



AAK | PROMOTING EXCELLENCE
IN THE BUILT ENVIRONMENT

AAK/RA/KURA/Y24/F01

9th February 2024

Eng. Silas M. Kinoti

The Director General,
Kenya Urban Roads Authority,
P.O. Box 41727-00100,
Nairobi, Kenya

Dear Sir,

RE: REQUEST FOR EXPRESSION OF INTEREST FOR NAIROBI INTELLIGENT TRANSPORT SYSTEM (ITS) ESTABLISHMENT AND JUNCTIONS IMPROVEMENT PROJECT (PHASE III). TENDER NO. KURA/DEV/HQ/326/2023-2024 PUBLISHED ON THE MYGOV NEWSPAPER DATED 6TH FEBRUARY 2024

Established in 1967, the AAK is Kenya's apex association for professionals in the built environment. and represents the interests of *Architects, Town Planners, Quantity Surveyors, Engineers, Landscape Architects, Environmental Design Consultants, Construction Project Managers, and Interior Designers*. As an umbrella Association, AAK brings together professionals in national and county governments, private sector, and academia. It also acts as a link between professionals and stakeholders in the wider construction industry, including policymakers, manufacturers, real estate developers, and financial institutions.

We write to you to express our profound concern regarding the recently advertised Request for Expression of Interest (REOI) for the Nairobi Intelligent Transport System (ITS) Establishment and Junctions Improvement Project (Phase III) on the *MyGov* newspaper dated Tuesday, 6th February 2024. We note the following:

- a) The REOI specifically states, "*The bidder and all other parties constituting the bidder shall have the nationality of the Republic of China.*"

It is disconcerting that such exclusionary criterion can be given in a Kenyan procurement process 60 years post-independence and against the very values that the Kenyan Constitution upholds. This requirement limiting participation to Chinese nationals only raises serious questions about the adherence to fundamental principles outlined in the Public Procurement and Asset Disposal Act (PPADA) 2015, which states that for foreign bidders, 51% of the entity ownership should be by Kenyans. The criterion raises our apprehensions about the legality, fairness, transparency, and inclusivity of the procurement process. We emphasize that Kenyan-owned companies meet the requisite qualifications and MUST be part of the process.

Further, the Public Procurement and Asset Disposal Regulations, 2020 stresses on the transfer of technology, skills, and knowledge through training, mentoring, and participation of Kenya citizens, where

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75% of the employment opportunities must be reserved for Kenyans for works, consultancy services, and non-consultancy services, of which not less than twenty percent (20%) shall be reserved for Kenyan professionals at management level. The criterion, which excludes all but Chinese nationals from participating in the project, contradicts this requirement and could potentially hinder its fulfillment.

The regulations further require that in the case of a foreign tenderer, the entity should include a plan for building linkages with local industries by ensuring at least 40% of the inputs are sourced from local markets. The Act also provides that 30% of the procurement budget should go to disadvantaged groups. While these provisions aim at boosting the domestic supply chain by supporting local businesses, the exclusionary criterion may lead to a significant portion, if not all, of the supplies for the project being exclusively sourced from China and other foreign suppliers.

- b) We also note that it is not a coincidence that the REOI has come just two weeks after the registration of the Chinese Developers Association in Kenya (CDAK). AAK strongly condemns this move as it further perpetuates the unfair competition gap that has continued to plague the local construction industry in the recent past.
- c) Local content policies are designed to pursue targets such as industrial development, job creation, skills transfer, and value addition, as well as linkage creation and better value chain incorporation. We emphasize that local content in construction projects is not only a strategic economic decision, but also a commitment to the long-term sustainability and prosperity of our country.

In light of these critical concerns and the fundamental principles that underpin successful infrastructure development, we request that you withdraw the Request for Expression of Interest and reissue only after adhering to the established legal frameworks and upholding the principles of local content and inclusivity.

Please do not hesitate to contact the AAK for clarification on our submission.

SIGNED:

ARCH. FLORENCE NYOLE
PRESIDENT, AAK

CC:
Hon. Kipchumba Murkomen
Cabinet Secretary
Ministry of Roads and Transport
Nairobi, Kenya

Eng. Joseph Mungai Mbugua
Principal Secretary
Ministry of Roads and Transport
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