



## **UNCLAIMED FINANCIAL ASSETS AUTHORITY (UFAA)**

**PREQUALIFICATION OF LEGAL SERVICE PROVIDERS FOR 2024-2026**

**TENDER NUMBER. UFAA/PL/020/2023-2024**

**CLOSING FRIDAY 5<sup>TH</sup> APRIL 2024 AT 10:30 AM**

**CHIEF EXECUTIVE OFFICER/MT**

**UNCLAIMED FINANCIAL ASSETS AUTHORITY  
PACIS CENTRE, 2<sup>ND</sup> FLOOR, WESTLANDS**

**P.O BOX 28235- 00200**

**NAIROBI, KENYA**

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**Email: [procurement@ufaa.go.ke](mailto:procurement@ufaa.go.ke)**

**Website: [www.ufaa.go.ke](http://www.ufaa.go.ke)**

**<https://eProcurement.ufaa.go.ke>**

**19<sup>TH</sup> MARCH 2024**

# ADDENDUM TO THE TENDER ADVERT



## UNCLAIMED FINANCIAL ASSETS AUTHORITY

### 1. SENSITIZATION OF SUPPLIERS OF GOODS, WORKS, AND SERVICES ON ACCESS TO GOVERNMENT PROCUREMENT OPPORTUNITIES

The Unclaimed Financial Assets Authority (UFAA) invites all interested suppliers (both AGPO & citizen contractors) for a sensitization workshop on public procurement, reservation schemes and UFAA's eProcurement Portal. The training will be held on **Thursday 28<sup>th</sup> March 2024** at a venue to be communicated within Nairobi starting at 8.00AM. All interested suppliers are required to confirm their attendance by sending their email address, telephone contact and representative (one) details to [suppliers.training@ufaa.go.ke](mailto:suppliers.training@ufaa.go.ke) by **Monday 25<sup>th</sup> March 2024 at 2.00PM**. Only registered participants will be allowed to attend.

### 2. INVITATION TO TENDER

The Unclaimed Financial Assets Authority (UFAA) invites interested and eligible firms to tender for the following:

TENDER NAME	CLOSING DATE	REMARKS
Registration of Suppliers for Supply of Goods and Provision of Services/Works for 2024 -2026: UFAA/REG/019/2023-2024 through e-procurement portal <a href="https://eProcurement.ufaa.go.ke">https://eProcurement.ufaa.go.ke</a>	5.4.2024 at 10:30am	Open/Reserved
Prequalification of legal service providers for 2024-2026: UFAA/PL/020/2023-2024	5.4.2024 at 10:30am	Open

Bid documents to be downloaded free from UFAA website: [www.ufaa.go.ke](http://www.ufaa.go.ke) or PPIP portal: [www.tenders.go.ke](http://www.tenders.go.ke) and e-procurement portal <https://eProcurement.ufaa.go.ke>. Bidders should immediately forward their details for receiving any further clarifications to [procurement@ufaa.go.ke](mailto:procurement@ufaa.go.ke). Bidders are advised to paginate and serialize their tender documents.

The complete bid documents addressed to:

**Chief Executive Officer/Managing Trustee  
Unclaimed Financial Assets Authority  
2<sup>nd</sup> Floor Pacis Centre, Slip Road Off Waiyaki Way, Westland's  
P.O. Box 28235-00200 Nairobi  
Tel. Tel. +254- 020 4023000**

should be submitted through the e-procurement portal <https://eProcurement.ufaa.go.ke> so as to be received on or before **Friday 5<sup>th</sup> April 2024 at 10:30AM. NO PHYSICAL SUBMISSIONS SHALL BE ACCEPTED.** Tenders shall be opened in the Boardroom immediately thereafter in the presence of bidders who choose to attend.

**CHIEF EXECUTIVE OFFICER & MANAGING TRUSTEE  
UNCLAIMED FINANCIAL ASSETS AUTHORITY**

## INVITATION TO APPLY FOR PREQUALIFICATION

Name of Contract: **PREQUALIFICATION OF LEGAL SERVICE PROVIDERS FOR 2024-2026**

Contract No: **UFAA/PL/020/2023-2024.**

Prequalification Reference No.: **UFAA/PL/020/2023-2024**

1. The Unclaimed Financial Assets Authority (UFAA) intends to prequalify Service Providers for provision of legal services for two years.
2. It is expected that the Invitation to Tender will be made as and when required between 2024 and 2026. Tendering will be conducted through *national competitive tendering* procedures using a standardized tender document and will be open to all applicants who prequalify.
3. Qualified and interested applicants may obtain further information and inspect the Prequalification Document during office hours *0900 to 1600 hours* at the address given below.
4. A complete set of prequalification documents may be purchased or obtained by interested tenders upon payment of a non-refundable fee of Kshs. 1,000 payable to the Accounts Office on 2nd floor Pacis Centre. Tender documents obtained electronically will be free of charge.
5. Prequalification documents may be viewed and downloaded for free from our website [www.ufaa.go.ke](http://www.ufaa.go.ke); e-procurement portal <https://eProcurement.ufaa.go.ke> or PPIP portal [www.tenders.go.ke](http://www.tenders.go.ke). Applicants who download the Prequalification Document must forward their particulars immediately to [procurement@ufaa.go.ke](mailto:procurement@ufaa.go.ke) to facilitate any further clarification or addendum. Firms must also register their details under <https://eProcurement.ufaa.go.ke>.
6. Applications for prequalification should be submitted electronically through the e-Procurement Portal (<https://eProcurement.ufaa.go.ke>) to be received on or before **Friday, 5<sup>th</sup> April 2024, at 10:30 a.m . No Physical submission will be accepted.**
7. Late applications shall be rejected.
8. Address where to submit Applications - ***e-Procurement Portal (<https://eProcurement.ufaa.go.ke>)***

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## **PART 1 - APPLICATION PROCEDURES**

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## **SECTION I - INSTRUCTIONS TO APPLICANTS (ITA)**

### **A. General**

#### **1 Scope of Application**

1.1 The name of the Procuring Entity inviting for applications is defined in the **PDS**. The particular type of contract (works, goods or Non-Consulting Services required) and its name and description of the contract(s) and its reference number are defined in the **PDS**. If the scope of contract so defined is in multiple contracts, it will be specified in the **PDS** if prequalification will be based on individual contracts or multiple contracts. The Full scope of Works or Goods or Non-Consulting Services are described in Section V (Scope of Works or goods contract).

2 **Source of Funds** to be specified in the PDS, if deemed necessary.

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

3.1 The Government of Kenya requires compliance with its Anti-Corruption laws and its prevailing sanctions policies and procedures.

3.2 In further pursuance of this policy, Applicants shall permit and shall cause their agents (where declared or not), subcontractors, sub consultants, service providers, suppliers, and their personnel, to permit the Public Procurement Regulatory Authority (PPRA) to inspect all accounts, records and other documents relating to any initial selection process, prequalification process, tender submission (incase prequalified), proposal submission, and contract performance (in the case of award), and to have them audited by auditors appointed by the PPRA.

#### **4 Collusive practices**

4.1 The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any applicant found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, applicants shall be required to complete and sign a Certificate of Independent Tender Determination" annexed to the Form of applicant.

#### **5 Eligible Applicants**

5.1 Applicants shall meet the eligibility criteria as per this ITA and ITA 5.1 and 5.2. An Applicant may be a firm that is a private entity, a state-owned enterprise or institution subject to ITA 5.9 or any combination of such entities in the form of a joint venture ("JV") under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the prequalification process, tendering (in the event the JV submits a Tender) and during contract execution (in the event the JV is awarded the Contract). Members of a joint venture may not also make an individual tender, be a subcontractor in a separate tender or be part of another joint venture for the purposes of the same Tender. The maximum number of JV members shall be specified in the PDS.

5.2 Public Officers of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to be prequalified. Public Officers with such relatives are also not allowed to participate in any procurement proceedings.

- 5.3 A firm may apply for prequalification both individually, and as part of a joint venture, or participate as a subcontractor. If prequalified, it will not be permitted to tender for the same contract both as an individual firm and as a part of the joint venture or as a subcontractor. However, a firm may participate as a subcontractor in more than one Tender, but only in that capacity. Tenders submitted in violation of this procedure will be rejected.
- 5.4 A firm and any of its affiliates (that directly or indirectly control, are controlled by or are under common control with that firm) may submit its application for prequalification either individually, as joint venture or as a subcontractor among them for the same contract. However, if prequalified, only one prequalified Applicant will be allowed to tender for the. All Tenders submitted in violation of this procedure will be rejected.
- 5.5 An Applicant may have the nationality of any country, subject to the restrictions pursuant to ITA 5.1 and 5.2. An Applicant shall be deemed to have the nationality of a country if the Applicant is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. sub-contractors or suppliers for any part of the Contract including related Non-Consulting Services.
- 5.6 Applicants shall not have a conflict of interest. Applicants shall be considered to have a conflict of interest, if they, or any of their affiliates, participated as a consultant in the preparation of the design or technical specifications or have been hired or proposed to be hired by the Procuring Entity as Engineer for contract implementation of the contract(s) that are the subject of this prequalification. In addition, Applicants may be considered to have a conflict of interest if they have a close business or family relationship with a professional staff of the Procuring Entity who:
- a are directly or indirectly involved in the preparation of the prequalification Document or Invitation to Tender (ITT), Document or specifications of the Contract, and/or the Tender evaluation process of such Contract; or
  - b would be involved in the implementation or supervision of such Contract, unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the prequalification, ITT process and execution of the Contract.
- 5.7 An Applicant that has been debarred shall be ineligible to be initially selected for, prequalified for, tender for, propose for, or be awarded a contract during such period of time as the PPRA shall have determined. The list of debarred firms and individuals is available at [www.ppra.go.ke](http://www.ppra.go.ke)
- 5.8 Applicants that are state-owned enterprise or institutions in Kenya may be eligible to prequalify, compete and be awarded a Contract(s) only if they can establish, in a manner accept able to the Procuring Entity, that they (i) are legally and financially autonomous (ii) operate under commercial law, and (iii) are not under supervision of any public entity.
- 5.9 An Applicant shall not be under sanction of debarment from Tendering by the PPRA as the result of the execution of a Tender/Proposal–Securing Declaration.
- 5.10 An Applicant that is a Kenyan firm or citizen shall provide evidence of having fulfilled his/her tax obligations by producing a current tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority.
- 5.11 An Applicant shall provide any other such documentary evidence of eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.

## **6 Eligibility**

- 6.1 Firms and individuals may be ineligible if they are nationals of ineligible countries as indicated herein. The countries, persons or entities are in eligible if:

- a. As a matter of law or official regulations, Kenya prohibits commercial relations with that country, or
  - b. By an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or contracting of works or Non- Consulting Services from that country, or any payments to any country, person, or entity in that country.
- 6.2 When the Works, supply of Goods or provision of non-consulting services are implemented a cross jurisdictional boundary (and more than one country is a Procuring Entity, and is involved in the procurement), then exclusion of a firm or individual on the basis of ITA 5.1 (a) above by any country may be applied to that procurement a cross other countries involved, if the Procuring Entities involved in the procurement so agree.
- 6.3 Any goods, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement.

## **B. Contents of the Prequalification Documents**

### **7 Sections of Prequalification Document**

- 7.1 This Prequalification Document consists of parts 1 and 2 which comprise all the sections indicated below, and which should be read in conjunction with any Addendum issued in accordance with ITA 8.

#### **PART 1 - Prequalification Procedures**

- i) Section I- Instructions to Applicants (ITA)
- ii) Section II - Prequalification Data Sheet (PDS)
- iii) Section III - Qualification Criteria and Requirements
- iv) Section IV- Application Forms

#### **PART 2 - Works, Goods, or Non-Consulting Services Requirements**

- i) Section VII- Scope of Works, Goods, or Non-Consulting Services

- 7.2 Unless obtained directly from the Procuring Entity, the Procuring Entity accepts no responsibility for the completeness of the document, responses to requests for clarification, the minutes of the pre-Application meeting (if any), or Addenda to the Prequalification Document in accordance with ITA 8. In case of any discrepancies, documents issued directly by the Procuring Entity shall prevail.
- 7.3 The Applicant is expected to examine all instructions, forms, and terms in the Prequalification Document and to furnish with its Application all information or documentation as is required by the Prequalification Document.

## **8 Clarification of Prequalification Documents, site visit(s) and Pre-Application Meeting**

- 8.1 An Applicant requiring any clarification of the Prequalification Document shall contact the Procuring Entity in writing at the Procuring Entity's address indicated in the **PDS**. The Procuring Entity will respond in writing to any request for clarification provided that such request is received no later than fourteen (14) days prior to the deadline for submission of the applications. The Procuring Entity shall forward a copy of its response to all prospective Applicants who have obtained the Prequalification Document directly from the Procuring Entity, including a description of the inquiry but without identifying its source. If so indicated in the **PDS**, the Procuring Entity shall also promptly publish its response at the webpage identified in the **PDS**. Should the Procuring Entity deem it necessary to amend the Prequalification Document as a result of a clarification, it shall do so following the procedure under ITA 8. And in accordance with the provisions of ITA 17.2.



- 8.2 The Applicant, at the Applicant's own responsibility and risk, is encouraged to visit and examine and inspect the Site of the required contracts and obtain all information that may be necessary for preparing the application. The costs of visiting the Site shall be at the Applicant's own expense. The Procuring Entity shall specify in the **PDS** if a pre-application meeting will be held, when and where. The Procuring Entity shall also specify in the **PDS** if a pre-arranged Site visit will be held and when. The Applicant's designated representative is invited to attend a pre- application meeting and a pre-arranged site visit. The purpose of the meetings will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 8.3 The Applicant is requested to submit any questions in writing, to reach the Procuring Entity not later than the period specified in the **PDS** before the submission date of applications.
- 8.4 Minutes of a pre-arranged site visit and those of the pre-application meeting, if applicable, including the text of the questions asked by Applicants and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Applicants who have acquired the prequalification documents. Minutes shall not identify the source of the questions asked.
- 8.5 The Procuring Entity shall also promptly publish anonymized (*no names*) Minutes of the pre-arranged site visit and those of the pre-proposal meeting at the web page identified **in the PDS**. Any modification to the Prequalification Documents that may become necessary as a result of the pre-arranged site visit and those of the pre-application meeting shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to PDS 8 and not through the minutes of the pre-application meeting. Non-attendance at the pre- arranged site visit and the pre-tender meeting will not be a cause for disqualification of a Tenderer.

## **9 Amendment of Prequalification Document**

- 9.1 At any time prior to the deadline for submission of Applications, the Procuring Entity may amend the Prequalification Document by issuing an Addendum.
- 9.2 Any Addendum issued shall be part of the Prequalification Document and shall be communicated in writing to all Applicants who have obtained the Prequalification Document from the Procuring Entity. The Procuring Entity shall promptly publish the Addendum at the Procuring Entity's webpage identified in the PDS.
- 9.3 To give Applicants reasonable time to take an Addendum into account in preparing their Applications, the Procuring Entity may, at its discretion, extend the deadline for the submission of Applications in accordance with ITA 17.2.

## **C. Preparation of Applications**

### **10 Cost of Applications**

- 10.1 The Applicant shall bear all costs associated with the preparation and submission of its Application. The Procuring Entity will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the prequalification process.

### **11 Language of Application**

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



## **12 Documents Comprising the Application**

- 12.1 The Application shall comprise the following:
- a. Application Submission Letter, in accordance with ITA 13.1;
  - b. Eligibility: documentary evidence establishing the Applicant's eligibility, in accordance with ITA 14.1;
  - c. Qualifications: documentary evidence establishing the Applicant's qualifications, in accordance with ITA 15; and
  - d. Any other document required as specified in the PDS.
- 12.2 The Applicant shall furnish information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Application.

## **13 Application Submission Letter**

- 13.1 The Applicant shall complete an Application Submission Letter as provided in Section IV (Application Forms). This Letter must be completed without any alteration to its format.

## **14 Documents Establishing the Eligibility of the Applicant**

- 14.1 To establish its eligibility in accordance with ITA 4, the Applicant shall complete the eligibility declarations in the Application Submission Letter and Forms ELI (eligibility) 1.1 and 1.2, included in Section IV (Application Forms).

## **15 Documents Establishing the Qualifications of the Applicant**

- 15.1 To establish its qualifications to perform the contract(s) in accordance with Section III, Qualification Criteria and Requirements, the Applicant shall provide the information requested in the corresponding Information Sheets included in Section IV (Application Forms).
- 15.2 Wherever an Application Form requires an Applicant to state a monetary amount, Applicants should indicate the Kenya Shilling equivalent using the rate of exchange determined as follows:
- a. For construction turnover or financial data required for each Year-Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year is to be converted).
  - b. Value of single Contract-Exchange rate prevailing on the date of the contract.
- 15.3 Exchange rates shall be taken from the publicly available source identified in the PDS. Any error in determining the exchange rates in the Application may be corrected by the Procuring Entity.
- 15.4 Applicants shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a particular contractor or group of contractors qualifies for a margin of preference. Further the information will enable the Procuring Entity identify any actual or potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between Applicants, and thereby help to prevent any corrupt influence in relation to the procurement processor contract management.
- 15.5 The purpose of the information described in ITT 6.2 above overrides any claims to confidentiality which an Applicant may have. There can be no circumstances in which it would be justified for an Applicant to keep information relating to its ownership and control confidential where it is tendering to undertake public sector work and receive public sector funds. Thus, confidentiality will not be accepted by the Procuring Entity as a justification for an Applicant's failure to disclose, or failure to provide required information on its ownership and control.

- 15.6 The Applicant shall provide further documentary proof, information or authorizations that the Procuring Entity may request in relation to ownership and control which information on any changes to the information which was provided by the Applicant under ITT 6.3. The obligations to require this information shall continue for the duration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.
- 15.7 All information provided by the Applicant pursuant to these requirements must be complete, current and accurate as at the date of provision to the Procuring Entity. In submitting the information required pursuant to these requirements, the Applicant shall warrant that the information submitted is complete, current and accurate as at the date of submission to the Procuring Entity.
- 15.8 If an Applicant fails to submit the information required by these requirements, its application will be rejected. Similarly, if the Procuring Entity is unable, after taking reasonable steps, to verify to a reasonable degree the information submitted by an Applicant pursuant to these requirements, then the application will be rejected.
- 15.9 If information submitted by an Applicant pursuant to these requirements, or obtained by the Procuring Entity (whether through its own enquiries, through notification by the public or otherwise), shows any conflict of interest which could materially and improperly benefit the Applicant in relation to the procurement or contract management process, then:
- a. If the procurement process is still ongoing, the Applicant will be disqualified from the procurement process,
  - b. If the contract has been awarded to that Applicant, the contract award will be set aside,
- 15.10 the Applicant will be referred to the relevant law enforcement authorities for investigation of whether the Applicant or any other persons have committed any criminal offence.
- 15.11 If an Applicant submits information pursuant to these requirements that is incomplete, inaccurate or out-of-date, or attempts to obstruct the verification process, then the consequences ITT 6.7 will ensue unless the Applicant can show to the reasonable satisfaction of the Procuring Entity that any such act was not material, or was due to genuine error which was not attributable to the intentional act, negligence or recklessness of the Applicant.

## **16 Signing of the Application and Number of Copies**

- 16.1 The Applicant shall prepare one original of the documents comprising the Application as described in ITA 11 and clearly mark it "ORIGINAL". The original of the Application shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Applicant. In case the Applicant is a JV, the Application shall be signed by an authorized representative of the JV on behalf of the JV and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized signatories.
- 16.2 The Applicant shall submit copies of the signed original Application, in the number specified in the PDS, and clearly mark them "COPY". In the event of any discrepancy between the original and the copies, the original shall prevail.

## **D. Submission of Applications**

### **17 Sealing and Marking of Applications**

- 17.1 The Applicant shall enclose the original and the copies of the Application in a sealed envelope that shall:
- a. Bear the name and address of the Applicant;
  - b. Be addressed to the Procuring Entity, in accordance with ITA 17.1; and
  - c. Bear the specific identification of this prequalification process indicated in the PDS 1.1.

17.2 The Procuring Entity will accept no responsibility for not processing any envelope that was not identified as required in ITA 16.1 above.

## **18 Deadline for Submission of Applications**

18.1 Applicants may either submit their Applications by mail or by hand. Applications shall be received by the Procuring Entity at the address and no later than the deadline indicated in the PDS. When so specified in the PDS, Applicants have the option of submitting their Applications electronically, in accordance with electronic Application submission procedures specified in the **PDS**.

18.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of Applications by amending the Prequalification Document in accordance with ITA 8, in which case all rights and obligations of the Procuring Entity and the Applicants subject to the previous deadline shall thereafter be subject to the deadline as extended.

## **19 Late Applications**

19.1 The Procuring Entity reserves the right to accept applications received after the deadline for submission of applications, unless otherwise specified in the **PDS**. If late applications will be accepted, they must be received not later than the date specified in the **TDS** after the deadline for submission of applications.

## **20. Opening of Applications**

20.1 The Procuring Entity shall open all Applications at the date, time and place specified in the **PDS**. Late Applications shall be treated in accordance with ITA 19.1.

20.2 Applications submitted electronically (if permitted pursuant to ITA 17.1) shall be opened in accordance with the procedures specified in the **PDS**.

20.2 The Procuring Entity shall prepare a record of the opening of Applications to include, as a minimum, the name of the Applicants. A copy of the record shall be distributed to all Applicants.

## **E. Procedures for Evaluation of Applications**

### **21 Confidentiality**

21.1 Information relating to the Applications, their evaluation and results of the prequalification shall not be disclosed to Applicants or any other persons not officially concerned with the prequalification process until the notification of prequalification results is made to all Applicants in accordance with ITA 28.

21.2 From the deadline for submission of Applications to the time of notification of the results of the prequalification in accordance with ITA 28, any Applicant that wishes to contact the Procuring Entity on any matter related to the prequalification process may do so only in writing.

### **22 Clarification of Applications**

22.1 To assist in the evaluation of Applications, the Procuring Entity may, at its discretion, ask an Applicant for a clarification (including missing documents) of its Application, to be submitted within a stated reasonable period of time. Any request for clarification from the Procuring Entity and all clarifications from the Applicant shall be in writing.

22.1 If an Applicant does not provide clarifications and/or documents requested by the date and time set in the Procuring Entity's request for clarification, its Application shall be evaluated based on the information and documents available at the time of evaluation of the Application.

## **23 Responsiveness of Applications**

23.1 The Procuring Entity may reject any Application which is not responsive to the requirements of the Prequalification Document. In case the information furnished by the Applicant is incomplete or otherwise requires clarification as per ITA 21.1, and the Applicant fails to provide satisfactory clarification and/or missing information, it may result in disqualification of the Applicant.

## **24 Margin of Preference**

24.1 Unless otherwise specified in the **PDS**, a margin of preference shall not apply in the Tendering process resulting from this prequalification.

## **25 Nominated Subcontractors**

25.1 Unless otherwise stated in the PDS, the Procuring Entity does not intend to execute any specific elements of the works by sub-contractors selected in advance by the Procuring Entity (so-called "Nominated Subcontractors").

25.2 The Applicant shall not propose to subcontract the whole of the Works or Goods. The maximum limit of subcontracting permitted under the contract may be specified by the Procuring Entity in the Tendering Document. The Procuring Entity, in ITA 25.2, may permit the Applicant to propose subcontractors for certain specialized parts of the contract as indicated there in as ("Specialized Subcontractors"). Applicants planning to use such Specialized Subcontractors shall specify, in the Application Submission Letter, the activity(ies) or parts of the Works proposed to be subcontracted along with details of the proposed subcontractors including their qualification and experience.

## **F. Evaluation of Applications and Prequalification of Applicants**

### **26 Evaluation of Applications**

26.1 The Procuring Entity shall use the factors, methods, criteria, and requirements defined in Section III, Qualification Criteria and Requirements, to evaluate the qualifications of the Applicants, and no other methods, criteria, or requirements shall be used. The Procuring Entity reserves the right to waive min or deviations from the qualification criteria if they do not materially affect the technical capability and financial resources of an Applicant to perform the Contract.

26.2 Subcontractors proposed by the Applicant shall be fully qualified and meet the minimum specific experience criteria as specified for their parts of the proposed contract for Works or Goods or non-consulting services. The subcontractor's qualifications shall not be used by the Applicant to qualify for the Works or Goods or non-consulting services unless their parts of the Works or Goods or non-consulting services were previously designated by the Procuring Entity in the PDS as can be met by Specialized Subcontractors, in which case:

i) The Specialized Subcontractors shall meet the minimum qualification requirements specified in Section III, and

ii) the qualifications with respect to specific experience of the Specialized Subcontractor proposed by the

Applicant may be added to the qualifications of the Applicant for the purpose of the evaluation.

Unless the Applicant has been determined prequalified on its own without taking into account the qualification and experience of the proposed specialized sub-contractor, the tender submitted by the Applicant shall include the same specialized sub-contractor failing which, such tender may be rejected unless a change in the specialized sub-contractor was requested by the Applicant and approved by the Procuring Entity subsequent to prequalification but before the tender submission deadline in accordance with ITA 30.

26.3 In case of multiple contracts, Applicants should indicate in their Applications the individual contract

or combination of contracts in which they are interested. The Procuring Entity shall prequalify each Applicant for each lot and for a combination of contracts for which the Applicant has thereby indicated its interest and for which the Applicant meets the appropriate aggregate requirements the Eligibility and Qualification Criteria.

26.4 Further, in the case of multiple contracts, the Procuring Entity will prepare the Eligibility and Qualification Criteria Form for items 3.1, 3.2, 4.2(a) and 4.2(b) for each Lot, to be completed by applicants.

26.5 Only the qualifications of the Applicant shall be considered. The qualifications of other firms, including the Applicant's subsidiaries, parent entities, affiliates, subcontractors (other than Specialized Subcontractors in accordance with ITA 25.2 above) or any other firm(s) different from the Applicant shall not be considered.

## **27 Procuring Entity's Right to Accept or Reject Applications**

27.1 The Procuring Entity reserves the right to accept or reject any Application, and to annul the prequalification process and reject all Applications at any time, without thereby incurring any liability to the Applicants.

## **28 Prequalification of Applicants**

28.1 All Applicants whose Applications substantially meet or exceed the specified qualification requirements will be prequalified by the Procuring Entity. The Procuring Entity shall notify all Applicants in writing of the names of those Applicants who have been prequalified or conditionally prequalified. In addition, those Applicants who have been disqualified will be informed separately.

28.32 Applicants that have not been prequalified may write to the Procuring Entity to request, in writing, the grounds on which they were disqualified.

## **28 Invitation to Tender**

29.1 Promptly after the notification of the results of the prequalification, the Procuring Entity shall invite Tenders from all the Applicants that have been prequalified or conditionally prequalified.

28.2 Applicants may be required to provide a Tender Security or a Tender-Securing Declaration acceptable to the Procuring Entity in the form and an amount to be specified in the tendering document.

28.3 The successful Applicant shall be required to provide a Performance Security as specified in the tendering document.

## **29 Changes in Qualifications of Applicants**

30.1 Any change in the structure or formation of an Applicant after being prequalified in accordance with ITA 27 and invited to tender (including, in the case of a JV, any change in the structure or formation of any member and also including any change in any specialized subcontractor whose qualifications were considered to prequalify the Applicant) shall be subject to the written approval of the Procuring Entity prior to the deadline for submission of Tenders. Such approval shall be denied if (i) a prequalified applicant proposes to associate with a disqualified applicant or in case of a disqualified joint venture, any of its members; (ii) as a consequence of the change, the Applicant no longer substantially meets the qualification criteria set forth in Section III (Qualification Criteria and Requirements); or (iii) in the opinion of the Procuring Entity, the change may result in a substantial reduction in competition. Any such change should be submitted to the Procuring Entity not later than fourteen (14) days after the date of the Invitation to Tender.

## **31 Procurement Related Complaints and Administrative Review**

31.1 The procedures for making a Procurement-related Complaint are as specified in the PDS.

31.2 A request for administrative review shall be made in the form provided.



## SECTION II - PREQUALIFICATION DATA SHEET (PDS)

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
<b>A. General</b>	
ITA 1.1	<p>The Procuring Entity is <b>Unclaimed Financial Assets Authority (UFAA)</b></p> <p>The identification of the Invitation for Prequalification is: UFAA/PL/020/2023-2024</p> <p>The particular type of contract is on Legal Services</p> <p>The application is for provision of legal services as and when required for a period of three years – 2024-2026</p> <p>Prequalification will be based on individual</p>
ITA 2	The Source of funds shall be <u>   GOK   </u>
ITA 5.2	Maximum number of members in the JV shall be: JV NOT allowed
<b>B. Contents of the Prequalification Document</b>	
ITA 8.1	<p>For clarification purposes, the Procuring Entity's address is:  <i>Attention: <b>Chief Executive Officer &amp; Managing Trustee</b></i>  <i>Postal Address: <b>P.O. Box 28235- 00200</b></i>  <i>Physical Address: <b>Nairobi, Pacis Centre, 2<sup>nd</sup> Floor, Westlands</b></i>  <i>Telephone: 020 4023000</i>  <i>Electronic mail address: <a href="mailto:procurement@ufaa.go.ke">procurement@ufaa.go.ke</a></i>  <i>Website: <a href="http://www.ufaa.go.ke">www.ufaa.go.ke</a></i></p>
ITA 8.2	<p>A pre-application meeting will be held on <b>Not Applicable</b></p> <p>A pre-arranged Site visit will be held on <b>Not Applicable</b></p>
ITA 8.3	<p>Questions and requests for clarification made in writing or by email shall reach the Procuring Entity not later than <b>Wednesday 27<sup>th</sup> March 2024 at 5.00PM</b></p> <p>The Procuring entity shall also promptly publish the response to clarifications in the website by <b>Thursday 28<sup>th</sup> March 2024 at 5:00PM</b></p>
ITA 8.5	Minutes of the pre-arranged site visit and those of the pre-proposal meeting at the web page <b>Not Applicable</b>
ITT 9.2	Addendum issued shall be published at the website, <a href="http://www.ufaa.go.ke">www.ufaa.go.ke</a> , <a href="http://www.tenders.go.ke">www.tenders.go.ke</a> , <a href="https://eProcurement.ufaa.go.ke">https://eProcurement.ufaa.go.ke</a>
ITA 8.2	Pre-Application Meeting will be held: <b>NO</b>
<b>C. Preparation of Applications</b>	



Reference to ITC Clause	<b>PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS</b>
<b>A. General</b>	
ITA 12.1 (d)	The Applicant shall submit with its Application, the following additional documents: <b>Refer to evaluation criteria</b>
ITA 15.2(b)	The source for determining exchange rates is <i>CBK</i>
ITA 16.2	In addition to the original, the number of copies to be submitted with the Application is: <b>Not Applicable</b>  <b>Applications shall be submitted electronically through the e-Procurement Portal (<a href="https://eProcurement.ufaa.go.ke">https://eProcurement.ufaa.go.ke</a>) Only</b>
<b>D. Submission of Applications</b>	
ITA 17.1	The deadline for Application submission is: Date: <b>5<sup>th</sup> April 2024</b> Time: <b>10.30AM</b> The electronic Application submission procedures shall be:  <i>Step 1. Click the link <a href="https://eProcurement.ufaa.go.ke">https://eProcurement.ufaa.go.ke</a> and create an account</i> <i>Step 2. Use the link sent to your email after registration to confirm your account</i> <i>Step 3. Once you log into your account; you will be able to see all tenders in your dashboard</i> <i>Step 4. Open the tender that you want to apply, generate open tender, fill the necessary information/upload attachments then <b>submit quote (Input 1 as cost)</b>.</i>
ITA 18.1	N/A
ITA 19.1	The Procuring Entity will NOT accept late applications.
ITA 20.1	The opening of the Applications shall be at NAIROBI, WAIYAKI WAY, PACIS CENTRE, 2 <sup>ND</sup> FLOOR, RECEPTION AREA/BOARD ROOM 1 Date: Friday 5 <sup>th</sup> April 2024 at 10.30AM
ITA 20.2	The electronic Application opening procedures shall be: Opening Committee will log into eprocurement Nav System and open the purchase quote responses submitted.
<b>E. Procedures for Evaluation of Applications</b>	
ITA 24.1	A margin of preference <i>SHALL NOT</i> apply.
ITA 25.1	At this time the Procuring Entity <i>does not intend</i> to execute certain specific parts of the Works by sub-contractors selected in advance.
ITA 25.2	The parts of the Works for which the Procuring Entity permits Applicants to propose Specialized Subcontractors are designated as follows: Not Applicable
ITA 31.1	An Applicant wishes to make a Procurement-related Complaint, the Applicant should submit its complaint in writing (by the quickest means available, that is either by hand delivery or email), to: Title/position: <i>CEO/Managing Trustee</i>

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
<b>A. General</b>	
	<p>Procuring Entity: <i>Unclaimed Financial Assets Authority</i> Email address: <a href="mailto:procurement@ufaa.go.ke">procurement@ufaa.go.ke</a> In summary, at this stage, a Procurement-related Complaint may challenge any of the following: the terms of the Prequalification Documents; and the Procuring Entity's decision not to prequalify an Applicant.</p>

## SECTION III - QUALIFICATION CRITERIA AND REQUIREMENTS

- This section contains all the methods, criteria, and requirements that the Procuring Entity shall use to evaluate Applications.

### PART I: MANDATORY REQUIREMENTS

NO.	REQUIREMENTS	MAX SCORE	YES/ NO
1.	Duly completed prequalification forms in the format provided (Section IV).  a) Application Submission Letter b) Applicant Information Form c) Historical Contract Non-Performance, and Pending Litigation and Litigation History d) Financial Situation and Performance e) Sources of Finance & Financial documents f) Average Annual Turnover g) Service Contract Experience h) Specific service Contract Experience	Mandatory	
2.	A copy of the Certificate of Registration/Certificate of Incorporation of the Candidate	Mandatory	
3.	Evidence of Physical Address. (Attach copies of utility bills e.g.electricity/water or lease agreement/Title.)	Mandatory	
4.	Copies of valid Practicing Certificates of all partners, associate advocates, or any other advocates of the Candidate	Mandatory	
5.	Letters of Recommendation from at least Three (3) corporate clients. (Company name Client's Contact Person (email and telephone No.)	Mandatory	
6.	Audited Accounts for the last three Years (2020, 2021 & 2022)	Mandatory	
7.	Applicants MUST provide a copy of valid Kenya Revenue Authority Tax Compliance Certificate (tax compliance certificate MUST be valid at the date of tender opening)	Mandatory	
8.	Valid Copy of the Professional Indemnity Cover of at least Kshs.2,000,000.00	Mandatory	
9.	Valid copy of CR12 form for Ltd firms or equivalent CR13 form for other firms e.g., sole proprietors from registrar of companies issued <b>within the last one year.</b> <b>NB. ID copies &amp; affidavits will not be accepted.</b>	Mandatory	
10.	Registration and submission of tender document in PDF format via e-procurement portal ( <a href="https://eProcurement.ufaa.go.ke">https://eProcurement.ufaa.go.ke</a> )	Mandatory	

**An Application for Pre-qualification shall be rejected at this stage if it does not respond to the mandatory requirements. Applications for Pre-qualification that respond to the mandatory requirements will proceed to Technical evaluation.**

**PART II - TECHNICAL CRITERIA**

NO.	REQUIREMENTS	PARAMETER	MAX SCORE (Points)	CANDIDATE'S SCORE
A.	Experience in advising three (3) public institutions  Attach evidence of service level agreement or engagement letter or instruction letter or legal opinion	3 public institutions - 10 marks  2 public institutions - 7 marks  1 public institution - 3 marks	10	
B.	Value of Professional Indemnity	Kshs. 100 million and Over - 15 marks  Kshs. 50-99 Million - 10 marks  Kshs. 30-49 Million – 6 marks  Kshs. 10-29 Million - 4 marks  Kshs. 2– 9 Million - 2 marks	15	
C.	<p><b>Capacity &amp; Period of Operation of Candidate</b></p> <p><b>C1. Candidate Profile &amp; Experience</b>                      Qualifications and competence/areas of practice of Key professional staff (attach respective CVs for each with above details)</p>	<p><b>Partners – at least one partner has</b></p> <p>10 years' experience and above – 7 marks</p> <p>7-9 years' experience -5 marks</p> <p>Less than 7 years' experience – 2 marks</p> <p><b>Associates – at least one Associate has</b></p> <p>years' experience and</p> <p>Less than 4 years' experience – 3 marks</p>	30	

4  
above - 6 marks

	<p><b>C2. Size</b> Number of Partners</p> <p>Number of Associates</p> <p><b>C3. Facilities</b> Branches (provide location and staffing)</p>	<p>2 and above - 6 marks</p> <p>Under 2 – 3 marks</p> <p>6 and above – 5 marks</p> <p>3 - 5 Associates - 4 marks</p> <p>1 – 2 Associates - 3marks</p> <p>5 and above – 6 marks</p> <p>3 – 4 branches - 4 marks</p> <p>2 branches and below - 2 marks</p>		
<b>D</b>	<p>Evidence of Dispute resolution Expertise (Attach Evidence)</p> <p>Court of Appeal</p> <p>High Court</p> <p>Public Procurement Administrative Review Board</p> <p>Arbitration</p>	<p>matters – 6 marks</p> <p>1 matter - 4 marks</p> <p>2 matters - 6 marks</p> <p>1 matter- 4 marks</p> <p>2 matters – 6 marks</p> <p>1 matter- 4 marks</p> <p>2 matters – 6 marks</p> <p>1 matter – 4 marks</p> <p>2 matters – 6 marks</p> <p>1 matter – 4 marks</p>	<b>30</b>	
<b>E.</b>	<p>Audited financial statements for 3 years and duly filled financial capability form</p>	<p>2019 - 2 marks</p> <p>2020 - 2 marks</p> <p>2021 – 3 marks</p>	<b>7</b>	
<b>F.</b>	<p>Registration certificate from Access to Government Procurement Opportunities (AGPO)</p>	-	<b>5</b>	
<b>G.</b>	<p>Completeness of Pre-qualification Documents</p>	-	<b>3</b>	
			<b>100</b>	

Each responsive Application for Pre-qualification will be given a technical score (ts). An Application for Pre-qualification shall be rejected at this stage if it does not respond to important aspects of the Criteria or if it fails to achieve the minimum technical score indicated. The pass mark shall be a minimum technical score of **70 points**.

In appointment of Law Firms, Unclaimed Financial Assets Authority shall strive to appoint at least 30% of the firms in its panel from among the youth, women and persons with disability who possess a certificate of preference and fulfil the requirements for pre-qualification under this Tender document.

### **PART III FURTHER EVALUATION CRITERIA**

Unclaimed Financial Assets Authority may classify the firms of advocates for purposes of determination of the suitability of each firm for any assignment, based on the risk involved and the technical expertise required.

**A.** The classification will be as follows: -

A.1 Category A law firms – (Super-size)

- a. Has a Professional Indemnity Cover of not less than Ksh. 200 million, or
- b. Has more than fifteen (15) admitted lawyers

A.2 Category B law firms – (Large)

- a. Has a Professional Indemnity Cover of not less than Ksh. 100 million, or
- b. Has between eight (8) and fourteen (14) admitted lawyers

A.3 Category C law firms – (Medium)

- a. Has a Professional Indemnity Cover of not less than Ksh. 50 million, or
- b. Has between four (4) and seven (7) admitted lawyers

A.4 Category D law firms – (Standard)

- a. Has a Professional Indemnity Cover of not less than 2 million, or
- b. Has between one (1) and three (3) admitted lawyers

**B.** For purposes of this categorization and the Pre-Qualification Tender Document –

- B.1 'Admitted lawyers' shall mean qualified lawyers who have been admitted to the Bar and hold a valid year 2024 practicing certificate. It includes all Partners and Associates in the law firm.
- B.2 Law firms shall satisfy all relevant licensing and/or registration with Law Society of Kenya.
- B.3 Law firms shall provide such evidence of their continued eligibility satisfactory to Unclaimed Financial Assets Authority as it may reasonably request.

### **1. Post Qualification Evaluation**

Under this criterion the evaluation committee may visit the premises of the successful candidates that scored 70 points and above to ascertain: the physical existence of the candidates; verify the original documentation submitted by the candidates and any other information that may be of importance.

The applications for pre-qualification that will successfully qualify at this stage will be enlisted in the procuring entity's database as the prequalified legal service providers.

**SECTION IV- APPLICATION FORMS**

**1. Application Submission Letter**

Date: .....[insert day, month, and year]  
 ITT No. and title: ..... [insert ITT number and title]

To: .....[insert full name of Procuring Entity] We, the undersigned, apply to be prequalified for the referenced ITT and declare that:

- a) No reservations: We have examined and have no reservations to the Prequalification Document, including Addendum(s) No(s), issued in accordance with ITA 8: [insert the number and issuing date of each addendum].
- b) No conflict of interest: We have no conflict of interest in accordance with ITA 5.7;
- c) Eligibility: We (and our subcontractors) meet the eligibility requirements as stated ITA 5, we have not been suspended by the Procuring Entity based on execution of a Tender/Proposal-Securing Declaration in accordance with ITA 5.8;

Suspension and Debarment: We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the PPRA. Further, we are not ineligible under the Kenya laws or official regulations or pursuant to a decision of the United Nations Security Council;

State-owned enterprise or institution: [select the appropriate option and delete the other] [We are not a state-owned enterprise or institution] / [We are a state-owned enterprise or institution but meet the requirements of ITA5.9];

- f) Subcontractors and Specialized Subcontractors: We, in accordance with ITA 24.2 and 25.2, plan to subcontract the following key activities and/or parts of the works or supply contracts: ..... [Insert any of the key activities identified in Section III-4.2 (a)or(b) or 4.3(a) or (b) which the Procuring Entity has permitted under the Prequalification Document and which the Applicant intends to subcontract along with complete details of the Specialized Subcontractors, their qualification and experience]
- (g) Commissions, gratuities, fees: We declare that the following commissions, gratuities, or fees have been paid or are to be paid with respect to the prequalification process, the corresponding Tendering process or execution of the Contract:

<u>Name of Recipient</u>	<u>Address</u>	<u>Reason</u>	<u>Amount</u>
[insert full name for each occurrence]	[insert street/ number/city/country]	[indicate reason]	[specify amount currency, value, exchange rate and KENYA SHILLING equivalent]
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

[If no payments are made or promised, add the following statement: "No commissions or gratuities have been or are to be paid by us to agents or any third party relating to this Application"]



- (h) Not bound to accept: We understand that you may cancel the prequalification process at any time and that you are neither bound to accept any Application that you may receive nor to invite the prequalified Applicants to Tender for the contract subject of this Prequalification process, without incurring any liability to the Applicants, in accordance with ITA 26.1.
- (i) True and correct: All information, statements and description contained in the Application are in all respect true, correct and complete to the best of our knowledge and belief.

Signed.....*[insert signature(s) of an authorized representative(s) of the Applicant]*

Name .....*[insert full name of person signing the Application]*

In the capacity of ..... *[insert capacity of person signing the Application]*

Duly authorized to sign the Application for and on behalf of: Applicant's Name.....

*[insert full name of Applicant or the name of the JV]*

Address ..... *[insert street number/town or city/country address]*

Dated on .....*[insert day number]* day of *[insert month]*, *[insert year]*

*[For a joint venture, either all members shall sign or only the authorized representative, in which case the power of attorney to sign on behalf of all members shall be attached]*

## 2 Form ELI -1.1 - Applicant Information Form

Date: ..... *[insert day, month, year]*

ITT No. and title: ..... *[insert ITT number and title]*

Page.....*[insert page number]* of *[insert total number]* pages

Applicant's name <i>[insert full name]</i>
In case of Joint Venture (JV), name of each member: <i>[insert full name of each member in JV]</i>
Applicant's actual or intended country of registration: <i>[indicate country of Constitution]</i>
Applicant's actual or intended year of incorporation: <i>[indicate year of Constitution]</i>
Applicant's legal address [in country of registration]: <i>[insert street/ number/ town or city/ country]</i>
Applicant's authorized representative information Name: <i>[insert full name]</i> Address: <i>[insert street/ number/ town or city/ country]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers, including country and city codes]</i> E-mail address: <i>[indicate e-mail address]</i>
1. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITA 5.6. <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITA 5.3. <input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with ITA 5.9 documents establishing: Legal and financial autonomy Operation under commercial law Establishing that the Applicant is not under supervision of the Procuring Entity 2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

**3. Form ELI-1.2 - Applicant's JV Information Form – Not applicable (Joint Venture Not allowed)**

*[The following form is additional to Form ELI-1.1., and shall be completed to provide information relating to each JV member (incase the Applicant is a JV) as well as any Specialized Subcontractor proposed to be used by the Applicant for any part of the Contract resulting from this prequalification]*

Date: ..... *[insert day, month, year]*

ITT No. and title: ..... *[insert ITT number and title]*

Page.....*[insert page number]* of *[insert total number]*

pages

Applicant name: <i>[insert full name]</i>
Applicant's JV Member's name: <i>[insert full name of Applicant's JV Member]</i>
Applicant's JV Member's country of registration: <i>[indicate country of registration]</i>
Applicant JV Member's year of constitution: <i>[indicate year of constitution]</i>
Applicant JV Member's legal address in country of constitution: <i>[insert street/ number/ town or city/ country]</i>
Applicant JV Member's authorized representative information Name: <i>[insert full name]</i> Address: <i>[insert street/ number/ town or city/ country]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers, including country and city codes]</i> E-mail address: <i>[indicate e-mail address]</i>
1. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITA 5.6 <input type="checkbox"/> In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and they are not under the supervision of the Procuring Entity, in accordance with ITA 5.9. 2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

#### 4. Form CON 2 - Historical Contract Non-Performance, and Pending Litigation and Litigation History

[The following table shall be filled in for the Applicant and for each member of a Joint Venture]

Applicant's Name: [insert full name]

Date: [insert day, month, year]

Joint Venture Member's Name: [insert full name]

ITT No. and title: [insert ITT number and title]

Page [insert page number] of [insert total number] pages

Non-Performed Contracts			
<input type="checkbox"/> Contract non-performance did not occur since <b>1<sup>st</sup> January 2019</b> <input type="checkbox"/> Contract(s) not performed since <b>1<sup>st</sup> January 2019</b> as indicated below			
Year	Non- performed portion of contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and KENYA SHILLING equivalent)
[insert year]	[insert amount and percentage]	Contract Identification: [indicate complete contract name/ number, and any other identification] Name of Procuring Entity: [insert full name] Address of Procuring Entity: [insert street/city/country] Reason(s) for nonperformance: [indicate main reason(s)]	[insert amount]
Pending Litigation			
<input type="checkbox"/> No pending litigation <input type="checkbox"/> Pending litigation as indicated below.			
Year of dispute	Amount in dispute (currency)	Contract Identification	Total Contract Amount (currency), USD Equivalent (exchange rate)
[insert year]	[insert amount]	Contract Identification: [indicate complete contract name, number, and any other identification] Name of Procuring Entity: [insert full name] Address of Procuring Entity: [insert street/city/country] Matter in dispute: [indicate main issues in dispute] Party who initiated the dispute: [indicate "Procuring Entity" or "Contractor"] Status of dispute: [Indicate if it is being treated by the Adjudicator, under Arbitration or being dealt with by the Judiciary]	[insert amount]
Litigation History			
<input type="checkbox"/> No Litigation History <input type="checkbox"/> Litigation History as indicated below.			

Year of award	Outcome as percentage of Net Worth	Contract Identification	Total Contract Amount (currency), USD Equivalent (exchange rate)
<i>[insert year]</i>	<i>[insert percentage]</i>	Contract Identification: <i>[indicate complete contract name, number, and any other identification]</i> Name of Procuring Entity: <i>[insert full name]</i> Address of Procuring Entity: <i>[insert street/city/country]</i> Matter in dispute: <i>[indicate main issues in dispute]</i> Party who initiated the dispute: <i>[indicate "Procuring Entity" or "Contractor"]</i> Reason(s) for Litigation and award decision <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>

Note:

1. Nonperformance, as decided by the Procuring Entity, shall include all contracts where (a) nonperformance was not challenged by the service provider, including through referral to the dispute resolution mechanism under the respective contract, and (b) contracts that were so challenged but fully settled against the contractor. Nonperformance shall not include contracts where Procuring Entity's decision was overruled by the dispute resolution mechanism. Nonperformance must be based on all information on fully settled disputes or litigation, i.e. dispute or litigation that has been resolved in accordance with the dispute resolution mechanism under the respective contract and where all appeal instances available to the applicant have been exhausted.
2. The Applicant shall provide accurate information on the related Application Form about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the last five years. A consistent history of awards against the Applicant or any member of a joint venture may result in rejection of the Application.

**5. Form FIN – 3.1 - Financial Situation and Performance**

**Financial Situation and Performance**

*[The following table shall be filled in for the Applicant and for each member of a Joint Venture]*

Applicant's Name: ..... *[insert full name]*

Date: ..... *[insert day, month, year]*

Joint Venture Member Name: ..... *[insert full name]*

ITT No. and title: ..... *[insert ITT number and title]*

Page..... *[insert page number]* of *[insert total number]* pages

**1. Financial data**

Type of Financial information in Ksh.	Historic information for previous 5 (five) years,				
	Year 1 2019	Year 2 2020	Year 3 2021	Year4 2022	Year 5 2023
Statement of Financial Position (Information from Balance Sheet)					
Total Assets (TA)					
Total Liabilities (TL)					
Total Equity/Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
Working Capital (WC)					
Information from Income Statement					
Total Revenue (TR)					
Profits Before Taxes (PBT)					
Cash Flow Information					
Cash Flow from Operating Activities					

\* Refer ITA 14 for the exchange rate

## 5.2 Sources of Finance

[The following table shall be filled in for the Applicant and all parties combined in case of a Joint Venture]

Specify sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.

No.	Source of finance	Amount (Kenya shilling equivalent)
1		
2		
3		

## 5.3 Financial documents

The Applicant and its parties shall provide copies of financial statements for *THREE* years (2020, 2021 & 2022) The financial statements shall:

- a) reflect the financial situation of the Applicant or in case of JV member, and not an affiliated entity (such as parent company or group member).
  - b) Be independently audited or certified in accordance with local legislation.
  - c) Be complete, including all notes to the financial statements.
  - d) Correspond to accounting periods already completed and audited.
- Attached are copies of financial statements for the [number] years required above; and complying with the requirements



## 6 Form FIN - 3.2 - Average Annual Service Contracts Turnover

[The following table shall be filled in for the Applicant and for each member of a Joint Venture] Applicant's

Name: ..... [insert full name]

Date: ..... [insert day, month, year]

Joint Venture Member Name: ..... [insert full name]

ITT No. and title: [insert ITT number and title]

Page.....[insert page number] of .....[insert total number] pages Table A (Complete if

Contractor)

Annual turnover data (service contracts)	
Year	Amount Currency ( Ksh)
2019	
2020	
2021	
2022	
2023	
	Average Annual Turnover **

\*\* Total Kenya shilling equivalent for all years divided by the total number of years.

## 7 Form EXP - 4.1 – Service Contract Experience

[The following table shall be filled in for the Applicant and in the case of a JV Applicant, each Member]

Applicant's Name: [insert full name]

Date: ..... [insert day, month, year]

Joint Venture Member Name: ..... [insert full name]

ITT No. and title: ..... [insert ITT number and title]

Page ..... [insert page number] of [insert total number] pages

[Identify contracts that demonstrate continuous construction work over the past **FIVE** years List contracts chronologically, according to their commencement (starting) dates.]

Starting Year	Ending Year	Contract Identification	Role of Applicant
[indicate year]	[indicate year]	Contract name: [insert full name] Brief Description of the Works performed by the Applicant: [describe works performed briefly] Amount of contract: [insert amount in currency, mention currency used, exchange rate and KENYA SHILLING equivalent*] Name of Procuring Entity: [indicate full name] Address: [indicate street/number/town or city/country]	[insert "Prime Contractor" or "JV Member" or "Sub-contractor" or "Management Contractor"]
		Contract name: [insert full name] Brief Description of the Works performed by the Applicant: [describe works performed briefly] Amount of contract: [insert amount in currency, mention currency used, exchange rate and KENYA SHILLING equivalent*] Name of Procuring Entity: [indicate full name] Address: [indicate street/number/town or city/country]	[insert "Prime Contractor" or "JV Member" or "Sub-contractor" or "Management Contractor"]
		Contract name: [insert full name] Brief Description of the Works performed by the Applicant: [describe works performed briefly] Amount of contract: [insert amount in currency, mention currency used, exchange rate and Kenya shillings equivalent*] Name of Procuring Entity: [indicate full name] Address: [indicate street/number/town or city/country]	[insert "Prime Contractor" or "JV Member" or "Sub-contractor" or "Management Contractor"]

\* Refer ITA 15 for date and source of exchange rate.

## 8 Form EXP - 4.2(a) - Specific service Contract Experience

*[The following table shall be filled in for contracts performed by the Applicant, each member of a Joint Venture, and Specialized Sub-contractors]*

Applicant's Name: ..... *[insert full name]*

Date: ..... *[insert day, month, year]*

Joint Venture Member Name: ..... *[insert full name]*

ITT No. and title: ..... *[insert ITT number and title]*

Page..... *[insert page number]* of..... *[insert total number]* pages

Similar Contract No. <i>[insert number] of [insert number of similar contracts required]</i>	Information			
Contract Identification	<i>[insert contract name and number, if applicable]</i>			
Award date	<i>[insert day, month, year, e.g., 15 June, 2015]</i>			
Completion date	<i>[insert day, month, year, e.g., 03 October, 2017]</i>			
Role in Contract <i>[check the appropriate box]</i>	Prime Contractor <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management Contractor <input type="checkbox"/>	Sub-contractor <input type="checkbox"/>
Total Contract Amount	<i>[insert total contract amount in local currency]</i>		KENYA SHILLING <i>[insert Exchange rate and total contract amount in KENYA SHILLING equivalent] *</i>	
If member in a JV or sub-contractor, specify share in value in total Contract amount and roles and responsibilities	<i>[insert a percentage amount]</i>	<i>[insert total contract amount in local currency]</i>	<i>[insert exchange rate and total contract amount in KENYA SHILLING equivalent] *</i>	
Procuring Entity's Name:	<i>[insert full name]</i>			
Address:	<i>[indicate street / number / town or city / country]</i>			
Telephone/fax number	<i>[insert telephone/fax numbers, including country and city area codes]</i>			
E-mail:	<i>[insert e-mail address, if available]</i>			

**9 Form EXP - 4.2(a) (cont.) - Specific Construction and/or Contract Management Experience (cont.) – Not Applicable**

<b>Similar Contract No.</b> <i>[insert number] of [insert number of similar contracts required]</i>	<b>Information</b>
Description of the similarity in accordance with Sub-Factor 4.2(a) of Section III:	
1. Amount	<i>[insert amount in local currency, exchange rate, KENYA SHILLING in words and in Figures]</i>
2. Physical size of required works items	<i>[insert physical size of items]</i>
3. Complexity	<i>[insert description of complexity]</i>
4. Methods/Technology	<i>[insert specific aspects of the methods/technology involved in the contract]</i>
5. Construction rate for key activities	<i>[insert rates and items]</i>
6. Other Characteristics	<i>[insert other characteristics as described in Section VII, Scope of Works]</i>

**10 Form EXP - 4.2(b) - Construction Experience or Supply or service contract in Key Activities – Not Applicable**

Applicant's Name: ..... *[insert full name]*

Date: ..... *[insert day, month, year]*

Applicant's JV Member's Name: ..... *[insert full name]*

Sub-contractor's Name..... (as per ITA 24.2 and 24.3): *[insert full name]*

ITT No. and title: ..... *[insert ITT number and title]*

Page.....*[insert page number]* of..... *[insert total number]*

pages

All Sub-contractors for key activities must complete the information in this form as per ITA 24.2 and 24.3 and Section III, Qualification Criteria and Requirements, 4.2.

- Key Activity No. One: *[insert brief description of the Activity, emphasizing its specificity]*  
Total Quantity of Activity under the contract: \_\_\_\_\_

	Information			
Contract Identification	<i>[insert contract name and number, if applicable]</i>			
Award date	<i>[insert day, month, year, e.g., 15 June, 2015]</i>			
Completion date	<i>[insert day, month, year, e.g., 03 October, 2017]</i>			
Role in Contract <i>[check the appropriate box]</i>	Prime Contractor <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management Contractor <input type="checkbox"/>	Sub-contractor <input type="checkbox"/>
Total Contract Amount	<i>[insert total contract amount in contract currency(ies)]</i>		KENYA SHILLING <i>[insert exchange rate and total contract amount in KENYA SHILLING equivalent]</i>	
Quantity (Volume, number or rate of production, as applicable) performed under the contract per year or part of the year <i>[Insert extent of participation indicating actual quantity of key activity successfully completed in the role performed]</i>	Total quantity in the contract (i)	Percentage participation (ii)		Actual Quantity Performed (i) x (ii)
Year 1				
Year 2				
Year 3				
Year 4				

Procuring Entity's Name:	<i>[insert full name]</i>
Address: Telephone/fax number E-mail:	<i>[indicate street / number / town or city / country] [insert telephone/fax numbers, including country and city area codes] [insert e-mail address, if available]</i>

2. Activity No. Two

3. ....

	Information
Description of the key activities in accordance with Sub-Factor 4.2(b) of Section III:	
	<i>[insert response to inquiry indicated in left column]</i>

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## **PART 2 - NON - CONSULTING SERVICES REQUIREMENTS**

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## SECTION V - SCOPE OF LEGAL SERVICES REQUIRED

### Introduction

- a) UFAA will pre-qualify and enlist Candidates for the provision of Legal Services from among those who will have submitted their pre-qualification documents in accordance with the pre-qualification requirements to undertake the assignments described herein for **TWO (2) years. Firms already prequalified through tender no. UFAA/PL/016/2022-23 in March 2023 need not reapply – check www.ufaa.go.ke.**
- b) The pre-qualification of legal service providers does not constitute a retainer.
- c) The pre-qualification document and the Candidates response thereof shall be the basis for pre-qualification.
- d) Candidates must familiarize themselves with the requirements described in this document including all attachments and take them into account while preparing their application for pre-qualification.
- e) Candidates will be informed in writing of the results of their application for pre-qualification.
- f) Candidates will meet all costs associated with preparation and submission of their applications for pre-qualification.
- g) Candidates who have previously been on the UFAA list of registered suppliers and not prequalified through tender no. UFAA/PL/016/2022-23 should also apply for reconsideration.
- h) It is UFAA's policy to require that Candidates observe the highest standards of ethics and professionalism in the procurement process and execution of Service Level Agreements. In pursuance of this policy, UFAA:
  - 1.1 Defines, for the purpose of this provision, the terms set forth below:
    - "Corrupt practice"** means the offering, giving, receiving or soliciting of anything of value to influence the action of an officer of the UFAA/ Candidate/ in the Pre-qualification process; and
    - "Fraudulent practice"** means a misrepresentation of facts in order to influence the Pre-qualification process to the detriment of the Candidate/UFAA, and includes collusive practices among Candidates (prior to or after submission of Pre-qualification documents) designed to establish prices at artificial, non-competitive levels and to deprive UFAA of the benefits of free and open competition.
  - 2.1 UFAA will reject an Application for Pre-qualification if it determined that a Candidate has engaged in corrupt or fraudulent activities in competing for the tender in question;
  - 3.1 UFAA will declare a Candidate ineligible, for Pre-qualification if at any time it determines that a Candidate has engaged in corrupt or fraudulent practices in competing for, or in executing, a similar Pre-qualification; and
  - 4.1 UFAA will have the right to examine financial or other records relating to the performance of legal services to determine capability;
  - 5.1 UFAA will have the right to inspect the business premises of the Candidate.
- i) Candidates shall furnish information as described in the Pre-qualification document.
- j) Candidates shall be aware of the provisions on fraud and corruption stated in herein after.

### 2. Professional Qualifications

The Partners and Associate Advocates of a Candidate must be active members of the Law Society of Kenya with current Practicing Certificates. Candidates should not have any pending disciplinary cases at the Advocates Complaint's Commission or at the Advocates Disciplinary Tribunal.



Due diligence will be carried out to ensure that the Candidates comply with this provision.

### **3. Professional Insurance Indemnity**

Candidates must have taken out a valid Professional Insurance Indemnity of not less than Kshs.2,000,000.00 (Kenya Shillings Two Million) subject to an upward review depending on the brief at hand.

### **4. Expertise**

Candidates must be ranked highly by their peers as well as have proven experience of rendering legal services. While it is important for the lead partners of the Candidate to be experienced, the qualification of other members of the firm who will be performing the majority of the legal services should also be of high standard. This includes associates, research assistants and paralegals within the Candidate's firm.

### **5. Scope of Legal Services**

5.1 The legal services being procured include but are not limited to: Civil Litigation and Practice, Commercial Law, Construction Law, Public Procurement and Asset Disposal Law, Labour Law, Constitutional Law, Arbitration & Alternative Dispute Resolution Law and Practice, Tax Law, Land Law & Conveyancing, Public and Private Law, Partnership Law, International Law, Project Finance, and Environmental Law.

5.2 Candidates should attach their profiles stating the type of cases/matters handled. The profile should indicate experience in handling matters before the different courts, Tribunals, quasi-judicial bodies and adjudicating bodies as established by either the Constitution or an Act of Parliament including Arbitrations.

5.3 The Candidates should also provide a list of clients handled which should include government departments and parastatals, international companies and private organizations; and the types of matters handled.

### **6. Candidate's History**

- a. Period for which the Candidate has been in operation
- b. Number of partners and their standing in the bar
- c. Number of Associates and their standing in the bar
- d. Number of pupils
- e. Number of paralegal staff
- f. Number of support staff
- g. Areas of Practice & Specialization including regional preference
- h. Whether the Candidate by itself or its lawyers/advocates are members of an international consortium of lawyers or members of international legal bodies.

### **7. Facilities**

The Candidate should possess facilities like access to online law reports or other legal resources, computers, internet connectivity etc, to enable them provide adequate services and facilitate real-time communication.

### **8. Payment of Fees/Costs**

8.1 UFAA will consider Candidates that offer the right balance of value for money as measured by the quality of legal service offered. Candidates will be required to identify ways in which legal costs for any significant or complex matter can be mitigated and be willing to negotiate on the same within the Advocates Remuneration Order, 2014 or any replacement thereof.

8.2 The payment of fees will be based on the Advocates Remuneration Order, capped or as may be agreed between the Candidate and UFAA. The mode of billing shall be as per the terms of the Service Level Agreement between the Candidate and UFAA and subject to prior agreement between the Candidate and UFAA

## **9. Litigation against UFAA**

The Candidate should disclose if they are engaged with past or pending litigation matters against UFAA and the nature of the litigation in order to avoid conflict of interest. The Candidate should declare any conflict of interest.

## **10. Ability to Work Closely with UFAA Legal Department**

The pre-qualified Candidates will be required to work closely with the Corporation Secretary & Head of Legal Services to ensure effective communication. The pre-qualified Candidates are required to put in place the necessary mechanism to facilitate continuous communication and to ensure timely feedback/reporting on the progress of matters is efficient. Quarterly reports will be required in respect of litigation matters to be submitted no later than the first week of every quarter.

## **11. Monitoring and Evaluation**

The pre-qualified Candidates must agree to be monitored through regular client satisfaction surveys in order to ensure that they maintain high standards of service. The Candidates must give regular reports to UFAA. The Candidates must enter into Service Level Agreements with UFAA once they are formally instructed.

## **12. Clarifications of Pre-qualification documents**

Candidates may request a clarification on the Pre-qualification document up to seven (7) days before the date of the Application for Pre-qualification submission deadline. Any request for clarification must be sent in writing by postal mail or electronic mail to the UFAA's address which are as follows: [procurement@ufaa.go.ke](mailto:procurement@ufaa.go.ke)

UFAA will respond in writing by normal postal mail or electronic mail to such requests and will send copies of the response to all Candidates who intend to submit Applications for Pre-qualification.

## **13. Preparation of Pre-Qualification Documents**

13.1 Candidates are requested to submit a Tender written in English language.

13.2 Candidates are expected to examine the documents comprising this Pre-qualification in detail. Material deficiencies in providing the information requested may result in rejection of an Application for Pre-qualification.

13.3 Candidates are required to meet the Pre-qualification criteria stipulated hereinafter. Those who do not meet the requirements need not submit Applications for Pre-qualification. Only Candidates, who fulfill these requirements, will be considered for detailed evaluation.

13.4 The Pre-qualification documents shall not include any financial proposal information other than audited accounts.

## **14. Period of Validity**

The Application for Pre-qualification must remain valid for not less than one hundred and twenty (120) days from the date of submission deadline. UFAA will make best effort to complete the evaluation and communicate within thirty days from the date of submission deadline but in any event within the validity period.

**Request For Review**

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

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

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

**BETWEEN**

.....**APPLICANT**

**AND**

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

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

**REQUEST FOR REVIEW**

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

- 1.
- 2.

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

- 1.
- 2.

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

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

**SIGNED**

**Board Secretary**

# UFAA EPROCUREMENT PORTAL GUIDE

**Step 1.** Click the link <https://eProcurement.ufaa.go.ke> to access the portal

**Step 2.** Register as a new supplier by filling in the required registration details

**Step 3.** Submit and wait for account activation link sent to the email used upon registration

Log in to the email account used upon registration to find the link sent from [suppliersregistration@ufaa.go.ke](mailto:suppliersregistration@ufaa.go.ke) follow the instructions of the email to activate your account.

**Step 4.** After activation of the email account log in to the Eprocurement portal next access your profile and complete all the steps by filling in the required information and submit for approval (**You will be required to attach mandatory documents**) NB: Open Tender, RFP process and Restricted tender may be applied for even before approval is given by UFAA upon submitting profile details.

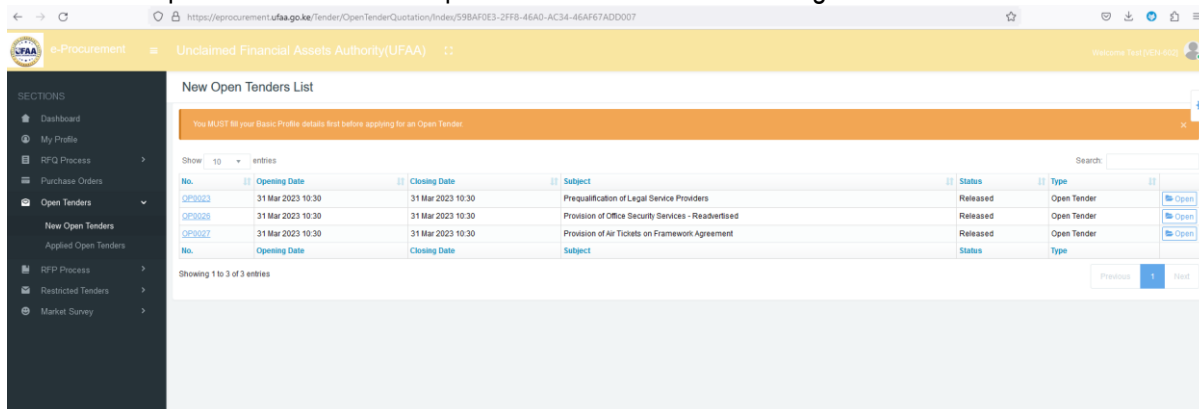
**Step 5.** Once approval is given from UFAA you will be able to see the RFQ Process and apply for the same.

## Bid submission process (Applies for Open tender and the rest)

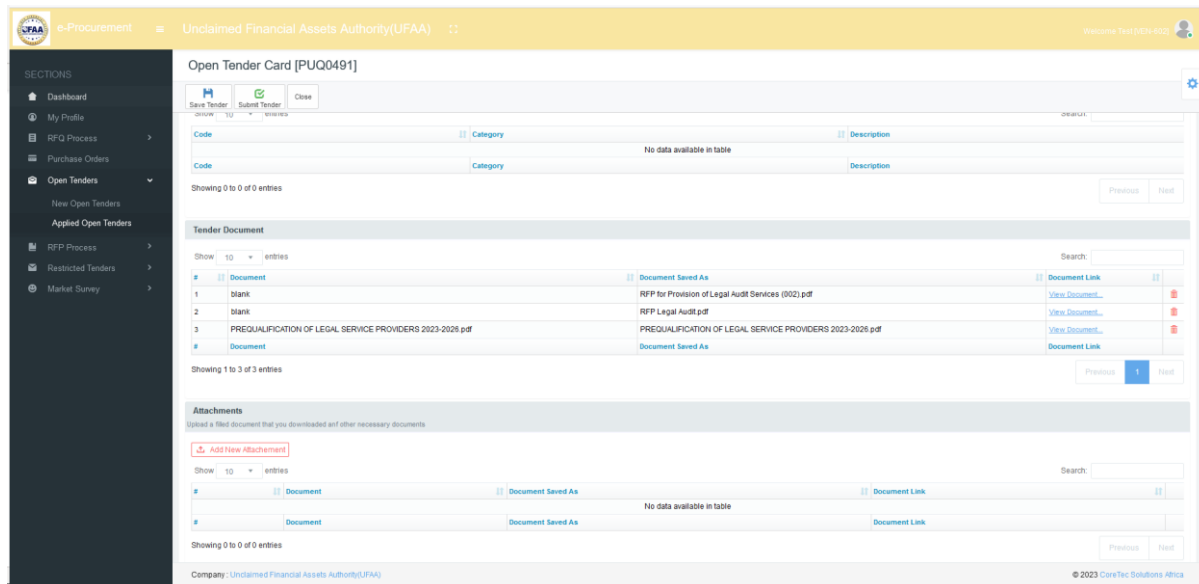
For Open Tender proceed to expand the Open Tender drop down to reveal

*New Open Tenders and Applied Open Tenders*

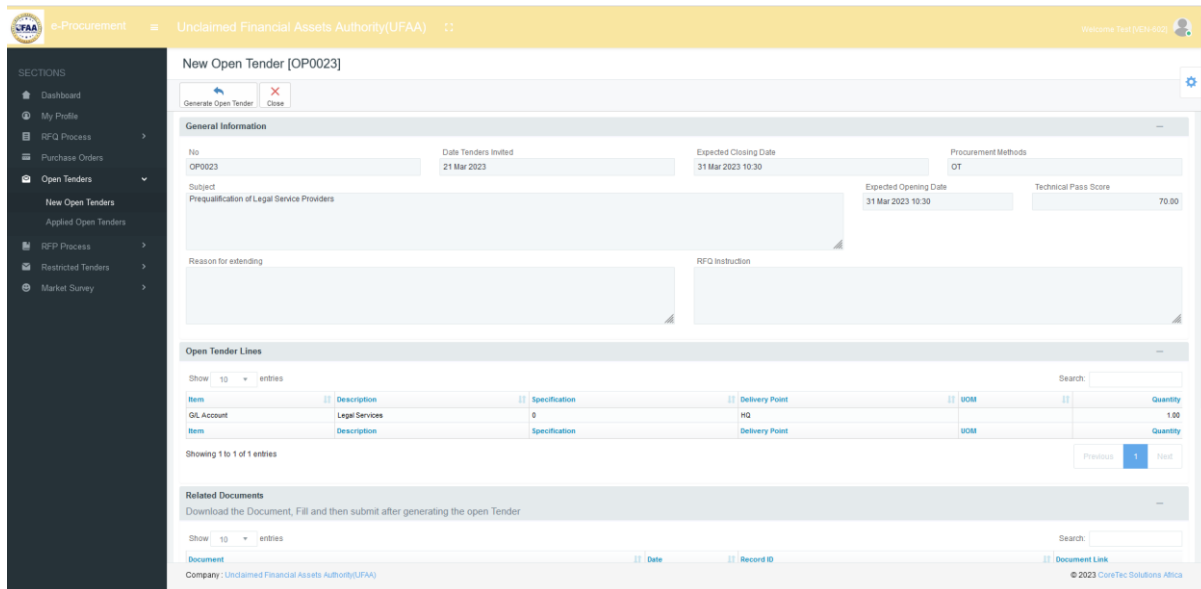
Select New Open Tenders to list all Open tenders available for Bidding



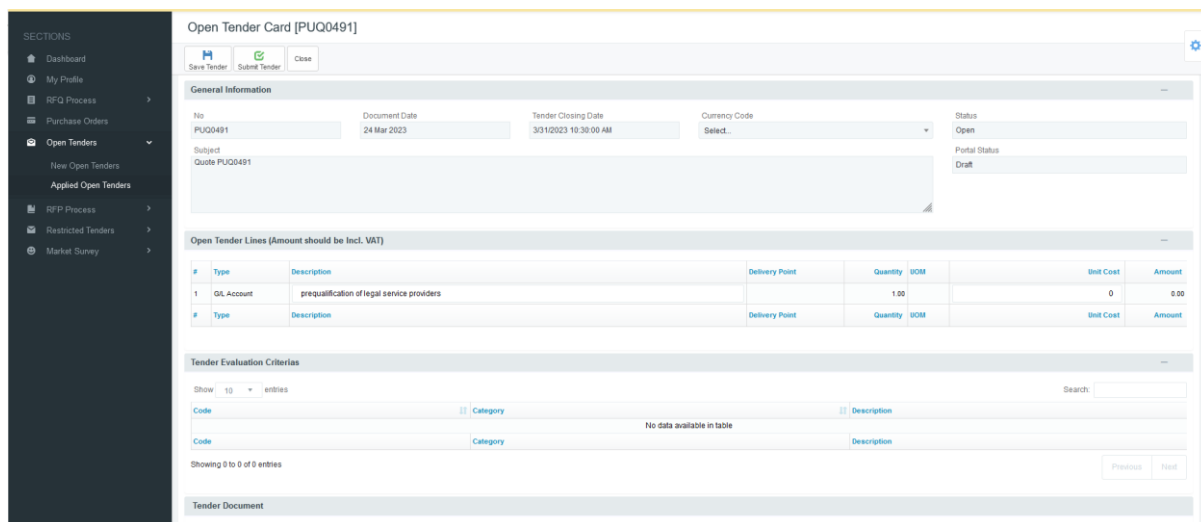
From the list of new open tenders select your interest by clicking the open tab at the far end to your right. Once you open the tender scroll down to find the document link where you will be able to download the tender. As seen below



Next click on the Generate open tender tab on the top of the page as seen below.

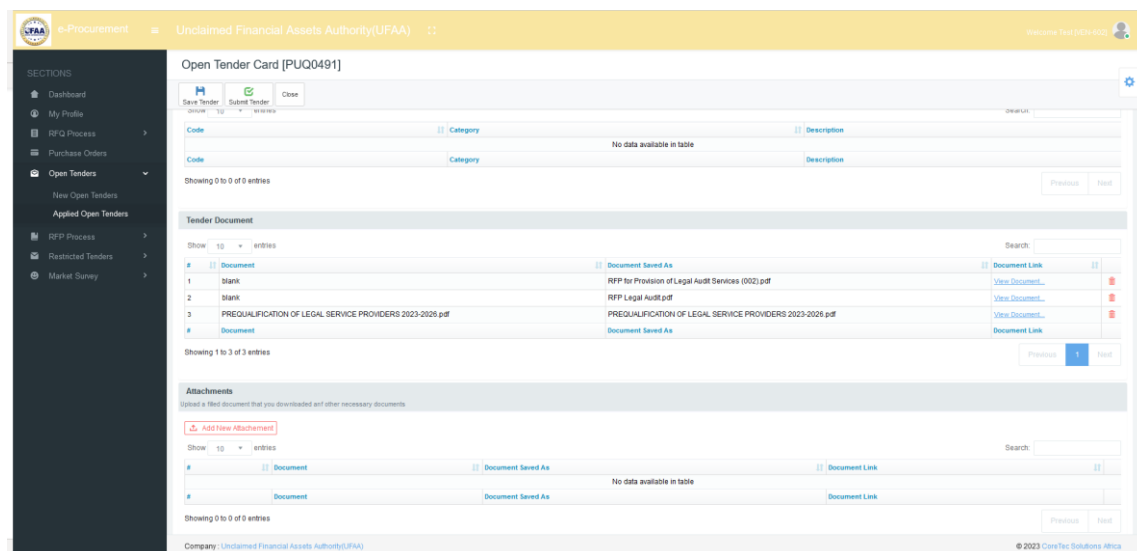


Once the Open Tender Quote is generated proceed to fill in the unit cost.



Under unit cost avoid putting commas and decimal points to the figure. E.g., Do not put 2,000 or 2000.00 use this format 2000. For prequalification, framework agreements and registration input 1

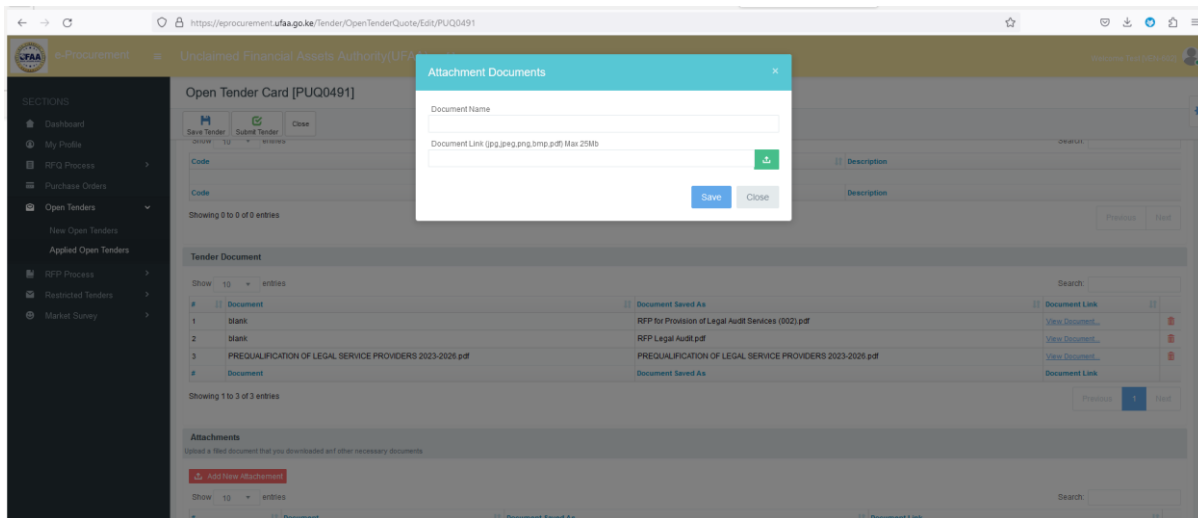
Proceed to scroll down the page to find Attachments.



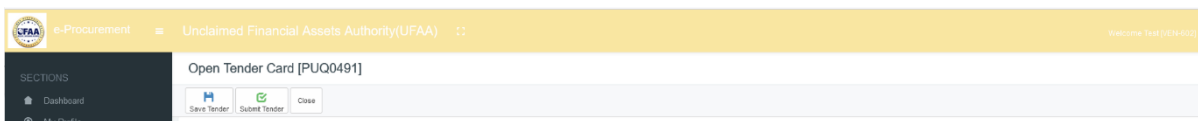
Click on the add new attachment link to upload files as seen above.

Please note files uploaded accept this formats only (jpg,jpeg,png,bmp,pdf)

Also, max document per upload is 25mb



Attach supporting documents as per the tender evaluation criteria from the Tender document.



Once you are done uploading supporting tender documents click on the save Tender button at the top and submit the Tender to finalize.

**NOTE:**

**PHYSICAL AND EMAIL SUBMISSIONS WILL NOT BE ACCEPTED. ENSURE BIDS ARE SUBMITTED THROUGH THE EPROCUREMENT PORTAL EARLY TO AVOID LAST MINUTE TECHNICAL CHALLENGES.**

In case of any challenge do call (0204023140) or Email [procurement@ufaa.go.ke](mailto:procurement@ufaa.go.ke) for further assistance.

Regards

UFAA procurement