



**East African Portland
Cement PLC**

Holding life Together

TENDER FOR

**PRE-QUALIFICATION OF LEGAL SERVICES
EAPC/PQ/196/2019**

CLOSING DATE & TIME: 12TH APRIL 2019

AT 12.00 NOON

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SECTION I - LETTER OF INVITATION

Date:

TO:___ (Name and Address of Firm)

Dear Sir/Madam,

RE: INVITATION TO PRE-QUALIFICATION FOR PROVISION OF LEGAL SERVICES

1.1 East African Portland Cement PLC invites applications for **Pre- qualification for Provision of Legal Services** .

1.2 The Application includes the following documents:

- Section I - Letter of invitation
- Section II - Information to firms
- Appendix to Tenderers information
- Section III - Pre-Qualification Submission Form
- Section IV - Confidential Prequalification Business Questionnaire Form
- Section V - Statutory Declaration
- Section VI - Team Summary Form and Sample CV's

1.3 Completed Pre-qualification documents shall be submitted in plain sealed envelopes clearly marked with the **Tender number** and **name** addressed to:

Managing Director

The East African Portland Cement PLC

Off Namanga Road,

P O Box 20-00204

Athi River, Kenya.

Tel. 0709 855000

E-mail: customercare@eapcc.co.ke

Website: www.eastafricanportland.com

and deposited in the tender box located at Customer Care office next to the main entrance, East African Portland Cement PLC , Off Namanga Road, Athi River, **on or before APRIL 12TH, 2019 at 12.00 NOON.**

1.4 Bidders who choose to download the tender from website www.eastafricanportlan.com or public procurement information portal: <https://tenders.go.ke> should forward their company's details to catherine.otido@eapcc.co.ke; ngala.oloitip@eapcc.co.ke so that any addendum/ clarifications can be sent to their email address.

East African Portland Cement Plc reserves the right to accept or reject any tender and may annul the tendering process and reject all tenders at any time prior to contract award without thereby incurring any liability to the affected tenderer or tenderers.

The application will be opened immediately on **12TH APRIL 2019 at 12:00 NOON** in the presence of Tenderers' or their representatives who choose to attend at Customer Care office next the main entrance, East African Portland Cement PLC , Off Namanga Road, Athi River.

Any canvassing or giving of false information will lead to automatic disqualification.

Late proposals will not be accepted.

MANAGER, SUPPLY CHAIN

SECTION II – INFORMATION TO TENDERERS (ITC)

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SECTION II: - INFORMATION TO TENDERERS (ITC)

2.1 Introduction

2.1.1 EAPC PLC will pre-qualify and enlist prospective Tenderers for the provision of Legal Services from among those who will have submitted their Pre-qualification documents in accordance with the pre-qualification requirements to undertake the assignments described herein.

2.1.2 EAPC PLC intends to apply scales of fees provided under the Advocates Remuneration Order.

2.1.3 The Pre-qualification Tender document and the Tenderers response thereof shall be the basis for prequalification. Tenderers must familiarize themselves with the requirements described in this document including all attachments and take them into account while preparing their response.

2.1.4 Tenderers will be informed in writing of the results of their application.

2.1.5 Tenderers will meet all costs associated with preparation and submission of their applications.

2.1.6 It is EAPC PLC's policy to require that Tenderers observe the highest standards of ethics and professionalism in the procurement process and execution of contracts. In pursuance of this policy, EAPC PLC:

a. Defines, for the purpose of this provision, the terms set forth below:

i. **"Corrupt practice"** means the offering, giving, receiving or soliciting of anything of value to influence the action of an officer of the Procurement Entity/Purchaser/Employer in the prequalification process; and

ii. **"Fraudulent practice"** means a misrepresentation of facts in order to influence the prequalification process to the detriment of the Purchaser/Employer, and includes collusive practices among Tenderers (prior to or after submission of Tenders) designed to establish prices at artificial, non-competitive levels and to deprive the Procurement Entity of the benefits of free and open competition.

b. Will reject a Tender for pre-qualification if it determines that a Tenderer has engaged in corrupt or fraudulent activities in competing for the contract in question;

c. Will declare a Tender ineligible, for pre-qualification if at any time it determines that Tenderer has engaged in corrupt or fraudulent practices in competing for, or in executing, a similar contract; and

d. Will have the right to examine financial or other records relating to the performance of such services to determine capability;

e. Will have the right to inspect the business premises of the Tenderer.

2.1.7 Tenderers shall furnish information as described in the pre-qualification tender document.

2.1.8 Tenderers shall be aware of the provisions on fraud and corruption stated in herein after.

2.2 Professional Qualifications

The Advocates must be active members of the Law Society of Kenya with current practicing certificates. They should not have any pending disciplinary cases. Due diligence will be carried out to ensure that they have not been disbarred.

2.3 Professional Insurance Indemnity

They must have taken out a Professional Insurance Indemnity of not less than Kshs.5,000,000.00 but capable of being reviewed depending on the brief at hand.

2.4 Expertise

The Law firms must be ranked highly by their peers as well as have proven experience of the issues in question. While it is important for the lead partners to be experienced the qualification of other members of the firm who will be performing the majority of the legal services should also be of high standard. This includes associates, research assistants and paralegals.

Senior Partners should have at least 10 years of Legal experience.

2.5 Scope of Legal Services

2.5.1 The legal services being procured include but not limited to: Civil Litigation and Practice, Commercial Law, Energy Law, Public Procurement and Disposal Law, Labour Law, Constitutional Law, Arbitration & Alternative Dispute Resolution Law and Practice, Tax Law, Land Law & Conveyancing, Public Private Partnership Law, International Law, Project Finance, and Environmental Law.

2.5.2 The law firms should attach their profiles stating the type of cases/matters handled and their success rate in litigation and commercial transactions. The profile should indicate experience in handling matters before the different courts and Tribunals.

2.5.3 The firms should also provide a list of clients handled which should include government departments and parastatals, international companies and private organizations; and the types of matters handled.

2.6 Firm's History

The following information should be included:

- Period for which the law firm has been in operation
- Number of partners and their standing in the bar
- Number of Associates and their standing in the bar
- Number of pupils
- Number of paralegal staff
- Number of support staff
- Areas of Practice & Specialization
- Whether the firm is a member of an international consortium of lawyers or members of international legal bodies.

2.7 Facilities

The firm should possess facilities like a modern legal library, access to online law reports or other legal resources, computers, internet connectivity etc to enable them provide adequate services and facilitate real-time communication.

2.8 Payment of Fees/Costs

2.8.1 EAPC PLC will consider law firm's that offer the right balance of value for money as measured by the quality of legal service offered. Law firms will be required to identify ways in which legal costs for any significant or complex matter can be mitigated.

2.8.2 The payment of fees will be based on the Advocates Remuneration Order, capped or as may be agreed between the firm and EAPC PLC.

2.9 Litigation against EAPC PLC

The firm should disclose if they are engaged with past or pending litigation against EAPC PLC and the nature of the litigation in order to avoid conflict of interest. The Firm should declare any conflict of interest.

2.10 Ability to Work Closely with EAPC PLC Legal Department

The selected law firms will be required to work closely with EAPC PLC's in-house lawyers.

2.11 Monitoring and Evaluation

The selected law firms must agree to be monitored through regular client satisfaction surveys in order to ensure that they maintain high standards of service. The firms must give regular reports to EAPC PLC.

2.12 Documents Comprising the Request for Pre-Qualification

Tenderers may request a clarification on the Tender Pre-qualification document up to seven (7) days before the Tender submission date. Any request for clarification must be sent in writing by mail to the EAPC PLC's email address ;

catherine.otido@eapcc.co.ke; ngala.oloitip@eapcc.co.ke

EAPC PLC will respond in writing by electronic mail to such requests and will publish in EAPC PLC website , public procurement portal and send copies of the response to all Tenderers who intend to submit tenders.

2.13 Preparation of Tender Documents

2.13.1 Tenderers are requested to submit a Tender written in English language.

2.13.2 Tenderers are expected to examine the documents comprising this Request for pre-qualification in detail. Material deficiencies in providing the information requested may result in rejection of a Tender.

2.13.3 Tenderers are required to meet the Pre-Qualification criteria stipulated in herein after. Those who do not meet the requirements need not submit tenders. Only tenders, which fulfill these requirements, will be considered for detailed evaluation.

2.13.4 The pre-qualification documents shall not include any financial proposal information other than audited accounts for the last 2 years.

2.14 Period of Validity

The request for pre-qualification must remain valid for not less than 120 days from the date of submission. EAPC PLC will make best effort to complete the evaluation and communicate within this period.

2.15 Submission, Receipt, and Opening of Pre-Qualifications

2.15.1 The original Pre-qualification Document shall be prepared in indelible ink. It shall contain no interlineations or overwriting, except as necessary to correct errors made by the applicant. Any such corrections must be initialed by the person or persons who sign(s) the Pre-qualification Document.

2.15.2 An authorized representative of the Applicants should initial all pages of the tender document.

2.15.3 The tenderer shall seal the original and each copy of the pre-qualification document in separate envelopes, duly marking the envelopes as **“ORIGINAL** “and **“COPY**. “The envelopes shall then be sealed in an outer envelope. The inner and outer envelopes shall:

- (a) **be addressed to the Procuring entity at the address given in the invitation to tender**
- (b) **bear, tender number and name in the invitation to tender and the words: “DO NOT OPEN BEFORE FRIDAY 12TH APRIL, 2019, AT 12.NOON.”**

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

2.15.5 If the outer envelope is not sealed and marked as required by paragraph 2.15.3, the Procuring entity will assume no responsibility for the tender’s misplacement or premature opening.

2.16 Tender Submission

2.16.1 Submission Time:

The closing time for the submission of the Pre-Qualification Document shall be **12TH APRIL 2019 at 12.00 NOON** and shall be sent to the above address. Pre-Qualification Document shall be marked on top **"DO NOT OPEN BEFORE 12TH APRIL 2019 at 12.00 NOON ."**

2.16.2 Late Submission

Any Pre-Qualification Document received after the deadline shall be rejected as a late tender and shall not be considered.

2.16.3 Tender Opening

An Opening Committee shall open the applications immediately after the closing time for submission of the Pre-Qualification Document.

EAPC PLC will prepare a record of the Pre-Qualification Document opening.

2.16.4 Pre-Qualification Evaluation

a. Mandatory Requirements for Pre-Qualification:

- i. Pre-qualification Submission Form.
- ii. Duly Completed Confidential Pre-qualification Business Questionnaire.
- iii. A copy of Certificate of Registration.
- iv. Evidence of physical address and premises (attach copies of utility bills e.g. electricity/water or lease agreement/Title).
- v. Certified copy of current practicing certificates for all partners and associates; Senior Partner(s) must have a minimum experience of 10 years.
- vi. Five (5) letters of commendation from your current major clients including public institutions or large commercial enterprises, summary of services rendered, value and contact persons, addresses and telephone numbers. Tenderers are advised to ensure that they officially verify the accuracy, authenticity and validity of any documentation, certification or information obtained from third parties i.e. letters from referees that they intend to or submit to EAPC PLC as part of their Tender. EAPC PLC will have the discretion to contact your referees without prior reference to the tenderer.
- vii. Immediate past Two (2) year's audited accounts.
- viii. A copy of Valid Tax Compliance Certificate.
- ix. Evidence of the firm's Professional Insurance Indemnity of at least Kshs.5,000,000.00 but capable of being reviewed depending on the brief at hand.

2.16.5 EAPC PLC will examine the tenders to determine completeness, general orderliness and sufficiency in responsiveness.

2.16.6 Tenderers must paginate their Tender document consistent with the table of content to facilitate ease of reference during evaluation.

2.16.7 Applicants shall not contact EAPC PLC on the matter relating to their Pre-Qualification Document from the time of opening to the time the evaluation is finalized unless official communication is sent to them. Any effort by the Applicant to influence EAPC PLC in the Pre-Qualification Document evaluation shall result in the rejection of their application.

2.16.8 Pre-qualification will be based on meeting the following minimum criteria regarding the Applicant's legal status, general and particular experience, personnel and financial position as demonstrated by the responses in the attached forms.

2.16.9 The Applicants should have registered offices and EAPC PLC reserves the discretion of visiting physical premises from which the applicant conducts business if so desired to confirm existence and capability to deliver the said services.

2.16.10 Applicants who qualify according to the selection criteria will be required to offer various legal services as and when required.

2.16.11 EAPC PLC reserves the right to accept or reject any or all Pre-Qualification Documents without the obligation to assign any reason(s) for its decision thereof.

2.17 Litigation

Applicants must disclose any current litigation against the firm and briefly describe the nature of the litigation.

2.18 Corrupt or fraudulent practice

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

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

2.18.3 Further , a tenderer who is found to have indulged in corrupt or fraudulent practices risk being debarred from participating in Public Procurement in Kenya.

2.19 Evaluation Criteria

The points given to evaluation criteria are provided in the evaluation matrix below.

EVALUATION MATRIX

Bidders must attach evidence to fulfill the following requirements:

PART I - MANDATORY CRITERIA			
	REQUIREMENTS	MAX SCORE	YES/ NO
	Duly completed and signed Submission Form.	Mandatory	
	Duly completed and signed Confidential Business Questionnaire.	Mandatory	
	A copy of the Certificate of Registration of the Law firm.	Mandatory	
	Evidence of Physical Address.	Mandatory	
	Certified Copies of practicing Certificates of all advocates in the Law firm.	Mandatory	
	Letters of Commendation from at least 5 corporate clients. (Company name Client's Contact Person (email and telephone No.)	Mandatory	
	Audited Accounts for immediate past two (2) Year's.	Mandatory	
	Tax Compliance Certificate.	Mandatory	
	Evidence of the firm's Professional Insurance Indemnity of at least Kshs.5,000,000.00	Mandatory	
An application shall be rejected at this stage if it does not respond to the mandatory requirements. Applications that respond to the mandatory requirements will proceed to Technical evaluation.			

PART II - TECHNICAL CRITERIA			
	REQUIREMENTS	PARAMETER	MAX SCORE (points)
A.	Experience in advising a manufacturing company (Attach evidence)	-	10
B.	Value of Professional Indemnity	Kshs. 100 Million and over Kshs. 50m -99m Kshs. 30m- 49m Kshs. 10m - 29m Kshs. 5m - 9M	15 10 7.5 5 2.5
C.	Capacity & Period of Operation of Firm C1) Firm Profile& Experience Qualifications and competence/areas of practice of key professional staff (attach respective CVs for each with above details) C2) Size Number of partners Number of associates Number of support staff	Minimum Law undergraduate degree for all advocates Senior Partners Over 15 years experience 12-15 years Less than 10 years Associates Over 8 years experience 3-7 years Under 3 years 6 and above 3-5 1-2 6 and above 3-5 1-2 5 and above 2-4	20 3 2 1 3 2 1 2 1 0.5 2 1 0.5 2.5 1

	C3) Facilities Equipped library Branches (provide location and staffing) Affiliations to international bodies (provide evidence)		2.5 2.5 2.5
D.	10 major litigation briefs successfully handled in terms of value and subject matter . <i>Indicate court</i> Supreme court Court of appeal High court Regional courts/International courts	Subject matter Over Kshs. 200 m Kshs. 100-199m Kshs. 50-99 Kshs. 49 Million and below	30 20 10 5
E.	Audited financial statements for the last two years or where the firm has been in operation for less than 2 years certified management accounts		10
F.	Completeness of bid documents		5
G.	Experience in arbitration arising out of commercial disputes. (<i>bidders to attach evidence</i>)		10
	TOTAL		100

Note.

Each responsive proposal will be given a technical score (St). A proposal shall be rejected at this stage if it does not respond to important aspects of the Criteria or if it fails to achieve the minimum technical score indicated.

The pass mark shall be a minimum technical score of **70 points**.

2.9 Confidentiality

Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the Tenderers who submitted the proposals or to other persons not officially concerned with the process, until the winning firm has been notified that it has been prequalified for the services.

2.10 Corrupt or fraudulent practices

2.10.1 EAPC PLC requires that the Tenderers observe the highest standards of ethics during the selection and prequalification of the firms and also during the performance of any assignment(s). The tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.

2.10.2 EAPC PLC will reject an application if it determines that the tenderer recommended for prequalification has engaged in corrupt or fraudulent practices in competing for the services in question.

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

SECTION III: - PRE-QUALIFICATION SUBMISSION FORM

To,

Date: _____

Tender No.: _____

Managing Director,
East African Portland Cement PLC,
PO Box 20-00204
Athi river - Off Namanga Road .

Dear Sir,

We/I, the undersigned, offer to provide the required services in accordance with your instructions and we hereby submit our Pre-qualification Document.

Our Application is binding to us and if found acceptable we shall be pleased to be included in the list of pre-qualified firms.

We understand you are not bound to accept any application you receive.

We remain, Yours sincerely,

Authorised Signature:

Name and Title of Signatory

Name of Tenderer

Address:

SECTION IV-CONFIDENTIAL PRE-QUALIFICATION BUSINESS QUESTIONNAIRE FORM

You are requested to give the particulars indicated in Part 1; either Part 2(a), 2(b) or 2 (c) whichever applies to your type of business; and Part 3. You are advised that it is a serious offence to give false information on this form.

<p>Part 1 – General</p> <p>1.1 Business Name</p> <p>.....</p> <p>1.2 Location of Business Premises.</p> <p>.....</p> <p>1.3 Plot No..... Street/Road</p> <p>Postal Address</p> <p>Tel No. Fax.....</p> <p>E mail</p> <p>1.4 Nature of Business</p>

1.5 Registration Certificate No.

.....

1.6 Maximum Value of Business which you can handle at any one time – Kshs.....

1.7 Name of your BankersBranch

Part 2 (a) – Sole Proprietor
2a.1 Your Name in Full
2a.2 Nationality
Country of Origin
• Citizenship Details
Part 2 (b) Partnership
2b.1 Given details of Partners as follows:

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

Part 2 (c) – Debarment

I / We declare that I/ we have not been debarred from any procurement process and shall not engage in any fraudulent or corrupt acts with regard to this or any other tender by EAPC PLC and any other public or private institutions.

Date

Name of duly authorized person.....

Signature of duly authorized person.....

Part 2 (d) – Criminal Offence

I / We, individually or jointly have not been convicted of any criminal offence relating to professional (mis)conduct or the making of false statements or misrepresentations as to my/our qualifications to enter into a procurement contract within a period of five (5) years preceding the commencement of this prequalification procurement.

Date

Name of duly authorized person.....

Signature of duly authorized person.....

Part 3 – Conflict of interest

3.1 I/We , the undersigned state that I/We have no conflict of interest in relation to this prequalification .

- 1.....
- 2.....
- 3.....

Date

Name of duly authorized person.....

Signature of duly authorized person.....

3.2 Does any person/person in EAPC PLC have interest in the firm?

Yes__No____

3.3 If answer in '3.2' above is YES give details.

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

3.4 Are you under a declaration of ineligibility for corrupt and fraudulent practices?

YES_No____

3.5 If answer in '3.4' above is YES give details:

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

I / We DECLARE that the information given on this form is correct to the best of my/our knowledge and belief and that I/We give EAPC PLC authority to seek any other references concerning my/our firm from whatever sources deemed relevant.

Date Signature of Candidate.....

SECTION V – STATUTORY DECLARATION

REPUBLIC OF KENYA

IN THE MATTER OF OATHS AND STATUTORY DECLARATION ACT CHAPTER 15 OF
THE LAWS OF KENYA

AND

IN THE MATTER OF THE PUBLIC PROCUREMENT AND DISPOSAL ACT, 2015.

I, of P. O. Box being a
resident of

..... in the Republic of Kenya do hereby make oath and state as follows: -

1. THAT I am the..... (Managing
Partner/
/Senior Partner) of(Name of the
Law Firm) which is a Candidate in respect of Tender Number
..... to render legal services to East
African Portland Cement PLC and duly authorized and competent to make this Affidavit.

2. THAT the aforesaid Firm has not been requested to pay any inducement to any member of
the Board, Management, Staff and/or employees and/or agents of EAPC PLC, which is the
procuring entity.

3. THAT the aforesaid Candidate, its servant(s) and/or agent(s) have not been offered and
will not offer any inducement to any member of the Board, Management, Staff and/or
employee(s) and/or agent(s) of EAPC PLC.

4. THAT the aforesaid Candidate, its servant(s) and/or agent(s) have not been debarred from
any procurement process.

5. THAT what is deponed to hereinabove is true to the best of my knowledge information and belief.

SWORN at by the said }
..... }
on this day of 20... } DEPONENT
} Before me }
Commissioner for Oaths }

SECTION VI: TEAM COMPOSITION SUMMARY AND TASK ASSIGNMENTS

1. Partner(s)

	Name	Position	Area of Practice

2. Associates, Support Staff and Consultants

	Name	Position	Area of Practice

6. FORMAT OF CURRICULUM VITAE (CV) FOR PROPOSED PROFESSIONAL STAFF

Position: _____

Name of Advocate: _____

Date of Birth: _____

Years of Practice: _____

Years with Firm: _____ Nationality: _____

Membership in Professional Societies:

Key Qualifications:

[Give an outline of staff member's experience and training most pertinent to tasks on assignment. Describe degree of responsibility held by staff member on relevant previous assignments and give dates and locations].

Education:

[Summarize college/university and other specialized education of staff member, giving names of schools, dates attended and degree[s] obtained.]

Employment Record:

[Starting with present position, list in reverse order every employment held. List all positions held by staff member since graduation, giving dates, names of employing organizations, titles of positions held, and locations of assignments.]

Certification:

I, the undersigned, certify that these data correctly describe me, my qualifications, and my experience.

_____Date: __

[Signature of staff member]

_____ Date; __

[Signature of authorized representative of the firm]

Full name of staff member: ____

Full name of authorized representative: _____