



East African Portland
Cement Co. Ltd

Holdings Life Together

TENDER NO. EAPCC/OT/130/2017

SUPPLY & DELIVERY OF FUELS.

JULY, 2017

CLOSING DATE: 27th JULY 2017

CLOSING TIME12.00 Noon

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SECTION I – INVITATION TO BID

SUPPLYOFFUELS

The East African Portland Cement Company Ltd, one of the leading Cement manufacturing Companies in Kenya, invites sealed bids from eligible candidates for **Supply of Fuels**. The detailed breakdown of the requirements can be obtained in the schedule of requirements/price schedule stipulated in this bid document.

- 1.1 Interested eligible candidates may obtain further information from the Bid documents or contact the Procurement Office, East African Portland Cement Company Ltd, off Namanga Road Athi River, during normal working hours (08:30 – 15:30 local time on Mondays to Fridays except during lunch time from 13:00 to 14:00 hours and public holidays.).
- 1.2 A complete set of bid documents can be downloaded from the company website (www.eastafricanportland.com) and IFMIS portal (<https://supplier.treasury.go.ke>) free of charge. Candidates who do not wish to download can obtain a hard copy by paying a non-refundable fee of Kenya Shillings 1,000.00 (One thousand Kenya Shillings only) in cash or bankers cheque payable to East African Portland Cement Ltd.
- 1.3 Completed Bid documents are to be enclosed in plain sealed envelopes marked with Bid reference number and be deposited in the Bid Box located at the Customer Care office next the main entrance, East African Portland Cement Company Ltd, Off Namanga Road, Athi River, **P O Box 20-00204, Athi River, Kenya; Tel: +254-709-855-000** so as to be received on or before **July, 27th 2017 at 12.00 Noon**.
- 1.4 Prices quoted shall clearly show if all taxes are exclusive or inclusive; and be in Kenya Shillings. They shall remain valid for a period of one twenty (120) days from the closing date of the Bid.
- 1.5 Bids will be opened immediately thereafter in the presence of the Candidates or their representatives who choose to attend at East African Portland Cement Company LtdCustomer care office.
- 1.6 All bids shall be accompanied by a bid security from the bank of not less than **KES 500,000/=** (Five Hundred Thousand Kenya shillings) only **or an equivalent amount in USD convertible to KES using the Central Bank of Kenya rate at the time of tender closing date**
- 1.7 The East African Portland Cement Company Ltd reserves the right to accept /reject all or part of the Bids and is not bound to give reasons for doing so.

For: Managing Director

The East African Portland Cement Company Ltd

Off Namanga Road,

P O Box 20-00204

Athi River, Kenya.

Tel. +254-709-855-000

E-mail: customercare@eapcc.co.ke

Website: www.eastafricanportland.com

FORM OF BID

TO: The Managing Director

East African Portland Cement Company Ltd
P. O. Box 20- 00204
ATHI RIVER, KENYA

Gentlemen:

Having examined the bidding documents including Addenda Nos..... *[Insert numbers]*, the receipt of which is hereby duly acknowledged, we, the undersigned, offer **Supply & delivery of Fuels** and in conformity with the said bidding document for the sum of

.....
.....
.....

(Figures)..... *(Inclusive of all taxes)* or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Bid.

We undertake to commence the services in accordance with the delivery Schedule specified in the Schedule of Requirements if our bid is accepted.

After our Bid is accepted we shall furnish a security in the form of Bank Guarantee (to be approved by you) to be jointly and severally bound with us in an amount of 10% of the above named sum, which shall be subject to release to the Supplier in accordance with the General Conditions of the Contract.

We agree to abide by this Bid for a period of ninety (90) days from the date of Bid submission prescribed in the Invitation to Bid and it shall remain binding upon us and may be accepted any time before the expiration of that period.

Unless and until an Agreement is prepared and executed, this Bid together with your written acceptance thereof shall constitute a binding Contract between us.

A Bid security in the sum of KES 500,000/=(Five Hundred Thousand Kenya Shillings), is enclosed with this Bid.The bid security is valid for at least 120 days from the date of bid submission.

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

We hereby agree that any errors in our Bid shall be adjusted as defined in the Bid Document under instructions to Bidders.

Dated this ____ day of _____ 2017

(Name) _____

(Signature) _____

In the capacity of _____

duly authorized to sign Bids, for and on behalf of

P. O. Box _____ Code _____

Name of Witness _____ Address _____

Signature of Witness

- **Delete as appropriate**

SECTION II - INSTRUCTIONS TO BIDDERS

2.1 Eligible Bidders

- 2.1.1 This Invitation for Bids is open to all eligible Bidders as described in the Invitation to Bid. Successful Bidders shall complete the supply of goods by the intended completion date 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 Bid.
- 2.1.3 Bidders shall provide the qualification information statement that the Bidder (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates 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 procurement of the goods under this Invitation for Bids.
- 2.1.4 Bidders shall not be under a declaration of ineligibility for corrupt and fraudulent practices.

2.2 Eligible Goods

- 2.2.1 All goods to be supplied under the contract shall have their origin in eligible source countries.
- 2.2.2 For purposes of this clause, "origin" means the place where the goods are mined, grown, or produced. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially-recognized product results that is substantially different in basic characteristics or in purpose or utility from its components
- 2.2.3 The origin of goods is distinct from the nationality of the Bidder.

2.3 Cost of Bidding

- 2.3.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the procuring entity, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the Bidding process.

2.4. The Bid Document

- 2.4.1 The Bid document comprises the documents:
 - (i) Instructions to Bidders

- (ii) Schedule of requirements
- (iii) Bid Form and Price Schedules
- (iv) Bid Security Form
- (v) Performance Security Form
- (vi) Confidential Business Questionnaire

2.4.2 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bid documents. Failure to furnish all information required by the Bid documents or to submit a Bid not substantially responsive may result in the rejection of its Bid.

2.5 Clarification of Documents

2.5.2 A prospective Bidder requiring any clarification of the Bid document may notify the Procuring entity in writing or by post at the entity's address indicated in the Invitation to Bid. The Procuring entity will respond in writing to any request for clarification of the Bid documents, which it receives not later than three (3) days prior to the deadline for the submission of Bids. 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 prospective Bidders that have received the Bid document. These clarifications may be sent to:

Ngala oloiptip
Head of Supply Chain
The East African Portland Cement Company Ltd
Off Namanga Road,
P O Box 20-00204
Athi River, Kenya.
Tel. 254-045-6622777/6620627
Email: ngala.oloiptip@eapcc.co.ke;camilla.sielei@eapcc.co.ke

2.5.4 The procuring entity shall reply to any clarifications sought by the Bidder within 3 days of receiving the request to enable the Bidder to make timely submission of its Bid.

2.6 Amendment of Documents

2.6.1 At any time prior to the deadline for Bid submission, the Procuring entity, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Bidder, may modify the Bid document.

2.6.2 All prospective candidates that have received the Bid documents will be notified of the amendment in writing or by post and will be binding on them.

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

2.7 Language of Bid

2.7.1 The Bid prepared any correspondences and documents relating to the Bid document shall be written in English language, any printed literature furnished by the Bidder written in another language shall be accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the Bid, the English translation shall govern.

2.8 Documents Comprising of Bid

2.8.1 The Bid prepared by the Bidders shall comprise the following components

- a) A Bid Form and a Price Schedule completed in accordance with paragraph 2.9, 2.10 and 2.11 below
- b) documentary evidence established in accordance with paragraph 2.1.2 that the Bidder is eligible to Bid and is qualified to perform the contract if its Bid is accepted;
- c) documentary evidence established in accordance with paragraph 2.2.1 that the goods and ancillary services to be supplied by the Bidder are eligible goods and services and conform to the Bid documents; and
- d) Bid security furnished in accordance with paragraph 2.14

2.9 Bid Forms

2.9.1 The Bidder shall complete the Bid Form and the appropriate Price Schedule furnished in the Bid documents, indicating the goods to be supplied, a brief description of the goods, their country of origin, quantity, and prices.

2.10 Bid Prices

- 2.10.1 The Bidder shall indicate on the appropriate Price Schedule the unit prices and total Bid price
- 2.10.2 Prices indicated on the Price Schedule shall include all costs including taxes, insurances and delivery to the premises of the procuring entity.
- 2.10.3 Quoted prices by the Bidder shall be fixed during the contract performance and shall not be subject to variation on any account. A Bid submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.22
- 2.10.4 Mode of payments will be through EFT fourteen (14) days of invoicing and after presentation of the invoices. The Company shall accept and pay the awarded firm on a bi-monthly basis. No single invoice shall be less than Kenya shillings two hundred (200,000.00) except for the final invoice.
- 2.10.5 Prices charged shall be as per the Energy Regulatory Commission periodical announcements, and shall be discounted prices compared to the site (or area) ruling pump price for the time being. For avoidance of doubt, the following shall be assumed to prevail:
- a. **Lot 1: Supply of Bulk Fuel (Petrol and Diesel)** – Discounted pump price for Athi River for bulk fuel delivered to Athi River and discounted pump price for Sultan Hamud for bulk fuel delivered to Kabini quarry.
- Prices changes to this contract shall only be applicable under the following circumstances:-
- i) If there is change in legislation and statutory regulations.
 - ii) If there is changes in the mean exchange rate between the Kenya shilling and the United States of America Dollar (US\$) of more than 25% from the date of bid submission or from the date of earlier price variation award.
- b. In all cases above, the Energy Regulatory commission shall be the final authority in guiding the variation.
 - c. Request for price variation shall be addressed within thirty days of receipt by the Procurement Manager
- 2.10.6 The validity period of the Bid shall be 90 days from the date of opening of the Bid.
- 2.10.7 Quoted price shall cover deliveries to EAPCC Athi River plant and Kabini quarry in Sultan Hamud.

2.11 Bid Currencies

2.11.1 Prices shall be quoted in Kenya Shillings or any other currency easily convertible to Kenya Shillings unless otherwise specified in the Appendix to Instructions to Bidders.

2.12 Bidders Eligibility and Qualifications

2.12.1 Pursuant to paragraph 2.1. The Bidder shall furnish, as part of its Bid, documents establishing the Bidder's eligibility to Bid and its qualifications to perform the contract if its Bid is accepted.

2.12.2 The documentary evidence of the Bidders eligibility to Bid shall establish to the Procuring entity's satisfaction that the Bidder, at the time of submission of its Bid, is from an eligible source country as defined under paragraph 2.1

2.12.3 The documentary evidence of the Bidders qualifications to perform the contract if its Bid is accepted shall be established to the Procuring entity's satisfaction;

- (a) that, in the case of a Bidder offering to supply goods under the contract which the Bidder did not manufacture or otherwise produce, the Bidder has been duly authorized by the goods' Manufacturer or producer to supply the goods.
- (b) that the Bidder has the financial, technical, and production capability necessary to perform the contract;
- (c) that, in the case of a Bidder not operating within Kenya, the Bidder is or will be (if awarded the contract) represented by an Agent in Kenya or provide prove that contract performance will not be affected, disruption will lead to penalties equivalent to the loss realized by the procuring entity.

2.13 Goods Eligibility and Conformity to Bid Documents

2.13.1 Pursuant to paragraph 2.2 of this section, the Bidder shall furnish, as part of its Bid documents establishing the eligibility and conformity to the Bid document.

2.13.2 The documentary evidence of the eligibility of the goods shall consist of a statement in the Price Schedule of the country of origin of the goods and services offered which shall be confirmed by a certificate of origin issued at the time of shipment.

2.13.3 The documentary evidence of conformity of the goods to the Bid documents may be in the form of literature, drawings, and data, and shall consist of:

- (a) a detailed description of the essential technical and performance characteristic of the goods;
- (b) A clause-by-clause commentary on the Procuring entity's Technical Specifications demonstrating substantial responsiveness of the goods and service to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.

2.13.4 For purposes of the documentary evidence to be furnished pursuant to paragraph 2.13.3(b) above, the Bidder shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by the Procurement entity in its Technical Specifications, are intended to be descriptive only and not restrictive. The Bidder may substitute alternative standards, brand names, and/or catalogue numbers in its Bid, provided that it demonstrates to the Procurement entity's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

2.14 Bid Security

- 2.14.1 The Bidder shall furnish, as part of its Bid, a Bid security for the amount specified in the Appendix to Invitation to Bidders.
- 2.14.2 The Bid security shall be from a reputable bank of not less than KES 500,000/= (FiveHundred Thousand Kenya Shillings) only or an equivalent amount in any other eligible currency
- 2.14.3 The Bid security is required to protect the Procuring entity against the risk of Bidder's conduct which would warrant the security's forfeiture, pursuant to paragraph 2.14.7
- 2.14.4 The Bid security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form of a bank cheque or a bank guarantee issued by a reputable bank located in Kenya or abroad in the form provided in the Bid documents and valid for thirty (30) days beyond the validity of the Bid i.e. 120 days from the date of Bid submission. **NO INSURANCE BID SECURITY SHALL BE ACCEPTED FOR THIS PROCUREMENT.**
- 2.14.5 Any Bid not secured in accordance with paragraph 2.14.2 and 2.14.4 will be rejected on bases of non responsive, pursuant to paragraph 2.22
- 2.14.6 Bid security(s)of unsuccessful bidders will be discharged or returned as promptly as possible as but not later than thirty (30) days after the expiration of the period of Bid validity prescribed by the Procuring entity.
- 2.14.7 Bid security(s) of successful bidders will be discharged upon Bidder signing the contract, pursuant to paragraph 2.27 and furnishing the performance security, pursuant to paragraph 2.28

2.14.8 The Bid security may be forfeited:

- (a) if a Bidder withdraws its Bid during the period of Bid validity as specified by the procuring entity on the Bid Form; or
- (b) in the case of a successful Bidder, if the Bidder fails:
 - (i) to sign the contract in accordance with paragraph 2.27
 - Or
 - (ii) to furnish performance security in accordance with paragraph 2.28

2.15 **Validity of Bids**

2.15.1 Bids shall remain valid for 90 days or as specified in the Invitation to Bid after the date of Bid opening prescribed by the Procuring entity, pursuant to paragraph 2.18. A Bid valid for a shorter period shall be rejected by the Procuring entity and treated as non responsive.

2.15.2 In exceptional circumstances, the Procuring entity may solicit the Bidder's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The Bid security provided under paragraph 2.14 shall also be suitably extended. A Bidder may refuse the request without forfeiting its Bid security. A Bidder granting the request will not be required nor permitted to modify its Bid.

2.16 **Format and Signing of Bid**

2.16.1 The bidding entity shall prepare two copies of the Bid, clearly marking each "**ORIGINAL BID**" and "**COPY OF BID,**" as appropriate. In the event of any discrepancy between them, the original shall govern.

2.16.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by the Bidder or a person(s) duly authorized to bind the Bidder to a contract. The latter authorization shall be indicated by written power-of-attorney accompanying the Bid. All pages of the Bid, except for unlamented printed literature, shall be initialed by the person or persons signing the Bid and stamped.

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

2.17 **Sealing and Marking of Bids**

2.17.1 The Tenderer's shall submit proposals of both Technical and – Commercial envelope (**combined**),
Technical

- The technical documents shall comprise technical specifications, Tenderers profile, Bid Bond/Tender security, Certified Audited accounts, the confidential business questionnaire, statement of verification that the tenderer is not debarred in the matter of the Public Procurement.

Commercial

- Commercial documents shall comprise the filled and duly signed Form of Tender, payment terms, and price schedule.

2.17.2 The envelopes shall indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared late or the bidder does not make it to the next stage of commercial evaluation.

2.17.3 If the outer envelope is not sealed and marked as stipulated in clause 2.17 the Procuring entity will assume no responsibility for the Bid's misplacement or premature opening.

2.17.4 The envelopes shall bear the tender number and addressed as indicated below:

TENDER No: EAPCC/OT/130/2017; SUPPLY OF FUELS; DO NOT OPEN BEFORE; JULY, 27th 2017 AT 1200 NOON.

ADDRESSED TO:

**THE HEAD OF SUPPLY CHAIN
EAST AFRICAN PORTLAND CEMENT COMPANY LTD
P.O. BOX 20 -00204
ATHI RIVER –KENYA**

2.17.5 The Bidder shall seal the original and each copy of the Bid in separate envelopes, duly marking the envelopes as "**ORIGINAL**" and "**COPY**." The envelopes shall then be sealed in an outer envelope.

2.18 Deadline for Submission of Bids

2.18.1 Bids must be received by the Procuring entity at the address specified under paragraph 2.17.2 not later than **12 Noon – Thursday, 27th, JULY 2017.**

2.18.2 The Procuring entity may, at its discretion, extend this deadline for the submission of Bids by amending the Bid documents in accordance with paragraph 2.6, in which case all rights and obligations of the Procuring entity and candidates previously subject to the deadline will therefore be subject to the deadline as extended.

2.19 Modification and Withdrawal of Bids

2.19.1 The Bidder may modify or withdraw its Bid after the Bid's submission, provided that written notice of the modification, including substitution or withdrawal of the Bids, is received by the Procuring entity prior to the deadline prescribed for submission of Bids.

2.19.2 The Bidder's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 2.17. A withdrawal notice may also be sent by cable, telex but followed by a signed confirmation copy, postmarked not later than the deadline for submission of Bids.

2.19.3 No Bid may be modified after the deadline for submission of Bids.

2.19.4 No Bid may be withdrawn in the interval between the deadline for submission of Bids and the expiration of the period of Bid validity specified by the Bidder on the Bid Form. Withdrawal of a Bid during this interval may result in the Bidder's forfeiture of its Bid security, pursuant to paragraph 2.14.8

2.19.5 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

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

2.20 Opening of Bids

2.20.1 The Procuring entity will open all Bids in the presence of Bidders' representatives who choose to attend, at the said time and location specified in the Bid document.

The Bidders' representatives who are present shall sign a register evidencing their attendance.

2.20.2 The Bidders' names, Bid modifications or withdrawals, Bid prices, discounts and the presence or absence of requisite Bid security and such other details as the Procuring entity, at its discretion, may consider appropriate, will be announced at the opening.

2.20.3 The Procuring entity will prepare minutes of the Bid opening.

2.21 Clarification of Bids

2.21.1 To assist in the examination, evaluation and comparison of Bids the Procuring entity may, at its discretion, ask the Bidder for a clarification of its Bid. The request for clarification and the response shall be in writing, and no change in the prices or substance of the Bid shall be sought, offered, or permitted.

2.21.2 Any effort by the Bidder to influence the Procuring entity in the Procuring entity's Bid evaluation, Bid comparison or contract award decisions may result in the rejection of the Bidders' Bid.

2.22 Preliminary Examination

2.22.1 The Procuring entity will examine the Bids 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 Bids are generally in order.

2.22.2 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 quantify, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its Bid will be rejected, and its Bid security forfeited. If there is a discrepancy between words and figures the amount in words will prevail. All in all, the award shall be based on the corrected figure.

2.22.3 The Procuring entity may waive any minor informality or non-conformity or irregularity in a Bid which does not constitute a material deviation, provided such waiver does not prejudice or effect the relative ranking of any Bidder.

2.22.4 Prior to the detailed evaluation, pursuant to paragraph 2.23 the Procuring entity will determine the substantial responsiveness of each Bid to the Bid documents. For purposes of these paragraphs, a substantially responsive Bid is one, which conforms to all the terms and conditions of the Bid documents without material deviations. The Procuring entity's determination of a Bid's responsiveness is to be based on the contents of the Bid itself without recourse to extrinsic evidence.

2.22.5 If a Bid is not substantially responsive, it will be rejected by the Procuring entity and may not subsequently be made responsive by the Bidder by correction of the non-conformity.

2.22.6 The Company reserves the right to waive minor deviations in the evaluation criteria if they do not materially affect the capability of an applicant to perform.

2.23 Conversion to Single Currency

2.23.1 Where other currencies are used, the procuring entity will convert these currencies to Kenya Shillings using the selling exchange rate on the date of Bid closing provided by the Central Bank of Kenya.

2.24 Evaluation and Comparison of Bids

- 2.24.1 The Procuring entity will evaluate and compare the Bids which have been determined to be substantially responsive, pursuant to paragraph 2.22
- 2.24.2 The Bid evaluation committee shall evaluate the Bid within 14 days of the validity period from the date of opening the Bid.
- 2.24.3 A Bidder who gives false information in the Bid 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.
- 2.24.4 Each lot if applicable shall be considered as a separate contract and may be awarded on its own.

2.25 Preference

- 2.25.1 Preference where allowed in the evaluation of Bids shall not exceed 15%.

2.26 Contacting the Procuring entity

- 2.26.1 Subject to paragraph 2.21 no Bidder shall contact the Procuring entity on any matter related to its Bid, from the time of the Bid opening to the time the contract is awarded.
- 2.26.2 Any effort by a Bidder to influence the Procuring entity in its decisions on Bid, evaluation, Bid comparison, or contract award may result in the rejection of the Bidder's Bid.

2.27 Award of Contract

- 2.27.1 The determination will take into account the Bidder financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the Bidders qualifications submitted by the Bidder, pursuant to paragraph 2.12.3 as well as such other information as the Procuring entity deems necessary and appropriate.
- 2.27.2 An affirmative determination will be a prerequisite for award of the contract to the Bidder. A negative determination will result in rejection of the Bidder's Bid, in which event the Procuring entity will proceed to the next lowest evaluated Bid to make a similar determination of that Bidder's capabilities to perform satisfactorily.

(b) **Award Criteria**

2.27.3 The Procuring entity will award the contract to the successful Bidder(s) whose Bid has been determined to be substantially responsive and has been determined to be the lowest evaluated Bid, provided further that the Bidder is determined to be qualified to perform the contract satisfactorily.

2.27.4 Awards shall not be subject to appeals

(c) **Procuring entity's Right to Vary quantities**

2.27.5 The Procuring entity reserves the right at the time of contract award to increase or decrease the quantity of goods originally specified in the Schedule of requirements without any change in unit price or other terms and conditions

(d) **Procuring entity's Right to accept or Reject any or All Bids**

2.27.6 The Procuring entity reserves the right to accept or reject any Bid, and to annul the Bidding process and reject all Bids at any time prior to contract award, without thereby incurring any liability to the affected Bidder(s) or any obligation to inform the affected Bidder or Bidders of the grounds for the Procuring entity's action

2.28 Notification of Award

2.28.1 Prior to the expiration of the period of Bid validity, the Procuring entity will notify the successful Bidder in writing that its Bid has been accepted.

2.28.2 The notification of award will constitute the formation of the Contract but will have to wait until the contract is finally signed by both parties

2.28.3 Upon the successful Bidder's furnishing of the performance security pursuant to paragraph 2.28, the Procuring entity will promptly notify each unsuccessful Bidder and will discharge its Bid security, pursuant to paragraph 2.14

2.29 Signing of Contract

2.29.1 At the same time as the Procuring entity notifies the successful Bidder that its Bid has been accepted, the Procuring entity will send the Bidder the Contract Form detailing contract format.

2.29.2 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.

2.29.3 Within thirty (30) days of receipt of the Contract Form, the successful Bidder shall sign and date the contract and return it to the Procuring entity.

2.29.4 All payments to the successful bidder shall be by EFT

2.30 Performance Security

2.30.1 Within Thirty (30) days of the receipt of notification of award from the Procuring entity, the successful Bidder shall furnish the performance security in accordance with the Conditions of Contract, in the Performance Security Form provided in the Bid documents, or in another form acceptable to the Procuring entity.

2.30.2 Failure of the successful Bidder to comply with the requirements of paragraph 2.27 or paragraph 2.28 shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid security, in which event the Procuring entity may make the award to the next lowest evaluated Candidate or call for new Bids.

2.31 Corrupt or Fraudulent Practices

2.31.1 The Procuring entity requires that Bidders observe the highest standard of ethics during the procurement process and execution of contracts when used in the present regulations, the following terms are defined as follows;

- (i) “Corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and
- (ii) “Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring entity, and includes collusive practice among Bidder (prior to or after Bid submission) designed to establish
- (iii) Bid prices at artificial non-competitive levels and to deprive the Procuring entity of the benefits of free and open competition;
- (iv) ‘Collusive Practice’ means a scheme or arrangement between two or more bidders, with or without the knowledge of the Company, designed to establish bid prices at artificial, noncompetitive levels, and
- (iv) ‘Coercive Practice’ means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or effect the execution of a contract.

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

2.31.3 Further a Bidder who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in EAPCC future procurements.

APPENDIX TO INSTRUCTIONS TO BIDDERS

The following information regarding the particulars of the Bid shall complement supplement or amend the provisions of the instructions to Bidders. Wherever there is a conflict between the provision of the instructions to Bidders and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to Bidders

| INSTRUCTIONS TO BIDDERS REFERENCE | PARTICULARS OF APPENDIX TO INSTRUCTIONS TO BIDS |
|-----------------------------------|--|
| 2.1.1 | <p><i>Qualification requirements. ;</i></p> <p style="padding-left: 40px;">(a) <i>The bidder shall furnish details of the experience and past performance with respect to supply of similar goods in nature and value within the past five years. Evidence of this, e.g. testimonial letters or copies of orders from such authority, shall be presented with this bid on submission;</i></p> <p style="padding-left: 40px;">(b) <i>Provide copy of certificate of incorporation</i></p> <p style="padding-left: 40px;">(c) <i>Provide a copy of pin & vat certificate</i></p> <p style="padding-left: 40px;">(d) <i>Provide a copy of valid tax compliance certificate.</i></p> <p style="padding-left: 40px;">(e) <i>Duly filled confidential business questionnaire form (refer to page 28-29 of this tender document)</i></p> <p><i>The above requirements are mandatory and any bidder not meeting any of the above shall be treated as non-responsive.</i></p> |
| 2.1.3 | <i>The qualification statement shall be drawn on bidder’s letterhead, signed and stamped.</i> |
| 2.1.4 | <i>A statement declaring bidder is not ineligible for corrupt and fraudulent practices shall be drawn on bidder’s letterhead, signed and stamped.</i> |
| 2.24.1 | <p><i>Under technical evaluation, the following shall be considered:-</i></p> <ul style="list-style-type: none"> • <i>Conformity to Specification</i> • <i>Capability and capacity</i> • <i>List of clientele of similar assignments</i> • <i>Experience with the African market</i> • <i>Financial ability (derived from certified financial statements for the</i> |

| | |
|--------|--|
| | <p><i>last two years i.e. 2014&2015)</i></p> <ul style="list-style-type: none">• <i>Turnover of sales per annum</i>• <i>Delivery period, (the less the days the better)</i> |
| 2.27.5 | <p><i>Quantity variation shall not exceed 25% of awarded quantity and may be varied within the life of the contract</i></p> |

SECTION III- TECHNICAL SPECIFICATIONS

General Information,

Lot 1: Supply of Bulk Fuel and Lot 2: Supply of Fuel at retail level-(Technical Specifications for Fuels)

a)Automotive Diesel Fuel (Low Sulphur)-GAS OIL.

| Property | Units | Method | Min specs | Max specs | Willingness to supply As per specifications. Yes/No |
|---|--------------|---------------|------------------|------------------|--|
| Density at 20degC | Kg/L | D1298 | 0.8161 | 0.8656 | |
| Colour | | D1500 | 0.5 | 2 | |
| colour | | Visual | Yellow/amber | | |
| Appearance | | Visual | Bright and clear | Bright and clear | |
| Cetane Number, | | D4737 | 45.0 | | |
| Sulphur | % mass | D1266 | | 0.05 | |
| Flash point | DegC | D93 | 57 | | |
| Kinematic Viscosity at 40degC | Centistokes | D445 | 1.7 | 5.3 | |
| Water content | % volume | D95 | | 0.05 | |
| Copper strip corrosion (3hrs at 100degC) | | D130 | | 1.0 | |
| CFPP | degC | IP309 | | 3 | |
| Carbon residue, Ramsbottom (10% distillation residue) | % mass | D524 | | 0.2 | |
| Ash Content | % mass | D482 | | 0.01 | |
| Distillation 90% volume F.B.P | DegC | D86 | | 362400 | |
| Conductivity | PS/M | D2624 | 100 | | |
| Sediment | % mass | D1796 | | 0.01 | |
| Total acid number | Mg/100ml | D974 | | 0.5 | |

| | | | | | |
|--------------------|----------|------|--|---|--|
| Strong acid number | Mg/100ml | D974 | | 0 | |
|--------------------|----------|------|--|---|--|

b) Premium Motor Spirit- UNLEADED PETROL

| Appearance | | visual | Bright and clear | Bright and clear | Willingness to supply as per specification. Yes /No |
|--|--|--------|---------------------|-----------------------------------|---|
| Colour | | visual | Red/orange | Red/orange | |
| Density at 20 deg C | Kg/L | D1298 | 0.7107 | 0.7600 | |
| Octane Number. Research (RON) | | D2699 | 93.0 | | |
| Octane Number. Motor (MON) | | D2700 | 83.0 | | |
| Lead Content | gPb/L | D3348 | | 0.008 | |
| Existent Gum | mg/100ml | D381 | | 4 | |
| Induction period | minutes | D525 | 240 | | |
| Distillation I.B.P 10% (v/v) evaporated 50% (v/v) evaporated 90% (v/v) evaporated % evaporated at 70 deg C F.B.P Residue | Deg C Deg C Deg C Deg C % vol/vol deg C % vol/vol | D86 | Report 77 Report | Report 6511518 5 Report 2152.0 | |
| RVP at 37.8 deg C | kPa | D323 | 45 | 75 | |
| Sulphur content | % mass | D1266 | | 0.10 | |
| Copper strip corrosion (3 hrs at 100 deg C) | | D130 | | 1.0 | |
| Mercaptan Sulphur | % mass | D3227 | | 0.0015 | |
| Total acidity | Mg KOH | | | 0.03 | |
| Oxygen Content | % mass | D4815 | | 3.7 | |
| Benzene content | % vol/vol | D3606 | | 5 | |
| Aromatics | % vol/vol | D1319 | | 40 | |
| Doctor test | | D4952 | Negative | Negative | |

SECTION VI- Bills of Quantities

SCHEDULE OF REQUIREMENTS & PRICES CHEDULE OF GOODS

Lot1:Supply of Bulk Fuel

| Item No. | ItemDescription | Unit of Issue | Delivery Site | Discount from the pump price (unit price)- exclusive vat |
|-----------------|---|----------------------|----------------------|--|
| 1 | Premium Motor Spirit (Unleaded) <i>(Please note that the procuring entity shall award two bidders each for quantity , 1,250,000 litres plus or minus 10 %. for a period of two years)</i> | Litre | Athi River | |
| | | Litre | Kabini Quarry | |
| 2 | Automotive Diesel Fuel (Low Sulphur). | Litre | Athi River | |
| | | Litre | Kabini Quarry | |

Delivery Schedule

1. Requirements

Lot1:Supply of Bulk Fuel & Lot 2: Supply of Fuel at retail level.

Description: a)Automotive Diesel Fuel (Low Sulphur)
b)Premium Motor Spirit (Unleaded)

Quantity: Approximately:

a) Two thousand five hundred million liters 2,500,000 plus or minus 10 % of Automotive Diesel Fuel (Low Sulphur).

b) Seventy two thousand (72,000) liters of Premium Motor Spirit (Unleaded)

c) Measurement of fuel delivered will be done at the weighbridge where the fuel mass will be measured in kgs, and the density figure will be measured by our team in the presence of the supplier. The volume will be arrived at by using the formula: $\text{Volume}=\text{mass}/\text{Density}$.

d) The contract shall run for a period of two years.

EVALUATION CRITERIA

a) Technical Specifications (70Mks)

| | Criteria | Score |
|----|--|-----------|
| 1. | Conformity to Specification. <i>(Bidders to confirm their willingness to supply as per specification.)</i> | 25 |
| 2. | List of clientele of similar assignments and experience within the past five years, for the same or more quantity. (1.25million litres). <i>(Bidders are expected to provide copies of orders & testimonials letters from such authorities)</i> | 20 |
| 3. | Financial ability (derived from certified financial statements for the last two years i.e. 2013 & 2014) | 15 |
| 4. | Delivery period. <i>(the less the days the better)</i> | 10 |
| | TOTAL | 70 |

b) Commercial evaluation (30marks)

| Details | Marks (30%) |
|--|--------------------|
| Price | 20 |
| Payment terms (<i>we prefer 60 days from invoice</i>) | 5 |
| Price validity (<i>state willingness to hold the price for the entire contract period - 2 years</i>) | 5 |
| Total | 30 |

Award criteria

- i) Only technical proposals of firms scoring a technical score of 70 % and above will be considered responsive and will proceed to the financial evaluation.
- ii) Those that score less than 70 % will not proceed to the financial evaluation.(49/70).

Overall evaluation

- i) The winning bid shall be to the successful tenderer whose tender has been determined to be substantially responsive and provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

Award of contract

- i. Who has submitted the tender document in line with the tender requirements.
- ii. Who has been successfully evaluated in preliminary evaluation and attained the technical evaluation pass mark of 70 % and above
- iii. Who has been determined to be the best priced on rates (least overall quoted rates) subject to prevailing market prices /rates.

CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

You are requested to give the particulars indicated in Part 1 and either Part 2(a), 2(b) or 2 (c) whichever applied to your type of business

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

Part 1 – General:

Business Name
.....

Location of business premises.
.....

Plot No..... Street/Road
.....

Postal Address Tel No. Fax E mail
.....

Nature of Business
.....

Registration Certificate No.
.....

Maximum value of business which you can handle at any one time – Kes.
.....

Name of your bankers Branch
.....

Part 2 (a) – Sole Proprietor

Your name in full Age

Nationality Country of origin

- Citizenship details
.....

-

Part 2 (b) Partnership

Given details of partners as follows:

| Name | Nationality | Citizenship Details | Shares |
|------|-------------|---------------------|--------|
|------|-------------|---------------------|--------|

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| 2. | | | |
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| 3. | | | |
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| 4. | | | |
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Part 2 (c) – Registered Company

Private or Public
.....

State the nominal and issued capital of company-

Nominal Kes.

Issued Kes.

Given details of all directors as follows

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

- If a Kenya Citizen, indicate under “Citizenship Details” whether by Birth, Naturalization or registration.

FORM OF BID SECURITY

(Note: The Bidders shall provide bank Security of this format.)

WHEREAS [Name of bidder]

.....
.....

(Hereinafter called "the Bidder") has submitted his bid dated for the "Bid for supply of Fuel Enquiry No. **EAPCC/OT/130/2017 at East African Portland Cement Company Limited** Hereinafter called "the Bid"

KNOW ALL MEN by these presents that we [Name and address of Bank]..... of [Name of country]

.....

Having our registered offices at..... (Hereinafter called the bank) are bound unto the Managing Director, EAPCC Co Limited (hereinafter called "the Employer") in the sum of (In words Kes.).....

..... (In Figures Kes.).....

for which payments shall be well and truly made to the said Employer the Bank bids 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 bidder withdraws his Bid during the period of bid validity specified by the Bidder on the Bid Form; or
- 2. If the Bidder having been notified of the acceptance of his bid by the Employer during the period of Bid validity,
 - (i) Fails or refuses to execute the form of Agreement in accordance with the instructions to Bidders when required or
 - (ii) Fails or refuses to furnish the Performance Security, in accordance with the Instructions to Bidders;

We undertake to pay the Employer up to the above amount upon receipt of his first written demand, without the Employer having to substantiate his demand, provided that in his demand the Employer will not state that the amount claimed by him (employer) is due to him (employer) owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

This security shall remain in force up to and including thirty (30) days after the date of expiration of the bid validity, as stated in the instructions to Bidders.

At the request of the employer, the bid validity period may be extended by mutual agreement between the employer and the bidder and we undertake to extend the validity of this surety accordingly

without you having to inform us of such an extension of the bid validity period if within this period the bidder has been notified of the acceptance of his bid. This surety shall remain valid up to the time the contact agreement has been executed.

SIGNATURE AND SEAL OF THE BANK.....

SIGNATURE OF THE WITNESS.....

NAME OF THE WITNESS.....

ADDRESS OF THE WITNESS.....

PERFORMANCE SECURITY FORM

To
[Name of procuring entity]

WHEREAS [Name of Bidder] (Hereinafter called “the Bidder”) has undertaken, in pursuance of Contract No. _____ [Reference number of the contract] dated _____ 20 _____ to supply [Description of goods](Hereinafter called “the Contract”).

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

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

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the Bidder, up to a total of [amount of the guarantee in words and figure] and we undertake to pay you, upon your first written demand declaring the Bidder to be in default under the Contract and without cavil or argument, any sum or sums within the limits of [Amount of guarantee] as aforesaid, without you 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 _____

Signed and seal of the Guarantors

[Name of bank or financial institution]

[Address]

[Date]