



PRIVATIZATION COMMISSION

Enhancing Kenya's Productive Capacity

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REF: PC/030/2018-2019 & PC/031/2018-2019

3rd May 2019

TO: All Consultants Participating in the RFPs

**RE: ADDENDUM NO. 1 - CLARIFICATIONS FOR RFPs NO.:
PC/030/2018-2019 – PROVISION OF CONSULTANCY SERVICES
ON THE PRIVATIZATION OF THE PUBLIC SECTOR
OWNED/CONTROLLED SUGAR COMPANIES {SOUTH NYANZA,
NZOIA, CHEMELIL, MUHORONI (IN RECEIVERSHIP) AND MIWANI
(IN RECEIVERSHIP) &
PC/031/2018-2019 - PROVISION OF CONSULTANCY
SERVICES ON THE PRIVATIZATION OF AGRO CHEMICAL AND
FOOD COMPANY (ACFC).**

During the pre-bid conference for the above mentioned RFPs held at the Commission's Boardroom on 3rd May 2019, some queries were raised by the Consultants present and clarifications to the queries given by the Commission. The clarifications constitute this addendum which is issued by the Commission and forms part of the RFPs in accordance with Section 75 of the Public Procurement and Asset Disposal Act 2015.

The Commission clarifies as follows: -

Question 1:

Will the Commission avail all the previous studies and information pertaining to these transactions?

Response: The Commission requires the consultant that will be successful to seek new information and produce new reports as previous reports that were done are outdated. So the Commission will not avail any previous reports as they are outdated and not relevant.

Question 2

Does the Government intend to retain some shareholding in these companies to be privatized?

Response: Yes as per the approved recommendations, the GOK will 25% of the sugar companies' shareholding which it may decide to sell later through an Initial Public Offer (IPO) or any other method determined at the time of sale to meet the sugar industry's and the country's strategic objectives. In a future sale, part of this shareholding would be reserved for farmers, depending on their ability to buy and the needs of the companies

For ACFC, the percentage to be retained by the Government will be guided and informed by the privatization options/recommendations approved by the Cabinet.

Question 3:

For ACFC, are the consultants required to give an indication of the valuation?

Response: Yes as part of the deliverables, the Consultant shall be required to prepare a Fixed Asset Valuation report and review financial performance parameters and projection necessary for financial/business valuation of the company

Question 4:

Will the Tax and Human Resource due diligence be required as they are not mentioned in the RFP document?

Response: Yes, both shall be required as they form part of the financial and operational due diligence. However, there shall be no additional marks for proposing HR specialists who are not mentioned in the RFP documents.

Question 5:

What happens if the lead consultant does not have all the expertise?

Response: The lead consultant/Team Leader/Project Co-ordinator must demonstrate that he/she as an individual possesses the requisite expertise as per the requirements of the RFP document.

Question 6:

What if the lead consultant/Team Leader/Project/Co-ordinator is not a Certified Public Accountant Kenya (CPA K)?

Response: Chartered Certified Accountants (ACCA – UK), Chartered Financial Analyst (CFA) or any other relevant professional body qualifications will be acceptable.

Question 7:

Will the Commission when evaluating the proposals for the sugar companies categorize them as five (5) different companies?

Response: No, the five (5) sugar companies have been grouped together and shall be handled as one transaction and the consultant shall submit their proposal as one tender and not for five different companies.

What are key Procurement Items on the RFP documents that the Consultants must take of?

Response: The following are the key areas the Consultants need not forget.

- a) The RFP shall close on 14th May 2019 at 11.00 a.m. The Consultants are advised to observe the deadline as late tenders shall be returned unopened.
- b) The tender security for the RFP for ACFC is Kshs. 50,000.00 while that of the Public Sector Owned Sugar Companies is Kshs. 250,000.00. The tender securities must be submitted in the formats prescribed in the RFP documents and must remain valid for 30 days beyond the tender validity period.
- c) The tender security shall be submitted together with the technical proposal. The tender security shall not and whatsoever should not be submitted together with the financial proposal
- d) Consultants shall submit one original and copy of both the technical and financial proposal.
- e) Ensure proposals are serialized.
- f) Letters of reference shall be authentic and on the client's letter heads.

Question 9:

Can a Consultant partner with a foreign firm? Is there any restriction that the lead firm has to be local?

Response: Yes, a Consultant can partner with a foreign firm but preference and reservation provisions enshrined in the Public Procurement and Assets Disposal Act 2015 will apply in line with

clause 2.8.4 in the Section 'Information to Consultants' in the RFP documents.

Question 10:

For the sugar companies RFP, what was the approved privatization option? And will the successful bidder be limited to the approved option? Or are we allowed to suggest alternative options, should the approved one not seem viable?

Response: To improve the competitiveness and future sustainability of the Government owned/controlled sugar companies, the recommendations approved by the Cabinet and subsequently by Parliament are outlined below:

- (a) Sale of 51% shareholding of each of the sugar companies to a strategic partner/s. This took into account the fact that the farmers were unlikely to be able to pay for their shares at the time of sale and that the law prohibits sale of shares on credit hence the shares reserved for farmers would remain under Government warehousing. It also took into account that, any sale to the strategic partner that is less than 51% would maintain the company as a state corporation making it difficult to attract a strategic partner.
- (b) Sale of 24% of the shares to Outgrowers and Employees Trust with a further 6% shareholding reserved for the Trust if the Government decides to sale its remaining shares at a later date. As the farmers are unlikely to mobilize adequate resources to buy the allotted shares immediately, the shares would continue to be held for them by the Government and released as and when the Trust is ready to buy. In this respect, a moratorium of three years was approved by the Cabinet and Parliament during which the Trust would be able to buy the shares at the price at which they were sold to the strategic partner. After the moratorium period, the shares would be sold to the Trust at market price that will reflect the market valuation of the shares of the rehabilitated companies.
- (c) Retention by the Government of 25% of the sugar companies' shareholding which it may decide to sell later through an Initial Public Offer (IPO) or any other method determined at the time of sale to meet the sugar industry's and the country's strategic objectives. In a future sale, part of this shareholding would be reserved for farmers, depending on their ability to buy and the needs of the companies.

- (d) Amendment of the Sugar Act 2001 to repeal the clause which requires that the Outgrowers should hold 51% of a privatized sugar company shareholding as well as appoint 51% of directors of the privatized companies. This provision would work well only if the farmers were able to raise funds to purchase 51% of the current shareholding of the company and also mobilize at least 51% of the resources required for the rehabilitation and expansion of the factories. Investors are unlikely to invest the amount of resources required in the sugar companies unless they have control over the operational management decisions. **The Sugar Act, 2001 was repealed and replaced with the Agriculture, Livestock, Fisheries and Food Authority Act, 2012.**
- Response: Yes the successful bidder shall be limited to the approved privatization option and shall be required to implement the same.

Question 11:

Are the firms incorporated as members of a consortium supposed to have team leaders?

Response: Yes, the firms which form the consortium may have their respective team leaders and whose qualifications and experience shall be provided in the proposals. However, the Consortium shall have a team leader who doubles up as the lead Consultant.

Question 12:

Is there any document from PC confirming that we attended the bid conference? Or do we just prepare our own letter confirming participation?

Response: The Commission shall use the register that was signed by all the firms that were present during the pre-bid conference to verify attendance. Consultants need not prepare anything for this requirement.

Question 13:

Will the Commission share with the consultants the power point presentations that were projected during the pre-bid conference.

Response: Yes, the presentations shall be uploaded on the Commission's website.

All the other terms and conditions of the RFP remain unchanged.

Joseph Koskey
Executive Director/CEO

ANNEX 1 - CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

(Must be filled by all applicants or Consultants who choose to participate in this RFP)

<i>Name of Applicant(s)</i>

.....

You are requested to give the particulars in Part 1 and either Part 2 (a), 2 (b) or 2 (c), whichever applies to your type of business. Part 2 (d) to part 2(i) must be filled.

You are advised that giving wrong or false information on this Form will lead to automatic disqualification/termination of your business proposal at your cost.

Part 1 – General

Business Name:.....Certificate

Of Incorporation / Registration No.....

Location of business premises:

CountryPhysical address:

Town.....Building.....

Floor.....Plot No.

Street / Road:.....Postal Address.....

Postal / Country Code.....Telephone No's.....

Fax No's. E-mail address:

Website:.....

Contact Person (*Full Names*)

Direct / Mobile No's.....

Title Power of Attorney (**Yes / No**)

If **Yes**, attach written document.

Nature of Business (*Indicate whether manufacturer, distributor, etc.....*)

(Applicable to Local suppliers only)

Local Authority Trading License No. Expiry Date

.....

Value Added Tax

No.....

....

Value of the largest single assignment you have undertaken to date (**US\$/KShs**)

Was this successfully undertaken? **Yes / No.** (If **Yes**, attach reference).

Name (s) of your banker (s)

.....

BranchesTel No's. ..

Part 2 (a) – Sole Proprietor

Full names

.....

Nationality.....Country of Origin.....

.....

Company Profile

(Attach brochures or annual reports in case of public company)

Part 2 (b) – Partnerships

Give details of partners as follows:

Full Names

Nationality

Citizenship Details

Shares

1.

2.

3.....

4.....

Company Profile*(Attach brochures)*

Part 2 (c) – Registered Company

Private or public

Company Profile *(Attach brochures or annual reports in case of public companies)*

State the nominal and issued capital of the Company

Nominal KShs

Issued KShs

List of top ten (10) shareholders and distribution of shareholding in the company.

Give details of all directors as follows:-

<u>Full Names</u>	<u>Nationality</u>	<u>Citizenship Details</u>	<u>Shares</u>
1.....
2.....
3.....
4.....

Part 2 (d) – Debarment

I/We declare that I/We have not been debarred from any procurement process and shall not engage in any fraudulent or corrupt acts with regard to this or any other tender by the Commission and any other public or private institutions.

Full Names.....

Signature.....

Dated thisday of 2018.

In the capacity of

Duly authorized to sign Tender for and on behalf of

.....

Part 2 (e) – Criminal Offence

I/We, (Name (s) of Director (s)):-

a)

b)

c)

have not been convicted of any criminal offence relating to professional conduct or the making of false statements or misrepresentations as to its qualifications to enter into a procurement contract within a period of three (3) years preceding the commencement of procurement proceedings.

Signed.....

For and on behalf of M/s

.....

In the capacity of

.....

Dated thisday of 2018

Suppliers' / Company's Official Rubber Stamp

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Part 2 (f) – Conflict of Interest

I/We, the undersigned state that I / We have no conflict of interest in relation to this procurement:

a)

b)

c)

d)

For and on behalf of M/s

.....

In the capacity of

.....

Dated thisday of2018

Suppliers' / Company's Official Rubber Stamp

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Part 2 (g) – Interest in the Firm:

Is there any person/persons in the Privatization Commission or any other public institution who has interest in the Firm? Yes/No
(Delete as necessary) Institution

.....

(Title)

(Signature)

(Date)

Part 2(h) – Experience

Please list here below similar projects accomplished or companies / clients you have provided with similar services in the last two (2) years.

<u>Company Name</u>	<u>Country</u>	<u>Contract/ Order No.</u>	<u>Value</u>
1.....
2.....
3.....

Contact person (Full Names)

.....

E-mail address.....

Cell phone no

ANNEX 2 - SELF-DECLARATION FORM - ANTI-CORRUPTION DECLARATION

We **(insert the name of the company / supplier)** -----

declares and guarantees that no offer, gift or payment, consideration or benefit of any kind, which constitutes an illegal or corrupt practice, has been or will be made to anyone by our organization or agent, either directly or indirectly, as an inducement or reward for the award or execution of this procurement.

In the event the above is contravened we accept that the following to apply —

- a) The person shall be disqualified from entering into a contract for the procurement; or
- b) If a contract has already been entered into with the person, the contract shall be voidable at the option of EACC.
- c) The voiding of a contract by the procuring entity under subsection (b) does not limit any other legal remedy That EACC may have.

Name.....Signature.....Date

Company Seal / Business Stamp.....

ANTI-FRAUDULENT PRACTICE DECLARATION

We **(insert the name of the company / supplier)** -----

declares and guarantees that no person in our organization has or will be involved in a fraudulent practice in any procurement proceeding.

Name.....Signature.....Date

Company Seal / Business Stamp

NON - DEBARMENT DECLARATION

We **(insert the name of the company / supplier)** -----

declares and guarantees that no director or any person who has any controlling interest in our organization has been debarred from participating in a procurement proceeding.

Name.....Signature.....Date

Company Seal / Business Stamp