



**REPUBLIC OF KENYA**  
**MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT**  
**State Department for Housing and Urban Development**

**ADDENDUM II**  
**TENDER CLARIFICATIONS**  
**PROPOSED DRILLING, EQUIPPING, TESTING AND COMMISSIONING OF**  
**BOREHOLES FOR THE AFFORDABLE HOUSING PROGRAM UNDER**  
**FRAMEWORK AGREEMENT**

**TENDER NO. SDHUD/784/SPPM/011/2025-26**

This is in reference to tenders' advertisement appearing in MyGov on 31<sup>st</sup> March, 2026 and Addendum 1 dated 23<sup>rd</sup> April, 2026.

S/NO	CLARIFICATIONS	RESPONSE
1.	Kindly clarify whether the tender is limited to international bidders only.	This tenders are for both international and local bidders
2.	What is the commencement Period	SCC 8 — Time for Commencement and Completion SCC 8.1: The Contractor shall commence work on the Facilities within _____ from the Effective Date is amended to read: <b>The Contractor shall commence work on the Facilities within Thirty (30) calendar days from the Effective Date of each call-off order, or such other period as stated in the specific call-off order. Commencement shall mean: submission of the call-off construction programme under SCC 8.3, issuance of the factory inspection notice under Clause 1.19.2, and mobilization of the Lift Engineer-in-Charge to the project site.</b>
3.	SCC 11.2 — Price Adjustment (Maintenance Component)	SCC 11 — Contract Price SCC 11.2: The Contract Price shall be adjusted in accordance with the provisions of the Appendix to the Contract Agreement Titled Adjustment Clause. Is amended to read:  <b>SCC 11.2: The Contract Price shall be adjusted in accordance with the provisions of Appendix 2 (Price Adjustment) to the Framework Agreement. For the avoidance of doubt, price adjustment applies to both: (a)</b>

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		<p><b>the supply and installation component of each call-off, using the index basket specified in Appendix 2; and (b) the maintenance fee component of each call-off, using a separate index basket weighted as follows: Kenyan Consumer Price Index (Labour and Overhead component) — 60%; Steel and Components Import Price Index (as published by the Kenya National Bureau of Statistics or equivalent) — 20%; Fixed (non-adjustable) component — 20%.</b></p> <p><b>The Base Date for price adjustment for each call-off shall be the date thirty (30) days before the Effective Date of that specific call-off, not the Framework Agreement signing date.</b></p>
4.	Section VII — SCC Insert as new Schedule to the SCC — INVESTMENT AND MANUFACTURING MILESTONES	<p><b>NEW CLAUSE: SCHEDULE [X] — INVESTMENT AND LOCAL MANUFACTURING MILESTONES</b></p> <p>The following milestones are binding contractual obligations under SCC [NEW] (Framework Renewal and KPI-Based Continuation). Evidence for each milestone shall be submitted to the Project Manager within 14 days of the target month: Milestone M-1 (Month 3): Submit signed lease or ownership documents for Kenya facility site (minimum 2,000 m<sup>2</sup>) and local business registration certificate (KRA PIN, NCA certificate, investment permit). Consequence of failure: Written warning; Tier 2 reclassification if not cured within 30 days.</p> <p>Milestone M-2 (Month 9): Submit approved factory layout drawings and building permit; evidence of capital expenditure on facility fit-out. Consequence of failure: Demotion to Tier 2 call-off eligibility.</p> <p>Milestone M-3 (Month 18): First local assembly in Kenya; submit video evidence and independent QA inspection report to the Project Manager; KEBS/relevant certification application filed. Consequence of failure:</p>

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		<p>Performance deduction of 5% of performance Security value.</p> <p>Milestone M-4 (Month 24): Full local assembly plant operational; all components passing through the Kenya facility; minimum 10 Kenyan technical staff employed on assembly; KEBS certificate of compliance submitted. Consequence of failure: Suspension of new call-off awards; risk of framework termination after 30-day cure.</p> <p>Milestone M-5 (Month 36): First call-off fulfilled using locally assembled lifts; local assembly content ≥ 40% by value certified by independent QA; KEBS periodic audit report submitted. Consequence of failure: Removal from Tier 1 preferred ranking until complied.</p>
5.	<p><b>1. Reliance on the original tender architecture.</b></p> <p>Following the publication of the tender on 31st March, 2026 and in advance of the pre-bid meeting of 14th April, 2026, our company invested significant time and money preparing a JV bid in strict reliance on the express provisions of the tender document. In particular:</p> <ul style="list-style-type: none"> <li>• ITT 4.2 limits JV membership to two parties - typically the OEM and the local installer - without prescribing which party is to take the lead;</li> <li>• ITT 13.1(j)(3) expressly contemplates three alternative qualifying instruments - a manufacturer’s authorization, a JV agreement with a local installer, or a declaration of local manufacturer presence - each of which is on equal footing; and</li> <li>• the evaluation criteria reward “already manufacturing locally”</li> </ul>	<p><b>1. Policy Rationale for Manufacturer-Led Requirement</b></p> <p>The requirement for the manufacturer to be the lead bidder is intended to:</p> <ul style="list-style-type: none"> <li>• Support the Government’s objective of promoting local manufacturing capacity building under the Affordable Housing Programme;</li> <li>• To catalyze and anchor local manufacturing capacity in Kenya, particularly for high-value MEP components.</li> <li>• To ensure direct accountability of Original Equipment Manufacturers (OEMs) in long-term performance, warranties, and lifecycle support Facilitate technology transfer and industrial development in Kenya.</li> </ul> <p>This requirement is therefore developmental and strategic, rather than purely procedural</p> <p><b>2. CLARIFICATION ON JV OPERATIONAL STRUCTURE</b></p> <p>For avoidance of doubt:</p>

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	<p>(Criterion 4 - 8 marks) and a Board Resolution plus Investment Plan to manufacture in Kenya within 24 months (Criterion 4 - 6 marks), neither of which presupposes that the lead bidder is itself the foreign OEM.</p> <p><b>2. Executed JV agreements.</b> On the strength of the foregoing, we have already executed a binding JV agreement with our foreign OEM partner; obtained, paid for and lodged the prescribed notarizations and apostilles on the JV deed and supporting Powers of Attorney; applied for our Tender Security in favor of the JV; mobilized our Manufacturer’s Authorization, OEM declarations and component certifications; and instructed our auditors and bankers towards the financial-capacity submissions on Forms FIN 3.1-3.3. To unwind, re-paper and re-execute the JV in favor of a different lead party at this stage is, in real terms, to begin the bid afresh.</p> <p><b>3. Closure on 14th May, 2026.</b> The tender now closes on 14th May, 2026. The change introduced by the Addendum is not a clarification; it is a structural reallocation of responsibility, signing authority, tax residency, banking, and the chain of warranties and indemnities running between the parties. None of those instruments can be re-executed and re-notarized across jurisdictions in approximately seventeen calendar days. The practical effect is to disenfranchise tenderers who, in good faith, structured their bids in</p>	<p>The designation of the manufacturer as lead bidder is for policy and compliance purposes;</p> <p>The manufacturer (lead bidder) may issue a <b>Power of Attorney (PoA)</b> or equivalent legally binding instrument to the JV partner;</p> <p>Such PoA may authorize the JV partner to:</p> <ul style="list-style-type: none"> <li>● <b>Prepare and submit the bid;</b></li> <li>● <b>Execute the contract;</b></li> <li>● <b>Undertake installation, commissioning, and maintenance obligations.</b></li> </ul> <p>This approach ensures that, Manufacturing commitments remain secured at OEM level, while, Execution flexibility is preserved for local partners</p> <p><b>3. EFFECT ON EXISTING JV ARRANGEMENTS</b></p> <p>Bidders who have already constituted JVs are not required to fundamentally restructure their operational arrangements;</p> <p>Compliance may be achieved through:</p> <ul style="list-style-type: none"> <li>● <b>Designation of the manufacturer as lead; and</b></li> <li>● <b>Submission of an appropriate Power of Attorney or delegation instrument.</b></li> </ul> <p><b>4. CONTINUITY OF OTHER TENDER PROVISIONS</b></p> <p>All other provisions of the Tender Document and Addendum I remain unchanged.</p> <p><b>5. COMPLIANCE</b></p> <p>Bidders are advised to ensure that their submissions:</p> <p><b>Clearly indicate the manufacturer as the lead JV member; and</b></p> <p><b>Include the necessary Power of Attorney or legal authorization where applicable.</b></p>

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	<p>reliance on the document as published.</p> <p><b>4. Section 75 PPADA, 2015.</b>  We respectfully draw the State Department’s attention to Section 75 of the Public Procurement and Asset Disposal Act, 2015, which requires that, where amendments to a tender document are issued, tenderers be afforded reasonable additional time to prepare their bids. The orthodox practice in such circumstances - where the change is so material that it goes to the very root of the Structure - is to extend the submission deadline by a margin commensurate with the change, or to withdraw and re-issue the tender.</p> <p><b>5. Article 227 of the Constitution.</b>  Article 227(1) requires public procurement to be fair, equitable, transparent, competitive and cost-effective. Penalizing tenderers for a JV structure they were expressly invited to adopt is the opposite of fair and equitable, and the implicit narrowing of the field to OEM-led JVs is the opposite of competitive.</p> <p>We accordingly request the Procuring Entity to:</p> <p>(a) Withdraw the requirement that the lead JV member must be the manufacturer; or</p> <p>(b) In the alternative, expressly grandfather all JV agreements executed prior to Addendum I, and grant a tender-submission extension of not less than thirty (30) calendar days to permit those bidders who must restructure to do so without</p>	<p>The Procuring Entity remains committed to ensuring a procurement process that is fair, equitable, transparent, competitive, and cost-effective in accordance with Article 227 of the Constitution and the Public Procurement and Asset Disposal Act, 2015.</p>

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	breach of the tender's notarization, apostille and signing requirements.	

All the other conditions remain the same.

**Head Supply Chain Management Services**

**For: The Principal Secretary**

**Ministry of Lands, Public Works, Housing and Urban Development**

**State Department for Housing and Urban Development.**

**P.O. Box 30119 -00100 NAIROBI, KENYA**

**Dated 30<sup>th</sup> April, 2026**