



MALINDI MUNICIPALITY

REQUEST FOR PROPOSAL (RFP) FOR APPOINTMENT OF A PROFESSIONAL MANAGEMENT COMPANY TO OPERATE THE BUNTWANI MALINDI WATER FRONT PUBLIC PARK

TENDER NO. KCG/MM/RFP/004-2020/2021

JANUARY 2021

**KILIFI COUNTY GOVERNMENT P.O. BOX 519 – 80108 KILIFI
kilificalitygovt@gmail.com**

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INTRODUCTION

- 1.1 This standard tender document for letting, leasing, licensing, tenancy, franchise or management contracting has been prepared for use by public entities in Kenya.
- 1.2 The standard tender document has been prepared for general application in all cases where public entities wish to offer their assets, services or rights to the public at a fee. The standard tender document has been introduced to ensure that the assets, services or rights are offered to the public efficiently, competitively, fairly and in a transparent manner as required by the Public procurement regulations.
- 1.3 The following general directions should be observed when using the tender document.
 - (a) specific details should be furnished in the Invitation to Tender and in the Special Conditions of Contract. The final document to be provided to the tenderers should not have blank spaces or give options.
 - (b) the Instructions to Tenderers and the General Conditions of Contract should remain unchanged. Any necessary amendments to these parts should be made through the Special Conditions of Contract and Appendix to Instructions to Tenderers respectively.
- 1.4
 - (a) Information contained in the Invitation to Tender shall conform to the data and information in the tender documents to enable potential tenderers to decide whether or not to participate in the tender and shall indicate any important tender requirements.
 - (b) The Invitation to Tender shall be issued as an advertisement in accordance with the regulations or a letter of invitation addressed to tenderers who have expressed interest following an advertisement of a prequalification tender.
- 1.5 The cover of the tender document should be modified to include:
 - i. Tender number.
 - ii. Tender name.
 - iii. Name of procuring entity.
 - iv. Delete name and address of PPOA

SECTION I - INVITATION TO TENDER
Date _____

Tender Ref (KCG/MM/RFP/004-2020/2021)
Tender name (REQUEST FOR PROPOSAL FOR APPOINTMENT OF A PROFESSIONAL MANAGEMENT COMPANY TO OPERATE THE BUNTWANI MALINDI WATERFRONT PUBLIC PARK.)

A complete set of tender documents may be obtained by interested tenderers from the Kilifi County Government website: www.kilifi.go.ke or Public Procurement Information Portal (PIIP) free of charge. The tender document can also be obtained from the office of the Head of Supply Chain Management during working hours upon payment of a non – refundable fee of **KSHS. 1,000 (One thousand shillings only)** in form of banker ‘s cheque only payable to Kilifi County Government.

Completed tender documents SHALL be enclosed in plain sealed envelope clearly marked with tender name, reference number addressed to:-

COUNTY EXECUTIVE COMMITTEE MEMBER FOR FINANCE AND ECONOMIC PLANNING.
P O. Box 519-80108
KILIFI

Completed tender documents SHALL be **deposited** in the Tender Box located at the County Treasury on or before 9th February, 2021 at 10.00 AM

Rent quoted SHALL include all Government of Kenya taxes and any other charges and must be in Kenya shillings and shall remain valid for the entire lease period from the closing date of tender.

NOTE: Eligible bidders are informed that due to the prevailing health protocols issued by the Ministry of Health (MOH) to contain the spread of COVID-19. Pre-bid site visit shall be conducted by the County Government of Kilifi under those protocol conditions. The cost of visiting the site shall be the bidder’s own responsibility.

HEAD OF SUPPLY CHAIN MANAGEMENT SERVICES
FOR COUNTY EXECUTIVE COMMITTEE MEMBER
FOR FINANCE AND ECONOMIC PLANNING
COUNTY GOVERNMENT OF KILIFI
Dated This, 1st February, 2021

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SECTION II - INSTRUCTIONS TO TENDERERS

2.1 Eligible Tenderers

- 2.1.1 This invitation for tenders is open to all tenderers eligible as described in the Appendix to Instructions to Tenderers. Successful tenderers shall be contracted for the stipulated duration from the date of commencement (hereinafter referred to as the term) specified in the schedule of requirements.
- 2.1.2 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender unless where specially allowed under section 131 of the Act.
- 2.1.3 Tenderers shall provide the qualification statement that the tenderer (including all members of a joint venture and subcontractors), is not associated, or have been associated in the past, directly or indirectly, with the firm or any of its officials which have been engaged by the procuring entity to provide consulting services for the preparation of the design specifications and other documents to be used for the purpose of this invitation to tender.
- 2.1.4 Tenderers involved in corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

2.2 Cost of Tendering

- 2.2.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the procuring entity, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process
- 2.2.2 The price to be charged for the tender document shall not exceed Kshs.1,000/=
- 2.2.3 The procuring entity shall allow the tenderer to review the tender document free of charge before purchase.

2.3 Contents of Tender Documents

2.3.1 The tender documents comprise the documents listed below and addenda issued in accordance with clause 2.7 of these instructions to tenderers.

- (i) Instructions to tenderers
- (ii) General Conditions of Contract
- (iii) Special Conditions of Contract
- (iv) Schedule of particulars of tender
- (v) Form of Tender
- (vi) Price Schedules
- (vii) Contract Form
- (viii) Confidential Business Questionnaire Form
- (ix) Tender security Form
- (x) Performance security Form
- (xi) Authorization Form
- (xii) Declaration form
- (xiii) Request for Review Form

2.3.2 The Tenderer is expected to examine all instructions, forms, terms and particulars in the tender documents. Failure to furnish all information required by the tender documents or to submit a tender not substantially responsive to the tender documents in every respect will be at the tenderers risk and may result in the rejection of its tender.

2.4 Clarification of tender Documents

2.4.1 A prospective tenderer making inquiry on the tender documents may notify the Procuring entity by post, fax or by email at the procuring entity's address indicated in the Invitation to Tender. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives no later than seven (7) days prior to the deadline for the submission of tenders, prescribed by the procuring entity. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all candidates who have received the tender documents.

2.4.2 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.

2.5 Amendment of tender Documents

2.5.1 At any time prior to the deadline for submission of tenders, the Procuring entity, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by issuing an **addendum** amendment.

2.5.2 All prospective tenderers who have obtained the tender documents will be notified of the amendment by post, fax or email and such amendment will be binding on them.

2.5.3 In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, the Procuring entity, at its discretion, may extend the deadline for the submission of tenders.

2.6 Language of Tenders

2.6.1 The tender prepared by the tenderer, as well as all correspondence and documents relating to the tender exchanged by the tenderer and the Procuring entity, shall be written in English language. Any printed literature furnished by the tenderer may be written in another language provided 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.

2.7 Documents Comprising the Tender

2.7.1 The tender prepared by the tenderer shall comprise the following components:

- (a) a Tender Form and a Price Schedule completed in accordance with paragraph 2.8, 2.9 and 2.10 below
- (b) documentary evidence established in accordance with paragraph 2.12 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;

(c) tender security furnished in accordance with paragraph 2.12

2.8. Form of Tender

2.8.1 The tenderer shall complete the Form of Tender and the Price Schedules furnished in the tender documents, indicating the particulars of the tender.

2.9. Tender Prices

2.9.1 The tenderer shall indicate on the Price Schedules the unit prices and total tender price of the particular of tender under the contract.

2.9.2 Prices indicated on the Price Schedule shall be the amounts to be paid by the tenderer to the procuring entity for the particulars of the tender under the contract.

2.9.3 Prices quoted by the tenderer shall remain fixed during the term of the contract unless otherwise agreed by the parties. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.20.5

2.10. Tender Currencies

2.10.1 Prices shall be quoted in Kenya Shillings unless otherwise stated in the appendix.

2.11. Tenderers Eligibility and Qualifications

2.11.1 Pursuant to paragraph 2.1.1 and 2.1.2 the tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if it's tender is accepted.

2.11.2 The documentary evidence of the tenderer's qualifications to perform the contract if its tender is accepted shall establish to the Procuring entity's satisfaction that the tenderer has the financial and technical capability necessary to perform the contract.

2.12. Tender Security

2.12.1 The tenderer shall furnish, as part of its tender, a tender security for the amount and form specified in the Appendix to Instructions to Tenderers.

2.12.2 The tender security shall be in the amount not exceeding 2 per cent of the tender price

2.12.3 The tender security is required to protect the Procuring entity against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 2.12.7

2.12.4 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form of

- a) Cash.
- b) A bank guarantee.
- c) Such insurance guarantee approved by the authority.
- d) Letter of credit.

2.12.5 Any tender not secured in accordance with paragraph 2.12.1. and 2.12.3 will be rejected by the Procuring entity as non-responsive, pursuant to paragraph 2.20.5

2.12.6 Unsuccessful Tenderer's tender security will be discharged or returned as promptly as possible but not later than thirty (30) days after the expiration of the period of tender validity

2.12.7 The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 2.29, and furnishing the performance security, pursuant to paragraph 2.30

2.12.8 The tender security may be forfeited:

- (a) if a tenderer withdraws its tender during the period of tender validity
- (b) in the case of a successful tenderer, if the tenderer fails:
 - (i) to sign the contract in accordance with paragraph 2.29 or

- (ii) to furnish performance security in accordance with paragraph 2.30
- (c) If the tenderer rejects a correction of an arithmetic error in the tender.

2.13. Validity of Tenders

2.13.1 Tenders shall remain valid for 60 days after date of tender opening pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the Procuring entity as non-responsive.

2.13.2 In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 2.12 shall also be suitably extended. A tenderer granting the request will not be required nor permitted to modify its tender.

2.14. Format and Signing of Tenders

2.14.1 The tenderer shall prepare an original and a copy of the tender, clearly marking each "ORIGINAL TENDER" and "COPY OF TENDER," as appropriate. In the event of any discrepancy between them, the original shall govern.

2.14.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. All pages of the tender, except for un-amended printed literature, shall be initialed by the person or persons signing the tender.

2.14.3 The tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

2.15 Sealing and Marking of Tenders

2.15.1 The tenderer shall seal the original and the copy of the tender in separate envelopes, duly marking the envelopes as "ORIGINAL

TENDER” and “COPY OF TENDER”. The envelopes shall then be sealed in an outer envelope.

2.15.2 The inner and outer envelopes shall:

- (a) be addressed to the Procuring entity at the address given in the Invitation to Tender
- (b) bear tender number and name in the Invitation to Tender and the words, “DO NOT OPEN BEFORE (9th February 2021 at 10.00 AM)

2.15.3 The inner envelopes shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared “late”.

2.15.4 If the outer envelope is not sealed and marked as required by paragraph 2.15.2, the Procuring entity will assume no responsibility for the tender’s misplacement or premature opening.

2.16. Deadline for Submission of Tenders

2.16.1 Tenders must be received by the Procuring entity at the address specified under paragraph 2.15.2 no later than 9th January 2021 at 10.00AM).

2.16.2 The Procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 2.5.3 in which case all rights and obligations of the Procuring entity and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

2.16.3 Bulky tenders which will not fit in the tender box shall be received by the procuring entity as provided for in the appendix.

2.17. Modification and Withdrawal of Tenders

2.17.1 The tenderer may modify or withdraw its tender after the tender’s submission, provided that written notice of the modification, including substitution or withdrawal of the tenders, is received by

the Procuring entity prior to the deadline prescribed for submission of tenders.

- 2.17.2 The tenderer's modification or withdrawal notice shall be prepared, sealed, marked and dispatched in accordance with the provisions of paragraph 2.15. a withdrawal notice may also be sent by fax or email but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.
- 2.17.3 No tender may be modified after the deadline for submission of tenders.
- 2.17.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity. Withdrawal of a tender during this interval may result in the Tenderer's forfeiture of its tender security, pursuant to paragraph 2.12.7.

2.18. Opening of Tenders

- 2.18.1 The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, at 9th February 2021 at 10.00AM) and in the location specified in the Invitation of tender. The tenderers' representatives who are present shall sign a register evidencing their attendance
- 2.18.2 The tender's names, tender modifications or withdrawals, tender prices, discounts, and the presence or absence of requisite tender security and such other details as the Procuring entity, at its discretion, may consider appropriate, will be announced at the opening.
- 2.18.3 The Procuring entity will prepare minutes of the tender opening, which will be submitted to tenderers that signed the tender opening register and will have made the request.

2.19 Clarification of Tenders

- 2.19.1 To assist in the examination, evaluation and comparison of tenders the Procuring entity may, at its discretion, ask the tenderer for a

clarification of its tender. The request for clarification and the response shall be in writing, and no change in the prices or substance of the tender shall be sought, offered, or permitted.

2.19.2 Any effort by the tenderer to influence the Procuring entity in the Procuring entity's tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderers' tender.

2.20 Preliminary Examination and Responsiveness

2.20.1 The Procuring entity will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order.

2.20.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security forfeited. If there is a discrepancy between words and figures, the amount in words will prevail

2.20.3 The Procuring entity may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation provided such waiver does not prejudice or affect the relative ranking of any tenderer.

2.20.4 Prior to the detailed evaluation, pursuant to paragraph 2.20, the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one which conforms to all the terms and conditions of the tender documents without material deviations the Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

2.20.5 If a tender is not substantially responsive, it will be rejected by the procuring entity and may not subsequently be made responsive by the tenderer by correction of the nonconformity.

2.21. Conversion to single currency

2.21.1 Where other currencies are used, the Procuring entity will convert those currencies to Kenya Shillings using the selling exchange rate on the date of tender closing provided by the Central Bank of Kenya.

2.22. Evaluation and Comparison of Tenders

2.22.1 The Procuring entity will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.20

2.22.2 The Procuring entity's evaluation of a tender will take into account, in addition to the tender price, the following factors, in the manner and to the extent indicated in paragraph 2.22.3.

(a) operational plan proposed in the tender;

(b) deviations in payment schedule from that specified in the Special Conditions of Contract

2.22.3 Pursuant to paragraph 2.22.2. the following evaluation methods will be applied.

(a) Operational Plan

(i) The Procuring entity requires that the services under the Invitation for Tenders shall be performed at the time specified in the Schedule of Requirements. Tenderers offering to perform longer than the procuring entity's required delivery time will be treated as non-responsive and rejected

(b) Deviation in payment schedule

(i) Tenderers shall state their tender price for the payment on

schedule outlined in the special conditions of contract. Tenders will be evaluated on the basis of this base price. Tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in tender price they wish to offer for such alternative payment schedule. The Procuring entity may consider the alternative payment schedule offered by the selected tenderer.

2.22.4 Preference where allowed in the evaluation of tenders shall not exceed 15%.

2.22.5 The evaluation committee shall evaluate the tenders within 30 days from the date of opening the tender.

2.23. Contacting the Procuring entity

2.23.1 Subject to paragraph 2.19 no tenderer shall contact the Procuring entity on any matter relating to its tender, from the time of the tender opening to the time the contract is awarded.

2.23.2 Any effort by a tenderer to influence the Procuring entity in its decisions on tender evaluation, tender comparison, or contract award may result in the rejection of the Tenderers' tender.

2.24 Post-qualification

2.24.1 The Procuring entity will verify and determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.

2.24.2 The determination will take into account the tenderer financial and technical capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 2.11.2 , as well as such other information as the Procuring entity deems necessary and appropriate

2.24.3 An affirmative determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the Tenderer's tender, in which event the Procuring

entity will proceed to the next lowest evaluated tender to make a similar determination of that tenderer's capabilities to perform satisfactorily.

2.25 Award Criteria

2.25.1 Subject to paragraph 2.29 the Procuring entity will award the contract to the successful tenderer whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

2.25.2 To qualify for contract awards, the tenderer shall have the following:-

- (a) Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.
- (b) Legal capacity to enter into a contract for procurement
- (c) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
- (d) Shall not be debarred from participating in public procurement.

2.26. Procuring entity's right to accept or reject any or all tenders

2.26.1 The Procuring entity reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the Procuring entity's action. If the Procuring entity determines that none of the tenders is responsive, the Procuring entity shall notify each tenderer who submitted a tender.

2.26.2 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

2.26.3 A tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after

notification of contract award shall be considered for debarment from participating in future public procurement.

2.27 Notification of Award

2.27.1 Prior to the expiration of the period of tender validity, the Procuring entity will notify the successful tenderer in writing that its tender has been accepted.

2.27.2 The notification of award will constitute the formation of the contract subject to the signing of the contract between the tenderer and the procuring entity pursuant to clause 2.29. Simultaneously the unsuccessful tenderers shall be notified that their tenders have been unsuccessful.

2.27.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 2.30, the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.12

2.29 Signing of Contract

2.29.1 At the same time as the Procuring entity notifies the successful tenderer that its tender has been accepted, the procuring entity will simultaneously inform the other tenderers that their tenders have not been successful.

2.29.2 Within fourteen (14) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Procuring entity.

2.29.3 The contract will be definitive upon its signature by the two parties.

2.29.4 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

2.30 Performance Security

2.30.1 The successful tenderer shall furnish the performance security in accordance with the Appendix to instructions to tenders, in a form acceptable to the Procuring entity.

2.30.2 Failure by the successful tenderer to comply with the requirement of paragraph 2.29 or paragraph 2.30.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Procuring entity may make the award to the next lowest evaluated tender or call for new tenders.

2.31 Corrupt or Fraudulent Practices

2.31.1 The procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts. A tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.

2.31.2 The Procuring entity will reject a proposal for award if it determines that the tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question

2.31.3 Further a tenderer who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public Procurement in Kenya.

Appendix to Instructions to Tenderers

Notes to the Appendix to the Instructions to Tenderers

1. The Appendix to instructions to tenderers is intended to assist the procuring entity in providing specific information in relation to corresponding clauses in the Instructions to Tenderers included in Section II and has to be prepared for each specific procurement.
2. The procuring entity should specify in the appendix information and requirements specific to the circumstances of the procuring entity, the particulars of the tender, and the tender evaluation criteria that will apply to the tenders.
3. In preparing the Appendix the following aspects should be taken into consideration;
 - (a) The information that specifies and complements provisions of Section II to be incorporated.
 - (b) Amendments and/or supplements if any, to provisions of Section II as necessitated by the circumstances of the particulars of the tender to be also incorporated.
4. Section II should remain unchanged and can only be amended through the Appendix to Instructions to Tenderers.
5. Clauses to be included in this part must be consistent with the public procurement law and regulations.

Appendix to instructions to Tenderers

The following information for letting, leasing, licensing, tenancy, franchise or management contract of (*entity as appropriate*) shall complement, supplement, or amend, the provisions on the instructions to tenderers. Wherever there is a conflict between the provisions of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the Instructions to Tenderers.

INSTRUCTIONS TO TENDERERS REFERENCE	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERERS
2.1.1	OPEN TO BUSINESS PEOPLE OPERATING WITHIN MALINDI CONSTITUENCY
2.12.1	<i>Tender Security: KSH. 200,000</i>
2.15.2	9 th February, 2021 at 10.00 AM
2.16.1	<i>As 2.15.2 above</i>
2.18.1	<i>As in 2.15.2 above</i>
2.30.1	<i>Performance security: KSH, 1,000,000</i>

(Complete as necessary)

SECTION III - GENERAL CONDITIONS OF CONTRACT

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SECTION III GENERAL CONDITIONS OF CONTRACT

3.1. Definitions

3.1.1 In this Contract, the following terms shall be interpreted as indicated:

- (a) “The Contract” means the agreement entered into between the Procuring entity and the tenderer, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- (b) “The Contract Price” means the price payable to the procuring entity under the Contract by the tenderer for the full and proper performance of the contractual obligations
- (c) “The Procuring entity” means the organization offering the particulars of the tender under this Contract
- (d) “The Contractor” means the organization or firm procuring the particulars of tender under this Contract.
- (e) “GCC” means the General Conditions of Contract
- (f) “SCC” means the Special Conditions of Contract
- (g) “Day” means calendar day

3.2. Application

3.2.1 These General Conditions shall apply to the extent that they are not superceded by provisions of other part of the contract

3.3. Standards

3.3.1 The services provided under this Contract shall conform to the standards mentioned in the schedule of particulars of the tender.

3.4. Use of Contract Documents and Information

3.4.1 The Contractor shall not, without the Procuring entity’s prior written consent, disclose the Contract, or any provision therefore, or any specification, plan, drawing, pattern, sample, or information furnished

by or on behalf of the Procuring entity in connection therewith, to any person other than a person employed by the contractor in the performance of the Contract.

3.4.2 The Contractor shall not, without the Procuring entity's prior written consent, make use of any document or information enumerated in paragraph 2.4.1 above.

3.4.3 Any document, other than the Contract itself, enumerated in paragraph 2.4.1 shall remain the property of the Procuring entity and shall be returned (all copies) to the Procuring entity on completion of the contractor's performance under the Contract if so required by the Procuring entity.

3.5. Patent Rights

3.5.1 The Contractor shall indemnify the Procuring entity against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the services under the contract or any part thereof.

3.6 Performance Security

3.6.1 Within twenty-eight (28) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the performance security where applicable in the amount specified in SCC

3.6.2 The proceeds of the performance security shall be payable to the Procuring entity as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.

3.6.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Procuring entity and shall be in the form of:

- (a) Cash.
- (b) A bank guarantee.
- (c) Such insurance company guarantee approved by the Authority.
- (d) A letter of credit.

3.6.4 The performance security will be discharged by the Procuring entity and returned to the Contractor not later than thirty (30) days following the date of completion of the Contractor's performance of obligations under the Contract, including any warranty obligations, under the Contract.

3.7. Delivery of services and Documents

3.7.1 Delivery of the services shall be made by the Contractor in accordance with the terms specified by the procuring entity in the schedule of requirements and the special conditions of contract

3.8. Payment

3.8.1. The method and conditions of payment to be made to the procuring entity under this Contract shall be specified in the SCC

3.8.2. Payment shall be made promptly by the contractor, but in no case later than sixty (60) days after submission of an invoice or claim by the procuring entity.

3.9. Prices

3.9.1 Prices charged by the procuring entity for particulars provided under the Contract shall not, with the exception of any price adjustments authorized in SCC vary from the prices quoted by the Contractor in its tender or in the procuring entity's request for tender validity extension as the case may be. No variation in or modification to the terms of the contract shall be made except by written amendments signed by the parties.

3.9.2 Contract price variations shall not be allowed for contract not exceeds one year (12 months)

3.9.3 Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price.

3.9.4 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.

3.10. Assignment

3.10.1 The Contractor shall not assign, in whole or in part, its obligations under this Contract, except with the Procuring entity's prior written consent.

3.11. Termination for Default

3.11.1 The Procuring entity may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Contractor terminate this Contract in whole or in part:

- (a) if the Contractor fails to provide any or all of the services within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring entity.
- (b) If the Contractor fails to perform any other obligation(s) under the Contract
- (c) If the Contractor in the judgment of the Procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the contract

3.11.2 In the even the Procuring entity terminates the contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, services similar to those un-delivered, and the Contractor shall be liable to the Procuring entity for any excess costs for such similar services. However the contractor shall continue performance of the contract to the extent not terminated.

3.12. Termination for insolvency

3.12.1 The Procuring entity may at any time terminate the contract by giving written notice to the Contractor if the contractor becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the contractor, provided that such termination will not prejudice or affect any right of action or remedy, which has accrued or will accrue thereafter to the procuring entity.

3.13. Termination for convenience

- 3.13.1 The Procuring entity by written notice sent to the contractor, may terminate the contract in whole or in part, at any time for its convenience. The notice of termination shall specify that the termination is for the procuring entity's convenience, the extent to which performance of the contractor under the contract is terminated and the date on which such termination becomes effective.
- 3.13.2 For the remaining part of the contract after termination the procuring entity may elect to cancel the services and pay to the contractor an agreed amount for partially completed services.

3.14 Resolution of Disputes

- 3.14.1 The procuring entity and the contractor shall make every effort to resolve amicably by direct informal negotiations any disagreement or disputes arising between them under or in connection with the contract
- 3.14.2 If after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute either party may require that the dispute be referred for resolution to the formal mechanisms specified in the SCC.

3.15. Governing Language

- 3.15.1. The contract shall be written in the English language. All correspondence and other documents pertaining to the contract, which are exchanged by the parties shall be written in the same language.

3.16. Applicable Law

- 3.16.1 The contract shall be interpreted in accordance with the laws of Kenya unless otherwise specified in the SCC.

3.17 Force Majeure

3.17.1 The Contractor shall not be liable for forfeiture of its performance security, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

3.18 Notices

3.18.1 Any notices given by one party to the other pursuant to this contract shall be sent to the other party by post, Fax or Email and confirmed in writing to the other party's address specified in the SCC.

3.18.2 A notice shall be effective when delivered or on the notices effective date, whichever is later.

SECTION IV - SPECIAL CONDITIONS OF CONTRACT

Notes on Special Conditions of Contract

1. The clauses in this section are intended to assist the procuring entity in providing contract-specific information in relation to corresponding clauses in the General Conditions of Contract
2. The Provisions of Section IV complement the General Conditions of Contract included in Section III, specifying contractual requirements linked to the special circumstances of the procuring entity and the particulars of the tender. In preparing Section IV, the following aspects should be taken into consideration.
 - (a) Information that complement provisions of Section III must be incorporated; and
 - (b) Amendments and/or supplements to provisions of Section III, as necessitated by the circumstances of the particulars of the tender must also be incorporated.
3. Section III should remain unchanged and can only be amended through the SCC Section IV.
4. Clauses to be included in this part must be consistent with the public procurement law and the regulations.

SECTION IV – SPECIAL CONDITIONS OF CONTRACT

- 4.1 Special condition of contract shall supplement the General Conditions of Contract. Whenever there is a conflict between the GCC and the SCC, the provisions of the SCC herein shall prevail over those in the GCC.
- 4.2 Special Conditions of Contract as relates to the GCC.

GCC REFERENCE	SPECIAL CONDITIONS OF CONTRACT
3.6.1	<i>10 Percent</i>
3.8.1	<i>Monthly Rent</i>
314.2	<i>Arbitration</i>
3.16.1	<i>Kenyan Law</i>
3.18.1	<i>519-80108</i>

MANDATORY REQUIREMENTS TO BE MET BY THE CONSULTANTS

Instructions to tenderers (Reference)	Particulars of appendix to instructions to tenderers
<p>Mandatory requirements</p>	<p>1. Preliminary criteria</p> <ul style="list-style-type: none"> i. Copy of certificate of incorporation / registration. ii. Current single business permit iii. Valid KRA Tax compliance certificate iv. Copy of VAT/PIN certificates from KRA with two obligations v. Tender should be accompanied by a bid bond of 200,000 from established approved insurance company/ Bank which must remain valid for 150 days from the date of opening vi. Dully filled and stamped form of tender in the format provided vii. Dully filled and stamped confidential business questionnaire in the format provided viii. Site visit certificate as per the date and time indicated in the tender advert. <p>Evaluation Methodology will be a PASS/FAIL</p> <p>NOTE: Bidders MUST meet ALL the above requirements to proceed to technical evaluation.</p>

TECHNICAL EVALUATION

S/NO	DESCRIPTION	POINTS
1	Attach Curriculum Vitae for the employees with their academic certificates (3NO)	30
2	Understanding of the terms of reference; provide an elaborate methodology and work plan on how you are going to operate and manage the BUNTWANI MALINDI WATER FRONT PUBLIC PARK. (30 Mks)	20
4	Proof of financial Capability-Audited books of accounts for the last Three (3NO) (2018), (2019) and 2021) years (MUST be prepared, signed and stamped by a Certified public accountant) (30)	30
5	Proof of Registration with the relevant Accreditation Board and Professional bodies for each of the employees (3NO)	10
6	Must provide recommendation letters dully signed and stamped from at least Two (2) previous clients. (10Mks).	10

NB: Pass mark shall be 60 percent

FINANCIAL EVALUATION

The Lowest responsive bidder shall be awarded the tender

SECTION V - SCHEDULE OF PARTICULARS OF TENDER

Notes on preparation of the Schedule of the Particulars of Tender

- 5.1 The schedule of particulars of tender shall be included in the tender documents by the procuring entity and shall cover, at the minimum, a description of the assets, services or facilities being offered and full particulars of the same.
- 5.2 The objectives of the Schedule of Particulars of Tender is to provide sufficient information to enable tenderers to prepare their tenders comprehensively, efficiently and accurately. In particular the price schedule for which a form is provided in Section VI must be carefully completed.
- 5.3 In addition, the Schedule of Particulars of Tender together with the price schedules should serve as a basis in the event of particulars of tender variation at the time of award of contract pursuant to instruction to tenderers paragraph 2.26

SECTION V - SCHEDULE OF REQUIREMENTS

ITEM DESCRIPTION	ELIGIBILITY	PERIOD
MANAGEMENT AND OPERATION OF THE BUNTWANI MALINDI WATER FRONT PUBLIC PARK	OPEN TO BUSINESS PEOPLE OPERATING WITHIN MALINDI CONSTITUENCY	UTMOST THREE YEARS

(Complete as necessary including all necessary details)

SECTION VI - STANDARD FORMS

Notes on the sample Forms

1. **Form of Tender** - The form of Tender must be completed by the tenderer and submitted with the tender documents. It must also be duly signed by duly authorized representatives of the tenderer.
2. **Price Schedule Form** - The price schedule form must similarly be completed and submitted with the tender.
3. **Contract Form** - The contract form shall not be completed by the tenderer at the time of submitting the tender. The contract form shall be completed after contract award and should incorporate the accepted contract price.
4. **Confidential Business Questionnaire Form** - This form must be completed by the tenderer and submitted with the tender documents.
5. **Tender Security Form** - When required by the tender documents the tenderer shall provide the tender security either in the form included herein or in another format acceptable to the procuring entity. The tender security form must be completed by the tender and submitted with the tender.
6. **Performance security Form** - The performance security form should not be completed by the tenderers at the time of tender preparation. Only the successful tenderer will be required to provide performance security in the form provided herein or in another form acceptable to the procuring entity.
7. **Authorization Form** - When required by the tender documents this form must be completed and submitted with the tender documents. This form will be completed by the principal where the tenderer is an agent.

Form of Tender

To: _____
Name and address of procuring entity

Date _____
Tender No. _____
Tender Name _____

Gentlemen and/or Ladies:-

5. Having examined the Tender documents including Addenda No. (insert numbers) the receipt of which is hereby duly acknowledged, we the undersigned, offer to procure (the particulars of the tender) under this tender in conformity with the said Tender document for the sum of
.....[Total Tender amount in words and figures]

or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

6. We undertake, if our Tender is accepted, to abide by the conditions of the tender.

7. We agree to abide by this Tender for a period of[number] days from the date fixed for Tender opening of the Instructions to Tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

8. This Tender, together with your written acceptance thereof and your notification of award, shall constitute a Contract between us subject to the signing of the contract by both parties.

9. We understand that you are not bound to accept the lowest or any Tender you may receive.

Dated this _____ day of _____ 2005

[Signature]

[In the capacity of]

Duly authorized to sign Tender for and on behalf of _____

Price Schedule Form

ITEM NO	PARTICULRS OF TENDER BEING OFFERED	MONTHLY RENT (KSHS)	YEARLY RENT (KSH)
1.	MANAGEMENT AND OPERATION OF THE BUNTWANI MALINDI WATER FRONT PUBLIC PARK		

Signature of tender

Contract Form

THIS AGREEMENT made the _____ day of _____ 20_____ between
[name of Procurement entity] of _____ [country of Procurement entity]
(hereinafter called “the Procuring entity”) of the one part and
[name of tenderer] of _____ [city and country of tenderer] (hereinafter
called “the tenderer”) of the other part:

WHEREAS the Procuring entity invited tenders for the GPA cover and has accepted a
tender by the tenderer for the supply of the services in the sum of _____
_____ [contract price in words in
figures] (hereinafter called “the Contract Price”).

NOW THIS AGREEMENT WITNESSTH AS FOLLOWS:-

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz:
 - (a) the Tender Form and the Price Schedule submitted by the tenderer;
 - (b) the Schedule of Requirements
 - (c) the Details of cover
 - (d) the General Conditions of Contract
 - (e) the Special Conditions of Contract; and
 - (f) the Procuring entity’s Notification of Award
3. In consideration of the payments to be made by the Procuring entity to the tenderer as hereinafter mentioned, the tenderer hereby covenants with the Procuring entity to provide the GPA cover and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Procuring entity hereby covenants to pay the tenderer in consideration of the provision of the services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the contract at the times and in the manner prescribed by the contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with their respective laws the day and year first above written

Signed, sealed, delivered by _____ the _____ (for the Procuring entity)

Signed, sealed, delivered by _____ the _____ (for the tenderer) in the presence of _____

CONFIDENTIAL BUSINESS QUESTIONNAIRE

You are requested to give the particular indicated in Part 1 and either Part 2(a), 2(b), or 2(c)
Which ever applies to your type of business

You are advised that it is a serious offence to give false information on this Form.

Part _____ General:

Business Name
 Location of business premises
 Plot No. Street/Road
 Postal Address Tel. No. Fax Email
 Nature of business
 Registration Certificate No.

Maximum value of business which you can handle at any one time Kshs.
 Name of your bankers Branch

Part 2(a) – Sole Proprietor:

Your name in full Age
 Nationality Country of origin
 Citizenship details.....

Party 2(b) – Partnership

Give details of partners as follows

	Name	Nationality	Citizenship Details	Shares
1.
2.
3.
4.
5.

Part 2(c) – Registered Company:

Private or public

State the nominal and issued capital of the company –

Nominal Kshs..

Issued Kshs.....

Give details of all directors as follows

	Name	Nationality	Citizenship Details	Shares
1.
2.
3.
4.
5.

Date..... Signature of Tenderer

TENDER SECURITY FORM

Whereas [name of Bidder] (hereinafter called <the tenderer> has submitted its bid dated [date of submission of bid] for [particulars] (hereinafter called <the tender>).

KNOW ALL PEOPLE by these presents that WE [name of bank] of [name of country], having our registered office at [name of procuring entity] (hereinafter called <the procuring entity> in the sum of [state the amount] for which payment well and truly to be made to the said procuring entity, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this _____ day of _____
_____ 20 _____

THE CONDITIONS of this obligation are:-

1. If the tenderer withdraws its tender during the period of tender validity specified by the procuring entity on the Form; or
2. If the tender, having been notified of the acceptance of its tender by the procuring entity during the period of tender validity
 - (a) Fails or refuses to execute the Contract Form, if required; or
 - (b) Fails or refuses to furnish the performance security, in accordance with the Instructions to tenders.
 - (c) Refuses correction of arithmetic errors in the tender.

We undertake to pay to the procuring entity up to the above amount upon receive of its first written demand, without the procuring entity having to substantiate its demand, provided that in its demand the procuring entity will note that the amount claimed by its is due to it, owing to the occurrence of one or both of the conditions, specifying the occurred condition(s)

This tender guarantee will remain in force up to and including thirty (30) days after the period of tender validity, and any demand in respect thereof should reach the Bank not later than the above date

[Signature of the Bank]

(Amend accordingly if provided by Insurance Company)

PERFORMANCE SECURITY FORM

To:
[Name of procuring entity]

WHEREAS [Name of tenderer]
(Hereinafter called "the tenderer") has undertaken, in pursuance of Contract
No. _____ [Reference number of the contract] dated _____
20 _____ to supply
[Description of materials and spares] (Hereinafter called "the Contract")

AND WHEREAS it has been stipulated by you in the said Contract that the
tenderer shall furnish you with a bank guarantee by a reputable bank for a
sum specified therein as security for compliance with the Tenderer's
performance obligations in accordance with the Contract

AND WHEREAS we have agreed to give the tenderer a guarantee:

THEREFORE WE hereby affirm that we are Guarantors and responsible to
you, on behalf of the tenderer, up to a total of
[amount of the guarantee in words and figures], and we undertake to pay
you, upon your first written demand declaring the tenderer to be in default
under the Contract and without cavil or argument, any sum of sums within
the limits of [amount of
guarantee] as aforesaid, without your needing to prove or to show grounds or
reasons for your demand or the sum specified therein.

This guarantee is valid until the _____ day of _____
20 ____

Signature and seal of the Guarantors

[Name of bank of financial institution]

[Address]

[Date]

(Amend accordingly if provided by Insurance Company)

AUTHORIZATION FORM

To *[name of the Procuring entity]*

WHEREAS

[Name of the principal]

who are established and reputation dealers in

[Type of business] having registered offices at

..... *[Address of principal]* do hereby

authorizing *[Name and address*

of tenderer] to submit a tender, *[reference of the tender]* for the stated

(particulars of tender).

We hereby extend our full guarantee and warranty as per the General Conditions of Contract for the services to be provided against this Invitation for Tenders.

[Signature for and on behalf of the principal]

Note: This letter of authority should be on the letterhead of the principal and should be signed by a competent person.

LETTER OF NOTIFICATION OF AWARD

Address of Procuring Entity

To: _____

RE: Tender No. _____

Tender Name _____

This is to notify that the contract/s stated below under the above mentioned tender have been awarded to you.

1. Please acknowledge receipt of this letter of notification signifying your acceptance.
2. The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.
3. You may contact the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.

(FULL PARTICULARS) _____

SIGNED FOR ACCOUNTING OFFICER

REQUEST FOR REVIEW FORM
FORM RB 1
REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO.....OF.....20.....

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (*Procuring Entity*)

Request for review of the decision of the..... (*Name of the Procuring Entity*) of
.....dated the...day of20.....in the matter of Tender No.....of
.....20...

REQUEST FOR REVIEW

I/We.....,the above named Applicant(s), of address: Physical
address.....Fax No.....Tel. No.....Email, hereby request the Public
Procurement Administrative Review Board to review the whole/part of the above mentioned
decision on the following grounds , namely:-

- 1.
- 2.

By this memorandum, the Applicant requests the Board for an order/orders that: -

- 1.
- 2.

SIGNED(Applicant)

Dated on.....day of/...20...

FOR OFFICIAL USE ONLY

Lodged with the Secretary Public Procurement Administrative Review Board on day of
.....20.....

SIGNED
Board Secretary

TERMS OF REFERENCE (TOR) FOR
APPOINTMENT OF A PROFESSIONAL MANAGEMENT COMPANY TO OPERATE THE
BUNTWANI MALINDI WATERFRONT PARK

DECEMBER, 2020
Background

The Constitution of Kenya, 2010, brought in the need for the formation of a two tier government system. The Counties were established under the fourth schedule, and mandated with the responsibility of ensuring sustainable urban development within the county. Municipalities in Kenya were reintroduced in 2018 through the Kenya Urban Support Programme (KUSP). The criteria and modalities of formation and functions of the Municipalities are stipulated within the Urban Areas and Cities Act 2011 (UACA).

In response to this, the County Government of Kilifi, through the Municipality of Malindi is undertaking the development of Buntwani Malindi Waterfront Public Park in Malindi.

The project was initiated in 2018/2019 financial year and was funded by a loan from the World Bank to the National government and granted to counties through the state department of urban development under the Kenya Urban Support Programme (KUSP).

Historical context of the town

The name Malindi is believed to have originated from a Swahili term “Mali Ndi,” which means a lot of wealth. Others also claim that Malindi refers to the Swahili term “Ma Lindi” meaning “holes” referring to the caves found along the coastline. Malindi was also known to the Portuguese as Melinde.

Malindi is a peaceful and friendly ancient coastal town, founded around the 1st Century AD. Its original site may have been Mambrui, north of the

Sabaki River; it is now the second largest town on the Kenyan Coast after Mombasa.

Formally an independent Islamic town which came under the influence of Portuguese in the 16th century for some two hundred years before being ruled by the Sultan of Oman and Zanzibar and later, in the 19th century, the British. Notable visitors to Malindi included the Chinese explorer Cheng Ho during his fifth voyage and the Portuguese explorer, Vasco da Gama, in the 1400's. The Vasco da Gama Pillar and The Portuguese Chapel stand as evidence of the Portuguese period.

Generally there were instances that demonstrated friendly relations between the inhabitants of Malindi and foreign visitors. Such instances include;

- The famous Chinese Muslim sailor Zheng Ho, who made several trips to Malindi between 1417 and 1419 AD and during his expeditions ambassadors from Malindi gifted him a giraffe, celestial stag(thought to be an Oryx) and a celestial horse(may be a zebra) to the emperor of China.
- The Portuguese explorers were assigned to a local sailor Ahmed Bin Majid who guided them through the sea to India. They were also allowed to build a Chapel in the southern part of the Town and a pillar (The Vasco Da Gama Pillar) as a mark of discovery.

Malindi's culturally diverse population of Africans, Asians and Europeans (some of whom are featured as prominent personalities), has led to the development of various economic activities from Indian Ocean trade, fishing and agriculture to present day commerce and tourism.

The Coast of Malindi where the Buntwani Waterfront Park has been developed was also home to sport fishing activities that brought together participants from various countries in the world. Notable historical sport fishing events include the Malindi Fishing Festival; an annual fishing competition event that is held each year in Malindi. The event was started in November 1960 by Malindi Sea Fishing Club founded in May 1959 located at Lawfords hotel. Malindi Fishing Festival will be celebrating 60 years in November, 2020.

The location of the park was also known for its abundance of billfish; a group of predatory fish characterized by prominent bills and by their large size such as sailfish and marlin. The abundance of billfish in the coast of Malindi led to hosting of the first ever International Billfish Contest in East Africa in Malindi in February 1961 which attracted competitors from seven countries.

Rationale of the project

The thinking behind the project conceptualization was to regenerate Malindi's waterfront to provide a platform that supports a wide range of recreational activities and integrate it with the existing tourism attraction sites in Malindi to boost the tourism industry, improve the economic situation of the town and create employment for the people of Malindi.

In 2001, Malindi was declared the cleanest town in Kenya and runner up in 2003. For this achievement, the town was nominated to represent Kenya at the UN HABITAT World Urban Forum in Barcelona, Spain and in 2004 it received a Gold Award from Total Oil Kenya Eco Challenge for its commendable environmental hygiene.

During these years the town was a very popular tourist destination and a choice holiday destination for many local as well as international visitors. The economy was very vibrant with a 24hour economy mainly in the hospitality industry and the entertainment sector. Fishing and agriculture were undertaken within the peripheries and supplied the high demand from the populations within the town.

Over the years however, particularly the late 2000s, the environmental situation coupled with matters of insecurity among other factors, led to the town's loss of its coveted status with hotels and other businesses closing down.

With the dependence on tourism as the main source of employment and household earnings, thousands of jobs were lost, while the agricultural and fishing products lacked the ready market they once had.

Drug abuse and crime rates soared while the infrastructure started falling to disrepair with the once vibrant economy deteriorating. The town had dirty streets and uncontrolled dumping of waste with residential areas dotted with overflowing bins. Solid waste including plastics, roaming domestic animals, and all kinds of waste were strewn all over the town.

Following the inception of the counties in 2013, the County government of Kilifi managed to undertake various interventions to address the situation. These include renovation, upgrading and construction of new roads, drainage systems, street lighting, markets and improved waste management systems.

The revival of the Municipality in 2018 further enhanced the County efforts to improve the situation of the town. As part of the Municipality's strategy to revamp tourism by creating new experiences and attracting both domestic and international tourists, the regeneration of the waterfront was proposed as

a game changer expected to be among the projects that will help restore the towns lost glory and the recreation sector which has not been factoring the family element.

Mission and vision

Vision

To rethink, reimagine and redefine how our waterfront can be utilized through innovative approaches for sustainable development of urban recreational spaces in order to become a global value chain tourist product for both domestic and international markets and a tourist destination of choice.

Mission

To provide a vibrant, clean and safe park for family entertainment as well as for the socio – economic development of the people.

Project Objectives

Main objective

To revive the tourism industry and economy of Malindi

Specific objectives

- To create employment
- To attract both local and international tourists
- To improve the image of Malindi town.

Purpose of evaluation

- To provide efficient management of the park that will ensure social economic and environmental development
- To provide a framework to guide in the identification of a suitable firm to manage the park in order to realize the set deliverables.

Project components

The Buntwani Malindi Waterfront Recreational Park consists of the following components;

1. Administration block

This will be the park's main operation center. The administration block will also include a Tourism Information Centre (TIC) that will provide visitors with information on various tourist attractions in Malindi and other relevant information. The TIC is aimed at integrating the Buntwani Malindi Waterfront Park with the existing tourist attraction sites in Malindi such as;

The Vasco Da Gama pillar, Portuguese Chapel, Museums, Marine park, Uhuru (Mekatilili) garden, Gedi ruins, Mouth of River Sabaki entering the Indian Ocean, Whale and Dolphin migration in Watamu, Bird watching at Sabaki among others.

2. Car park

The car park is located immediately after the park's main entrance and consists of one hundred open parking spaces for visitors coming into the park.

3. Children's play area

The children's play area is the park's section that will have fun fare facilities for various recreational activities for children to enjoy themselves.

4. Food court

The park also has a food court consisting of six spacious outlets to be rented out to providers of catering services.

5. Ground Stalls

These stalls are meant to provide a platform for structured vending of local cuisine.

6. Beach volleyball pitch

The beach will consist of a standard volleyball pitch.

7. Beach soccer field

The beach will consist of a standard beach soccer field

8. Futsal pitch

The park will consist of an enclosed artificial turf futsal pitch able to host seven aside football, lawn and table tennis, etc.

Scope of work for the management company

General scope

The management company shall perform/ offer the following services:

- Provide park maintenance services to include mowing, trimming, cleaning, trash removal, mulching and other services.
- Provide adequate staff and equipment to perform park maintenance services.
- Be responsible for the safety requirements for all visitors to the park.
- Some of the staff shall be required to work after working hours to respond to incidents, emergencies with a timely response.
- Provide security for the fixtures, property and visitors to the park

The scope of work shall also be undertaken in accordance to the following components within the facility:

1. Parking area

- Directing customers to available parking spaces
- Ensuring safety and security of vehicles
- Collection of parking fees
- Ensure general efficiency of the parking area

2. Administration office

- Coordination and management of the facility
- Ensure the implementation of guidelines and regulation put in place to govern the facility
- Maintaining and updating a database of visitors which information can be used to assess daily, monthly or annual footfall.

3. Children's play area

- Provide staff that will supervise and ensure the safety of the children at all times.
- Ensure children use equipment that is appropriate for their age and ability.
- Daily inspection of the equipment to ascertain their conditions.
- Coming up with fair criteria for equal access of the facility to all children.

4. Food court

- Ensure there is no unnecessary competition of the services or products at the outlet
- Ensure top standards of maintenance of all kitchen facilities and infrastructure by all operators.

- Ensure compliance with and strict adherence to designs submitted or approved by the Municipality while doing necessary extra modifications
- Ensure adherence to all regulations and standards prescribed for usage of all kitchen facilities and infrastructure
- Determine all requirements for the smooth running of the kitchen facilities
- Ensure that operators sell items belonging to the category the space has been allocated for.
- Ensure the park is plastic free and in particular dissuade using single use plastic

5. Stalls

- These are mainly purposed to accommodate the low and middle income traders. The Municipality shall fund their construction or is at liberty to enter an agreement with the traders for a BOT (Build Operate Transfer).
- All businesses must be sanctioned by the management company and approved by the Municipality.

6. Beach volleyball/football pitch

- Users shall pay a fee to be determined by the management company.
- Waivers shall be considered particularly for local youth/ teams.

7. Seven-a-side football pitch

- Users shall pay a fee to be determined by the firm.
- Waivers shall be considered on a case to case basis particularly for local youth/ teams.

8. Beach front

- Undertake and supervise beach cleaning activities on a daily basis
- Conduct environmental advocacy on the best practices by users to encourage maintenance of high standards of cleanliness within the beach.
- Prohibit collection of coral shells at the sea shore to ensure sustainability of the marine ecosystem
- Lobby for funds to undertake various beach cleaning campaigns from various stakeholders
- Ensure that all activities within the beach front are in harmony with the natural setting

9. Enforcement

- Protect users from intruders who may compromise on their safety and security
- Ensure and enforce decent dressing and outlook. The management company has the right to determine what is decent dressing under the circumstances
- Man all areas and entry points within the park
- Eject from the park any users who violate set regulations
- Handle traffic violation within the park
- Advocate for an alcohol free environment within the park

10. Landscaping and maintenance

- Maintain lawns, trees and other plants within the facilities at top condition.
- The management company shall be responsible for planting of extra trees within the park
- Maintain the general design of the landscaping within the facility.
- Recommend necessary modifications and additions to the design as appropriate. This must be approved by the Municipality.

- Inspect and treat as needed for disease and insect infestation.
- Ensure proper and adequate watering of the plants and grass

11. General cleaning

- Cleaning of all facilities including; ablution blocks, kitchen area, food court area, administration block, the parking area, all business stalls and all the pathways within the park.
- Collection of litter and sorting of the same for collection.
- Ensuring the collection of waste by coordinating with waste collectors.
- Ensuring the facility is clean at all times.
- Provide a container to serve as main transfer station located at strategic point for temporary storage of all waste before final disposal.
- Inspect all sidewalks and trails daily for cleanliness and safety, and report any areas of concern

Deliverables

Expected deliverables are tabulated below:

S/NO	Deliverables	Timelines
1.	Inception report <ul style="list-style-type: none"> • Management plan • Marketing plan 	30 days after contract signing
2.	Inspection reports <ul style="list-style-type: none"> • Repair and maintenance 	Monthly
3.	Financial reports <ul style="list-style-type: none"> • Audited accounts 	Biannually
4.	Staff report (70% Locals) <ul style="list-style-type: none"> • Recruitment 	30 days

	<ul style="list-style-type: none"> • Contract and Casual 	
5.	Needs assessment report <ul style="list-style-type: none"> • Equipment and machinery • staff 	Quarterly
6.	Performance/ Progress reports <p>a) Monitoring and evaluation</p>	Quarterly
7.	Marketing	Annually

Contract period

The contract period for management of the Buntwani Malindi Waterfront Public park shall be awarded for a 5 (five) year renewable term to be determined by the board of the Municipality of Malindi.

Role of the Municipality in the Management of the Park

- a. The Board of the Municipality of Malindi shall play a supervisory overall role on the management which shall be reporting monthly to it.
- b. The Board of the Municipality of Malindi shall have its nominee sit in the management structure/ committee of the contracted management company

Criteria of evaluation:

Preference for the appointment of the management company shall be given to qualified, experienced, indigenous locally owned companies which meet the set criteria.

CRITERION	QUALIFICATION
Strategic planning	b) Proof of strategic planning experience, ability and skills
Investment abilities	c) The management company shall attract and invite other relevant investors into the park

	<p>with the express knowledge and concurrence of the Board of the Municipality which investment shall be invited on record</p> <p>d) The management company shall at all times strive to expand the revenue base for itself which exponentially shall also increase the revenue for all partner entities</p>
<p>Competency</p>	<ul style="list-style-type: none"> • The candidate shall be a management company specializing in tourism and hospitality industry with a proven track record in Kenya and particular in Kilifi County • Due to prevailing community dynamics, the ability and skills to create a good social and working relationship with the neighborhood shall be an advantage. The company should give a brief on how they intend to achieve this. • Proof of professional performance as certified by previous clients shall be a requirement • This being a community project located in an area rampant with drug addicts and unemployed youth, the company must have a proven record of working with different security apparatus which shall come in handy

	<p>in handling any threats.</p> <ul style="list-style-type: none"> • The firm should provide a comprehensive workable marketing and investment strategy with a clear implementation plan and future outlook for the park
Financial capabilities	<ul style="list-style-type: none"> • Should have certified bank statements. • Audited accounts within the last 5 years. • Proof of financial capacity based on cost of previous works and current investments.
Management capabilities	<ul style="list-style-type: none"> • The managing Director should have a degree in a relevant field from a recognized university • The managing director shall have not less than 15 years' experience in managing diverse

	<p>concerns which include finance as well as HR</p> <ul style="list-style-type: none"> • Experience of not less than 10 years in providing management direction to organizations and business ventures especially in the tourism and hospitality sector • A team player with proven record of leading a team of not less than 100 workers
<p>Management team</p>	<ul style="list-style-type: none"> • The management team shall have the necessary qualifications at diploma and above level in the hotel and hospitality industry or associated field • Should have analytical skills and experience to make quick decisions • Should be critical thinkers able to make sound judgment when dealing with the public • Able to work under minimal supervision • The composition of the team should adhere to the constitutional requirements on gender and diversity
<p>Social responsibility</p>	<ul style="list-style-type: none"> • Show evidence of past corporate social responsibility initiatives undertaken.

Environmental initiatives	<ul style="list-style-type: none"> • Possession of a certificate of participation in any local or international environmental forums is an advantage • Have knowledge and proven interest in green energy and proof of its application in the company's past ventures will be an advantage • Provide evidence of firm's programs that support environmental initiatives • Provide a report on plans to mitigate environmental concerns
Political interference	<ul style="list-style-type: none"> • Have ability and tact to engage and withstand socio-political pressure especially on matters employment and other favors.
Communication competencies	<ul style="list-style-type: none"> • The company top leadership should have proven qualifications and experience in ICT with skills and knowledge of latest technologies which includes social media, virtual communication
Social cultural diversity	<ul style="list-style-type: none"> • Ability to work and deliver in a dynamic society with diverse culture.

The company management team qualification

KEY STAFF	QUALIFICATIONS
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<p>Team Leader – Managing Director (MD)</p>	<ul style="list-style-type: none"> • A minimum of 15 years relevant working experience • Registration with relevant Board • Corporate Membership in relevant Professional Bodies • Degree in either, wildlife, hospitality, tourism, management, environmental studies or other related courses. • Masters degree in relevant field will be an added advantage • Certification in EIA will be an added advantage
<p>Assistant Team Leader – General Manager (GM)</p>	<ul style="list-style-type: none"> • A minimum of 7 years relevant working experience • Registration with relevant Board • Corporate Membership in relevant Professional Bodies • Degree in either, wildlife, hospitality, tourism, management, environmental studies or other related courses • Certification in EIA will be an added advantage
<p>Team Members – Departmental Managers/ Heads</p>	<ul style="list-style-type: none"> • A minimum of 5 years relevant working experience • Graduate membership in relevant

	Professional bodies <ul style="list-style-type: none"> • Degree in any relevant disciplines
Assistants – Technical staff	<ul style="list-style-type: none"> • A minimum 2 years relevant working experience • Membership in relevant Professional bodies • Diploma/Certificates in any relevant disciplines

Actors and their responsibilities

The main actors of this TOR and their responsibilities are as outlined

1. The Company

Responsibilities

Waste management, sanitation and hygiene

The management should ensure the provision of adequate waste disposal infrastructure including liquid and solid waste within the facility. This will be done through;

- The provision of strategically placed solid waste disposal bins
- Provision of adequate drainage or alternative liquid disposal mechanisms within the park.

Safety and security

- The management shall ensure that the facility has adequate provisions for safety, rapid response teams in emergency situations such as; Fires, Natural disasters (tsunamis), Shark attacks etc.

- The management should provide adequate facilities and personnel for the management of security incidences such as theft and terror attacks by;
 - Providing adequate security within the facility.
 - Providing adequate surveillance technology within the facility.

Infrastructure and maintenance

- The existing infrastructure design standards shall be maintained in all the renovations and modifications undertaken.
- Ensure that there is a scheduled routine for repairs and general cleanliness.
- The existing landscaping shall be maintained to conform to the natural form and features of the Coastline terrain and topography, and shall not harm the soundness of such areas including the existing critical ecosystems.

Revenue

- The firm shall charge appropriate fees for utilization of the park facilities with exceptions of the following;
 - Park entry.
 - Sitting on benches.
 - Jogging on the walkways and other forms of no-equipment exercises.

- The firm shall remit revenues arising from the operations of the park to the Municipality as will be provided in the contract which will be negotiated.

Marketing

The firm should provide a marketing strategy for the products and services offered within the park.

2. The Board of Municipality of Malindi

- Play a Supervisory role on the Company and appoint its nominee to sit in the relevant management committee
- Consider and provide any needed support to enable the company manage the park seamlessly as desired
- Consider and approve any request for renovations or modification of the existing infrastructure
- Provide relevant information and documentation to enable the firm carry out its responsibility
- The Municipality shall from time to time order the auditing of the financial books of the park to ensure that its management is efficient and sustainable
- The Municipality shall also monitor the activities of the park to ensure they are keeping with the founding principles, objectives and values

3. Local Community

- The local community shall provide an enabling environment for the firm to efficiently operate the park.
- Shall offer themselves for support/ employment whenever called upon

4. The Committee

There will be established a park advisory committee by the Municipal board together with the company management to be known as Buntwani Waterfront Committee (BWC). The committee will be comprised of stakeholders derived from the following categories of representation: Local community, Tourism fraternity, Fishing community, Business community, National government administration, Municipality and the Company. Membership to this committee shall not attract a salary but will be entitled to sitting allowances as will be determined by the Company.

The committee shall hold their meetings on a quarterly basis or when need arises.

The committee will play an advisory role to the municipal board on matters appertaining the park operations in the following ways;

- Receive submissions from community groups on general concerns regarding the park operation and make recommendations to the municipal board.
- Make recommendations to the Municipal board regarding other recreational services and sports activities that may be incorporated
- Make recommendations to the municipal board on ways of ensuring the adaptability of the park to emerging trends
- Make recommendations to the municipal board on matters related to park development, programs and events
- The committee shall from time to time recommend to the Municipal board on ways that can improve the operations of the park

Criteria to be used for letting the Food outlets

Each outlet shall be allocated a unique business and these outlets will be leased out to businesses which meet the following conditions;

- The business should be registered.
- Applicants should provide proof of financial ability to run the business applied for.
- Applications shall only be admitted for the following categories of businesses;
 - Beverages
 - Ice cream parlor and fruits
 - Fast food
 - Local cuisine
 - International cuisine
 - Bakery/snack bar

Conditions

The following conditions shall be adhered by the successful applicants of the food outlets;

- Subletting shall not be allowed after the acquisition of lease.
- The leasing contract is subject to review by the firm after the lapse of their contract.
- The leasing contract shall be terminated in case of breach of contract conditions.
- Majority of the employees within the food outlets businesses should come from the locals.
- Adherence of legal licensing formalities e.g. Public health