



East African Portland  
Cement PLC

*Holding Life Together*

## **TENDER DOCUMENT**

**FOR**

**SUPPLY AND DELIVERY OF SIXTY THOUSAND  
(60,000) METRIC TONNES OF CLINKER**

**TENDER NO. EAPC PLC/RT/320/2019**

**SUBMISSION DEADLINE: , 17<sup>TH</sup> APRIL 2019  
AT 12.00 NOON**

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## SECTION I

## - INVITATION TO TENDER

### SECTION I – INVITATION TO BID

- 1 Supply and delivery of sixty thousand (60,000) metric tonnes of Clinker**
- 1.1 The East African Portland Cement PLC, one of the leading Cement manufacturing Companies in Kenya, invites sealed bids from eligible candidates for **Supply and delivery of sixty thousand (60,000) metric tonnes of clinker.** The detailed breakdown of the requirements can be obtained in the schedule of requirements/price schedule stipulated in this bid document.
- 1.2 The candidates may obtain further information from the company website and at the Procurement Office, East African Portland Cement PLC, off Namanga Road Athi River, during normal working (8.30-17.00 hours local time on Mondays to Friday except during lunch hour time from 13.00 to 14.00 hours and public holiday).
- 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 PLC ,Off Namanga Road, Athi River, PO Box 20-00204, Athi River, Kenya; **Tel:+254-709 855 000** so as to be received **on or before 12.00 noon Wednesday 17<sup>th</sup> April 2019.**
- 1.5 Prices quoted shall clearly show if all taxes are exclusive or inclusive; and be in Kenya Shillings. They shall remain valid for the entire contract period.
- 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 PLC customer care office.
- 1.7 The East African Portland Cement PLC reserves the right to accept /reject all or part of the Bids and is bound to give reasons for doing so.

**For: 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](mailto:customercare@eapcc.co.ke)**

**Website: [www.eastafricanportland.com](http://www.eastafricanportland.com)**

**SECTION II – INSTRUCTIONS TO TENDERERS**

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## **SECTION II - INSTRUCTIONS TO TENDERERS**

### **2.1 Eligible tenderers**

- 2.1.1. This Invitation to tender is open to all tenderers eligible as described in the instructions to tenderers. Successful tenderers shall provide the services for the stipulated duration from the date of commencement (hereinafter referred to as the term) specified in the tender documents.
- 2.1.2. The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender unless where specially allowed under section 131 of the Act.
- 2.1.3. Tenderers shall provide the qualification information statement that the tenderer (including all members, of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with 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 services under this Invitation for tenders.
- 2.1.4. Tenderers involved in corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

### **2.2 Cost of tendering**

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

### **2.3 Contents of tender documents**

- 2.3.1. The tender document comprises of the documents listed below and addenda issued in accordance with clause 5 of these instructions to tenders
  - i) Instructions to tenderers
  - ii) General Conditions of Contract
  - iii) Special Conditions of Contract
  - iv) Schedule of Requirements
  - v) Technical Specifications
  - vi) Form of tender
  - vii) Price schedules
  - viii) Contract form
  - ix) Confidential business questionnaire form
  - x) Tender security form

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

## **2.4 Clarification of Documents**

- 2.4.1. A prospective candidate making inquiries of the tender document may notify the Procuring entity in writing or by post, fax or email at the entity's address indicated in the Invitation for tenders. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives no later than four (4) days prior to the deadline for the submission of tenders, prescribed by the procuring entity. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers who have received the tender documents"
- 2.4.2. The procuring entity shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender

## **2.5 Amendment of documents**

- 2.5.1. At any time prior to the deadline for submission of tenders, the Procuring entity, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by issuing an addendum.
- 2.5.2. All prospective tenderers who have obtained the tender documents will be notified of the amendment by post, fax or email and such amendment will be binding on them.
- 2.5.3. In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, the Procuring entity, at its discretion, may extend the deadline for the submission of tenders.

## **2.6 Language of tender**

- 2.6.1. The tender prepared by the tenderer, as well as all correspondence and documents relating to the tender exchanged by the tenderer and the Procuring entity, shall be written in English language. Any printed literature furnished by the tenderer may be written in another language provided they are accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the tender, the English translation shall govern.

## **2.7 Documents Comprising the Tender**

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

- (a) A Tender Form and a Price Schedule completed in accordance with 2.8,2. 9, 2.10 below.
- (b) Documentary evidence established in accordance with Clause 2.11 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
- (d) Confidential business questionnaire

## **2.8 Form of Tender**

2.8.1 The tenderers shall complete the Form of Tender and the appropriate Price Schedule furnished in the tender documents, indicating the services to be performed.

## **2.9 Tender Prices**

2.9.1 The tenderer shall indicate on the Price schedule the unit prices where applicable and total tender prices of the goods it proposes to provide under the contract.

2.9.2 Prices indicated on the Price Schedule shall be the cost of the services quoted including all customs duties and VAT and other taxes payable: **The price is DDP Athi River factory.**

2.9.3 Prices quoted by the tenderer shall remain fixed during the term of the contract unless otherwise agreed by the parties. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.22.

2.9.4 Contract price variations shall not be allowed for contracts not exceeding one year (12 months)

2.9.5 Where contract price variation is allowed, the quantity variation of goods and services shall not exceed fifteen per cent of the original contract quantity, the cumulative value of all contract variation do not result in an increment of the total contract price by more than twenty five percent of the original contract price.

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

## **2.10 Tender Currencies**

2.10.1 Prices shall be quoted in Kenya Shillings unless otherwise specified in the appendix to in Instructions to Tenderers

## **2.11 Tenderers Eligibility and Qualifications.**

2.11.1 Pursuant to Clause 2.1 the tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.

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

## **2.12 Tender Security- *(not applicable for this tender)***

2.12.1 This tender does not have a tender security required.

## **2.13 Validity of Tenders**

2.13.1 Tenders shall remain valid for 120 days or as specified in the invitation to tender after date of tender opening prescribed by the Procuring entity, pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the Procuring entity as non-responsive.

2.13.2 In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 2.12 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.



## **2.14 Format and Signing of Tender**

- 2.14.1 The tenderer shall prepare two copies of the tender, clearly / marking each “**ORIGINAL TENDER**” and “**COPY OF TENDER,**” as appropriate. In the event of any discrepancy between them, the original shall govern.
- 2.14.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. All pages of the tender, except for unamended printed literature, shall be initialed by the person or persons signing the tender.
- 2.14.3 The tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

## **2.15 Sealing and Marking of Tenders- The Tenderer’s shall submit proposals of both Technical and – Commercial envelope (combined) .**

- 2.15.1 The tenderer shall seal the original and each copy of the tender 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 17<sup>th</sup> April , 2019, AT 12.00 Noon.**”
- 2.15.2 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”.
- 2.15.3 If the outer envelope is not sealed and marked as required by paragraph 2.15.1, the Procuring entity will assume no responsibility for the tender’s misplacement or premature opening.
- 2.15.4 Bidders names, Bid modifications or withdrawals, Bid prices, discounts and such other details as the Procuring entity, at its discretion, may consider appropriate, **will be announced at the opening.**

## **2.16 Deadline for Submission of Tenders**

- 2.16.1 Tenders must be received by the Procuring entity at the address specified under paragraph 2.15.1 not later than **12.00 noon. On 17<sup>th</sup> April 2019.**
- 2.16.2 The procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 2.5, in which case all rights and obligations of the procuring entity and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.
- 2.16.3 Bulky tenders which will not fit in the tender box shall be received by the procuring entity as provided for in the appendix.

## **2.17 Modification and withdrawal of tenders**

- 2.17.1 The tenderer may modify or withdraw its tender after the tender's submission, provided that written notice of the modification, including substitution or withdrawal of the tender's is received by the procuring entity prior to the deadline prescribed for the submission of tenders.
- 2.17.2 The Tenderer's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 2.15. A withdrawal notice may also be sent by cable, but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.
- 2.17.3 No tender may be modified after the deadline for submission of tenders.
- 2.17.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the Tenderer's forfeiture of its tender security, pursuant to paragraph 2.12.8.
- 2.17.5 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 2.17.6 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

## **2.18 Opening of Tenders**

- 2.18.1 The Procuring entity will open all tenders in the presence of tenderers representatives who choose to attend, at **12.00 noon, 17<sup>th</sup> April, 2019** and in the location specified in the invitation to tender. The tenderers' representatives who are present shall sign a register evidencing their attendance.
- 2.18.3 The tenderers' names, tender modifications or withdrawals, tender prices, discounts, and the presence or absence of requisite tender security and such other details as the Procuring Entity, at its discretion, may consider appropriate, will be announced at the opening.
- 2.18.4 The procuring entity will prepare minutes of the tender opening which will be submitted to the tenderers that signed the tender opening register and will have made the request.

## **2.19 Clarification of tenders**

- 2.19.1 To assist in the examination, evaluation and comparison of tenders the procuring entity may at its discretion, ask the tenderer for a clarification of its tender. The request for clarification and the response shall be in writing, and no change in the prices or substance shall be sought, offered, or permitted.
- 2.19.2 Any effort by the tenderer to influence the procuring entity in the procuring entity's tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderer's tender.

## **2.20 Preliminary Examination and Responsiveness**

- 2.20.1 The Procuring entity will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required securities have been furnished whether the documents have been properly signed, and whether the tenders are generally in order.
- 2.20.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security may be forfeited. If there is a discrepancy between words and figures, the amount in words will prevail.
- 2.20.3 The Procuring entity may waive any minor informality or nonconformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any tenderer.
- 2.20.4 Prior to the detailed evaluation, pursuant to paragraph 22, the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one which conforms to all the terms and conditions of the tender documents without material deviations. The Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.
- 2.20.5 If a tender is not substantially responsive, it will be rejected by the Procuring entity and may not subsequently be made responsive by the tenderer by correction of the nonconformity.

## **2.21 Conversion to a single currency**

- 2.21.1 Where other currencies are used, the procuring entity will convert those currencies to Kenya shillings using the selling exchange rate on the date of tender closing provided by the central bank of Kenya.

## **2.22 Evaluation and comparison of tenders.**

- 2.22.1 The procuring entity will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.20
- 2.22.2 The comparison shall be of the price including all costs as well as duties and taxes payable on all the materials to be used in the provision of the services.
- 2.22.3 The Procuring entity's evaluation of a tender will take into account, in addition to the tender price, the following factors, in the manner and to the extent indicated in paragraph 2.22.4 and in the technical specifications:
- (a) Conformity to Clinker specification in accordance to EAPCC Plc Requirements;
  - (b) Payment terms provided by the bidders

2.22.4 Pursuant to paragraph 22.3 the following evaluation methods will be applied:

(a) ***Conformity to specifications.***

The Procuring entity requires that the clinker provided by the bidders shall conform to its quality requires as provided for in this tender document and evidenced by the Certificate of Analysis provided by the bidder.

(b) ***Payment terms***

Tenderers shall state their tender prices and payment terms. Bidders are encouraged to extend credit terms to the Procuring Entity. The longer the credit period the better.

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

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

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

**2.23. Contacting the procuring entity**

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

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

**2.24 Award of Contract**

a) **Post qualification**

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

- 2.24.2 The determination will take into account the tenderer's financial and technical capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 2.1.2, as well as such other information as the Procuring entity deems necessary and appropriate.
- 2.24.3 An affirmative determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the Tenderer's tender, in which event the Procuring entity will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

**b) Award Criteria**

- 2.24.4 Subject to paragraph 2.22 the Procuring entity will award the contract to the successful tenderer whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.
- 2.24.5 The procuring entity reserves the right to accept or reject any tender and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the procuring entity's action. If the procuring entity determines that none of the tenderers is responsive; the procuring entity shall notify each tenderer who submitted a tender.
- 2.24.6 A tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

**2.25 Notification of award**

- 2.25.1 Prior to the expiration of the period of tender validity, the Procuring entity will notify the successful tenderer in writing that its tender has been accepted.
- 2.25.2 The notification of award will signify the formation of the Contract subject to the signing of the contract between the tenderer and the procuring entity pursuant to clause 2.26. Simultaneously the other tenderers shall be notified that their tenders have not been successful.
- 2.25.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 27, the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.12

**2.26 Signing of Contract**

- 2.26.1 At the same time as the Procuring entity notifies the successful tenderer that its tender has been accepted, the Procuring entity will simultaneously inform the other tenderers that their tenders have not been successful.
- 2.26.2 Within fourteen (14) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Procuring entity.

2.26.3 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.

## **2.27 Performance Security**

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

2.27.2 Failure of the successful tenderer to comply with the requirement of paragraph 2.26 or paragraph 2.27.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Procuring entity may make the award to the next lowest evaluated or call for new tenders.

## **2.28 Corrupt or Fraudulent Practices**

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

2.28.2 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;

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

## APPENDIX TO INSTRUCTIONS TO THE TENDERERS

The following information for procurement of services shall complement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provisions of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers.

Instructions to tenderers	Particulars of appendix to instructions to tenderers
2.1	Particulars of eligible tenderers: <b>Firms registered in Kenya.</b>
2.2.2	Price to be charged for tender documents- <b>Kshs. 1,000 for those who purchase a hard copy while those who download the document will be free of charge</b>
2.10	Particulars of other currencies allowed. <b>None</b>
2.12.2	Particulars of tender security if applicable- <b>Not applicable</b>
2.12.4	Form of Tender Security: <b>Not applicable for this tender</b>
2.13	Validity of Tenders: <b>Tenders Shall remain valid for 120 days after date of tender opening</b>
2.16.3	Bulky tenders which do not fit in the tender box shall be delivered to the Procurement Office and bidders will sign off the delivery book .
2.20.1	<p>Tenderers are required to submit copies of the following <b><u>MANDATORY DOCUMENTS</u></b> which will be used during Preliminary Examination to determine responsiveness:</p> <ol style="list-style-type: none"> <li>1) <b>Copy of certificate of Registration/Incorporation</b></li> <li>2) <b>Copy of Valid Tax Compliance certificate</b></li> <li>3) <b>Copy of pin certificate</b></li> <li>4) <b>Must Fill the Form of Tender in the format provided</b></li> </ol>

Instructions to tenderers	Particulars of appendix to instructions to tenderers
2.22	<p>Evaluation and comparison of Tenders: <b>The following evaluation criteria shall be applied Notwithstanding any other requirement in the tender documents.</b></p> <p><u>Selection Process</u></p> <p>Below is a description of the evaluation steps that will be adopted.</p> <p><b><i>STEP 1: Preliminary evaluation</i></b></p> <p>This will be an elimination stage which will be done as per paragraph 2.20.1 above.</p> <p><b><i>STEP 2: Technical evaluation</i></b></p> <p>Only Tenderers who comply with our minimum technical quality requirements shall proceed for commercial evaluation.</p> <p><b><i>STEP 3: Financial Evaluation</i></b></p> <p>This will include the following:-</p> <ul style="list-style-type: none"> <li>a) The bidder with the lowest price and one who meets quality requirements shall be awarded.</li> <li>b) Conducting a financial comparison</li> <li>c) Correction of arithmetical errors</li> </ul>
2.24 (a)	Particulars of post – qualification if applicable. <b>East African Portland Cement PLC may carry out post qualification and inspect the premises or contact listed clients to confirm details</b>
2.24.4	Award Criteria: <b>Award will be made to the lowest evaluated bidder in financial Evaluation.</b>
2.27	Particulars of performance security if applicable. <b>10 % for the batches of every 10,000 metric tonnes delivered or Kes. 10,000,000 (ten million Kenyan shillings) whichever is lower.</b>



**SECTION III**

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**GENERAL CONDITIONS OF CONTRACT**

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## **SECTION III - GENERAL CONDITIONS OF CONTRACT**

### **3.1 Definitions**

In this contract the following terms shall be interpreted as indicated:

- a) “The contract” means the agreement entered into between the Procuring entity and the tenderer as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- b) “The Contract Price” means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations.
- c) “The services” means services to be provided by the contractor including materials and incidentals which the tenderer is required to provide to the Procuring entity under the Contract.
- d) “The Procuring entity” means the organization sourcing for the services under this Contract.
- e) “The contractor means the individual or firm providing the services under this Contract.
- f) “GCC” means general conditions of contract contained in this section
- g) “SCC” means the special conditions of contract
- h) “Day” means calendar day

### **3.2 Application**

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

### **3.3 Standards**

- 3.3.1 The services provided under this Contract shall conform to the 7 standards mentioned in the Schedule of requirements

### **3.4 Patent Right’s**

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

### **3.5 Performance Security**

- 3.5.1 Within thirty (30) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the performance security where applicable in the amount specified in Special Conditions of Contract.
- 3.5.2 The proceeds of the performance security shall be payable to the Procuring entity as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.
- 3.5.3 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) A bank guarantee.
- 3.5.4 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 tenderer's performance of obligations under the contract, including any warranty obligations under the contract.

### **3.6 Inspections and Tests**

- 3.6.1 The Procuring entity or its representative shall have the right to inspect and/or to test the services to confirm their conformity to the Contract specifications. The Procuring entity shall notify the tenderer in writing, in a timely manner, of the identity of any representatives retained for these purposes.
- 3.6.2 The inspections and tests may be conducted on the premises of the tenderer or its subcontractor(s). If conducted on the premises of the tenderer 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.
- 3.6.3 Should any inspected or tested services fail to conform to the Specifications, the Procuring entity may reject the services, and the tenderer shall either replace the rejected services or make alterations necessary to meet specification requirements free of cost to the Procuring entity.
- 3.6.4 Nothing in paragraph 3.7 shall in any way release the tenderer from any warranty or other obligations under this Contract.

### **3.7 Payment**

- 3.7.1 The method and conditions of payment to be made to the tenderer under this Contract shall be specified in SCC

### **3.8 Prices**

3.8.1 Prices charged by the contractor for services performed under the Contract shall not, with the exception of any Price adjustments authorized in SCC, vary from the prices by the tenderer in its tender or in the procuring entity's request for tender validity extension as the case may be. No variation in or modification to the terms of the contract shall be made except by written amendment signed by the parties.

### **3.9 Assignment**

3.9.1 The tenderer shall not assign, in whole or in part, its obligations to perform under this contract, except with the procuring entity's prior written consent.

### **3.10 Termination for Default**

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

- a) if the tenderer 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 tenderer fails to perform any other obligation(s) under the Contract.
- c) if the tenderer, in the judgment of the Procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

3.10.2 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 tenderer shall be liable to the Procuring entity for any excess costs for such similar services.

### **3.11 Termination of insolvency**

3.11.1 The procuring entity may at the anytime 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.

### **3.12 Termination for convenience**

3.13.1 The procuring entity by written notice sent to the contractor may terminate the contract in whole or in part, at any time for its convenience. The notice of termination shall specify that the termination is for the procuring entity convenience, the extent to which performance of the contractor of the contract is terminated and the date on which such termination becomes effective.

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

### **3.13 Resolution of disputes**

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

### **3.14 Governing Language**

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

### **3.15 Force Majeure**

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

### **3.16 Applicable Law.**

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

### **3.17 Notices**

- 3.17.1 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
- 3.17.2 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.

General conditions of contract reference	Special conditions of contract
3.5	Specify performance security if applicable: <b>10 % for the batches of every 10,000 metric tonnes delivered or Kes. 10,000,000 (Ten million Kenyan shillings) whichever is lower .</b>
3.7	Specify method Payments. <b>Payment terms preferred by the procuring entity shall be payment after consumption of 3000MT. Bidders are free to state their payment terms.</b>
3.8	Specify price adjustments allowed. <b>None</b>
3.14	Specify resolution of disputes. <b>Disputes to be settled as per the Arbitration Laws of Kenya.</b>
3.16	Specify applicable law. <b>Laws of Kenya</b>

## SECTION V - SCHEDULE OF REQUIREMENTS

### GENERAL

1. These specification describes the basic requirements of goods. Bidders are requested to submit with their offers the detail specifications, drawings, catalogues, etc. for the products they intend to supply.
2. Bidders must indicate on the specifications sheets whether the material offered comply with each specified requirement.
3. All the specifications and capacities of the material to be supplied shall not be less than those required in these specifications/requirements. Deviations from the basic requirements, if any, shall be explained in details 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.

### TECHNICAL SPECIFICATIONS.

#### A. CLINKER CHEMICAL PARAMETERS.

<b>(i) Basic Oxides</b>		<b>EAPCC REQUIREMENTS</b>
SiO <sub>2</sub>	%	21 – 23
Al <sub>2</sub> O <sub>3</sub>	%	4 – 6
Fe <sub>2</sub> O <sub>3</sub>	%	2 – 4
CaO	%	63 – 66
LSF	%	0.90-0.96
<b>(ii) Clinker Compounds</b>		
C <sub>3</sub> S	%	50 Min
C <sub>2</sub> S	%	28 Max
C <sub>3</sub> A	%	6 Min
C <sub>4</sub> AF	%	12 Max
FCaO	%	1.5 Max
<b>(iii) Impurities/ Volatiles</b>		
MgO	%	3.0 Max
SO <sub>3</sub>	%	0.65 Max
K <sub>2</sub> O	%	0.5 Max
Na <sub>2</sub> O	%	0.3 Max
Chlorides	%	0.02 Max

## **B. PHYSICAL PARAMETER**

Litre Weight	gm/lt	1200-1350
Size		(i) (- 3 mm) Max 5% (ii) (+ 3 mm – 25 mm) Min 85% (iii) (+25 mm) Max 5%
Moisture	%	1.0 Max
Insoluble Residue	%	0.5Max
Loss on Ignition	%	0.7 Max
<b>Total</b>		

### **IMPORTANT**

- BIDDERS **MUST** PROVIDE CERTIFICATE OF ANALYSIS FROM AN ACCREDITED OR INTERNATIONALLY RECOGNIZED LABORATORY WITH SPECIFIC RESULTS AND NOT A RANGE.
- Bidder shall also specify both the chemical and physical parameters of the Clinker they are offering in the bidder's specifications column shown above
- Bidder shall provide samples for analysis at EAPCC laboratory



## Technical Scores

### EVALUATION CRITERIA.

#### a) Technical Specifications (70Mks)

#### Clinker - T e c h n i c a l Evaluation Criteria 70% Conformity to Specifications

(i) Basic Oxides	EAPCC REQUIREMENTS	Maximum Score	
SiO <sub>2</sub> %	21 – 23	<b>2</b>	
Al <sub>2</sub> O <sub>3</sub> %	4 – 6	<b>2</b>	
Fe <sub>2</sub> O <sub>3</sub> %	2 – 4	<b>2</b>	
CaO %	63 – 66	<b>2</b>	
LSF %	0.90-0.96	<b>10</b>	
<b>(ii) Clinker Compounds</b>			
C <sub>3</sub> S %	50 Min	<b>10</b>	
C <sub>2</sub> S %	28 Max	<b>2</b>	
C <sub>3</sub> A %	6 Min	<b>2</b>	
C <sub>4</sub> AF %	12 Max	<b>2</b>	
FCaO %	1.5 Max	<b>6</b>	
<b>(iii) Impurities/ Volatiles</b>			
MgO %	3.0 Max	<b>6</b>	
SO <sub>3</sub> %	0.65 Max	<b>2</b>	
K <sub>2</sub> O %	0.5 Max	<b>2</b>	
Na <sub>2</sub> O %	0.3 Max	<b>2</b>	
Chlorides %	0.02 Max	<b>2</b>	

Litre Weight gm/lt	1200-1350	<b>4</b>	
Size	(i) (- 3 mm) Max 5%	<b>2</b>	
	(ii) (+ 3 mm – 25 mm) Min 85%	<b>2</b>	
	(iii) (+25 mm) Max 5%	<b>2</b>	
Moisture %	1.0 Max	<b>2</b>	
Insoluble Residue %	0.5Max	<b>2</b>	
Loss on Ignition %	0.7 Max	<b>2</b>	
<b>Total</b>		<b>70</b>	

**b) Commercial evaluation (30 marks)**

<b>Basis</b>	<b>Criteria</b>	<b>Score</b>
Price schedule	I. Price	20
	II. Payment Terms	5
	III. Delivery Period	5
<b>Total Score</b>		<b>30</b>

**Price Schedule**

<b>ITEM DESCRIPTION</b>	<b>UNIT PRICE US\$ DDP</b>
Supply and delivery of Clinker	
Quantity	Sixty thousand ( 60,000) metric tonnes
<b>TOTAL ( Exclusive of taxes )</b>	
<b>ADD TAX</b>	
<b>GRAND TOTAL ( Inclusive of taxes) (DELIVERED TO EAPC PLC ATHI RIVER)</b>	
<b>Payment Terms</b>	<b>Bidders to specify payment terms below;</b>
Payment terms preferred by the procuring entity shall be payment after consumption of <u>3,000MT</u> .	

	<b>BIDDER TO SPECIFY</b>
DELIVERY PERIOD	
WAREHOUSE LOCATION	
AVAILABLE STOCK- (immediate)	
<b>NOTE: EAPCC Plc shall provide storage space to bidders who wish to store their product at its Athi River factory.</b>	

Note: In case of discrepancy between unit price and total, the unit price shall prevail.

Signature of Bidder \_\_\_\_\_

Name of Bidder \_\_\_\_\_

Address \_\_\_\_\_

Name and Signature of Authorized signatory \_\_\_\_\_

Date \_\_\_\_\_

Rubber Stamp \_\_\_\_\_

## NOTE

### Evaluation and Comparison of Bids

- a. Award shall be to the lowest evaluated bidders who has submitted the tender document in line with the tender and whose material conforms to the specification provided.
- b. Lowest bidder who has been successfully evaluated in preliminary evaluation and whose material conforms to our specification will be recommended for award subject to **carrying out due diligence by the evaluation committee on the bidder's attribute** & confirmation of the **availability of the material** before making the final recommendation for award, EAPC Plc will inspect the premise & interview management to confirm all the information given by the bidder.
- c. In the event of a tie in the lowest evaluated tender price, then the tenderer whose technical score is higher will be recommended for award.

GRAND SUMMARY

ITEM	AMOUNT – Kes
Total from the BOQ	
Add 16% VAT (If applicable)	
<b>TOTAL BID SUM TO THE FORM OF BID</b>	
<b>AMOUNT IN WORDS AND INCLUSIVE OF ALL TAXES</b>	
<p>Name of Bidder.....</p> <p>Physical Address.....</p> <p>Building.....</p> <p>Town..... Name</p> <p>of Authorized Representative of Bidder.....</p> <p>Signature.....</p> <p>Date.....</p> <p style="text-align: center; margin-top: 20px;">Official Stamp/Company Seal</p>	

SCHEDULE OF PARTICULARS

These Particulars are to be entered in the appropriate place on the following pages. Failure to complete all of these schedules fully or the giving of false information may invalidate the Bid and cause for forfeiture of the Bid Bond.

SCHEDULE 1 – FINANCIAL STATUS

- a) Name and Address of bankers (State Branch) Postal Address and Account No..... b) Name of Account Held at that Branch.....
- c) Bidder to sign here authority by the Bank Manager to release details of the Account to Managing Director, The East African Portland Cement PLC P.O. Box 20 -00204 Athi River or his authorized representation upon production of this signed authority.
- d) Annual turnover of the last Audited Account.....
- e) Financial year for which the most recent audited account may be inspected at registrar of Companies.....
- f) Maximum value of all Contracts worked concurrently within the last two years.....

.....  
.....

**SCHEDULE 2 – PARTICULARS OF PREVIOUS EXPERIENCE**

Bidders must insert in the space below and submit with the Bid the following statements, showing a list of works they have successfully carried out within the last three years

NAME OF CLIENT	NATURE OF WORK	VALUE OF WORK	YEAR COMPLETED	REMARKS

I hereby certify that the above works have been successfully carried out by me/us and that I am fully experienced and competent in the type of work included in this bid and have adequate financial resources to carry out the work in this contract within the period for completion.

Sign.....

Date.....

## SECTION VII

## - STANDARD FORMS

### Notes on the standard Forms

1. **Form of Tender** - The form of Tender must be completed by the tenderer and submitted with the tender documents. It must also be duly signed by duly authorized representatives of the tenderer.
2. **Contract Form** - The contract form shall not be completed by the tenderer at the time of submitting the tender. The contract form shall be completed after contract award and should incorporate the accepted contract price.
3. **Confidential Business Questionnaire Form** - This form must be completed by the tenderer and submitted with the tender documents.
4. **Tender Security Form** - When required by the tender document the tenderer shall provide the tender security either in the form included hereinafter.
5. **Performance security Form** - The performance security form should not be completed by the tenderer at the time of tender preparation. Only the successful tenderer will be required to provide performance security in the form provided herein or in another form acceptable to the East African Portland Cement PLC.



#### 4.1 FORM OF TENDER

Date \_\_\_\_\_  
Tender No. **EAPCCPLC /RT/320/2019**

To:

Sir/Madam:

Having examined the Tender documents including Addenda Nos. *[insert addenda numbers]*, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to **Supply and delivery of sixty thousand (60,000) metric tonnes of clinker** in conformity with the said Tender documents for the sum *as per the Price Schedule* or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

We undertake, if our Tender is accepted, to deliver the Services in accordance with the delivery schedule specified in the Schedule of Requirements.

We agree to abide by this Tender for the Tender validity period specified in Clause 2.13 of the Appendix to Instructions to Tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

We are not participating, as Tenderers, in more than one Tender in this Tendering process.

Our firm, its affiliates or subsidiaries – including any subcontractors or suppliers for any part of the contract – has not been declared ineligible by the Government of Kenya under Kenyan laws.

Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.

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

We certify/confirm that we comply with the eligibility requirements as per ITT Clause 3 of the Tender documents

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.  
(Name)

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[in the capacity of]

Duly authorized to sign Tender for and on behalf of \_\_\_\_\_

## 4.2 CONTRACT FORM

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

WHEREAS the procuring entity invited tenders for certain materials and spares. Viz.....[brief description of materials and spares] and has accepted a tender by the tenderer for the supply of those materials and spares in the sum of .....[contract price in words and figures]

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

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

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

Signed, sealed, delivered by \_\_\_\_\_ the \_\_\_\_\_ (for the Procuring entity)

Signed, sealed, delivered by \_\_\_\_\_ the \_\_\_\_\_ (for the tenderer)

in the presence of \_\_\_\_\_.

### 4.3 CONFIDENTIAL BUSINESS QUESTIONNAIRE

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 .....	..... Email
..... Nature of Business	
..... Certificate No.....	..... Registration
value of business which you can handle at any one time – Kshs.....	..... Maximum
..... Name of	.....
your bankers.....	.....

Branch.....

	Part 2 (a) – Sole Proprietor
Your name in full.....	Age.....
Nationality.....	Country of Origin.....
Citizenship details	
.....	
	Part 2 (b) – Partnership
Given details of partners as follows	
Name	Nationality                      Citizenship details                      Shares
1. ....	.....
2. ....	.....
3. ....	.....
4. ....	.....
	Part 2 (c) – Registered Company
Private or Public	
State the nominal and issued capital of company	
Nominal Kshs.	
Issued Kshs.	
Given details of all directors as follows	
Name	Nationality                      Citizenship details                      Shares
1. ....	.....
2. ....	.....
3. ....	.....
4. ....	.....
Date.....	Signature of Candidate.....

**4.4 FORMAT OF TENDER SECURITY INSTRUMENT-  
NOT APPLICABLE FOR THIS TENDER.**

Whereas ..... [*Name of the tenderer*] (hereinafter called “the tenderer”) has submitted its tender dated ..... [*Date of submission of tender*] for the ..... [*Name and/or description of the tender*] (hereinafter called “the Tender”)

KNOW ALL PEOPLE by these presents that WE ..... of ..... [*Name of Insurance Company*] having our registered office at ..... (hereinafter called “the Guarantor”), are bound unto ..... [*Name of Procuring Entity*](hereinafter called “the Procuring Entity”) in the sum of ..... (Currency and guarantee amount) for which payment well and truly to be made to the said Procuring Entity, the Guarantor binds itself, its successors, and assigns by these presents.

Sealed with the Common Seal of the said Guarantor this \_\_\_day of \_\_\_\_\_20 \_\_.

THE CONDITIONS of this obligation are:

1. If after tender opening the tenderer withdraws his tender during the period of tender validity specified in the instructions to tenderers, Or
2. If the tenderer, having been notified of the acceptance of his tender by the Employer during the period of tender validity:
  - (a) fails or refuses to execute the form of Agreement in accordance with the Instructions to Tenderers, if required; or
  - (b) fails or refuses to furnish the Performance Security, in accordance with the Instructions to Tenderers;

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

\_\_\_\_\_  
[Date ]  
\_\_\_\_\_  
[Witness]

\_\_\_\_\_  
[Signature of the Guarantor]  
\_\_\_\_\_  
[Seal]

**Performance Bank Guarantee [Unconditional]**

To

.....

[name of Procuring entity]

WHEREAS ..... [name of tenderer] (hereinafter called "the tenderer") has undertaken , in pursuance of Contract No. [reference number of the contract] dated 20 to supply ..... [description of goods] (hereinafter called "the Contract")

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

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

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

This guarantee is valid until the day of 20

Signed and seal of the Guarantors

[name of Bank Guarantee]

[address

] [date]

Date..... Time .....  
(Stamp.....)