



**Kenya Power**

**PRE-QUALIFICATION TENDER NO.  
KP1/9AA-2/OT/56/CACS/16-17 FOR LEGAL  
SERVICES**

**ALL LAW FIRMS ARE ADVISED TO READ CAREFULLY THIS PRE-Q  
TENDER DOCUMENT IN ITS ENTIRETY BEFORE MAKING ANY BID**

**(E-PROCUREMENT TENDER)**

**(ENSURE TO READ THE APPENDIX TO INSTRUCTIONS TO  
TENDERERS)**

February 2017

THE KENYA POWER & LIGHTING COMPANY LIMITED  
CENTRAL OFFICE, STIMA PLAZA,  
KOLOBOT ROAD, PARKLANDS,  
P.O. BOX 30099-00100,  
NAIROBI,  
KENYA.

Telephones: +254-020-3201000; 3644000 Pilot Lines  
Telephones: +254 -720-600070/1-5; 733-755001/2-3 Cellular  
Facsimile: +254-20-3514485  
E-mail: [JOchieng@kplc.co.ke](mailto:JOchieng@kplc.co.ke)  
E-mail 2: [AOWiti@kplc.co.ke](mailto:AOWiti@kplc.co.ke)  
E-mail 3: [VSimiyu@kplc.co.ke](mailto:VSimiyu@kplc.co.ke)  
Website: [www.kplc.co.ke](http://www.kplc.co.ke)

*PRE-Q TENDER DOCUMENT FOR PROVISION OF LEGAL SERVICES MADE BY AND FOR  
THE KENYA POWER & LIGHTING COMPANY LIMITED FEBRUARY,2017*

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**ABBREVIATIONS AND ACRONYMS**

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

## **A. INTRODUCTION**

Dear Prospective Bidder,

### ***1. Description of The Kenya Power & Lighting Company Limited and our Core Business***

- 1.1 The Kenya Power & Lighting Company Limited (KPLC) is a limited liability company registered under the Companies Act, Chapter 486 of the Laws of Kenya. It was incorporated in 1922 as the East African Power & Lighting Company Limited. KPLC was listed on the Nairobi Stock Exchange (NSE) in 1954. The Company changed to its present name in 1983.
- 1.2 Our shareholders include the Government of Kenya (GoK) institutional and individual persons. KPLC is a public company with GoK holding the majority block of shares. We are subject to the State Corporations Act, Chapter 442 of the laws of Kenya and the laws governing procurement by public bodies, mainly the Public Procurement and Asset Disposal Act, 2015 and the various regulations made there-under.
- 1.3 **Our Vision is “To provide world class power that delights our customers”**
- 1.4 **Our Mission is “Powering People for Better Lives.”**
- 1.5 Our Core Business is bulk purchase of electrical energy; transmit; distribute; supply electrical energy and related customer services throughout Kenya.
- 1.6 Our Core Values were developed to support the Company’s Mission. These Values are Customer First, One Team, Passion, Integrity and Excellence.

### ***2. Organizational and Business Structure***

- 2.1 KPLC is structured into 13 Divisions, 1 Institute and 10 Main Regions. Our headquarters is referred to as Central Office located at Stima Plaza, Kolobot Road, Parklands, Nairobi. Amongst the 13 Divisions is the Corporate Affairs and Company Secretary headed by the General Manager Corporate Affairs & Company Secretary. Under her are several departments, including the Legal Services Department.
- 2.2 KPLC’s operations are geographically split in ten (10) regions. **Nairobi South** and **Nairobi West** Region with their main office in Electricity House, Harambee Avenue Nairobi Central Business District; **Nairobi North** Region with its main office in Stima Sacco Plaza (*a few meters from KPLC Hq*), Mushembi Road, Parklands, Nairobi; **Central Rift** Region with the main office in Electricity House, Moi South Road, Nakuru; **Coast Region** with the main office in Electricity House, Nkrumah Road, Mombasa Central Business District and **Mount Kenya** Region with the main office in Stima House Nyeri. **Western**

Region with its main office in Electricity House Kisumu, **South Nyanza** Region has its main office in Kisii, **North Rift** Region has its main office at KVDA Plaza Eldoret while **North Eastern** Region has its main office in Thika.

- 2.3 To attain higher penetration and decentralization within the devolved governance system, KPLC has about 47 Branches throughout the 10 Regions which transvers all the 47 counties of the Republic.
- 2.4 The branches are headed by County Business Managers. They are responsible for and are the link persons for all affairs of the Company within their respective spheres of operation.
- 2.5 As part of our growth and transformation strategy, from 2009 the Company has been engaged in the process of rebranding in a programme dubbed “Project Mwangaza”. One result of this has been the change of our logo to one depicted as a bulb with the words “Kenya Power” at the bottom.
- 2.6 However, the name of the Company remains the same i.e. The Kenya Power & Lighting Company Limited (abbreviated as KPLC).

### **3. *Nature and Scope of the Pre-Qualification Tender***

- 3.1 KPLC intends to procure by way of pre-qualification the services of competent law firms and qualified lawyers (*hereinafter referred to as the lawyers*) –
  - 3.1.1 to be listed on its Panel for the three year period between April, 2017 to April 2019 or as may be extended.
  - 3.1.2 to offer a myriad of legal and associated consultancy services (*hereafter referred to as the Services*) as may from time to time be required over the period in question.
- 3.2 The scope of the Services includes the fields of Energy Law, Company and Commercial Law, Constitutional and Administrative Law; Construction and Engineering law; Conveyancing; Debt Recoveries; Employment and Labour laws; Health and Safety laws; law relating to Information Technology; Land Law, Public-Private Partnership, Procurement law, Arbitration and Alternative Dispute Resolution; Environmental Law; Insurance law; associated civil litigation; criminal prosecutions; Devolution and Public Policy.
- 3.3 This will also include provision of expert advise and opinions on specific cases, transactions, events including projects. It may involve carrying out searches locally and abroad in land and company registries together with liaising with other relevant bodies and authorities.
- 3.4 The lawyers will be expected to primarily work closely and under the auspices of the General manager, Corporate Affairs and Company Secretary in its Legal Services Department.

#### 4. *The Legal Services Department*

- 4.1 The Legal Services Department (*hereinafter the Department*) is situated at our headquarters at Stima Plaza, 2<sup>nd</sup> Floor, Kolobot Road, Parklands, Nairobi. From its offices, the Department provides services to the entire Company locally as well as abroad. It is presently headed by the Manager, Legal Services under whom are, for the purposes of this tender, two Chief Legal Officers who head two different sections. The Chief Legal Officer- Commercial whose docket is primarily concerned with Contracts, Conveyancing, Compliance and Legislation, and secondly, hand the Chief Legal Officer- Litigation and Prosecutions whose docket involves the dual functions of both civil and criminal matters. The Department comprises lawyers with a combined experience of well over 50 years at the Bar.
- 4.2 The Department is primarily responsible for and co-ordinates all of KPLC's Legal Services.
- 4.3 Consequent upon KPLC's transformational strategy, the Department has adopted robust, increased efficiency and timely response approaches in delivery of services. The Department and each officer's performance is evaluated on a monthly basis premised on each individual's Performance Contract entered into annually with KPLC. In order to meet higher expectations and address new challenges, each individual's Performance Contract is reviewed every year to ensure growth in success parameters.
- 4.4 KPLC has a sizable civil litigation portfolio as outlined below.
- 4.4.1 It is engaged in litigation in about 70% of all Magistrates Courts country-wide; 75% of all High Courts (*this includes the Employment & Labour Relations Court*), and some cases in the Court of Appeal. It is yet to be engaged in litigation in the Supreme Court of Kenya. It also adopts Alternative Dispute Resolution processes which include, but are not limited to, Negotiation, Mediation and Arbitration.
- 4.4.2 Occasionally, KPLC finds itself before some Tribunals for instance the Public Procurement Administrative Review Board, the National Environmental Tribunal, the Energy Regulatory Commission, the Energy Tribunal and the Business Premises Rent Tribunal.
- 4.4.3 When need arises, the Department handles some of the insurable claims. However insurance matters are mainly within the purview of its sister department i.e. Risk Management and Integrity. The insurable claims relate to personal injury claims, occupational injuries, motor and other road traffic accidents, electrocutions, damage to and attendant direct loss arising from burnt electrical appliances and deaths from electrical accidents.
- 4.5 The Department is also handling criminal cases. This is in conjunction with KPLC's Security Services Department.

- 4.6 The Department carries out its role in provision of the Services either alone or through the KPLC's external lawyers listed on its Panel as follows:-
- 4.6.1 Civil litigation is very nearly 100% exclusively out-sourced to the Panel.
  - 4.6.2 Criminal prosecutions; 100% through the ODPP or its specially appointed prosecutors
  - 4.6.3 A portion of commercial and conveyancing work is out-sourced
  - 4.6.4 Debt collection through litigation is also outsourced.

## 5. *The Objectives*

- 5.1 Over the years, the Kenyan electricity market has been evolving, as have been electricity markets all over the world. The demand for electricity has grown, the technologies have changed, there is more emphasis on renewable source of energy. There is also the increased legislation and policy drive towards open access to electricity driven by the demand for quality supply and customers' heightened awareness. These and more changes and growth areas require a focused strategy for KPLC to maintain its competitive advantage and focus on being a market leader in this sector.
- 5.2 The expansion of operations within KPLC and other developments in the energy sector together with the changes in legislation affecting KPLC, necessitate extra vigilance and continuous review of our legal matters, operations and business. These legal ramifications may require the selected lawyers to provide timely, up to date informed responses and recommendations to queries from the Department.
- 5.4 Pre-qualification and enlisting on KPLC's Panel shall not constitute a retainer. KPLC does not bind itself to request for provision of any service but shall endeavour to ensure that empanelled lawyers will be treated equitably.

## 6. *Professionalism and Experience*

- 6.1 The lawyers should be adequately competent, possess substantial relevant experience who can be able to promptly offer the Services and associated consultancy.
- 6.2 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 Kenya Power & Lighting Company Ltd. In particular, any perceptions of conflict of interest are strongly undesirable and will be swiftly remedied.
- 6.3 The lawyers should demonstrate the capability of conducting presentations and/or providing training to staff on relevant legal aspects in the various fields.
- 6.4 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).*



## **7. *Requirements, Reports and Schedules***

- 7.1 It is expected that the selected lawyers may enter into discussion and agreement with KPLC on the approach and action plans to realize the objectives of their appointment.
- 7.2 Taking cognizance of the entrenched adoption of Performance Contracts in KPLC and the benefits accruing there-from, the law firms will be required to enter into Service Level Agreements with KPLC. 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 KPLC Panel.
- 7.3 The lawyers will be expected to give periodic Reports and Review of legal matters that they are handling and timely submission within specified Schedules.
- 7.4 Lawyers/Law firms who have previously been removed from the KPLC Panel or had all matters transferred away from such law firm will not be considered in this Pre-Q Tender.

## **8. *The Evaluation and Selection Process***

- 8.1 The Evaluation and Selection Process of this Pre-Q tender will be Quality and Cost Based Selection conducted largely along the following lines:-
  - 8.1.1 Desk evaluation of all submitted bid documents, and
  - 8.1.2 Confirmatory/Inspection Visits of the lawyers premises or any other places deemed necessary by the Evaluation Team.
- 8.2 All lawyers who participate in this Pre-Q Tender shall be deemed to have consented to this Process. KPLC therefore requests that participating lawyers and firms grant reasonable access and facilities to the KPLC staff for these purposes.

## **9. *Confirmation and Verification of Bid Documents***

- 9.1 All lawyers/law firms are strongly advised to:-
  - 9.1.1 Follow and conform to the information contained in the Pre-Qualification Tender Document in preparing and submitting its bid.
  - 9.1.2 Ensure that they officially verify the accuracy, authenticity and validity of any and all documentation, certification or information obtained from third parties e.g. Kenya Revenue Authority (*KRA*), Law Society of Kenya (*LSK*), letters from referees that they intend to or submit to KPLC as part of their bid.
  - 9.1.3 Ensure that they comply with the E-procurement process. Any queries or assistance from the KPLC E-procurement or SRM Help Desk should be sought at least **five (5) working days** before the close of the Tender.

- 9.2 The bidders are also encouraged to demonstrate high degrees of integrity, fidelity and honesty in the information supplied to KPLC as part of their bids. The information should be as clear and concise as possible.
- 9.3 KPLC advises bidders that any deviations from the contents of this paragraph may lead to disappointment and automatic disqualification of such bidder.

Yours faithfully,

**FOR: THE KENYA POWER & LIGHTING COMPANY LIMITED**

**BEATRICE MESO**  
**GENERAL MANAGER, CORPORATE AFFAIRS**  
**AND COMPANY SECRETARY**

**SECTION I - INVITATION TO TENDER**

**DATE: FEBRUARY, 2017**

**PRE-QUALIFICATION TENDER NO. KP1/9AA-2/OT/56/CACS/16-17 FOR  
PROVISION OF LEGAL SERVICES**

- 1.1 The Kenya Power & Lighting Company Ltd (KPLC) invites bids from eligible law firms for the provision of **Legal Services (hereinafter referred to as “the Services”)**. Interested eligible law firms may obtain further information from the Procurement Manager, The Kenya Power & Lighting Company Ltd at Stima Plaza, 3<sup>rd</sup> Floor, Kolobot Road, P. O. Box 30099 – 00100 Nairobi, Kenya; e-mail [JOchieng@kplc.co.ke](mailto:JOchieng@kplc.co.ke) .
- 1.2 **Obtaining tender documents**
- 1.2.1 Pre-Q Tender documents detailing the requirements may be viewed at KPLC E-Procurement Web Portal found on the KPLC website ([www.kplc.co.ke](http://www.kplc.co.ke)) beginning on **Thursday, 9<sup>th</sup> February, 2017**. All bidders will be required to e-mail their name, e-mail address, physical address and telephone contacts to [JOchieng@kplc.co.ke](mailto:JOchieng@kplc.co.ke) and [AOWiti@kplc.co.ke](mailto:AOWiti@kplc.co.ke). Interested bidders are requested to register to enable them participate. Registration and submission is online. No manual submission will be accepted.
- 1.3 **Submission of Tender documents**
- Completed Tenders are to be saved as PDF documents marked **FOR PRE-QUALIFICATION TENDER NO. KP1/9AA-2/OT/56/CACS/16-17 PROVISION OF LEGAL SERVICES** and submitted in the appropriate KPLC E-procurement Web Portal found on the KPLC website ([www.kplc.co.ke](http://www.kplc.co.ke)) so as to be received on or before 10.00 a.m. on Friday, 7<sup>th</sup> April, 2017.
- 1.4 **Prices**
- Any charges or fees quoted should preferably be in Kenya Shillings. The tender validity shall be for a hundred and twenty (120) days from the closing date of the tender.
- 1.5 **Opening of Submitted Tenders**
- Tenders will be opened electronically on Friday, 7<sup>th</sup> April, 2017 at 10.30am in the presence of the law firm’s or their representatives who choose to attend in Stima Plaza, Auditorium, Kolobot Road, Parklands, Nairobi.

- 1.6 There will be a pre-bid meeting on Friday, 17<sup>th</sup> February, 2017 at 9.30am at Auditorium, Stima Plaza, Kolobot Road, Parklands, Nairobi. It is advisable for prospective bidders to attend this meeting as guidance will be given on the E-procurement process.

## **SECTION II - TENDER SUBMISSION CHECKLIST**

### **A. Tender Submission Format - Non-Financial Proposal**

This order and arrangement shall be considered as the Tender Submission Format, Non-Financial. 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	Any other document or item required by the Pre-Q Tender Document that is non-financial. <i>(The Law firm shall specify such other documents or items it has submitted)</i>	

### **B. Tender Submission Format – Financial Proposal**

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

No.	Item	Tick Where Provided
1	Accepted Method of Charging for Services with amounts indicated therein	

2	<p>Audited 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-Q Tender Document.</p> <p><i>(For law firms that are registered or incorporated within the last one calendar year of the Date of the Pre-Q Tender Document, they should submit certified copies of bank statements covering a period of at least six months prior to the date of the pre-q tender document. The copies should be certified by the Bank or Financial Institution issuing the statements. The certification should be original).</i></p>	
3*	<p>Any other document or item required by the Pre-Q Tender Document that is financial. (The Law firm shall specify such other documents or items it has submitted)</p>	

**\*NOTES TO LAW FIRMS ON TENDER SUBMISSION CHECKLIST**

1. Valid Tax Compliance Certificate shall be one issued by KRA in respect of the law firm and not the individual lawyer. It must have been valid at least 1<sup>st</sup> July 2016. For firms registered after this date, they should provide tax registration certificates that are valid as at the time of the registration.
2. All law firms are required to provide the Personal Identification Number Certificate (PIN Certificate) of the managing partner where such firm is not registered or is owned by a single person. If the firm is registered as a partnership with more than two partners existing either within the date of this Tender Document or by the closing date of this Tender this note shall apply.
3. A non-financial document or item includes one that does not contain or reveal the content of the Method of Charging for Services and the required audited financial statements. **A law firm shall not insert financial documents or items in the Non-financial tender submission folder.**
4. A financial document or item includes one that contains all information on the Method of Charging for Services and the required audited financial statements. **A law firm shall not insert Non-financial documents or items in the Financial tender submission folder.**

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### **SECTION III - INSTRUCTIONS TO TENDERERS (ITT)**

#### **3.1 Definitions**

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

- a) *Any reference to any Act shall include any statutory extension, amendment, modification, re-amendment or replacement of such Act and any rule, regulation or order made there-under;*
- b) *“Day” means calendar day and “month” means calendar month;*
- c) *“Date of Pre-Q Tender Document or 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 Pre-Q Tender Document;*
- d) *“PPRA” wherever appearing means The Public Procurement Regulatory Authority or its successor(s) and assign(s) where the context so admits;*
- e) *“The tender” or the “Tender Document” or “the Pre-Q Tender Document” includes its appendices and documents mentioned hereunder and any reference to this tender or to any other document includes a reference to the other document as varied supplemented and/or replaced in any manner from time to time;*
- f) *The expression “law firm” shall include “lawyers” and vice-versa;*
- g) *“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 or default or omission by the law firm shall be deemed to be an act, default or omission by any one or more of such lawyers;*
- h) *“The Procuring Entity” means The Kenya Power and Lighting Company Limited or its successor(s) and assign(s) where the context so admits (hereinafter abbreviated as ‘KPLC’ or referred to as Kenya Power);*
- i) *“The Services” refers to the myriad of legal and associated consultancy services;*
- j) *Words importing the masculine gender only, include the feminine gender or (as the case may be) the neutral gender;*
- k) *Words importing the singular number only include the plural number and vice-versa and where there are two or more persons included in the expression the “law firm” the covenants, agreements and obligations expressed to be made or performed by the law firm shall be deemed to be made or performed by such persons jointly and severally.*



### 3.2 Eligible Law Firms

- 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 KPLC.
- 3.2.3 The classification, as defined by KPLC, 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-Q Tender Document -
- a) *'Admitted lawyers'* shall mean qualified lawyers who have been admitted to the Bar and hold a valid year 2016 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 KPLC as KPLC may reasonably request.
- 3.2.7 In KPLC's appointment of law firms, KPLC shall strive to appoint at least 30% of the firms in this tender from among the Youth, Women and Persons with

Disabilities who possess a certificate of preference and fulfill the requirements for pre-qualification under this Tender document.

### **3.3 Declarations of Eligibility**

- 3.3.1 Law firms shall not be under declarations of ineligibility for corrupt, fraudulent practices or any other reasons prescribed by the PPAD or any other law.
- 3.3.2 Law firms who are not under these declarations shall complete the Declaration Form strictly in the form and content as prescribed at Section XV.
- 3.3.3 Those that are under the Declaration for corrupt and fraudulent practices whether currently or in the past shall not complete the Form. They will submit a suitable Form giving details, the nature and present status of their circumstances.

### **3.4 Pre-Bid Meeting**

- 3.4.1 KPLC will conduct a pre-bid meeting. The purpose of the pre-bid meeting shall be to clarify issues and answer any questions that may be raised at that stage.
- 3.4.2 The law firm's designated representative is invited to attend the pre-bid meeting which will take place on Friday, 17<sup>th</sup> February, 2017 starting at 9.30 a.m. The venue shall be Auditorium, Stima Plaza, Kolobot Road, Parklands, Nairobi.
- 3.4.3 The law firm is requested as far as possible to submit any questions in writing or be electronic means to reach KPLC through the Procurement Manager in writing at KPLC's address indicated in the Invitation to Tender before the pre-bid meeting.
- 3.4.4 Minutes of the pre-bid meeting including the text of the questions raised and the responses given together with any response prepared after the pre-bid meeting may be transmitted to the downloaders of the Pre-Q Tender Document.
- 3.4.5 Non-attendance during the pre-bid meeting will not be a cause of disqualification of the Pre-Q Tender.

### **3.5 Cost of Tendering**

- 3.5.1 The law firm shall bear all costs associated with the preparation and submission of its Tender. KPLC will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 3.5.2 There are no charges for the Pre-Q Tender Document.

### **3.6 Obtaining the Tender Document**

- 3.6.1 Pre-Q Tender documents detailing the requirements may be obtained by downloading tenders online from the KPLC website ([www.kplc.co.ke](http://www.kplc.co.ke)). No tender documents will be issued from any KPLC office.

- 3.6.2 Within twenty-four (24) hours of downloading the tender document, the law firm should send only by e-mail its name, e-mail address(es) and telephone/mobile number to the following:-

*The Manager, Supply Chain (Procurement)*  
*The Kenya Power & Lighting Company Limited,*  
*Stima Plaza, 3<sup>rd</sup> Floor, Kolobot Road, Parklands,*  
*P. O. Box 30099 – 00100,*  
*Nairobi, Kenya.*  
 Email: [JOchieng@kplc.co.ke](mailto:JOchieng@kplc.co.ke)  
 Cc: [AOWiti@kplc.co.ke](mailto:AOWiti@kplc.co.ke)

### **3.7 Contents of the Tender Document**

- 3.7.1 The Tender Document comprises the documents listed below and Addendum (where applicable) issued in accordance with paragraph 3.9 of these Instructions to law firms: -

- a) *Introduction*
- b) *Invitation to Tender*
- c) *Tender Submission Checklist*
- d) *Instructions to Tenderers*
- e) *Appendix to Instructions to Tenderers*
- f) *Schedule of Requirements*
- g) *Method of Charging for Services*
- h) *Evaluation Criteria*
- i) *Confirmation/Inspection Visits*
- j) *General Conditions of Appointment*
- k) *Tender Form*
- l) *Confidential Business Questionnaire Form*
- m) *Evaluation Criteria Table 6.2.2 Forms*
- n) *List of Law Firm's References*
- o) *Quality Management System/ Standard Operating Procedures*
- p) *Format of CV for Professional Staff*
- q) *Declaration Form*
- r) *Conditions of Appointment Form*
- s) *Professional Indemnity Cover (Before and After Appointment)*

- 3.7.2 The law firm is expected to examine all instructions, forms, provisions, terms and specifications in the Pre-Q Tender Document. Failure to furnish all information required by the Pre-Q Tender Document or to submit a tender not substantially responsive to the Pre-Q Tender Document in every respect will be at the law firm's risk and may result in the rejection of its Tender.

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

### **3.8 Clarification of Documents**

- 3.8.1 A prospective law firm requiring any clarification of the Pre-Q Tender Document may notify the Procurement Manager in writing or by post at KPLC’s address indicated in the Invitation to Tender.
- 3.8.2 The request for clarification shall also be sent to the following:-  
*The Manager, Supply Chain (Procurement)*  
*The Kenya Power & Lighting Company Limited,*  
*Stima Plaza, 3<sup>rd</sup> Floor, Kolobot Road, Parklands,*  
*P. O. Box 30099 – 00100,*  
*Nairobi, Kenya.*  
*Email: [JOchieng@kplc.co.ke](mailto:JOchieng@kplc.co.ke)*  
*Cc: [AOWiti@kplc.co.ke](mailto:AOWiti@kplc.co.ke)*
- 3.8.3 KPLC will respond in writing to any request for clarification of the Pre-Q Tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of Tenders, prescribed by KPLC. Written copies of KPLC’s response (*including an explanation of the query but without identifying the source of inquiry*) will be sent to all prospective law firms that have duly received the Pre-Q Tender Document prior to that period.

### **3.9 Amendment of Documents**

- 3.9.1 At any time prior to the deadline for submission of Tenders, KPLC, for any reason, whether at its own initiative or in response to a clarification requested by a prospective law firm, may modify the Pre-Q Tender Documents by amendment.
- 3.9.2 All prospective law firms that have received the Pre-Q Tender Documents will be notified of the amendment(s) (*hereinafter referred to or otherwise known as addendum*) in writing and the same will be binding on them.
- 3.9.3 In order to allow prospective law firms reasonable time in which to take the amendment into account in preparing their Tenders, KPLC, at its discretion, may extend the deadline for the submission of Tenders.

### **3.10 Language of Tender**

- 3.10.1 The Tender prepared by the law firm, as well as all correspondence and documents relating to the tender, exchanged between the law firm and KPLC, shall be written in English language.
- 3.10.2 Any printed literature furnished by the law firm may be written in another language so long as they are accompanied by an accurate English translation of

the relevant passages in which case, for purposes of interpretation of the Tender, the English translation shall govern. The English translation shall be on the law firm's letterhead and shall be signed by the duly authorized signatory signing the Tender and stamped with the law firm's stamp.

### **3.11 Documents Comprising the Tender**

The Tender prepared and submitted by the law firms shall include but not be limited to all the following components: -

- a) *Declaration Form, Tender Form and a Method of Charging for Services completed in compliance with paragraphs 3.3, 3.12 and 3.13.*
- b) *Documentary evidence established in accordance with paragraph 3.2 that the law firm is eligible to tender and is qualified to perform the Services when called upon to do so if its tender is accepted.*
- c) *Documentary evidence established in accordance with paragraph 3.15 that the Services that may be provided by the law firm conform to the Pre-Q Tender Document, and,*
- d) *Professional Indemnity Cover furnished in accordance with paragraph 3.18*
- e) *For purposes of reference and evaluation, the law firm shall submit a list of at least six (6) names with details as per Section VI Evaluation Criteria, Part II, Sub-Part B, Table 6.2.2 and its Note No. 2 to Table 6.2.2*

### **3.12 Tender Form**

The Law firm shall complete and sign the Tender Form and all other documents furnished in the Pre-Q Tender Document, indicating the services to be performed, and Methodology of Charging for Services amongst other information required.

### **3.13 Charges for Services**

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

3.13.2 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.

### **3.14 Tender Currencies**

3.14.1 For Services that the law firm will provide from within or outside Kenya, the rates and prices shall be quoted in Kenya Shillings.

### **3.15 Law Firm's Competence and Qualifications**

- 3.15.1 Pursuant to paragraph 3.2, 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.
- 3.15.2 The documentary evidence of the law firm's qualifications to be appointed and perform well if its Tender is accepted shall be established to KPLC'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-Q Tender Document.*
    - (ii.) *For law firms that are registered within the last one calendar year of the Date of the Pre-Q Tender Document, they should submit certified copies of bank statements covering a period of at least six (6) months prior to the Date of the Pre-Q Tender Document. The copies should be certified by the Bank issuing the statements. The certification should be original.*
  - 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.*
- 3.15.3 The law firm will furnish KPLC with a copy of the registration certificate and LSK's recognition whether by hard copy letter or on the internet. KPLC 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-Q Tender Document unless satisfactorily explained otherwise by the law firm.*
- 3.15.4 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.

- 3.15.5 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 KPLC's Panel of Lawyers.
- 3.15.6 The documentary evidence of conformity of the services to the Pre-Q Tender Document may be in the form of literature, drawings, and data.
- 3.15.7 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 KPLC 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 KPLC's satisfaction that the substitutions ensure substantial and/or higher equivalence to those designated in the Pre-Q Tender Document.

### **3.16 Deviations**

- 3.16.1 Where a law firm deems that it possesses competency that may not aptly fit into any of the evaluation criteria set out in the Pre-Q Tender document, it is at liberty to provide a statement of deviations from the tender requirements on a separate sheet of paper clearly marked as "Statement of Deviations".
- 3.16.2 The Statement should include the following:-
- a) the specific pre-q tender document requirement
  - b) the deviation proposed by the law firm
  - c) the details of the deviation
  - d) justification or reason for the deviation
  - e) where possible, the law firm's cost of that deviation and the law firm's estimate of the cost of complying with KPLC's requirement without the deviation.

### **3.17 Demonstration(s), Inspection(s) and Test(s)**

- 3.17.1 Where required in the tender, all law firms shall demonstrate ability of performance of the required service in conformity with the Details of Services.
- 3.17.2 KPLC or its representative(s) after giving reasonable notice to the law firm shall have the right to inspect/ test the law firm's capacity, equipment, premises, and to confirm their conformity to the tender requirements. This shall include any quality management system. KPLC's representative(s) retained for these purposes shall provide appropriate identification at the time of such inspection/ test/ visitation.
- 3.17.3 KPLC shall meet its own costs of the inspection/ test. Where conducted on the premises of the law firm(s), all reasonable facilities and assistance, including access to literature and documentation save for clients confidential information shall be furnished to the inspectors at no charge to KPLC.

- 3.17.4 Demonstration, Inspection/ Test/ Visitation Report(s) shall be completed by KPLC upon conclusion of the inspection/ tests/ visitations. This Report will be considered prior to appointment.

### **3.18 Professional Indemnity Cover (Before Appointment)**

- 3.18.1 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).
- 3.18.2 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.
- 3.18.3 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.
- 3.18.4 The PI Cover, at the tender submission stage, shall be valid up to at least the closing date of the tender.
- 3.18.5 KPLC 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 KPLC. The period for response shall not exceed three (3) days from the date of KPLC'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.
- 3.18.6 Any Tender not secured in accordance with this paragraph will be rejected by KPLC as non-responsive, pursuant to paragraph 3.28.
- 3.18.7 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 KPLC.

### **3.19 Validity of Tenders**

- 3.19.1 Tenders shall remain valid for a hundred and twenty (120) days after the date of tender opening as specified in the Invitation to Tender or as otherwise may be prescribed by KPLC, pursuant to paragraph 3.23. A Tender that is valid for a shorter period shall be rejected by KPLC as non-responsive.
- 3.19.2 In exceptional circumstances, KPLC may extend the Tender validity period. The extension shall be made in writing. For the purposes of evaluation and award, the PI Cover provided under paragraph 3.18 shall not be affected by any extension. A Law firm shall not be required nor permitted to modify its tender during the extended period.



### **3.20 Tender Format**

- 3.20.1 The Law firm shall divide and mark the folders as follows:-
- a) *NON-FINANCIAL.*
  - b) *FINANCIAL.*
- 3.20.2 The Law firm shall ensure that -
- a) *the Non-Financial folders do not contain any or all the information that reveals the Method of Charging for Services and the required Audited Financial Statements. Further, no financial documents are included or inserted in the Non-Financial folders.*
  - b) *a Financial set, document or item is one that contains all information on Method of Charging for Services and the Audited Financial Statements or Bank Statements and no non-financial documents are included or inserted into the Financial sets, or folders.*
- 3.20.4 The Tender shall be 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.
- 3.20.5 The order and arrangement as indicated in the Tender Submission Checklist will be considered as the Tender Format.
- 3.20.6 Any Tender not prepared and signed in accordance with this paragraph may be rejected by KPLC as non-responsive, pursuant to paragraph 3.28.

### **3.21 Preparation and Signing of the Tender**

- 3.21.1 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.
- 3.21.2 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).
- 3.21.3 All pages of the Tender, including un-amended printed literature, shall be initialled by the Partner(s) signing the Tender and serially numbered.
- 3.21.4 The Tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the law firm, in which case such corrections shall be initialled by the Partner(s) signing the Tender.
- 3.21.5 KPLC will assume no responsibility whatsoever for the law firm's failure to comply with or observe the entire contents of this paragraph.
- 3.21.6 Any Tender not prepared and signed in accordance with this paragraph may be rejected by KPLC as non-responsive, pursuant to paragraph 3.27.

### **3.22 Deadline for Submission of Tenders**

- 3.22.1 Tenders must be received by KPLC by the time and at the place specified in the Invitation to Tender.
- 3.22.2 KPLC may, at its discretion, extend this deadline for submission of Tenders by amending the tender documents in accordance with paragraph 3.8, in which case all rights and obligations of KPLC and the law firm's previously subject to the initial deadline, will therefore be subject to the deadline as extended.

### **3.23 Modification and Withdrawal of Tenders**

- 3.23.1 The law firm may modify or withdraw its Tender after it has submitted it, provided that written notice of the modification, including substitution or withdrawal of the Tender is received by KPLC prior to the deadline prescribed for submission of tenders.
- 3.23.2 The law firm's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraphs 3.20, 3.21 and 3.22. A withdrawal notice may also be sent by facsimile or electronic mail but followed by an original signed confirmation copy, postmarked no later than the deadline for submission of Tenders.
- 3.23.3 No Tender may be modified after the deadline for submission of Tenders.

### **3.24 Opening of Tenders**

- 3.24.1 KPLC shall electronically open all Tenders promptly at the date and time specified in the KPLC tendering portal and at the location specified in the Invitation to Tender or as may otherwise be indicated.
- 3.24.2 The Tenderer's names, tender modifications or withdrawals, the presence or absence of requisite Professional indemnity cover and such other details as KPLC, at its discretion, may consider appropriate, will be announced at the opening.
- 3.24.3 At the Tender opening, tender prices, and such other details as KPLC, at its discretion, may consider appropriate will be read out.
- 3.24.4 KPLC shall assign an identification number to each tender received.
- 3.24.5 The Tenderers or their representatives may attend the opening and those present shall sign a register evidencing their attendance.

### **3.25 Process to be Confidential**

- 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 law firm or other person(s) not officially concerned with such process until conclusion of that process.
- 3.25.2 Conclusion of that process shall be deemed to have occurred, by the date and time KPLC notifies the successful law firm(s).

- 3.25.3 In any event, official disclosure by KPLC of any information upon conclusion of that process shall be on request by the law firm and only be in summary form to the extent permissible by law.
- 3.25.4 Any effort by a law firm to influence KPLC or any of its staff members in the process of examination, evaluation and comparison of tenders and information or decisions concerning appointment to the Panel may result in the rejection of the law firm's tender.

### **3.26 Clarification of Tenders and Contacting KPLC**

- 3.26.1 To assist in the examination, evaluation and comparison of Tenders KPLC may, at its discretion, ask the law firm or any institution for a clarification of the law firm's Tender. The request for clarification and the response shall be in writing, and no change in the Method of Charging for Services or substance of the Tender shall be sought, offered, or permitted.
- 3.26.2 The law firm is required to provide timely clarification or substantiation of the information that is essential for effective evaluation of its qualifications. It is the responsibility of the law firm to provide in writing the clarification or substantiation which should reach KPLC within twenty four hours (24hr) from the time of KPLC's query or any such period expressly indicated by KPLC. Such writing may include by electronic mail or hand delivered mail. Should there be no conclusive response within this period, it may result in the law firm's disqualification.
- 3.26.3 Save as is provided in this paragraph and paragraph 3.25 above, no law firm shall contact KPLC on any matter related to its Tender, from the time of the tender openings to the time the award is declared.
- 3.26.4 Any effort by a law firm to influence KPLC in its decisions on tender evaluation, tender comparison, tender recommendation(s) or appointment may result in the rejection of the law firm's Tender.

### **3.27 Preliminary Evaluation and Responsiveness**

- 3.27.1 Prior to the detailed Technical and Financial evaluation, KPLC will determine the substantial responsiveness of each Tender. For purposes of this tender, a substantially responsive Tender is one that conforms to the requirements of Preliminary Evaluation. KPLC's determination of a Tender's responsiveness is to be based on the contents of the Tender itself without recourse to extrinsic evidence.
- 3.27.2 KPLC will examine the Tenders to determine whether they conform to the Preliminary Evaluation Criteria set out in Section VI Evaluation Criteria.

- 3.27.3 Notwithstanding the contents of the foregoing sub-paragraphs, if a Tender is not substantially responsive, it will be rejected at the earliest stage of evaluation by KPLC and cannot subsequently be made responsive by the law firm by correction of any non-conformity.

### **3.28 Minor Deviations, Errors or Oversights**

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

- 3.28.2 Such minor deviation -

- a) *shall be quantified to the extent possible*
- b) *shall be taken into account in the evaluation process and comparison of tenders and,*
- c) *shall be applied uniformly and consistently to all qualified Tenders duly received by KPLC.*

- 3.28.3 KPLC may waive errors and oversights that can be corrected without affecting the substance of the Tender.

- 3.28.4 A material deviation or reservation is one –

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

### **3.29 Technical Evaluation and Comparison of Tenders**

- 3.29.1 KPLC will further evaluate and compare the Tenders that have been determined to be substantially responsive, in compliance to the Technical Evaluation Criteria as set out in the Tender Document.

### **3.30 Financial Evaluation**

- 3.30.1 The financial evaluation and comparison shall be as set out in the Financial Evaluation Criteria. The comparison shall be of the –

- a) Methodology of Charging for Services
- b) Audited Financial Statements or Bank Statements
- c) Quantified deviations, if any, as relates to any of the tender requirements

### **3.31 Preferences**

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

### **3.32 Tender Evaluation Period**

- 3.32.1 The Evaluation Committee may conduct and complete evaluation of the tender within thirty (30) days of the validity period.
- 3.32.2 Notwithstanding the above, the evaluation period as stated in the Evaluation Criteria may be extended by KPLC but in any event such evaluation will not exceed twenty one (21) days in the validity period of the tender.

### **3.33 Debarment of a law firm**

- 3.33.1 A Law firm that gives false information in the Tender about its qualification or which refuses to enter into a contract after notification of appointment shall be considered for debarment from participating in future public procurement.

### **3.34 Confirmation of Qualification for Appointment**

- 3.34.1 KPLC may confirm to its satisfaction whether a law firm's that is selected as having submitted the highest compliant evaluated responsive tender is qualified to be appointed and perform any eventual assignment satisfactorily.
- 3.34.2 The confirmation will take into account the law firm's financial, technical, and performance capabilities. It will be based upon an examination of the documentary evidence of the law firm's qualifications submitted by it pursuant to paragraphs 3.11 and 3.15 as well as confirmation of such other information as KPLC deems necessary and appropriate. This may include offices and other facilities inspection and audits; cleanliness, orderliness of its offices, and, general satisfaction and good welfare of its non-lawyer staff.
- 3.34.3 An affirmative confirmation will be a prerequisite for appointment of the law firm to the KPLC Panel. A negative confirmation will result in rejection of the law firm's Tender, in which event KPLC will proceed to fill in the available gap by the next available highest evaluated responsive tender to make a similar confirmation of that law firm's capabilities to perform satisfactorily.

### **3.35 Notification of Appointment**

- 3.35.1 Prior to the expiration of the period of tender validity, KPLC shall notify the successful law firm(s) in writing that its Tender has been accepted.
- 3.35.2 Subject to paragraph 3.35.3, the successful law firms shall be those whose Tenders have been determined to be substantially responsive, compliant with the evaluation criteria and have been determined to be the highest evaluated tenders, and further, where deemed necessary, that the law firms are confirmed to be qualified for appointment to the KPLC Panel of Lawyers.
- 3.35.3 The appointment of law firms shall take into account the need for KPLC to have appropriate representation in its regions.
- 3.35.4 Appointment will be done as follows:-
  - a) Category A, super-size law firms – Btwn one (1) and three (3) firms,

- b) Category B, large law firms – Btwm one (1) and two (2) firms,
  - c) Category C, medium law firms – Btwm two (2) and four (4) firms,
  - d) Category D, standard law firms – Btwm three (3) and five (5) firms.
- 3.35.5 The notification of appointment shall not constitute the formation of any contract.
- 3.35.6 Simultaneously, and without prejudice to the contents of paragraph 3.35.1, on issuance of Notification of Appointment to the successful law firms, KPLC shall formally notify each unsuccessful law firm.

### **3.36 Termination of Procurement Proceedings**

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

### **3.37 Acceptance of Appointment**

- 3.37.1 At the same time as KPLC notifies the successful law firm that its Tender has been accepted, KPLC will send the law firm the Service Level Agreement together with any other necessary documents incorporating all agreements between the Parties.
- 3.37.2 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 KPLC,
  - b) signing the Service Level Agreement where required, and any other documents specified, and
  - c) returning (a) and (b) to KPLC within that period of seven (7) days.
- 3.37.3 Subject to paragraph 3.37.4, KPLC 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.
- 3.37.4 KPLC shall sign the Service Level Agreement and include the name of the law firm on its Panel unless a law firm fails to provide a valid Professional Indemnity Cover is pursuant to paragraph 3.38.
- 3.37.5 Appointment to the Panel shall be annulled for failure of the successful law firm to sign the Service Level Agreement AND provide the Professional Indemnity Cover where it is required by KPLC to do so, in which event KPLC may notify the next available highest evaluated responsive law firm that its Tender has been accepted.
- 3.37.6 Paragraph 3.38 together with the provisions of this paragraph 3.37 will apply with necessary modifications with respect to the law firm notified under sub-paragraph 3.35.6.

### **3.38 Professional Indemnity Cover (After Appointment)**

- 3.38.1 Within seven (7) days of the date of notification of appointment from KPLC, the successful law firm shall furnish KPLC with a valid PI Cover.
- 3.38.2 The Professional Indemnity Cover shall be issued by an insurance company approved by PPOA and acceptable to KPLC. The Insurer must be located in Kenya.
- 3.38.3 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.
- 3.38.4 The PI Cover is required to protect KPLC 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.
- 3.38.5 KPLC 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 KPLC. The period for response shall not exceed three (3) days from the date of KPLC'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.
- 3.38.6 In case of failure by the successful law firm to furnish an authentic PI Cover, the appointment shall stand annulled.
- 3.38.7 Paragraphs 3.35 and 3.37 together with the provisions of this paragraph 3.38 will apply with necessary modifications, and as far as circumstances permit, with respect to the law firm notified under sub-paragraph 3.35.1.

### **3.39 Corrupt or Fraudulent Practices**

- 3.39.1 KPLC requires that law firms observe the highest standard of ethics during the procurement process and execution of contracts. When used in the Regulations, the following terms are defined as follows: -
- a) *“Corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of public official in the procurement process or in contract execution;*
  - b) *“Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of KPLC, and includes collusive practice among law firms (prior to or after Tender submission) designed to establish tender prices or other content at artificial non-competitive levels and to deprive KPLC of the benefits of free and open competition.*
- 3.39.2 KPLC will reject a proposal for appointment if it determines that the law firm recommended for appointment has engaged in corrupt or fraudulent practices in competing for this pre-qualification.

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

### **3.40 Conflict of Interest**

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

3.40.2 For purposes of this paragraph, a conflict of interest with respect to KPLC includes, but is not limited to circumstances, where the law firm, after fourteen (14) days of the law firm's acceptance of KPLC's Appointment to its Panel, is still a provider of professional services to a party with conflicting interests to KPLC.

3.40.3 The law firm shall be required to state in the prescribed form, details of any case or assignment in which it on its own behalf or it has acted on behalf of a party with conflicting or adverse interests to KPLC within the last two (2) years of the Date of the Prequalification Tender Document.

## **SECTION IV - SCHEDULE OF REQUIREMENTS**

### **4. Brief Schedule of Services Required**

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

4.1.1 to be listed on its Panel for the three year period between December 2016 to December 2019 or as may be extended.

4.1.2 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.

4.2 The scope of the Services includes the fields of Energy Law, Company and Commercial Law, Constitutional & Administrative Law; Construction and Engineering law; Conveyancing; Debt Recoveries; Employment and Labour laws; Health and Safety laws; law relating to Information Technology; Land Law; 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.

4.3 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 KPLC’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 KPLC 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 KPLC and the firm. Should there be a difference on this, then KPLC 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**

- 5.2.1 Without prejudice to the contents of paragraph 5.1, KPLC recognizes that the present 5<sup>th</sup> Schedule of the Order provides for an hourly billing system or an amount fixed by agreement between KPLC and the firm.
- 5.2.2 Law firms’ 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 three year period, where KPLC consents, the parties will refer to the Table 5.2.2 below as a basis for discussion and determination of fees payable.

**Table 5.2.2**

Sr. No.	Name of Professional Staff	Position ( <i>Partner or Associate or Assistant</i> )	Hourly Remuneration Rate (KSh.)
1.			
2.			
3.			
4.			
5.			

**Notes to Law Firms on Method of Charging for Services**

1. **Reimbursable Costs**
  - 1.1 KPLC's proposed payments for subsistence and accommodation shall be as follows:-
    - 1.1.1 For matters or assignments in Nairobi, Mombasa, Kisumu, Malindi, Kilifi, Lamu and Kwale – KSh. 10,000/= per night out.
    - 1.1.2 For matters or assignments in Nakuru, Nyeri, Eldoret, Kericho, Kakamega, Naivasha, Nanyuki, Garissa, Embu – KSh. 8,000/= per night out.
    - 1.1.3 For matters or assignments in all other towns – KSh. 7,000/= per night out.
  - 1.2 The above are payable on reimbursement basis; as part of a fee note and with demonstrable proof of the necessity and occurrence.
  - 1.3 KPLC may revise these figures where circumstances permit but not within the first year of appointment.
  - 1.4 The figures apply only where the law firm or lawyer does not have an office or ordinarily practice in that town.
  - 1.5 This excludes other disbursements incurred in the normal course of rendering the Services.

Date:

Tender Number and Name:

**To:**

The Kenya Power & Lighting Company Limited,  
Stima Plaza,  
Kolobot Road, Parklands,  
P.O Box 30099 – 00100,  
Nairobi, Kenya.

Dear Sirs and Madams,

Having read, examined and understood the Pre-Q 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: -

### **6.1 Part 1 - Preliminary Evaluation Under Paragraph 3.27 of the ITT.**

These are mandatory requirements. This shall include confirmation of the following:-

- 6.1.1 Checking general orderliness and tidiness 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-Q Tender Form duly completed and signed
- 6.1.5 Submission and considering the following:-
  - a) Firm's Registration Certificate
  - b) PIN Certificate or Taxpayer's Registration Certificate issued by KRA
  - c) Valid Tax Compliance or Clearance Certificate issued by KRA
  - d) Firm profile
- 6.1.6 That the Tender is valid for the period required
- 6.1.7 Submission 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)*
- 6.1.8 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 3.3 and 3.4 of the ITT.
- 6.1.9 Evidence of recognition of the law firm by LSK *(excluding the law firm's own statement to this effect)*.
- 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-Q Tender Document.
- 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-Q 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 (2016) practising certificate issued by the Judiciary
- 6.1.12 Submission and considering the details on Conflict of Interest Form

- 6.1.13 Record of unsatisfactory or default in performance obligations in respect of any client shall be considered. This shall include any law firm with unresolved disputes with any client in its obligations for more than three (3) months. This excludes any dispute before a competent judicial or quasi-judicial or adjudicatory body.

## 6.2 Part II – Technical Evaluation and Comparison of Tenders Under Paragraph 3.32 of the ITT.

### Sub-Part A - Verification of Information and Documentation

1. Relevant requested certificates and or documents
2. Any other details required in the Pre-Q Tender

### Sub-Part B - 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 B.
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 B**
  - 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 KPLC, it is preferable for the certification to be original.
  - 5.2 However copies whether from electronical scanning, photocopying or other means of reproduction of an original may be accepted.
  - 5.3 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 also shares its profits as well as losses. All other definitions of “Partner” however styled or of whatever nature shall be excluded from the definition of Partner.
- 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-Q 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 KPLC 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 86 marks from the Tables out of a total of 132 marks awardable.
- 10.2 For firms that are eligible under preferences, the minimum marks shall be 72 from the Tables out of the 132 marks awardable.
- 10.3 To earn any mark,

- 10.3.1 the law firm's must satisfy each and every 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 11** broken down as per the table below

*Table 6.2.1 Sub –Part B*

<b>Sr. No.</b>	<b>Criteria</b>	<b>KPLC Requirement (Full scores for compliance and graduated scores for partial compliance)</b>	<b>Law Firm's Response</b>	<b>Marks awarded</b>
1.	Main Office in Nairobi, Mombasa, Nakuru, Kisumu, Eldoret, Nyeri, Kisii, Thika. (State location; attach proof)	<i>2 marks</i> For any irrespective of whether the firm has more than one main office in any of these towns.		
2.	Main office in any other town. (State location; attach proof)	<i>1 mark</i> For any irrespective of whether the firm has more than one main office in that town.		
3.	Branches in major towns i.e. Nairobi, Mombasa, Nakuru, Kisumu, Eldoret, Nyeri, Kisii, Thika. (State location; attach proof)	<i>1 mark</i> Whether firm has one or more branches in one or more towns		
4.	Affiliation or Accreditation with any law firm or legal organisation within EAC (except Kenya) i.e. Tanzania, Uganda, Rwanda and Burundi. (State firm/ body; attach proof)	<i>Maximum marks are 2</i> 1 mark for not more than 2 countries and 2 marks for 3 or more countries		
5.	Affiliation or Accreditation with any other law firm or legal organisation outside Kenya and EAC (State firm/ body; attach proof)	<i>Maximum marks are 5</i> 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 for Table 6.2.1 Sub-Part B is \_\_\_\_\_*

Notes To Table 6.2.1 Sub-Part B

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-Q 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-Q 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. Where a law firm has more than one office in the same town, that other office shall not be considered as a branch for purposes of evaluation.
4. Evidence of EAC and international affiliation or accreditation shall be through -
  - 4.1 a letter confirming such affiliation or accreditation
  - 4.2 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
  - 4.3 the letter shall contain the full physical, postal, facsimile (if any), and e-mail address of the organisation
  - 4.4 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 KPLC.

5. 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 18** broken down as per the table below.

*Table 6.2.2 Sub –Part B*

<b>Sr. No.</b>	<b>Criteria</b>	<b>KPLC Requirement (Full scores for compliance and graduated scores for partial compliance)</b>	<b>Law Firm's Response</b>	<b>Marks awarded</b>
1.	Give two (2) organisations with above KSh. 20 Billion annual turnover.	<i>Maximum marks are 8.</i> 4 marks for each		
2.	Give two (2) organisations with above KSh. 100 Million but not more than KSh. 20 Billion annual turnover.	<i>Maximum marks are 6.</i> 3 marks for each		
3.	Give two (2) organisations with between KSh. 10-100 Million annual turnover.	<i>Maximum marks are 4.</i> 2 marks for each		

*Law Firm's total score for Table 6.2.2 Sub-Part B is \_\_\_\_\_*

**Notes To Table 6.2.2 Sub-Part B**

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) or Government 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. *Satisfactory Resolution of Legal Matters from any Four out of the Six Organisations Above*

3.3 **Maximum awardable marks are 8** broken down as per the table below.

*Table 6.2.3 Sub –Part B*

<b>Sr. No.</b>	<b>Criteria</b>	<b>KPLC Requirement (Full scores for compliance and graduated scores for partial compliance)</b>	<b>Law Firm's Response</b>	<b>Marks awarded</b>
1.	Organisation no. 1 (State name of organisation; attach proof)	<i>2 marks</i>		
2.	Organisation no. 2 (State name of organisation; attach proof)	<i>2 marks</i>		
3.	Organisation no. 3 (State name of organisation; attach proof)	<i>2 marks</i>		
4.	Organisation no. 4 (State name of organisation; attach proof)	<i>2 marks</i>		

*Law Firm's total score for Table 6.2.3 Sub-Part B is \_\_\_\_\_*

*Notes To Table 6.2.3 Sub-Part B*

1. Please give four organizations which had serious or manifestly important matters that your firm handled competently and professionally in the best interests of the organisation
2. Evidence of satisfactory handling and acceptance shall be through –
  - 2.1 a letter outlining/stating the following-
    - a) competence and professionalism in the handling of the matter
    - b) a very brief or general statement of the matter or issue eg. *“successfully negotiated a syndicated loan agreement involving five lenders on behalf of ABCD Ltd (the client)”* or *“obtained an injunction (not ex parte) in favour of XYZ against loss of land due to fraudulent sale or encroachment by unauthorized persons.”*
  - 2.2 the letter shall be done on the letterhead of the bidding law firm

3. Serious or important is defined as:-
  - 3.1 in terms of pecuniary value, a liability that the organisation faced of no less than KSh. 3 Million should it have had an adverse Judgement or Award against it. The Judgement should be the final in the matter. Proof of the Judgement or Award will be required.
  - 3.2 where the pecuniary value cannot be determined at face value, the main issue would have had far reaching adverse consequences on the organisation and/or other organizations though not in court but would be in a similar predicament.
  - 3.3 where the pecuniary value cannot be determined at face value, the main issue had far reaching consequences on the organization and/or other organizations though not in court but were in a similar predicament.
  - 3.4 In commercial transactions involving a sum of over KSh. 5 Million. Commercial transactions excludes all conveyancing of immoveable property except where the amount involved is over KSh. 10 Million (*excluding lawyers professional fees*).
4. The handling may include through the law firm's advisory opinions; acting in mergers & acquisitions; litigation; share offering; restructuring, transfer of assets and liabilities between two or more organisations but does not include the conventional or traditional conveyancing of selling, buying or leasing land or other immovable property, except as provided above.
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) or Government for a continuous period of five years, before venturing into private practice, evidence of satisfactory resolution 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. Valid evidence of Partner's Appropriate Qualification, Experience and Degree of Responsibility**

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

*Table 6.2.4 Sub –Part B*

<b>Sr. No.</b>	<b>Criteria</b>	<b>KPLC Requirement (Full scores for compliance and graduated scores for partial compliance)</b>	<b>Law Firm's Response</b>	<b>Marks awarded</b>
1.	Level in the firm must be Senior or Managing Partner. (Give full name of Partner; attach or indicate source of proof)	<i>2 marks</i>		
2.	Years of legal experience (State number; attach or indicate source of proof)	<i>Maximum marks are 5</i> 1/2 mark for each full year of legal experience. <i>(Maximum marks in this parameter is attained irrespective of whether the Partner has actually more than ten years experience)</i>		
3.	Professional Membership(s) (CPS (Kenya) and/or Notary Public; attach or indicate source of proof)	<i>Maximum marks are 2</i> 1 mark for each i.e. CPS and Notary Public		
4.	Professional Membership (CI Arb; attach or indicate source of proof)	<i>Maximum marks are 2</i> a) 2 marks for Fellow b) 1 mark for Member		
5a.)	Degree of Responsibility (State organizations where responsibility as Lead Counsel or Lead Lawyer was in 3 completely different assignments with at least once each, being in respect of an organization or Government with above KSh. 10 Billion and another between KSh. 10–100 Million annual turnover; attach proof), OR	<i>Maximum marks are 9</i> 3 marks each for each different assignment		
5b.)	Degree of Responsibility	<i>Maximum marks are 6</i>		



	(State organization or Government where responsibility as Lead Counsel or Lead Lawyer was in less than 3 completely different assignments; attach proof)	2 marks each for each different assignment		
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*Law Firm's total score for Table 6.2.4 Sub-Part B is \_\_\_\_\_*

*Notes To Table 6.2.4 Sub-Part B*

1. Evidence of Partner's position shall be through –
  - 1.1 where the firm is a sole proprietorship 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 eleven (11) months old prior to the Date of the Pre-Q 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, either which way, from the organisation or Government 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) or Government for a  
*PRE-Q TENDER DOCUMENT FOR PROVISION OF LEGAL SERVICES MADE BY AND FOR THE KENYA POWER & LIGHTING COMPANY LIMITED FEBRUARY, 2017*

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.

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

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

*Table 6.2.5 Sub –Part B*

<b>Sr. No.</b>	<b>Criteria</b>	<b>KPLC Requirement (Full scores for compliance and graduated scores for partial compliance)</b>	<b>Law Firm's Response</b>	<b>Marks awarded</b>
1.	Years of legal experience (Give names of all lawyers; each lawyer's years of experience; attach or indicate source of proof)	<i>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)</i>		

*Law Firm's total score for Table 6.2.5 Sub-Part B is \_\_\_\_\_*

*Notes To Table 6.2.5 Sub-Part B*

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.

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

Maximum awardable marks are 22 broken down as per the table below.

*Table 6.2.6 Sub –Part B*

<b>Sr. No.</b>	<b>Criteria</b>	<b>KPLC Requirement (Full scores for compliance and graduated scores for partial compliance)</b>	<b>Law Firm's Response</b>	<b>Marks awarded</b>
1.	In Civil Litigation – Supreme Court, Court of Appeal (Give full name of lawyer(s); attach summary; attach copy of proof)	<i>Maximum marks are 3</i>		
2.	In Civil Litigation – High Court or PPARB (Give full name of lawyer(s); attach summary; attach copy of proof)	<i>Maximum marks are 3</i>		
3.	In Civil Litigation – Magistrate's Court (Give full name of lawyer(s); attach summary; attach copy of proof)	<i>Maximum marks are 2</i>		
4.	In Civil Litigation – ERC, ET or NET (Give full name of lawyer(s); attach summary; attach copy of proof)	<i>Maximum marks are 1</i>		
5.	In Criminal Prosecutions in the High Court (Defence) (Give full name of lawyer(s); attach summary; attach copy of proof)	<i>Maximum marks are 2</i>		
6.	In Criminal Prosecutions in the Magistrate's Court (Defence) (Give full name of lawyer(s); attach summary; attach copy of proof)	<i>Maximum marks are 2</i>		
7.	In commercial transactions of any nature (Give full name of lawyer(s); attach summary; attach copy of proof)	<i>Maximum marks are 3</i>		

8.	In compliance and legislation (policy making and regulation formulation) (Give full name of lawyer(s); attach summary; attach copy of proof)	<i>Maximum marks are 3</i>		
9.	In all other matters whether local or foreign (Give full name of lawyer(s); attach summary; attach copy of or indicate source of proof)	<i>Maximum marks are 3</i>		

*Law Firm's total score for Table 6.2.6 Sub-Part B is \_\_\_\_\_*

*Notes To Table 6.2.6 Sub-Part B*

1. To score, the total number of admitted lawyers in the respective section 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. For purposes of this tender, section means either Commercial or Litigation department within the law firm.
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 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) or Government 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.

**7. 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 6.2.7 Sub –Part B*

<b>Sr. No.</b>	<b>Criteria</b>	<b>KPLC Requirement (Full scores for compliance and graduated scores for partial compliance)</b>	<b>Law Firm's Response</b>	<b>Marks awarded</b>
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 6.2.7 Sub-Part B is \_\_\_\_\_*

*Notes To Table 6.2.7 Sub-Part B*

- 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.
- Any lawyer who qualifies under both categories will be scored in the aggregate i.e. cumulatively.
- 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 eleven months old prior to the Date of the Pre-Q 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.

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

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

*Table 6.2.8 Sub –Part B*

<b>Sr. No.</b>	<b>Criteria</b>	<b>KPLC Requirement (Full scores for compliance and graduated scores for partial compliance)</b>	<b>Law Firm's Response</b>	<b>Marks awarded</b>
1.	Companies/organizations and numbers trained in each company/organisation (Provide list with complete contact addresses incl. website of each company/organisation; attach proof)	<i>Maximum marks are 3</i> 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)	<i>Maximum marks are 3</i> 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 6.2.8 Sub-Part B is \_\_\_\_\_*

*Notes To Table 6.2.8 Sub-Part B*

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 ICPAK or any other continuous professional development program. It excludes any and all trainings in human rights, children's rights, family law, 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) or Government 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.

**9. Law Firm's Facilities, Systems & Adequacy of Support Staff**

Maximum awardable marks are 11 broken down as per the table below.

*Table 6.2.9 Sub –Part B*

<b>Sr. No.</b>	<b>Criteria</b>	<b>KPLC Requirement (Full scores for compliance and graduated scores for partial compliance)</b>	<b>Law Firm's Response</b>	<b>Marks awarded</b>
1.	Library facilities (Indicate proof)	<i>Maximum marks are 5</i> a) 1 mark for two complete book shelves/ cabinets of four levels each or their equivalent b) 2 marks for four complete bookshelves/ cabinets of four levels each or their equivalent c) 5 marks for a complete independent room of more than (b) above		
2.	Modern Computer and IT Systems (Indicate proof)	<i>Maximum marks are 3</i> a) 1 mark for modern computers and systems including at least one laptop b) 2 marks for (a) above but with at least two laptops and a smartphone/blackberry (or its equivalent for ease and speed of communication) c) 3 marks for (a) above but with at least three laptops and 2 smartphones/blackberry or an I-Pad in lieu of a blackberry		
3.	Adequacy of Support Staff (Give names and designations of staff; indicate proof)	<i>Maximum marks are 3</i> for each category or its sub a) Category A law firms – above 12 lawyers: minimum 20 support staff b) Category B law firms - between 8 and 12 lawyers: minimum 15 support staff c) Category C law firms - between 4 and 7 lawyers: minimum 9 support staff d) Category D law firms (i.) 1 lawyer: minimum 3 support staff (ii.) 2 or 3 lawyers: minimum 4 to 6 support staff		

*Law Firm's total score for Table 6.2.9 Sub-Part B is \_\_\_\_\_*

*Notes To Table 6.2.9 Sub-Part B*

1. This should be contained in the Firm Profile. *(Please note that if any usual/standard/pre-printed marketing material is used, these specific requirements should be clearly and completely discernible).*
2. It may be confirmed during an office and other facilities visit by KPLC staff nominated for that purpose.
3. Law firms should note that any information or documentation that is found to have been false or misrepresented may lead to automatic disqualification or removal from the Panel, if appointed, irrespective of any prior findings.
4. Support staff includes pupils whose engagement with the bidding firm is through a formal document. That formal document should be attached to the bid. The engagement should be at least within a period of two months prior to the Date of the Tender Document.

**10. Appropriateness of Law Firm's Quality Management System /Standard Operating Procedures (QMS/SOP) including Case Management and Client Handling Methodology**

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

*Table 6.2.10 Sub –Part B*

<b>Sr. No.</b>	<b>Criteria</b>	<b>KPLC Requirement (Full scores for compliance and graduated scores for partial compliance)</b>	<b>Law Firm's Response</b>	<b>Marks awarded</b>
1.	Overview/Mission of QMS/SOP	<i>Maximum marks are 2</i>		
2.	Case Management - Orderliness and Flow (Should contain ascertainable details)	<i>Maximum marks are 2</i>		
3.	Case Management -Flexibility (Should contain ascertainable details)	<i>Maximum marks are 2</i>		
4.	Case Management -Achievability (Should contain ascertainable details)	<i>Maximum marks are 2</i>		
5.	Case Management -Soundness (Should contain ascertainable details)	<i>Maximum marks are 2</i>		
6.	Case Management-Comprehensive (Should contain ascertainable details)	<i>Maximum marks are 2</i>		
7.	Client Handling Methodology-Orderliness and Flow (Should contain ascertainable details)	<i>Maximum marks are 2</i>		
8.	Client Handling Methodology-Soundness (Should contain ascertainable details)	<i>Maximum marks are 2</i>		
9.	Client Handling Methodology-Flexibility (Should contain ascertainable details)	<i>Maximum marks are 2</i>		
10.	Client Handling Methodology-Dispute Handling Mechanism (Should contain ascertainable details)	<i>Maximum marks are 2</i>		

*Law Firm's total score for Table 6.2.10 Sub-Part B is \_\_\_\_\_*

*Notes To Table 6.2.10 Sub-Part B*

1. This should be furnished using the format provided in the Pre-Q 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.

### **6.3 Part III – Financial Evaluation Criteria Under Paragraph 3.32 of the ITT.**

6.3.1 This will include the following: -

- a) Checking submission of financial statements required which must be those that are reported within fifteen (15) calendar months of the Date of the Pre-Q Tender Document.
- b) Confirmation that the Method of Charging for Services is duly completed and signed and considering the content.
- c) Taking into account the cost of any deviation(s) from the Pre-Q tender requirements.
- d) For law firms that are registered and recognized within the last one calendar year of the Date of the Pre-Q 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 in accordance with the notes below.

6.3.2 Considering information submitted in the Confidential Business Questionnaire against other information in the bid including shareholding.

#### Notes on Financial Evaluation

1. For law firms that are registered within the last one calendar year of the Date of the Pre-Q Tender Document, they should submit certified copies of bank statements covering a period of at least three 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.
2. This requirement of certified copies of bank statements of at least three (3) months prior to the date of the pre-qualification tender document, shall not apply to 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) or Government for a continuous period of five years, before venturing into private practice.

### **6.4 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 until the available numbers per category are filled.
- 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, KPLC 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).

**SECTION VII - CONFIRMATION/INSPECTION VISITS**

- 7.1 KPLC will conduct a confirmatory/inspection visit in order to ascertain that details match with that provided in the tender submitted and comply with the confirmation requirements.
- 7.2 KPLC may also conduct proposed Service Level Agreement discussions after determining the successful law firms. These will be held at KPLC's headquarters at Stima Plaza or otherwise as may be advised. The discussions will additionally touch on Quality Management System and on financial proposals.
- 7.3 The purpose of the discussions is to reach clarity and agreement on all items. The discussions will conclude with the signing of the SLA. If the discussions are not fruitful, KPLC shall at its sole discretion terminate any further discussions with that law firm and notify the next firm whose tender received the next available highest score in that category of its appointment and invite it for similar discussions.



**TABLE OF CLAUSES ON GENERAL CONDITIONS OF APPOINTMENT**

<b>Clause No.</b>	<b>Headings</b>	<b>Page No.</b>
8.1	Definitions.....	
8.2	Application....	
8.3	Standards.....	
8.4	Use of Documents and Information.....	
8.5	Professional Indemnity Cover .....	
8.6	Demonstration(s), Inspection(s) and Test(s).....	
8.7	Nature of the Conditions .....	
8.8	Interest.....	
8.9	Fees and Rates.....	
8.10	Assignment.....	
8.11	Resolution of Disputes .....	
8.12	Language and Law.....	
8.13	Waiver.....	
8.14	Force Majeure.....	

## **SECTION VIII – GENERAL CONDITIONS OF APPOINTMENT**

The General Conditions of Appointment shall form part of the Conditions of Appointment in accordance with the law and KPLC’s guidelines, practices, procedures and working circumstances. The provisions in the GCA will apply unless an alternative solution or amendment is made under other parts of the Conditions including the Service Level Agreement.

### **8.1 Definitions**

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

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

### **8.2 Application**

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

### **8.3 Standards**

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

#### **8.4 Use of Documents and Information**

- 8.4.1 The law firm and each and every individual lawyer therein shall not, without KPLC's prior written consent, disclose these Conditions, or any provision thereof or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of KPLC in connection therewith, to any person other than a person employed by the law firm in the performance of any assignment arising out of this appointment.
- 8.4.2 The law firm shall not, without KPLC's prior written consent, make use of any document or information enumerated in sub-clause 8.4.1 above.
- 8.4.3 Any document, other than the contract itself, enumerated in sub-clause 8.4.1 shall remain the property of KPLC and shall be returned (including all copies) to KPLC on completion of the law firm's performance of any assignment which may be given to and accepted by it, where so required by KPLC.

#### **8.5 Professional Indemnity Cover**

- 8.5.1 Within fourteen (14) days of the date of notification of appointment from KPLC, the successful law firm shall furnish KPLC with a valid PI Cover.
- 8.5.2 The Professional Indemnity Cover shall be issued by an insurance company registered by the Insurance Regulatory Authority and approved by PPOA. The insurer must be located in Kenya.
- 8.5.3 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, giving rise to these Conditions.
- 8.5.4 The law firm shall ensure that the PI Cover remains valid throughout the period of Appointment and where KPLC engages it in any assignment upto the conclusion of that assignment.
- 8.5.5 The PI Cover is required to protect KPLC 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.
- 8.5.6 KPLC 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 KPLC. The period for response shall not exceed five (5) days from the date of KPLC'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.
- 8.5.7 Failure of the successful law firm to furnish an authentic PI Cover, the appointment shall stand annulled.
- 8.5.8 The law firm shall provide such evidence of the continued existence and validity of the PI Cover as KPLC may reasonably and from time to time request.

## **8.6 Demonstration(s), Inspection(s) and Test(s)**

- 8.6.1 The law firm will be required to demonstrate dexterity, diligence, skill and professionalism in the performance of Services when called upon to do so right from receipt of instructions to conclusion of the assignment which is by closure of the file or matter by agreement between KPLC and the law firm except in cases of earlier cessation of instructions.
- 8.6.2 KPLC or its representative(s) shall have the right to inspect and confirm this demonstration of the law firm's performance, capacity, equipment, premises, and to confirm their conformity to the Conditions of Appointment. This shall include any Quality Management System.
- 8.6.3 KPLC shall meet its own costs of the inspections/ visits. These may be done on the law firm's offices, courts or any other place at the discretion of KPLC.
- 8.6.4 Where conducted on the premises of the law firm(s), all reasonable facilities and assistance, including access to literature and documentation save for other clients confidential information shall be furnished to KPLC representative(s) at no charge to KPLC.
- 8.6.5 A Demonstration/Visitation Report(s) may be completed by KPLC upon conclusion of the inspection/ visitation. This Report where done shall be considered during periodical review with the law firm for purposes of improvement in the engagement between the parties, performance, analysis and continued empanelling or re-appointment at the end of the Period.
- 8.6.6 Nothing in this clause 8.6 shall in any way be construed as a Waiver of any kind whatsoever or release the law firm from any of its obligations under the Advocates Act as and when it is engaged in any matter by KPLC.

## **8.7 Nature of the Conditions**

- 8.7.1 The Pre-qualification and enlisting of the law firm on KPLC's Panel shall not constitute a retainer or contract.
- 8.7.2 KPLC does not bind itself to request the law firm for provision of any Service during any time in which the law firm is considered to be on its Panel.

## **8.8 Interest**

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

## **8.9 Fees and Rates**

- 8.9.1 Where professional fees, charges or payments of any kind are due and owing to the law firm, the guide for payment shall be the relevant Advocates Remuneration Order except for Schedule V thereon.
- 8.9.2 The mode of billing shall be considered on a case by case basis and subject to agreement between KPLC and the law firm. Should there be a difference on this, then KPLC and the law firm, may by agreement, refer the issue to Taxation with each party bearing their own costs for the Taxation.
- 8.9.3 The parties recognize that the present 5<sup>th</sup> Schedule of the Advocates Remuneration Order under the Advocates Act, 2014 provides for an hourly billing system or an amount fixed by agreement between KPLC and the firm. Where fees or charges are due and owing to the law firm and it is agreed between the law firm and KPLC that the same should be paid on the basis of Schedule V, then and in that event, the parties shall discuss the quantum thereof with regard to the figures indicated by the law firm in its tender at the Method of Charging for Services section.

#### **8.10 Assignment**

- 8.10.1 The law firm shall not assign or in whole or in part its appointment by virtue of its pre-qualification or assign or sub-contract its obligations to perform when instructed by KPLC except as may be prescribed.
- 8.10.2 In the event that a sub-contract is permissible and the law firm sub-contracts its role, the responsibility and onus over the instructions given to the law firm shall rest with the law firm that is pre-qualified by KPLC.

#### **8.11 Resolution of Disputes**

- 8.11.1 KPLC and the law firm may make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with its appointment to the Panel or during the performance of any services rendered by the firm.
- 8.11.2 Where the parties are of the opinion that direct informal negotiation has been unable to amicably resolve the dispute, or, that it is not appropriate either party may resort to resolution before a recognized local forum for the resolution of disputes where circumstances permit.

#### **8.12 Language and Law**

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

#### **8.13 Waiver**

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

#### **8.14 Force Majeure**

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

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

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

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

8.14.4 Upon the occurrence of any circumstances of *force majeure*, the law firm shall endeavour to continue to perform its obligations so far as is reasonably practicable. The law firm shall notify KPLC of the steps it proposes to take including any reasonable alternative means for performance, which is not prevented by *force majeure*. The law firm shall not take any such steps unless directed so to do by KPLC.

8.14.5 If the law firm incurs additional costs in complying with KPLC's directions under sub clause 8.14.4, then notwithstanding the provisions of the GCA and any ensuing contract, the amount thereof shall be agreed upon with KPLC and added to the fees and charges payable.

8.14.6 If circumstances of *force majeure* have occurred and shall continue for a period of twenty one (21) days then, notwithstanding that the law firm may by reason thereof have been granted an extension of time for performance of the services,

either party shall be entitled to serve upon the other seven (7) days' notice to terminate the instructions. If at the expiry of the period of twenty-eight (28) days, *force majeure* shall still continue, the services at the option of either party shall terminate.

### SECTION IX - TENDER FORM

Date:

Tender No.

**To:**

The Kenya Power & Lighting Company Limited,  
Stima Plaza,  
Kolobot Road, Parklands,  
P.O Box 30099 – 00100,  
Nairobi, Kenya.

Ladies and Gentlemen,

1. Having read, examined and understood the Pre-Q Tender Document including all Addenda, the receipt of which is hereby duly acknowledged, we, the undersigned Law firm, offer to render and perform **Legal Services** in accordance and conformity with the said tender document and in particular the **Method of Charging for Services** that are made part of this Tender.
2. We undertake, if our Tender is accepted, to perform and provide the Services in accordance with the Schedule of Requirements.
3. If our Tender is accepted, we will obtain the Professional Indemnity Cover insurance from a reputable insurance company in a sum that is no less than that which we submitted for purposes of evaluation in the Tender.
4. We agree to abide by this Tender for a period of.....days (**law firm please indicate validity of your Tender**) from the date fixed for tender opening as per the Pre-Q Tender Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
5. This Tender, together with your written acceptance thereof and your notification of appointment shall not constitute a contract, between us. The contract shall be formed

between us when KPLC duly issues instructions to us on any specific matter or assignment.

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

Yours sincerely,

\_\_\_\_\_  
Full name of law firm

\_\_\_\_\_  
Signature of duly authorised person signing the Tender

\_\_\_\_\_  
Name and Capacity of duly authorised person signing the Tender

\_\_\_\_\_  
Stamp of the law firm

**\*NOTES:**

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



**SECTION X - 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 Bankers .....Branch.....

\*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 .....

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

**Part 2 (b) Partnership**

Give details of partners as follows: -

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

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

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

Capacity of the duly authorized person.....

Signature of the duly authorized person.....

**NOTES TO THE LAW FIRMS ON THE QUESTIONNAIRE**

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

**SECTION XI – LIST OF LAW FIRM’S REFERENCES**

The law firm is requested to provide the list of its references. Please refer to the Pre-Q Tender Document including ITT paragraph 3.7 Evaluation Criteria 2 Table 6.2.2

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

Yours sincerely,

\_\_\_\_\_  
Full name of law firm

\_\_\_\_\_  
Signature of duly authorised person signing the Tender

\_\_\_\_\_  
Name and Capacity of duly authorised person signing the Tender

\_\_\_\_\_  
Stamp of the law firm

**SECTION XII – QUALITY MANAGEMENT SYSTEM/ STANDARD  
OPERATING PROCEDURES**

The law firm is requested to give details of its Quality Management System (QMS) or Standard Operating Procedures (SOP). Please refer to the Pre-Q Tender Document including ITT paragraph 3.17.2, Evaluation Criteria 10 Table 6.2.10

***Overview of law firm's QMS***

***Description of Case Management System or Handling of any Matter***

***Description of Client Handling Methodology***

Yours sincerely,

\_\_\_\_\_  
Full name of law firm

\_\_\_\_\_  
Signature of duly authorised person signing the Tender

\_\_\_\_\_  
Name and Capacity of duly authorised person signing the Tender

Stamp of the law firm

**SECTION XIII – FORMAT OF CURRICULUM VITAE (CV) FOR  
PROFESSIONAL STAFF**

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

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

**Key Qualifications:**

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

---

**Preferred areas of practice if appointed to KPLC panel:**

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

**Employment Record:**

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

**Certification:**

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

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

Yours sincerely,

\_\_\_\_\_  
Full name of law firm

\_\_\_\_\_  
Signature of duly authorised person signing the Tender

\_\_\_\_\_  
Name and Capacity of duly authorised person signing the Tender

\_\_\_\_\_  
Stamp of the law firm

**SECTION XIV – FORMAT OF CONFLICT OF INTEREST FORM**

1. Full name of lawyer(s) involved in the matter
2. Name of third party involved in the matter
3. Nature of the matter  
(E.g. Claim for negligence; personal injury; damage to property; electricity billing, commercial transaction)
4. Brief Details  
(Including when and where the dispute arose; amount involved or the commercial transaction )
5. Case Number (where applicable)
6. Date of commencement of the matter where there was/is litigation
7. Present position of the matter

Yours sincerely,

\_\_\_\_\_  
Full name of law firm

\_\_\_\_\_  
Signature of duly authorised person signing the Tender

\_\_\_\_\_  
Name and Capacity of duly authorised person signing the Tender

\_\_\_\_\_  
Stamp of the law firm

**SECTION XV - DECLARATION FORM**

Date \_\_\_\_\_

**To:**

The Kenya Power & Lighting Company Limited,  
Stima Plaza, Kolobot Road, Parklands,  
P.O Box 30099 – 00100,  
Nairobi,  
KENYA.

Ladies and Gentlemen,

The law firm i.e. (give full name of firm)\_\_\_\_\_declares  
the following:

- a) That I/ We have not been debarred from participating in public procurement by any body, institution or person.
- b) That I/ We have not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement anywhere.
- c) That I/We or any partner and/or other lawyer of the firm is not a person within the meaning of paragraph 3.3 of ITT.
- 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 have not been found guilty of any serious violation of fair employment laws and practices.
- f) That I/ We are not associated with any other Tenderer participating in this Tender.
- g) That I/We do hereby confirm that all the information given in this tender is accurate, factual and true to the best of our knowledge.

Yours sincerely,

\_\_\_\_\_  
Full name of law firm

\_\_\_\_\_  
Signature of duly authorised person signing the Tender

\_\_\_\_\_  
Name and Capacity of duly authorised person signing the Tender



Stamp of the law firm

**SECTION XVI- DRAFT LETTER OF NOTIFICATION OF APPOINTMENT**

**To:**

*(Name and full address of the selected law firm).....*

Dear Sirs/ Madams,

**RE: NOTIFICATION OF APPOINTMENT TO KPLC PANEL OF LAWYERS**

We refer to your Tender dated..... and are pleased to inform you that following evaluation, your firm has been selected for appointment to our Panel of Lawyers for the period December 2016 to December 2019.

This notification does not constitute a contract. A contract shall only arise when KPLC instructs you on any particular assignment. The confirmation of appointment (*i.e. commencement*) shall be given upon expiry of seven (7) days from the date hereof but not later than fourteen (14) days after expiry of pre-qualification tender validity pursuant to the provisions of the Public Procurement and Asset Disposal Act, 2015 (*or as may be amended from time to time, or replaced*).

Enclosed herewith, please find the Service Level Agreement for your perusal and acceptance. Kindly sign, and stamp the Agreement. Further, initial and stamp on all pages of the documents forming the Conditions of Appointment that are forwarded to you with this letter and that are in your possession. Thereafter return the signed and stamped documents together with a copy of the valid Professional Indemnity Cover within seven (7) days of the date hereof for our further action.

We congratulate you and look forward to a cordial and mutually beneficial business relationship.

Yours faithfully,

**FOR: THE KENYA POWER & LIGHTING COMPANY LIMITED**

**GENERAL MANAGER, SUPPLY CHAIN**

Enclosures

**SECTION XVII – DRAFT LETTER OF NOTIFICATION OF REGRET**

**To:** *(Name and full address of the Unsuccessful law firm).....*

**Date:**

Dear Sirs/ Madams,

**RE: NOTIFICATION OF REGRET IN RESPECT OF PRE-QUALIFICATION TENDER NO. ....**

We refer to your Tender dated..... and regret to inform you that following evaluation, your Tender is unsuccessful. It is therefore not accepted. The brief reasons are as follows:-

1. ....
2. ....
3. .... etc...

However, this notification does not reduce the validity period of your Tender. In this regard, we request you to relook at the provisions regarding the Notification of Appointment and Acceptance of Appointment as stated in the Instructions to Tenderers.

Notwithstanding the above, we take the early opportunity to thank you for the interest shown in participating in this tender and wish you well in all your future endeavors.

Yours faithfully,

**FOR: THE KENYA POWER & LIGHTING COMPANY LIMITED**

**GENERAL MANAGER, SUPPLY CHAIN**

**SECTION XVIII – DRAFT LETTER OF CONFIRMATION OF APPOINTMENT**

**To:**

*(Name and full address of the selected law firm).....*

Dear Sirs/ Madams,

**RE: CONFIRMATION OF APPOINTMENT TO KPLC PANEL OF LAWYERS**

We refer to your Tender dated..... and our letter dated \_\_\_\_\_

We are pleased to inform you that your firm is confirmed to be on the Panel of our Lawyers for the period December 2016 to December 2019.

We wish you well in this role and hope that when called upon on any assignment you will perform in a diligent and professional manner noting to secure our position and protect our interests.

Yours faithfully,

**FOR: THE KENYA POWER & LIGHTING COMPANY LIMITED**

**GENERAL MANAGER, CORPORATE AFFAIRS AND COMPANY  
SECRETARY**

**SECTION XIX – CONDITIONS OF APPOINTMENT FORM**

**THIS AGREEMENT** made this.....day of.....**20....** **BETWEEN THE KENYA POWER & LIGHTING COMPANY LIMITED**, a limited liability company duly incorporated under the Companies Act, Chapter 486 of the Laws of Kenya, with its registered office situated at Stima Plaza, Kolobot Road, Parklands, Nairobi in the Republic of Kenya and of Post Office Box Number 30099-00100, Nairobi in the Republic aforesaid (*hereinafter referred to as the “KPLC”*) of the one part,

**AND**

..... (*law firm’s full name and principal place of business*) a duly registered law firm according to the Registration of Business Names Act, Chapter \_\_\_ of the laws of Kenya and of Post Office Box Number.....(*full address i.e. e-mail, physical and postal of law firm*) in the Republic aforesaid, (*hereinafter referred to as the “law firm”*) of the other part;

**WHEREAS** KPLC invited tenders for to prequalify for certain services, that is to say for **Legal Services** under Pre-qualification Tender Number..... (*KPLC insert Pre-Q Tender number*)

**AND WHEREAS** KPLC has selected the Tender by the law firm for Appointment to render the Services as and when called upon to do so;

**NOW THIS AGREEMENT WITNESSETH AS FOLLOWS: -**

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Appointment and the Pre-Qualification Tender Document.
2. Unless the context or express provision otherwise requires: -
  - a) reference to “this Agreement” includes its recitals, any schedules and documents mentioned hereunder and any reference to this Agreement 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.
  - b) 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.

- c) words importing the masculine gender only, include the feminine gender or (as the case may be) the neutral gender.
  - d) words importing the singular number only include the plural number and vice-versa and where there are two or more persons included in the expression the “*law firm*” or “*the lawyer*” or “*the Consulting firm*” or “*the Successful law firm*” the covenants, agreements obligations expressed to be made or performed by the law firm shall be deemed to be made or performed by such persons jointly and severally.
  - e) where there are two or more persons included in the expression the “*law firm*” or “*the lawyer*” or “*the Consulting firm*” or “*the Successful law firm*” any act default or omission by the law firm or the lawyer or the Consulting firm or the Successful Law firm shall be deemed to be an act default or omission by any one or more of such persons.
3. In consideration of the payments to be made by KPLC to the law firm, the law firm hereby covenants with KPLC to perform and provide the Services and remedy any defects thereon in conformity in all respects with the provisions of these Conditions.
  4. KPLC hereby covenants to pay the law firm in consideration of the proper performance and provision of the services and the remedying of defects therein, the sum as may become payable under the provisions of any ensuing Contract.
  5. The following documents shall constitute the Conditions between KPLC and the law firm and each shall be read and construed as an integral part of these Conditions: -
    - a) this Conditions of Appointment Form
    - b) the Service Level Agreement
    - c) the General Conditions of Appointment as per the Pre-Qualification Tender Document
    - d) the Method of Charging for Services submitted by the law firm and agreed upon with KPLC.
    - e) the Quality Management System submitted by the law firm
    - f) Partners and Team Composition
    - g) the Professional Indemnity Cover
    - h) KPLC’s Notification of Appointment dated.....**
    - i) the Tender Form signed by the law firm
    - j) the Declaration Form signed by the law firm

6. In the event of any ambiguity or conflict between the documents listed above, the order of precedence shall be the order in which the documents are listed in 5 above except where otherwise mutually agreed in writing.
7. The period of appointment shall begin from the Confirmation date and end on the last day of the month of the Pre-qualification period, or, such other date as KPLC may signify to the law firm.
8. No failure or delay to exercise any power, right or remedy by KPLC shall operate as a waiver of that right, power or remedy and no single or partial exercise of any other right, power or remedy.
9. Notwithstanding proper completion of performance or parts thereof, all the provisions of these Conditions shall continue in full force and effect to the extent that any of them remain to be implemented or performed unless otherwise agreed upon by both parties.
10. Any notice required to be given in writing to any Party herein shall be deemed to have been sufficiently served, if where delivered personally, one day after such delivery; notices by electronic mail and facsimile shall be deemed to be served one day after the date of such transmission and delivery respectively, notices sent by post shall be deemed served seven (7) days after posting by registered post (*and proof of posting shall be proof of service*), notices sent by courier shall be deemed served two (2) days after such receipt by the courier service.
11. For the purposes of Notices, the contacts of KPLC shall be the General Manager, Corporate Affairs and Company Secretary, The Kenya Power & Lighting Company Limited, 7<sup>th</sup> Floor, Stima Plaza, Kolobot Road, Post Office Box Number 30099-00100, Nairobi, Kenya , e-mail: [BMeso@kplc.co.ke](mailto:BMeso@kplc.co.ke) .The contacts for the law firm shall be the law firm's contacts as stated by it in the Confidential Business Questionnaire provided in the Tender Document.

**IN WITNESS** whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Kenya the day and year first above written.

**SIGNED** for and on behalf  
of **KPLC**

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**GENERAL MANAGER, CORPORATE AFFAIRS**

*PRE-Q TENDER DOCUMENT FOR PROVISION OF LEGAL SERVICES MADE BY AND FOR  
THE KENYA POWER & LIGHTING COMPANY LIMITED FEBRUARY, 2017*

AND COMPANY SECRETARY

SIGNED BY AND ON BEHALF OF THE )  
 LAW FIRM ) \_\_\_\_\_  
 in the presence of: ) NAME & SIGN. OF PARTNER  
 )

AND

)  
 )  
 ) \_\_\_\_\_  
 ) NAME & SIGN. OF PARTNER

in the presence of: )  
 ) AND  
 )  
 )  
 ) \_\_\_\_\_  
 ) NAME & SIGN. OF PARTNER

in the presence of: )  
 )  
 )  
 )  
 )

DRAWN BY: -  
**Beatrice Meso Advocate,**  
 C/o The Kenya Power & Lighting Company Limited,  
 7<sup>th</sup> Floor, Stima Plaza,  
 Kolobot Road, Parklands,  
 Post Office Box Number 30099–00100,  
NAIROBI, KENYA,

Telephones: + 254-20-3201000/ 731  
 E-mail: bmeso@kplc.co.ke

**END**