



PRE-QUALIFICATION TENDER NO.....
FOR LEGAL SERVICES
FOR THE PERIOD 2018 TO 2020

KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED,
KAWI COMPLEX, BLOCK B,
POPO LANE, OFF RED CROSS ROAD, SOUTH C,
P.O. BOX 34942-00100,
NAIROBI,
KENYA.

Telephone Nos: 020 4956000, 0719018000, 0732128000
Email: info@ketraco.co.ke
Website: www.ketraco.co.ke

ABBREVIATIONS AND ACRONYMS

1.	CLE	Council of Legal Education
2.	GCA	General Conditions of Appointment
3.	ICPAK	Institute of Certified Public Accountants of Kenya
4.	ITT	Instructions to Tenderers
5.	KRA	Kenya Revenue Authority
6.	KSh. / KES	Kenya Shillings
7.	KSL	Kenya School of Law
8.	LSK	Law Society of Kenya
9.	PP&ADA 2015	Public Procurement and Asset Disposal Act, 2015
11.	PPRA	Public Procurement and Regulatory Authority
12.	SLA	Service Level Agreement
13.	VAT	Value Added Tax

SECTION I : INTRODUCTION

Dear Prospective Bidder,

1.1. Description of KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED and our Core Business

1.1.1 KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED (KETRACO) is a limited liability company registered under the Companies Act, Chapter 486 of the Laws of Kenya and is wholly owned by the Government. It was incorporated in December 2008. Amongst many other statutes, it is subject to the State Corporations Act, Chapter 446 of the Laws of Kenya and the laws governing procurement by public bodies, mainly the Public Procurement and Asset Disposal Act, 2015 and the various regulations made thereunder.

1.1.2 Our Vision is ***“To be a world-class electricity transmission company and the leading inter-connector in Africa.”***

1.1.3 Our Mission is ***“To build and operate a national electricity transmission network that is reliable, efficient, effective, safe and environment-friendly through innovative and best practices; and to promote regional power trade for socio-economic development.”***

1.1.4 The Mandate of the Company is to plan, design, construct, operate and maintain new high voltage (132kV and above) electricity transmission infrastructure that will form the backbone of the National Transmission Grid. This is critical since infrastructure has been identified as a key enabler for socio-economic transformation under the Kenya Vision 2030 and is a critical driver of the Big Four Agenda of the Jubilee Government.

1.2. Nature and Scope of the Pre-Qualification Tender

1.2.1 KETRACO intends to procure by way of pre-qualification the services of competent law firms and qualified lawyers (*the lawyers*) –

1.2.1.1 to be listed on its Panel for a two-year period.

1.2.1.2 to offer a myriad of legal and associated consultancy services (*hereafter referred to as the Services*) as may from time to time be required over the period in question.

- 1.2.2 The scope of the Services includes the fields of Energy Law, Company and Commercial Law, Constitutional and Administrative Law; Construction and Engineering law; Conveyancing; Employment and Labour laws; Health and Safety laws; law relating to Information Technology; Land Law, Public-Private Partnership, Procurement law, Arbitration and Alternative Dispute Resolution; Environmental Law; Insurance law; associated civil litigation; criminal prosecutions and Public Policy.
- 1.2.3 This will also include provision of expert advice and opinions on specific cases, transactions, events including projects. It may involve carrying out searches in land and company registries together with liaising with other relevant bodies and authorities.

1.3. The Objectives

- 1.3.1 KETRACO is implementing a number of high priority projects (transmission lines and associated substations). Three interconnectors are also in the pipeline and at various stages of implementation. This is with the aim of strengthening and extending the national power transmission grid hence enhancing quality, reliability and security of electricity supply in the country. The projects are also aimed at increasing electricity access, effectively evacuate power generated and facilitate regional power exchange and trade, which goes a long way in reducing cost of power supply
- 1.3.2 These have legal ramifications and the prequalified lawyers may be called to render services in these respects.
- 1.3.3 The prequalified lawyers will also be expected to provide timely, up to date informed responses and recommendations to queries from the Company.
- 1.3.4 The Pre-qualification and enlisting on KETRACO's Panel shall not constitute a retainer. KETRACO does not bind itself to requests for provision of any service but shall endeavour to ensure that empaneled lawyers will be treated equitably.

1.4 Professionalism and Experience

- 1.4.1 The lawyers should be adequately competent, possess substantial relevant experience who can be able to promptly offer the Services and associated consultancy.
- 1.4.2 The lawyers shall at all times during the period of the engagement conduct themselves in a manner suited to the best interests of KETRACO.
- 1.4.3 The lawyers should demonstrate the capability of conducting presentations and/or providing training to staff on relevant legal aspects in the various fields.

- 1.4.4 The selected lawyers should have good credentials in handling relevant Kenyan cases and matters. They should also have appropriate experience and/or international affiliations in emerging markets including the East African Region.

1.5. Requirements, Reports and Schedules

- 1.5.1 It is expected that the prequalified lawyers may enter into discussion and agreement with KETRACO on the approach and action plans to realize the objectives of their appointment.
- 1.5.2 Taking cognizance of the entrenched adoption of Performance Contracts in the public service and particularly KETRACO and the benefits accruing therefrom, the law firms will be required to enter into Service Level Agreements with KETRACO.
- 1.5.3 The lawyers will be expected to give periodic Reports and Review of the legal matters that they are handling and timely submission within specified Schedules.
- 1.5.3 Annual Performance Evaluations shall be carried out on each Law Firm rendering services for KETRACO

1.6. The Evaluation and Selection Process

- 1.6.1 The Evaluation and Selection Process of this Pre- Qualification tender will be conducted largely along the following lines:-
 - 1.6.1.1 Desk evaluation of all submitted bid documents
 - 1.6.1.2 Confirmatory/Inspection Visits of the lawyers premises or any other places deemed necessary by the Evaluation Team.
- 1.6.2 All lawyers who participate in this Pre-Qualification Tender shall be deemed to have consented to this Process. KETRACO therefore requests that participating lawyers and firms grant reasonable access and facilities to the KETRACO staff for these purposes.

1.7. Confirmation and Verification of Bid Documents

- 1.7.1 All lawyers/law firms are advised to:-
 - 1.7.1.1 Follow and conform to the Tender Document in preparing and submitting their bid.
 - 1.7.1.2 Ensure that they officially verify the accuracy, authenticity and validity of any and all documentation, certification or information obtained from third parties e.g. Kenya Revenue Authority (*KRA*), Law Society of Kenya (*LSK*), letters from referees that they intend to or submit to KETRACO as part of their bid.
- 1.7.2 The bidders are also encouraged to demonstrate high degrees of integrity, fidelity to and honesty in the information supplied to KETRACO as part of their bids. The information should be as clear and concise as possible.
- 1.7.3 KETRACO advises bidders that any deviations from the contents of this paragraph may lead to automatic disqualification of such bidder.

Yours faithfully,

FOR: THE KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED

DUNCAN K. MACHARIA

COMPANY SECRETARY/SENIOR MANAGER, LEGAL SERVICES

SECTION II- INVITATION TO TENDER

PRE-QUALIFICATION TENDER FOR PROVISION OF LEGAL SERVICES

- 2.1 Kenya Electricity Transmission Company Ltd (KETRACO) invites bids from eligible law firms for the provision of **Legal Services (hereinafter referred to as “the Services”)**. Interested eligible law firms may obtain further information from the Senior Manager, Supply Chain, KETRACO at Kawi Complex, Popo Lane, Off Red Cross Road, South C, P. O. Box 34942 – 00100 Nairobi, Kenya; e-mail: info@ketraco.co.ke

- 2.2 Pre-Qualification (Pre-Q) Tender documents detailing the requirements may be obtained by downloading tenders online from the KETRACO website (www.ketraco.co.ke). All bidders will be required to e-mail their name, e-mail address, physical address and telephone contacts to pkubasu@ketraco.co.ke immediately after downloading the tender document so that they can benefit from any tender clarifications that may be made.

- 2.3 Completed Tenders are to be enclosed in plain sealed envelopes marked “PRE-QUALIFICATION TENDER NO. PROVISION OF LEGAL SERVICES” and deposited in the Tender Box on 2nd Floor Kawi Complex, Popo Lane, Off Red Cross Road, South C, so as to be received on or before **10.00 a.m. on**

- 2.4 Any charges or fees quoted should be in Kenya Shillings. The tender validity shall be ninety (90) days from the closing date of the tender.

- 2.5 Tenders will be opened promptly thereafter on the closing date mentioned above in the presence of the law firm’s representatives who choose to attend.

SECTION III: INSTRUCTIONS TO TENDERERS (ITT)

3.1 Definitions

In this Pre-Q Tender, unless the context or express provision otherwise requires: -

- a) *Any reference to any Act shall include any statutory extension, amendment, modification, re-amendment or replacement of such Act and any rule, regulation or order made there-under.*
- b) *“Day” means calendar day and “month” means calendar month.*
- c) *“KRA” wherever appearing means the Kenya Revenue Authority or its successor(s) and assign(s) where the context so admits.*
- d) *“LSK” wherever appearing means the Law Society of Kenya or its successor(s) and assign(s).*
- e) *“PPRA” wherever appearing means The Public Procurement Regulatory Authority or its successor(s) and assign(s).*
- f) *Reference to “the tender” or the “Tender Document” or “the Pre-Q Tender Document” includes its appendices and documents mentioned hereunder and any reference to this tender or to any other document includes a reference to the other document as varied supplemented and/or replaced in any manner from time to time.*
- g) *The expression “law firms” shall include “lawyers” and vice-versa*
- h) *“The Procuring Entity” means The Kenya Electricity Transmission Company Limited or its successor(s) and assign(s) where the context so admits (hereinafter abbreviated as ‘KETRACO’).*
- i) *“The law firm” means the law firm submitting its Tender for the provision of Services in response to the Invitation to tender for Pre-qualification.*
- j) *Where there are two or more persons included in the expression the “law firm”, any act or default or omission by the law firm shall be deemed to be an act, default or omission by any one or more of such lawyers.*
- k) *Words importing the masculine gender only, include the feminine gender or (as the case may be) the neutral gender.*

- l) *Words importing the singular number only include the plural number and vice-versa and where there are two or more persons included in the expression the “law firm” the covenants, agreements and obligations expressed to be made or performed by the law firm shall be deemed to be made or performed by such persons jointly and severally.*

3.2 Eligible Law Firms and Pre-Qualification Procedure.

- 3.2.1 All law firms that are duly registered in Kenya and recognized by LSK are eligible to participate.
- 3.2.2 Successful law firms shall provide the Services in accordance with this tender and the Service Level Agreement (SLA) as shall be entered between the law firm and KETRACO.
- 3.2.3 Firms shall be prequalified under the following two categories;
- a) **General Category** – these are firms that will score an aggregate score of 80 marks and above.
 - b) **Youth, Women and Persons Living with Disabilities Category** (hereinafter referred to as the Preferential Category)
- 3.2.4 Firms should meet all the mandatory requirements under Part “A” of the Evaluation Criteria. Any firm that does not meet all the requirements under Part “A” will be disqualified and will not be evaluated further.
- 3.2.5 Prequalification under the General Category Criteria:** The total Marks capable of being awarded under the rest of the evaluation criteria shall be One Hundred (100). All Law Firms that will score eighty (80) marks and above shall qualify for prequalification. If none of the Law Firm qualifies, or if the total number of Law Firms that qualify for prequalification is less than five (5), a retendering shall be done but those firms that will have scored eighty marks and above shall automatically be prequalified.
- 3.2.6 Prequalification under the Preferential Category Criteria:** Firms wishing to be prequalified under the Preferential Category should state as much by giving particulars and signing the requirement as indicated just before the Evaluation Criteria. Firms wishing to be prequalified under this category shall be required to also fulfil the Mandatory Requirements that are statutory in nature.

No firm shall be prequalified under the two Categories above.

3.2.7 For purposes of this Pre-Q Tender Document -

- a) *'Admitted lawyers'* shall mean qualified lawyers who have been admitted to the Bar and hold a valid year 2018 practicing certificate or evidence of payment for the same – payment having been made before 31st January, 2018. It includes all Partner(s) in the law firm.
- b) A law firm that substantially fits within one category will be deemed to be within that category even though it does not strictly fully fall within the parameters described for that category as above.

3.2.8 Law firms shall satisfy all relevant licensing and registration requirements.

3.2.9 Law firms shall provide such evidence of their continued eligibility satisfactory to KETRACO as KETRACO may reasonably request.

3.3 Declarations of Eligibility

3.3.1 Law firms shall not be under declarations of ineligibility for corrupt, fraudulent practices or any other reasons prescribed by the PP&ADA or any other law.

3.3.2 Law firms who are not under these declarations shall complete the Declaration Form strictly in the form and content as prescribed at Section X.

3.3.3 Those that are under the Declaration for corrupt and fraudulent practices whether currently or in the past shall not complete the Form. They will submit a suitable Form giving details, the nature and present status of their circumstances.

3.4 Cost of Tendering

3.4.1 The law firm shall bear all costs associated with the preparation and submission of its Tender. KETRACO will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

3.4.2 There are no charges for the Pre-Q Tender Document.

3.5 Obtaining the Tender Document

- 3.5.1 Pre-Q Tender documents detailing the requirements may be obtained by downloading tenders online from the KETRACO website (www.KETRACO.co.ke). No tender documents will be issued from any KETRACO office.
- 3.5.2 After downloading the tender document, the law firm should send only by e-mail its name, e-mail address(es) and telephone/mobile number to the following:-

*Prisca Kubasu,
Ag. Supply Chain Manager,
Kenya Electricity Transmission Company Limited,
Kawi Complex, Popo Lane, Off Red Cross Road, South C,
e-mail pkubasu@ketraco.co.ke*

3.6 Contents of the Tender Document

- 3.6.1 The Tender Document comprises the documents listed below and Addendum (where applicable);
- a) Introduction*
 - b) Invitation to Tender*
 - c) Instructions to Tenderers*
 - d) Evaluation Criteria/Matrix*
 - e) General Conditions of Appointment.*
 - f) Tender Form*
 - g) Confidential Business Questionnaire Form*
 - h) Format of curriculum vitae (CV) for key staff.*
 - i) Format of Conflict of Interest Form*
 - j) Declaration Form*
 - k) Service Level Agreement Form*
- 3.6.2 The law firm is expected to examine all instructions, forms, provisions, terms and specifications in the Pre-Q Tender Document. Failure to furnish all information required

by the Pre-Q Tender Document or to submit a tender not substantially responsive to the Pre-Q Tender Document in every respect will be at the law firm's risk and may result in the rejection of its Tender.

- 3.6.3 All recipients of the documents for the proposed engagement for the purpose of submitting a tender (*whether they submit a tender or not*) shall treat the details of the documents as "Private and Confidential".

3.7 Clarification of Documents

- 3.7.1 A prospective law firm requiring any clarification of the Pre-Q Tender Document may notify the Supply Chain Manager in writing at KETRACO's address indicated in the Invitation to Tender.

- 3.7.2 The request for clarification shall also be sent to the following:-

Duncan Macharia,,

Company Secretary/Senior Manager, Legal Services,

Kenya Electricity Transmission Company Limited,

Kawi Complex, Popo Lane, Off Red Cross Road, South C,

Email: dmacharia@ketraco.co.ke

- 3.7.3 KETRACO will respond in writing to any request for clarification of the Pre-Q Tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of Tenders, prescribed by KETRACO. Written copies of KETRACO's response (*including an explanation of the query but without identifying the source of inquiry*) will be sent to all prospective law firms that have duly received the Pre-Q Tender Document prior to that period. Hence, the importance of bidders submitting email addresses as soon as possible after downloading the tender document.

3.8 Amendment of Documents

- 3.8.1 At any time prior to the deadline for submission of Tenders, KETRACO, for any reason, whether at its own initiative or in response to a clarification requested by a prospective law firm, may modify the Pre-Q Tender Documents.

- 3.8.2 All prospective law firms that have received the Pre-Q Tender Documents will be notified of the amendment(s) (*hereinafter referred to or otherwise known as addendum*) in writing and will be binding on them.
- 3.8.3 In order to allow prospective law firms reasonable time in which to take the amendment into account in preparing their Tenders, KETRACO, at its discretion, may extend the deadline for the submission of Tenders.

3.9 Language of Tender

- 3.9.1 The Tender prepared by the law firm, as well as all correspondence and documents relating to the tender, exchanged between the law firm and KETRACO, shall be written in English language.
- 3.9.2 Any printed literature furnished by the law firm may be written in another language so long as they are accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the Tender, the English translation shall govern. The English translation shall be on the law firm's letterhead and shall be signed by the duly authorized signatory signing the Tender and stamped with the law firm's stamp.

3.10 Law Firm's Competence and Qualifications

- 3.10.1 The law firm shall furnish, as part of its Tender, documents establishing the law firm's eligibility, competence to tender and its qualifications to perform well in any ensuing assignment if its Tender is accepted.
- 3.10.2 The documentary evidence of the law firm's qualifications to be appointed and perform well if its Tender is accepted shall be established to KETRACO's satisfaction.
- 3.10.3 Law firms with a record of unsatisfactory or default in performance obligations in any contract or service delivery shall not be considered for evaluation or award.
- 3.10.4 The law firm may furnish, as part of its tender, documents establishing the conformity to the Pre-Q Tender Document of all services that the law firm proposes its ability to perform if appointed to KETRACO's Panel of Lawyers.
- 3.10.5 The documentary evidence of conformity of the services to the Pre-Q Tender Document may be in the form of literature and data.
- 3.10.6 For purposes of the documentary and other evidence to be furnished the law firm shall note that standards for competence, professionalism, material, and equipment, designated by KETRACO in its Evaluation Criteria are intended to be descriptive only and not restrictive.

The law firm may adopt higher standards in its Tender, provided that it demonstrates to KETRACO's satisfaction that the substitutions ensure substantial and/or higher equivalence to those designated in the Pre-Q Tender Document.

3.11 Demonstration(s), Inspection(s) and Test(s)

- 3.11.1 Where required in the tender, all law firms shall demonstrate ability of performance of the required service in conformity with the Details of Services.
- 3.11.2 KETRACO or its representative(s) shall have the right to inspect/ test the law firm's capacity, equipment, premises, and to confirm their conformity to the tender requirements. This shall include any quality management system. KETRACO's representative(s) retained for these purposes shall provide appropriate identification at the time of such inspection/ test/ visitation.
- 3.11.3 KETRACO shall meet its own costs of the inspection/ test. Where conducted on the premises of the law firm(s), all reasonable facilities and assistance, including access to literature and documentation save for clients confidential information shall be furnished to the inspectors at no charge to KETRACO.
- 3.11.4 Demonstration, Inspection/ Test/ Visitation Report(s) shall be completed by KETRACO upon conclusion of the inspection/ tests/ visitations. This Report will be considered prior to appointment.

3.12 Professional Indemnity Cover.

- 3.12.1 The law firm shall furnish, as part of its Tender, a Professional Indemnity Cover (*the PI Cover*).
- 3.12.2 The PI Cover is required to demonstrate the law firm's commitment and ability to perform the Services together with its compliance with the law and guidelines regarding establishment and operation of law firms in Kenya.
- 3.12.3 The PI Cover shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be issued by a bank or an insurance company registered by the Central Bank of Kenya or the Insurance Regulatory Authority, respectively. The issuer must be located in Kenya.
- 3.12.4 The Cover, at the tender submission stage, shall be valid upto at least the closing date of the tender. Successful bidders shall be required to maintain a PI cover of a minimum value as presented in the tender during the entire period of prequalification.

- 3.12.5 KETRACO shall seek authentication of the PI Cover from the issuing company. It is the responsibility of the law firm to sensitize its issuing company on the need to respond directly and expeditiously to queries from KETRACO. The period for response shall not exceed three (3) days from the date of KETRACO's query. Should there be no conclusive response by the company within this period, such law firm's PI Cover may be deemed as invalid and the bid rejected.
- 3.12.6 Any Tender not secured in accordance with this paragraph will be rejected by KETRACO as non-responsive.
- 3.12.7 The successful law firm's PI Cover will be required to be updated and valid at all times for the period of engagement and rendering of services to KETRACO. The value of the PI cover will, to some extent, determine the kind of briefs a successful Law Firm shall be engaged in.

3.13 Validity of Tenders

- 3.13.1 Tenders shall remain valid for ninety (90) days after the date of tender opening as specified in the Invitation to Tender or as otherwise may be prescribed by KETRACO. A Tender that is valid for a shorter period shall be rejected by KETRACO as non-responsive.
- 3.13.2 In exceptional circumstances, KETRACO may extend the Tender validity period. The extension shall be made in writing. A law firm shall not be required nor permitted to modify its tender during the extended period.

3.14 Number of Sets of and Tender Format

- 3.14.1 The law firm shall prepare three complete sets of its Tender, identifying and clearly marking the "ORIGINAL TENDER", "COPY 1 OF TENDER", and "COPY 2 OF TENDER" as appropriate. Each set shall be properly bound. The copies shall be a replica of the Original. Each copy will be deemed to contain the same information as the Original.
- 3.14.4 The Tender shall be bound and divided clearly in line with the requirements of the Evaluation Criteria. The divisions are for clear identification and marking of the respective documents or information.
- 3.14.5 Any Tender not prepared and signed in accordance with this paragraph may be rejected by KETRACO as non-responsive.

3.15 Preparation and Signing of the Tender

- 3.15.1 The Original and all copies of the Tender shall be typed or written in indelible ink. They shall be signed by any Partner(s) of the law firm (or a sole Proprietor). For purposes of this tender, only a Partner/sole Proprietor can sign where a signature is required unless any other person is expressly permitted by the Pre-Q Tender document to do so.
- 3.15.2 The name of the Partner(s) or the sole proprietor must appear either in the Registration Certificate or the Change of Particulars Certificate (*both issued by the Office of Attorney General of Kenya's Registrar of Business Names*) or the law firm's Confidential Business Questionnaire.
- 3.15.3 All pages of the Tender, including un-amended printed literature, shall be initialled by the Partner(s) signing the Tender and serially numbered.
- 3.15.4 The Tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the law firm, in which case such corrections shall be initialled by the Partner(s) signing the Tender.
- 3.15.5 KETRACO will assume no responsibility whatsoever for the law firm's failure to comply with or observe the entire contents of this paragraph.
- 3.15.6 Any Tender not prepared and signed in accordance with this paragraph may be rejected by KETRACO as non-responsive.

3.16 Sealing and Outer Marking of Tenders

- 3.16.1 The law firm shall seal the Original and each Copy of the Tender in separate envelopes or packages, duly marking the envelopes or packages as "ORIGINAL", "COPY 1 OF TENDER" and "COPY 2 OF TENDER". The envelopes or packages shall then be sealed in outer envelopes or packages.
- 3.16.2 The inner and outer envelopes or packages shall -
 - a) *be addressed to KETRACO at the address given in the Invitation to Tender,*
 - b) *bear the tender number and name as per the Invitation to Tender and the words, "DO NOT OPEN BEFORE(The deadline for tender submission)*
- 3.16.3 All inner envelopes or packages shall also indicate the name and full physical telephone, e-mail and postal contacts of the law firm to enable the Tender to be returned unopened in circumstances necessitating such return including where Tenders are received late, or the procurement proceedings are terminated before tenders are opened.

3.16.4 If the envelopes or packages are not sealed and marked as required by this paragraph, KETRACO will assume no responsibility whatsoever for the Tender's misplacement.

3.17 Deadline for Submission of Tenders

3.17.1 Tenders must be received by KETRACO by the time and at the place specified in the Invitation to Tender.

3.17.2 KETRACO may, at its discretion, extend this deadline for submission of Tenders by amending the tender documents in which case all rights and obligations of KETRACO and the law firm's previously subject to the initial deadline, will therefore be subject to the deadline as extended.

3.18 Modification and Withdrawal of Tenders

3.18.1 The law firm may modify or withdraw its Tender after it has submitted it, provided that written notice of the modification, including substitution or withdrawal of the Tender is received by KETRACO prior to the deadline prescribed for submission of tenders.

3.18.2 The law firm's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraphs 3.14, 3.15 and 3.16. A withdrawal notice may also be sent by facsimile or electronic mail but followed by an original signed confirmation copy, postmarked not later than the deadline for submission of Tenders.

3.18.3 No Tender may be modified after the deadline for submission of Tenders.

3.19 Opening of Tenders

3.19.1 At the opening, KETRACO shall open all Tenders promptly after the tender closing date and time, at the location specified in the Invitation to Tender or as may otherwise be indicated.

3.19.2 The law firm's name, the number of sets of the tender documents duly received and such other details as KETRACO, at its discretion, may consider appropriate, will be announced at the opening.

3.19.3 Representatives of the law firms may attend the opening and those present shall sign a register evidencing their attendance.

3.19.4 Tenders not opened and read out at the tender opening shall not be considered for evaluation, award or otherwise irrespective of the circumstances.

3.20 Process to be Confidential

3.20.1 After the opening of tenders, information relating to the examination, clarification, evaluation and comparisons of tenders and recommendations arising there-from shall not be disclosed to a law firm or other person(s) not officially concerned with such process until conclusion of that process.

3.20.2 Official disclosure by KETRACO of any information upon conclusion of that process may contain only the information permissible by law in summary form.

3.20.3 Any effort by a law firm to influence KETRACO or any of its staff members in the process of examination, evaluation and comparison of tenders and information or decisions concerning appointment to the Panel may result in the rejection of the law firm's tender.

3.21 Clarification of Tenders and Contacting KETRACO

3.21.1 To assist in the examination, evaluation and comparison of Tenders KETRACO may, at its discretion, ask the law firm or any institution for a clarification of the law firm's Tender. The request for clarification and the response shall be in writing.

3.21.2 The law firm is required to provide timely clarification or substantiation of the information that is essential for effective evaluation of its qualifications. It is the responsibility of the law firm to provide in writing the clarification or substantiation which should reach KETRACO within twenty four hours (*24hr*) from the time of KETRACO's query or any such period expressly indicated by KETRACO. Such writing should be by electronic or hand-delivered mail. Should there be no conclusive response within this period, it may result in the law firm's disqualification.

3.21.3 Save as is provided in this paragraph and paragraph 3.20 above, no law firm shall contact KETRACO on any matter related to its Tender, from the time of the tender opening to the time the contract is awarded.

3.22 Preliminary Evaluation

3.22.1 Any Tender that does not fulfil all the mandatory requirements (Part "A" of the Evaluation Criteria) shall be disqualified and no further evaluation shall be carried out.

3.22.2 Notwithstanding the contents of the foregoing sub-paragraphs, if a Tender does not pass the preliminary evaluation, it will be rejected at the earliest stage of evaluation by KETRACO and cannot subsequently be rectified by the law firm by correction of any non-conformity.

3.23 Minor Deviations, Errors or Oversights

3.23.1 KETRACO may waive any minor deviation in a Tender that does not materially depart from the requirements of the Services set out in the Pre-Q Tender Document.

3.23.2 Such minor deviation *shall be applied uniformly and consistently to all qualified Tenders duly received by KETRACO.*

3.23.3 KETRACO may waive errors and oversights that can be corrected without affecting the substance of the Tender.

3.23.4 A material deviation or reservation is one –

- a) which affects in any substantial way the scope, quality, or ability of performance of the Services;
- b) which limits in any substantial way, inconsistent with the tendering documents, KETRACO's rights or the law firm's obligations under any ensuing engagement; or,
- c) whose rectification would affect unfairly the competitive position of other law firms presenting tenders that have passed the preliminary evaluation.

3.24 Evaluation and Comparison of Tenders

3.24.1 KETRACO will further evaluate and compare the Tenders that have fulfilled the mandatory requirements in compliance to the Evaluation Criteria as set out in this Tender Document.

3.25 Preferences

3.25.1 Preferences as per the Public Procurement & Asset Disposal Act, 2015, together with any other relevant Governmental Policy Directives apply to these Services.

3.26 Tender Evaluation Period

- 3.26.1 The Tender Evaluation Committee may conduct and complete evaluation of the tender within thirty (30) days of the validity period from the date of the opening of the Tender.
- 3.26.2 Notwithstanding the above, the evaluation period may be extended by KETRACO within the validity period of the tender.

3.27 Debarment of a law firm

- 3.27.1 A law firm that gives false information in the Tender about its qualification shall be considered for debarment from participating in future public procurement.

3.28 Confirmation of Qualification for Placement in the KETRACO Panel.

- 3.28.1 KETRACO may confirm to its satisfaction whether a law firm that is selected as having scored eighty or more marks is qualified to be appointed and perform any eventual assignment satisfactorily.
- 3.28.2 The confirmation will take into account the law firm's financial, technical, and performance capabilities. It will be based upon an examination of the documentary evidence of the law firm's qualifications submitted by it as well as confirmation of such other information as KETRACO deems necessary and appropriate. This may include court, office and other facilities' inspection and audits; cleanliness and orderliness of its offices.
- 3.28.3 The confirmation/inspection visits are estimated to take upto thirty (30) days in the validity period of the tender.
- 3.28.4 An affirmative confirmation may be a prerequisite for appointment of the law firm to the KETRACO Panel. A negative confirmation will result in rejection of the law firm's Tender.

3.29 Notification of Appointment

- 3.29.1 Prior to the expiration of the period of tender validity, KETRACO shall notify the successful law firm(s) in writing that its Tender has been accepted.
- 3.29.2 Subject to paragraph 3.29.3 the successful law firms shall be those whose Tenders have been determined to be compliant with the evaluation criteria and have been determined to be evaluated tenders with eighty marks and above and further, where deemed necessary, that the law firms are confirmed to be qualified for appointment to the KETRACO Panel of Lawyers.

- 3.29.3 The appointment of law firms shall take into account the need for KETRACO to have appropriate representation in the Regions/Counties where its projects traverse.
- 3.29.4 The notification of appointment shall not constitute the formation of any contract. However, successful bidders will be required to execute a SLA that defines the framework of Agreement and sets the expected service standards. The bidders MUST understand that the prescribed SLA is the standard form SLA for KETRACO and will not be open to negotiations. The same is attached herewith for ease of reference.

3.30 Termination of Procurement Proceedings

- 3.30.1 KETRACO may at any time terminate procurement proceedings before Notice of Appointment or Rejection and shall not be liable to any person for the termination.
- 3.30.2 KETRACO shall give prompt notice of the termination to the law firms, and, on request from any law firm, give its reasons for termination within fourteen (14) days of such request.

3.31 Acceptance of Appointment

- 3.31.2 Within seven (7) days of the date of notification of prequalification, the successful law firm shall indicate its acceptance by writing a formal acceptance letter to KETRACO.

3.32 Professional Indemnity Cover (After Appointment)

- 3.32.1 Within seven (7) days of the date of notification of appointment from KETRACO, the successful law firm shall furnish KETRACO with a valid PI Cover. This is for Law Firms whose PI validity expires before notification of appointment. All Law firms that will be successful leading to prequalification shall, on the expiry of PI cover during the period of prequalification, renew the validity thereof and furnish KETRACO with the particulars.
- 3.32.2 The Professional Indemnity Cover shall be issued by a bank or an insurance company acceptable to KETRACO. The issuer must be located in Kenya.
- 3.32.3 The PI Cover is required to protect KETRACO against the risk of the law firm's conduct during the performance of Services which would warrant the PI Cover's forfeiture or part thereof.
- 3.32.4 KETRACO shall seek authentication of the PI Cover from the issuing Insurer. It is the responsibility of the successful law firm to sensitize its issuing Insurer on the need to

respond directly and expeditiously to queries from KETRACO. The period for response shall not exceed three (3) days from the date of KETRACO's query. Should there be no conclusive response by the Insurer within this period, such successful law firm's PI Cover may be deemed as invalid.

- 3.32.5 Failure of the successful law firm to furnish an authentic PI Cover, (with a minimum value as submitted in its Tender) the appointment shall stand annulled.

3.33 Corrupt or Fraudulent Practices

- 3.33.1 KETRACO requires that law firms observe the highest standard of ethics during the procurement process and execution of contracts. When used in the Regulations, the following terms are defined as follows: -

- a) *“Corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of public official in the procurement process or in contract execution;*
- b) *“Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of KETRACO, and includes collusive practice among law firms (prior to or after Tender submission) designed to establish tender prices or other content at artificial non-competitive levels and to deprive KETRACO of the benefits of free and open competition.*

- 3.33.2 KETRACO will reject a proposal for appointment if it determines that the law firm recommended for appointment has engaged in corrupt or fraudulent practices in competing for this pre-qualification.

- 3.33.3 Further, a law firm which is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

3.34 Conflict of Interest

- 3.34.1 A law firm bidding for provision of Legal Services shall ensure that it does not have any conflict of interest with respect to KETRACO.

- 3.34.2 For purposes of this paragraph, a conflict of interest with respect to KETRACO includes, but is not limited to circumstances, where the law firm, after seven (7) days of the law firm's acceptance of KETRACO's Appointment to its Panel, is still a provider of professional services to a party with conflicting interests to KETRACO.

3.34.3 The law firm shall be required to state in the prescribed form, details of any case or assignment in which it on its own behalf or it has acted on behalf of a party with conflicting or adverse interests to KETRACO within the last three (3) years of the Date of the Prequalification Tender Document.

SECTION IV: EVALUATION CRITERIA/MATRIX

The notes below apply generally across the board to the evaluation criteria and are additional to the specific notes/guidelines below the criteria table.

Curriculum Vitae (CV)

Some lawyers may have long careers and experience. However, all lawyers are strongly advised to furnish their CV's in the appropriate format and which should not be more than two (2) single sided A4 size pages at font 12 spacing at least 1.25.

Any information in the CV that is beyond the 2 pages may stand disregarded for purposes of evaluation. Any CV that is not signed by both the owner of the CV and the person authorized to sign the tender may be disregarded. Where the owner and authorized person are the same, the signature by such same person will suffice.

Definition of Partner

“Partner” where used shall be s/he who has equity in the law firm AND also shares its profits as well as losses. All other definitions of “*Partner*” however styled or of whatever nature shall be excluded from the definition of Partner.

Method of Charging for Services

KETRACO's appointment will consider law firm's that offer the right balance of value for money as measured by the quality of legal service rendered. Law firm's will be expected to identify ways in which legal costs for any significant or complex cases may be mitigated.

KETRACO expects that legal fees and charges payable shall generally be in accordance with the Advocates Remuneration Order as applicable to the case or matter being handled.

The mode of billing shall be considered on a case by case basis and subject to agreement between KETRACO and the firm. Should there be a difference on this, then KETRACO and the law firm may by agreement refer the issue to Taxation with each party bearing their own costs for the Taxation.

Combining Information in Single Document

KETRACO recognizes that there could be certain information which is required to be availed by the law firm whereas the information may be combined in one document. Where the law firm feels that the information may be adequately contained in one document, the law firm may do so. The law firm must state that the information variously requested is in the submitted single document and identify that document.

Where the law firm exercises this option of combining, care must be taken to ensure that all the information required of the several separate documents is included in the composite document.

Associates’ Nature of Engagement with the Law Firm

It is recommended that the Associates be permanent employees or hold long term contracts with the firm.

Scoring

To earn any mark,

- the law firm must satisfy each and every tenet of each criterion to obtain the full award or marks for that particular criterion.
- where any single tenet is not fulfilled for any criterion, the marks may not be awarded. For instance, where a law firm submits the correct document but lacks a signature or fails in certification or absence of letter, the firm may lose the full marks for that criterion.

For avoidance of doubt, partial scoring in a criterion will be avoided and only full marks as per the scheme and criteria in the respective tables may be awarded.

NB:

A) Firms should meet all the mandatory requirements under Part “A” of the Evaluation Criteria. Any firm that does not meet all the requirements under Part “A” will be disqualified and will not be evaluated further.

B) Firms wishing to be prequalified under the Preferential Category should state as much herein below;

<i>STATEMENT</i>	<i>Name and capacity of the duly authorized person signing the tender</i>
<p><i>I/We</i> (the <i>firm) wish to be prequalified under the Youth, Women and Persons with Disabilities Category (Tick the Category that is desired). I am aware that my firm should fulfill the Statutory Mandatory requirements.</i></p>	<p><i>Name.....</i></p> <p><i>Capacity - (Partner/Associate/Sole Proprietor).....</i></p> <p><i>Signature.....</i></p>

C) Bidders should go through the Explanatory notes below the Evaluation Matrix/Criteria before drafting their responses. Note however that where the criteria is self-explanatory, no notes are provided.

Serial No.	EVALUATION ATTRIBUTE	EVALUATION PARAMETERS	MAXIMUM SCORE	MARKS AWARDED
PART “A” - MANDATORY REQUIREMENTS.				
1	Pre-qualification Tender Form	Mandatory		
2	Copy of the Certificate of Registration of the Law Firm	Mandatory		
3	Duly completed Confidential Business Questionnaire	Mandatory		
4	Copies of the current practising certificates for all the advocates in the firm. If not available, evidence of payment for the same and date when paid. Any payment after 31 st January, 2018 shall be disregarded.	Mandatory		
5	Tax Compliance Certificate	Mandatory		
6	Evidence of physical address and premises.	Mandatory		
7	Sworn Anti-Corruption Affidavit	Mandatory		
8	Copies of two years audited accounts (or certified six months current bank statements if firm is registered in the past year).	Mandatory		
9	Copy of Professional Indemnity Cover showing its value.	Mandatory		
10	A signed statement that the bidder is not debarred from participating in public procurement.	Mandatory		
11	A statement from the Complaints Commission and the Advocates Disciplinary Committee indicating that all the lawyers in the bidding firm have no pending disciplinary cases – including the partners. The list of the lawyers should be stated therein. detailing	Mandatory		

	all the advocates in the Firm from the Law Society of Kenya.					
12	A letter of good standing of the Law Firm					
13	Submit details of six (6) major clients and contact persons, addresses and telephone numbers, summary of three (3) major briefs handled (to include their value) and attach recommendation letters.	Mandatory				
14	A copy of the VAT Certificate or exemption certificate	Mandatory				
15	Submission of one “Original” and two copies of the Pre-Qualification Tender Document.	Mandatory				
16	Copy of the Personal Identification Number (PIN) Certificate of the firm.	Mandatory				
17	Submission of Conflict of Interest Form – Law Firms should disclose details of past or pending litigation against KETRACO and any other matters that fall under this realm.	Mandatory				
18	Provide location(s) of your office(s) in the following format and guide.					
	<u>Item No.</u>	<u>Firm Name</u>	<u>Town Where Office is located</u>	<u>Is it the main (Headquarter) office or a branch office?</u>	<u>County</u>	<u>Address; Physical and Telephone</u>
	<u>i.</u>	<u>ABC LLP</u>	<u>i. Nairobi</u>	<u>Main Office</u>	<u>Nairobi</u>	<u>Xxxx Building, 3rd Floor. Tel:....</u>
			<u>ii. Ongata Rongai</u>	<u>Branch</u>	<u>Kajiado</u>	<u>Xxxx Building, 2nd Floor. Tel:....</u>
	<u>ii.</u>	<u>XYZ & Co. Advocates</u>	<u>i. Ruiru</u>	<u>Main</u>	<u>Kiambu</u>	<u>.....</u>

PREFERENTIAL CATEGORY – firms wishing to be prequalified under the preferential Category, MUST, in addition to any statutory requirements set out above, furnish copies of the following;

19	A copy of the certificate of Registration with the National Treasury	Mandatory		
20	For the firms that wish to be prequalified based on the Youth banner, a copy (copies) of the National IDs of the proprietor(s).	Mandatory		
21	For firms wishing to be prequalified based on the Persons with Disabilities banner, a copy of the registration certificate showing registration with the National Council for People Living with Disability.	Mandatory		

PART “B” PRACTICE AREAS.

1	Construction and Engineering law	(i)4 Marks for Fidic Conditions of Contract - any version (ii)3 Marks for Engineering consultancy contracts (iii)3 Marks for concluded or ongoing litigation	10	
2	Arbitration and Alternative Dispute Resolution with regard to Engineering, Procurement and Construction Contracts and other matters.	(i) 4 Marks where the matter was of a value of over One Billion Kenya Shillings (ii)3 marks for any International Arbitration in Engineering, Procurement and Construction Contracts (ii)2 Marks for any other matter(s)	9	
3	Land Law and practice	(i)3 Marks for drafting and registration of easements (ii)4 marks for acquisition of Wayleaves and Public Rights of Way under the Land Act, 2012 (iii)2 marks for concluded litigation in Wayleaves and Public Rights of Way.	11	

		iii) 2 marks for two successfully completed transfers (conveyancing) of land under the Land Laws, 2012 for values of over Kshs. 10million.		
4	Legal Audits	2 marks for every Legal Audit completed with a report being submitted to client	6	
5	Development and negotiation of Commercial and other contracts	i)4 marks for Wheeling of Power ii)3 marks for Contracts related to Fibre Optic Business. iii) 2 marks for any other	9	
6	Civil Litigation and Practice.	(i)3 Marks for three High Court Matters (ii)2 Marks for two Court of Appeal matters (iii)1 Mark for any other matter in any Tribunal	6	
7	Other Commercial Transactions	Provide four clients who had manifestly important matters that your firm handled competently and professionally in the best interests of the client. 1 mark for each transaction.	4	
8	Constitutional and Administrative Law	Two matters	2	
9	Employment and Labour Laws	Two matters	2	
10	Public-Private Partnerships	Two matters	2	
11	Public Procurement and Disposal Law	Two matters	2	
12	Environmental Law	Two matters	2	
13	Any aspect of International Law	Three matters	3	
PART “C” – THE FIRM				
1	Firm profile	(i)2 marks for over 5 years in operation. (ii)1 mark for the rest	2	
2	Membership (Affiliation) of any international consortium of lawyers. Provide proof.	1 mark for each membership/affiliation	3	

3	Capacity of the firm (Partners)/Sole Proprietor	(i)3 marks for four partners and above. (ii) 2 marks for between two and three partners (iii)1 mark for sole proprietorship.	3	
4	Capacity of the Firm (Associates)	(i)2 marks for over four associates (ii)1mark for between one and four associates	2	
5	Firm Capacity: Membership with a Professional organisation.	1 mark for every partner or associate who has membership with CI Arb (attach proof).	2	
6	Degree of Responsibility (State an assignment where a partner/Sole Proprietor in the firm acted as lead counsel or lead lawyer; attach proof)	2marks	2	
7	Associate's outstanding achievement (Civil matters only)	(i)2 marks for Supreme Court or Court of Appeal (ii) 1 mark for High Court (iii)1 mark for Magistrate's Court (or its equivalent) or other Tribunals	4	
8	Adequacy of Support staff	(i)5 marks for over ten support staff (ii)3 marks for between five and nine support staff (iii)2 mark for upto four support staff (iv) No mark if there are no support staff.	5	
9.	Recognition.	(i)3Marks if all the Associates/lawyers in the firm having been recognised by LSK as being engaged by the law firm by the date of the Pre-Q Tender Document unless satisfactorily explained otherwise by the law firm	3	

PART “D” – ORGANIZATIONS WHICH THE FIRM HAS OFFERED LEGAL TRAINING IN THE LAST THREE YEARS				
1	Companies/organizations and numbers trained in each company/organization. (Provide list with complete contact addresses incl. website of each company/organization)	1 mark for each company/organization.	3	
2	Training material for each company/ organisation	1 mark for each manual or material or other training document per company/organisation	3	
TOTAL MARKS			100	

EXPLANATORY NOTES TO THE CONTENTS OF THE EVALUATION CRITERIA:

PART “A” MANDATORY REQUIREMENTS

Item 5: Tax Compliance Certificate: Valid Tax Compliance Certificate shall be one issued by KRA in respect of the law firm and not the individual lawyer where such firm is not registered as owned by a single person. It must be valid for at least up to the Pre-Q Tender closing date.

Item 6: Evidence of the physical address and premises shall be through;

- if building/premise is not owned by the law firm, a signed lease or tenancy agreement for a period exceeding three (3) months beyond the Date of the Pre-Q Tender Document.
- if building/premise is owned by the law firm, the firm’s own statement to that effect in its separate cover letter, together with a copy of the title document,
- if acquired but ownership documents are yet to be obtained or not easily available, then a registered sale agreement or other registered document or other confirmatory proof of

ownership of the building/ premise eg. letter from a bank or financial institution if the title is charged or mortgaged.

If the lease/tenancy is set to or has expired within 3 months of the Date of the Pre-Q Tender Document;

- where the lease is renewable, the law firm should submit a copy of that lease/tenancy agreement together with a letter from the owner/manager of the building/premise confirming that the tenancy/lease is renewable or has been renewed.
- where the law firm is moving to another premises, a letter from the proposed new premises confirming such intention.

Item 8: Financial Statements of the law firm. The audited financial statements required must be those that are reported in the past two years of the Date of the Pre-Q Tender Document.

For law firms that are registered within the last one calendar year of the Date of the Pre-Q Tender Document, they should submit certified copies of bank statements covering a period of at least six (6) months prior to the Date of the Pre-Q Tender Document. The copies should be certified by the Bank issuing the statements. The certification should be original.

Item 9: Professional Indemnity Cover: The amount of the Professional Indemnity Cover submitted by the bidder will determine the kind of briefs that the firm will be engaged in by KETRACO, if the bid will be successful. High value briefs will, similarly, require high Professional Indemnity Covers.

Item 16: Copy of the Personal Identification Number (PIN) Certificate of the firm. All law firms are required to provide the Personal Identification Number Certificate (PIN Certificate) of the firm where such firm is not registered as owned by a single person. If the firm is registered as a partnership with more than two partners existing either within the date of this Tender Document or by the closing date of this Tender this note shall apply.

PART “B” PRACTICE AREAS.

Item 1: Construction and Engineering law. The bidder should be able to provide evidence of development/negotiation of contracts based on Fidic Conditions of Contract under any version (edition). So also is evidence of development/negotiation of engineering consultancy contracts. Evidence of completed (a copy of the Judgement) or ongoing litigation in these areas will be considered for additional marks. Provide the name of the client(s), value of transaction(s) and contact persons, address and telephone numbers.

Item 2: Arbitration and Alternative Dispute Resolution with regard to Engineering, Procurement and Construction Contracts. If the award is voluminous, a brief should be provided;

in the event that KETRACO requires to peruse the award, the same should be availed. Arbitration proceedings that will be cited as ongoing as at the time of submission of this tender will be considered, subject to the bidder giving details of the matter, including the parties involved (specify name of the client(s), and contact persons, address and telephone numbers), the seat of arbitration, the issues before the panel, etc. Evidence of involvement in one matter will earn the firm the full marks.

Item 3: Land Law; Conveyancing, Wayleaves and Public Rights of Way. The bidder should have been engaged in acquisition of Public Right of Way including drafting and registration of easement agreements. Under acquisition of Wayleaves, proof of opinions rendered on the applicable process will be considered. So also is proof of training conducted (the bidder giving details of the resource person who should be the firm's employee) with regard to the procedures applicable. Proof of concluded Litigation in Wayleaves and Public Rights of Way should be by a copy of the relevant Judgement. Provide the name of the client(s) and contact persons, address and telephone numbers. For conveyancing, provide the value of the transaction.

Item 4: Legal Audits: Provide the name of the client(s) and contact persons, address and telephone numbers

Item 5: Development and negotiation of Commercial other contracts: Provide the name of the client(s) and contact persons, address and telephone numbers

Item 6: Civil Litigation and Practice.

Provide details of "serious" litigation handled in the named courts. Representation in "running down" cases or issues will be accepted only if the eventual final Award or Judgement exceeded KSh. 10 Million in a single case or series of cases arising from the same incident. The law firm shall provide evidence of such final Judgement or Award from which there has been no or no further Appeal.

"Serious" is defined as:-

- in terms of pecuniary value, a liability that the client faced of no less than KSh. 100 Million should the client have had an adverse Judgement or Award. The Judgement should be final in the matter. Proof of the Judgement or Award will be required.
- where the pecuniary value cannot be determined at face value, the main issue would have had far reaching adverse consequences on the client and/or other clients though not in court but would be in a similar predicament.

Item 7: Other Commercial Transactions:

The commercial transactions herein will be those involving a sum of over KSh. 50 Million. These will exclude all conveyancing of immoveable property. The handling may include through the law firm's advisory opinions; acting in mergers & acquisitions; transfer of assets and liabilities

between two or more organisations, being the advisory in PPPs, etc. Provide a very brief or general statement of the matter or issue. Important details should however be included.

Other items under Part “B”

With respect to the following items, provide a brief of any recent experience in an assignment involving the specific area of law (not more than five years old). Provide the name of the client(s) and contact persons, address and telephone numbers. Also provide, if available, the judgement, (and if reported reference where available), ruling, award, etc.

- Item 8: Constitutional and Administrative Law – Two Matters
- Item 9: Employment and Labour Laws – Two Matters
- Item 10: Public-Private Partnerships - One Matter
- Item 11: Public Procurement & Disposal Law – Two Matters
- Item 12: Environmental Law – Two Matters
- Item 13: Any aspect of International Law – Three Matters.

PART “C” – THE FIRM.

Item 1: Firm Profile. This should describe the firm; the structure, number of partners and associates, their standing in the bar, number of pupils, paralegal and support staff, period in operation, areas of practice, etc

Item 3: Capacity of the firm (partners). Proof of equity ownership and Curriculum vitae (as per sample format) for all should be availed.

Item 4: Capacity of the Firm (Associates). Curriculum Vitae (as per sample format) for all should be provided.

Item 6: Degree of Responsibility:

Evidence of Partner’s degree of responsibility shall be through an appointment or confirmation or recommendation, contract or other document, either way, from the client in respect of which such responsibility was shouldered and performed. Any of the documents must clearly show that the Partner acted as such lead counsel in that assignment.

Item 7: Associate’s outstanding achievement (Civil matters only).

Evidence of outstanding achievement shall be through a summary of the achievement in not more than two paragraphs containing:-

- A statement of the assignment handled
- The specific challenge(s) in the assignment

- The manner the associate handled the assignment; or view taken that tilted the matter or led to success for the client
- The ultimate conclusion of the assignment

A copy of the ultimate resolution must be submitted. The outstanding achievement must have been attained in the employment/service of the bidder. For firms in which there is only a sole qualified lawyer/sole proprietorships, the firm will be entitled to the marks subject to the sole proprietor complying with the requirements under each sub-criterion.

Item 8: Adequacy of Support staff: Law firms should note that any information or documentation that is found to have been false or misrepresented may lead to automatic disqualification or removal from the Panel, if appointed, irrespective of any prior findings. Support staff includes pupils whose engagement with the bidding firm is through a formal document. That formal document should be attached to the bid. The engagement should be at least within a period of three months prior to the Date of the Tender Document.

PART “D” – ORGANIZATIONS WHICH THE FIRM HAS OFFERED LEGAL TRAINING IN THE LAST THREE YEARS

List prepared by the law firm giving the full names of the companies or firms or organisations (at least three). The List shall contain the current full physical, postal, website (*if any*) and e-mail address of the organization. It should also include the contact person or office for that training.

The List shall also spell out the total number of persons in each company or firm or organization who were given the training.

A letter from the organization/company/firm confirming that the training was performed by the law firm. The letter shall be done on the letterhead of that company or firm or organisation and signed by its authorized representative who shall give his/her full names and designation in that company or firm or organization together with his/her full contact details.

Copies of relevant legal training manuals or documents or materials that were issued or imparted to the participants or companies or firms or organisations during the training.

The training includes any that was done for or on behalf of LSK, KSL, CLE, ICPSK or any other continuous professional development program on any legal aspect. It excludes any and all trainings in human rights, children’s rights, family law, elections and election laws, refugee or military law/issues.

SECTION V – GENERAL CONDITIONS OF APPOINTMENT

The General Conditions of Appointment (GCA) shall form part of the Conditions of Appointment in accordance with the law and KETRACO's guidelines, practices, procedures and working circumstances. The provisions in the GCA will apply in addition to the Service Level Agreement (Sample attached herewith). Where there is a conflict between the two, the Service Level Agreement shall prevail.

5.1 Definitions

In these Conditions the following terms shall be interpreted as follows: -

- a) *“Day” means calendar day and “month” means calendar month.*
- b) *“The Conditions” means this pre-qualification tender document, the agreements entered into between KETRACO and the law firm, as signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.*
- c) *“The Charges” means the rates and fees of which the appointed law firm is entitled to for the proper performance of its obligations as and when it is called upon by KETRACO to do so.*
- d) *“The Services” means services or part thereof that may from time to time be duly provided by the law firm and includes all of the materials and incidentals, which the law firm is required to perform and provide to KETRACO as part of its assignment.*
- e) *“The Procuring Entity” means The Kenya Electricity Transmission Company Limited or its successor(s) and assign(s) where the context so admits (hereinafter abbreviated as KETRACO).*
- f) *“The law firm” or the lawyer” or the Consulting firm” means the individual or firm providing the Services consequent to the appointment. For the avoidance of doubt this shall mean the Successful Law firm(s) or lawyer(s) pursuant to the tender.*

5.2 Application

These General Conditions of Appointment shall apply to the extent that the provisions of other parts of the Conditions, including the SLA, do not supersede them.

5.3 Standards

The Services supplied under this contract shall conform to the professional ethics and standards applicable to lawyers under the Advocates Act, 1989 together with the Service Level Agreement entered into between KETRACO and the law firm.

5.4 Use of Documents and Information

- 5.4.1 The law firm and each and every individual lawyer therein shall not, without KETRACO's prior written consent, disclose these Conditions, or any provision thereof or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of KETRACO in connection therewith, to any person other than a person employed by the law firm in the performance of any assignment arising out of this appointment.
- 5.4.2 The law firm shall not, without KETRACO's prior written consent, make use of any document or information enumerated in sub-clause 5.4.1 above.
- 5.4.3 Any document, other than the contract itself, enumerated in sub-clause 5.4.1 shall remain the property of KETRACO and shall be returned (including all copies) to KETRACO on completion of the law firm's performance of any assignment which may be given to and accepted by it, where so required by KETRACO.

5.5 Professional Indemnity Cover

- 5.5.1 Within seven (7) days of the date of notification of appointment from KETRACO, the successful law firm shall furnish KETRACO with a valid PI Cover if the one furnished has become invalid or has expired.
- 5.5.2 The Professional Indemnity Cover shall be issued by a bank or an insurance company registered by the Central Bank of Kenya or the Insurance Regulatory Authority, respectively. The issuer must be located in Kenya.
- 5.5.3 The law firm shall ensure that the PI Cover remains valid throughout the period of Appointment and where KETRACO engages it in any assignment up to the conclusion of that assignment.
- 5.5.4 The PI Cover is required to protect KETRACO against the risk of the law firm's conduct during the performance of Services which would warrant the PI Cover's forfeiture or part thereof.

- 5.5.5 KETRACO shall seek authentication of the PI Cover from the issuer. It is the responsibility of the successful law firm to sensitize its issuer on the need to respond directly and expeditiously to queries from KETRACO. The period for response shall not exceed three (3) days from the date of KETRACO's query. Should there be no conclusive response by the Insurer within this period, such successful law firm's PI Cover may be deemed as invalid.
- 5.5.6 Failure of the successful law firm to furnish an authentic PI Cover shall render the appointment to stand annulled.
- 5.5.7 The law firm shall provide such evidence of the continued existence and validity of the PI Cover as KETRACO may reasonably and from time to time request.

5.6 Demonstration(s), Inspection(s) and Test(s)

- 5.6.1 The law firm will be required to demonstrate dexterity, diligence, skill and professionalism in the performance of Services when called upon to do so right from receipt of instructions to conclusion of the assignment which is by closure of the file or matter by agreement between KETRACO and the law firm except in cases of earlier cessation of instructions.
- 5.6.2 KETRACO or its representative(s) shall have the right to inspect and confirm this demonstration of the law firm's performance, capacity, equipment, premises, and to confirm their conformity to the Conditions of Appointment. This shall include any Quality Management System.
- 5.6.3 KETRACO shall meet its own costs of the inspections/ visits. These may be done on the law firm's offices, courts or any other place at the discretion of KETRACO.
- 5.6.4 Where conducted on the premises of the law firm(s), all reasonable facilities and assistance, including access to literature and documentation save for other clients confidential information shall be furnished to KETRACO representative(s) at no charge to KETRACO.
- 5.6.5 A Demonstration/Visitation Report(s) may be completed by KETRACO upon conclusion of the inspection/ visitation. This Report where done shall be considered during periodical review with the law firm for purposes of improvement in the engagement between the parties, performance, analysis and continued empanelling or re-appointment at the end of the Period.
- 5.6.6 Nothing in this clause shall in any way be construed as a Waiver of any kind whatsoever or release the law firm from any of its obligations under the Advocates Act as and when it is engaged in any matter by KETRACO.

5.7 Nature of the Conditions

5.7.1 The Pre-qualification and enlisting of the law firm on KETRACO's Panel shall not constitute a retainer or contract.

5.7.2 KETRACO does not bind itself to request the law firm for provision of any Service during any time in which the law firm is considered to be on its Panel.

5.8 Interest

Where the law firm is instructed by KETRACO on any assignment or matter, it is hereby agreed that interest payment by KETRACO is inapplicable on any charges or fees accruing to the law firm.

5.9 Fees and Rates

5.9.1 Where professional fees, charges or payments of any kind are due and owing to the law firm, the guide for payment shall be the relevant Advocates Remuneration Order.

5.9.2 The mode of billing shall be considered on a case by case basis and subject to agreement between KETRACO and the law firm. Should there be a difference on this, then KETRACO and the law firm, may by agreement, refer the issue to Taxation with each party bearing their own costs for the Taxation.

5.9.3 The parties recognize that the present 5th Schedule of the Advocates Remuneration Order under the Advocates Act, provides for an hourly billing system or an amount fixed by agreement between KETRACO and the firm.

5.10 Assignment

5.10.1 The law firm shall not assign either in whole or in part its appointment by virtue of its pre-qualification or assign or sub-contract its obligations to perform when instructed by KETRACO except as may be prescribed.

5.10.2 In the event that a sub-contract is permissible and the law firm sub-contracts its role, the responsibility and onus over the instructions given to the law firm shall rest with the law firm that is pre-qualified by KETRACO.

5.11 Resolution of Disputes

5.11.1 KETRACO and the law firm may make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with its appointment to the Panel or during the performance of any services rendered by the firm.

5.11.2 Where the parties are of the opinion that direct informal negotiation has been unable to amicably resolve the dispute, or, that it is not appropriate, either party may refer the dispute to arbitration under the Arbitration Act.

5.12 Language and Law

The language of the GCA and the law governing any ensuing contract shall be the English language and the laws of Kenya respectively unless otherwise stated.

5.13 Waiver

Any omission or failure by KETRACO to exercise any of its rights or enforce any of the penalties arising from the obligations imposed on the law firm shall in no way, manner or otherwise howsoever, alter, amend, prejudice, vary, waive or be deemed to alter, amend, prejudice, vary, waive or otherwise whatsoever any of KETRACO's powers and rights as expressly provided in and as regards the GCA and any ensuing contract.

5.14 Force Majeure

5.14.1 Force majeure means any circumstances beyond the control of the parties, including but not limited to:

- a) *war and other hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition or embargo;*
- b) *ionizing radiation or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosives or other hazardous properties of any explosive nuclear assembly or nuclear components thereof;*
- c) *rebellion, revolution, insurrection, military or usurped power & civil war;*
- d) *riot, commotion or disorder except where solely restricted to employees servants or agents of the parties;*
- e) *un-navigable storm or tempest at sea.*

5.14.2 Notwithstanding the provisions of the GCA, neither party shall be considered to be in default or in breach of its obligations under the GCA or any ensuing contract to the extent that performance of such obligations is prevented by any circumstances of *force majeure* which arise after the GCA.

5.14.3 If either party considers that any circumstances of *force majeure* are occurring or have occurred which may affect performance of its obligations it shall promptly notify the other party and provide reasonable proof of such circumstances.

5.14.4 Upon the occurrence of any circumstances of *force majeure*, the law firm shall endeavour to continue to perform its obligations so far as is reasonably practicable. The law firm shall notify KETRACO of the steps it proposes to take including any reasonable alternative means for

performance, which is not prevented by *force majeure*. The law firm shall not take any such steps unless directed so to do by KETRACO.

- 5.14.5 If the law firm incurs additional costs in complying with KETRACO's directions under the above sub clause, then notwithstanding the provisions of the GCA and any ensuing contract, the amount thereof shall be agreed upon with KETRACO and added to the fees and charges payable.
- 5.14.6 If circumstances of *force majeure* have occurred and shall continue for a period of twenty one (21) days then, notwithstanding that the law firm may by reason thereof have been granted an extension of time for performance of the services, either party shall be entitled to serve upon the other seven (7) days' notice to terminate the instructions. If at the expiry of the period of twenty-eight (28) days, *force majeure* shall still continue, the services at the option of either party shall terminate.

SECTION VI - TENDER FORM

Date:

Tender No.

To:

Kenya Electricity Transmission Company Limited,
Kawi Complex, Popo Lane, Off Red Cross Road, South C,
P.O. Box 34942 - 00100

Nairobi, Kenya.

Ladies and Gentlemen,

1. Having read, examined and understood the Pre-Q Tender Document, the undersigned Law firm, offer to render and perform **Legal Services** in accordance and conformity with the said pre-qualification tender document.

2. We agree to abide by this Tender for a period of.....days (**law firm please indicate validity of your Tender**) from the date fixed for tender opening as per the Pre-Q Tender Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

3. This Tender, together with your written acceptance thereof and your notification of being placed on the panel shall not constitute a contract, between us. The contract shall be formed between us when KETRACO duly issues instructions to us on any specific matter or assignment.

4. We understand that you are not bound to accept and prequalify any Tender you may receive.

Yours sincerely,

Full name of law firm

Signature of duly authorised person signing the Tender

Name and Capacity of duly authorised person signing the Tender

Stamp of the law firm

SECTION VII - CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

All law firms are requested to give the particulars indicated in Part 1 and either Part 2 (a) or 2 (b), whichever applies to your type of business. You are advised that it is a serious offence to give false information on this form.

Part 1 – General

Business Name.....

Location of business premises.....

Plot No.Street/ Road

Postal Address Postal Code

Tel No.....

Mobile No.....

E-mail:.....

Nature of your business

Registration Certificate No.....

Name of your BankersBranch... ..

*Names of law firm’s contact person(s)

Designation/ capacity of the law firm's contact person(s)

Address, Tel, and E-mail of the law firm's contact person(s)

.....

.....

Part 2 (a) Sole Proprietor

Your name in full

Citizenship including whether by birth, marriage, registration or naturalisation.....

Part 2 (b) Partnership

Give details of partners as follows: -

Names	Shares
1.....	
2.....	
3.....	
4.....	
5.....	

Give citizenship of each partner including whether by birth, marriage, registration or naturalisation.....

Name of duly authorized person to sign for and on behalf of the law firm
.....

Capacity of the duly authorized person.....

Signature of the duly authorized person.....

Notes to the Law Firms on the Questionnaire

1. *The address and contact person of the Law firm provided above shall at all times be used for purposes of this tender.*
2. *The details on this Form are essential and compulsory for all law firms. **Failure to provide all the information requested may lead to the law firm's disqualification.***

SECTION VIII – FORMAT OF CURRICULUM VITAE (CV) FOR KEY STAFF

Full name of lawyer: _____ Position in firm i.e. Partner or Associate: _____

Years and or months with law firm: _____ Membership (and status) in Professional Bodies: _____

Key Qualifications:

[Give an outline of lawyer’s key experience and training most pertinent to the Services; going not more than six years prior to the Date of the Pre-Q Tender Document. Indicate degree of responsibility held by the lawyer on relevant previous assignments and give dates and locations. For experience in the last six years, also give types of activities performed and client references, where appropriate].

Preferred areas of practice if appointed to KETRACO panel:

[Give an outline of lawyer’s preferred areas of practice relevant to the Services and any two outstanding achievements in that area going not more than five years prior to the Date of the Pre-Q Tender Document. Give client references, where possible].

Employment Record:

[Starting with present position, list in reverse order every employment held in the last ten years. List all positions held by the lawyer giving dates, names of employing organizations, titles of positions held, and locations of assignments].

Certification:

I, the undersigned, certify that to the best of my knowledge and belief, the information above correctly describes me, my qualifications, and my experience.

_____ Date: _____
[Signature of lawyer] *Day/Month/Year*

Yours sincerely,

Full name of law firm

Signature of duly authorised person signing the Tender

Name and Capacity of duly authorised person signing the Tender

Stamp of the law firm

SECTION IX – FORMAT OF CONFLICT OF INTEREST FORM

1. Full name of lawyer(s) involved in the matter

2. Name of third party involved in the matter

3. Nature of the matter
(Eg. Wayleave acquisition, Claim for negligence; personal injury; damage to property;)

4. Brief Details
(Including when and where the dispute arose; amount involved)

5. Case Number (where applicable)

6. Date of commencement of the matter where there was/is litigation

7. Present position of the matter

Yours sincerely,

Full name of law firm

Signature of duly authorised person signing the Tender

Name and Capacity of duly authorised person signing the Tender

Stamp of the law firm

SECTION X - DECLARATION FORM

Date _____

To:

Kenya Electricity Transmission Company Limited,
Kawi Complex, Popo Lane, Off Red Cross Road, South C,
P.O Box 34942 – 00100,
Nairobi,
KENYA.

Ladies and Gentlemen,

The law firm i.e. (give full name of firm)_____declares the following:

- a) That I/ We have not been debarred from participating in public procurement by any body, institution or person.
- b) That I/ We have not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement anywhere.
- c) That I/We or any partner and/or other lawyer of the firm has not been debarred from participating in public procurement by virtue of the Public Procurement & Disposal Act.
- d) That I/ We are not insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
- e) That I/ We are not associated with any other Tenderer participating in this Tender.
- f) That I/We do hereby confirm that all the information given in this tender is accurate, factual and true to the best of our knowledge.

Yours sincerely,

Full name of law firm

Signature of duly authorised person signing the Tender

Name and Capacity of duly authorised person signing the Tender

Stamp of the law firm