



NATIONAL AIDS CONTROL COUNCIL

REQUEST FOR PROPOSAL

PRE- QUALIFICATION FOR LEGAL SERVICES TENDER NO. NACC/PRQ/ 024/ 2016-2017
APRIL 2017

CLOSING DATE 26/4/2017

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PREQUALIFICATION NOTICE

- 1.1 The National AIDS Control Council (NACC) intends to prequalify eligible candidates for PRE-QUALIFICATION FOR LEGAL SERVICES TENDER NO. NACC/PRQ/ 024/ 2016-2017
- 1.2 Interested firms may obtain further information on the tender document from;

NACC
P.O.BOX 61307-00200
NAIROBI KENYA,

E-mail: musicn@nacc.or.ke or nchoge@nacc.or.ke or lanisa@nacc.or.ke

upon receipt:

- (a) that you received the Letter of Invitation; and
- (b) Whether you will submit a proposal alone or in association.

Failure to provide this information may lead to your replacement.

- 1.3 Tender documents detailing the requirements may be viewed and downloaded from the NACC website (www.nacc.or.ke)
- 1.4 Completed Tenders are to be enclosed in plain sealed envelopes marked with the tender reference number and name and be deposited in the Tender Box located at NACC premises, **Landmark Plaza, 9th Floor Argwings Kodhek Road, Nairobi, Kenya so as to be received on or before 26.04.2017 at 10.00 AM**
- 1.5 Tenders will be opened promptly thereafter in the presence of the Tenderer's or their representatives who choose to attend in the **NACC Boardroom on 6th Floor of Landmark Plaza**
- 1.6 All Candidates whose applications will have been received before the closing date and time will be advised of the results of their applications. Only bidders pre-qualified under this prequalification process will be invited to tender.
- 1.7 The bidders are also encouraged to demonstrate high degrees of integrity, fidelity, and honesty in the information supplied to NACC as part of their bids. The information should be as clear and concise as possible.
- 1.8 NACC advises bidders that any deviations from the contents of this paragraph may lead to disappointment and automatic disqualification of such bidder.

Yours sincerely,

Clauder Musi
For: DIRECTOR
National AIDS Control Council

ABBREVIATIONS AND ACRONYMS

CLE	Council of Legal Education
GCA	General Conditions of Appointment
ICPAK	Institute of Certified Public Accountants of Kenya
ITT	Instructions to Tenderers
KRA	Kenya Revenue Authority
KSL	Kenya School of Law
LSK	Law Society of Kenya
ODPP	Office of the Director of Public Prosecutions
PPAD 2015	Public Procurement and Asset Disposal Act, 2015
SLA	Service Level Agreement
NACC	National AIDS Control Council

CHECKLIST

This order and arrangement shall be considered as the Tender Submission Format. Law firms shall tick against each item indicating that they have provided it.

No.	Item	Tick Where Provided
1	Professional Indemnity Cover	
2	Declaration Form	
3	Duly completed Tender Form	
4	Copy of law firm's Registration Certificate	
5*	Copy of law firm's PIN Certificate	
6*	Copy of the law firm's Valid Tax Compliance or Clearance Certificate	
7	Confidential Business Questionnaire (CBQ)	
8	List with full contacts as well as physical addresses of six (6) corporate clients	
9	Curriculum Vitae of lawyers	
10	Practicing certificate issued by LSK	
11	Proof of evidence of physical address and premises through eg. copy of utility bills i.e. electricity, water, telephone; copy of title deed; lease or tenancy agreement etc. (For detailed requirements please see the relevant Notes)	
12	Any other document or item required by the Pre-Q Tender Document (The Law firm shall specify such other documents or items it has submitted)	

3.1 DEFINITIONS

In this tender, unless the context or express provision otherwise requires: -

- a) “The Procuring Entity” means The National AIDS Control Council
- b) “The Candidate” means the person(s) submitting its application for the pre-qualification for the supply, installation and commissioning (where applicable) of the goods, equipment and ancillary services in response to the Invitation for Pre-qualification.
- c) Reference to “the tender” or the “Tender Document” includes its appendices and documents mentioned hereunder and any reference to this tender or to any other document includes a reference to the other document as varied supplemented and/or replaced in any manner from time to time.
- d) any reference to any Act shall include any statutory extension, amendment, modification, re-amendment or replacement of such Act and any rule, regulation or order made thereunder.
- e) Words importing the masculine gender only, include the feminine gender or (as the case may be) the neutral gender.
- f) Words importing the singular number only include the plural number and vice-versa and where there are two or more persons included in the expression the “Candidate” the covenants, agreements and obligations expressed to be made or performed by the Candidate shall be deemed to be made or performed by such persons jointly and severally.
- g) “Date of Tender Document” shall begin with the first day and end on the last day of the month appearing on the cover page of the Prequalification document.
- h) “**The law firm**” means the law firm submitting its Tender for the provision of Services in response to the Invitation to Tender. Where there are two or more persons included in the expression the “law firm”, any act, default, or omission by the law firm shall be deemed to be an act, default, or omission by any one or more of such lawyers.
- i) “Day” means calendar day and “month” means calendar month.
- j) “Corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of public official in the procurement process or in contract execution;
- k) “Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of The NACC, and includes collusive practice among Candidates (prior to or after Tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive NACC of the benefits of free and open competition.

- l) The expression “**law firm**” shall include “lawyers” and vice-versa
- m) “**The Services**” refers to the myriad of legal and associated consultancy services;

3.2 Eligible Law Firms

- 3.2.1 All law firms that are duly registered in Kenya and recognized by LSK are eligible to participate.
- 3.2.2 Successful law firms shall provide the Services in accordance with this tender and the ensuing Service Level Agreement (SLA) as may be entered between the law firm and NACC.
- 3.2.3 The classification, as defined by NACC, shall be as follows:-
 - a) Category A law firms – (Super-size)
 - (i.) Has a Professional Indemnity Cover of not less than KSh. 200 Million
 - (ii.) Has more than twelve (12) admitted lawyers (Essential Condition-EC)
 - b) Category B law firms – (Large)
 - (i.) Has a Professional Indemnity Cover of not less than KSh. 100 Million but not equivalent to or more than KSh. 200 Million
 - (ii.) Has between eight (8) and twelve (12) admitted lawyers (E.C.)
 - c) Category C law firms – (Medium)
 - (i.) Has a Professional Indemnity Cover of not less than KSh. 50 Million but not equivalent to or more than KSh. 100 Million
 - (ii.) Has between four (4) and seven (7) admitted lawyers (E.C.)
 - d) Category D law firms – (Standard)
 - (i.) Has a Professional Indemnity Cover of not less than KSh. 10 Million but not equivalent to or more than KSh. 50 Million
 - (ii.) Has between one (1) and three (3) admitted lawyers (E.C.)
- 3.2.4 For purposes of this categorization and the Pre-Qualification Tender Document -
 - a) ‘Admitted lawyers’ shall mean qualified lawyers who have been admitted to the Bar and hold a valid year 2017 practicing certificate. It includes all Partner(s) in the law firm.
 - b) A law firm that substantially fits within one category will be deemed to be within that category even though it does not strictly fully fall within the parameters described for that category as above.
- 3.2.5 Law firms shall satisfy all relevant licensing and/or registration with LSK, the Office of the Attorney General of Kenya and the relevant County.
- 3.2.6 Law firms shall provide such evidence of their continued eligibility satisfactory to NACC as NACC may reasonably request.
- 3.2.7 In NACCs appointment of law firms, NACC shall strive to appoint at least 30% of the firms in its panel from among the youth, women, disabled, and minority and marginalized groups who possess a certificate of preference and fulfill the requirements for pre-qualification under this Tender document. This Invitation to Prequalify is open to all Candidates eligible as described in the Appendix to Instructions to Candidates.
- 3.2.8 NACC’s employees, committee members, board of trustees and their relatives (spouse(s) and children) are not eligible to participate in the tender.

- 3.2.9 Candidates shall provide the qualification information statement that the Candidate (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which may be or have been engaged by NACC to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the services under the ensuing tender.
- 3.2.10 Candidates shall not be under a declaration of ineligibility for corrupt and fraudulent practices.
- 3.2.11 the Candidate shall furnish, as part of its tender, documents establishing the Candidate's eligibility to tender and its qualifications to be pre-qualified. The documentary evidence of the Candidate's eligibility to tender shall establish to NACC's satisfaction that the Candidate, at the time of submission of its Tender, is eligible Candidate.

3.3 Post – Qualification

- 3.3.1 NACC will from time to time issue tenders for the provision of law services.
- 3.3.2 Only successful identified pre-qualified candidates who are in NACC's Standing List may be invited to tender.
- 3.3.3 The tenders for future contracts to be issued will be over a period of **Three (3) years** to Candidates from the date of appointment or as otherwise may be extended. After this period NACC may conduct another pre-qualification process.

3.4 Fresh Pre-Qualification

- 3.4.1 At the end of the pre-qualification period, NACC may conduct another pre-qualification process at which the existing Standing List will automatically expire.
- 3.4.2 At the fresh pre-qualification, all pre-qualified candidates in the Standing List shall be required to re-apply if they so wish to be in the new Standing List.

3.5 Cost of Tendering

- 3.5.1 The Candidate shall bear all costs associated with the preparation and submission of its Tender and NACC will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 3.5.2 The Prequalification Document shall be free of charge, downloaded from the NACC website, www.nacc.or.ke

3.6 Contents of the Prequalification Document

3.6.1 The Prequalification Document comprises the documents listed below and Addendum (where applicable) issued in accordance with clause 3.7 of these Instructions to Candidates:

- a) Prequalification notice
- b) Instructions to Candidates
- c) Appendix to Instructions to Candidates
- d) Description of services for pre-qualification.
- e) Evaluation criteria

- f) Confidential Business Questionnaire Form
- g) Notification of pre-qualification.
- h) Methods of charging

- i) List of law firm's references
- j) *Professional Indemnity Cover (Before and After Appointment)*

3.6.2 The Candidate is expected to examine all instructions, forms, provisions, terms and specifications in the Prequalification Document. Failure to furnish all information required by the Prequalification Document or to submit a tender not substantially responsive to the Prequalification Document in every respect will be at the Candidate's risk and shall result in the rejection of its Tender.

3.7 Clarification of Documents

3.7.1 A prospective Candidate requiring any clarification of the Prequalification Document may notify the Procurement Office in writing or by post at NACC's address indicated in the Prequalification notice. NACC will respond in writing to any request for clarification of the Prequalification documents, which it receives not later than seven (7) days prior to the deadline for the submission of Tenders, prescribed by NACC. Written copies of NACC's response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective Candidates that have duly received the Tender Document.

3.7.2 NACC shall reply to any clarifications sought by the Candidate within three (3) days of receiving the request to enable the Candidate make timely submission of its Tender.

3.7.3 If a prospective Candidate sends an inquiry after the stated days or the inquiry is received by NACC after the stated days, NACC shall have the option of responding to the inquiry and extension of the date of submission of tenders or **ignoring it**.

3.8 Amendment of Documents

3.8.1 At any time prior to the deadline for submission of Tenders, NACC, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Candidate, may modify the tender documents by amendment.

3.8.2 All prospective Candidates that have received the Prequalification documents will be notified of the amendment(s) (hereinafter referred to or otherwise known as addendum) in writing and will be binding on them.

3.8.3 In order to allow prospective Candidates reasonable time in which to consider the amendment in preparing their Tenders, NACC, at its discretion, may extend the deadline for the submission of Tenders.

3.9 Language of Tender

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

3.10 Law Firm's Competence and Qualifications

3.10.1 the law firm shall furnish, as part of its Tender, documents establishing the law firm's eligibility, competence to tender and its qualifications to perform well in any ensuing assignment if its Tender is accepted.

3.10.2 The documentary evidence of the law firm's qualifications to be appointed and perform well if its Tender is accepted shall be established to NACC's satisfaction-

- a) That the law firm has the financial capability necessary to perform the contract. The law firm shall be required to provide the following documents:-
 - i) Financial Statements of the law firm. The audited financial statements required must be those that are reported within fifteen (15) calendar months of the Date of the Pre-Qualification Tender Document.
 - ii) For law firms that are registered within the last one calendar year of the Date of the Pre-Qualification Tender Document, they should submit certified copies of bank statements covering a period of at least six (6) months prior to the Date of the Pre-Q Tender Document. The copies should be certified by the Bank issuing the statements. The certification should be original.
- b) Valid and current Tax Compliance Certificate issued by KRA. The law firm is strongly advised to confirm the authenticity of the TCC with KRA's Compliance Department to avoid rejection of its Tender.
- c) That the Law firm has the technical and production capability necessary to be appointed and perform the Services well when called upon to do so.
- d) That the law firm is duly registered, recognized and is a current member of the body or institution accredited and or pertaining to the Services.

3.10.3 The law firm will furnish NACC with a copy of the registration certificate and LSK's recognition whether by hard copy letter or on the internet. N A C C reserves the right to subject the certificate and recognition to authentication.

- a) Registration is by the Republic's Attorney General's Office's Registrar of Business Names or Partnerships.
- b) Recognition is by listing at the LSK of the law firm as declared by the Partner(s) and, in the name of the law firm.
- c) All lawyers in the firm must also be recognized by LSK as belonging to or being in that law firm by the Date of the Pre-Qualification Tender Document unless satisfactorily explained otherwise by the law firm.

3.10.4 Law firms with a record of unsatisfactory or default in performance obligations in any contract or service delivery shall not be considered for evaluation or award. For the avoidance of doubt, this shall include any law firm with unresolved case(s) in its obligations for more than three (3) months in any assignment or service delivery.

- 3.10.5 The law firm shall furnish, as part of its tender, documents establishing the conformity to the Pre-Q Tender Document of all services that the law firm proposes its ability to perform if appointed to NACC's Panel of Lawyers.
- 3.10.6 The documentary evidence of conformity of the services to the Pre-Qualification Tender Document may be in the form of literature, drawings, and data.

3.10.7 For purposes of the documentary and other evidence to be furnished the law firm shall note that standards for competence, professionalism, material, and equipment, designated by NACC in its Evaluation Criteria are intended to be descriptive only and not restrictive. The law firm may adopt higher standards in its Tender, provided that it demonstrates to NACC's satisfaction that the substitutions ensure substantial and/or higher equivalence to those designated in the Pre-Q Tender Document.

3.11 Professionalism and Experience

3.11.1 The lawyers should be adequately competent, possess substantial relevant experience who can be able to promptly offer the Services and associated consultancy.

3.11.2 The lawyers shall at all times during the period of the engagement conduct him/herself in a manner suited to the best interests of The National AIDS Control Council. In particular, any perceptions of conflict of interest are strongly undesirable and will be swiftly remedied.

3.11.3 The lawyers should demonstrate the capability of conducting presentations and/or providing training to staff on relevant legal aspects in the various fields.

3.11.4 The selected lawyers should have good credentials in handling relevant Kenyan cases and matters. S/he should also have appropriate experience and/or international affiliations in emerging markets including the East African Region. (Such affiliation will be an added advantage).

3.12 Charges for Services

3.12.1 The law firm shall indicate on the appropriate table labeled as Method of Charging for Services the unit prices and rates (where applicable) when called upon to do render such Services.

3.12.2 The rates and prices shall be of costs for the Services excluding VAT but inclusive of all other taxes and insurances payable. No other basis shall be accepted for evaluation.

3.13 Requirements, Reports, and Schedules

3.13.1 It is expected that the selected lawyers may enter into discussion and agreement with NACC on the approach and action plans to realize the objectives of their appointment.

3.13.2 Taking cognizance of the entrenched adoption of Performance Contracts in NACC and the benefits accruing therefrom, the law firms will be required to enter into Service Level Agreements with NACC. Therefore, law firms will be required to indicate their acceptance of signing the Agreements. This will be among the mandatory basis for confirmation to the NACC Panel.

3.13.3 The lawyers will be expected to give periodic Reports and Review of legal matters that they are handling and timely submission within specified Schedules.

3.14 Professional Indemnity Cover (Before Appointment)

3.14.1 The law firm shall furnish, as part of its Tender, a Professional Indemnity Cover (hereinafter referred to as the PI Cover) of a minimum of Kenya Shillings Ten Million (KShs.10 Million).

- 3.14.2 The PI Cover is required to demonstrate the law firm's commitment and ability to perform the Services together with its compliance with the law and guidelines regarding establishment and operation of law firms in Kenya.
- 3.14.3 The PI Cover shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be issued by an insurance company registered by the Insurance Regulatory Authority and approved by PPRA. The insurance company must be located in Kenya.
- 3.14.4 The PI Cover, at the tender submission stage, shall be valid up to at least the closing date of the tender.
- 3.14.5 NACC shall seek authentication of the PI Cover from the issuing insurance company. It is the responsibility of the law firm to sensitize its issuing insurance company on the need to respond directly and expeditiously to queries from NACC. The period for response shall not exceed three (3) days from the date of NACC's query. Should there be no conclusive response by the insurance company within this period, such law firm's PI Cover may be deemed as invalid and the bid rejected.
- 3.14.6 Any Tender not secured in accordance with this paragraph will be rejected by NACC as non-responsive
- 3.14.7 The successful law firm's PI Cover will be required to be updated and valid at all times for the Period of engagement and rendering of services to NACC.
- 3.15 **Letter of Application**
- The Candidate shall complete the Letter of Application and all other documents furnished in the Prequalification Document attaching all documents required noting to include originals where necessary. The Candidate should also indicate the items they can tender for and their country of origin if pre-qualified, amongst other information required.
- 3.16 **Validity of Tenders**
- 3.16.1 Tenders shall remain valid for a period **120 days** after the date of tender opening or as otherwise may be prescribed by NACC. A Tender that is valid for a shorter period shall be rejected by NACC as non-responsive. In exceptional circumstances, NACC may extend the Tender validity period. The extension shall be made in writing. A Candidate shall not be required nor permitted to modify its tender during the extended period.
- 3.17 **Number of Sets of and Tender Format**
- 3.17.1 The Candidate shall prepare **two complete sets of its Tender, identifying and clearly marking the "ORIGINAL TENDER" and "COPY OF TENDER" as appropriate.** Each set shall be properly bound. The copy shall be a replica of the Original. The copy will be deemed to contain the same information as the Original.
- 3.17.2 Where there is any discrepancy between the Original and the Copy of the Candidate's documents, the Original shall govern.

- 3.17.3 The Tender shall be bound and divided clearly in descending order as listed in the Tender Submission Checklist. The divisions are for clear identification and marking of the respective documents or information that are serially numbered in the Checklist.
- 3.17.4 The order and arrangement as indicated in the Tender Submission Checklist will be considered as the Tender Format.
- 3.17.5 Any Tender not prepared and signed in accordance with this paragraph, may be rejected by NACC as non-responsive.
- 3.18 Preparation of the Tender**
- 3.18.1 The Original and the copy of the Tender shall be typed or written in indelible ink. The Candidate shall sign them or a person or persons duly authorized to bind the Candidate.
- 3.18.2 The Tender shall be signed by any Partner(s) of the law firm. For purposes of this tender, only a Partner can sign where a signature is required unless any other person is expressly permitted by the Pre-Q Tender document to do so.
- 3.18.3 The name of the Partner(s) must appear either in the Registration Certificate or the Change of Particulars Certificate (both issued by the Office of the Attorney General and Department of Justice) or the law firm's Confidential Business Questionnaire Part 2 (a) or (b).
- 3.18.4 All pages of the Tender, including un-amended printed literature, shall be initialed by the Collaborates signing the Tender and serially numbered.
- 3.18.5 The Tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the law firm, in which case such corrections shall be initialed by the Partner(s) signing the Tender.
- 3.18.6 NACC will assume no responsibility whatsoever for the law firm's failure to comply with or Observe the entire contents of this paragraph.
- 3.18.7 Any Tender not prepared and signed in accordance with this paragraph may be rejected by NACC as non-responsive.
- 3.18.8 Tender not prepared and signed in accordance with this paragraph may be rejected by NACC as non-responsive
- 3.18.9 The Candidate shall prepare two complete sets of its Tender, identifying and clearly marking the "ORIGINAL TENDER" and "COPY OF TENDER" as appropriate. Each set shall be properly bound. The copy shall be a replica of the Original. The copy will be deemed to contain the same information as the Original.
- 3.18.10 where there is any discrepancy between the Original and the Copy of the Candidate's documents, the Original shall govern.

- 3.18.11 The Candidate shall seal the Original and the copy of the Tender in separate envelopes or packages, duly marking the envelopes or packages as "ORIGINAL" and "COPY OF TENDER". The envelopes or packages shall then be sealed in outer envelopes or packages.
- 3.18.12 The inner and outer envelopes or packages shall -
- a) be addressed to NACC at the address given,
 - b) bear the tender number and name as per the Prequalification notice and the words, "DO NOT OPEN BEFORE " as specified.
- 3.18.13 All inner envelopes or packages shall also indicate the name and full physical, telephone, e-mail, facsimile and postal contacts of the Tenderer to enable the Tender to be returned unopened in circumstances necessitating such return including where Tenders are received late, procurement proceedings are terminated before tenders are opened or the Tender does

not qualify for further financial evaluation in accordance with the Summary of Evaluation Process set out in the Tender Document.

3.18.14 If the envelopes or packages are not sealed and marked as required by this paragraph, NACC will assume no responsibility whatsoever for the Tender's misplacement or premature opening. A tender opened prematurely for this cause will be rejected by NACC and promptly returned to the Tenderer.

3.19 Deadline for Submission of Tenders

3.19.1 Tenders must be received by NACC by the time and at the place specified in the Prequalification notice.

3.19.2 NACC may, at its discretion, extend this deadline for submission of Tenders by amending the pre-qualification documents, in which case all rights and obligations of NACC and the Candidate's previously subject to the initial deadline, will therefore be subject to the deadline as extended.

3.20 Modification and Withdrawal of Tenders

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

3.20.2 The Candidate's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraphs 3.19, 3.20 and 3.21. A withdrawal notice may also be sent by facsimile, electronic mail, cable, or telex but followed by an original signed confirmation copy, postmarked not later than the deadline for submission of Tenders.

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

3.21 Opening of Tenders

3.21.1 NACC shall open all Tenders promptly after the close of submission at the location specified in the tender document or as may otherwise be indicated. The Candidates or their representatives may attend the opening and those present shall sign a register evidencing their attendance.

3.21.2 The Candidate's names, tender modifications or withdrawals and such other details as NACC, at its discretion, may consider appropriate, will be announced at the opening.

3.21.3 NACC will prepare Minutes of the tender opening and in the presence of the Tenderer's or their Representatives who choose to attend.

3.22 Clarification of Tenders

3.22.1 To assist in the examination, evaluation and comparison of Tenders NACC may, at its discretion, ask the Candidate for a clarification of its Tender. The request for clarification and the response shall be in writing, and no change in the substance of the Tender shall be sought, offered, or permitted.

3.22.2 Failure to provide timely clarification or substantiation of the information that is essential for effective evaluation of the Candidate's qualifications shall result in the Candidate's disqualification.

3.23 **Due Diligence**

- 3.23.1 NACC or its representative(s) shall have the right to conduct due diligence of the Candidate's capacity, equipment, premises, and to confirm their conformity to the pre-qualification requirements. This shall include the quality management system. NACC's representative(s) retained for these purposes shall provide appropriate identification at the time of such inspection.
- 3.23.2 NACC shall meet its own costs of the any inspection or due diligence. Where conducted on the premises of the Candidate(s), all reasonable facilities and assistance, shall be furnished to the inspectors at no charge to NACC.
- 3.23.3 Inspection Report shall be completed upon conclusion of the inspection. This Report will be considered at time of evaluation and or approval as pre-qualified.

3.24 Tender Evaluation

- 3.24.1 NACC will determine the responsiveness of each Tender. For purposes of this pre-qualification, a responsive Tender is one that conforms to all the requirements of the Evaluation. NACC's determination of a Tender's responsiveness is to be based on the contents of the Tender itself without recourse to extrinsic evidence.
- 3.24.2 If a Tender is not responsive, it will be rejected at the earliest stage of evaluation by NACC and cannot subsequently be made responsive by the Candidate by correction of any non-conformity.
- 3.24.3 Pre-qualification will be based on meeting the requirements to pass in the criteria set out in the Evaluation Criteria set.

3.25 Confidentiality

- 3.25.1 After the opening of tenders, information relating to the examination, clarification, evaluation and comparisons of tenders and recommendations arising there-from shall not be disclosed to a Candidate or other person(s) not officially concerned with such process until conclusion of that process.
- 3.25.2 Any effort by a Candidate to influence NACC or any of its staff members in the process of examination, evaluation, and comparison of tenders and information or decisions concerning award of Contract may result in the rejection of the Candidate's tender.

3.26 Minor Deviations, Errors, or Oversights

- 3.26.1 NACC may waive any minor deviation in a Tender that does not materially depart from the requirements set out in the Tender Document.
- 3.26.2 NACC may waive errors and oversights that can be corrected without affecting the substance of the Tender.

3.27 Tender Evaluation Period

The tender evaluation committee shall evaluate the tender within the validity period of the tender. (Within 30 days from the date opening)

3.28 Preferences

Preferences for the certified Youth, Women, and Persons with Disabilities will be applied as per the PPAD, 2015.

3.29 Confirmation of Qualification for Appointment on the Standing List

- 3.29.1 NACC may confirm to its satisfaction whether the Candidate that is identified is qualified for appointment.
- 3.29.2 The confirmation will take into account the Candidate's technical, and production capabilities. It will be based upon an examination of the documentary evidence of the Candidate's qualifications submitted by the Candidate, as well as confirmation of such other information, as NACC deems necessary and appropriate. This may include factory and other facilities inspection and audits.
- 3.29.3 An affirmative confirmation will be a prerequisite for appointment to the Standing List. A negative confirmation will result in rejection of the Candidate's tender.

3.30 Approval of Pre-qualification

- 3.30.1 The approval of pre-qualification will be either pass or fail regarding the Candidate's general and particular experience, capabilities, and financial position as demonstrated by the Candidate's response to this Tender and inspection when conducted.
- 3.30.2 Approval shall be for all Candidates who meet the prequalification requirements as prescribed in the Appendix to Instructions to Candidates.
- 3.30.3 NACC shall invite tenders as and when it requires from only the Candidates who have been pre-qualified, subject to applicable thresholds.

3.31 Termination or cancellation of Procurement Proceedings

- 3.31.1 NACC may at any time terminate prequalification proceedings before approval and shall not be liable to any person for the termination.
- 3.31.2 NACC shall give prompt notice of the termination to all the Candidates who submitted tenders and, give its reasons for termination within fourteen (14) days.

3.32 Notification of Appointment

- 3.32.1 At the same time as NACC notifies the successful law firm that its Tender has been accepted, NACC will send the law firm the Service Level Agreement together with any other necessary documents incorporating all agreements between the Parties.
- 3.32.2 Appointment will be done as follows:
 - a) Category A, super-size law firms
 - b) Category B, large law firms
 - c) Category C, medium law firms
 - d) Category D, standard law firms
- 3.32.3 The notification of appointment shall not constitute the formation of any contract.
- 3.32.4 Within seven (7) days of the date of notification of appointment, the successful law firm shall indicate its acceptance by -
 - a) Writing a formal acceptance letter to NACC,
 - b) Signing the Service Level Agreement where required, and any other documents specified, and

c) Returning (a) and (b) to NACC within that period of seven (7) days.

- 3.32.5 Subject to paragraph 3.39.4, NACC shall sign and date the Service Level Agreement in the period between not earlier than seven (7) days from the date of notification of appointment and not later than thirty (30) days after this date.
- 3.32.6 NACC shall not sign the Service Level Agreement and not include the name of the law firm on its Panel until and unless the authentic valid Professional Indemnity Cover is received.
- 3.32.7 Failure of the successful law firm to sign the Service Level Agreement where it is required by NACC to do so, AND provide the Professional Indemnity Cover as stipulated, the appointment shall be annulled in which event NACC may notify the next available highest evaluated responsive law firm that its Tender has been accepted.
- 3.33 Acceptance of Pre-qualification**
- 3.33.1 Within seven (7) days of the date of notification of appointment from NACC, the successful law firm shall furnish NACC with a valid PI Cover.
- 3.33.2 The Professional Indemnity Cover shall be issued by an insurance company approved by PPOA and acceptable to NACC. The Insurer must be located in Kenya.
- 3.33.3 The successful law firm shall furnish the PI Cover in no less than Kenya Shillings Twenty Million (Kshs. 20 Million) or that which it submitted for purposes of evaluation, whichever is higher.
- 3.33.4 The PI Cover is required to protect NACC against the risk of the law firm's conduct during the performance of Services, which would warrant the PI Cover's forfeiture or part thereof.
- 3.33.5 NACC shall seek authentication of the PI Cover from the issuing Insurer. It is the responsibility of the successful law firm to sensitize its issuing Insurer on the need to respond directly and expeditiously to queries from NACC. The period for response shall not exceed three (3) days from the date of NACC's query. Should there be no conclusive response by the Insurer within this period, such successful law firm's PI Cover may be deemed as invalid.
- 3.33.6 In case of failure by the successful law firm to furnish an authentic PI Cover, the appointment shall stand annulled.
- 3.33.7 Paragraphs 3.36 and 3.38 together with the provisions of this paragraph 3.39 will apply with necessary modifications, and as far as circumstances permit, with respect to the law firm notified under sub-paragraph 3.36.4.
- 3.33.8 At the same time as NACC notifies the approved Candidate that its Tender has been approved, NACC will send the Candidate a copy of the Notification of Appointment together with any other necessary documents incorporating all agreements between the Parties.
- 3.33.9 Within Seven (7) days of the date of notification of appointment, the successful Candidate(s) shall sign and stamp (where applicable) the copy of notification of appointment and all other documents, if any, and return them to NACC.
- 3.33.10 Failure of the successful Candidate(s) to sign and return the copy of the Notification of Appointment, the Appointment shall stand nullified.

3.34 **Corrupt, Coercive, Obstructive, Collusive, or Fraudulent Practices**

3.34.1 No candidate shall be involved in any corrupt, coercive, obstructive, collusive, or fraudulent practice during the procurement process and execution of contracts

3.34.2 NACC will reject a tender if it determines that the Candidate recommended for approval has engaged in corrupt, coercive, obstructive, collusive or practices in competing for the pre-qualification.

SECTION IV - SCHEDULE OF REQUIREMENTS

4.1 Brief Schedule of Services Required

- 4.1.1 NACC intends to procure by way of pre-qualification the services of competent law firms and qualified lawyers as follows:
- ▯ to be listed on its Panel for the two-year period between 2017 to March 2019 or as may be extended.
 - ▯ to offer a myriad of legal services (hereafter referred to as the Services) as may from time to time be required over the period in question.
- 4.1.2 The scope of the Services includes the fields of Company and Commercial Law, Constitutional & Administrative Law; Construction and Engineering law; Convincing; Debt Recoveries; Employment and Labour laws; Health and Safety laws; law relating to Information Technology; Intellectual & Trademarks Copyright law, Land Law, Public-Private Partnership, Procurement law, Arbitration and Alternative Dispute Resolution; Environmental Law Insurance, law; Public Policy; associated civil litigation and criminal prosecutions.
- 4.1.3 This will also include provision of expert advice and opinions on specific cases, transactions, events including projects. It may involve carrying out searches locally and abroad in land and company registries and liaising with other relevant bodies and authorities.

SECTION V – METHOD OF CHARGING FOR SERVICES

PART A

5.1 Advocates Remuneration Order under the Advocates Act, 2014

- 5.1.1 NACC's appointment will consider law firm's that offer the right balance of value for money as measured by the quality of legal service rendered. Law firm's will be expected to identify ways in which legal costs for any significant or complex cases may be mitigated.
- 5.1.2 NACC expects that legal fees and charges payable shall generally be in accordance with the Order as applicable to the case or matter being handled.
- 5.1.3 The mode of billing shall be considered on a case by case basis and subject to agreement between NACC and the firm. Should there be a difference on this, then NACC and the law firm may by agreement refer the issue to Taxation with each party bearing their own costs for the Taxation.

PART B

5.2 Advocates Remuneration Order (Schedule V) under the Advocates Act, 2014

Without prejudice to the contents of paragraph 5.1, NACC recognizes that the present 5th Schedule of the Order provides for an hourly billing system or an amount fixed by agreement between NACC and the firm.

- 5.2.1 Law firm's are required to fill in the table below (Hourly Billing Table). If and when the issue of hourly billing arises from the performance of services instructed within the two year period, where NACC consents, the parties will refer to the Table 5.2.2 below as a basis for discussion and determination of fees payable.

5.2.2 Table

Sr. No.	Name of Professional Staff	Position (Partner or Associate or Assistant)	Hourly Remuneration Rate (KSh.)
1.			
2.			
3.			
4.			

Date:

Tender Number and Name:

To:
The Director,
National AIDS Control Council
P.O.BOX 61307-00200
NAIROBI, KENYA
Located at Landmark Plaza 8th and 9th Floor,
Upper Hill area
Opposite The Nairobi Hospital

:-

Dear Sirs and Madams,

Having read, examined and understood the Pre-Qualification Tender Document including all Addenda, receipt of which we hereby acknowledge, we, the undersigned law firm, offer to provide Legal Services for the sums as may be ascertained in accordance with the Method of Charging for Services accepted and inserted by me/ us above.

Yours sincerely,

Full name of law firm

Name and Capacity of authorized person signing the Tender

Signature of authorized person signing the Tender

Stamp of the law firm

SECTION VI-EVALUATION CRITERIA

Evaluation of duly submitted tenders will be conducted along the following stages: -

Part 1 - Preliminary Evaluation. These are mandatory requirements. This shall include confirmation of the following:

- 6.1.1 Checking general orderliness, tidiness and well bound nature of the Tender
- 6.1.2 Submission of copy of a valid Professional Indemnity Cover
- 6.1.3 Submission of Declaration Form(s) duly completed and signed
- 6.1.4 Submission and considering that Pre-Qualification Tender Form duly completed and signed
- 6.1.5 Submission and considering the following:-
 - a) Firm's Registration Certificate (where the law firm is registered under youth women and persons with disability group, the registration certificate should be provided)
 - b) PIN Certificate or Taxpayer's Registration Certificate issued by KRA
 - c) Valid Tax Compliance or Clearance Certificate issued by KRA
- 6.1.6 That the Tender is valid for the period required (2 years)
- 6.1.7 Submission of the required number of sets (original and copies) of Tender
- 6.1.8 Submission of evidence of physical addresses and premises through eg. Copy of utility bills i.e. electricity, water, telephone; copy of title deed; lease or tenancy agreement etc. (For detailed requirements please see the relevant Notes)
- 6.1.9 Submission and considering the Confidential Business Questionnaire:-
 - a) Is filled
 - b) That details correspond to the related information in the bid
 - c) That the law firm is not ineligible as per paragraphs 3.2 of the ITT.
- 6.1.10 Submission of list of at least six clients as evidence of the law firm's performance and experience on legal matters in the last three years from the Date of the Pre-Qualification Tender Document within the scope of services given on the schedule of requirements.
- 6.1.11 Submission of copies of the following documents in respect of each and all of the law firm's qualified admitted Advocates who may be engaged in providing services if successful -
 - a) Curriculum Vitae (C.V.) as provided in the sample format
 - b) For Partners - Letter of the law firm signed as prescribed in the relevant notes in the Pre-Qualification Tender Document.
 - c) All other admitted lawyers, employment contracts or Service Agreements, whichever exists, signed by the Partner and the lawyer in question.
 - d) Current (2017) practicing certificate issued by LSK

Progress to Next Stage of Evaluation

Law firms will proceed to the Technical Evaluation Stage only if they qualify in compliance with Part

1 above, Preliminary Evaluation and Responsiveness.

Part II – Technical Evaluation and Comparison of Tenders.

Sub-Part A- Detailed Evaluation

1. Technical Proposals will be evaluated using the tables and criteria below.
2. To assist the law firms in responding, the law firms may be guided, use or adopt the Tables below when responding to Sub-Part A.
3. In any event, where the law firm adopts any other mode of responding, the format and content of its response should be in summary, specific to the criterion in question, avoid as far as possible extensive use of prose, unnecessary literature or marketing material.
4. **General Notes/Guidelines to Sub-Part A**
 - 4.1 These notes (in bold below) apply generally across the board to all the Tables below.
 - 4.2 They are in addition to the specific notes/guidelines for each table.
5. **Certification/ Certified copies**
 - 5.1 Wherever certified copies are requested or acceptable to NACC, it is preferable for the certification to be original.
 - 5.2 Any lawyer who is also a Commissioner of Oaths in the bidding law firm may certify any document on behalf of his/her own law firm, which documents, the law firm intends to submit in this Tender.
6. **Curriculum Vitae (CV)**
 - 6.1 Some lawyers may have long chequered careers and experience. However, all lawyers are strongly advised to furnish their CV's in the format provided and which should not be more than two (2) single sided A4 size pages at font 12.
 - 6.2 Any information in the CV that is beyond the 2 pages may stand disregarded for purposes of evaluation.
 - 6.3 Any CV that is not signed by both the owner of the CV and the person authorized to sign the tender may be disregarded. Where the owner and authorized person are the same, the signature by such same person will suffice.
7. **Definition of Partner**
 - 7.1 Partner where used in Technical Evaluation and its attendant Tables shall mean Senior or Managing Partner. This Partner shall be s/he who has equity in the law firm AND shares its profits as well as losses. All other definitions of "Partner" however styled or of whatever nature shall be excluded from the definition of Partner.

7.2 Where a law firm has both a Senior and Managing Partner in different persons, it has a discretion to use any one of them whom it deems would more advance and enhance its bid in this Pre-Qualification Tender.

7.3 Conversely, where a law firm has only one Partner, that Partner shall be considered the Managing or Senior Partner for purposes of this Tender.

8. **Combining Information in Single Document**

8.1 NACC recognizes that there could be several letters which are required to be authored by the law firm whereas the information may be combined in one document or letter. Where the law firm feels that the information may be adequately contained in one letter or document, the law firms may do so. The law firm must state that the information variously requested is in the submitted single letter or document and identify that document or letter.

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

8.2.1 No information sought should be omitted at all.

8.2.2 The requirements as to several signatures and certifications in the different documents may be dispensed with. Instead a single signature (and co-signature where required) together with a single certification, all on each printed page of the letter or document may suffice.

9. **Staff's Nature of Engagement with the Law Firm**

9.1 It is recommended that the staff (including lawyers who are not Partners) be permanent employees or at least have an extended and stable relationship with the law firm.

10. **Qualification and Scoring**

10.1 To qualify for further evaluation and any appointment, the law firm ought to score a minimum of 80 marks from the tables out of 100 marks awardable.

10.2 For firms that are eligible under preferences, the minimum marks shall be 70 from the tables out of the 100 marks awardable.

10.3 To earn any mark,

10.3.1 The law firm's must satisfy each tenet of each criterion to obtain the full award or marks for that particular criterion.

10.3.2 Where any single tenet is not fulfilled for any criterion, the marks may not be awarded.

For instance, where a law firm's submits the correct document but lacks a signature

or fails in certification or absence of letter, the firm may lose the full marks for that criterion.

- 10.4 For avoidance of doubt, partial scoring in a criterion will be avoided and only full marks as per the scheme and criteria in the respective tables may be awarded.
- 10.5 Where after completion of all calculations and the Grand Total in the tables is obtained that contains a decimal mark, such decimal will be rounded off to the nearest whole. Where the decimal mark is nought decimal five (0.5), this shall be treated as a full mark upwards.
- 10.6 To be qualified for further evaluation and any appointment, the law firm must obtain the minimum marks outlined in the relevant tables.

11. **Third Party Documents**

- 11.1 Where any document is required unless expressly permitted, the law firm's own letters or documents originating from it may not be reckoned for purposes of evaluation.

Tables, Criteria and Scores

1. **Physical Presence and Networking**

Maximum awardable marks are 10 broken down as per the table below

Table 6.2.1 Sub -Part A

Sr. No.	Criteria	NACC Requirement (Full scores for compliance and graduated scores for partial compliance)	Law Firm's Response	Marks awarded
1.	Main Office in Nairobi, Mombasa, Nakuru, Kisumu, Eldoret, Nyeri, Kisii. (State location; attach proof)	2 marks For any irrespective of whether the firm has more than one main office in any of these towns.		
2.	Affiliation or Accreditation with any law firm or legal organization within EAC (except Kenya) i.e. Tanzania, Uganda, Rwanda and Burundi. (State firm/ body; attach proof)	Maximum marks are 3 1 mark for not more than 2 countries and 3 marks for 3 or more countries		
3.	Affiliation or Accreditation with any other law firm or legal organisation outside Kenya and EAC (State firm/ body; attach proof)	Maximum marks are 5 1 mark each for a country in Asia, a country in the rest of Africa, a country in Europe, a country in America and in Australia and/or New Zealand		

Law Firm's total score is _____

Notes To Table 6.2.1 Sub-Part A

1. Evidence of main office and branches, whether Kenyan or within the EAC region shall be through -
 - 1.1 if building/premise is not owned by the law firm, a signed lease or tenancy agreement for a period exceeding three (3) months beyond the Date of the Pre-Q Tender Document.

- 1.2 if building/premise is owned by the law firm, the firm's own statement to that effect in its separate cover letter, together with:-
 - a) a copy of the title document, and,
 - b) a valid utility (electricity or water or telephone or cable television) bill that is not more than three (3) months prior to the Date of the Pre-Qualification Tender Document.
- 1.3 if acquired but ownership documents are yet to be obtained or not easily available, then a registered sale agreement or other registered document or other confirmatory proof of ownership of the building/ premise eg. Letter from a bank or financial institution if the title is charged or mortgaged.
- 1.4 Registration shall be manifested by necessary stamping or lodging at the relevant registry at the Ministry of Lands.
2. If the lease/tenancy is set to or has expired within 3 months of the Date of the Pre-Qualification Tender Document -
 - 2.1 Where the lease is renewable, the law firm should submit a copy of that lease/tenancy agreement together with a letter from the owner/manager of the building/premise confirming that the tenancy/lease is renewable or has been renewed.
 - 2.2 Where the law firm is moving to another premises, a letter from the proposed new premises confirming such intention.
3. Evidence of EAC and international affiliation or accreditation shall be through -
 - 3.1 a letter confirming such affiliation or accreditation
 - 3.2 The letter shall be done on the letterhead of that other organisation and signed by its authorized representative who shall give his/her full names and designation in the organisation
 - 3.3 the letter shall contain the full physical, postal, facsimile (if any), and e-mail address of the organisation
 - 3.4 in exceptional circumstances, the law firm may provide any other evidence other than the above. In such occurrence, the firm must explain its exception with compliance with the above. In any event the evidence must be to the satisfaction of NACC.
4. Membership, affiliation or accreditation with a professional organisation like the East African Lawyers Association or African Lawyers Association or any organisation primarily dealing with human rights shall not be considered for purposes of evaluation.

2. Representation in Legal Matters in the Last Three Years

Maximum awardable marks are 20 broken down as per the table below.

Table 6.2.2 Sub –Part A

Sr. No.	Criteria	NACC Requirement (Full scores for compliance and graduated scores for partial compliance)	Law Firm's Response	Marks awarded
1.	Give two (2) organisations with above KSh. 20 Billion annual turnover.	Maximum marks are 10. 5 marks for each		
2.	Give two (2) organisations with above KSh. 100 Million but not more than KSh. 20 Billion annual turnover.	Maximum marks are 6. 3 marks for each		
3.	Give two (2) organisations with between KSh. 20-100 Million annual turnover.	Maximum marks are 4. 2 marks for each		

Law Firm's total score for Table 6.2.2 Sub-Part A is _____

Notes To Table 6.2.2 Sub-Part A

1. Evidence of Representation in Legal Matters in the Last Three Years shall be through the following –
 - 1.1 List prepared by the law firm giving the full names of the companies or firms or organisations.
 - 1.2 The List shall contain the current full physical, postal, facsimile (if available) and website (if any) and e-mail address of the organization. It should also include the contact person or office and his/her e-mail address.
2. Representation in “running down” cases or issues will be accepted only if the eventual final Award or Judgement exceeded KSh. 2 Million in a single case or series of cases arising from the same incident. The law firm shall provide evidence of such final Judgement or Award from which there has been no or no further Appeal.
3. For lawyers who have been in private practice for no more than 18 months from the Date of the Tender Document, but were previously employed as in-house counsel (by whatever

description) for any organization(s) for a continuous period of five years, before venturing into private practice, evidence of Representation shall take into account any organisation or customer or client of their employer(s) that s/he was directly responsible for during his/her period of employment. This shall include his/her employer itself.

3. Valid evidence of Partner’s Appropriate Qualification and Degree of Responsibility
Maximum awardable marks are 20 broken down as per the table below

Table 6.2.3 Sub -Part A

Sr. No.	Criteria	NACC Requirement (Full scores for compliance and graduated scores for partial compliance)	Law Firm’s Response	Marks awarded
1.	Level in the firm must be Senior or Managing Partner. (Give full name of Partner; attach or indicate source of proof)	2 marks		
2 a)	Degree of Responsibility (Responsibility as Lead Counsel or Lead Lawyer in 2 completely different assignments with one of an organisation with above KSh. 30 Billion and another between KSh. 10-100 Million annual turnover; attach proof)	Maximum marks are 12 6 marks each for each different assignment		
2 b)	Degree of Responsibility (Lead Counsel or Lead Lawyer 2 completely different assignments below 100 million annual turnover; attach proof)	Maximum marks are 6 3 marks each for each different assignment		

Law Firm’s total score for Table 6.2.4 Sub-Part A is _____

Notes To Table 6.2.3 Sub-Part A

1. Evidence of Partner’s position shall be through -
 - 1.1 where the firm is a sole proprietorship or a “one-man show” the firm’s letter to that effect.

1.2 where the firm has more than one Partner a letter to that effect by the firm and such letter co-signed by any other Partner in that firm.

Please see definition of Partner and other Lawyers under General Clarifications.

2. Evidence of the Partner's years of legal experience shall be taken from the year of admission to the Bar as reflected and recorded by the Partner's admission number at LSK. Any period prior to this shall not be reckoned.
3. Evidence of Partner's professional membership or status shall be through-
 - 3.1 a letter on the letterhead of the professional organisation confirming the Partner's membership or status
 - 3.2 the letter shall not be more than 12 months old prior to the Date of the Pre-Qualification Tender Document.
 - 3.3 Or in lieu of 3.1 above, a copy of a valid/current certificate of membership or status in that professional organization.
 - 3.4 Or in lieu of 3.1 and 3.3 above, where such membership or status can be confirmed through the organisation's website or other relevant independent website -
 - a) a printed extract of that where the Partner's name appears together with the address of the website, or,
 - b) a statement by the law firm stating the website where that membership or status of the Partner may be confirmed.
4. Evidence of Partner's degree of responsibility shall be through an appointment or confirmation or recommendation or congratulatory letter, contract or other document, which way, from the organisation in respect of which such responsibility was shouldered and performed. Any of the documents must clearly show that the Partner acted as such Lead Counsel in that assignment.
5. For lawyers who have been in private practice for no more than 18 months from the Date of the Tender Document, but were previously employed as in-house counsel (by whatever description) for any organization(s) for a continuous period of five years, before venturing into private practice, evidence of Partner's appropriate qualification, experience and degree of responsibility shall take into account any organisation or customer or client of their employer(s) that s/he was responsible for during his/her period of employment. This shall include his/her employer itself.

4. Team's Average Years of Legal Experience (Excluding all Partners)

Maximum awardable marks are 10 broken down as per the table below.

Table 6.2.4 Sub -Part A

Sr. No.	Criteria	NACC Requirement (Full scores for compliance and graduated scores for partial compliance)	Law Firm's Response	Marks awarded
1.	Years of legal experience (Give names of all lawyers; (each lawyer's years of experience; attach or indicate source of proof)	2 marks for each average year. Maximum marks in this parameter is 10 marks irrespective of whether the Team has more than five average years of legal experience)		

Law Firm's total score for Table 6.2.4 Sub-Part A is _____

Notes To Table 6.2.5 Sub-Part A

1. To score,
 - 1.1 the years of legal experience for each admitted lawyer in the firm will be added up to obtain the total years of legal experience whether gained in the employment/service of the bidder firm or elsewhere.
 - 1.2 Those total years will then be divided by the total number of admitted lawyers in the firm.
 - 1.3 The resulting figure will be taken as the lawyers or Team's average years of legal experience.
2. Years of legal experience of each lawyer shall be by confirming that each lawyer is engaged in the law firm through -
 - 2.1 employment/appointment letters or contract/service agreement of the lawyer in the law firm.
 - 2.2 the letter shall be on the law firm's letterhead and signed by the Partner and acknowledged/received by signing of the letter by the lawyer in question.
 - 2.3 the agreement shall be signed by both the Partner and the lawyer.
3. The years will then be computed on the same parameters as that of a Partner i.e. based on the admission number at LSK.

4. For firms in which there is only a sole qualified lawyer, the firm will be entitled to only the minimum of 2 marks under this criteria. If the sole lawyer has been in active practice for more than 10 years, such firm will be entitled to 4 marks only, provided it meets the criteria.

5. **Team's Outstanding Achievement (Excluding all Partners)**

Maximum awardable marks are 20 broken down as per the table below.

Table 6.2.5 Sub -Part A

Sr. No.	Criteria	NACC Requirement (Full scores for compliance and graduated scores for partial compliance)	Law Firm's Response	Marks awarded
1.	In Civil Litigation – Court of Appeal (Give full name of lawyer(s); attach summary; attach copy of proof)	Maximum marks are 3		
2.	In Civil Litigation – High Court or PPARB (Give full name of lawyer(s); attach summary; attach copy of proof)	Maximum marks are 3		
3.	In Civil Litigation – Magistrate's Court (Give full name of lawyer(s); attach summary; attach copy of proof)	Maximum marks are 2		
5.	In Criminal Prosecutions in the High Court (Defence) (Give full name of lawyer(s); attach summary; attach copy of proof)	Maximum marks are 2		
6.	In Criminal Prosecutions in the Magistrate's Court (Defence) (Give full name of lawyer(s); attach summary; attach copy of proof)	Maximum marks are 2		
7.	In Criminal Prosecutions in the High Court (Prosecuting) (Give full name of lawyer(s); attach summary; attach copy of proof)	Maximum marks are 3		

8.	In Criminal Prosecutions in the Magistrate's Court (Prosecuting) (Give full name of lawyer(s); attach summary; attach copy of proof)	Maximum marks are 3		
9.	In all other matters (Give full name of lawyer(s); attach summary; attach copy of or indicate source of proof)	Maximum marks are 2		

Law Firm's total score for Table 6.2.5 Sub-Part A is _____

Notes To Table 6.2.5 Sub-Part A

1. To score, the total number of admitted lawyers in the firm attaining the qualifications will be added up. That figure will be divided by the total number of admitted lawyers in the firm. The resultant figure will then be multiplied by the maximum marks under each category.
2. Evidence of outstanding achievement shall be through a summary of the achievement in not more than two paragraphs containing:-
 - 2.1 A statement of the issue/assignment handled
 - 2.2 The specific challenge(s) in the issue/assignment
 - 2.3 The manner the lawyer handled the issue/assignment; or view taken that tilted the matter or led to success for the client
 - 2.4 The ultimate conclusion of the assignment
3. Copy of the ultimate resolution, where possible. In case of a litigated/prosecuted matter, a copy of the ultimate resolution must be submitted.
4. The outstanding achievement may have been attained in the employment/service of the bidder firm or elsewhere.
5. For firms in which there is only a sole qualified lawyer, the firm will be entitled to only the minimum marks subject to it complying with the requirements under each sub-criterion.
6. For lawyers who have been in private practice for no more than the last 12 months from the Date of the Tender Document, but were previously employed as in-house counsel (by whatever description) for any organization(s) for a continuous period of three years, before venturing into private practice, evidence of outstanding achievement shall take into account any organisation or customer or client of their employer(s) that s/he was responsible for during his/her period of employment.
This shall include his/her employer itself.

7. For lawyers who have been in private practice for no more than the last 18 months from the Date of the Tender Document, but were previously employed as in-house counsel (by whatever description) for any organization(s) for a continuous period of five years, before venturing into private practice, evidence of such lawyer's Team's outstanding achievement shall take into account the lawyers engaged by his/her employer(s) that s/he was responsible for during his/her period of employment.

6. **Team’s Valid Membership or Status in Professional Organisations (Excluding all Partners)**
Maximum awardable marks are 6 broken down as per the table below.

Table 6.2.6 Sub –Part A

Sr. No.	Criteria	NACC Requirement (Full scores for compliance and graduated scores for partial compliance)	Law Firm’s Response	Marks awarded
1.	Give name of lawyer(s)	Maximum marks are 1		
2.	Professional Membership(s) as Commissioner of Oaths, CPS and/or Notary Public (Attach or indicate source of proof)	Maximum marks are 3 1 mark for each category		
3.	Professional Membership in the CIArb (Attach or indicate source of proof)	Maximum marks are 2 2 marks for Fellow or Member 1 mark for Associate		

Law Firm’s total score for Table 6.2.6 Sub-Part A is _____

Notes To Table 6.2.6 Sub-Part A

1. To score in each category, the total number of lawyers in the firm who qualify will be added up. That figure will be divided by the total number of lawyers in the firm. The resultant figure will then be multiplied by the maximum marks under each category.
2. Any lawyer who qualifies under both categories will be scored in the aggregate i.e. cumulatively.
3. Evidence of each lawyer’s membership or status shall be through a letter on the letterhead of the professional organisation confirming the membership of each lawyer.
 - 3.1 The letter may be original and shall not be more than 12 months old prior to the Date of the Pre-Qualification Tender Document.
 - 3.2 Or in lieu of 3.1 above, a copy of a valid/current certificate of membership or status in that organization.

- 3.3 Or in lieu of 3.1 and 3.2 above, where such membership or status can be confirmed Through the organisation's website or other relevant independent website -
- 3.3.1 a printed extract of that where the lawyer's name appears together with the address of the website, or,
 - 3.3.2 a statement by the law firm stating the website where that membership or status of that lawyer may be confirmed.

7. **Companies or Organizations Offered Legal Training by the Law Firm in the last Three Years of the Pre-Qualification Tender Document**

Maximum awardable marks are 6 broken down as per the table below.

Table 6.2.7 Sub -Part A

Sr. No.	Criteria	NACC Requirement (Full scores for compliance and graduated scores for partial compliance)	Law Firm's Response	Marks awarded
1.	Companies/organizations and numbers trained in each company/organisation (Provide list with complete contact addresses incl. website of each company/organisation; attach proof)	Maximum marks are 2 1 mark will be given for each company or firm or organisation.		
2.	Training material for each company/organisation (Attach or give source of proof)	Maximum marks are 2 1 mark for the manual or material or other training document or part thereof per each company or firm or organisation		

Law Firm's total score for Table 6.2.7 Sub-Part A is _____

Notes To Table 6.2.7 Sub-Part A

1. List prepared by the law firm giving the full names of the companies or firms or organisations. The List shall contain the current full physical, postal, website (if any) and e-mail address of the organization. It should also include the contact person or office for that training.
2. The List shall also spell out the total number of persons in each company or firm or organization who were given the training.
3. A letter from the organisation, company or firm or confirming that the training was performed by the law firm.
4. The letter shall be done on the letterhead of that company or firm or organisation and signed by its authorized representative who shall give his/her full names and designation in that company or firm or organization together with his/her full contact details.

5. Copies of relevant legal training manuals or documents or materials that were issued or imparted to the participants or companies or firms or organisations during or after the training.
6. The training includes any that was done for or on behalf of the LSK, KSL, CLE ICPSK or any other continuous professional development program. It excludes any and all trainings in consumer protection, human rights, children's rights, family law, elections and election laws, refugee or military law/issues.
7. For lawyers who have been in private practice for no more than the last 18 months from the Date of the Tender Document, but were previously employed as in-house counsel (by whatever description) for any organization(s) for a continuous period of five years, before venturing into private practice, evidence of such training shall take into any organisation or customer or client of their employer(s) that s/he was responsible for during his/her period of employment. This shall include his/her employer itself.

8. Financial capability

Maximum awardable marks are 10 broken down as per the table below.

Table 6.2.8 Sub -Part A

Sr. No.	Criteria	NACC Requirement (Full scores for compliance and graduated scores for partial compliance)	Law Firm's Response	Marks awarded
1.	Checking submission of financial statements required which must be those that are reported within fifteen (15) calendar months of the Date of the Pre-Qualification Tender Document. (For law firms that are registered and recognized within the last one calendar year of the Date of the Pre-Qualification Tender Document, they will not be evaluated on (a) above, but will instead be evaluated on the basis of the submission of the certified bank statements provided)	Maximum marks are 5		
2.	Confirmation that the Method of Charging for Services is duly completed and signed and considering the content	Maximum marks are 5		

Law Firm's total score for Table 6.2.8 Sub-Part A is _____

Notes To Table 6.2.8 Sub-Part A

1. This should be furnished using the format provided in the Pre-Qualification Tender Document.
2. Law firms are advised to furnish all the information regarding this criterion in not more than three (3) single-sided A4 size pages at font 12.

Successful Law Firms

6.4.1 The successful law firms eligible for appointment shall be the ones who attain highest passes in compliance with the Evaluation Criteria above

6.4.2 The law firms with the highest overall scores shall be considered for appointment subject to Confirmation/Inspection visits.

- 6.4.3 In case of a tie within any category of firms, NACC shall opt for the firm which provides added value over and above what is set out. The added value will be determined on the basis of:
- a) Achievability of the Value Add (2 marks)
 - b) Relevance of the Value Add (2 marks); and
 - c) Cost of the Value Add (2 marks).
- 6.4.4 The classification, as defined by NACC, shall be as follows:
- a) Category A law firms - (Super-size)
 - (i.) Has a Professional Indemnity Cover of not less than KSh. 200 Million
 - (ii.) Has more than twelve (12) admitted lawyers
 - b) Category B law firms - (Large)
 - (i.) Has a Professional Indemnity Cover of not less than KSh. 100 Million but not equivalent to or more than KSh. 200 Million
 - (ii.) Has between eight (8) and twelve (12) admitted lawyers
 - c) Category C law firms - (Medium)
 - (i.) Has a Professional Indemnity Cover of not less than KSh. 50 Million but not equivalent to or more than KSh. 100 Million
 - (ii.) Has between four (4) and seven (7) admitted lawyers
 - d) Category D law firms - (Standard)
 - (i.) Has a Professional Indemnity Cover of not less than KSh. 10 Million but not equivalent to or more than KSh. 50 Million
 - (ii.) Has between one (1) and three (3) admitted lawyers

NOTES ON EVALUATION CRITERIA

- a) Where applicable, Candidates who meet the cut off points will be subjected to a site physical due diligence before award is given.
- b) To qualify for further evaluation and any appointment, the law firm ought to score a minimum of 80 marks from the tables out of a total of 100 marks.
- c) For firms that are eligible under preferences (Youth, Women & Persons with disability), the minimum marks shall be 70 from the tables out of the 100 marks.

SECTION VII- LETTER OF APPLICATION

Date: Tender No.....

To:

The Director,
National AIDS Control Council
P.O.BOX 61307-00200
NAIROBI, KENYA
Located at Landmark Plaza 8th and 9th Floor,
Upper Hill area
Opposite The Nairobi Hospital

Ladies and Gentlemen,

1. Having read, examined and understood all of the pre-qualification information provided in the Prequalification Document, the receipt of which is hereby duly acknowledged, we, the undersigned Candidate, hereby apply to be prequalified by yourselves as a potential bidder for the item(s) as indicated by us in Section IV Detailed Description of Items.
2. We agree to abide by this Tender for a **period of.....days (Candidate please indicate validity of your tender)** from the date fixed for tender opening as per the Prequalification Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
3. This application, together with your written appointment thereof, shall not constitute a contract between us nor commit NACC to any actual tender or amount of contract.
4. We understand that you are not bound to accept any application you may receive.
5. We declare that the statements made and the information provided in our prequalification tender document are complete, true, and correct in every detail.

Yours sincerely, Name of

Candidate

Name and Capacity of authorized person signing the Application

Signature of authorized person signing the Tender

Stamp or Seal of Candidate

NOTES:

1. NACC requires a validity period of at least one hundred and twenty (120) days.
2. This form must be duly signed, stamped and/or sealed.

SECTION VIII - DECLARATION FORM

Date _____

To

**The Director,
National AIDS Control Council
P.O.BOX 61307-00200
NAIROBI, KENYA
Located at Landmark Plaza 8th and 9th Floor,
Upper Hill area
Opposite The Nairobi Hospital**

Ladies and Gentlemen,

The Tenderer i.e. (full name and complete physical and postal address) _____

_____ declare the following: -

- a) That I/ We have not been debarred from participating in public procurement by anybody, institution or person.
- b) That I/ We have not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement anywhere.
- c) That I/We or any director of the firm or company is not a person within the meaning of paragraph 3.2 of ITT (Eligible Tenderers) of the Instruction to Tenderers.
- d) That I/ We are not insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
- e) That I/ We are **not** associated with any other Tenderer participating in this Tender.
- f) That I/We do hereby confirm that all the information given in this tender is accurate, factual and true to the best of our knowledge.

Yours sincerely,

Name of Tenderer

Signature of duly authorised person signing the Tender

Name and Capacity of duly authorised person signing the Tender

Stamp or Seal of Tenderer

SECTION IX-CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

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

Part 1 – General

Business Name.....

Location of business premises.....

Plot No.Street/ Road

Postal Address Postal Code

Tel No.....

Facsimile.....

Mobile and/ or CDMA No.....

E-mail:.....

Nature of your business

Registration Certificate No.....

Name of your BankersBranch... ..

*Names of Law firm's contact person(s)

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

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

.....
.....

Part 2 (a) Sole Proprietor

Your name in full

Part 2 (b) Partnership

Give details of partners as follows: -

Names

Shares

1.....

2.....

3.....

4.....

5.....

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

.....

Capacity of the duly authorized person.....

Signature of the duly authorized person.....

NOTES ON THE QUESTIONNAIRE

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

SELF DECLARATION FORMS (r 62)
REPUBLIC OF KENYA
PUBLIC PROCUREMENT REGULATORY AUTHORITY (PPRA)

FORM SD1

SELF-DECLARATION THAT THE PERSON/TENDERER IS NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015.

I,of P. O. Box being a resident of
..... in the Republic of — do hereby make a statement as
follows:-

1. THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Director of
.....
..... (insert name of the Company) who is a Bidder in respect of **Tender No.**
..... for(insert tender title/description) for(insert name of the
Procuring entity) and duly authorized and competent to make this statement.

2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.

3. THAT what is deponed to hereinabove is true to the best of my knowledge, information and belief.

.....
(Title) (Signature) (Date)

Bidder Official Stamp

FORM SD2

SELF DECLARATION FORMS (r 62)

REPUBLIC OF KENYA

PUBLIC PROCUREMENT REGULATORY AUTHORITY (PPRA)

SELF-DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE.

I,of P. O. Box being a resident of
..... in the Republic of — do hereby make a statement as follows:-

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of
..... (insert name of the Company) who is a Bidder in respect of **Tender No.**
..... for(insert tender title/description) for(insert name of the
Procuring entity) and duly authorized and competent to make this statement.

2. THAT the aforesaid Bidder, its servants and/or agents /subcontractors will not engage in any corrupt or
fraudulent practice and has not been requested to pay any inducement to any member of the Board,
Management, Staff and/or employees and/or agents of(insert name of the Procuring entity)
which is the procuring entity.

3. THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to
any member of the Board, Management, Staff and/or employees and/or agents of(name of the
procuring entity)

4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders
participating in the subject tender

5. THAT what is deponed to hereinabove is true to the best of my knowledge information and belief.

.....
(Title) (Signature) (Date)
Bidder's Official Stamp

BANK DETAILS FORM- MANDATORY

Provide the following bank details for electronic transfer purposes

Name of the Bidder:.....

Bank Name :.....

Bank branch name ;.....

Bank code :.....

Bank account :.....

PIN Number :.....

VAT Number :.....

Bank signatory(s) :.....

.....

Signed/ date.....