

4<sup>th</sup> July 2023

**TO: ALL BIDDERS**

**ADDENDUM 2: CLARIFICATION**

**RE: TENDER FOR LEASING OF MOTOR VEHICLES FOR A PERIOD OF FOUR (4) YEARS – REF: TENDER NO. GDC/FLEET/OT/037/2022-2023**

In response to the request for clarification, GDC wishes to respond as follows;

No.	Bidders Query	GDC Response
1.	<p>On Page 27 – Clause 5 c. Replacement of Vehicles in The event Of A Write Off and Page 54 Clause 32 on total Loss.</p> <p>On Clause 5 you indicate thirty days yet on Clause 54 you indicate in the event of total loss you would like to have the vehicles be replaced immediately.</p> <p>Our Concern is a vehicle is declared a write off by the insurance company this takes a few weeks say 3 weeks because of gathering claim documentations from the Procuring entity, appointment of assessors by insurance companies and investigators, this exercises quite long, we propose to align both Clauses and have the vehicles replaced within 30 days after the insurer has declared the vehicle a total loss so as to enable the lessor to buy a new vehicle, register it on NTSA TIMS, and also brand it properly to enable lessors to stick to reasonable timelines</p>	<p>The requirements remain the same as stated in the tender document.</p> <p>The lessor has the responsibility of providing a replacement vehicle as the insurance matters are being handled.</p>
2.	<p>Clause 6. Return of Leased vehicles at end of agreement Addition on Clarification</p> <p>If for any reason whatsoever, the procuring entity does not make the Vehicle available for the lessor to collect in accordance with the provisions of this Agreement upon expiry of the Lease term, the bidder/ lessor shall bill for every km per day that the vehicle is in the Procuring entities possession, until such vehicle is released to the lessor.</p>	<p>The requirements remain the same as stated in the tender document.</p>

<p>3.</p>	<p>Clause 8 Insurance and Clause 33 on insurance The issue of re-instatement of excess protector on the vehicles that have more than one accident in a year, as this is an issue the procuring entity needs to address, since the lessor is not the user of the vehicle and cannot control whether it has an accident or not. Ordinarily this cost of re-instatement of the excess protector is a cost to be borne by the lessee as such we suggest the inclusion of the wordings below.</p> <p>Secondly we have the issue of accidental damages that are below the insurance excess, this costs are not taken up by the insurer, hence we propose to have the accident damages/ repairs below excess to be taken up by the procuring entity as they are the user of the asset. We propose the clauses below to read as follows;</p> <p><u>Excess protector reinstatement:</u> Reinstatement of excess protector charges after the first accident on a particular vehicle to be borne by the Lessee/ Procuring entity and if the Lessee/ procuring entity fails to make any payment when called upon to do so then the Lessor will be entitled to debit such costs to the Lessee's statement of account and to recover such costs</p> <p>Damages Below excess : Where the Lessee/ procuring entity damages the vehicles and such costs are below the applicable excess, the Lessee/ procuring entity shall bear the costs of repair.</p>	<p>The requirements remain the same as stated in the tender document. GDC shall take appropriate administrative actions to officers causing damages as a result of negligence All insurance excess charges and administrative costs shall be payable by the Lessor.</p>
<p>4.</p>	<p>Page 28 on Clause 8 Notifications under insurance policies (including loss, damages or accidents) &amp; Clause 33 on Notifications under insurance policies (including loss, damages or accidents)</p> <p>To enable the lessors and insurance companies to adhere to service level agreements and streamline the insurance claims process we propose to have the following documentation required by the insurance company for any claim to be processed. We propose alignment to read as follows:</p> <p>The procuring entity and or the User Entity shall within 24twenty four hours notify the Bidder/ the Lessor with the following documents in the event of</p>	<p>The requirements remain the same as stated in the tender document. Schedule H in the document has detailed the process for handling insurance claims.</p>

	<p>any incident or damage whether the Client intends to claim or not a Completed claim form, Police abstract, Driver's written statement on how the accident occurred and a sketch of the accident scene, Driver's valid driving license, Driver's National ID copy, Photos taken at the scene of the accident before moving the vehicles if any, Damage photos of the car.</p>	
<p>5.</p>	<p>Page28 - Risk and Excess Usage  We note with concern that you indicate that bidders shall not demand for any cost of repair and maintenance during the term or thereafter nor bill for any excess usage.</p> <p>Our concern first is that bidders/ lessors will price for service and maintenance according to the proposed Cumulative mileage of Kes 160,000kms over the four years. Hence if we do not bill for any out of scope service and maintenance then it means this money shall not be enough.</p> <p>The issue of return of the vehicles after the lease has expired it means that lessors shall be subjected to a loss because either the vehicle has returned in a very bad and poor operational state or it has exceeded the 160,000 kms that had been agreed upon in the beginning of the lease. This is not agreeable since a lessor only recovers money after a lease term has expired and they need to sell the vehicle, if the lessee/client destroys the vehicle then the lessor shall be subjected to unnecessary loss of fixing a vehicle and hence not recoup the profits they had projected for their residual value.</p> <p>We propose to amend the same to read</p> <p>At the expiration or earlier termination of the lease term, the vehicles will be returned according to the returned conditions save for fair wear and tear. If any damages are detected the Client will pay the lessor on demand the cost of and generally all costs of reinstating the Vehicle to an acceptable mechanical and operational form, fair wear and tear is going to be accepted</p> <p>We also propose a return conditions as follows;  "Return Conditions" means the conditions specified in Appendix A being the minimum conditions in which the Vehicles should be maintained at all times during the Term and upon</p>	<p>The requirements shall remain as stated in the tender document.</p>



	<p>the delivery of the Vehicles to the Lessor on the Termination Date of the Lease Schedules or upon the earlier termination of this Agreement and/or the Lease Schedules .</p>	
6.	<p>Page 55 on Clause 36 Licenses, Permits and Inspections Clarification to read the permits and licenses that are in relation to the bidders/ lessors business including approvals by relevant authorities shall be the responsibility of Bidders/ Lessors at their cost.</p>	<p>This requirement remains as stated in the tender document.</p>
7.	<p>Applicable taxes and labor laws  We propose an addition clause 39.2 to read that the procuring entity is not entitled to claim capital allowances on the vehicle.</p>	<p>This requirement remains as stated in the tender document.</p>
8.	<p>On page 56 part h: lease pricing, financing and payments We propose an additional clause 43. To enable lessors to access funding from banks, lessors depend on financial assistance from banks, hence banks are not shy to advance lease funding to bidders if they are not sure that their money shall be payable, hence you find even with Contracts with National Treasury this clause is there. We can also assure the procuring entity that to mitigate the issue of vehicles under service and maintenance, we sign a service level agreement so that the timelines are met by both lessors, lessees and the OEMs who shall be performing service and maintenance on the vehicles and to the procuring entities satisfaction.</p> <p>Save For Total Loss, the Procuring entities obligation to pay rent and other moneys under this Agreement is absolute and unconditional. Without limitation, the procuring entities payment obligations will continue notwithstanding any defect in, breakdown, accident, loss, theft or damage to the vehicle. The procuring entities payment obligations are not subject to set-off or reduction for any reason provided that the lessor shall be entitled, to set off any amounts which the lessor owes to the Procuring entity from any cause whatsoever against any equivalent amount due by the prcuring entity to the Lessor under this Agreement.</p>	<p>This requirement remains as stated in the tender document. GDC is committed to pay as per the contract. Payments shall be made quarterly (Three months) in arrears</p>

9.	<p>Acquisition of additional vehicles under similar terms and conditions</p> <p>We propose an addition that The Procuring Entity would only be required to sign new lease schedules and delivery notes (this is just a clarification new leases schedules are to be signed for any additional vehicles or replacement vehicles)</p>	<p>GDC will be guided by the Public Procurement and Asset Disposal Act and the provisions of the contract.</p>
10.	<p>Page 56 on Clause 27 on Limitation of Liability</p> <p>We note we do not speak of limits of liabilities for the lessor on insurance policy limits and exception and to ensure a well -balanced tender we propose the following:</p> <p>Clause 27.1 c the lessor shall not be liable for insurance claims that are not admissible or have surpassed the insurance policy limits on injury cases or third property damage limits.</p> <p>Clause 27.1d The lessor is not liable for any damage, injury or loss to any person or property arising from the possession, operation or use of the Vehicle in the event the loss, damage, or injury except if such damage or loss is caused by the negligence of lessor, its employees, or agents.</p>	<p>This requirement remains as stated in the tender document.</p>
11.	<p>On Page 99 Clause 33.3 Termination for Convenience.</p> <p>Termination is a sensitive issue that must be addressed, it only addresses redress to the procuring entity but what about the lessor, hence what are the effects of termination by either party, to ensure this contract is bankable.</p>	<p>This requirement remains as stated in the tender document.</p>
12.	<p>On termination by Convience we propose additional clause 33.1 a,b,c</p> <p>i) If the Company terminates the leasing of any vehicle under clause 33. the procuring must immediately</p> <p>a. return the Vehicle to the Contractor at a place specified by the Contractor; and</p> <p>b. pay to the Contractor all moneys then due and payable under this agreement until the date of such termination</p> <p>c. Pay to the Contractor liquidated damages being the difference between the present the present value of future rent instalments</p>	<p>This requirement remains as stated in the tender document.</p> <p>GDC will be guided by the Public Procurement and Asset Disposal Act and the provisions of the contract.</p>

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payable for the balance of the Term, calculated by applying to each such installment a discount rate equal to the rate of interest rate used to calculate or derive the respective periodical Lease as the commencement of the Lease period for the remainder of the Term.

We would also appreciate a well-worked document, what happens in the event of default by the procuring entity, what forms of redress are their for the lessor, we propose the clause below.

### 33.4 TERMINATION BY THE LESSOR

33.4.1 The Lessor may give the Procuring entity a 28 day notice terminating the Leasing of all Vehicles then being leased under this Agreement if there is a breach in payments and usage of the vehicles.

33.4.2 The Lessor may also give the procuring entity notice terminating the Lease of all Vehicles then being leased under this Agreement in an event of default as set out in clause 33.4.1 occurs and, where that default is capable of remedy, and the procuring entity does not remedy that default within twenty eight (28) Days of written notice from us to do so

33.4.3. If the Lessor terminates the Leasing of any Vehicle under clause 33.4.1. and 33.4.2 the procuring entity must immediately

33.4.1.1. return the Vehicle to the lessor at a place specified by the Lessor; and

33.4.1. 2 pay to the lessor all moneys then due and payable under this Agreement until the date of such termination;

33.4.1. 3 pay to the lessor as liquidated damages being the difference between the present value of future rent instalments payable for the balance of the Term, calculated by applying to each such installment a discount rate equal to the rate of interest rate used to calculate or derive the

	<p>respective periodical Lease as the commencement of the Lease period for the remainder of the Term, and</p> <p>M. On Page 100 on the GCC 10.2 we note that termination by Default, termination by notice, termination by convenience all have not stated the financial implication the lessor stands to suffer, yet the procuring entity has subjected the lessor to liquidated damages, as lessors we also have a proposal that needs to be adopted to enable lessor have some form of redress and our proposal is as follows;</p> <p>Clause g 10.2 If the procuring party or the lessor terminates the Leasing of any Vehicle under the above clauses the procuring entity must immediately</p> <ol style="list-style-type: none"> <li>i. All arrears of Lease Rentals together with all other amounts which are due (but unpaid) under the Lease schedules up to the Early Termination Date, including the notice period;</li> <li>ii. Excess mileage charges at the rate specified in the Lease Schedules;</li> <li>iii. The Net Present value of All Lease Rentals that would have been payable from the Early Termination Date to the</li> </ol> <p>N. Clause 33. Assignment Our concerns is that all lessors submit contracts and tender document to the banks to enable them unlock funding from the financing bank hence we would suggest to insert the words</p> <p>33.1 Excluding assignment to Financing Institutions Neither the Procuring Entity nor the Lessor shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.</p>	
13.	<p>The tender document is silent on the issue of Repossession, Indemnity and Governing law, in the unlikely event of default, what would be the lessors form of redress and what measures or steps should be taken, it is our view to introduce in the agreement the clauses to address repossession in the event of default, indemnity while using the vehicle</p>	<p>This requirement remains as stated in the tender document. GDC will be guided by the Public Procurement and Asset Disposal act and the provisions of the contract.</p>

35 Indemnity on use of the Motor Vehicle

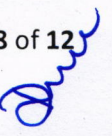
The Lessee while using the vehicles shall indemnify and keep the Lessor fully and effectually on a full and unqualified indemnity basis at all times against all criminal fines, judgments, demands, losses, liabilities, damages, actions, claims, proceedings (whether civil or criminal), that are not covered under the Insurance policy and are suffered or incurred by or imposed on the Lessor arising out of the leasing and use of the Vehicles by the Lessee;

36 Repossession

a) Upon the occurrence of a material unremedied breach by the Lessee and without prejudice to the Lessor's other rights and remedies hereunder, the Lessor may in its sole and absolute discretion do all or any of the following:

i. at any time, after a notice of fourteen (14) days (whether or not the Lessor may subsequently accept payments by the Lessee) demand or retake possession of the Vehicle until such time as the Lessee remedies the breach or satisfies the Lessor that the breach in respect of which the powers contained herein were exercised does not or will not prejudicially affect the Vehicle or the rights of the Lessor to the Vehicle or under any agreement following which the Vehicle shall be redelivered to the Lessee upon payment of the reasonable costs of the Lessor in the exercise of the Lessor's rights hereunder.

ii. by fourteen (14) days' notice in writing to the Lessee terminate this Agreement or any Lease Schedule as at the date of the





	<p>notice or any later date specified in the notice, without prejudice to all other rights and remedies whatsoever the Lessor may have or exercise hereunder or under any Agreement or otherwise howsoever.</p> <p>b) If the Lessor exercises any of its rights under Clause 35 (a), the balance of the moneys payable by the Lessee under this Agreement (including without limitation all Rental Payments outstanding and unpaid calculated down to the Termination Date and all other amounts due and owing under this Agreement) shall after fourteen (14) days' notice immediately become due and payable to the Lessor, subject to such rebate as the Lessor may allow in its sole and absolute discretion.</p>	
14.	<p>Clause 36 - Governing law</p> <p>d) The construction, validity and performance of this agreement shall be governed in all respects by the Laws of Kenya</p> <p>e) The lessor and lessee shall use their best efforts to negotiate in good faith and settle amicably any dispute that may arise out of or relating to this agreement. If any such dispute cannot be settled amicably through negotiations by the appropriate representatives of the lessor and lessee, then either party shall be at liberty to refer the matter to a competent courts in Kenya which shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this agreement and each of the parties irrevocably submits to the jurisdiction of such courts</p>	<p>This requirement remains as stated in the tender document.</p>
	<p>Under the preliminary mandatory Evaluation Requirements/Criteria point 19 states that the annual turnover of a company needs to be equivalent to the tender price. This is prohibitive to most SMEs that may wish to participate in this Tender. Why not relax this rule so as to be more accommodating and to help promote SMEs.</p>	<p>This requirement remains as stated in the tender document</p>
	<p>Under the Technical evaluation Technical Implementation Requirements, the tender is structured in such a way that if you do not tender for</p>	<p>This requirement remains as stated in the tender document.</p>

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	<p>even one category of vehicles then one cannot achieve the Pass Mark. Our Humble request would be you allow various firms to participate for different Categories so that even your organization can benefit from the different strengths in the industry.</p>	<p>The tender does not preclude bidders against forming JVs so as to comply with GDC requirements</p>
	<p>In the Experience Skills, Technical and Local content 10 leasing contracts and at least 5 from the public sector is once again very stringent for SMEs. Proof of Ownership of an assembly plant is prohibitive. We once again humbly request that you consider the SMEs.</p>	<p>This requirement remains as stated in the tender document. The tender does not preclude bidders against forming JVs so as to comply with GDC requirements</p>
15.	<p>Bidding per LOT: We kindly request that the tender committee allows bidders to submit bids for individual LOTS rather than requiring them to bid for all LOTS collectively. Granting this flexibility would not only allow for more competitive bids across the board but also enable bidders such as ourselves to participate in the bidding process for the specific LOTS that align with our capabilities and expertise.</p>	<p>This requirement remains as stated in the tender document. The tender does not preclude bidders against forming JVs so as to comply with GDC requirements</p>
16.	<p>Inclusion of a 4X2 Configuration for Single Cabin Pickups: We propose that the tender committee allows for the inclusion of a 4X2 configuration for single cabs, in addition to the currently specified 4X4 configuration. We believe that our 4X2 pickup is both cost-effective and suitable for the project requirements. Allowing for this alternative configuration would enable us to leverage our resources efficiently while maintaining the project's desired outcomes.</p>	<p>This is the most important technical parameter that if changed will negatively affect the single cabin pickups' performance. This requirement remains as stated in the tender document.</p>
17.	<p>Addition of more 4x4 Double Cabin Pickups: Due to the adverse weather conditions and the rough terrain of the area, we strongly recommend the addition of more 4X4 double cabin pickups to the tender fleet requirements. These vehicles are well equipped to handle challenging environments, ensuring the safety and efficiency of operations.</p>	<p>The number of double cabin pick ups has been increased from four to six units as per addendum one (1).</p>
18.	<p>Out-of-Schedule Repairs: Following our site visit to Baringo earlier this week, our Aftersales department recommends the inclusion of provisions for out-of-schedule repairs, which are currently not provided for in the tender document. Out-of-schedule repairs are integral to ensuring the vehicles' longevity and their ability to function optimally in rough terrain. We there for propose an amendment to the tender document allowing for repairs outside of the scheduled maintenance which will ensure a comprehensive approach to maintenance throughout the lease term.</p>	<p>The purpose of the site visit was to determine what should be considered Normal wear and tear for the environment where GDC operates. Bidders' should provision the same in their overall pricing schedules.  This requirement remains as stated in the tender document.</p>

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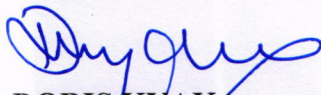
19.	Having gone through the terrain where the vehicles will be used, we will seek to engage our principals on further modifications on the cars we intend to bid. These discussions take time and we would therefore request that the tender opening/closing date be pushed to 12th/13th July 2023 same time.	The tender opening/closing date has been extended to 14 <sup>th</sup> July 2023 at 11.00am. Refer to Addendum one (1).
20.	The termination of the contract should be based on non-performance ONLY and NOT convenience. The CAPEX investment in vehicles is huge and a termination-based convenience would leave the OEM or industry in huge losses. Besides cancellation based on convenience may not be bankable banks may refuse to finance the lease program.	This requirement remains as stated in the tender document. GDC will be guided by the Public Procurement and Asset disposal Act and provisions of the contract.
21.	The global warming issues and the UN ratification for greener solutions could have informed GDC's requested for Euro 4 vehicles. As a company we realize the gravity of this objective and would therefore propose that this specification is scored given that that the matter of KS1515 is still under determination in the environment court. Our proposed solution to this integral matter to GDC would be to score this requirement, for example, Euro 4 compliant would be given 5 marks, Euro 3/2 - 2 marks, Euro 1 and below 0 marks.	<ul style="list-style-type: none"> <li>- The requirement for Euro 4 is hereby deleted from the tender document.</li> <li>- Bidders are required to indicate; <ul style="list-style-type: none"> <li>- i.) Their current engine emission standards and</li> <li>- ii.) Fuel efficiency ratings.</li> <li>- iii.) Performance benchmarks.</li> </ul> </li> </ul>
22.	Given the network challenges at the North Rift (SOLALI Area) the normal GPS/GSM tracking system may not offer consistent data as required. Additionally, the security of the drivers and vehicles is also compromised when there is inconsistency in the transmission of data. We are therefore proposing that a Satellite Tracking system be used instead.	This requirement remains as stated in the tender document. Bidders should make appropriate measures to ensure that their assets are transmitting at all times.
23.	Maintenance cost will vary with terrain	This requirement remains as stated in the tender document document.  Bidders are expected to forecast their overall expenses for the entirety of the contract
24.	Measures put to deal with rogue drivers, Monitoring user viability and discipline, Geo-fencing to control speed in rough terrain	The requirements remain the same as the stated in the tender document. GDC shall take appropriate administrative actions to officers causing damages as a result of negligence. Bidders to ensure the fleet management software employed transmits at all times
25.	Quarterly meetings to monitor the arising issues and performance time	The requirements remain the same as the stated in the tender document. GDC will constitute a Contract Implementation team (CIT) that will schedule quarterly meetings to monitor matters arising

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26.	Branding- stickers and vinyl	The requirements remain the same as the stated in the tender document.
27.	The preference of one contractor to supply all the vehicles	The requirements remain the same as the stated in the tender document.
28.	Replacement of vehicles- (time frame)	The requirements remain the same as the stated in the tender document. That is 24 hrs after reporting
29.	SPECIFICATION NO 4, HEAVY DUTY AMBULANCE 4x4, 2900cc-4200cc to 2900cc to 4800cc to include other appropriate product offering with optimal utility.	Minimum Specification HEAVY DUTY AMBULANCE 4x4 amended to 2900cc.
30.	SPECIFICATION NO. LOT 5 HEAVY DUTY 4x4, 3,000 -4,500cc DIESEL 10 SEATER PASSENGER – STATION WAGON.	<b>Amended to read as;</b> - SPECIFICATION NO. LOT 5 HEAVY DUTY 4x4, 3,000-4,500cc. DIESEL. (10 - 12-SEATER PASSENGER VAN). - (NB: The van should be a single open spacious van. The van should not be supplied as a separate front cabin and back cabin.)

All other requirements/instructions including the tender closing date of **14<sup>th</sup> July 2023 at 11.00am** remain unchanged.

Yours faithfully,

  
**DORIS KYAKA**  
**MANAGER, SUPPLY CHAIN**