(V) FORMAT OF POWER OF ATTORNEY FOR DESIGNATING LEAD CONSORTIUM MEMBER**

(each firm to designate LCM on separate sheet)

**POWER OF ATTORNEY FOR DESIGNATING LEAD CONSORTIUM MEMBER**

Whereas the Nairobi City County ("NCC") has invited proposals from interested parties for the Redevelopment of Ngong Road PHASE TWO Estate within Nairobi City County under Joint Venture Partnership.

Whereas, the members of the Consortium are interested in bidding for the Project and implementing the Project in accordance with the terms and conditions of the Request for Proposal (RFP) Document and other connected documents in respect of the Project, and

Whereas, it is necessary under the RFP Document for the Consortium Member to designate the Lead Consortium Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium's bid for the Project who, acting jointly, would have all necessary power and authority to do all acts, deeds and things on behalf of the Consortium, as may be necessary in connection with the Consortium's bid for the Project.

NOW THIS POWER OF ATTORNEY WITNESSETH THAT;

We, M/s. \_\_\_\_\_ (Consortium Member) (the respective names and addresses of the registered office) do hereby designate M/s.



\_\_\_\_\_ being

one of the members of the Consortium, as the Lead Consortium Member of the Consortium, to do on behalf of the Consortium, all or any of the acts, deeds or things necessary or incidental to the Consortium's bid for the Project, including submission of proposal, participating in conferences, responding to queries, submission of information / documents and generally to represent the Consortium in all its dealings with NCC, any other Government Agency or any person, in connection with the Project until culmination of the process of bidding and thereafter till the Agreement is entered into with NCC.

We hereby agree to ratify all acts, deeds and things lawfully done by Lead Consortium Member, our said attorney pursuant to this Power of Attorney and that all acts deeds and things done by our aforesaid attorney shall and shall always be deemed to have been done by us / Consortium.

Dated this ..... day of ..... 2019.

Signed & Stamped: .....

## **(VI) FORMAT OF POWER OF ATTORNEY FOR AUTHORISED REPRESENTATIVE**

### **POWER OF ATTORNEY FOR AUTHORISED REPRESENTATIVE**

We ..... (name and address of the registered office) do hereby constitute, appoint and authorize Mr. / Mrs. / Ms .....(name and residential address) who is presently employed with us and holding the position of ..... as our attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to our proposal for the project “The Redevelopment of Ngong Road PHASE TWO Estate within Nairobi City County under Joint Venture Partnership.”, including signing and submission of all documents and providing information / responses to the Nairobi City County ("NCC"), representing us in all matters before NCC, and generally dealing with NCC in all matters in connection with our Proposal for the said Project.

We hereby agree to ratify all acts, deeds and things lawfully done by our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney shall and shall always be deemed to have been done by us.

..... (Signature)

(Name, Title and Address)

Accepted

..... (Signature)

(Name, Title and Address of the Attorney)

## **(VII) FORMAT FOR UNDERTAKING**

The information / documents submitted by us are true to our knowledge and if the information / documents so furnished shall be found to be untrue or false, the bid shall be liable for disqualification and our Bid Security accompanying the Bid will be forfeited. Also, we are aware that if the information / document furnished is found to be untrue or false during the currency of contract, then our contract is liable for termination.

We hereby declare that we have made ourselves thoroughly conversant with the specifications, conditions laid by NCC for this bid and we have understood the same before submitting this Bid. We hereby certify and confirm that in the preparation and submission of our Bid for the proposals listed below, we have not acted in concert or in collusion with any other Bidder or other person(s) and also not done any act, deed or thing which is or could be regarded as anti-competitive.

We further confirm that we have not offered nor will offer any illegal gratification in cash or in kind to any person or agency in connection with the instant proposals.

We agree that the amount of Bid Security shall be liable to be forfeited by NCC, should we fail to abide by the stipulation to keep the offer open for a period of not less than 90 days from the date fixed for opening the same and thereafter until it is withdrawn by us by the notice in writing duly addressed to the authority opening the Bids.

Signature of Bidder

Bidder \_\_\_\_\_

Address \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 2019.

Signature of Witness

Witness \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 2019.

## (VIII) FORMAT FOR JOINT BIDDING AGREEMENT

THIS Joint Bidding Agreement executed on this \_\_\_\_\_ day of \_\_\_\_\_ Two thousand and fifteen between M/s \_\_\_\_\_, a \_\_\_\_\_ incorporated under \_\_\_\_\_ and having its Registered Office at \_\_\_\_\_ (hereinafter called the "Lead Consortium Member", which expression shall include its successors, executors and permitted assigns) and M/s \_\_\_\_\_, a \_\_\_\_\_ incorporated \_\_\_\_\_ and having its Registered Office at \_\_\_\_\_ (hereinafter called the "Technical Consortium Member", which expression shall include its successors, executors and permitted assigns) for the purpose of making a Proposal and entering into the Development Agreement (in case of award) to be hereinafter referred to as the Contracts, against Request for Proposal of the Nairobi City County, or its authorized representative (hereinafter referred to as NCC).

WHEREAS NCC desires to select a Developer for the Redevelopment of Ngong Road Phase Two Estate within Nairobi City County under Joint Venture Partnership, WHEREAS, NCC had invited Proposals vide its RFP Document; AND WHEREAS **Clause 3.2.3** of the Instructions to Bidders in this RFP document stipulates that the Bidder qualifying on the strength of a Bidding consortium to submit a legally enforceable Joint Bidding Agreement in a format specified by NCC wherein the Consortium Members have to set out their roles and responsibilities for the implementation of the Project.

AND WHEREAS the Proposal has been submitted to NCC vide letter no. \_\_\_\_\_ dated \_\_\_\_\_ in accordance with the relevant provisions of RFP. NOW THEREFORE, THIS INDENTURE WITNESSTH AS UNDER:

In consideration of the above premises and agreements all the partners in this consortium do hereby mutually agree as follows:

- 1) In consideration of the award of the Contract by NCC to the Consortium, we, the members of the Consortium and partners to the Joint Bidding Agreement do hereby unequivocally agree that partner, M/s (name of Lead Consortium Member), shall act as the Lead Consortium Member as defined in the RFP for self and agent for and on behalf of the Consortium Members.
- 2) Notwithstanding anything contrary contained in this Joint Bidding Agreement, all the Consortium Members shall be jointly and severally responsible for the execution of the Project in accordance with the terms of the Joint Venture Agreement.
- 3) The roles and responsibilities of the Lead Consortium Member are as follows:
  - a. \_\_\_\_\_
  - b. \_\_\_\_\_
- 4) The roles and responsibilities of the Consortium Members are as follows:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- 5) The Lead Consortium Member is hereby authorized by the Consortium Members to bind the Bidding Consortium and receive instructions for and on their behalf. It is further understood that the

execution of the Contract shall be done exclusively by the Lead Consortium Member.

- 6) The Lead Consortium Member shall be jointly liable and responsible for ensuring the individual and collective commitment of each of the members of the consortium in discharging all their respective obligations. Each Consortium member further undertakes to be individually liable for the performance of its part of the obligations without in any way limiting the scope of collective liability envisaged.
- 7) The Lead Consortium Member shall inter alia undertake full responsibility for liaising with Lenders and mobilizing debt resources for the Project, achieving financial closure and implementation of the Project on behalf of the Consortium.
- 8) This Joint Bidding Agreement shall be construed and interpreted in accordance with the Laws of Kenya and shall have the exclusive jurisdiction in all matters relating thereto and arising hereunder.
- 9) It is further expressly agreed that the Joint Bidding Agreement shall be irrevocable and shall form an integral part of the Contract and shall remain valid till the term of the Contract unless expressly agreed to the contrary by NCC.
- 10) The Lead Consortium Member is authorized and shall be fully responsible for the accuracy and veracity of the representations and information submitted by the Consortium Members respectively from time to time in response to the RFP and for the purposes of the project.

11) It is hereby expressly understood between the partners to this Joint Bidding Agreement that neither partner may assign or delegate its rights, duties or obligations under the contract except with prior written consent of NCC.

12) This Joint Bidding Agreement

a) has been duly executed and delivered on behalf of each Party hereto and constitutes the legal, valid, binding and enforceable obligation of each such Party,

b) sets forth the entire understanding of the Parties hereto with respect to the subject matter hereof;

c) may not be amended or modified except in writing signed by each of the Parties and with prior written consent of NCC.

IN WITNESS WHEREOF, the partners to the Joint Bidding Agreement have, through their authorized representatives, executed these present and affixed Common Seals of their respective companies on the Day, Month and Year first mentioned above.

For and behalf of Lead Consortium Member by:

(Signature)

(Name)

(Designation)

For and on behalf of the Consortium Member by:

(Signature)

(Name)

(Designation)



**(IX) FORM OF BID SECURITY**

WHEREAS .....(hereinafter called “the Bidder”) has submitted its bid dated ..... for the construction of .....  
(name of project and bid no.)

KNOW ALL PEOPLE by these presents that WE, .....  
having our registered office at .....(hereinafter called “the Bank”),  
are bound unto Nairobi City County (hereinafter called “NCC”) in the sum  
of Kshs..... for which payment well and truly to be made  
to the said NCC, the Bank binds itself, its successors and assigns by these  
presents sealed with the Common Seal of the said Bank this .....  
Day of ..... 20.....

THE CONDITIONS of this obligation are:

- 1) If after bid opening the Bidder withdraws its bid during the period of bid validity specified in the instructions to Bidders, OR,
- 2) If the Bidder, having been notified of the acceptance of its bid by NCC during the period of bid validity:
  - a) fails or refuses to execute the form of Agreement in accordance with the Instructions to Bidders, if required; or
  - b) fails or refuses to furnish the Performance Security, in accordance with the Instructions to Bidders;

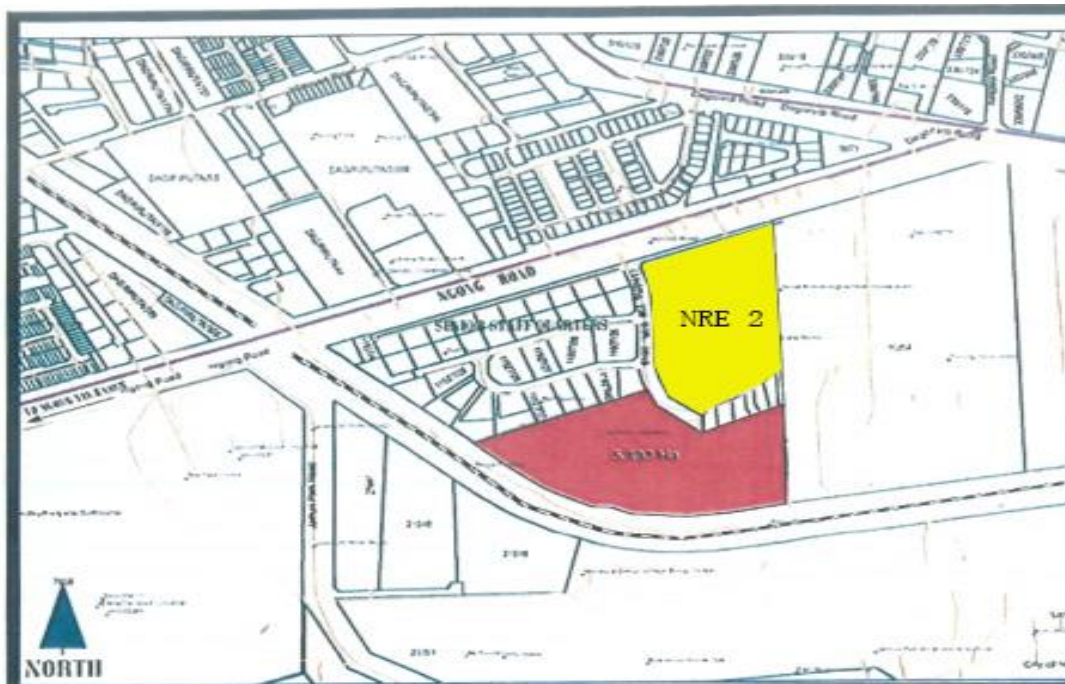
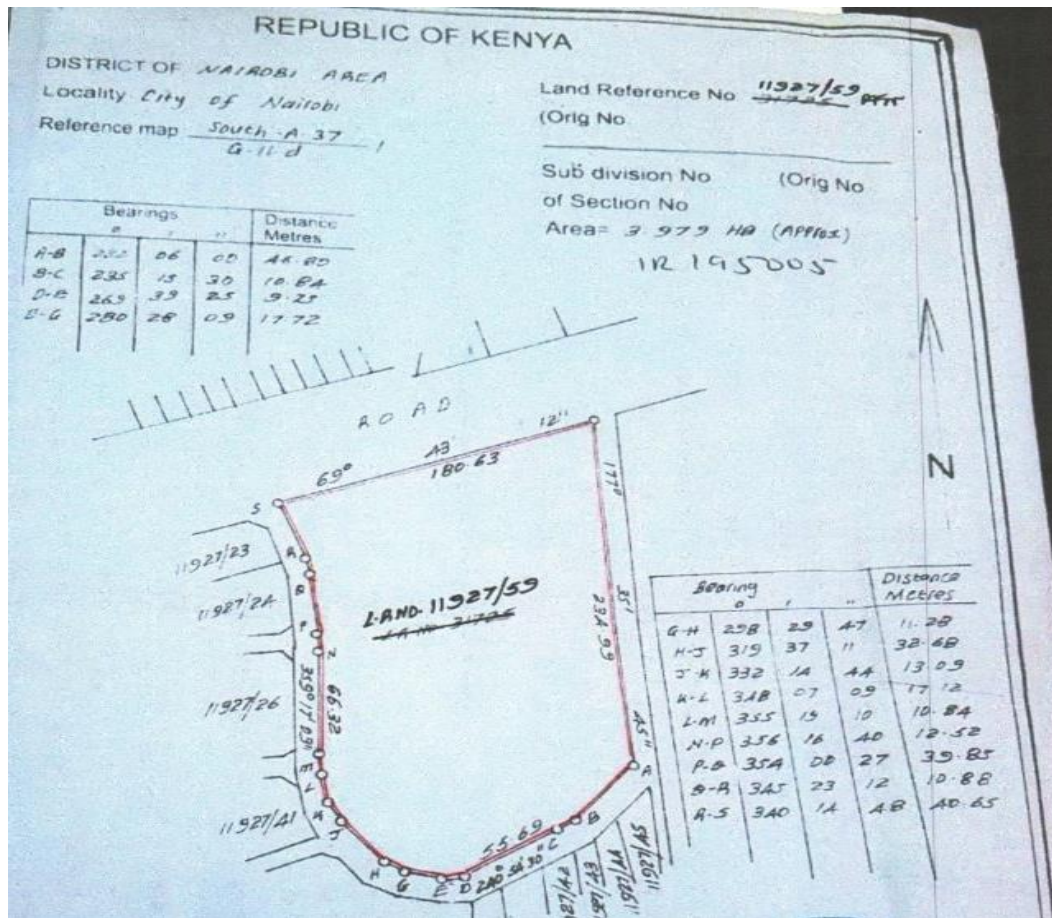
We undertake to pay to NCC up to the above amount upon receipt of its first written demand, without NCC having to substantiate its demand, provided that in its demand, NCC will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

This guarantee will remain in force up to and including thirty (30) days after the period of bid validity, and any demand in respect thereof should reach the Bank not later than the said date.

_____	_____
[date]	[signature of the Bank]

_____	_____
[Witness]	[Seal]

## SECTION VIII SITE SURVEY MAP



LOCATION PLAN