



East African Portland  
Cement Co. Ltd

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*Holding Life Together*

CONTRACT No.  
EAPCC/112/OT/2016

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FRAMEWORK CONTRACT FOR  
SUPPLY & DELIVERY OF IRON  
ORE TO THE  
FACTORY

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October 2016

CLOSING DATE .....Nov 21<sup>st</sup> , 2016

CLOSING TIME .....12.00 noon

## **INTRODUCTION**

The East African Portland Cement Company Limited hereinafter abbreviated as 'EAPCC' is interested in Framework contracts for the supply of Iron ore to be used in the production of cement.

EAPCC desires timely delivery throughout the contract period and by the agreed delivery dates or lead times.

It is EAPCC's intent to establish a **Two (2)** year Framework contract with about 7-10 suppliers based on a periodic review of quantity.

Prospective Suppliers shall note that EAPCC expects the following:

1. Highly competitive pricing
2. Timely Delivery to avoid stock-outs. An exchange of information would allow the Supplier to plan delivery to meet EAPCC's requirements.
3. Quality products and service.

The quantities indicated are estimates only based on historical and forecasted requirements.

These quantities may be altered and are to be used for estimating purposes only.

## SECTION I – INVITATION TO BID

### Contract No. EAPCC/112/OT/2016 – Frame work contract for Supply & Delivery of Iron Ore

- 1.1 The East African Portland Cement Company Ltd invites sealed bids from eligible candidates for a frame work contract for Supply & Delivery of Iron Ore to the Factory. The detailed breakdown of the requirements can be obtained in the schedule of requirements/price schedule inside the bid document.
- 1.2 Interested eligible candidates may obtain further information from the company website , IFMIS Portal anytime and at 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.).
- 1.3 A complete set of Bid documents can be downloaded from the company website and IFMIS portal 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 (one Thousand Kenya Shillings only) in cash or Bankers cheque payable to East African Portland Cement Company Ltd
- 1.4 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 12.00 noon** Monday Nov 21<sup>st</sup>, 2016
- 1.5 Prices quoted shall be net and inclusive of all taxes; and be in Kenya Shillings. They shall remain valid for a period of ninety (90) days from the closing date of the Bid.
- 1.6 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 Ltd Boardroom.
- 1.7 All bids shall be accompanied by a bid security from the bank of not less than Kes 300,000/= (Kenya Shillings three hundred thousand) only.
- 1.8 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: [info@eapcc.co.ke](mailto:info@eapcc.co.ke)

Website: [www.eastafricanportland.com](http://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 to Supply & Deliver Iron Ore to the Factory situated in Athi River as and when required, and in conformity with the said bidding document for the sum of Kes .....Per ton (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 300,000/= (Kenya Shillings three hundred thousand only), 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 \_\_\_\_\_ 2016

(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 Bidders eligible 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 Section VI.
- 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.

2.3.2 The price to be charged for the Bid document (if Bidder prefers hard copy from EAPCC) shall be Kes.1, 000/= (one Thousand) only payable at the cash office in EAPCC Athi river

2.3.3 All firms found capable of performing the contract satisfactorily in accordance to the set prequalification criteria shall be pre-qualified.

## 2.4. The Bid Document

2.4.1 The Bid document comprises the documents listed below and addenda issued in accordance with clause 2.6 of these instructions to Bidders

- (i) Invitation to Bid
- (ii) Instructions to Bidders
- (iii) General Conditions of Contract
- (iv) Special Conditions of Contract
- (v) Schedule of requirements
- (vi) Technical Specifications
- (vii) Bid Form and Price Schedules
- (viii) Bid Security Form
- (ix) Contract Form
- (x) Performance Security Form
- (xi) 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 to the Bid documents in every respect will be at the Bidders risk and may result in the rejection of its Bid.

## 2.5 Clarification of Documents

2.5.1 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 five (5) days prior to the deadline for the submission of Bids, 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 prospective Bidders that have given their contact details and tender Number to the procurement department using the email(s) given in the tender document for purposes of issuance of any addendum These clarifications will also be posted to the EAPCC Website.

2.5.2 The procuring entity shall reply to any clarifications sought by the Bidder within 2 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 submission of Bids, 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 documents by amendment.

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.

2.6.3 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 by the Bidder, as well as all correspondence and documents relating to the Bid exchange by the Bidder and the Procuring entity, shall be written in English language, provided that any printed literature furnished by the Bidder 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 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 it proposes to supply under the contract

2.10.2 Prices indicated on the Price Schedule shall include all costs including taxes, insurances and delivery to the premises of the entity.

2.10.3 Prices quoted by the Bid shall be fixed during the Bid's performance of the contract and not 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 The validity period of the Bid shall be 90 days from the date of opening of the Bid.

## 2.11 Bid Currencies

2.11.1 Prices shall be quoted in 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 Bidders 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 doing business within Kenya, the Bidder is or will be (if awarded the contract) represented by an Agent in Kenya equipped, and able to carry out the Bidder's maintenance, repair, and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.

## 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 documents of all goods which the Bidder proposes to supply under the contract

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 form shall be accompanied by a bid security of not less than Kes 300,000/= (Kenya Shillings three hundred thousand only) only.
- 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 or a bank draft 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 by the Procuring entity as non responsive, pursuant to paragraph 2.22
- 2.14.6 Unsuccessful Bidder's Bid security will be discharged or returned as promptly as possible but not later than thirty (30) days after the expiration of the period of Bid validity prescribed by the Procuring entity.
- 2.14.7 The successful Bidder's Bid security will be discharged upon the 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 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 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 Procuring 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 or persons duly authorized to bind the Bidder to the 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 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.

2.17.2 The inner and outer envelopes shall:

(a) be addressed to the Procuring entity at the address given in the Invitation to Bid:

(b) Bear, Bid number and name in the Invitation for Bids and the words, "DO NOT OPEN BEFORE," Monday Nov 21<sup>st</sup>, 2016

2.17.3 The inner envelopes shall also indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared "late".

2.17.4 If the outer envelope is not sealed and marked as required by paragraph 2.17.2, the Procuring entity will assume no responsibility for the Bid's misplacement or premature opening.

## 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 no later than 12 Noon – Monday Nov 21<sup>st</sup>, 2016

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 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 12 noon on Monday Nov 21<sup>st</sup>, 2016 and in the location specified in the Invitation to Bid.

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. 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 30 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.

## 2.25 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

### (a) Post-qualification

2.27.1 In the absence of pre-qualification, the Procuring entity will determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated responsive Bid is qualified to perform the contract satisfactorily.

2.27.2 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.

2.27.3 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

2.27.4 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.

### (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 or Bidders 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 Bidders 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 provided in the Bid documents, incorporating all agreements between the parties.

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.

2.30 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 Bidders 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 any thing 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 public procurement in Kenya.

## 2.32 Other sanctions

The company shall provide sanctions against firms that have not performed according to professionally regulated procedures, contractual agreements or legislation. The latter includes those in serious violations of fair employment laws & practices and known violation of the Public Procurement and Disposal Act, 2005.

## 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>Eligible Bidders shall:-</p> <ul style="list-style-type: none"> <li>• Be incorporated in Kenya;</li> <li>• Have fulfilled their obligation to pay taxes and social security contributions evidence of which must be produced;</li> <li>• Have undertaken similar assignments in value and nature in the last three years. Evidence of this, e.g. testimonial letters or copies of orders from such authority, shall be presented with this bid on submission;</li> <li>• Have financial and technical capability;</li> <li>• Have the authorization letter from the National Environmental Management Authority (NEMA), Mining and geology license and all other requisite permits (council permit, blasting permit from relevant government authorities) for mining and supply of Iron Ore or any other related mineral and copy of the same shall form part of this bid.</li> </ul> <p>The above requirements are mandatory and any bidder not meeting any of the above may be treated as non-responsive.</p> <p>This procurement shall be for supply and delivery of Iron Ore to the factory situated at AthiRiver.</p>
2.1.3	<p>The qualification statement shall be drawn on bidder's letterhead, signed and stamped.</p>

2.4.1-xi	Shall be on bidders letterhead, signed, stamped and dated
2.4.2	Pay special attention to this clause
2.8.1	Pay special attention to the clause (See 2.22.4 below)
2.9.1	Pay special attention to the clause
2.10.2	Prices quoted shall be inclusive of all taxes, duties, incidentals etc and shall be delivered prices to Athi River Factory.
2.10.3	No price variations are applicable in the performance of this Contract.
2.11.1	The bid price shall be in Kenya shillings – (See 2.23.1 below )
2.12	Pay special attention to the clause. The requirements of this clause shall form part of the evaluation criteria
2.13.3 (a) & (b)	Pay special attention to the clause. The requirements of this clause shall form part of the evaluation criteria
2.13.4	Pay special attention to the clause. The requirements of this clause shall form part of the evaluation criteria
2.14.1	The Bid security shall be not less than Kes 300,000/= (three hundred thousand only) and valid for 120 days from the date of bid submission. No insurance bid security shall be accepted.
2.14.4	Pay special attention to the clause. Insurance bid securities shall not be accepted.
2.16.1	Bidders shall prepare two copies and mark them clearly as “ORIGINAL BID” and “COPY BID”.
2.16.3	Any alterations shall be initialed by the person or persons signing the bid. Any alterations not initialed shall lead to disqualification of the bid.
2.17	Pay special attention to the clause
2.18.1	Bids must be received by 12 noon on Monday Nov 21 <sup>st</sup> , 2016
2.20.1	Bids shall be opened immediately thereafter receipt on Monday Nov 21 <sup>st</sup> , 2016
2.22.4	Under preliminary evaluation, the following shall be checked to confirm they conform: <ul style="list-style-type: none"> <li>• Valid Bid Security issued by a bank NOT insurance company</li> <li>• Copy of certificate of Incorporation/Certificate</li> <li>• Proof of Tax Compliance that shall be confirmed from the KRA website</li> <li>• Copy of Audited Accounts or letter from bank indicating credit limit or certificate of deposit</li> <li>• Form of bid duly completed, signed, stamped and witnessed</li> <li>• All alterations countersigned</li> <li>• Copy of bid document buying receipt(if applicable)</li> </ul>

	<ul style="list-style-type: none"> <li>• Confidential Business Questionnaire on bidder's letter header</li> <li>• Have the authorization letter from the National Environmental Management Authority (NEMA), Mining and geology license and all other requisite permit for mining and supply of Iron Ore and copy of the same shall form part of this bid.</li> </ul>
2.22.5	<p>For a bid to be determined as responsive and award recommended, it shall:-</p> <p>a) Met the requirements of 2.24.1 below</p> <p>b) Meet the requirements of 2.22.4 above</p> <p>c) Award shall be to the lowest evaluated bidder.</p>
2.22.6	This is applicable and shall be determined by the evaluation committee
2.23.1	The Company shall allow bids only quoted in Kenya shillings
2.24.1	<p>Under technical evaluation, the following shall be considered:-</p> <ul style="list-style-type: none"> <li>• Conformity to Specification</li> <li>• Capability and capacity</li> <li>• Financial ability (derived from certified financial statements for the last two years i.e. 2015/2016)</li> <li>• Turnover (of not less than Kes 2 Million per annum)</li> <li>• Proof of logistical arrangements to deliver Iron Ore to the Factory situated at Athi River Works (Trucks availability or contract with a transporter)</li> <li>• Delivery period.</li> </ul>
2.25	This is not applicable
2.27.1	No pre-qualification shall be applicable
2.27.2	Bidder shall provide two immediate years signed audited accounts or a letter from the bank indicating the credit facility available or a certificate from the bank indicating the amount of deposit available at short notice for this contract.

2.27.3	See 2.22.5 above
2.27.5	Quantity variation shall not exceed 10% of awarded quantity and may be varied within the life of the contract
2.28.2	The award shall be subject to no appeals
2.28.3	The requirements of the Public Procurement & Disposal Act, 2015 shall apply.
2.30.1	Performance security shall be 10% of the awarded contract sum in form of a bank guarantee. No insurance performance securities shall be accepted.
2.31	This shall lead to rejection of the bid in total and may be subject to Debarment in future. Any member of public with any information may refer the same to the relevant state bodies or the Managing Director.
2.32	This will be taken very seriously and may result to a bid being Declared non-responsive.

## 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 Bidder, 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 Bidder under the Contract for the full and proper performance of its contractual obligations
- (c) “The Goods” means all of the equipment, machinery, and/or other materials, which the Bidder is required to supply to the Procuring entity under the Contract.
- (d) “The Procuring entity” means the organization purchasing the Goods under this Contract.
- (e) “The Bidder” means the individual or firm supplying the Goods under this Contract.
- (f) “Day” means calendar day

### 3.2 Application

3.2.1 These General Conditions shall apply in all Contracts made by the Procuring entity for the procurement installation and commissioning of equipment

### 3.3 Standards

3.3.1 The Goods supplied under this Contract shall conform to the standards mentioned in the Technical Specifications.

### 3.4 Use of Contract Documents and Information

3.4.1 The Bidder 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 Bidder in the performance of the Contract.



3.4.2 The Bidder shall not, without the Procuring entity's prior written consent, make use of any document or information enumerated in paragraph 3.5.1 above

3.4.3 Any document, other than the Contract itself, enumerated in paragraph 3.5.1 shall remain the property of the Procuring entity and shall be returned (all copies) to the Procuring entity on completion of the Bidder's performance under the Contract if so required by the Procuring entity

### 3.5 Patent Rights

3.5.1 The Bidder shall indemnify the Procuring entity against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof in the Procuring entity's country

### 3.6 Performance Security

3.6.1 Within thirty (30) days of receipt of the notification of Contract award, the successful Bidder shall furnish to the Procuring entity the performance security in the amount specified in Special Conditions of Contract.

3.6.2 The proceeds of the performance security shall be payable to the Procuring entity as compensation for any loss resulting from the Bidder'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 bank guarantee or an irrevocable letter of credit issued by a reputable bank located in Kenya or abroad, acceptable to the Procuring entity, in the form provided in the Bid documents.

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

### 3.7 Inspection and Tests

3.7.1 The Procuring entity or its representative shall have the right to inspect and/or to test the goods to confirm their conformity to the Contract specifications. The Procuring entity shall notify the Bidder in writing in a timely manner, of the identity of any representatives retained for these purposes.

- 3.7.2 The inspections and tests may be conducted in the premises of the Bidder or its subcontractor(s), at point of delivery, and/or at the Goods' final destination if conducted on the premises of the Bidder or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring entity.
- 3.7.3 Should any inspected or tested goods fail to conform to the Specifications, the Procuring entity may reject the equipment, and the Bidder shall either replace the rejected equipment or make alternations necessary to make specification requirements free of costs to the Procuring entity.
- 3.7.4 The Procuring entity's right to inspect, test and where necessary, reject the goods after the Goods' arrival shall in no way be limited or waived by reason of the equipment having previously been inspected, tested and passed by the Procuring entity or its representative prior to the equipment delivery.
- 3.7.5 Nothing in paragraph 3.8 shall in any way release the Bidder from any warranty or other obligations under this Contract.

### 3.8 Delivery and Documents

- 3.8.1 Delivery of the Goods shall be made by the Bidder in accordance with the terms specified by Procuring entity in its Schedule of Requirements and the Special Conditions of Contract

### 3.9 Insurance

- 3.9.1 The Goods supplied under the Contract shall be fully insured against loss or damage incidental to manufacturer or acquisition, transportation, storage, and delivery in the manner specified in the Special conditions of contract.

### 3.10 Payment

- 3.10.1 The method and conditions of payment to be made to the Bidder under this Contract shall be specified in Special Conditions of Contract

- 3.10.2 Payments shall be made promptly by the Procuring entity as specified in the contract

### 3.12 Prices

3.12.1 Prices charged by the Bidder for goods delivered and services performed under the Contract shall not, with the exception of any price adjustments authorized in Special Conditions of Contract, vary from the prices by the Bidder in its Bid.

### 3.13 Assignment

3.13.1 The Bidder shall not assign, in whole or in part, its obligations to perform under this Contract, except with the Procuring entity's prior written consent

### 3.14 Subcontracts

3.14.1 The Bidder shall notify the Procuring entity in writing of all subcontracts awarded under this Contract if not already specified in the Bid. Such notification, in the original Bid or later, shall not relieve the Bidder from any liability or obligation under the Contract

### 3.14 Termination for Default

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

- a) if the bidder 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 bidder fails to perform any other obligation(s) under the Contract.

- c) if the bidder, in the judgment of the Procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

In the event 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 undelivered, and the bidder shall be liable to the Procuring entity for any excess costs for such similar services.

### 3.15 Termination of insolvency

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 produce or affect any right of action or remedy, which has accrued or will accrue thereafter to the procuring entity.

### 3.16 Termination for convenience

3.16.1 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 convenience, the extent to which performance of the contractor of the contract is terminated and the date on which such termination becomes effective.

3.16.2 For the remaining part of the contract after termination the procuring entity may elect to cancel the services and pay to the contractor on agreed amount for partially completed services.

3.16.3 Either Party may terminate the contract for any reason provided that such termination is communicated to the other Party by way of a notice and provided that such a notice is given three calendar months from the date of receipt of the notice to the date of the termination.

### 3.17 Liquidated Damages

3.17.1. If the Bidder fails to deliver any or all of the goods within the period(s) specified in the contract, the procuring entity shall, without prejudice to its other remedies under the contract, deduct from the contract prices liquidated damages sum equivalent to 0.5% of the delivered price of the delayed items up to a maximum deduction of 10% of the delayed goods and as per SCC. After this the Bidder may consider termination of the contract.

### 3.18 Resolution of Disputes

3.18.2 The procuring entity and the Bidder shall make every effort to resolve amicably by direct informal negotiation and disagreement or dispute arising between them under or in connection with the contract

3.18.3 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 adjudication in an agreed national or international forum, and/or international arbitration.

### 3.19 Language and Law

3.19.2 The language of the contract and the law governing the contract shall be English language and the Laws of Kenya respectively unless otherwise stated.

### 3.20 Force Majeure

3.20.1 The Bidder 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.

### 3.21 Applicable Law.

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

### 3.22 Notices

Any notices given by one party to the other pursuant to this contract shall be sent to the other party by post or by fax or E-mail and confirmed in writing to the other party's address specified in the SCC. A notice shall be effective when delivered or on the notices effective date, whichever is later.

## SECTION IV SPECIAL CONDITIONS OF CONTRACT

- 4.1 Special conditions of contract shall supplement the general conditions of contract, wherever 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 with reference to the general conditions of contract.

REFERENCE OF GCC	SPECIAL CONDITIONS OF CONTRACT
3.5.1	An indemnity on the bidder's letter head, signed and stamped shall form part of the bid document. Non compliance may render the bid non-responsive.
3.6.1	Performance security shall be 10% of the awarded contract sum No insurance performance securities shall be accepted.
3.7	<p>Bidders shall submit samples to the procurement manager three days before date of bid submission. The submitted samples shall be taken to the laboratory to ascertain that the raw material meet the required specifications.</p> <p>On delivery, a composite sample shall be obtained from the supplied material by randomly picking and tested in the Company's Laboratories and as per the laid down laboratory test procedures.</p> <p>On the basis of the Company's lab test results, the supplied material may be accepted or rejected .If the raw material is rejected, the supplier shall be asked to remove them from the Company premises within seven days at his own expense. Failure to remove the rejected material and after the expiry of the notice, the Company shall charge Kes. Five hundred (500.00) per MT per day. Any pending payments shall be released only after removal and replacement with good quality raw materials.</p>
3.8	The awarded firm shall commence the assignment immediately but not later than seven (7) days from the date of issuance of an LPO by the Procurement Manager or his representative. The bidder shall be deemed to have performed their obligation after delivery notes for each consignment are signed by the receiving officer to signify acceptance.
3.9	Awarded bidder shall insure his trucks as per the laws of Kenya, and all his employees as per the requirements of WIBA. Also, Bidder shall fully insure the goods against loss or damage incidental to transportation, storage and delivery. This shall be discharged upon acceptance of the goods at the factory on signing of the delivery note.

3.10	Mode of payments will be through EFT thirty (30) days of invoices after Presentation. The invoice amount is against weighbridge tickets at the point of receipt in Athi River Works. No single invoice shall be less than Kenya shillings two hundred (200,000.00) except for the final invoice.
3.12	Bidder shall not assign in part or in whole this contract without written approval from the employer.
3.13	Bidder shall not subcontract in part or in whole this contract without written approval from the employer.
3.15	Thirty (30) days' notice
3.16	a) Thirty (30) days' notice b) This shall be negotiated c) Thirty (30) days' notice- This is applicable for any general termination not clearly defined in this document

3.14, 3.15 & 3.16	Should the bidder not provide the services and the employer procures the same either in part or whole; the bidder shall bear the difference between the market price of the service so procured and the contract price for the cancelled portion.
3.17	Liquidated damages shall be 0.5% (point five percent) of the contract amount per day, Up to a maximum of 10% of the quarterly issued LPO's or Kenya shillings Ten Million (10,000,000/=) whichever is higher.
3.18	If any dispute or difference of any kind whatsoever shall arise between the bidder and the employer in connection with or arising out of the Contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation. Should there be no solution to the dispute within thirty (30) days of engagement, then the parties shall seek help from the Institute of Arbitrators of Kenya and the cost of the arbitration shall be borne on a 50/50 basis by both parties.
3.19	The Contract shall be written in English language that shall also govern its interpretation. All correspondence and other documents pertaining to the Contract which are exchanged by the parties shall be written in English language.
3.20	<ul style="list-style-type: none"> <li>• Bidder shall not be liable for forfeiture of its performance security, liquidated damages, 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.</li> <li>• “Force Majeure” means an event beyond the control of the bidder and not involving the bidders fault or negligence and not foreseeable. Such events may include, but are not restricted to, acts of the employer in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, riots, strikes and freight embargoes.</li> <li>• If a Force Majeure situation arises, the bidder shall promptly notify the employer in writing of such condition and the cause thereof. Unless otherwise directed by the employer in writing, the bidder shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.</li> </ul>
3.21	The Applicable Law shall be the Laws of Kenya.
3.22	<p>The employers address for notice purposes shall be :-</p> <p>The Managing Director  East African Portland Cement Company Ltd  Off Namanga Road, P  O Box 20-00204  Athi River, Kenya.</p>



WHILE the Supplier's Address for notice purpose shall be:-

.....

.....

.....

.....

.....

.....

Bidder to complete this section

## SECTION V - TECHNICAL SPECIFICATIONS PREAMBLE

### 5.1 General

- 5.1.1 These specifications describe the requirements for goods. Bidders are requested to submit with their offers the detailed specifications, drawings, catalogues, etc for the products they intend to supply.
- 5.1.2 All the capacities of the goods to be supplied shall not be less than those required in these specifications. Deviations from the basic requirements, if any shall be explained in detail in writing with the offer, with supporting data such as calculation sheets, etc. The procuring entity reserves the right to reject the products, if such deviations shall be found critical to the use and operation of the products.
- 5.1.3 The Bidders are requested to state the shortest possible delivery period of the raw material that should not deviate too much from the timeline indicated in the bid document.

### RAW MATERIAL SPECIFICATIONS:

East African Portland Cement Company shall procure Iron Ore that conforms to the following minimum quality parameters:

#### . IRON ORE

##### **Physical properties**

##### **Size:**

Magnetite;

20% Max on 3mm sieve

0% Max on 5mm sieve.

Hematite;

0% Max on 15 mm sieve.

##### **Moisture:**

The water content shall not exceed 5%.

### **Chemical Properties**

The chemical components shall be assessed in the following domains:

Iron oxide ( $\text{Fe}_2\text{O}_3$ ) shall not be less than 65%.

Silicate ( $\text{SiO}_2$ ) shall not exceed 15%.

Periclase ( $\text{MgO}$ ) shall not exceed 5%.

## SECTION V – SCHEDULE OF REQUIREMENTS

### GENERAL

1. These are the basic requirements for Supply and delivery of Iron Ore. The Employer reserves the right to reject the raw material if deviations shall be found critical to the quality of the raw material.
2. The successful Bidder(s) shall be expected to fully comply with East African Portland cement co. Ltd, Safety, Health & Environment (SHE) management systems (OHSAS 18001:2007 and EMS14001:2004) respectively.
3. The successful Bidder shall make deliveries on the days and at the times specified below:

Point of discharge – Athi River Works

Monday – Friday: 6.00 am – 8.00 pm

Saturdays, 6.00 am – 6.00 pm.

Sundays and Public Holidays; as shall be notified by the Company in writing from time to time.

### Delivery Programme

- 1 The awarded firms shall commence the works immediately but not later than seven (7) days from the date of issuance of an LPO by the Procurement Manager or his representative.
- 2 Award shall be to the lowest evaluated 7-10 bidders.
- 4 The contract shall run for a period of two years with a possibility of contract renewal for a further one year depending on the performance of the awarded bidder(s).

### **Schedule of Requirements**

Description: Supply and delivery of Iron Ore

**Quantity required: 24,000MT per Annum** though allocation per supplier will be done on as and when required.

It is noted for general information and planning purposes that the above materials shall be delivered throughout the year.

**Daily delivery Schedule: At least 100 MT per day.** This quantity shall be divided

among the number of suppliers engaged.

The Reserve price for this procurement shall be **Kes. 5,100.00 Per ton (VAT Incl)**

1. Anticipated daily delivery in tons:

.....tons

2. Available number of trucks at any one time for this assignment:

.....trucks

### A. Technical Evaluation Criteria

S/No	CRITERIA	SCORE
1	Be incorporated in Kenya evidenced by a certificate of incorporation	5
2	Past experience on similar assignment in nature and value	10
3	Anticipated daily delivery quantities (at least 100MT per day ) Quantity to be divided amongst the number of suppliers engaged	20
4	Available number of trucks at any one time for this assignment (the higher the better )	10
5	Proof of an available safety policy	5
6	Have fulfilled their obligation to pay taxes evidenced by a valid tax compliance certificate	10
7	Proof of financial capability to sustain the service to the satisfaction of the employer's requirement.(Ksh. 2M per annum)	10
<b>TOTAL</b>		<b>70</b>

### B. Commercial Evaluation Criteria

S/No	CRITERIA	SCORE
1	Price	15
2	Payment terms indicated	5
3	Delivery period from award	5
4	Validity of Price – state to hold for the contract period(Bidders MUST indicate willingness to hold price)	5
<b>TOTAL</b>		<b>30</b>

## NOTE

### Evaluation and Comparison of Bids

- a) The East African Portland Cement Company Ltd shall evaluate and compare Bids which have been determined to be substantially responsive. The minimum technical score required to pass is 50 Points.
- b) The lowest priced bidders who scores the highest mark and more than 50 points shall be considered for award.
- c) Should none of the bidders score 50 and above, then the evaluation committee shall recommend re-tendering of this bid.

This information must be completed on the bidder's letter head and signed

**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 .....

	<p><b>Part 2 (a) – Sole Proprietor</b></p> <p>Your name in full ..... Age .....</p> <p>Nationality ..... Country of origin .....</p> <ul style="list-style-type: none"> <li>• Citizenship details</li> <li>• .....</li> </ul>																									
	<p><b>Part 2 (b) Partnership</b></p> <p>Given details of partners as follows:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 20%;"></th> <th style="width: 20%;">Name</th> <th style="width: 20%;">Nationality</th> <th style="width: 20%;">Citizenship Details</th> <th style="width: 20%;">Shares</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td style="text-align: center;">2.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td style="text-align: center;">3.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td style="text-align: center;">4.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>		Name	Nationality	Citizenship Details	Shares	1.	.....	.....	.....	.....	2.	.....	.....	.....	.....	3.	.....	.....	.....	.....	4.	.....	.....	.....	.....
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	<p><b>Part 2 (c) – Registered Company</b></p> <p>Private or Public .....</p> <p>State the nominal and issued capital of company-</p> <p>Nominal Kes. ....</p>																									



Issued	Kes. ....																														
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<p>Date ..... Signature of Candidate .....</p>																															

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

**NB:**

- a) Sample documents shall only be for use by the relevant parties (e.g. Banks) as guidelines to fulfill the requirements of the bid.
- b) Bidders are therefore encouraged to pass the sample documents to the relevant parties and avoid filling them on their own.

BID SECURITY FORM

Whereas ..... [name of the Bidder] (hereinafter called "the Bidder") has submitted its Bid dated ..... [date of submission of Bid] for the supply & delivery of .....[name and/or description of the equipment] (hereinafter called "the Bid") ..... KNOW ALL PEOPLE by these presents that WE ..... of ..... having our registered office at ..... (hereinafter called "the Bank"), are bound unto ..... [name of Procuring entity] (hereinafter called "the Procuring entity") in the sum of ..... 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 \_\_\_\_\_ 2016.

THE CONDITIONS of this obligation are:-

- 1. If the Bidder withdraws its 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 its Bid by the Procuring entity during the period of Bid 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 Bidders;

We undertake to pay to the Procuring entity up to the above amount upon receipt 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 it is due to it, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

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

\_\_\_\_\_  
[signature and seal of the bank]

## CONTRACT FORM

THIS AGREEMENT is made the     day of                             Two Thousand and Eleven BETWEEN THE EAST AFRICAN PORTLAND CEMENT COMPANY LTDLIMITED a limited liability company incorporated in the Republic of Kenya and of Post Office Box Number 20-00204, Athi River in the aforesaid republic (hereinafter called the “Employer” which expression shall where the context admits include its successors and assigns) of the one part and ..... of Post Office Box Number ....., ..... in the said republic (hereinafter called the “Supplier” which expression shall where the context admits include its successors and assigns) of the other part.

### WHEREAS:

- A) The Employer has invited bids for Goods and anxillary Services viz Contract No. EAPCC/112/OT/2016 –Framework contract for Supply & Delivery of Iron Ore to the Factory
- B) The Employer has by a Letter of Acceptance dated the ..... accepted a bid by the Supplier for the supply of computers.

### NOW THIS AGREEMENT WITNESSESTH as follows:

1. In this Agreement words and expression shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to;
2. The following documents shall be deemed to form and be read and construed as part of this Agreement; viz.:
  - (a) The Form of Agreement;
  - (b) The Letter of Acceptance;
  - (c) The said Bidder and Appendix;
  - (d) Special Conditions of Contract;
  - (e) The Conditions of Contract;
  - (f) General Conditions of Contract;
  - (g) The Technical Specifications;
  - (h) Purchaser’s notification of award;
  - (i) The Schedules of Supplementary Information and
  - (j) Any other documents forming part of the Contract

3. This contract shall prevail over all other contract documents. In the event of any discrepancy or inconsistency within the contract documents, then the documents shall prevail in the order listed above.
4. In consideration of the payment to be made by the Employer to the Supplier as hereinafter mentioned the Supplier hereby covenants with the Employer to provide the goods and services and to remedy defects thereto in conformity in all respects with the provisions of the Contract.
5. The Employer hereby covenants to pay the Supplier in consideration of the provision of the goods and 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 their respective Common Seals to be hereunto affixed (or have hereunto set their respective hands and seals) the day and year first above written.

Sealed with the common seal of	)
THE EAST AFRICAN PORTLAND	)
CEMENT COMPANY LIMITED	)
in the presence of: -	)
	)
	)
	)
MANAGING DIRECTOR	)
	)
	)
COMPANY SECRETARY	)
	)

Sealed with the common seal of	)
.....	)
in the presence of: -	)
	)
	)
	)
DIRECTOR	)
	)
	)
DIRECTOR	)

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 \_\_\_\_\_ 2016 \_\_\_\_\_to supply ..... [description of goods] (hereinafter called "the Contract").

AND WHEREAS it has been stipulated by you in the said Contract 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 \_\_\_\_\_ 2016

Signed and seal of the Guarantors

\_\_\_\_\_  
[name of bank or financial institution]

\_\_\_\_\_  
[address]

\_\_\_\_\_  
[date]

FORM OF WRITTEN POWER OF ATTORNEY

The bidder shall state here below the name(s) and address of his representative(s) who is/are authorized to receive correspondence in connection with the bid.

.....  
(Name of the Bidder's Representative in block letters)

.....  
(Address of Bidder's Representative)

.....  
(Representative's Signature)